This January marked the fifty-fifth anniversary of a speech by the last victorious military commander to occupy the White House, President Dwight D. “Ike” Eisenhower. His visionary warning holds crucial implications for the US today, and has been overlooked in debates across a range of policy areas, from mass surveillance to police accountability.

Ike was elected to the White House after playing a key role in World War II as supreme commander of the Allied forces in Europe. In his farewell address, he warned the American people of a threat that he had helped create. Even before winning office, then-General Eisenhower coordinated a world-historical industrial mobilization that enabled the US to liberate Europe and defend democracy from the global threat of fascism. But as he retired, Ike expressed concerns about its future consequences.

FORGOTTEN: A PRESIDENT’S PRESCIENT WARNING

In his departing speech to the American people before leaving the White House, Eisenhower described the necessity of creating a defense industry intertwined with secret government agencies, while predicting—in no uncertain terms—that they would together come to present a threat to democracy in America. President Eisenhower said,

[W]e have been compelled to create a permanent armaments industry of vast proportions. . . .
This conjunction of an immense military establishment and a large arms industry is new in the American experience. The total influence—economic, political, even spiritual—is felt in every city, every State house, every office of the Federal government. . . . Our toil, resources, and livelihood are all involved; so is the very structure of our society.

In the councils of government, we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex. The potential for the disastrous rise of misplaced power exists and will persist.

We must never let the weight of this combination endanger our liberties or democratic processes. We should take nothing for granted. Only an alert and knowledgeable citizenry can compel the proper meshing of the huge industrial and military machinery of defense with our peaceful methods and goals, so that security and liberty may prosper together.\(^\text{3}\) (emphasis added)

With the benefit of sixty-five years of hindsight, Ike appears more prescient than Nostradamus. The dangers he predicted have unfortunately grown all too visible today, reflected in several controversies—but rarely discussed in the terms he gave us to connect those issues and expose the threat that they, together, present.

**NSA: BIG BROTHER IS (STILL) WATCHING YOU**

Ike’s warnings proved prescient in several arenas. Few issues better embody the threat to democracy posed by the military-industrial complex than domestic surveillance.

Despite a continuing international outcry prompted by revelations of facts long kept secret from the public, mass NSA surveillance continues around the world and continues to collect the communications of law-abiding Americans.\(^\text{4}\)

Members of Congress from across the political spectrum have expressed outrage at the NSA dragnet capturing telephone and Internet communications.\(^\text{5}\) Part of their concern stems from their exclusion from the process: mass electronic surveillance programs
were created in secret under the George W. Bush administration without a public mandate.6

At the same time that Congress was prevented by executive secrecy from doing its job of imposing checks and balances, courts largely refused to examine mass domestic surveillance on its merits, leaving undefended the First and Fourth Amendment interests it offends.7

US history is replete with examples of government agencies and investigators misusing their powers to undermine the right to peacefully promote political perspectives.8 The advancing technology available to investigators has enabled an aspiration towards state omniscience, which in the wrong hands could threaten values as fundamental as freedom of thought.

Despite these concerns, and continuing controversies in all three branches of the federal government, the NSA’s mass surveillance dragnet continues to operate, largely unfettered, in secret.

Advocates continue to challenge unconstitutional domestic spying in the courts.9 Even over a decade since organizations such as the Electronic Frontier Foundation and the American Civil Liberties Union filed their first challenges, courts have yet to rule on the merits of their concerns.10

On the one hand, several court decisions have vindicated widespread concerns about the emergence of “almost Orwellian” systems of domestic spying.11 Other rulings, however, like the Supreme Court’s decision in Clapper vs. Amnesty International USA in 2013, have unfortunately allowed those programs to continue.12

Clapper essentially required plaintiffs to provide evidence of government activity that only government agencies could have, allowing judges to bury their heads in the sand rather than examine allegations that may be difficult to prove. Rulings with similar effects have cited the absurd state secrets privilege, holding that, despite a long history of prolific military and executive lies to evade accountability for everything from mass murders to illegitimate and unprovoked wars (including the very same case establishing the doctrine), US national security requires judges to ignore some topics that are openly discussed in the international press.13

The Court thus invites agencies to evade judicial review by maintaining secrets, while also undermining judicial independence
by forcing judges to accept official secrecy. From this perspective, Clapper undermines the role of the courts envisioned by the founders of our republic in the Federalist Papers No. 78.\footnote{\textit{\textsuperscript{14}}} Mass surveillance has also forced attention from the executive branch. President Obama promised surveillance reform when running for the White House, writing a campaign pledge to support “any steps needed to preserve civil liberties and to prevent executive branch abuse in the future.”\footnote{\textit{\textsuperscript{15}}} He commissioned a review group to issue recommendations, but the administration ultimately declined to adopt most of them, falling short of the president’s 2008 campaign pledge.

Meanwhile, Congress last year imposed the first restrictions in two generations on US intelligence agencies, before hastily adopting new surveillance measures at the end of 2015.\footnote{\textit{\textsuperscript{16}}} Even more bizarrely, it enacted both sets of laws before ever conducting an independent investigation to uncover facts as obviously relevant as, for instance, how many Americans have been monitored by the NSA, or how many times the system has been abused by people using the government’s powerful tools for their disturbing personal purposes.\footnote{\textit{\textsuperscript{17}}}

\section*{A PATTERN AND PRACTICE: ABUSING CONSTITUTIONAL RIGHTS IN SECRET}

On the few occasions that it has examined the intelligence agencies, Congress has discovered recurring violations of constitutional rights, as well as limits on the agencies’ powers. Historically, the most significant investigations were in the 1970s, when ad hoc committees convened in the Senate under Senator Frank Church (D-Idaho) and in the House under Representative Otis Pike (D-New York) revealed what the US Senate in 1976 described as “a sophisticated vigilante operation aimed squarely at preventing the exercise of First Amendment rights of speech and association…”\footnote{\textit{\textsuperscript{18}}} The most prolific target of unconstitutional surveillance during this era was a figure whose memory we now celebrate with a national holiday, the Rev. Dr. Martin Luther King, Jr. His example, involving not only surveillance, but also a character assassination campaign and a coordinated attempt to drive him to suicide, should serve as
a stark reminder to anyone today who thinks that because they have nothing to hide, they have nothing to fear.²⁹

Indeed, those who have had the most to fear from our government in the past are today celebrated as some of our greatest heroes. Since Dr. King’s era, other examples abound of peaceful activists being targeted by intelligence agencies to suppress their voices.³⁰

When vulnerable community members are intimidated into silence by the knowledge that their voices and concerns will be publicized or retained, it is not merely they who suffer.³¹ The theory of democracy animating the First Amendment presupposes the importance and primacy of public debate, not only as an exercise of a speaker’s rights but also to satisfy the rights of listeners to hear from all voices, grow informed by their perspectives, and make better reasoned judgments as participants in the political process.³²

In 2002 a federal judge ordered the FBI to pay a $4 million judgment to an environmental activist in the Bay Area, Judy Bari, who was severely injured in 1990 by a car bomb that the Bureau (according to the court) falsely accused her of planting before arresting her.³³

Would US energy policy be any different today had the FBI not criminalized the radical environmental community in the 1990s, driving the supposed “eco-terrorists” of the Earth Liberation Front and Animal Liberation Front into international exile and federal prisons, rather than congressional hearings and political campaigns?³⁴

Judy Bari’s case, the FBI’s plot to suppress the Occupy movement twenty years later, and the Edward Snowden revelations two years after that should each—indeed, all of it—have sparked the same outrage which, after Watergate, drove the Church and Pike Committees to investigate and reveal the FBI’s Counterintelligence Program (COINTELPRO).³⁵ They still could, if Congress finally does its job and investigates the issues that Snowden and other whistleblowers have raised.³⁶

A pattern visible across these historical instances involves what University of Chicago law professor Geoffrey Stone describes as “a national perception of peril and a concerted campaign by government to promote a sense of national hysteria by exaggeration, manipulation, and distortion.”³⁷ While executive secrecy enables violations of powers and rights, in the past we have been fortunate to witness
congressional and judicial oversight correct prior abuses. In 2016, a decade and a half since the beginning of the contemporary mass surveillance regime, that accounting still has yet to happen.

While federal agencies like the NSA, CIA, and FBI may be the most prolific bodies monitoring Americans, thousands of local and state law enforcement agencies around the country also practice unconstitutional surveillance of law-abiding residents.

NEW MARKETS FOR WEAPONS: MILITARIZING LOCAL POLICE

The emergence of electronic surveillance not only by federal authorities but also by their local counterparts starkly reflects President Eisenhower’s warnings. Surveillance programs, equipment, and training for local and state police serve both as a cause and effect of their militarization.

The Pentagon’s 1033 program provides surplus military equipment to local police and sheriffs departments, as well as state law enforcement agencies and the public safety departments of schools and universities. Since the 1033 program began in 1990, it has distributed military gear ranging from tactical vehicles like armored personnel carriers to weapons like assault rifles, to over 13,000 agencies across the US. Over $5 billion worth of military equipment has been transferred to police departments since 2000.

In Utah alone, police departments received over 1,200 military-grade rifles over two years, as well as other weapons like grenade launchers and .45-caliber pistols distributed to agencies across the state. Other gear distributed through the 1033 program ranges from blankets and cars to night vision tools, bomb disposal robots, armored vehicles, body armor, machine guns—and surveillance tools.

For example, International Mobile Subscriber Identity (IMSI) catchers—often known by a trade name, Stingray—mimic cell phone towers in order to monitor voice and data traffic over cell phone networks. In the hands of sheriffs departments and local police, the devices have proliferated across the country.

Domestic surveillance by federal agencies tends to take the form of monitoring communications, or using informants to monitor orga-
organizations from within, but local police monitoring takes a variety of forms that includes communications surveillance and human intelligence, but—increasingly enabled by technology—also goes well beyond them.

For instance, police use video surveillance of public spaces enabled by closed circuit cameras mounted in fixed locations, or on aerial drones. Proliferating police body cameras, and agreements allowing police to gain access to private video feeds, present other sources of increasingly pervasive video surveillance not by federal agencies, but by local police.

Beyond allowing authorities to capture video surveillance imagery in public, advanced technology also enables increasingly sophisticated facial recognition, which can automate the process of connecting individuals to specific locations and times.

Real-time and historical location tracking is further enabled by automatic license plate readers (ALPRs), which scan three million records in Los Angeles County alone every week. Corporate ALPR systems have also exposed troves of data to foreign intelligence agencies, malicious hackers, and others who have taken advantage of often weak security to access video feeds without permission.

ALPR systems are often procured and deployed through offensive agreements. Some arrangements, for instance, enable public agencies access to surveillance equipment for free, in exchange for giving police data to private contractors for their commercial purposes, and adding surcharges on court fees payable to the contractors by individuals identified by police. This process essentially turns police into debt collectors.

Local police also use other forms of advanced surveillance. For instance, the ShotSpotter system aims to detect gunshots within a city with microphones so sensitive they are capable of overhearing conversations. Yet in some tests, as many as 90 percent of the warnings delivered by ShotSpotter devices have proven to be false, suggesting that their utility is limited, whatever their impact on rights and communities.

The Pentagon is not the only source of federal resources fueling local police militarization. Local agencies also gain access to military training and tactics through programs like the Urban Areas Security
Initiative (UASI) administered by the Department of Homeland Security. Coordinated by for-profit contractors, UASI is a cross between a marketplace and a testing site, encouraging police departments to bring the military-industrial complex to a town near you.

UASI grants have helped support the proliferation of Special Weapons and Tactics (SWAT) divisions, which epitomize the militarization of police departments. In addition to employing military tactics, SWAT teams also reflect the tendency towards inexplicable violence and so-called “mission creep,” as explained by law professor Jonathan Turley:

80 percent of SWAT raids were to serve a search warrant. That is far different from the original purpose of rescuing hostages and capturing armed escaped felons. Conversely, just 7 percent of SWAT raids were “for hostage, barricade, or active shooter scenarios”—the famed purpose of the SWAT unit.

Despite public controversy, UASI funds have helped police departments buy sophisticated surveillance equipment like Stingrays and later versions of IMSI-catchers. UASI grants have also been used to purchase less lethal munitions such as Tasers, which have been abused by police departments in multiple cities, prompting local rules in some of them to restrain their use and curtail recurring deaths.

Similarly, biometric data collection, retention, and dissemination has grown ubiquitous largely through the coordination of local police under an FBI program called the Next Generation Initiative (NGI). While initially presented to the public as the Secure Communities program, billed as a way to streamline the deportation of undocumented migrants who had previously violated the law, NGI involved a more ambitious agenda from the beginning, entailing the creation of a federal biometric database enabling new forms of monitoring and surveillance.

The connection between police surveillance, on the one hand, and the militarization it enables and advances, on the other, may escape the attention of an observer unaware of Eisenhower’s parting address. But it emerges in stark relief when informed by Ike’s warning that “in
every city... the very structure of our society” would be influenced by corporate profit motives fueling military operations essentially seeking new targets to justify themselves.¹⁰

TRANSPARENCY: FUNDAMENTAL DEMOCRATIC VALUES AT STAKE

Not only are local police using military-grade surveillance equipment to monitor civilian populations, but local oversight of those tools has been essentially absent. It should come as no surprise that local policing and surveillance have been pervaded by the same accountability problems that have plagued federal programs supposedly justified by “national security” concerns.

In Baltimore, for instance, the use of Stingrays became so routine that police deployed the devices thousands of times before policymakers learned and started investigating.⁵⁵ Across the country, the North Dakota State Highway Patrol—a single agency among hundreds that receive military equipment under the 1033 program, and one of dozens that have been suspended from it—somehow lost track of over 150 weapons.⁵³

The New York Police Department (NYPD) was caught infiltrating college campuses to monitor constitutionally-protected political and religious beliefs.⁵⁴ Targets included even schools far beyond New York that, upon learning what happened under the cover of secrecy, expressed outrage at the NYPD’s violations.⁵⁵

Concerns about the secret and unaccountable use of Stingray devices have prompted lawsuits in multiple cities including San Diego, policy changes by the Justice Department requiring federal agents to use Stingrays only after receiving a judicial warrant, and legislation in several states, from California to Virginia, forcing greater transparency into the procurement and deployment of IMSI catchers.⁵⁶

While they have grown increasingly controversial in recent years, Stingrays have been used since at least 2007, long preceding revelations of their use and replacement by even more powerful—and constitutionally problematic—devices nearly a decade later.⁵⁷ In some communities, that controversy has in turn prompted pointed policy
debates, pitting residents and community advocates against police departments and police unions.⁵⁸

Efforts at the state and local level to require greater transparency into the use of surveillance equipment by local and state law enforcement authorities represent some of the most encouraging signs in the movement to reclaim constitutional rights. For instance, the state of California adopted two laws in 2015 that require at least minimal transparency governing two particular kinds of surveillance equipment, while jurisdictions within the state are grappling with proposed measures that would require greater transparency not only for specific surveillance systems, but also any technology method used to monitor residents without their consent.⁵⁹

Distributing military equipment, tactics, and training to domestic local law enforcement officers in itself represents the fulfillment of Eisenhower’s vision of a military-industrial complex threatening democratic processes and constitutional rights. The metastasis of domestic surveillance appears even more problematic when considered in historical context.

A VICIOUS CYCLE: IMPUNITY FOR RECURRING CIA HUMAN RIGHTS ABUSES

In the US, the militarization of domestic policing began in the 1980s, responding to paramilitary narco-trafficking syndicates killing police officers and Drug Enforcement Administration (DEA) agents in Miami and Los Angeles.⁶⁰ Official government sources confirmed—but not until the late 1990s—that the organized crime sector, then importing cocaine into US port cities, was largely armed, trained, and equipped by the CIA.⁶¹

The history of the CIA and its involvement in running drugs and weapons to fuel the Agency’s own rogue foreign policy may seem surprising, but it is well established and thoroughly documented: a CIA inspector general’s report in 1998 substantially admitted the findings of renowned journalist Gary Webb, who revealed the agency’s role in the crack cocaine epidemic at the cost of his own career, and helped set in motion the revelation of the Reagan administration’s illegal Iran-Contra affair.⁶² After being let go from the San Jose-based Mercury
News as a result of his reports, which the paper originally supported, Webb documented the entire story in his 1998 book, *Dark Alliance: The CIA, the Contras, and the Crack Cocaine Explosion*. Despite being vindicated in his reporting, Webb’s career as a journalist was never resuscitated. Years later, police reported he died of a suicide, which entailed multiple self-inflicted gunshots to the head (an incident that some parties found mysterious).  

Beyond its pervasive secrecy, or its work in escalating violence, the impact of CIA international human rights abuses on destabilizing domestic communities has never been systematically explored.

The mere fact that the CIA pursues its own foreign policy should disturb any policymaker or military leader conscious of Eisenhower’s legacy. The Agency’s commercial interests enable its budget to stretch well beyond its $15 billion federal budget allocation, but there is little transparency to allow the public oversight or opportunity to influence it.

More recently, the CIA has pioneered a new era of human rights abuses by deploying armed drones to conduct extrajudicial assassinations, even of American citizens never accused of committing violence or subjected to a criminal trial. Efforts by the Obama administration to ground drone strikes in some set of principles ultimately merely exposed how arbitrary the process remains.

As in Vietnam, executive officials presumptively classify dead bodies discovered after strikes as those of insurgents, categorically ignoring civilian deaths while downplaying the incalculable strategic costs of deploying unmanned weapons. And what harm to human life could come from CIA drones falling into the hands of our nation’s enemies is anyone’s guess.

Some of the CIA’s most prolific human rights abuses have come in the context of arbitrary detention, international human rights abuses such as torture, and digital espionage operations targeting Congress in order to hide evidence of the Agency’s criminal trail.

**A CONTINUING COVER-UP: CIA AND MILITARY TORTURE MOCKING INTERNATIONAL LAW**

Under President George W. Bush’s administration, the CIA held detainees in secret sites scattered around the globe, hidden from both
Congress and the governments of the countries in which they were situated. The military also continues to openly hold detainees on a US naval base in Cuba.

Interrogation techniques routinely conducted at those sites—such as waterboarding, sleep deprivation, forced “rehydration” using rectal enemas administered so brutally that observers have described the sessions as “rape,” and even involuntary human experimentation—violated well-established international laws.

These are not laws in which the US has been historically disinterested. Indeed, our nation—and particularly President Eisenhower—played a critical role in establishing the international human rights regime, by winning the Second World War at enormous cost and litigating the Nuremberg trials that followed its conclusion.

CIA human rights violations committed through the Agency’s detention program, however, were just the beginning. Well before torture became politically controversial, Agency personnel took active efforts to obstruct justice by destroying evidence, including videotapes of interrogations confirming accusations of illegally brutal treatment.

Secrecy continues under the Obama administration to prevent transparency into further evidence. Administration officials sought and received authorization from Congress in 2011 to suppress evidence of torture in US military custody. According to the retired US Army major general who wrote a report on detainee treatment, the body of existing evidence that remains suppressed includes thousands of photos, as well as videos, depicting offenses including “torture, abuse, rape, and every indecency.”

Later attempts to suppress evidence of CIA crimes reached new heights. In 2014, after concluding an investigation that spanned several years and compiled thousands of pages of documents, the Senate Select Intelligence Committee wrote a scathing report on CIA torture. Committee chair Dianne Feinstein (D-California) fought for years to make even a portion of the report public, and was ultimately forced to publicly decry on the Senate floor an erosion of the separation of powers rising to the level of what the press described as “a constitutional crisis.”

After the Senate Select Intelligence Committee demonstrated its
independence, resisting pressure from the Obama administration to suppress the Senate’s investigation into CIA torture, CIA personnel hacked into congressional computers to steal vital documents. Agency personnel also spied on and even filed false charges against the committee’s investigative staff.

An internal CIA accountability board later excused the CIA hack as a “miscommunication,” just a week after the inspector general who revealed the hack—contradicting the CIA director’s false claims denying it had happened—declared plans to leave the Agency. Less than two years later, his successors claimed to have “mistakenly” destroyed their office’s only copy of the Senate’s report.

Even the portion of the Senate report released in 2014 is no longer officially available. It was largely based on an internal CIA document memorializing a review by former CIA Director Leon Panetta that has never been released to the public, which former Sen. Mark Udall (D-Utah) felt compelled to focus on in his final speech on the Senate floor.

**“DEMOCRATIC PROCESSES”: MILITARIZATION UNDERMINING DEMOCRACY**

The CIA’s serial assaults on transparency make a mockery of democratic transparency, public oversight of covert operations, and international human rights principles. They reflect—as clearly as police militarization or the recurrence of torture itself—the prescience of Ike’s warnings that secrecy, national defense, and industry would combine to form a noxious mix inimical to democracy.

When an executive intelligence agency conducts offensive data exfiltration missions targeting the US Senate specifically in order to hide evidence of human rights abuses by their own agency, there is a grave problem. Perhaps the only thing more astounding than the CIA’s audacity is the failure of the political establishment and mainstream media to recognize it in the terms that Eisenhower gave us sixty-five years ago.

In that context, President Obama’s willingness to “look forward, not backward” appears like a stratagem to evade the political inconvenience of his administration’s responsibility under international law.
to “promptly and impartially prosecute senior military and civilian officials responsible for authorizing . . . acts of torture.”

Torture under the Bush administration violated international law, as does the Obama administration’s failure to pursue accountability. The decision to not criminally prosecute any state officials responsible for torture ultimately represents what I have described elsewhere as “an illegal capitulation to illegitimate political interests carrying profound consequences for human rights and freedom both in the US and around the world.”

Through another lens, impunity for CIA and military torture—like the torture itself and the continuing lack of transparency into its scope and resounding effects—reflects the subversion of democratic processes by the military-industrial complex that Eisenhower felt compelled to create and grew to fear.

“LIBERTIES”: MILITARIZATION UNDERMINING WE THE PEOPLE

Looking forward, the military-industrial complex threatens constitutional rights, and the American people, even more directly at the local level. Police militarization that may seem offensive in the abstract appears even more constitutionally subversive when it is observed suppressing dissent.

As illustrated during the uprisings in Ferguson, Missouri, and Baltimore, Maryland, military weapons, training, and surveillance tools in the hands of police have been turned increasingly towards suppressing First Amendment rights guaranteed under the speech, association, assembly, and petition clauses.

When the Occupy movement spread across dozens of US cities in Fall 2011, the FBI coordinated a campaign to violently suppress it. The police departments of dozens of major cities participated, all of which used their intelligence and interagency powers justified on national security grounds to instead suppress constitutionally protected domestic dissent.

Local police suppression of dissent continues unabated. A Truth and Power mini-documentary explores the use of IMSI-catchers specifically targeting the Black Lives Matter movement, which was
simultaneously targeted by a range of other intelligence methods by multiple agencies.\textsuperscript{93}

Militarized policing tactics extend beyond surveillance during periods of civil unrest. For example, the Chicago Police Department was caught housing incommunicado detainees in a domestic “black site,” Homan Square, at which thousands were routinely beaten, denied access to counsel, and pressured into signing false confessions.\textsuperscript{93}

Chicago police effectively denied the Fifth Amendment right against self-incrimination to residents merely suspected of a crime. In that respect, Homan Square resembles other detention centers run by the CIA, or the lawless and counterproductive US military detention facility at Guantánamo Bay in Cuba.\textsuperscript{94}

The abuses at Homan Square reflect the domestic impacts of both police militarization and suppression of dissent. Not only were military and CIA violations replicated at the local level, but Homan Square was ironically used to detain and interrogate protesters taking action to challenge US militarism.\textsuperscript{95}

Despite being illegal, torture by local police modeled on military practices is hardly unprecedented. In the very same city, a senior police commander was sentenced to prison for lying about a South Side torture ring that for decades sent innocent African American men to prison by the hundreds using torture techniques that were learned in Vietnam.\textsuperscript{96}

When Eisenhower warned the American people of the threat presented by a military-industrial complex, he was not likely thinking that law-abiding Americans would be subjected to torture techniques learned by police officers when deployed to fight wars on foreign shores.

It is one thing to relentlessly abuse vulnerable communities’ rights for decades, and even centuries.\textsuperscript{97} It is another thing to arm and train local police with military weapons and tactics. To then deploy militarized police to suppress demonstrations by communities that have long been victimized compounds an ugly legacy of violence with continuing violations of constitutional rights guaranteed to all Americans.

The circularity—rogue CIA operations importing drugs and sparking a gang war, domestic police deploying military weapons and tactics in response, low-income communities enduring murders with
impunity for decades, activists in those communities mobilizing to seek redress for their grievances, and then police responding to their mobilizations with the armed force originally justified by the crisis sparked by the CIA thirty years earlier—offers yet another disturbing reflection of Ike's warnings.98

WHAT TO EXPECT: THE SCHEDULED EXPIRATION IN 2017 OF FISA, SECTION 702

Congress should not be in the business of approving government programs it does not understand. Yet in the surveillance arena, that has become the institution's habit.99

Responding to a perceived national security crisis, the Bush administration in secret created a surveillance apparatus in 2001 that remained secret from the American people for several years. The first revelations of the domestic dragnet in 2005 followed an internal struggle within the Bush administration so severe that it nearly led to a mass resignation of the Justice Department's senior leadership.100

Yet, three years later, intimidated by the agencies and fear-mongering, Congress changed the law to let the agencies loose from the statutory limits imposed after the Church and Pike Committee investigations thirty years before.101

When Congress amended the Foreign Intelligence Surveillance Act (FISA) in 2008, the public did not know how the NSA would use its new powers.102 It took five years for a whistleblower to reveal how FISA powers have been contorted to pervasively spy on the Internet, using back door searches to effectively target Americans while remaining hidden from public legislative and judicial oversight.103

After Edward Snowden revealed the NSA dragnet in 2013, Congress set preliminary limits on domestic telephone surveillance in the USA Freedom Act, while leaving the Internet unprotected. But the key statute enabling Internet spying—FISA—is set to expire in 2017.104

As the statutory basis for the PRISM program and upstream collection, FISA must be the subject of further hearings to explore its full scope and impact on the Internet, the constitutional rights of Americans, and freedom of expression around the world.105

At a hearing in Spring 2016 in the Senate Select Judiciary Com-
mittee, senators explored some basic questions also posed by members of the House, to which no one has yet given an answer. For instance, how many Americans have been subjected to Internet monitoring through programs authorized under FISA? The first senator to pose this question, Ron Wyden (D-Oregon), did so over three years ago and is still waiting for an accurate response.

At a minimum, Congress should insist upon learning how many Americans have been monitored by the NSA. Government officials have had years to produce an answer to that question. But that’s just one among many questions that should be answered before Congress can legitimately extend or reauthorize the expiring FISA provisions.

How many times—and in which particular cases—has NSA data been used to circumvent the evidentiary rules of the criminal justice system? How many times has the FBI used NSA databases to find records about US persons? How many times has the Internet dragnet enabled surveillance of peaceful groups and individuals pursuing constitutionally protected political goals, or the former lovers of NSA personnel or government contractors?

We know that Internet spying has already imposed chilling effects on Americans. How many have silenced themselves, and what harm has our democracy suffered as a result?

Congress should also insist on releasing all legal opinions and executive legal analyses about the Section 702 programs, as well as declassifying all relevant documents sent to Congress when FISA was passed and reauthorized in 2008 and 2012.

If the capacity to generate answers does not currently exist, members of Congress should defend their own prerogatives—if not the rights of their constituents and Internet users around the world—by insisting on substantial reform enabling constitutional limits and meaningful congressional and judicial oversight of any programs used to monitor Internet use, traffic, communication, or data.

With the absence of such reform, the law should be allowed to expire as scheduled. Its expiration should force an end to numerous domestic surveillance activities, including PRISM and the upstream collection process.

It would be a mistake to think the process complete once congressional authorization has been allowed to expire. Given longstanding
secret interpretations of the USA PATRIOT Act’s authorities, or the secret creation of the mass surveillance program in the first instance, or the widespread violations that Congress discovered the last time it actively investigated domestic intelligence efforts, oversight committees should confirm that mass surveillance programs end after the expiration of their legal basis.113

We have a great deal to learn from President Eisenhower. Ike told us to “take nothing for granted,” while warning the people of the United States not to let our guardians turn their sights on us.

We would do well to remember Ike’s words, particularly as policymakers consider whether to reauthorize programs that realize his fears. Connecting seemingly disconnected surveillance and policing issues can help policymakers—from the local level to their counterparts in Congress—better see their decisions through the eyes of the former president and war hero who helped create the military-industrial complex and feared that it would come to threaten our Constitution and democracy in America.

Shahid Buttar is a constitutional lawyer focused on the intersection of community organizing and policy reform as a lever to shift legal norms. He led the Bill of Rights Defense Committee from 2009 to 2015 and crafted the organization’s platform for advancing transpartisan resistance to domestic surveillance and executive secrecy. Since graduating from Stanford Law School in 2003, he has worked on issues ranging from campaign finance reform and marriage equality for same-sex couples to foreign policy and police accountability. Shahid contributed to this book in his personal capacity. The opinions expressed in this article are his own and do not necessarily reflect the views of his employer, the Electronic Frontier Foundation.

Special thanks to Brandy Miceli, Project Censored intern and a senior in Print and Online Journalism at San Francisco State University. Miceli is the managing editor for the Xpress Magazine, a student-run publication at the university, and president of the Project Censored chapter at SFSU. For this chapter, Miceli provided additional editing, citation assistance, and formatting.

Notes


9 “NSA Spying on Americans.”


360
CENSORED 2017


See the results of Shawn Musgrave’s FOIA request for a listing of states and law enforcement agencies that have been temporarily suspended from the 1033 program during FY 2004 – FY 2014, “Redacted Responsive Suspension List,” Muckrock, November 13, 2015, https://muckrock.sf5.amazonaws.com/foia_files/2015/11/13/Redacted_Responsive_Suspension_list.pdf; Tim Cushing, “Documents Show


Link no longer available (furthering Buttar’s statement); previously available at http://www.intelligence.senate.gov/study2014/sscistudy1.pdf.


