

THE DEFENDER



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SEPTEMBER 2007

TELECOM SPY ROLE CONFIRMED

The country's national intelligence director, Michael McConnell, has confirmed that U.S. telecommunications companies assisted in the Bush admini-

stration's warrantless surveillance program.

The admission raises questions about whether the government can continue to claim a "state secrets privilege" in fighting efforts by the ACLU to determine if Verizon and AT&T secretly turned over customer phone records to the National Security Agency.

McConnell's admission came in an interview he gave to the *El Paso Times* of Texas in August. His comments were especially ironic because only three months previously, he asserted in a sworn affidavit filed in a federal court in San Francisco that "[D]isclosure of the information covered by this [state secrets] privilege assertion reasonably could be expected to cause exceptionally grave damage to the national security of the United

States."

For more than a year the ACLU-Vermont, and ACLU affiliates across the country, have been fighting to determine whether telecommunications companies violated privacy policies by releasing customer phone records to the NSA.

Those efforts started in public utility commissions, which regulate telecommunications companies. In Vermont, the state Department of Public Service also filed complaints with the Vermont Public Service Board against Verizon and AT&T.

The PSB agreed to launch an investigation, but then the federal government sued to stop the investigation on grounds of "state secrets." That legal action began in U.S. District Court in Burlington, but in late 2006 the Vermont case – and about a

half dozen others like it – were consolidated into one "multi-district litigation" suit before a federal judge in San Francisco.

In McConnell's interview with the *El Paso Times*, he repeatedly stressed the administration's desire to grant telecom companies protection from any liability because of the current inquiries and legal actions against them. He said the telecommunications companies could face bankruptcy without the protection.

In a May 2006 press release, Verizon denied providing customer call data to the NSA. However, it has joined the government in fighting the PSB investigation.

More details of the PSB case, and a link to the McConnell interview, are online at www.acluvt.org.



Logo from first ACLU of Vermont newsletter, 1967

**SPECIAL 40th
ANNIVERSARY
ANNUAL MEETING
OCTOBER 27 IN
MONTPELIER**

Details on this year's annual meeting celebrating 40 years of protecting civil liberties in Vermont, along with voting information for the board election and on proposed bylaw changes, may be found in the insert.

Ballots and the annual meeting reservation form are on the back page of the insert.

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FROM THE EXECUTIVE DIRECTOR

Allen Gilbert, Executive Director

We've received numerous inquiries about the state's new prebate/rebate credit system. Is the credit information printed on homeowners' property tax bills public, and must it be disclosed upon request?

We believe the information is confidential and that state law clearly prohibits its disclosure.

The prebate credit information printed on Vermonters' 2007 property tax bills is based on homeowners' income. Using the Tax Department's own Web calculator, anyone can take homeowners' prebate credit amounts and do a "reverse calculation" to get a pretty accurate idea of income.

The lack of a credit on the bill indicates that the taxpayers are ineligible for a rebate. In most cases, this means income is over \$88,000.

Why should anyone care that income information – in this case, household income – could be disclosed in this way?

"Data aggregators" are companies that collect information about us and then sell it to marketing firms, financial institutions, and consumer product companies.

Household income information is a gold nugget for aggregators. That's why it's always asked on things like product registration cards. It helps companies target commercial messages

Income information is something of value – to aggregators who sell it to companies, to companies who use it to target sales to consumers.

What is perhaps most troubling about the debate that's swirled around this issue is that the law – Section 3102, "Confidentiality of tax re-

ords," of Title 32 – seems so clear on this issue. And it provides very stiff penalties for officials who disclose the information.

The Tax Department and others maintain that Act 185 of the 2006 Legislature required the prebate credit amount to be printed on homeowners' property tax bills.

That may be true, but it doesn't follow that private information is somehow "transformed" into public information just because it appears on a specific document.

There's a simple solution: redact the credit amount on a copy of any bill handed out to anyone other than the homeowner. That's what the secretary of state has suggested, and we agree with her.

STAFF CHANGE



Sandra Nall has left the ACLU-Vermont to take a new job in the Boston area.

Sandra was development director at the ACLU for 12 years. She first became involved as a client following an incident with DEA agents while living in Winooski. She went on to serve as an office volunteer and board member before joining the staff. There she devoted her energies to strengthening the ACLU's financial base.

We wish Sandra all the best in her new position.

The process of finding a successor is underway.

Generous Gift Allows Renewal Of Legacy Challenge

The Legacy Challenge is a unique bequest program that helps protect civil liberties far into the future – and provides immediate benefits to local ACLU affiliates.

A generous offer from the Robert W. Wilson Charitable Trust to make an immediate cash donation of up to 10 percent of the future gift's value, with a maximum match of \$10,000, has been renewed. See www.legacy.aclu.org for details.

SPYING ON CITIZENS IS BROADENED

As it rushed towards its summer recess in early August, Congress bowed to administration calls for an expansion of the Foreign Intelligence Surveillance Act.

The legislation – approved 60-28 in the Senate and 227-183 in the House – was a dramatic illustration that the rule of law has not been re-established in Washington and that Congress is continuing to sanction government abuse of power.

Embarrassingly, two weeks after the law was passed, there was still debate about how much power Congress had actually given to the president.

“We did not cover ourselves in glory,” one congressional aide told *The New York Times*.

The administration claimed the law was necessary be-

cause of a recent FISA court decision limiting government spy powers.

Orders issued by the secret court, however, are themselves secret – which helped create confusion as to what Congressional action, if any, was needed.

The ACLU has filed legal action to try to force release of the court’s opinions.

The act expands the government’s authority to conduct warrantless wiretapping of Americans’ international phone calls and e-mails.

All that’s needed to authorize the surveillance is an order from the attorney general or national intelligence director.

Although the law has a sunset of six months, authority once granted is difficult to rescind, critics say. There is a danger the powers could become permanent.

All three members of Vermont’s congressional delegation voted against the bill. Only one other state showed such unanimous opposition – Rhode Island.

Two weeks after Congress’s action, the *Wall Street Journal* reported that U.S. intelligence officials had authorized expanded domestic use of spy satellite surveillance.

Unrelated to the FISA expansion, the decision raises even more troubling questions about warrantless government surveillance of U.S. citizens.

The government has never before turned spy satellites – some even with the capability to track people’s activities – on its own citizens.

And perhaps most frightening – the surveillance is invisible and largely untraceable.

WINDHAM COUNTY PARTY

Join members and friends at a Brattleboro house party celebrating the ACLU’s 40th anniversary. Enjoy good food and good company, learn about the latest civil liberties challenges in Vermont and the nation, and support the work of the ACLU.

Details: Contact us at (802) 223-6304 or info@acluvt.org.

HOLIDAY GIFT IDEA

Looking for a unique holiday gift? Give a gift membership to the ACLU!

Send us the name and address of each gift recipient, along with \$20 for each individual and \$30 for each joint membership, and we will send attractive gift membership notices to you to bestow.

Please write a separate check for each recipient, made payable to the ACLU, and send to 137 Elm St., Montpelier, VT 05602.

BOOK REVIEW

Static: Government Liars, Media Cheerleaders, and the People Who Fight Back, Amy Goodman and David Goodman, Hyperion, 2006

From a public “right-to-know” perspective, the 21st century has not started out well for Americans. The government has proved adept at manipulating intelligence to press its case for war and warrantless surveillance, and the denial of liberties as basic as habeas corpus. Astonishingly, Americans have seen these rights erode with barely any alarm sounded by the media.

Siblings Amy and David Goodman seek to address this deficiency in this disturbing 2006 volume. Amy is the host of “*Democracy Now!*”, broadcast nationwide over a mix of radio, TV, and

Internet media; David is a respected journalist who lives in Waterbury, Vermont. Both study the government, the media, and – more hopefully – those people who stand up to collusion between the two.

The chapter “Bravo! Bush” is particularly likely to get civil libertarians’ blood boiling. It details blatantly staged, minutely controlled “public” appearances by the president – from which the “public,” in a broader sense, was sometimes forcefully barred. Clearly, when political “image” and the rights of expression and assembly have clashed in recent years, the latter have given way.

The subtext of *Static* is that the news media have purposefully assisted in the charades and deceptions the Goodmans meticulously describe. And yet it’s interesting that the authors document their case through extensive footnotes largely citing newspaper accounts. A reader might conclude that some journalists, at least, have reported elements of the fractured truth of our times – but that their editors and publishers have buried and trivialized their stories, like veiled candles in the window.

Writer and musician Will Lindner of Barre serves on the ACLU-VT board.

AMERICAN CIVIL
LIBERTIES UNION OF
VERMONT
137 ELM STREET
MONTPELIER, VT 05602
(802) 223-6304 (v/f/TTY)
info@acluvt.org
www.acluvt.org

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Photo by David DeLacore courtesy of the Times Argus

"The pictures are an important part of the political message Guiles wished to convey, accentuating the anti-drug (and anti-Bush) message."
- 2nd Circuit Court opinion

STUDENT SPEECH RIGHTS UPHELD

Three years after his suspension from school for wearing an anti-Bush T-shirt, Zachary Guiles finally was told – as he had insisted – that the suspension violated his free speech rights.

This summer, as its term ended, the U.S. Supreme Court let stand a lower court ruling that said Williamstown school officials erred in banning the T-shirt.

The case – *Guiles v. Marineau* – was brought by the ACLU-Vermont in May 2004, immediately following Guiles' suspension. He was 13 at the time.

The T-shirt called Bush "Chicken-Hawk-in-Chief" who was engaged in a "World

Domination Tour." Guiles was told that he couldn't wear the T-shirt unless he taped over certain pictures on the T-shirt -- pictures of a martini glass, a marijuana cigarette, and cocaine. The pictures were allusions to Bush's alleged former substance abuse problems -- which were also described in words on the T-shirt.

The school claimed the display of the pictures violated the school's dress policy, which prohibits all images of drugs, or drug paraphernalia, on student clothing.

U.S. District Court Judge William K. Sessions ruled in August 2004 that Guiles' free speech rights covered the

written words on the T-shirt, even those words describing Bush's alleged drug problems. However, said Sessions, those rights did not cover the pictures on the T-shirt. The school's policy against drug images of any type allowed that part of the shirt to be censored.

The ACLU appealed the decision to the Second Circuit, which in August 2006 agreed with the ACLU. The three-judge appeals panel relied on the U.S. Supreme Court's 1969 *Tinker* decision. Zach was represented by cooperating attorneys Steve Saltonstall and David Williams.