

# Undermining the Fourth Amendment: NSA Memos Expose Obama Administration's Lies about Wiretapping

By [Eric London](#)

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National Security Agency internal memorandums made public over a decade ago refute the Obama administration's claims that its vast domestic surveillance program are being carried out as part of a "war on terror."

Plans to carry out the abrogation of basic democratic rights were well underway at least ten months before the "global war on terror" was launched in the aftermath of the still unexplained events of September 11th, 2001.

The "[Transition 2001](#)" memo, published internally by the NSA at the end of 2000 in preparation for the inauguration of President George W. Bush, discloses a decade-old plan to undermine the foundations of the Fourth Amendment. The heavily-redacted document was made public by a Freedom of Information Act request filed by a George Washington University professor.

The Fourth Amendment states that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated..."

The 2000 NSA memo expresses the view that this basic democratic right is not compatible with the repressive needs of the state:

"The Fourth Amendment is as applicable to eSIGNINT [electronic signal intelligence] as it is to the SIGINT of yesterday and today. The Information Age will *however* cause us to *rethink and reapply* the procedures, policies and authorities born in an earlier electronic surveillance environment." [emphasis added.]

"Make no mistake," the memo continues, "NSA can and will perform its missions consistent with the Fourth Amendment and all applicable laws. *But* senior leadership must understand that *today's and tomorrow's mission will demand a powerful, permanent presence on a global telecommunications network that will host the 'protected' communications of Americans as well as the targeted communications of adversaries.*" [emphasis added.]

The Fourth Amendment contains no "however" or "but" clauses, as the authors of the memo attempt to imply. The language "shall not be violated" clearly indicates that the constitution's authors intended no such exceptions.

Moreover, the fact that the NSA employed quotation marks when referencing “protected” constitutional rights signifies the level of contempt with which large sections of the ruling class view the basic democratic rights of the American people.

The authors also express consternation about the slow pace in the growth of the NSA’s surveillance plan, stating less than a year before the events of September 11th that “the process of transformation” is “likely to be a long one, absent some catastrophic and catalyzing event—like a new Pearl Harbor.”

This is an extraordinary statement, echoing remarks made in 1997 by former national security adviser under Jimmy Carter, Zbigniew Brzezinski, who noted that the “the pursuit of power is not a goal that commands popular passion, except in conditions of a sudden threat or challenge to the public’s sense of domestic well-being.”

Despite the authors’ formal statements of support for the Fourth Amendment, the insinuation that there exists a legalistic state of exception to protected constitutional rights has historical implications: such exceptions serve as pseudo-legal justification for the actual establishment of a police state.

References to the fact that the proposed “rethinking” is the result of changes in “today’s and tomorrow’s mission” demonstrate that Constitutional democratic rights are to be subordinated to the needs of US imperialism in the post-Soviet era.

Faced with the need “to exploit in an unprecedented way the explosion in global communications,” the memo demands that the NSA undertake a “fresh approach to the way [it] has traditionally done business.”

A related NSA document provides further insight into the social forces behind this “fresh approach.” Titled “The National Security Agency: Issues for Congress” and published in January 2001, the document explained that “a major renewal effort is underway” to expand the domestic surveillance powers of the agency, which in the last quarter of the 20th century had been limited by popular anger over agency abuses made public through the Church Committee hearings of 1976.

“This represents an Agency very different from the one we inherited from the Cold War,” the memo acknowledges. “It also demands a policy recognition that NSA will be a legal but also a powerful and permanent presence on a global telecommunications infrastructure...”

Reading the Church Committee’s finding that the NSA was “vital to American security” as encouragement to expand its anti-democratic practices, the 2001 memo commends Congress for watering-down the Foreign Intelligence Surveillance Act of 1978 to permit limited domestic surveillance operations for “law enforcement purposes.”

The degree to which the NSA colluded with Congress at the turn of the millennium was stated explicitly in the Transition 2001 memo. The NSA authors wrote that “[t]he Agency recognizes that Congressional buy-in is a necessary first step toward transforming the Agency, and has been keen to keep Congress fully and currently informed.”

Noting that NSA proposals for heightened domestic surveillance “led to hearings” in Congress, the Transition 2001 document points out that “[a]t the close of the 106th Congress, no legislation that would harm NSA’s collection was enacted.”

The 2001 Congressional report also mentions that “[m]embers and staff [of the House and Senate Select Committees on Intelligence] have regularly reviewed NSA programs and adjusted budgetary priorities with almost all hearings being conducted in closed sessions.”

Those members sitting on either the House or Senate Select Committee on Intelligence in the two years immediately prior include such high-ranking Democrats and friends of the Obama administration as former Democratic House Speaker Nancy Pelosi, Democratic Secretary of State John Kerry, and Democratic Chairman of the Senate Committee on Finance Max Baucus.

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