

**The federal government has been developing a highly classified plan that will override the Constitution in the event of a major terrorist attack. Is it also compiling a secret list of citizens who could face detention under martial law?**

## **The Last Roundup**

By CHRISTOPHER KETCHAM





# In

**the spring of 2007, a retired senior official in the U.S. Justice Department sat before Congress and told a story so odd and ominous, it could have sprung from the pages of a pulp political thriller. It was about a principled bureaucrat struggling to protect his country from a highly classified program with sinister implications.**

Rife with high drama, it included a car chase through the streets of Washington, D.C., and a tense meeting at the White House, where the president's henchmen made the bureaucrat so nervous that he demanded a neutral witness be present.

The bureaucrat was James Comey, John Ashcroft's second-in-command at the Department of Justice during Bush's first term. Comey had been a loyal political foot soldier of the Republican Party for many years. Yet in his testimony before the Senate Judiciary Committee, he described how he had grown increasingly uneasy reviewing the Bush administration's various domestic surveillance and spying programs. Much of his testimony centered on an operation so clandestine he wasn't allowed to name it or even describe what it did. He did say, however, that he and Ashcroft had discussed the program in March 2004, trying to decide whether it was legal under federal statutes. Shortly before the certification deadline, Ashcroft fell ill with pancreatitis, making Comey acting attorney general, and Comey opted not to certify the program. When he communicated his decision to the White House, Bush's men told him, in so many words, to take his concerns and stuff them in an undisclosed location.

Comey refused to knuckle under, and the dispute came to a head on the cold night of March 10, 2004, hours before the program's authorization was to expire. At the time, Ashcroft was in intensive care at George Washington Hospital following emergency surgery. Apparently, at the behest of President Bush himself, the White House tried, in Comey's words, "to take advantage of a very sick man," sending Chief of Staff Andrew Card and then-White House counsel Alberto Gonzales on a mission to Ashcroft's sickroom to persuade the heavily doped attorney general to override his deputy. Apprised of their mission, Comey, accompanied by a full security detail, jumped in his car, raced through the streets of the capital, lights blazing, and "literally ran" up the hospital stairs to beat them there.

Minutes later, Gonzales and Card arrived with an envelope filled with the requisite forms. Ashcroft, even in his stupor, did not fall for their heavy-handed ploy. "I'm not the attorney general," Ashcroft told Bush's men. "There"—he pointed weakly to Comey—"is the attorney general." Gonzales and Card were furious, departing without even ac-

knowledging Comey's presence in the room. The following day, the classified domestic spying program that Comey found so disturbing went forward at the demand of the White House—"without a signature from the Department of Justice attesting as to its legality," he testified.

What was the mysterious program that had so alarmed Comey? Political blogs buzzed for weeks with speculation. Though Comey testified that the program was subsequently readjusted to satisfy his concerns, one can't help wondering whether the unspecified alteration would satisfy constitutional experts, or even average citizens. Faced with push-back from his bosses at the White House, did he simply relent and accept a token concession? Two months after Comey's testimony to Congress, the *New York Times* reported a tantalizing detail: The program that prompted him "to threaten resignation involved computer searches through massive electronic databases." The larger mystery remained intact, however. "It is not known precisely why searching the databases, or data mining, raised such a furious legal debate," the article conceded.

Another clue came from a rather unexpected source: President Bush himself. Addressing the nation from the Oval Office in 2005 after the first disclosures of the NSA's warrantless electronic surveillance became public, Bush insisted that the spying program in question was reviewed "every 45 days" as part of planning to assess threats to "the continuity of our government."

Few Americans—professional journalists included—know anything about so-called Continuity of Government (COG) programs, so it's no surprise that the president's passing reference received almost no attention. COG resides in a nebulous legal realm, encompassing national emergency plans that would trigger the takeover of the country by extra-constitutional forces—and effectively suspend the republic. In short, it's a road map for martial law.

While Comey, who left the Department of Justice in 2005, has steadfastly refused to comment further on the matter, a number of former government employees and intelligence sources with independent knowledge of domestic surveillance operations claim the program that caused the flap between Comey and the White House was related to a database of Americans who might be considered potential threats in the event of a national emergency. Sources familiar with the program say

that the government's data gathering has been overzealous and probably conducted in violation of federal law and the protection from unreasonable search and seizure guaranteed by the Fourth Amendment.

According to a senior government official who served with high-level security clearances in five administrations, "There exists a database of Americans, who, often for the slightest and most trivial reason, are considered unfriendly, and who, in a time of panic, might be incarcerated. The database can identify and locate perceived 'enemies of the state' almost instantaneously." He and other sources tell *Radar* that the database is sometimes referred to by the code name Main Core. One knowledgeable source claims that 8 million Americans are now listed in Main Core as potentially suspect. In the event of a national emergency, these people could be subject to everything from heightened surveillance and tracking to direct questioning and possibly even detention.

**Of course, federal law is** somewhat vague as to what might constitute a "national emergency." Executive orders issued over the last three decades define it as a "natural disaster, military attack, [or] technological or other emergency," while Department of Defense documents include eventualities like "riots, acts of violence, insurrections, unlawful obstructions or assemblages, [and] disorder prejudicial to public law and order." According to one news report, even "national opposition to U.S. military invasion abroad" could be a trigger.

Let's imagine a harrowing scenario: coordinated bombings in several American cities culminating in a major blast—say, a suitcase nuke—in New York City. Thousands of civilians are dead. Commerce is paralyzed. A state of emergency is declared by the president. Continuity of Governance plans that were developed during the Cold War and have been aggressively revised since 9/11 go into effect. Surviving government officials are shuttled to protected underground complexes carved into the hills of Maryland, Virginia, and Pennsylvania. Power shifts to a "parallel government" that consists of scores of secretly preselected officials. (As far back as the 1980s, Donald Rumsfeld, then CEO of a pharmaceutical company, and Dick Cheney, then a congressman from Wyoming, were slated to step into key positions during a declared emergency.) The executive branch is the sole and absolute seat of authority, with Congress and the judiciary relegated to advisory roles at best. The country becomes, within a matter of hours, a police state.

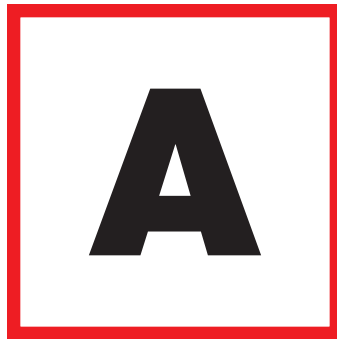
Interestingly, plans drawn up during the Reagan administration suggest this parallel government would be ruling under authority given by law to the Federal Emergency Management Agency, home of the same hapless bunch that recently proved themselves unable to distribute water to desperate hurricane victims. The agency's incompetence in tackling natural disasters is less surprising when one considers that, since its inception in the 1970s, much of its focus has been on planning for the survival of the federal government in the wake of a decapitating nuclear strike.

Under law, during a national emergency, FEMA and its parent organization, the Department of Homeland Security, would be empowered to seize private and public property, all forms of transport, and all food supplies. The agency could dispatch military commanders to run state and local governments, and it could order the arrest of citizens without a warrant, holding them without trial for as long as the acting government

deems necessary. From the comfortable perspective of peaceful times, such behavior by the government may seem farfetched. But it was not so very long ago that FDR ordered 120,000 Japanese-Americans—everyone from infants to the elderly—be held in detention camps for the duration of World War II. This is widely regarded as a shameful moment in U.S. history, a lesson learned. But a long trail of federal documents indicates that the possibility of large-scale detention has never quite been abandoned by federal authorities. Around the time of the 1968 race riots, for instance, a paper drawn up at the U.S. Army War College detailed plans for rounding up millions of "militants" and "American negroes" who were to be held at "assembly centers or relocation camps." In the late 1980s, the *Austin American-Statesman* and other publications reported the existence of 10 detention camp sites on military facilities nationwide, where hundreds of thousands of people could be held in the event of domestic political upheaval. More such facilities were commissioned in 2006, when Kellogg Brown & Root—then a subsidiary of Halliburton—was handed a \$385 million contract to establish "temporary detention and processing capabilities" for the Department of Homeland Security. The contract is short on details, stating only that the facilities would be used for "an emergency influx of immigrants, or to support the rapid development of new programs." Just what those "new programs" might be is not specified.

In the days after our hypothetical terror attack, events might play out like this: With the population gripped by fear and anger, authorities undertake unprecedented actions in the name of public safety. Officials at the Department of Homeland Security begin actively scrutinizing people who—for a tremendously broad set of reasons—have been flagged in Main Core as potential domestic threats. Some of these individuals might receive a letter or a phone call, others a request to register with local authorities. Still others might hear a knock on the door and find police or armed soldiers outside. In some instances, the authorities might just ask a few questions. Other suspects might be arrested and escorted to federal holding facilities, where they could be detained without counsel until the state of emergency is no longer in effect.

It is, of course, appropriate for any government to plan for the worst. But when COG plans are shrouded in extreme secrecy, effectively unregulated by Congress or the courts, and married to an overreaching surveillance state—as seems to be the case with Main Core—even sober observers must weigh whether the protections put in place by the federal government are becoming more dangerous to America than any outside threat.



**Another well-informed** source—a former military operative regularly briefed by members of the intelligence community—says this particular program has roots going back at least to the 1980s and was set up with help from the Defense Intelligence Agency. He has been told that the program utilizes software that makes predictive judgments of targets' behavior and tracks their circle of associations with

"social network analysis" and artificial intelligence modeling tools.

"The more data you have on a particular target, the better [the software] can predict what the target will do, where the target will go, who it will turn to for help," he says. "Main Core is the table of contents for all the illegal information that the U.S. government has [compiled] on specific targets." An intelligence expert who has been briefed by high-level contacts in the Department of Homeland Security confirms



that a database of this sort exists, but adds that “it is less a mega-database than a way to search numerous other agency databases at the same time.”

A host of publicly disclosed programs, sources say, now supply data to Main Core. Most notable are the NSA domestic surveillance programs, initiated in the wake of 9/11, typically referred to in press reports as “warrantless wiretapping.” In March, a front-page article in the *Wall Street Journal* shed further light onto the extraordinarily invasive scope of the NSA efforts: According to the *Journal*, the government can now electronically monitor “huge volumes of records of domestic e-mails and Internet searches, as well as bank transfers, credit card transactions, travel, and telephone records.” Authorities employ “sophisticated software programs” to sift through the data, searching for “suspicious patterns.” In effect, the program is a mass catalog of the private lives of Americans. And it’s notable that the article hints at the possibility of programs like Main Core. “The [NSA] effort also ties into data from an ad-hoc collection of so-called black programs whose existence is undisclosed,” the *Journal* reported, quoting unnamed officials. “Many of the programs in various agencies began years before the 9/11 attacks but have since been given greater reach.”

The following information seems to be fair game for collection without a warrant: the e-mail addresses you send to and receive from, and the subject lines of those messages; the phone numbers you dial, the numbers that dial in to your line, and the durations of the calls; the Internet sites you visit and the keywords in your Web searches; the destinations of the airline tickets you buy; the amounts and locations of your ATM withdrawals; and the goods and services you purchase on credit cards. All of this information is archived on government supercomputers and, according to sources, also fed into the Main Core database.

Main Core also allegedly draws on four smaller databases that, in turn, cull from federal, state, and local “intelligence” reports; print and broadcast media; financial records; “commercial databases”; and unidentified “private sector entities.” Additional information comes from a database known as the Terrorist Identities Datamart Environment, which generates watch lists from the Office of the Director of National Intelligence for use by airlines, law enforcement, and border posts. According to the *Washington Post*, the Terrorist Identities list has quadrupled in size between 2003 and 2007 to include about 435,000 names. The FBI’s Terrorist Screening Center border crossing list, which listed 755,000 persons as of fall 2007, grows by 200,000 names a year. A former NSA officer tells *Radar* that the Treasury Department’s Financial Crimes Enforcement Network, using an electronic-funds transfer surveillance program, also contributes



data to Main Core, as does a Pentagon program that was created in 2002 to monitor anti-war protestors and environmental activists such as Greenpeace.

**f previous FEMA and FBI** lists are any indication, the Main Core database includes dissidents and activists of various stripes, political and tax protestors, lawyers and professors, publishers and journalists, gun owners, illegal aliens, foreign nationals, and a great many other harmless, average people.

A veteran CIA intelligence analyst who maintains active high-level clearances and serves as an advisor to

the Department of Defense in the field of emerging technology tells *Radar* that during the 2004 hospital room drama, James Comey expressed concern over how this secret database was being used “to accumulate otherwise private data on non-targeted U.S. citizens for use at a future time.” Though not specifically familiar with the name Main Core, he adds, “What was being requested of Comey for legal approval was exactly what a Main Core story would be.” A source regularly briefed by people inside the intelligence community adds: “Comey had discovered that President Bush had authorized NSA to use a highly classified and compartmentalized Continuity of Government database on Americans in computerized searches of its domestic intercepts. [Comey] had concluded that the use of that ‘Main Core’ database compromised the legality of the overall NSA domestic surveillance project.”

If Main Core does exist, says Philip Giraldi, a former CIA counterterrorism officer and an outspoken critic of the agency, the Department of Homeland Security (DHS) is its likely home. “If a master list is being compiled, it would have to be in a place where there are no legal issues”—the CIA and FBI would be restricted by oversight and accountability laws—“so I suspect it is at DHS, which as far as I know operates with no such restraints.” Giraldi notes that DHS already maintains a central list of suspected terrorists and has been freely adding people who pose no reasonable threat to domestic security. “It’s clear that DHS has the mandate for controlling and owning master lists. The process is not transparent, and the criteria for getting on the list are not clear.” Giraldi continues, “I am certain that the content of such a master list [as Main Core] would not be carefully vetted, and there would be many names on it for many reasons—quite likely, including the two of us.”

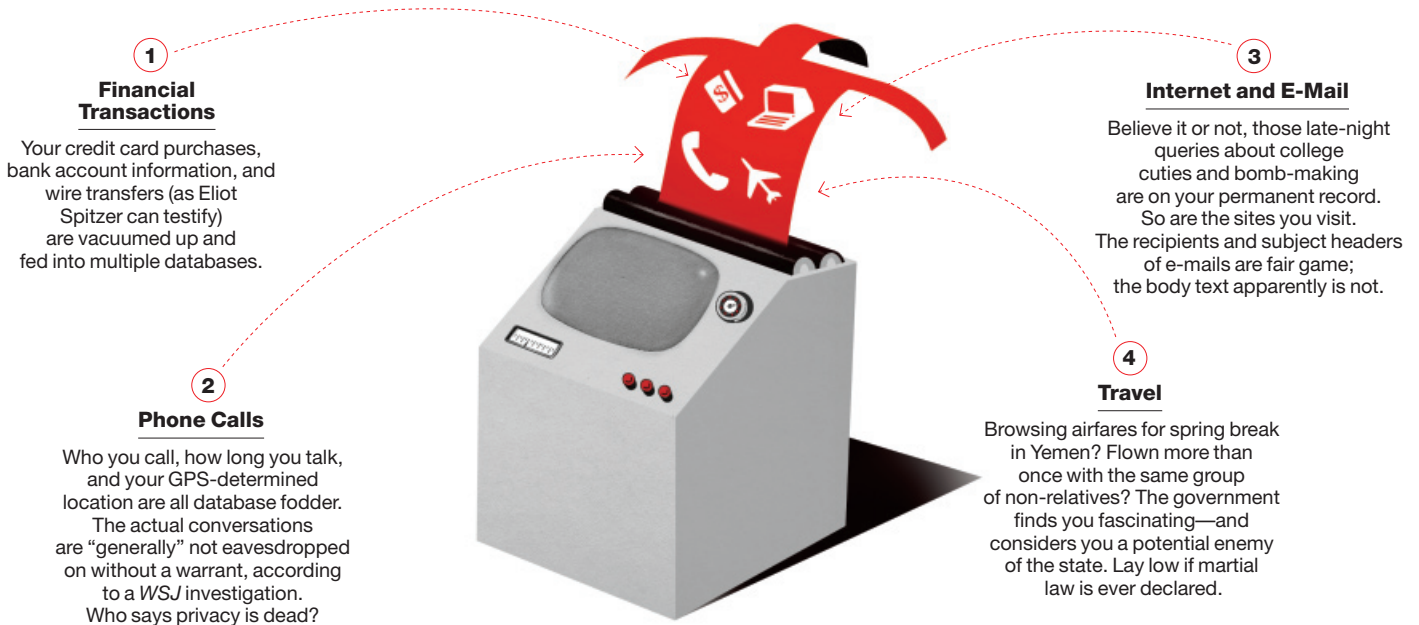
Would Main Core in fact be legal? According to constitutional scholar Bruce Fein, who served as associate deputy attorney general under Ronald Reagan, the question of legality is murky: “In the event of a national emergency, the executive branch simply assumes these powers”—the powers to collect domestic intelligence and draw up detention lists, for example—“if Congress doesn’t explicitly prohibit it. It’s really up to Congress



**“We’re at the edge of a cliff,” says Bruce Fein, a top justice official in the Reagan administration. “To a national everybody looks like a danger to stability.”**

## Here's Lookin' at You

We've all heard about those 82-year-old grandmothers who get Gitmo-style friskings at the airport on the way to Duluth for Thanksgiving. But every day, invasive government surveillance networks are giving each of us an electronic full cavity search. Every time you make a call, surf the Web, or purchase something with a credit card, information may be harvested and socked away in a variety of massive databases, allegedly including a highly classified one called Main Core, designed to flag potential troublemakers in case of a national emergency.



to put these things to rest, and Congress has not done so.” Fein adds that it is virtually impossible to contest the legality of these kinds of data collection and spy programs in court “when there are no criminal prosecutions and [there is] no notice to persons on the president’s ‘enemies list.’ That means if Congress remains invertebrate, the law will be whatever the president says it is—even in secret. He will be the judge on his own powers and invariably rule in his own favor.”

The veteran CIA intelligence analyst notes that Comey’s suggestion that the offending elements of the program were dropped could be misleading: “Bush [may have gone ahead and] signed it as a National Intelligence Finding anyway.”

But even if we never face a national emergency, the mere existence of the database is a matter of concern. “The capacity for future use of this information against the American people is so great as to be virtually unfathomable,” the senior government official says.

In any case, mass watch lists of domestic citizens may do nothing to make us safer from terrorism. Jeff Jonas, chief scientist at IBM, a world renowned expert in data mining, contends that such efforts won’t prevent terrorist conspiracies. “Because there is so little historical terrorist event data,” Jonas tells *Radar*, “there is not enough volume to create precise predictions.”

**The overzealous compilation** of a domestic watch list is not unique in post-war American history. In 1950, the FBI, under the notoriously paranoid J. Edgar Hoover, began to “accumulate the names, identities, and activities” of suspect American citizens in a rapidly expanding “security index,” according to declassified documents. In a letter to the Truman White House, Hoover stated that in the event of certain emergency situations, suspect individuals would be held in detention camps overseen by “the National Military Establishment.” By 1960, a congressional investigation later revealed, the FBI list of suspicious persons included “professors, teachers, and educators; labor-union organizers and leaders; writers, lecturers, newsmen, and others in the mass-media field; lawyers, doctors, and scientists; other potentially influential persons on a local or (continued on page 88)

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national level; [and] individuals who could potentially furnish financial or material aid” to unnamed “subversive elements.” This same FBI “security index” was allegedly maintained and updated into the 1980s, when it was reportedly transferred to the control of none other than FEMA (though the FBI denied this at the time).

FEMA, however—then known as the Federal Preparedness Agency—already had its own domestic surveillance system in place, according to a 1975 investigation by Senator John V. Tunney of California. Tunney, the son of heavyweight boxing champion Gene Tunney and the inspiration for Robert Redford’s character in the film *The Candidate*, found that the agency maintained electronic dossiers on at least 100,000 Americans, which contained information gleaned from wide-ranging computerized surveillance. The database was located in the agency’s secret underground city at Mount Weather, near the town of Bluemont, Virginia. The senator’s findings were confirmed in a 1976 investigation by the *Progressive* magazine, which found that the Mount Weather computers “can obtain millions of pieces [of] information on the personal lives of American citizens by tapping the data stored at any of the 96 Federal Relocation Centers”—a reference to other classified facilities. According to the *Progressive*, Mount Weather’s databases were run “without any set of stated rules or regulations. Its surveillance program remains secret even from the leaders of the House and the Senate.”

Ten years later, a new round of government martial law plans came to light. A report in the *Miami Herald* contended that Reagan loyalist and Iran-Contra conspirator Colonel Oliver North had spearheaded the development of a “secret contingency plan,”—code named REX 84—which called “for suspension of the Constitution, turning control of the United States over to FEMA, [and the] appointment of military commanders to run state and local governments.” The North plan also reportedly called for the detention of upwards of 400,000 illegal aliens and an undisclosed number of American citizens in at least 10 military facilities maintained as potential holding camps.

North’s program was so sensitive in nature that when Texas Congressman Jack Brooks attempted to question North about it during the

1987 Iran-Contra hearings, he was rebuffed even by his fellow legislators. “I read in Miami papers and several others that there had been a plan by that same agency [FEMA] that would suspend the American Constitution,” Brooks said. “I was deeply concerned about that and wondered if that was the area in which he [North] had worked.” Senator Daniel Inouye, chairman of the Senate Select Committee on Iran, immediately cut off his colleague, saying, “That question touches upon a highly sensitive and classified area, so may I request that you not touch upon that, sir.” Though Brooks pushed for an answer, the line of questioning was not allowed to proceed.

*Wired* magazine turned up additional damaging information, revealing in 1993 that North, operating from a secure White House site, allegedly employed a software database program called PROMIS (ostensibly as part of the REX 84 plan). PROMIS, which has a strange and controversial history, was designed to track individuals—prisoners, for example—by pulling together information from disparate databases into a single record. According to *Wired*, “Using the computers in his command center, North tracked dissidents and potential troublemakers within the United States. Compared to PROMIS, Richard Nixon’s enemies list or Senator Joe McCarthy’s blacklist looks downright crude.” Sources have suggested to *Radar* that government databases tracking Americans today, including Main Core, could still have PROMIS-based legacy code from the days when North was running his programs.

In the wake of 9/11, domestic surveillance programs of all sorts expanded dramatically. As one well-placed source in the intelligence community puts it, “The gloves seemed to come off.” What is not yet clear is what sort of still-undisclosed programs may have been authorized by the Bush White House. Marty Lederman, a high-level official at the Department of Justice under Clinton, writing on a law blog last year, wondered, “How extreme were the programs they implemented [after 9/11]? How egregious was the lawbreaking?” Congress has tried, and mostly failed, to find out.

**In July 2007** and again last August, Rep. Peter DeFazio, a Democrat from Oregon and a senior member of the House Homeland Security Committee, sought access to the “classified annexes” of the Bush administration’s Continuity of Government program.

DeFazio's interest was prompted by Homeland Security Presidential Directive 20 (also known as NSPD-51), issued in May 2007, which reserves for the executive branch the sole authority to decide what constitutes a national emergency and to determine when the emergency is over. DeFazio found this unnerving.

But he and other leaders of the Homeland Security Committee, including Chairman Bennie Thompson, a Mississippi Democrat, were denied a review of the Continuity of Government classified annexes. To this day, their calls for disclosure have been ignored by the White House. In a press release issued last August, DeFazio went public with his concerns that the NSPD-51 Continuity of Government plans are "extra-constitutional or unconstitutional." Around the same time, he told the *Oregonian*: "Maybe the people who think there's a conspiracy out there are right."

Congress itself has recently widened the path for both extra-constitutional detentions by the White House and the domestic use of military force during a national emergency. The Military Commissions Act of 2006 effectively suspended habeas corpus and freed up the executive branch to designate any American citizen an "enemy combatant" forfeiting all privileges accorded under the Bill of Rights. The John Warner National Defense Authorization Act, also passed in 2006, included a last-minute rider titled "Use of the Armed Forces in Major Public Emergencies," which allowed the deployment of U.S. military units not just to put down domestic insurrections—as permitted under posse comitatus and the Insurrection Act of 1807—but also to deal with a wide range of calamities, including "natural disaster, epidemic, or other serious public health emergency, terrorist attack, or incident."


More troubling, in 2002, Congress authorized funding for the U.S. Northern Command, or NORTHCOM, which, according to *Washington Post* military intelligence expert William Arkin, "allows for emergency military operations in the United States without civilian supervision or control."

"We are at the edge of a cliff and we're about to fall off," says constitutional lawyer and former Reagan administration official Bruce Fein. "To a national emergency planner, everybody looks like a danger to stability. There's no doubt that Congress would have the authority to denounce all this—for example, to refuse to appropriate money for the preparation of a list of U.S. citizens to be detained

in the event of martial law. But Congress is the invertebrate branch. They say, 'We have to be cautious.' The same old crap you associate with cowards. None of this will change under a Democratic administration, unless you have exceptional statesmanship and the courage to stand up and say, 'You know, democracies accept certain risks that tyrannies do not.'"

**As of this** writing, DeFazio, Thompson, and the other 433 members of the House are debating the so-called Protect America Act, after a similar bill passed in the Senate. Despite its name, the act offers no protection for U.S. citizens; instead, it would immunize from litigation U.S. telecom giants for colluding with the government in the surveillance of Americans to feed the hungry maw of databases like Main Core. The Protect America Act would legalize programs that appear to be unconstitutional.

Meanwhile, the mystery of James Comey's testimony has disappeared in the morass of election year coverage. None of the leading presidential candidates have been asked the questions that are so profoundly pertinent to the future of the country: As president, will you continue aggressive domestic surveillance programs in the vein of the Bush administration? Will you release the COG blueprints that Representatives DeFazio and Thompson were not allowed to read? What does it suggest about the state of the nation that the U.S. is now ranked by worldwide civil liberties groups as an "endemic surveillance society," alongside repressive regimes such as China and Russia? How can a democracy thrive with a massive apparatus of spying technology deployed against every act of political expression, private or public? (*Radar* put these questions to spokespeople for the McCain, Obama, and Clinton campaigns, but at press time had yet to receive any responses.)

These days, it's rare to hear a voice like that of Senator Frank Church, who in the 1970s led the explosive investigations into U.S. domestic intelligence crimes that prompted the very reforms now being eroded. "The technological capacity that the intelligence community has given the government could enable it to impose total tyranny," Church pointed out in 1975. "And there would be no way to fight back, because the most careful effort to combine together in resistance to the government, no matter how privately it was done, is within the reach of the government to know." 

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