Was Obama administration illegal spying worse than Watergate?

Glenn Harlan Reynolds

The Obama administration's illegal spying may have been worse than Watergate.

EPA (FILE) MEXICO USA RUSSIA DIPLOMACY POL DIPLOMACY MEX

(Photo: Alexei Nikolsky, epa)

CONNECTTWEETLINKEDINCOMMENTEMAILMORE

In 1972, some employees of President Nixon's re-election committee were caught when they broke into the Democratic National Committee headquarters to plant a bug. This led to Nixon's resignation and probably would have led to his felony prosecution had he not been pardoned by his successor, Gerald Ford.

But if a single bugging of the political opposition is enough to bring down a presidency — and maybe lead to an unprecedented criminal prosecution of a former president — then what are we to make of the recently unveiled Obama administration program of massively spying on political opponents in violation of clearly established law?

Because that's what was unveiled last week.

When the FBI wants to wiretap a domestic suspect, it goes to court for a warrant. But when listening in on foreigners, the National Security Agency hoovers up a vast amount of stuff in bulk: Conversations between foreigners, conversations between Americans and foreigners, conversations between Americans

who mention foreigners, and sometimes just plain old conversations between Americans.

There are supposed to be strict safeguards on who can access the information, on how it can be used and on protecting American citizens' privacy — because the NSA is forbidden by law from engaging in domestic spying. These safeguards were ignored wholesale under the Obama administration, and to many Republicans, it is no coincidence that intelligence leaks damaged Democrats' political opponents in the 2016 election.

Bros are people, too: Glenn Reynolds

Robert Mueller will force Donald Trump to reckon with the truth

A report from journalists John Solomon and Sara Carter last week, based on recently declassified documents, exposed what went on. As Solomon and Carter write:

> More than 5%, or one out of every 20, searches seeking upstream Internet data on Americans inside the NSA's so-called Section 702 database violated the safeguards President Obama and his intelligence chiefs vowed to follow in 2011, according to one classified internal report reviewed by *Circa*. ...
>
> The normally supportive court censured administration officials, saying that the failure to disclose the extent of the violations earlier amounted to an "institutional lack of candor," and that the improper searches constituted a "very serious Fourth Amendment issue," according to a recently unsealed court document dated April 26.

> The admitted violations undercut one of the primary defenses that the intelligence community and Obama officials have used in recent weeks to justify their snooping into incidental NSA intercepts about Americans. … The American Civil Liberties Union said the newly disclosed violations are some of the most serious to ever be documented and strongly call into question the U.S. intelligence community's ability to police itself and safeguard Americans' privacy as guaranteed by the Constitution's Fourth Amendment protections against unlawful search and seizure.

As former anti-terrorism prosecutor and national security expert Andrew McCarthy writes in *National Review*, this is a very serious abuse. And potentially a crime. If such material were leaked to the press for political advantage, that's another crime.

McCarthy observes: "Enabling of domestic spying, contemptuous disregard of court-ordered minimization procedures (procedures the Obama administration itself proposed, then violated), and unlawful disclosure of classified intelligence to feed a media campaign against political adversaries. Quite the Obama legacy."

POLICING THE USA: A look at race, justice, media

How the White House Russia secrets endanger Donald Trump

Will the Justice Department investigate and prosecute former Obama officials? It seems hard to imagine. But then, so did Nixon's resignation, when the Watergate burglary was first discovered.

This debacle also raises serious questions about the viability of our existing “intelligence community.” In the post-World War II era, we gave massive power to the national security apparatus. In part, that power was granted in the belief that professionalism and patriotism would lead people in those agencies to refuse to let their work be used for partisan political purposes.

It now seems apparent that we overestimated the patriotism and professionalism of the people in these agencies, who allowed them to be politically weaponized by the Obama administration. That being true, if we value democracy, can we permit them to exist in their current form?

That’s a decision that President Trump and Congress will have to face. Ironically, they may be afraid to — for fear that intelligence agencies will engage in further targeted political leaks.

Glenn Harlan Reynolds, a University of Tennessee law professor and the author of The New School: How the Information Age Will Save American Education from Itself*, is a member of USA TODAY's Board of Contributors.*