

Center for American Progress



MEMORANDUM

TO: Interested Parties
FROM: Mark Agrast and Ken Gude
DATE: February 2, 2006
RE: NSA Domestic Warrantless Wiretapping and the “Trust Me” President

Electronic surveillance is an effective and essential tool that must be used to track members of al Qaeda and other terrorists wherever they may be. But President Bush has broken the law and needlessly violated the public’s trust by authorizing wiretapping of ordinary Americans without required warrants.

The president’s domestic spying program once again demonstrates his administration’s record of deception and incompetence on a scale not seen since the Nixon administration. By taking the law into his own hands—and then using fear to justify his actions—the president has weakened our national security.

A Trust Betrayed

When he accepted the nomination of his party in 2000, George Bush promised the American people, “If you give me your trust, I will honor it.”

In the immediate aftermath of September 11, this country experienced a period of unity and support for the president that was unprecedented. With the public’s support, Congress gave President Bush powerful new tools to defeat terrorists, and it revised, expanded, and updated numerous authorities to make it easier to detect and disrupt additional attacks. That included amending the Foreign Intelligence Surveillance Act (FISA) to make certain that intelligence and law enforcement officials had greater latitude to wiretap suspected terrorists. Working together, the president, the Congress, and the American people were determined to kill or capture members of al Qaeda and other foreign terrorist networks.

But in the last four years, President Bush has squandered that unity and violated our trust.

The domestic spying program is only the latest example. Since it was revealed last month—thanks to concerned and conscientious intelligence officials who worried that the law was being broken—President Bush and his minions have repeatedly told the American people that we

should “trust” him: that he knows what is right, that only he can protect us from terrorists, and that true patriots don’t quibble about constitutional constraints.

But trust must be earned. The incompetence and lies of this administration have not only failed to enhance our national security, they have endangered it. The administration’s campaign to defend the illegal spying program is nothing more than a smokescreen to cover up its failure to make real progress in protecting us from terrorists.

Two weeks ago, Americans were presented with another audiotape of Osama bin Laden. This week we got to watch a video from al Qaeda deputy Ayman al-Zawahiri, demonstrating that both of them are alive and well. State Department statistics demonstrate that terrorist attacks are on the rise. Clearly, the current approach has not worked.

The “Just Trust Me” President

We have seen this “don’t ask questions” approach before.

We all know now that Iraq was not developing weapons of mass destruction and there was no evidence that Saddam Hussein was supporting al Qaeda or involved in the 9/11 attacks. Nonetheless, the president launched a war of choice that has resulted in more than 2,200 deaths and 16,400 wounded among our armed forces, cost us more than \$250 billion and stretched our ground forces dangerously thin. Our ability to respond to other international crises now is extremely limited. And for what? The Iraq war misadventure has destabilized the region, created a training ground for terrorists, and given us skyrocketing oil prices. It has not made us more secure.

We also saw this approach with the White House campaign to justify torture. When photographic images of horrific abuse at the Abu Ghraib prison in Iraq were revealed, the “trust me” president denied categorically that torture had taken place, famously stating that “We do not torture.” He repeated his denials when further abuses were reported at Guantanamo. Faced with mounting evidence to the contrary, however, Vice President Cheney and others in the White House argued that the president has the authority to ignore the Geneva Conventions and therefore the torture was lawful. Disregarding these specious arguments, Congress ultimately forced the president to accept legislation reaffirming the prohibition on torture. But at the moment that he signed the law, President Bush simultaneously issued a statement in which he reserved the right to ignore it.

The result has been a destructive anti-Americanism that has aided our enemies and hurt our ability to lead a united coalition against the terrorists.

Instead of doing what is necessary to prevail in the fight against terrorism, the president has manipulated public fears to claim sweeping powers beyond the reach of Congress and the courts. The pattern is familiar. The president authorizes illegal actions. When those actions become public, he denies involvement. When the evidence is overwhelming, he asserts that as president he has the power to override the law. The president has justified each of these actions with the

same hollow refrain: trust me to do whatever is necessary to win the “war on terror.” If you object, you’re helping the terrorists. There is no need for public debate.

NSA Program Violates the Law and Compromises Our Security

When al Qaeda calls, our intelligence and law enforcement officials should be listening. Not a single credible expert would argue that FISA does not provide the authority to do this. If, as President Bush wants us to believe, all the administration wanted to do was to monitor phone conversations in which one of the parties is an al Qaeda operative, they did not have to break the law to do it. They didn’t even have to *change* the law to do it. FISA gives them all the authority they need.

It’s not likely that intelligence officials have any interest in monitoring the private conversations of Americans. But this is a president who has failed to seek the advice, let alone the legal authority, that would have enabled him to act in a targeted and effective way to gather the intelligence we need. He has relied on his judgment alone, evading constitutional checks and balances.

No matter the motivation, the results are clear. The constitutional rights of an unknown number of innocent Americans have been violated. And the program has compromised our national security in three primary ways.

First, it has jeopardized the prosecution of alleged terrorists. If evidence obtained under the warrantless surveillance program was or will be used in any criminal prosecutions (as the administration has asserted), then those convicted or accused terrorists can and surely will raise a constitutional challenge, potentially irreparably jeopardizing these criminal cases.

Second, the NSA program could harm ongoing investigations. The FISA Court, which approves or denies applications for FISA warrants, could shut down any counterterrorism wiretaps that it authorized on the basis of unlawfully collected information. This is not a hypothetical situation. In 2001, the FISA Court shut down numerous wiretaps after learning that the FBI had supplied faulty information in the FISA warrant applications.

Third, the program has misdirected resources that would be better spent pursuing terrorists. NSA eavesdropping – “turning on the spigot” in the words of former NSA Director Michael Hayden – yielded a tremendous volume of information that led nowhere. In the wake of 9/11, FBI Director Robert Mueller required that every lead, no matter how insignificant, be fully checked out. According to one senior prosecutor, “A trained investigator never would have devoted the resources to take those leads to the next level, but after 9/11, you had to.” According to one supervisory FBI field agent, the NSA material continued to be viewed as unproductive, prompting agents to joke that a new bunch of tips meant more “calls to Pizza Hut.” We know that the 9/11 Commission reported that even before September 11 valuable leads were not pursued and thousands of hours of (legally obtained) transcripts went untranslated. The president’s domestic spying program only made an incredibly difficult job harder.

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After 9/11, the American people rallied behind the president, hoping and trusting that he would protect our nation from foreign enemies while safeguarding our values and traditions. Four years later, that trust has been violated. We are not safer, and we are less free.