

With the White House defiant on illegal spying: Why no outcry for Bush's impeachment?

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Despite the brazen declaration by President Bush that he authorized illegal electronic eavesdropping on Americans and will continue to do so, in defiance of clear legislative prohibitions, the response in official Washington has been remarkably muted. There has been some verbal condemnation and calls for congressional hearings on the secret spying by the National Security Agency (NSA), but no serious consideration of the constitutional remedy for presidential lawbreaking: impeachment.

One congressman, Democrat John Lewis of Georgia, suggested in a radio interview that Bush's actions recalled "the dark past when our government spied on civil rights leaders and Vietnam War protesters," and could warrant impeachment. "It's a very serious charge, but he violated the law," Lewis said. "The president should abide by the law. He deliberately, systematically violated the law. He is not king, he is president."

One senator, Barbara Boxer (Democrat of California), has announced that she is investigating the possibility of impeachment, seeking opinions from four presidential scholars on whether Bush's actions constitute "high crimes and misdemeanors." But no other senator or congressman, and not a single congressional leader of either party, has allowed the "i-word" to cross his or her lips.

Five senators, two Republicans and three Democrats, issued a call for a joint investigation by the Senate Intelligence and Judiciary committees into whether the NSA eavesdropping was conducted "without appropriate legal authority." Republicans Chuck Hagel of Nebraska and Olympia Snowe of Maine joined Democrats Carl Levin of Michigan, Dianne Feinstein of California and Ron Wyden of Oregon in signing a joint letter.

"It is critical that Congress determine, as quickly as possible, exactly what collection activities were authorized, what were actually undertaken, how many names and numbers were involved over what period, and what was the asserted legal authority for such activities. In sum, we must determine the facts," they wrote.

It is highly unlikely, however, that the Bush administration will agree to cooperate with such an investigation. Bush, in his belligerent press conference Monday, declared that the fact that he was compelled to address the subject in public was "shameful." He bristled in response to one reporter's question about his assertion of unchecked executive power, declaring "To say 'unchecked power' basically is ascribing some kind of dictatorial position to the president, which I strongly reject."

In ordering the NSA to spy on international phone calls placed by US residents without obtaining a warrant, Bush acted in direct

violation of a federal law passed in 1978 in the wake of the systematic abuses of power by the CIA, FBI, military intelligence and other federal intelligence agencies exposed in the early 1970s. The high point of these abuses came in the Watergate scandal, which led to the ouster of President Richard Nixon in 1974. Nixon resigned rather than face impeachment for, among other crimes, authorizing illegal spying on US citizens.

The Foreign Intelligence Surveillance Act (FISA) of 1978 established a secret judicial panel, the Foreign Intelligence Surveillance Court, which had to approve all intelligence-related wiretapping inside the United States. Under FISA, the requirements for obtaining a wiretap order for intelligence purposes were considerably looser than for ordinary criminal investigations, and very few requests were turned down. Of nearly 19,000 eavesdropping requests since 1978, FISA has turned down only five. In 2004, the Bush administration sought 1,754 warrants, and not a single one was rejected.

FISA, moreover, allows the government to initiate a wiretap without a warrant from the special intelligence court, provided such authorization is sought and granted retroactively within 72 hours. This in itself undercuts the arguments of Bush and other administration officials that the procedure laid down by law is too "slow."

Bush instructed the NSA to bypass the FISA procedure, and reaffirmed that order on at least 30 occasions over the past four years, according to his own statements. As former Nixon White House aide John Dean observed over the weekend, Bush is thus the first president to publicly declare that he has committed an impeachable offense.

Given the rubberstamp character of FISA, the decision to bypass the required legal procedure must have been motivated by some other reason than avoiding a bureaucratic encumbrance. Logic and the political record of the Bush administration suggest two basic motives: the administration was deliberately seeking to establish a precedent for executive powers unconstrained by the constitutional requirements of judicial and congressional oversight, and it wanted to carry out surveillance of people who could not plausibly be connected to any terrorist threat, even in the eyes of the compliant FISA. In other words, the Bush White House has been compiling a Nixon-style "enemies list" of political opponents, especially opponents of the war in Iraq, and targeting them for illegal spying.

That this is the case is underscored by the reports Tuesday, based on documents obtained by the American Civil Liberties Union, that FBI counterterrorism units have conducted political spying and infiltration against environmental and antiwar groups such as Greenpeace, the

Arab-American Anti-Defamation Committee and Catholic Worker (a pacifist group whose “semi-communistic ideology” was noted in one internal FBI report). This follows the revelation last week that the Pentagon was accumulating a database on antiwar activists through surveillance of meetings and protests opposing the war and military recruitment.

Bush, Attorney General Alberto Gonzales, Secretary of State Condoleezza Rice and Vice President Dick Cheney have asserted two supposed legal and constitutional justifications for the secret spying program: that the 1978 law was superseded by the congressional resolution passed after the terrorist attacks of September 11, 2001 authorizing military action against those who attacked the World Trade Center and the Pentagon; and that the 1978 law is overridden by Bush’s authority under Article II of the Constitution, which makes the president the commander in chief of the armed forces.

The entire authorization of force resolution of September 18, 2001 consists of a single sentence, authorizing the use of “all necessary force” against Al Qaeda and its ally, the Taliban government in Afghanistan. To claim that this language can be read to authorize massive domestic electronic spying is not only preposterous, but cynically so.

As one legal expert, Professor Jonathan Turley of George Washington University, told the *Washington Post*, “The president’s dead wrong. It’s not a close question. Federal law is clear. I can’t believe anyone sincerely believes these arguments. This is really beyond the pale.” Turley added, “When the president admits that he violated federal law, that raises serious constitutional questions of high crimes and misdemeanors.”

The constitutional claim is equally preposterous, and more ominous, since, as one legal expert pointed out, it would invalidate every legal protection for civil and democratic rights in time of war. With Bush declaring a “war on terror” of indefinite duration and worldwide scope, his claim of absolute power as commander in chief implicitly calls into question the Bill of Rights, as well as such constitutional restraints as the 22nd Amendment, which compels him to leave office in 2009 by barring him from a third term.

The administration’s sweeping claims of unreviewable executive power were summed up in a September 2002 brief signed by then-Attorney General John Ashcroft, in an appeal related to the FISA rules. Ashcroft claimed, “[T]he Constitution vests in the president inherent authority to conduct warrantless intelligence surveillance (electronic or otherwise) of foreign powers or their agents, and *Congress cannot by statute extinguish that constitutional authority.*”(Emphasis added.)

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In other words, according to Bush, as president he exercises power which is above the law and above the Congress. This makes a mockery of fundamental constitutional principles: the notion that democracy is a government of laws, rather than men; and the principle of checks and balances, with a separation of powers between the executive, legislative and judicial branches of government, none of them absolute.

In television interviews Sunday, several Senate Republicans publicly disavowed the Bush administration’s more extravagant claims. Arlen Specter, chairman of the Senate Judiciary Committee, said, “There are limits to what the president can do under the Constitution.” John McCain of Arizona said that why Bush refused to use the FISA procedure was “a legitimate question,” while Lindsey

Graham of South Carolina, a reserve member of the Judge Advocate Generals, the military’s legal corps, said he did not know “of any legal basis” to evade FISA. He added, “Even in a time of war, you have to follow the process, because that’s what a democracy is all about: a process.”

None of these senators, however, suggested any means by which Congress could compel the administration to obey the law. From a constitutional standpoint, the mechanism is impeachment.

As for the congressional Democratic leadership, it is both cowed and compromised: frightened that the Bush administration will target Democrats politically as opponents of the “war on terror,” and complicit in having received briefings from the administration on the secret illegal spying at various times over the past four years, and saying nothing about it.

House Minority Leader Nancy Pelosi confirmed that she had been briefed on the NSA domestic spying as long ago as 2002, when she was the senior Democrat on the House Intelligence Committee. Senator Jay Rockefeller, the senior Democrat on the Senate Intelligence Committee, revealed that he had been personally briefed on the program by Vice President Cheney and then-CIA Director George Tenet, as well as General Michael Hayden, head of the NSA.

Senate Minority Leader Harry Reid and former senator Tom Daschle, the Senate majority leader in 2001-2002, also confirmed that they had known of the secret program and remained silent about it until now.

Relying on the acquiescence of the congressional Democratic leadership, the Bush administration successfully prevailed upon the *New York Times* to put off publication of an exposé in the fall of 2004, when the revelation might have affected the outcome of the presidential election. As late as December 6, 2005, Bush summoned *Times* publisher Arthur Sulzberger and *Times* editor Bill Keller to the Oval Office, seeking to browbeat them into suppressing the story.

Once it became impossible to keep the story quiet, the Bush administration, as it has consistently done, decided to up the ante and denounce all criticism of its police-state measures as unpatriotic and dangerous. On Tuesday, Vice President Cheney weighed in with characteristic thuggishness, denouncing criticism of the domestic spying and suggesting that such comments would facilitate another 9/11-style terrorist attack.



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