

Bush defends NSA spying program at White House press conference

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US President George W. Bush's remarks at a White House press conference on Thursday, and in an interview with CBS News broadcast on Friday, are further indications that the administration is going on the offensive in support of one of its central tenets: an insistence on the unconstrained powers of the executive branch.

On the CBS program, Bush was asked by anchorman Bob Shieffer, "Do you believe that there is anything that a president cannot do if he considers it necessary" in time of war? In response, Bush called it a "good question." After some hesitation, he said he thought torture and the assassination of foreign leaders might not be acceptable. He called it, however, "a very interesting Constitutional question."

In other words, whether or not the president functions with dictatorial powers is an interesting Constitutional question subject to debate. In fact, administration lawyers have argued in the past that the torture of prisoners is included among the powers of the president as commander-in-chief.

At the Thursday press conference, Bush was asked whether he would support a move in Congress to modify the existing law—the Foreign Intelligence Surveillance Act (FISA) of 1978, that restricts domestic surveillance by the National Security Agency (NSA)—or to write a new law to give the president explicit authority to do what he has already done.

Such a solution to the dispute over the spying program has been proposed by some Democratic and Republican legislators. It would give a pseudo-legal sanction to this antidemocratic infringement on the personal freedoms and constitutional rights of US citizens.

The president's reaction to such a proposal was decidedly cool. After making unsupported assertions

that the NSA program is legal—because administration lawyers have told him so—and that it does not intrude on the civil liberties of the American people, Bush made the following statement:

"It's important for people to understand that this program is so sensitive and so important, that if information gets out to how it's—how we do it, or how we operate, it will help the enemy.... If the attempt to write law makes this program—is likely to expose the nature of the program, I'll resist it.... Why tell the enemy what we're doing if the program is necessary to protect us from the enemy?"

More clearly, Bush is saying that the White House will oppose any legislation that sets specific limitations on the spying powers of the US government. In fact, such legislation already exists, including FISA, which specifically prohibits the NSA from monitoring communications into or out of the United States without a warrant. The existence of this legislation has constrained government actions for decades, rendering absurd the administration's position that any new legislation of a similar character would constitute an impermissible breach of security.

But Bush's concern has nothing to do with keeping the program secret from Al Qaeda. His concern, rather, is keeping it secret from the American people. The expansive nature of the spying program, as revealed in numerous press accounts, conflicts with administration claims that it is intended specifically to target Al Qaeda members. If the administration were to seek legal authority for carrying out the program, it would have to acknowledge that it in fact includes surveillance of the communications of significant sections of the population.

The Bush administration is opposed to any law that places limits on the powers of the presidency. The

argument employed repeatedly since 9/11 is that the president has what amounts to a blank check from Congress, which came in the form of the Authorization to Use Military Force (AUMF), passed shortly after the terrorist attacks. The White House contends AUMF gives the president the authority “to use all necessary and appropriate force” against anyone he determines was responsible for the terrorist attacks or harbored those who were responsible for them.

According to this theory, the AUMF helps buttress the president’s claim to commander-in-chief powers in the “war on terror.” These powers cover not only the wars in Afghanistan and Iraq, but the authority to impose antidemocratic measures such as the NSA spying program and other infringements on democratic rights.

On the particular issue of the NSA spying program, the administration is asserting the position that the legislative branch of government cannot, through FISA, require the executive branch to be subject to any control from the judicial branch, which according to FISA is tasked with authorizing search warrants.

This is why the administration is not pushing for new legislation in Congress that would authorize the NSA spying. To give support to such a law would give credence to the conception that the president, in fact, *needs* such authorization.

The Bush administration’s contempt for restrictions on its powers was also demonstrated in the president’s answer to another question on the NSA program. Asked why FISA needed to be circumvented, Bush declared: “The FISA law was written in 1978. We’re having this discussion in 2006. It’s a different world. And FISA is still an important tool.... But also...I said, look, is it possible to conduct this program under the old law? And people said, it doesn’t work in order to be able to do the job we expect us to do.”

More plainly, the law is outdated, so it is necessary to go outside the law. This is a novel legal theory, which holds that a law is merely a “tool” that comes with an expiration date, after which it is no longer applicable and can be cast aside. However, FISA was not intended as a tool for the use of the government in surveillance, but as a protection for the American people *against* government surveillance. It was enacted under the political impact of the exposure of massive spying on domestic political opponents, particularly by the Nixon

administration. What other laws and protections are on the books that, according to this administration, belong to a prior era?

At the press conference, Bush also defended a statement he made when signing the McCain amendment banning torture, in which he declared that the law would be interpreted in a way that did not violate the constitutional powers of the president as the unitary executive. This statement was necessary, Bush said, in order to “make it clear that the executive branch has got certain responsibilities. Conducting war is a responsibility in the executive branch, not the legislative branch.”

This statement could not be clearer. In the conduct of war, only the executive branch has any say, and cannot be limited by the legislature or constrained by law. Torture is considered to be part of “conducting war” and can therefore be authorized by the president.



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