

# Senate wiretapping hearing: Democrats bow to police state threat

**Bill Van Auken**  
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The Senate Judiciary Committee hearing Monday on the Bush administration's illegal use of the National Security Agency to carry out wiretaps against Americans exposed both the administration's determination to employ police state methods and the unwillingness of the Democratic Party to mount any serious opposition.

Testifying for the administration was Attorney General Alberto Gonzales, who, as Bush's White House counsel, crafted the legal justifications not only for the spying operation, but also for the detention without charges of so-called enemy combatants and the torture of detainees.

The spineless character of the congressional response to the administration's assertion of unprecedented powers became clear in the opening minutes of the hearing. The panel's chairman, Republican Senator Arlen Specter, announced that Gonzales would not be required to testify under oath. Democratic Senator Russ Feingold of Wisconsin moved to appeal Specter's decision. Feingold has charged that Gonzales deliberately concealed the existence of the National Security Agency (NSA) program during his confirmation hearing for the attorney general post in January 2005.

At that earlier hearing, Feingold asked the nominee, "Does the president have the authority acting as commander-in-chief to authorize warrantless searches of Americans' homes and wiretaps of their conversations in violation of the criminal and foreign intelligence surveillance statutes of this country?" Gonzales—who had signed off on the secret warrantless searches—refused to answer, claiming that Feingold's question posed a "hypothetical situation."

At Monday's hearing on the NSA spying program, Specter and the Republican majority on the Judiciary Committee easily defeated, on a party-line vote, Feingold's appeal, with the Democrats meekly submitting after having registered their dissent "for the record," in the words of the ranking Democrat, Patrick Leahy of Vermont.

The committee's refusal to place Gonzales under oath exposed, even before any testimony was taken or questions asked, the fraudulent character of the hearing, which was designed not to uncover, halt and punish government wrongdoing, but to vent political tensions over the spying operation while covering up its real scope.

Specter also announced at the outset that the panel would not press demands that the administration turn over legal papers elaborating its position on the wiretapping operation. The White House has stonewalled the Senate committee, again asserting extraordinary powers to impose a blanket of secrecy on government operations. Rather than confront this constitutional challenge, Specter declared that the "issue ought to be reserved to another day."

Gonzales began his testimony by quoting from recent videotapes issued by Osama bin Laden and Al Qaeda co-leader Ayman Al-Zawahiri threatening future terrorist attacks. "None of us can afford to shrug off warnings like this or forget that we remain a nation at war," he asserted.

The attorney general cast the Islamist terrorist group as an awe-inspiring

foe that employs "the most sophisticated communications, counter-intelligence and counter-surveillance techniques." The thrust of his remarks was that the danger posed by such a ubiquitous enemy justified extraordinary measures and the assumption of quasi-dictatorial powers by the president.

Gonzales declared he would testify only on the legality of the domestic spying operation and would refuse to provide any "operational details of that program or any other classified activity."

The attorney general maintained that Bush was justified in ordering warrantless wiretaps under his constitutional powers as commander in chief, and that this supposed authority had been buttressed by the Congressional Authorization of the Use of Military Force passed one week after the September 11, 2001 terrorist attacks on New York City and Washington.

Gonzales rested his case on the US Supreme Court's ruling in the case of Yaser Esam Hamdi, a US citizen declared by the Bush administration to be an "enemy combatant" and held without charges, legal representation or right to a trial. The court upheld the right of the president to carry out such executive detentions—a flagrant violation of the US Constitution and the fundamental right of habeas corpus—while ordering that "enemy combatants" be given a diluted and unspecified form of legal redress.

Gonzales' argument was that if the high court ruled in favor of the president's right to jail anyone he sees fit without recourse to the courts, then he certainly can tap their telephones.

The attorney general rejected the charge that the warrantless taps were in direct violation of the 1978 Foreign Intelligence Surveillance Act (FISA), and that the White House should have gone to the secret court set up under this statute to seek authorization for its surveillance operation. He argued that the legal requirements under FISA were "cumbersome and burdensome," even though the statute allows the government to carry out a wire tap first and seek a warrant justifying the action three days later, and even though in the course of 28 years the FISA court has approved some 20,000 wiretaps and rejected a total of six applications.

Essentially, the "burden" to which the attorney general objected was the statute's requirement that the government establish some legal justification for its spying, even if only after the fact.

The FISA law was passed in the wake of the gross abuse of powers by President Richard Nixon and the revelations of massive government spying on opponents of the Vietnam War, civil rights activists and other perceived "enemies." It was specifically enacted to curb the power of the president to carry out such arbitrary espionage against US citizens. The statute states that FISA "shall be the exclusive means by which electronic surveillance... and the interception of domestic wire, oral, and electronic communications may be conducted."

The Bush administration has effectively turned the clock back three decades, reviving the lawlessness of the Nixon administration in an even more menacing form.

Gonzales's principal defense against his congressional critics was the spinelessness and complicity of the Congress itself. He invoked the congressional abrogation of its own prerogative to declare war, contained in its authorization of force resolution of 2001, which he accurately described as a "very broadly worded authorization."

He noted that both the Democratic and Republican leaderships of both houses of Congress had been informed of the program for the last four years and had raised no objections until the existence of the program was revealed by the *New York Times* last December.

He called the bluff on those in the House of Representatives and the Senate who are complaining about the program by pointing out that not one member of either chamber has demanded that it be halted.

"The bipartisan leadership of the House and Senate Intelligence Committees has known about this program for years," he said. "The bipartisan leadership of both the House and Senate has also been informed. During the course of these briefings, no members of Congress asked that the program be discontinued."

Gonzales concluded his statement with an inference that those who questioned the unconstitutional and authoritarian methods of the administration were only aiding terrorism. "Our enemy is listening," he declared. "And I cannot help but wonder if they aren't shaking their heads in amazement at the thought that anyone would imperil such a sensitive program by leaking its existence in the first place, and smiling at the prospect that we might now disclose even more or perhaps even unilaterally disarm ourselves of a key tool in the war on terror."

While Democrats and some Republicans, such as Specter and South Carolina Senator Lindsey Graham, challenged the legal grounds of Gonzales's assertion of presidential authority to order wiretapping in the US without a warrant, none of them spelled out the far-reaching implications of the program for basic democratic rights or suggested that any action be taken against those who authorized it, including the president and Gonzales himself. As a result, the attorney general was able to sail through the hearing with relative ease.

There was, in fact, a basic agreement between Gonzales and his critics that vitiated any challenge to the illegal spying. All of the senators, and both of the parties, adhere to the administration's all-purpose rationale for militarism abroad and the destruction of democratic rights at home—the "global war on terrorism."

Virtually every one of the Democratic members of the panel felt obliged to make a fulsome declaration of loyalty to this so-called war. Thus, Democratic Senator Diane Feinstein of California prefaced her questioning of Gonzales by declaring: "I'd like to make clear that, for me, at least, this hearing isn't about whether our nation should aggressively combat terrorism; I think we all agree on that. And it's not about whether we should use sophisticated electronic surveillance to learn about terrorist plans and intentions and capabilities; we all agree on that. And it's not about whether we should use those techniques inside the United States to guard against attacks; we all agree on that."

Similarly, Senator Charles Schumer, Democrat of New York, began by saying: "First, we all support a strong, robust and vigorous national security program. Like everyone else in this room, I want the president to have all the legal tools he needs as we work together to keep our nation safe and free, including wiretapping."

For his part, Feingold affirmed, "All of us are committed to defeating the terrorists... It is without a doubt our top priority."

The thrust of their criticisms was not a denunciation of a frontal assault on the Bill of Rights and the US Constitution, but rather a concern that the administration was eschewing the fig leaf of democratic forms in pursuing its dictatorial agenda.

This line of reasoning found its clearest expression in the supposed voice of Democratic liberalism in the Senate, Edward Kennedy of Massachusetts. Kennedy warned that the warrantless searches constituted

an "unwise" threat to "national security."

"We're sending the wrong message to those that are on the front lines of the NSA that maybe someday they may actually be prosecuted, criminally or civilly," he declared. "We're sending a message to the courts that perhaps the materials that we're going to take from—let me just say from eavesdropping or signal intelligence may not be used in the court, again prosecuting Al Qaeda, people we really want to go after, because it wasn't done legally."

He even raised concerns for the executives of telephone and Internet service corporations who have covertly collaborated with the illegal government spying, warning that they could be hit by civil suits from their customers.

In short, Kennedy's statement consisted of a pitch for using Congress to grant a legal rubber stamp for the administration's police-state measures, without a word of concern for the democratic rights of the American people.

Repeatedly, the Democrats on the committee pointed to their support for the USA Patriot Act as well as their cooperation in amending FISA five times since 2001 to expand and expedite the powers of the government to spy on the American people. Their pathetic complaint was, if the administration had only asked them for another amendment gutting the minimal protections offered by FISA, they would have granted it.

"Why didn't you come to Congress?" asked Illinois Democrat Dick Durbin. "Why didn't you work with us, when you knew you had such strong bipartisan support?"

The Democrats repeatedly covered up the real implications of the NSA spying, posing it as a potential threat, while deliberately ignoring the widespread reports that it has already evolved into a massive electronic dragnet, collecting information on hundreds of thousands, if not millions, of people in the US.

In the course of the questioning, Gonzales invoked national security and the need to keep "operational" details of the spying program secret to remain silent on a number of issues, strongly suggesting that the illegal spying operations of the Bush administration go far beyond the revelations on the NSA wiretapping operation.

Gonzales refused to say whether the administration is opening first class mail as part of its spying operations. He deflected a question as to whether the administration believed that the president's inherent constitutional authority would allow him to abrogate the Posse Comitatus Act barring the use of the military in domestic policing.

He also declined to give the committee "absolute assurance" that only Americans linked to terrorists were being spied upon and refused to say what was done with information collected from surveillance of people who were deemed to have no ties to terrorism.

In one of the more chilling parts of his testimony, Gonzales argued that the decision as to whom the government should spy upon ought to be left to the spies themselves. "Intelligence experts [are] in the best position—better than, certainly, any lawyer—in evaluating whether or not there is reasonable grounds to believe that this person is an agent or member of Al Qaeda or an affiliated terrorist organization," he declared. In the same vein, he insisted that the "professionalism" of the NSA's spies provide adequate protection for the civil liberties of the American people.

The use of illegal police state powers—including warrantless wiretaps—the open flouting of the law and the refusal to provide information to Congress are grounds for impeaching George W. Bush in 2006, just as similar offenses were the basis for bringing articles of impeachment against Richard Nixon in 1974.

Yet there is not a hint of a demand from any section of the Democratic Party leadership that Bush be impeached for these crimes, nor for the launching of an illegal war of aggression in Iraq that was based upon lies.

A serious political challenge to the illegal and unconstitutional measures

that have been introduced in the name of the “war on terrorism” is impossible without exposing this so-called war itself as political contrivance, conjured up in the aftermath of 9/11 to provide an all-purpose justification and cover for US imperialism’s drive for global hegemony.

The Democrats have no intention of mounting such a challenge, because they know it would discredit every institution of the US political establishment, including their own party. Whatever their disagreements over tactics and legal forms, the Democrats support the same essential social interests and strategic aims as the Republicans. They are neither willing nor able to defend basic democratic rights.



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