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## Documentation

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# Administration Officials Defend Illegal Spying

### **President George W. Bush. weekly radio address, Dec. 17:**

As President, I took an oath to defend the Constitution, and I have no greater responsibility than to protect our people, our freedom and our way of life. . . .

To fight the war on terror, I am using authority vested in me by Congress, including the joint authorization for use of military force, which passed overwhelmingly in the first week after September the 11th. I'm also using constitutional authority vested in me as commander-in-chief. In the weeks following the terrorist attacks on our nation, I authorized the National Security Agency, consistent with U.S. law and the Constitution, to intercept the international communications of people with known links to al-Qaeda and related terrorist organizations. . . .

Yesterday, the existence of this secret program was revealed in media reports after being improperly provided to news organizations. As a result, our enemies have learned information they should not have, and the unauthorized disclosure of this effort damages our national security and puts our citizens at risk. . . . The authorization I gave the National Security Agency after September the 11th helped address that problem in a way that is fully consistent with my constitutional responsibilities and authorities. The activities I have authorized make it more likely that killers like these 9/11 hijackers will be identified and located in time.

And the activities conducted under this authorization have helped detect and prevent possible terrorist attacks in the United States and abroad. The activities I authorized are reviewed approximately every 45 days. Each review is based on a fresh intelligence assessment of terrorist threats to the continuity of our government and the threat of catastrophic damage to our homeland.

During each assessment, previous activities under the authorization are reviewed. The review includes approval by our nation's top legal officials, including the attorney general and the counsel to the President. I have reauthorized this program more than 30 times since the September the 11th attacks,

and I intend to do so for as long as our nation faces a continuing threat from al-Qaeda and related groups.

The NSA's activities under this authorization are thoroughly reviewed by the Justice Department and NSA's top legal officials. . . . Leaders in Congress have been briefed more than a dozen times on this authorization and the activities conducted under it. Intelligence officials involved in these activities also receive extensive training to ensure they perform their duties, consistent with the letter and intent of the authorization. This authorization is a vital tool in our war against the terrorists. It is critical to saving American lives.

The American people expect me to do everything under my power under our laws and Constitution to protect them and their civil liberties, and that is exactly what I will continue to do so long as I am the President of the United States. Thank you.

**Attorney General Alberto Gonzales, White House news briefing on legal issues relating to the NSA authorizations, Dec. 19:**

The President confirmed the existence of a highly classified program on Saturday. The program remains highly classified; there are many operational aspects of the program that have still not been disclosed and we want to protect that because those aspects of the program are very, very important to protect the national security of this country. So I'm only going to be talking about the legal underpinnings for what has been disclosed by the President. . . .

Now, in terms of legal authorities, the Foreign Intelligence Surveillance Act requires a court order before engaging in this kind of surveillance that I've just discussed and the President announced on Saturday, unless otherwise authorized by statute or by Congress. That's what the law requires. Our position is, that the authorization to use force, which was passed by the Congress in the days following September 11th, constitutes that other authorization, that other statute by Congress, to engage in this kind of signals intelligence. . . . [E]ven though signals intelligence is not mentioned in the authorization to use force, we believe that the Court would apply the same reasoning to recognize the authorization by Congress to engage in this kind of electronic surveillance.

I might also add that we also believe the President has the inherent authority under the Constitution, as Commander-in-Chief, to engage in this kind of activity. Signals intelligence has been a fundamental aspect of waging war since the Civil War, where we intercepted telegraphs, obviously, during the world wars, as we intercepted telegrams in and out of the United States. Signals intelligence is very important for the United States government to know what the enemy is doing, to know what the enemy is about to do. We believe that those two authorities exist to allow, permit the United States government to engage in this kind of surveillance.

**Vice President Dick Cheney, remarks to the press aboard Air Force 2, en route, Muscat, Oman, Dec. 20:**

I do have the view that over the years there had been an erosion of Presidential power and authority, that it's reflected in a number of developments—the War Powers Act, which many people believe is unconstitutional. It's never really been tested. . . . I am one of those who believe that was an infringement upon the authority of the President. The Budget Anti-Impoundment Act, back in the '70s, passed during the Ford Administration, that limited the President's authority to impound funds, a series of things Watergate—a lot of the things around Watergate and Vietnam, both, in the '70s served to erode the authority, I think, the President needs to be effective especially in a national security area.

If you want reference to an obscure text, go look at the minority views that were filed with the Iran-Contra Committee; the Iran Contra Report in about 1987. Nobody has ever read them, but we—part of the argument in Iran Contra was whether or not the President had the authority to do what was done in the Reagan years. And those of us in the minority wrote minority views, but they were actually authored by a guy working for me, for my staff, that I think are very good in laying out a robust view of the President's prerogatives with respect to the conduct of especially foreign policy and national security matters. It will give you a much broader perspective.

I served in the Congress for ten years. I've got enormous regard for the other body, Title I of the Constitution, but I do believe that, especially in the day and age we live in, the nature of the threats we face, it was true during the Cold War, as well as I think what is true now, the President of the United States needs to have his constitutional powers unimpaired, if you will, in terms of the conduct of national security policy. That's my personal view. . . .

So when you're asking about my view of the presidency, yes, I believe in a strong, robust executive authority. And I think the world we live in demands it. . . .

Either we're serious about fighting the war on terror or we're not. Either we believe that there are individuals out there doing everything they can to try to launch more attacks, to try to get ever deadlier weapons to use against, or we don't. The President and I believe very deeply that there's a hell of a threat, that it's there for anybody who wants to look at it. And that our obligation and responsibility given our job is to do everything in our power to defeat the terrorists. And that's exactly what we're doing.

But if there's anything improper or inappropriate in that, my guess is that the vast majority of the American people support that, support what we're doing. They believe we ought to be doing it, and so if there's a backlash pending, I think the backlash is going to be against those who are suggesting somehow that we shouldn't take these steps in order to protect the country.

## Rockefeller Hits Cheney And NSA Spy Program

*On Dec. 19, Sen. Jay Rockefeller (D-W.V.), the vice chairman of the Senate Select Committee on Intelligence, released the following statement regarding the White House's misrepresentation of the facts surrounding the National Security Agency (NSA) program for intercepting communications within the United States, and made public his 2003 letter to Vice President Dick Cheney, in which he expressed his concerns about this issue:*

For the last few days, I have witnessed the President, the Vice President, the Secretary of State, and the Attorney General repeatedly misrepresent the facts.

The record needs to be set clear that the Administration never afforded members briefed on the program an opportunity to either approve or disapprove the NSA program. The limited members who were told of the program were prohibited by the Administration from sharing any information about it with our colleagues, including other members of the Intelligence Committees.

At the time, I expressed my concerns to Vice President Cheney that the limited information provided to Congress was so overly restricted that it prevented members of Congress from conducting meaningful oversight of the legal and operational aspects of the program.

These concerns were never addressed, and I was prohibited from sharing my views with my colleagues.

Now that this issue has been brought out into the open, I strongly urge the Senate Intelligence Committee to immediately undertake a full investigation into the legal and operational aspects of the program, including the lack of sufficient Congressional oversight.

*The 2003 letter to Cheney was hand-written, because Rockefeller was prohibited from sharing the information with anyone, even a secretary, who would normally type a letter. Its text follows:*

July 17, 2003

Dear Mr. Vice President,

I am writing to reiterate my concern regarding the sensitive intelligence issues we discussed today with the DCI [Director of Central Intelligence], DIRNSA [Director National Security Agency], chairman Roberts and our House Intelligence Committee counterparts.

Clearly, the activities we discussed raise profound oversight issues. As you know, I am neither a technician nor an

attorney. Given the security restrictions associated with this information, and my inability to consult staff or counsel on my own, I feel unable to fully evaluate, much less endorse these activities.

As I reflected on the meeting today, and the future we face, John Poindexter's TIA [Total Information Awareness] project sprung to mind, exacerbating my concern regarding the direction the Administration is moving with regard to security, technology, and surveillance.

Without more information and the ability to draw on any independent legal or technical expertise, I simply cannot satisfy lingering concerns raised by the briefing we received.

I am retaining a copy of this letter in a sealed envelope in the secure spaces of the Senate Intelligence Committee to ensure that I have a record of this communication.

I appreciate your consideration of my views.

Most respectfully,  
Jay Rockefeller

## Bipartisan Senators Speak Out, Seek Hearings

*On Dec. 19, a bipartisan group of Senate Intelligence Committee members called for a joint inquiry by the Judiciary and Intelligence Committees into the President's authorization of domestic electronic surveillance of U.S. citizens. Sen. Diane Feinstein (D-Calif.) noted that under the Senate Intelligence Committee rules, if five members of the Committee make a request in writing to the Chairman to call a meeting of the Committee, and the Chairman fails to call such a meeting within seven calendar days thereafter, these members may call a meeting by filing a written notice with the Clerk of the Committee.*

Dear Senators,

We write to express our profound concern about recent revelations that the United States Government may have engaged in domestic electronic surveillance without appropriate legal authority. These allegations, which the President, at least in part, confirmed this weekend require immediate inquiry and action by the Senate.

We respectfully request that the Select Committee on Intelligence and the Committee on the Judiciary, which share jurisdiction and oversight of this issue, jointly undertake an inquiry into the facts and law surrounding these allegations. The overlapping jurisdiction of these two Committees is particularly critical where civil liberties and the rule of law hang in the balance.

On Saturday the President stated that he authorized the

National Security Agency, consistent with U.S. law and the Constitution, to intercept the international communications of people with known links to al-Qaeda and related terrorist organizations. 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.

Both the Judiciary and the Intelligence Committee have had numerous hearings and briefings on the authorities provided to the nation's law enforcement and intelligence agencies in their effort to defend against terrorism. We have extensively debated these issues. At no time, to our knowledge, did any Administration representative ask the Congress to consider amending existing law to permit electronic surveillance of suspected terrorists without a warrant such as outlined in the *New York Times* article.

We strongly believe that the Judiciary and Intelligence Committees should immediately seek to answer the factual and legal questions which surround these revelations, and recommend appropriate action to the Senate.

Sincerely,  
Diane Feinstein  
Carl Levin  
Chuck Hagel  
Ron Wyden  
Olympia Snowe

cc: Members of the Committee on the Judiciary Members of the Select Committee on Intelligence

**Sen. Diane Feinstein (D-Calif.), statement on the Senate floor, Dec. 16:**

Mr. President, I rise today as a 12-year member of the Senate Judiciary Committee and a 5-year member of the Senate Intelligence Committee. I do so indeed with a very heavy heart. I have had, until now, great confidence in America's intelligence activities. I have assured people time and time again that what happens at home has always been conducted in accordance with the law.

I played a role in the Patriot Act. I moved one of the critical amendments having to do with the wall and the FISA court. Today's allegations as written in the [*New York Times*] really question whether this is in fact true. I read it with a heavy heart, yet without knowing the full story.

Let me be clear. Domestic intelligence collection is governed by the Foreign Intelligence Surveillance Act, known as FISA. This law sets out a careful set of checks and balances that are designed to ensure that domestic intelligence collection is conducted in accordance with the Constitution, under the supervision of judges and with accountability to the Congress of the United States.

Specifically, FISA allows the Government to wiretap phones or to open packages, but only with a showing to a special court—the FISA court—and after meeting a legal standard that requires that the effort is based on probable cause to believe the target is an agent of a foreign power. . . . FISA is the exclusive law in this area, unless there is something I missed, and please, someone, if there is, bring it to my attention.

Section 105 (f) of FISA allows for emergency applications where time is of the essence. But even in these cases, a judge makes the final decision as to whether someone inside the United States of America, a citizen or a non-citizen, is going to have their communications wiretapped or intercepted. . . .

In times of war, FISA section 111 states this:

"Notwithstanding any other law, the President, through the Attorney General, may authorize electronic surveillance without a court order under this title to acquire foreign intelligence information for a period not to exceed 15 calendar days following a declaration of war by the Congress."

I would argue the resolution authorizing use of force was not a declaration of war. I read it this morning carefully. It does not authorize the President of the United States to do anything other than use force. It doesn't say he can wiretap people in the United States of America. And apparently, perhaps with some change, but apparently this activity has been going on unbeknownst to most of us in this body and in the other body now since 2002. . . .

In the absence of authority under FISA, Americans up till this point have been confident—and we have assured them—that such surveillance was prohibited.

This is made explicit in chapter 119 of title 18 of the criminal code which makes it a crime for any person without authorization to intentionally intercept any wire, oral, or electronic communication.

As a member of the Senate Judiciary and Intelligence Committees, I have been repeatedly assured by this administration that their efforts to combat terrorism were being conducted within the law, specifically within the parameters of the Foreign Intelligence Surveillance Act which, as I have just read, makes no exception other than 15 days following a declaration of war.

We have changed aspects of that law at the request of the Administration in the USA Patriot Act to allow for a more aggressive but still lawful defense against terror. So there have been amendments. But if this article is accurate, it calls into question the integrity and credibility of our nation's commitment to the rule of law.

I refreshed myself this morning on the fourth amendment to the Bill of Rights of the Constitution of the United States. Here is what it says:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizures, shall not be violated, and no Warrants shall issue,

but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

Clearly an intercept, a wiretap, is a search. It is a common interpretation. A wiretap is a search. You are looking for something. It is a search. It falls under the Fourth Amendment. . . .

What is concerning me, as a member of the Intelligence Committee, is if eight people, rather than 535 people, can know there is going to be an illegal act and they were told this under an intelligence umbrella—and therefore, their lips are sealed—does that make the act any less culpable? I don’t think so.

The resolution passed after Sept. 11 gave the President specific authority to use force, including powers to prevent further terrorist acts in the form of force. . . .

This is use of force. It is not use of wiretapping or electronic surveillance of American citizens or those without citizenship within the confines of the United States. That is the jurisdiction of the FISA Court. There is a procedure, and it is timely. . . .

We are a government of law. The Congress was never asked to give the President the kind of unilateral authority that appears to have been exercised.

I was heartened when Senator Specter also said that he believed that if the *New York Times* report is true—and the fact that they have withheld the story for a year leads me to believe it is true, and I have heard no denunciation of it by the Administration—then it is inappropriate, it is a violation of the law.

How can I go out, how can any Member of this body go out, and say that under the Patriot Act we protect the rights of American citizens if, in fact, the President is not going to be bound by the law, which is the FISA court?

And there are no exceptions to the FISA court. . . .

If the President wanted this authority, he should have come to the Intelligence Committee for an amendment to FISA, and he did not.

The fact that this has been going on since 2002—it is now the end of 2005. Maybe 8 people in these 2 bodies in some way, shape, or form may have known something about it, but the rest of us on the Intelligence Committees did not.

That is simply unacceptable.

**Sen. Lindsey Graham (R-S.C.), on CBS “Face the Nation,” Dec. 18:**

The FISA Act created a court, set up by the chief justice of the United States, to allow a rapid response to requests for surveillance activity in the war on terror. I don’t know of any legal basis to go around that. There may be some, but I’m not aware of it.

And here’s the concern I have. We can’t become an outcome-based democracy. Even in a time of war, you have to follow the process, because that’s what a democracy’s all

about, a process. . . .

The bottom line is, there is a theme here. This is a bit disturbing. Remember the debate with Senator McCain about immunity? The Administration was pushing to give immunity to interrogators in the field. Well, if you allow the President to make a finding that this is a bad person and these techniques are necessary, the President would have the authority to set aside statutes like the torture statute. If you allow him to make the findings, he becomes the court.

So you cannot give any executive, Republican or Democrat, the ability to make findings to set aside statutes that exist, or play the role of the court. . . .

Here’s what I reject. Whether you’re a Republican or a Democrat in the White House, I reject the ability of any President during a time of war to make findings to set aside the torture statute and give blanket immunity to people out in the field, because that could come back and hurt our own troops in different scenarios.

I reject the idea that any President can sit down with a handful of congressman and deal the courts out if the law requires the court to be involved. . . .

I want to see the statute. I want to see the executive order. Whatever legal authority was used, I want someone to explain to me how it justified not going to a court that was set up for this very purpose. And there may be a reason. And we are at war. And I applaud the President for being aggressive. But we cannot set aside the rule of law in a time of war, because that’s what we’re fighting for in Iraq, for them to follow the law, not an outcome.

**Senate Democratic Leader Harry Reid (Nev.) on Fox News Sunday, Dec. 18:**

The President can’t pass the buck on this one. This is his program. He’s commander in chief. But commander in chief does not, I don’t think, trump the Bill of Rights. . . . Congress has not been involved in setting up this program. This is totally a program of the President and the Vice President of the United States. . . .

Bob Graham, who everyone acknowledges is one of the finest members who’s ever served in the Congress of the United States, says that he wasn’t told about it when he was chairman. . . .

This is something that’s the President, the Vice President, and there is no way he can pass the buck. The Vice President came up to talk to us one day this week. I wonder if they checked that off as one of the times that they consulted with us. There were four members of Congress there. Maybe that counts for 4 of the 12. This is the President’s responsibility and the Vice President’s, and they cannot pass the buck.

**‘Impeachable Offenses’**

**Rep. John Conyers (D-Mich.) submitted the following resolution in the House of Representatives on Dec. 18:**

## RESOLUTION

Creating a select committee to investigate the Administration's intent to go to war before congressional authorization, manipulation of pre-war intelligence, encouraging and countenancing torture, retaliating against critics, and thwarting congressional oversight, and to make recommendations regarding grounds for impeachment.

*Resolved*, That there is hereby established in the House of Representatives a select committee to be known as the Select Committee on Administration Predetermination to Go to War, Manipulation of Intelligence, Abuse of Detainees, Retaliation Against Critics, and Thwarting of Congress. . . .

## PURPOSES AND FUNCTIONS

Sec. 2. (a) The Select Committee is authorized and directed to investigate all relevant government agencies' actions and decisions relating to the Administration's intent to go to war before congressional authorization, manipulation of pre-war intelligence, encouraging and countenancing torture, retaliating against critics, and thwarting congressional oversight, including:

1. actions by the White House, National Security Council, Department of State, Department of Defense, and Central Intelligence Agency related to United Nations and Iraq Survey Group inspections of Iraq;

2. knowledge of Iraq's ability regarding and intentions toward, or lack of ability regarding or intentions toward, nuclear weapons capability;

3. knowledge regarding Iraq's possession of or attempted possession of, or regarding the lack of possession of or attempted possession of, chemical or biological weapons;

4. knowledge of Iraq's possession of aluminum tubes for conventional rocket programs or for nuclear weapons development;

5. knowledge regarding Iraq's intent, or lack of intent, toward acquiring yellowcake uranium from Niger;

6. knowledge of any involvement, or lack of involvement, by Iraq in the September 11, 2001, attacks against the United States;

7. knowledge of any connections or ties, or of any lack of connections or ties, between Iraq and al-Qaeda;

8. knowledge of any meeting, or lack of any meeting, between Iraqi intelligence officials and Mohammed Atta in

Prague, Czechoslovakia;

9. preparations for detention, interrogation and treatment of detainees, or lack thereof, made in the planning stages of the Iraq conflict prior to March 19, 2003;

10. knowledge of abuses and mistreatment of detainees during the Iraq conflict after March 19, 2003;

11. the investigation of abuses and mistreatment or lack thereof, the results of these investigations, any sanctions or punishment of offenders, and any efforts to keep these reports either from supervisors, officials or the public;

12. an examination of all prison facilities, including the High Value Detainee facility at Baghdad airport and secret prisons or "black sites," for detaining individuals outside the United States;

13. the extent to which civilian, military, or intelligence officials expressly authorized, willingly ignored, or created an atmosphere that condoned the abuse's and mistreatment that occurred at Abu Ghraib, Iraq; and

14. knowledge on the part of any White House officials of the covert identity of Valerie Plame Wilson and any discussion or communication by such officials with members of the media about such identity. . . .

**Sen. Barbara Boxer (D-Calif.) announced on Dec. 20 that she has opened an inquiry into whether Bush committed an impeachable offense in authorizing a spying program against Americans. She wrote as follows to four "Presidential scholars":**

On December 16, along with the rest of America, I learned that President Bush authorized the National Security Agency to spy on Americans without getting a warrant from a judge. President Bush underscored his support for this action in his press conference today.

On Sunday, December 18, former White House Counsel John Dean and I participated in a public discussion that covered many issues, including this surveillance. Mr. Dean, who was President Nixon's counsel at the time of Watergate, said that President Bush is "the first President to admit to an impeachable offense." Today, Mr. Dean confirmed his statement.

This startling assertion by Mr. Dean is especially poignant because he experienced first hand the executive abuse of power and a Presidential scandal arising from the surveillance of American citizens.

Given your constitutional expertise, particularly in the area of Presidential impeachment, I am writing to ask for your comments and thoughts on Mr. Dean's statement.

Unchecked surveillance of American citizens is troubling to both me and many of my constituents. I would appreciate your thoughts on this matter as soon as possible.

Sincerely,  
Barbara Boxer  
United States Senator

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