



## SENATE INVESTIGATES GOVERNMENT SPYING PROGRAM

February 6, 2006

*The U.S. Senate is debating whether the Bush administration's program to spy on American citizens as part of the fight against terrorism is legal.*

Critics and some legal scholars argue that the wiretaps conducted by the National Security Administration (NSA) violate a law called the Foreign Intelligence Surveillance Act (FISA), passed by Congress in 1978.

President Bush, Attorney General Alberto Gonzales, and other intelligence experts claim the USA Patriot Act gives them the authority to listen in on domestic conversations, as does the 2001 congressional authorization to use military force against terrorism.

### **Earlier domestic spying**

In 1975, Senator Frank Church, Democrat from Idaho, opened an investigation into accusations that President Nixon had illegally spied on U.S. citizens.

At the request of the Nixon administration, the NSA began monitoring the telephone conversations of civil rights activists and Vietnam War protestors.

After the hearings, the Church Committee strongly recommended that the NSA should not be allowed to wiretap domestically unless it had a court-provided warrant.

Three years later, the Senate approved the FISA law, which created a special Foreign Intelligence Surveillance Court to approve warrants for domestic wiretapping.

Under this law, the NSA may eavesdrop on a suspected terrorist for up to 72 hours before applying for a warrant through the FISA court.

After that period of time, the government must appear before the 11-member court and prove that the suspect has ties to a terrorist group or a foreign power.

Since its inception, the FISA court has heard thousands of government cases, but has rejected only four requests for warrants.

### **The current program**

According to the New York Times article that broke the story about the domestic spying program, President Bush signed an executive order in 2002 that allowed the NSA to spy on Americans without seeking the FISA court's approval.

The Bush administration and other intelligence experts have refused to reveal specific details about the domestic spying program. They have insisted, however, that NSA agents only monitor international discussions between suspected terrorists in the United States and foreign agents abroad.

“An open discussion of the operational details of this program would put the lives of Americans at risk,” said Attorney General Alberto Gonzales at the Senate Judiciary Committee hearings.

### **The legal justification**

Much of the current debate, both inside and outside the Senate hearing rooms, centers on whether or not President Bush and the NSA acted legally in allowing warrantless eavesdropping.

Gonzales told the NewsHour that as a part of the post-Sept. 11, 2001 authorization to use military action against terrorism, “the Congress intended for the president to engage in all of those activities that are fundamentally incidental to waging war, including electronic surveillance.”

Former Senator Tom Daschle, a South Dakota Democrat who was Senate majority leader at the time, wrote a recent opinion piece in The Washington Post that said he was confident that “the 98 senators who voted in favor of authorization of force against al Qaeda did not believe that they were also voting for warrantless domestic surveillance.”

The Bush administration also has argued for a broad interpretation of Article II in the Constitution, the section that explains the powers given to the president.

“The president has inherent authority given to him directly by the Constitution ... to take measures to defend the country that include gathering foreign intelligence,” said Bradford Berenson, a former advisor to President Bush.

Administration officials claim the FISA law hampers counterterrorism efforts and places unnecessary restrictions on law enforcement.

In his recent State of the Union address, President Bush said, “If there are people inside our country who are talking with al-Qaida, we want to know about it because we will not sit back and wait to be hit again.”

### **The critics' arguments**

Senator Edward Kennedy, an outspoken opponent of the Bush administration, claims the president has upset the system of “checks and balances” by not going to Congress to request a change in FISA law.

Other critics assert that the NSA program violates the Fourth Amendment, which prohibits “unreasonable searches and seizures” and requires “probable cause” before a warrant can be issued.

In his prepared statement before the Judiciary Committee, Gonzales explained that the warrantless wiretapping’s focus on terrorist suspects “fully satisfies the reasonableness requirement of the Fourth Amendment.”

-- *Compiled by Brian Wolley for NewsHour Extra*  
© 2006 MacNeil/Lehrer Productions