



National Association of Criminal Defense Lawyers

⚖️ **Americans Entitled to Know Whole Truth About Warrantless Snooping**

"We have long since made clear that a state of war is not a blank check for the president when it comes to the rights of the Nation's citizens. . . . Whatever power the United States Constitution envisions for the Executive in its exchanges with . . . enemy organizations in times of conflict, it most assuredly envisions a role for all three branches when individual liberties are at stake."

Justice O'Connor, Hamdi v. Rumsfeld (2004)

Electronic surveillance is an essential tool for tracking terrorists, but the President broke the law by authorizing wiretaps of Americans without obtaining warrants required by FISA (the Foreign Intelligence Surveillance Act). Now that this program has been exposed, the White House and others are pushing legislation that would amend current legal authorities to legalize the domestic spying program without an inquiry that would clarify these activities. Congress should (1) reject any legislative proposals that seek to legalize the domestic spying program and (2) conduct a thorough investigation into the nature, scope and operation of the program.

⚖️ **The domestic spying program violates the Fourth Amendment and FISA**

"Exactly like Nixon before him, Bush has ordered the National Security Agency (NSA) to conduct electronic snooping on communications of various people, including U.S. citizens. That action is unequivocally contrary to the express and implied requirements of federal law that such surveillance of U.S. persons inside the U.S. (regardless of whether their communications are going abroad) must be preceded by a court order."

Former Congressman Bob Barr¹

⚖️ **Administration officials were not justified in circumventing FISA and the Congress**

"What is troubling is that this domestic spying is being done in apparent contravention of FISA, for reasons that still are not clear. FISA anticipates situations in which speed is essential. It allows the government to start eavesdropping without a court order and to keep it going for a maximum of three days."

Suzanne E. Spaulding (Former General Counsel to the House and Senate Intelligence Committees, Former CIA Assistant General Counsel)²

On the assumption that Congress or a court would have been cooperative in September 2001, and that the cooperation could have kept necessary actions clearly lawful without conferring any benefit on the nation's enemies, the president's decision to authorize the NSA's surveillance without the complicity of court or Congress was a mistake."

George F. Will³

⚖️ **Congress must conduct a thorough investigation of the program and ensure that investigation is open to the public**

"To borrow from Justice Robert Jackson's dissent in *Korematsu v. United States* (1944), the chilling danger created by President Bush's claim of wartime omnipotence to justify the NSA's eavesdropping is that the precedent will lie around like a loaded weapon ready for the hand of the incumbent or any successor who would reduce Congress to an ink blot."

Bruce Fein⁴

🚩 **Americans Troubled by Domestic Spying Program**

- According to recent nationwide poll commissioned by the American Bar Association, 77 percent of Americans expressed deep reservations about the president's secret surveillance program. A majority of Americans said in the flight against terrorism, the president should not suspend constitutional freedoms without a court order or congressional authorization.
- Another poll commissioned by the American Civil Liberties Union confirmed these public opinions: a majority of American voters want Congress to "demand that the warrantless eavesdropping be stopped because it is illegal" and believe "the president should not be acting on his own in deciding how to fight terrorism without the checks and balances of the courts and Congress." Also, at least a third of Republican voters consistently expressed viewpoints that they are concerned that the president is operating outside the law."

¹ "Presidential Snooping Damages the Nation," *Time*, Jan. 9, 2006

² "Power Play; Did Bush Roll Past the Legal Stop Signs," *The Washington Post*, Dec. 25, 2005

³ "Why Didn't He Ask Congress?," *The Washington Post*, Dec. 20, 2005

⁴ "If Men Were Angels," *The Washington Times*, Jan. 9, 2006