

Justice Talking Listening Guide
Domestic Spying: What are the Checks on Presidential Power?
2/6/06

SHOW SUMMARY

After recent reports in the New York Times, the Bush Administration has admitted it authorized the National Security Agency to eavesdrop on suspected terrorists within the United States without obtaining court approval. These actions raise significant questions about how far government can go to track terrorists and whether our civil liberties are on a crash course with executive power. On this edition of Justice Talking we take a look at U.S. intelligence policies and ask whether they are legal and effective at safeguarding the homeland.



Brad Berenson



Geoffrey Stone



Patrick Radden Keefe

- Part 1: **Eric Lichtblau**, the New York Times correspondent who helped break the story about the NSA's controversial domestic surveillance program, speaks with Margot about President Bush's executive order on governmental spying.

- Part 2: Producer **Reese Erlich** reports on what some critics are saying about the NSA program—that it is just one part of a much wider pattern of illegal, domestic spying.

- Part 3: **Brad Berenson**, a former White House counsel to President George W. Bush, and **Geoffrey Stone**, a University of Chicago constitutional law professor, debate whether the president broke the law when he approved the NSA program.

During the debate, **Maria LaHood**, an attorney at the Center for Constitutional Rights, one of the organizations that filed a lawsuit challenging the NSA program, talks about her suspicion that she has been a target of spying.

- Part 4: **Patrick Radden Keefe**, author of "Chatter: Dispatches from the Secret World of Global Eavesdropping," speaks with Margot about the past and present of government spying technology.



On National Public Radio's website you'll find a timeline of the history of wiretapping in America from 1791 to 2005, and the most current news on the Senate Judiciary Committee's hearings on the spying controversy.

<http://www.npr.org/template/story/story.php?storyId=5170376>



Host Margot Adler

Margot Adler is a National Public Radio correspondent based in NPR's New York Bureau. Adler has thirty years of experience as a radio host and reporter and is the author of several books. She lives in New York City with her husband and son.

DEFINITION OF TERMS

National Security Agency (NSA) – the U.S. intelligence agency established in 1952 by a presidential directive (not by law) in charge of creating and protecting codes for secret governmental information and intercepting and decoding non-governmental information for the purpose of national security. It conducts research on forms of electronic transmission and has listening posts around the world.

Foreign Intelligence Surveillance Act of 1978 (FISA) – the federal law which defines the guidelines for physical and electronic surveillance of information deemed necessary to protect the United States from attack that is passed among foreign governments, political organizations, and terrorist groups. The Act limits surveillance of citizens, legal aliens, and corporations within the United States. The President may authorize electronic surveillance without a court order for the period of one year if it is only for foreign intelligence information and it is not likely that the contents of any communication of a United States person will be included. Otherwise, the government must seek a court order permitting the surveillance within the first 72 hours. This means that the court must find probable cause (reasonable suspicion of criminal activity) for the surveillance.

Authorization for Use of Military Force Against Terrorists of 2001 – the resolution passed by Congress authorizing President Bush to use “all necessary and appropriate force” to fight those responsible for the terrorist attacks of September 11, 2001. Although the resolution stated that the President had to determine that diplomatic efforts alone would not protect the United States before he could use force, it did not require that he get approval from the United Nations Security Council to do so, allowing him to use military force on Afghanistan and Iraq. President Bush cited this authorization as justification for his executive order allowing the NSA to sidestep FISA in order to conduct domestic surveillance.

DISCUSSION QUESTIONS

1. Why do some people think the president broke the law when he authorized domestic surveillance?
2. Do you think the U.S. government should be allowed to spy on its citizens without a warrant during wartime?



Read the opinions of high schools students about “National Security vs. Civil Liberty”
on the *Student Voices Speak Out* at
<http://student-voices.org/discussions/discussion.php?DiscussionID=433>