

GOOD INTENTIONS, BAD CONSEQUENCES By Tara Ross

Contributed by DallasBlog.com
Tue, Dec 20, 2005, 09:40 PM

The New York Times dropped a bombshell on the country last week. One of its correspondents, James Risen, reported that the Bush administration has enabled the National Security Agency to eavesdrop on American citizens, without a warrant, in certain situations. The President justified this action, stating that the program "has targeted those with known links to al Qaeda." The eavesdropping is allowed only on international phone calls and e-mails directed at foreign recipients.

What are we to make of this charge? Is the NSA program justified by the extreme necessity of war, or is it an inexcusable breach of our civil liberties?

The first striking aspect of The Times report is its timing. Risen and The Times sat on the story for a year, finally publishing it last week. Call me cynical, but I don't think it's a coincidence that the story was published in the wake of a successful Iraqi election and improved poll numbers for the President. Or maybe the story was intended to influence the reauthorization of the Patriot Act, discussed on Capitol Hill last week.

Oh, but I nearly forgot. Risen has a book coming out in a few weeks. Perhaps that's it.

In all honesty, the biased timing of the story's release makes me want to ignore it altogether. It's tempting not to give The Times the satisfaction of creating bad news for the Bush administration this week—the week that The Times, in its infinite wisdom, has chosen.

But discuss it, I will. The national security and civil liberties issues at stake are too important to ignore.

I would be surprised to hear that the Bush administration is using its newfound ability to spy on American citizens in a reckless or abusive fashion. Though I disagree with the President at times, I believe that he is an honest man who works hard to serve his country honorably. I have the same confidence in many of those that serve him. I doubt that the warrantless searches have been used irresponsibly so far.

However, this Administration constantly makes the mistake of thinking that because it is full of honest and trustworthy individuals, then any action that it takes is automatically acceptable. Its attitude seems to be: But we won't abuse this power if you give it to us, so what, exactly, is the problem?

The fact that the President can't see the problem is what causes me so much concern.

The issue is not whether the current set of officeholders is honest or trustworthy. Even if this Administration is trustworthy, a dishonest Administration may follow. Unfortunately, the actions of one honorable Administration do nothing more than to set precedents for future officeholders, who may be less conscientious than the current set.

Our Constitution provides safeguards against those who are in positions of power. These safeguards are enforced regardless of whether we have correctly assessed the trustworthiness of our elected officials. Anything other than constant enforcement would place our freedom at risk when, unbeknownst to voters, greedy, ambitious, or abusive men worm their way into office. Our nation's laws, also, should share this one-size-fits-all trait.

Moreover, we should remember that even the best and most honest of men are fallible. Power corrupts. It goes to people's heads. Americans need to be protected from those who were once honest stewards of their office, but who have become numb to small abuses of power.

The Bush administration doubtless implemented the warrantless search rules with the best of intentions. We should not assume, however, that this newfound power won't eventually go to the heads of investigators. Over the course of days and years, investigators will become desensitized to the nature of what they are doing. Searches that seemed borderline at first become routine. Why, then, should we blindly trust them not to step inadvertently over the line? Getting a warrant is a very small hurdle to overcome—and it provides some protection for our freedom.

The Bush administration, however, argues that getting a warrant simply takes too long in some circumstances.

I find this hard to believe. The Foreign Intelligence Surveillance Act provides for a secret court to issue warrants. In some cases, a single judge can issue this warrant within a matter of hours. Furthermore, FISA provides an emergency procedure whereby a warrantless search can be performed, as long as the Administration seeks permission, retroactively, within 72 hours.

I have as yet to hear a good explanation of why this latter emergency procedure is too cumbersome for investigators, even if time is of the essence in a particular situation. Moreover, if the Administration needs the emergency procedure to be streamlined further, then it should have asked Congress for this modification rather than bypassing FISA, spontaneously, behind closed doors.

The warrantless searches may have benefited our national security in the short term; however, I fear that the Bush administration has underestimated the long term damage to our civil liberties.