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HOT TOPIC

Is Someone Listening to You?

THE MAIN EVENT

Bush's decision to allow the National Security Agency not to obtain warrants before eavesdropping on Americans communicating with people overseas has stirred up a firestorm.

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THE 2002 DECISION, reported by the New York Times last month, has put one of the American government's most secretive agencies in an uncomfortable spotlight and the Bush administration on the defensive. It not only invites criticism from Democrats; it also exacerbates a rift in the Republican ranks between civil libertarians and defenders of national security.

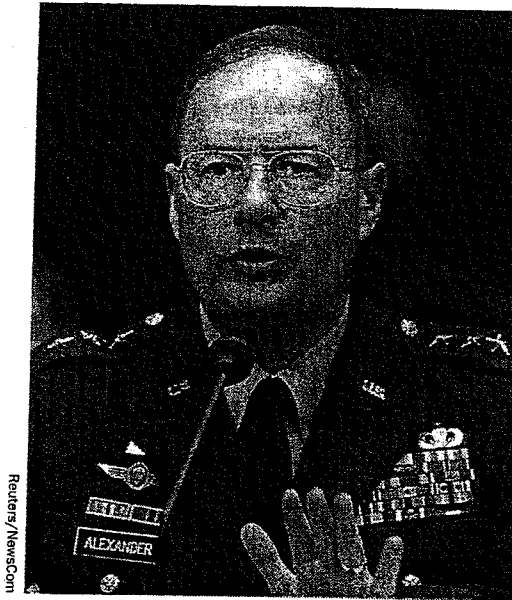
Mr. Bush says the program is legal and is necessary to protect Americans from terrorist attack. Critics say it violates rights to privacy guaranteed in the Constitution's Fourth Amendment, as well as the 1978 Foreign Intelligence Surveillance Act, or FISA.

Here are some of the issues:

What did the president do? After the Sept. 11, 2001 terrorist attacks, Mr. Bush signed a secret directive allowing the NSA to wiretap certain telephone conversations without warrants. Hundreds of people in the U.S. have been tracked by the program, which monitors conversations between people within the U.S. and people overseas with suspected links to terrorism. Recent media reports say the NSA also has agreements with U.S. telecom companies to mine telephone and Internet data in an effort to spot terror suspects.

What is allowed under the law? The NSA is charged with monitoring foreign—not domestic—communication. The 1978 FISA law requires intelligence agencies to obtain a warrant through a special court called the Foreign Intelligence Surveillance Court before tapping calls of people on U.S. soil. FISA was passed to prevent wiretapping by intelligence agencies. Just a few years later, a Senate committee had revealed that the NSA and the Federal Bureau of Investigation had been using wiretaps to gather information on U.S. citizens considered threats to national security.

Bush says we are at war; does that waive the law? That's the central question. Mr. Bush maintains that Article II of the Constitution gives the president inherent authority to use wiretaps when



Reuters/NewsCom

NSA Director Lt. Gen. Keith B. Alexander

the target is a terrorist suspect or has ties to a potential terrorist. He also says post-9/11 congressional authorization that allowed him to "use all necessary and appropriate force" to fight the war on terror extends to wiretapping—even though

Congress rejected language proposed by the administration that would have specifically authorized such wiretaps.

Why did the president bypass the FISA process? Since FISA was passed, more than 18,000 warrant applications have been presented to the court. Of those, just four were rejected. But the administration says that the process is cumbersome and that it might also rule out the sort of broad scale "data mining" effort that the NSA wanted to undertake because a warrant is supposed to be obtained for every person monitored.

What are the repercussions? Mr. Bush says the wiretaps have already been integral in prosecuting at least two al Qaeda cases—those of Iyman Faris of Ohio, who was sentenced to 20 years in prison after admitting to involvement in a plot to destroy the Brooklyn Bridge, and Mohammed Junaid Babar of New York, who was implicated in a failed plot to bomb British targets.

One of the 11 FISA court judges, U.S. District Judge James Robertson, resigned from the court after the wiretapping revelations, apparently out of concern that the president was undercutting the court. Sen. Arlen Specter (R., Pa.) and other members of Congress have called for a bipartisan investigation into the spying program. The Justice Department has begun an investigation into who leaked the program to the media.

—Compiled by Lauren Etter

POINTS OF VIEW

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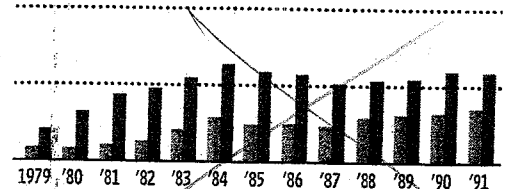
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BY THE NUMBERS

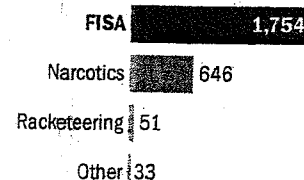
Expanding use of FISA

Congress passed the Foreign Intelligence Surveillance Act in 1978 to govern electronic surveillance used for foreign intelligence gathering. While the number of domestic federal wiretaps has remained steady over the past decade, wiretaps authorized under FISA have jumped.



FISA-authorized wiretaps

compared with the most common offenses specified in other federal wiretaps in 2004



Public opinion

Q: Should the president have the authority to use methods such as wiretaps to identify and apprehend suspected terrorists?

Note: Poll conducted Dec. 20-27, 2005 by telephone survey of 1,085 adults. Sources: Annual reports to Congress (FISA); Administrative Office of the U.S. G.

HOT TOPIC

Listening to Your Phone Calls?

POINTS OF VIEW

"If somebody from al Qaeda is calling you, we'd like to know why."

—President Bush

"If we had been able to do that before 9/11, we might have been able to pick up on two of the hijackers who were in San Diego in touch overseas with al Qaeda."

—Vice President Dick Cheney

"This administration is playing fast and loose with the law in national security. The issue here is whether the president of the United States is putting himself above the law, and I believe he has done so."

—Sen. Russ Feingold (D., Wis.)

"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."

—Sen. Lindsey Graham (R., S.C.)

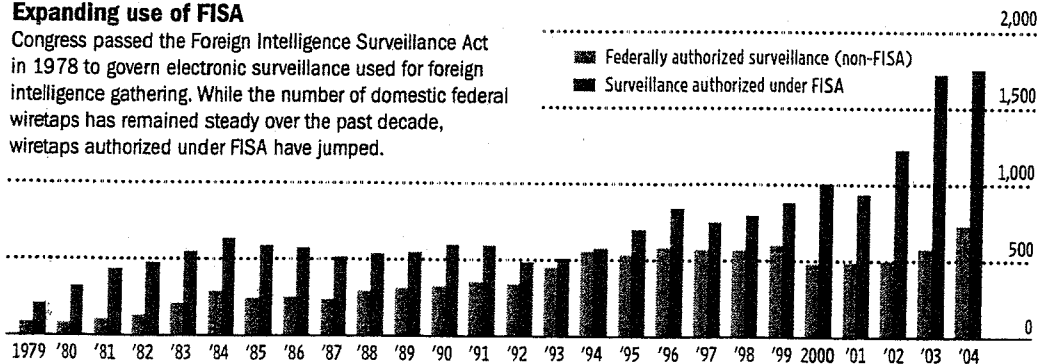
"I don't agree with the libertarians. I want my security first. I will deal with all the details after that."

—Sen. Trent Lott (R., Miss.)

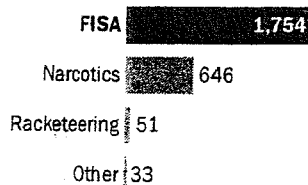
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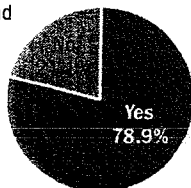


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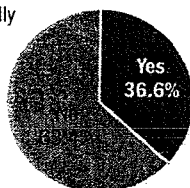


Public opinion on wiretapping and court authorization

Q: Should the president have the authority to use surveillance methods such as wiretaps to identify and apprehend suspected terrorists?



Q: Do you believe the need to obtain a court order or subpoena ... will prevent the federal government from successfully identifying and apprehending suspected terrorists?



Note: Poll conducted Dec. 20-27, 2005 by telephone survey of 1,085 adults; margin of error of +/-2 percentage points
Sources: Annual reports to Congress (FISA); Administrative Office of the U.S. Courts (wiretap reports); Ponemon Institute (poll)

FACTS



Some 38,000 people work at the NSA, almost double the number at the Central Intelligence Agency. The NSA is the largest employer of U.S. mathematicians. Because it is so secret, the NSA is nicknamed 'No Such Agency' and 'Never Say Anything.'



From 1945 to 1975, the NSA's 'Operation Shamrock' intercepted 150,000 teletype messages every month sent to Americans, and its 'Operation Minare' assembled 'watch lists' of U.S. citizens.



In 1968, private investigator Hal Lipset showed the Senate how to bug a martini olive disguising a tiny microphone as a pimento and an antenna as the toothpick. The same year, Congress passed the first federal law restricting wiretaps.



Article 2 of the impeachment against President Nixon said he illegally authorized agents 'to conduct or continue electronic surveillance or other investigations for purposes unrelated to national security ... or any other lawful function of his office.'



Some 4,056 people were arrested in 2004 based on non-FISA wiretaps initiated that year, up 10% from 2003. The arrests resulted in 634 convictions, 16% of all such arrests.



Starting in 2007, all Internet-service providers including universities and libraries, must upgrade their Internet systems so law enforcement can