



2006 WL 270364

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Verbatim Transcript

February 06, 2006

Senate  
Judiciary Committee  
Committee Hearing

U.S. Senator Arlen Specter (R-PA) Holds a Hearing on the National Security Agency Domestic Surveillance Program

(FINAL COPY: COMPLETES TRANSCRIPT)

U.S. SENATE JUDICIARY COMMITTEE HOLDS A HEARING ON  
WARTIME EXECUTIVE POWER AND THE NATIONAL SECURITY  
AGENCY'S SURVEILLANCE AUTHORITY  
FEBRUARY 6, 2006

SPEAKERS:

U.S. SENATOR ARLEN SPECTER (R-PA)

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WITNESSES:

ALBERTO GONZALES,

U.S. ATTORNEY GENERAL

SPECTER: It's 9:30. The Judiciary Committee will now proceed with our hearing on the administration's program administered by the National Security Agency on surveillance.

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a very narrowly tailored, focused amendment of FISA.

And, again, I'm not the expert on legislation, but we're talking potentially a very narrow focused amendment of FISA. And I think I'm concerned that that process will inform our enemies about what we're doing here and how we're doing it.

But subject to those concerns, of course, as the president said, we're happy to listen to your ideas.

KOHL: After-the-fact review by the FISA Court; you don't have any problem with that?

GONZALES: Again, Senator, we're happy to consider it.

KOHL: Attorney General, is there anything that a president cannot do in a time of war in the name of protecting our country? We saw that the Justice Department changed its position on torture, but are there other limits to the president's power or can, in your opinion, the president assign to himself, without an act of Congress, any powers that he believes are necessary?

GONZALES: Well, of course, we're not talking about acting outside of an act of Congress. We think in this case the president has acted with an act of Congress.

And, of course, there are limits upon the president of the United States. The Constitution serves as a limit of the president. The president's authorities under Article II as commander in chief are not limitless. Obviously Congress has a role to play in a time of war. The Constitution says Congress can declare war. The Constitution says it is Congress to raise and support armies. The Constitution says it is Congress's job to provide and maintain navies. It is the role of Congress to provide rules regarding capture. And so, in the arena of war, it is not true that the president works in that arena to the exclusion of Congress. Quite the contrary: Our framers intended that in a time of war both branches of government have a role to play.

KOHL: If the administration investigates an American for terrorism using this program and finds nothing -- and, of course, news reports have indicated that this happens in the vast majority of the time -- then what is done with the information collected? Does the administration keep this information on file somewhere? Is it disposed of? What happens with this information?

GONZALES: Well, let me tell you that every morning I receive an intelligence briefing out at the FBI. And there are numbers of possible threats against the United States. Many of them wash out, thank God.

The fact that they washed out doesn't mean that we should stop our intelligence collection. Intelligence is not perfect.

In terms of what is actually done with that information, what I can say is, again, I can't talk about specifics about it, but information is collected, information is retained and information is disseminated in a way to protect the privacy interests of all

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conservative guy, and that's how I read the statute. And that's my only point. And I understand your legal interpretation, I respect that, but that's it. I don't see it any other way on that.

Let me ask you a couple other questions that I wonder if you could clarify for me.

One is the legal standard that you are using -- that's being used by the NSA under this program for deciding when to conduct surveillance of a suspected terrorist.

In your December 19th press conference you said that you must have a, and I quote, "reasonable basis to conclude that one party to the communication is affiliated with AL Qaida."

Speaking on Fox TV yesterday, General Hayden referred to the standard as "in the probable cause range."

Could you just define it for me? I know you talked about it today, but we're hearing a lot of different definitions. You're the attorney general, just clarify it for me, pinpoint it, give me the definition that the people who are administering this every single day in the field are following.

GONZALES: To the extent there's confusion, we must take some of the credit for some of the confusion, because we have used different words.

The standard is a probable cause standard. It is reasonable grounds to...

DEWINE: A probable cause standard. Is that different than probable cause as we would normally learn that in law school...

GONZALES: Not in my judgment.

DEWINE: OK. So that means...

GONZALES: I think it's probable cause. But it's not probable cause as to guilt.

DEWINE: I understand.

GONZALES: OR probable cause as to a crime being committed. It's probable cause that a party to the communication is a member or agent of AL Qaida. The precise language that I'd like to refer to is, "There are reasonable grounds to believe that a party to communication is a member or agent or AL Qaida or of an affiliated terrorist organization." It is a probable cause standard, in my judgment.

DEWINE: So probable cause...

GONZALES: ... is probable cause.

DEWINE: And so all the case law or anything else that we would learn throughout the years about probable cause, about that specific question, would be what we would look at and what the people are being instructed to follow.

GONZALES: But, again, it has nothing to do with probable cause of guilt or probable cause that a crime had been committed. It's about...

DEWINE: I understand. We're extrapolating that traditional standard over to another question.