



Undermining the War at Home

Walid Phares

Colaboraciones n° 735

January 4, 2006

"Use their systems, passports, citizenship, laws, traditions, books and media, create internal divisions among them, and inflict defeat on the kuffars [infidels], for in the current balance of power, all we need to do is to use their weaknesses as our strength." - Abul ala', comment posted in the Al-Ansar chat room, September 2005.

Opening the first salvo in the newly launched "battle of the terrorist surveillance," the Associated Press wrote: "President Bush said Saturday he personally has authorized a secret eavesdropping program in the U.S. more than 30 times since the Sept. 11 attacks and he lashed out at those involved in publicly revealing the program." When I read this far in the report, I thought the article was about finding who in America is helping al-Qaeda. The AP added: "He said it is used only to intercept the international communications of people inside the United States who have been

determined to have 'a clear link' to al-Qaeda or related terrorist organizations." This would overlook home-grown *jihadists*, or those who infiltrated the country years ago and aren't making international phone calls. Moreover, well-trained terrorists would not reveal their plans on international calls; hence, the administration will likely be criticized for not spending enough resources investigating internal networks of terror, those who will probably produce the next terrorist strikes.

Obviously, the government - in a full fledged state of war with al-Qaeda and its allies - should be spending all possible resources to monitor, listen to, analyze, and act against potential threats. Despite that, the intelligence establishment has asked the president to only authorize 30 monitoring of possible cases since September 11. Most analysts believe al-Qaeda has 200 cadres operating within the U.S.

Former Senator Bob Graham (D-Florida) of the Senate Intelligence Committee cited this figure in 2002. The administration's ground troops have only tracked 30 of them, 15 percent.

That's why I was surprised as I continued reading the AP report that it did not criticize the administration for not doing enough surveillance of terror-related activities but for doing too much, or as it was framed in the media later: Spying on U.S. citizens! The argument was coined in pure theoretical - albeit erroneous- sculpture: The president was ordering spying on Americans, inside the country. Hence, he had - according to some - broken the law. Reading and listening to the surreal new debate, I thought of how al-Qaeda must be laughing. In one of his caves in middle earth, Osama bin Laden and Ayman Zawahiri must be in disbelief, yelling, "By Allah, had we known we were barely monitored; we could have pulled out the big one!"

But America's political debate is happening on a different planet: it's about *L.A. Law*, finding scandals, and who can get a story out; regardless of reflecting on what we'll need to do to win the War on Terror. The new "story" was given a title before it is investigated: it is spying on Americans rather than being about gathering information on terrorists. So if the terrorists happen to be U.S. citizens (a citizenship no longer so difficult to obtain) their status of terrorist is overridden by their legal status. But the critics stated that it is not about the War on Terror, but about civil liberties. A president must use the FISA Act's process: ask a special court for authorization to wiretap a suspected terrorist.

Well, let's examine the legal aspect before we look at the damage being made to Homeland Security and all American liberties by the promoters of this story.

The legal debate

The administration says the "program is reviewed every 45 days, using fresh threat assessments, legal reviews by the Justice Department, White House counsel and others, and information from previous activities under the program." The president added that "it is designed in part to fix problems raised by the Sept. 11 commission, which found that two of the suicide hijackers were communicating from San Diego with al-Qaeda operatives overseas." But Senator and likely 2008 presidential candidate Russ Feingold, D-WI, saw it otherwise: "This is not the system of government we have and that we fought for," he told the Associated Press in a telephone interview." Yes, our system of government asks the chief executive to go through a court before gathering information on U.S. citizens suspected of illegal activities or crimes. But the issue isn't about crimes or illegalities. And the issue isn't about Americans who may have a connection with violent activities.

Indeed, testifying to the House Select Committee on Intelligence on October 30, 2003 on "Collecting Intelligence under the law," former DOJ attorney John Yoo wrote:

During wartime, the military engages in searches and surveillance without a warrant. We do not, for example, require the armed forces to seek a warrant when it conducts visual or electronic surveillance of enemy forces or

of a battlefield, or when it searches buildings, houses, and vehicles for the enemy. Nor must military operations within the United States operate under a different rule.

The question is clear: Are we or are we not at *war* with the terrorists? Osama bin Laden declared that war in 1998. The bipartisan 9/11 Commission wondered why the previous administration didn't declare it and the current administration held off until October 2001. The *ihadists* are present within the U.S., including those who carry U.S. passports. So are other terror *ihadists* in Spain, Britain, Holland, or France. By pure rationale, the U.S. government has the duty to use all means (approved by war conventions) to resist the penetration and infiltration of the United States. Doing otherwise is unlawful, unconstitutional, and more importantly to the detriment of the security, and therefore the liberty of the American people. But regardless of any general legal argument, attorney John Yoo provides us with a technical legal provision. He writes:

Therefore, if al-Qaeda forces organize and carry out missions to attack civilian or military targets within the United States, government surveillance of terrorists would not be law enforcement so much as military operations. In such circumstances, when the government is not pursuing an ordinary criminal law enforcement objective, the Fourth Amendment requires no search warrant.

So, legally speaking, the administration, while defending itself from a terrorist *ihad*, had to grant our would-be killers civil liberties. One must admit how difficult this task is:

To fight a global and domestic war against terrorists who reject all laws of infidels, while using a legal system that wasn't designed for these enemies. The American people have been left in the dark, because they do not understand how the enemy exploits America's system. Now, instead of discussing how to close those loopholes, the debate is framed around "the government spying on Americans."

While *ihadist* cells are constantly spying to find chinks in America's infrastructure, President Bush's critics are concerned about how America is watching the terrorists. So far, I haven't heard a critic asking who are we watching? Or anyone requesting an update as to how many terrorists are within the U.S. So, in sum, they want the government to "catch" the terrorists but not to "watch" them. I must admit that if the 9/11 Commission was right on target regarding some fellow Americans; it is about "lack of imagination." For till further notice, I am not able to figure out how the U.S. can catch the *ihadist* terrorists if it doesn't monitor them. And how can the defense and security institutions monitor an enemy in a state of war, if it provides them with the knowledge and the technology it is using.

The liberties of Americans are too cherished to be infringed. It is the terrorists' freedom that needs to be shrunk. We need to match our laws with the nature of the conflict, not allow the terrorists to use them against us. Laws are made to protect the people, not to be used against them by the enemy.

Al-Qaeda and the *ihadists*

Were the terrorists communicating among each other in the 1990s, and was the U.S. government able to detect them and disrupt their operations before 9/11? Obviously the terrorists of Mohammed Atta and their colleagues were free to communicate, even meet on U.S. soil for years. There was no War on Terror in the Clinton administration, no advice that a *jihād* was happening in the research of most of academia, and no court was instructed to indict Islamo-fascism before September 11, 2001. Presidents didn't even need to develop techniques to monitor *jihadists*, since no doctrine on *jihād* was taught in military colleges. The country was on a different planet.

But Osama bin Laden changed the rules of engagement four years ago. The geopolitical reality changed, and laws had to serve the survival of Americans not to obstruct their global freedoms. Many questions are still being asked by the experts on terrorism: Are we fully prepared for them? Is our legal system, even when best interpreted ready to meet them? Apparently not: We are in a twilight zone. The Bush administration, inheriting a pre-9/11 American legal system, is struggling to balance between civil liberties and terror. But its critics haven't moved past September 10th: They want to use a system designed against the mafia to play with the most lethal forces of the globe.

The public must be told the whole story and be left to judge for itself. Americans must be rapidly informed

and educated as to the nature of this war, its length, the enemy they are facing, and the real threats that are clouding the future. I believe that the critics, in their rush to play politics, may have given the opportunity to America to open its eyes wide at Jihadism. Indeed, I'd be more than interested in learning about "who the government has wire tapped and whose surveillance was not reviewed through the FISA process." Only then can we see the big picture.

Meanwhile, al-Qaeda is learning more about our system - not about the fact that the U.S. government has been monitoring them, but how little it has done and how easy it is to attack these measures within the U.S. system. The terrorists in charge of penetrating U.S. national security are better off this week than last. They would have learned how many times the president has authorized exceptional surveillance; they would have understood why the pressure was higher on terror between 2001 and 2005; and above all they would have realized that politicians in America (and their academic advisors) are detached from the reality of the post-9/11 world.

Al-Qaeda knew it was under surveillance in America, but it didn't know much about that system. Soon, it will know and will use this knowledge to its advantage. While some among us are rotating their pre-9/11 planet back in time, future *jihād* is railing against another of its enemies' fatal weaknesses.