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Announcement

THE PRESIDENT, THE DEMOCRATS, AND WIRETAPS.

Washington continues to buzz with questions about possible legal and political ramifications of the revelation made last week by *The New York Times* that President Bush had authorized his National Security Administration (NSA) to intercept communications between terrorist suspects and their foreign communicants without court orders.

Though it is impossible at this point to determine how a prosecutor might interpret relevant law, it seems to us that there is at least enough legal ambiguity here that any attempt to bring a case against the administration would be exceptionally difficult. We know, for example, that the President was meticulous in his application of the extra-FISA (Foreign Intelligence Surveillance Act) wire taps, that he informed relevant members of Congress of his actions, that he repeatedly sought legal guidance from both the NSA's legal counsel and the U.S. Attorney General, and that he notified the FISA court of his decisions.

Given all of this, plus the fact that Bush was not the first President to have exercised constitutionally grounded presidential prerogatives in the absence of a court order for the express purpose of gathering foreign intelligence, it would appear right now that the legal case against the Bush administration is a stretch at best. This opinion was strongly bolstered in an e-mail Mark received yesterday from his old friend Buck Revell, who was former Associate Deputy Director of the FBI, the number two career post at the Bureau. As you can see from his text below, Buck has intimate knowledge of this subject matter. In fact, we think it is fair, given his background, to call him one of the nation's foremost authorities on many of the questions raised by last week's revelations. (Note, *The Wall Street Journal* editorial Buck references below is "Thank You for Wiretapping," which appeared in yesterday's paper):

I was going to write an Op-Ed piece about the use of NSA intercepts for Counter-Intelligence (CI) and Counter Terrorism (CT) purposes, but this Editorial by the *Wall Street Journal* does an excellent job of covering the field. During the period that I was responsible for directing and/or providing oversight of the FBI's CT & CI operations (1980-1991), which covered much of the Cold War and all of the Desert Storm periods, the FBI used both the FISA Court process and Presidential authority to obtain coverage of hostile governments and terrorist organizations. The Justice Department and White House decided which authority to use, but it was clear that none of the presidents during this period was willing to give up the inherent power of the president to order and authorize such coverage.

The Congressional leadership and Intelligence Oversight Committees were well aware of the presidents' retention of this Constitutional authority; and the FISA Statute did not preclude the use of this presidential authority. I find the raising of this issue at this time to be highly political and very dangerous to the ability of our intelligence agencies to protect our nation from those organizations that have declared war on us and are using terrorism as their principal weapon.

I sincerely regret that we no longer have leaders in our Senate such as Scoop Jackson, Sam Nunn, David Boren and Warren Rudman to lead this body in true bi-partisan support of our National Security. We sorely need such leadership during these perilous times.

Well said, Buck.

As for the political implications of this story, there is, in our opinion, no ambiguity here. President Bush sought information solely to prevent further terrorist attacks on American soil, and anyone who believes there is political advantage to be gained from attacking him for doing so is, we think, miscalculating terribly. The appropriate course for the President's critics at this time would be to respond with delicacy and prudence: to question the judgment of his decision, to suggest that he would be well-advised to seek greater Congressional input in the future, and then to drop the matter, at least publicly. Unfortunately for the Democrats, delicacy and prudence are two traits sorely lacking in their most visible leaders these days.

Already some in the party, including Congressman John Lewis and Senators Barbara Boxer and John Kerry, are bandying about the word "impeachment," suggesting that a Democratic takeover of Congress next November will result in the drafting of impeachment articles against the President. It is simply not possible for words to convey the sheer political stupidity of such talk. If the Democrats learned nothing else since September 11, they should at least have learned that their reputation for being soft on national security matters remains intact and is exceptionally damaging to them when the country is at war. Instead, they seem to have learned nothing of the sort.

The best way for Democrats to confirm once and for all the public's belief that they simply cannot be trusted with national security matters would be to pursue action against the President for trying to protect the citizens of the country at a time of war. Democratic leaders have shown incredibly poor political instincts of late. The only question is "are those instincts really so awful that they would try to pursue this line of attack?" Rank-and-file Democrats certainly should hope not. But you can mark us down as skeptical.

ANNOUNCEMENT.

As per tradition, there will be no issue of the newsletter next week. We will be back with the first part of our annual two-part forecast when the markets open after New Year's. In the meantime, we will continue to provide short updates such as this one if and when circumstances warrant.

Thank you all very much for your continued support. Merry Christmas to those of you who celebrate Christmas. For others, we wish you a wonderful holiday season. And for all of you, we hope you have a happy and prosperous New Year.

God Bless,
Mark and Steve

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