Government transparency is becoming a joke

June 25, 2012 | **Gene Healy**

In April 2010, when then-press secretary Robert Gibbs announced that "this is the most transparent administration in the history of our country," Politico reported that "laughter broke out in the briefing room."

For those of us with a mordant sense of humor, the Obama administration's record on transparency is comedy gold. In his letter last week formally requesting that President Obama invoke executive privilege in the Fast and Furious scandal, Attorney General Eric Holder fretted that turning over documents sought by the House Oversight and Government Reform Committee raised "substantial separation of powers concerns" and could "create an imbalance in the relationship between these two co-equal branches of government."

"Co-equal branches"? An "imbalance[d] relationship"? Don't make me laugh. Just last week, the National Security Agency refused to provide Congress with a rough estimate of how many Americans have had their communications monitored by the agency since 2008, on the grounds that revealing that information might violate Americans' privacy. As a result, my colleague Jim Harper lamented, "Congress has no idea what the NSA is doing."

As it happens, the Obama team's executive privilege claim in Fast and Furious is exceptionally flimsy. The president claims "deliberative process privilege," the weakest form of the privilege, about which the D.C. Circuit Court of Appeals has held "where there is reason to believe the documents sought may shed light on government misconduct, 'the privilege is routinely denied.' "

Still, as offenses go, it's pretty small beer compared to the administration's myriad other abuses of government secrecy privileges.

In its 2011 year-end review of executive branch secrecy, the Electronic Frontier Foundation noted that Obama's Justice Department has refused to release its interpretation of Section 215 of the Patriot Act, compelling production of Americans financial, medical and communications records in security investigations. There's a gap between "what the public thinks the law says and what the American government secretly thinks the law says," amounting to a "Secret Patriot Act," Sen. Ron Wyden, D-Ore., has warned.

Moreover, EFF points out, the administration "refuses to release its legal justification for killing an American citizen abroad without a trial, despite announcing the killing in a press conference." If the president is going to target American citizens for death by drone, shouldn't we at least get to examine, in broad daylight, the legal and constitutional arguments for doing so, so we can know how far they extend?

In passing, EFF noted this little gem, an actual headline from the Wall Street Journal in September: "Anonymous US officials push open government." You can't make this stuff up -- well, maybe you could, but why bother, when the truth is bad enough?

The history of government secrecy privileges shows they're all too often used to cover up government negligence and abuse.

The first Supreme Court case to recognize a limited executive privilege, 1974's U.S. v. Nixon, centered on President Nixon's refusal to produce portions of the Watergate tapes to special prosecutor Leon Jaworski. Showing impeccable comic timing, President Obama made his executive privilege claim on June 20 -- exactly 40 years after the day when a meeting between Nixon and his chief of staff produced the infamous "18 and a half minute gap" in the tapes.

Today, as the self-styled "most transparent administration in history" continues to shield more and more government operations behind a veil of secrecy, it's worth asking, what is it so afraid of?

The day after his inauguration, Barack Obama promised "a new era of openness in government." "Openness will strengthen our democracy and promote efficiency and effectiveness in government," he said. That sounds terrific; maybe we should try it.

Examiner Columnist Gene Healy is a vice president at the Cato Institute and the author of "The Cult of the Presidency."