

Obama Failed To Reign In Surveillance - Can Any President?

By: Pema Levy – June 8, 2013

Since news broke this week that the Obama administration collects the phone records of millions of Americans and often sifts through their online interactions, the inevitable question became: What happened to the Barack Obama who opposed the sweeping surveillance programs under President George W. Bush?

In 2007, for example, then-candidate Obama said the Bush administration had "put forward a false choice between the liberties we cherish and the security we demand." Nearly six years later, Obama defended the National Security Agency's collection of massive amounts of data. "My assessment of the programs," he said Friday, is that "the modest encroachments on privacy that are involved in getting phone numbers or duration, without a name attached and without looking at content, that on net, it was worth us doing."

Though privacy advocates and civil libertarians are disappointed in Obama, there is also an acknowledgment that this isn't just a problem for Obama. Many believe that any president would end up sanctioning this broad surveillance activity.

"No president should be trusted with this kind of power," said Jameel Jaffer, deputy legal director at the American Civil Liberties Union. "This is the kind of power that not only can be abused but will inevitably be abused if it's not subject to real oversight."

According to Jim Harper, the director of information policy studies at the libertarian Cato Institute, the problem is the national security bureaucracy, which provides presidents of either party with security intelligence.

"So you see a starry-eyed senator from Illinois saying it doesn't have to be this way," Harper said. "He gets into the Oval Office and the national security bureaucracy goes to work on him. They say, 'you're not going to let Americans die, are you?' So what's a politician going to do?"

Privacy advocates want an investigation into the government's secret surveillance activities and permanent rules to remove the temptation for pushing surveillance to the boundaries of what is legal. Harper believes the secret opinions issued by the Foreign Intelligence Surveillance Court (FISC) should be made public so Americans can know what surveillance practices the government employs -- a reform that he believes would remove the government's expansive powers.

Obama's defenders point out that unlike the Bush administration, which was conducting illegal surveillance without approval from the FISC, Obama's operations are overseen by these courts and members of Congress. Obama has consistently maintained that FISA courts are a necessary check on surveillance activity, although the FISC seems to simply rubber stamp surveillance requests from the government. But the cynical view is that any president will go to any length to make sure a terrorist attack doesn't happen on their watch, regardless of the infringement of U.S. citizens' civil liberties.

Harper isn't even sure that libertarian Sen. Rand Paul, R-Ky., who introduced a bill on Friday to outlaw the NSA's phone data collection activities, wouldn't cave if he became president. "Even with regard to Rand Paul and his father [former Rep. Ron Paul], I think you always have to be prepared to be disappointed by politicians," he said.

More cynical still is the idea that Obama's initial criticism of Bush was just partisan point-scoring. "Individuals from one political party always criticize the political party that's in power and complain about it, until they get into a position of power and then they end up liking that power," said Paul Thacker, a fellow at Harvard University's Edmond J. Safra Center for Ethics and a former Senate staffer.

Like Harper, Thacker says it's "normal" to change positions when you go from being outside the White House to inside, when the sources of information change. That each administration seems to augment the power of the executive branch, says Thacker, is part of the problem.

But perhaps freshman Sen. Angus King, I-Maine, was most blunt about the choices a president faces when he assumes office. "What if the headline this morning, instead of 'Obama searches records,' had been, 'Obama canceled program which could have prevented nuclear attack on Miami,'" King said on MSNBC Friday. "We would have articles of impeachment already drawn up."