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The joint Post/Obama defense of the Patriot Act and FISA

A prime example of stenographic journalism claims, and disproves, Obama is abandoning the Bush terrorism approach

Glenn Greenwald

Oct. 06, 2009 |

(updated below - Update II)

The Washington Post's Anne Kornblut today produces [an extreme piece of government-serving, stenographic "journalism,"](#) publishing a dubious administration press release masquerading as a lengthy news article on Obama's approach to Terrorism and civil liberties. The *Post* depicts Obama as heavily and heroically engaged in disrupting the alleged Najibullah Zazi domestic terrorist plot and -- repeatedly highlighting that success -- claims "the White House has been charting a delicate course as it attempts **to turn the page on Bush-era anti-terrorism policies,**" whereby "the Obama administration is increasingly confident that it has struck a balance between **protecting civil liberties, honoring international law and safeguarding the country.**" Here are all of Kornblut's cited sources for the article -- every last one of them -- in the order she cites them:

Obama aides pointed . . . administration officials said . . . a senior administration official said . . . officials said . . . a senior administration official said . . . senior Obama officials stressed . . . a senior administration official said . . . aides said . . . officials said . . . one senior administration official said. . . one senior official said. . . The official said . . . a senior administration official said . . . a senior administration official said . . . administration officials said . . . a senior official said.

Not a single named person is cited, and there's not a syllable of quoted dissent in any of it. Virtually every sentence in the long article does nothing but praise Obama and depict him as stalwartly safeguarding America's civil liberties (unlike Bush did) even as he protects us from the dangerous Terrorists, so why is anonymity needed for that? It's nothing more than what Robert Gibbs is eager to say every day. Nor is there a hint of who these officials are, what the basis is of their knowledge, or why *The Post* granted anonymity, all of which are flagrant violations of the *Post's* own so-called "anonymity rules," which its own Ombudsman -- just six weeks ago -- [complained are "routinely ignored"](#):

The Post has strict rules on the use of anonymous sources. . . . But some of those lofty standards are routinely ignored. . . . News organizations can pay dearly if they're not vigilant about sourcing. At minimum, **credibility can suffer. At worst, a damaging journalistic transgression can occur. . . .**

But anonymity can be overused and abused. Sources can make false or misleading assertions with impunity. That's why The Post has such stringent rules. . . .

The Post also is inconsistent in how it describes unnamed sources and the reasons they were granted anonymity. Post policies say that **readers should be told as much as possible about the quality of a confidential source** ("with first-hand knowledge of the case," for instance). They also say "we

must strive to tell our readers as much as we can about why our unnamed sources deserve our confidence."

But Post stories often say only that an unnamed source "spoke on condition of anonymity."

The Post's article today violates every one of these rules. It doesn't even claim that these anonymous officials have any knowledge at all -- first-hand or otherwise -- of what actually happened (are they national security officials, press people, political advisers?). The article doesn't even pretend to justify why anonymity was granted (there's not a word about that). One doesn't even have any idea how many anonymous officials are dictating all of this to Kornblut -- one, five, ten? Who knows?

That's because what happened here is obvious: the administration wanted to issue a Press Release exploiting the fear surrounding the Zazi case to justify Obama's Bush-copying civil liberties policies (including its current demands for full Bush-era Patriot Act renewal and FISA continuation) while depicting Obama as our careful yet forceful protector. So they dispatched an official (or officials) to dictate the sanctioned administration line to Anne Kornblut. She then unquestioningly wrote it all down (after granting them anonymity) and *The Post* uncritically published it as a "news article." That's what Washington journalists typically mean by "reporting": *we dutifully write down what government officials tell us to say -- while letting them hide behind anonymity -- and then we publish it.* This morning's *Post* article is as egregious as it gets.

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But far worse than the *Post's* indiscriminate use of anonymity and exclusive reliance on government sources spouting the official line are the numerous claims it advances which are, at best, highly dubious. *The Post* claims Obama is "attempt[ing] to **turn the page on Bush-era anti-terrorism policies**"; that "Obama discarded the term 'global war on terror,' **along with some of its most controversial tools**"; and "the Obama administration is increasingly confident that it has struck a balance between protecting civil liberties, honoring international law and safeguarding the country." But this is just plainly false. What has characterized the Obama administration's approach to terrorism and civil liberties, far more than anything else, is a full-scale embrace of the defining Bush/Cheney approach. The only two examples Kornblut cites to justify these claims -- that Obama jettisoned "enhanced interrogation techniques and secret prisons" -- prove little, since the formal authorization for such interrogation techniques was already withdrawn when Obama took office and secret prisons were already empty.

But even granting the significance of those [first-week measures](#), the Obama administration has aggressively defended, justified and embraced the overwhelming bulk of Bush/Cheney Terrorism policies -- the exact ones that caused liberals and Democrats to object so vehemently over the last eight years: imprisonment with no trials, maintaining a legal black hole at Bagram, military commissions, renditions, warrantless eavesdropping, claims of state secrets to prevent judicial review of presidential lawbreaking, legal immunity for all but the lowest-level war criminals, abuse-guaranteeing Patriot Act powers, impenetrable walls of secrecy in the national security context. The very idea that Obama has been "attempt[ing] to turn the page on Bush-era anti-terrorism policies" is ludicrous: blatant administration propaganda. [Even among huge numbers of Obama-supporting progressives, there has long been a consensus that Obama's Terrorism approach is defined by a full-scale embrace of the Bush/Cheney mentality.](#) Civil liberties groups have been astonished and horrified in equal parts by the Obama record in this area. And even the Right has acknowledged that Obama has followed most of the Bush/Cheney Terrorism policies, as illustrated by [Charles Krauthammer's comments earlier this week on Fox:](#)

I will give [Obama] credit for continuing the Bush policy of the rendition and detention without trial.

Rendition is handing over a bad guy that you capture abroad over to another country, which was denounced by the left in the Bush years as inhuman. And detention without trial, of course, was attacked by the Democratic left as a rape of the constitution.

So I'm glad Obama is continuing the inhumanity and the constitutional rape of the Bush administration. It shows a certain broadmindedness.

Beyond specific policies, even the arguments made to justify these claims are redolent of the Bush/Cheney approach. With unrecognized irony, *The Post* article notes that "the White House says it avoided trumpeting either the elevated threat level or the averted [Zazi] crisis." Really? What do you think this whole article is? It's nothing but Obama officials anonymously beating their chest over "the averted crisis" -- just as was true for [previous leaks from "officials" claiming](#) the Zazi plot was "the most significant since 9/11." Worse, in this very article, Obama officials are doing exactly what Bush officials spent years doing -- exploiting Terrorist plots and the fears they generate to justify the powers they demand. And they're using the same convoluted, manipulative logic to accomplish that.

Reining in the excesses of the Patriot Act (and, relatedly, of ever-expanding eavesdropping powers) has long been a top agenda item for civil liberties groups -- and, at least so they claimed, for Democrats generally. In fact, when Obama voted for the FISA Amendments Act of 2008 last year in the middle of the campaign, he [emphatically vowed that he would "fix" the problems with the FISA framework](#). But right as these reforms are finally being considered, the administration seizes on the Zazi case to insist that no such changes should be made:

At the same time, the Obama administration is pressing Congress to move swiftly to reauthorize three provisions of the USA Patriot Act set to expire in late December. They include the use of "roving wiretaps" to track movement, e-mail and phone communications, **a tool that federal officials used in the weeks leading up to Zazi's arrest.** . . .

"The Zazi case was the first test of this administration being able to successfully uncover and deal with this type of threat in the United States," a senior administration official said. "It demonstrated that we were able to successfully neutralize this threat, and to have insight into it, **with existing statutory authorities, with the system as it currently operates.**"

So the Obama administration has its first allegedly big Terrorism case, and they can hardly contain themselves as they exploit it to justify a continuation of the very Patriot Act and FISA powers which Democrats (and, in the case of FISA, Obama himself) long claimed to oppose. Indeed, key Obama ally Dianne Feinstein has [worked diligently](#) in the Senate not just to block Patriot Act reforms, but to [make the law even worse](#), and [has repeatedly cited the Zazi case to justify that](#). And notably, that's **exactly the same** fear-mongering tactic just used by Bush Attorney General Michael Mukasey [on the Wall St. Journal Op-Ed page](#) to demand there be no changes to the Patriot Act and FISA:

One would think that the arrests last week of Najibullah Zazi, charged with plotting to bomb New York City subways—and of two others charged with planning to blow up buildings in Dallas, Texas, and Springfield, Ill.—would generate support for the intelligence-gathering tools that protect this country from Muslim fanatics. . . . Nevertheless, there is a rear-guard action in Congress to make it more difficult to gather, use and protect intelligence -- the only weapon that can prevent an attack rather than simply punish one after the fact. . . . Those who indulge paranoid fantasies of government investigators snooping on the books they take out of the library, and who would roll back current authorities in the name of protecting civil liberties, should consider what legislation will be proposed and passed if the next Najibullah Zazi is not detected.

It's the Dick Cheney fear-mongering mantra exactly -- *give us the unchecked power we demand unless you want to be killed by Najibullah Zazi* -- and it's coming in equal measure from former Bush officials, Senate Democrats like Dianne Feinstein, and anonymous Obama officials.

* * * * *

All of that, in turn, is justified by the core Bush/Cheney fallacy: *if we have Power X and then prevent a Terrorist attack, it proves Power X is justified*. Over and over, that was the formula used by Bush followers to justify everything they did (*we tortured/illegally eavesdropped/rendered/detained without trial and used it to stop Terrorist attacks; that proves those powers are necessary*). This is **exactly** the argument anonymous Obama officials are making here: we used Patriot Act and FISA powers to disrupt the Zazi plot, so that proves we need

those powers in undiluted form to Stay Safe.

But the central fallacy of the Bush/Cheney claim was always obvious: the fact that certain information was obtained using illegal warrantless eavesdropping doesn't prove it wouldn't have been obtained using legal eavesdropping with a FISA warrant. The same is true for information obtained through torture or trial-free detentions. It was just pure fear-mongering of the most illogical form: *if we had Power A and Good Event B then occurred, that proves Power A caused Event B*. It's like someone who uses a hammer to kill a fly and -- after smashing his whole house up -- finally gets the fly and then proudly announces: *"see, this proves that hammers are needed to kill flies; without hammers, flies will get away."*

That's exactly how Obama officials are exploiting the Zazi case to justify full-scale Patriot Act renewal and FISA preservation. Nobody is advocating that the surveillance and investigative tools authorized by the Patriot Act and FISA be **abolished**. The argument is that the only way to prevent the [long history](#) of [serious abuse](#) is to impose more stringent requirements of proof before the government can subject someone to those invasive powers. The Zazi case is an argument against such reforms **only** if there's some plausible claim that the reforms would have impeded disruption of the Terrorist plot. Without such a claim, citing the Zazi case in opposition to reforms is just unadulterated fear-mongering.

[As Marcy Wheeler documents](#), there is no plausible argument that the Patriot Act and FISA reforms sought by civil libertarians would have impeded the Zazi investigation at all, since the Government had evidence from that start that Zazi was tied to Al-Qaeda and involved in an active terrorist plot, and it used that evidence to obtain court approval. If anything, the well-executed, apparently law-abiding Zazi investigation proves that these surveillance reforms are perfectly consistent with -- not impediments to -- effective Terrorism investigations. Yet here we have the Obama administration anonymously reciting the standard Cheneyite justification for these powers (*we stopped a scary Terrorist attack and that proves we need them*), and the *Post* just recites it all uncritically.

* * * * *

What we have here is as obvious as it is familiar: [just two weeks after](#) "adopting one of the arguments advanced by the Bush administration in years of debates about detention policies," and in the midst of efforts to fight off limitations on its Patriot Act and FISA powers, the administration dispatches officials to dictate to *The Post* a picture of the President as a crusading protector against Terrorism and a careful preserver of civil liberties. They exploit fears over a recent Terrorist plot to justify the continuation of these powers (while praising themselves for refraining from doing exactly that). And it's all done anonymously to cast the appearance that we're getting a valuable (though unauthorized) investigative glimpse into super-secret, high-level, dramatic Terrorism deliberations at the highest levels of government. All that's missing is Bob Woodward (though the [new one](#) is now clearly [on the way](#)).

So, to summarize: why can't we reform the Patriot Act and FISA excesses as Democrats long insisted they would do if and when they had power? Because of [this](#):

Officials: Terror Plot Most Significant Since 9/11

Friday, September 25, 2009
FOX NEWS

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An immigrant from Afghanistan who lived legally in Denver was plotting one of the most serious terrorist attacks on American soil since Sept. 11, 2001, federal authorities say.

Najibullah Zazi, 24, made his home in the United States, working as a Denver airport shuttle driver in Colorado and owning a coffee cart in New York City.

Authorities say Zazi scoured the Web and visited beauty supply stores in a hunt for chemicals needed to build bombs for Al Qaeda.

Najibullah Zazi arrives at the offices of the FBI in Denver for questioning on Thursday, Sept. 17, 2009.

They characterized the suspected plot against New York City subways and trains as one of the most significant threats to the United States since 9/11.



[PHOTOS: NYC-Denver Terror Plot Investigated](#)

[LIVESHOTS: New Charges in Terror Probe](#)

[RAW DATA: DOJ Terror Plot Charges Against Najibullah Zazi](#)

That doesn't exactly feel like "attempting to turn a page" on the Bush/Cheney approach to Terrorism.

UPDATE: In the video below, Cato's Julian Sanchez examines -- and absolutely destroys -- the fear-mongering claims from Fox News about efforts to reform the Patriot Act and FISA, with a particular focus on Fox's efforts to use the Zazi plot to justify the need for these powers. Note, however, that many of the plainly fallacious claims from Fox which Sanchez dissects -- particularly the ones related to the Zazi investigation -- are quite similar to the ones from the anonymous Obama officials dictated today to Kornblut in the *Post*:



UPDATE II: Bolstering all of this: Eric Holder was repeatedly asked in a press briefing today (a) whether the disputed Patriot Act and FISA powers were instrumental in the Zazi investigation and, more importantly, (b) whether the revisions sought by civil libertarians would have, in any way, impeded that investigation.

Despite the flamboyant attempts by anonymous Obama officials today to exploit the Zazi case to justify those powers, [Holder is either unwilling or unable to provide any real answers](#). He does pay lip service to the notion that some provisions can be modified to "be more sensitive to civil liberties concerns" -- something that, except in the most insignificant cases, is highly unlikely to happen due to the combination of Feinstein-type Senate Democrats, a unanimous GOP caucus and an administration all behind preservation of this framework.

-- Glenn Greenwald

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