

Power We Didn't Grant

By Tom Daschle

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In the face of mounting questions about news stories saying that President Bush approved a program to wiretap American citizens without getting warrants, the White House argues that Congress granted it authority for such surveillance in the 2001 legislation authorizing the use of force against al Qaeda. On Tuesday, Vice President Cheney said the president "was granted authority by the Congress to use all means necessary to take on the terrorists, and that's what we've done."

As Senate majority leader at the time, I helped negotiate that law with the White House counsel's office over two harried days. I can state categorically that the subject of warrantless wiretaps of American citizens never came up. I did not and never would have supported giving authority to the president for such wiretaps. I am also confident that the 98 senators who voted in favor of authorization of force against al Qaeda did not believe that they were also voting for warrantless domestic surveillance.

On the evening of Sept. 12, 2001, the White House proposed that Congress authorize the use of military force to "deter and pre-empt any future acts of terrorism or aggression against the United States." Believing the scope of this language was too broad and ill defined, Congress chose instead, on Sept. 14, to authorize "all necessary and appropriate force against those nations, organizations or persons [the president] determines planned, authorized, committed or aided" the attacks of Sept. 11. With this language, Congress denied the president the more expansive authority he sought and insisted that his authority be used specifically against Osama bin Laden and al Qaeda.

Just before the Senate acted on this compromise resolution, the White House sought one last change. Literally minutes before the Senate cast its vote, the administration sought to add the words "in the United States and" after "appropriate force" in the agreed-upon text. This last-minute change would have given the president broad authority to exercise expansive powers not just overseas -- where we all understood he wanted authority to act -- but right here in the United States, potentially against American citizens. I could see no justification for Congress to accede to this extraordinary request for additional authority. I refused.

The shock and rage we all felt in the hours after the attack were still fresh. America was reeling from the first attack on our soil since Pearl Harbor. We suspected thousands had been killed, and many who worked in the World Trade Center and the Pentagon were not yet accounted for. Even so, a strong

bipartisan majority could not agree to the administration's request for an unprecedented grant of authority.

The Bush administration now argues those powers were inherently contained in the resolution adopted by Congress -- but at the time, the administration clearly felt they weren't or it wouldn't have tried to insert the additional language.

All Americans agree that keeping our nation safe from terrorists demands aggressive and innovative tactics. This unity was reflected in the near-unanimous support for the original resolution and the Patriot Act in those harrowing days after Sept. 11. But there are right and wrong ways to defeat terrorists, and that is a distinction this administration has never seemed to accept. Instead of employing tactics that preserve Americans' freedoms and inspire the faith and confidence of the American people, the White House seems to have chosen methods that can only breed fear and suspicion.

If the stories in the media over the past week are accurate, the president has exercised authority that I do not believe is granted to him in the Constitution, and that I know is not granted to him in the law that I helped negotiate with his counsel and that Congress approved in the days after Sept. 11. For that reason, the president should explain the specific legal justification for his authorization of these actions, Congress should fully investigate these actions and the president's justification for them, and the administration should cooperate fully with that investigation.

In the meantime, if the president believes the current legal architecture of our country is insufficient for the fight against terrorism, he should propose changes to our laws in the light of day.

That is how a great democracy operates. And that is how this great democracy will defeat terrorism.

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