

The New York Times**July 17, 2009****EDITORIAL**

Illegal, and Pointless

We've known for years that the Bush administration ignored and broke the law repeatedly in the name of national security. It is now clear that many of those programs could have been conducted just as easily within the law — perhaps more effectively and certainly with far less damage to the justice system and to Americans' faith in their government.

That is the inescapable conclusion from [a devastating report](#) by the inspectors general of the intelligence and law-enforcement community on President George W. Bush's warrantless wiretapping program. The report shows that the longstanding requirement that the government obtain a warrant was not hindering efforts to gather intelligence on terrorists after the 9/11 attacks. In fact, the argument that the law was an impediment was concocted by White House and Justice Department lawyers after Mr. Bush authorized spying on Americans' international communications.

We know less, so far, about the Bush administration's plan to send covert paramilitary teams to assassinate Al Qaeda leaders. But what is overwhelmingly clear is that there was no legal or rational justification for Vice President Dick Cheney's order to conceal the program from Congress. The plan was never put into effect, apparently because it was unworkable. But it's hard to imagine Congress balking at killing terrorists.

So why break the law, again and again? Two things seem disturbingly clear. First, President Bush and his top aides panicked after the Sept. 11 attacks. And second, Mr. Cheney and his ideologues, who had long chafed at any legal constraints on executive power, preyed on that panic to advance their agenda.

According to the inspectors general, the legal memo justifying warrantless wiretapping was written by John Yoo, then the deputy head of the Justice Department's Office of Legal Counsel and author of other memos that twisted the law to justify torture.

In this case, the report said, he misrepresented both the law and the details of the wiretapping operation to make it seem as if the 1978 Foreign Intelligence Surveillance Act was outdated and that Mr. Bush could ignore it. And, according to the report, Mr. Yoo bypassed his bosses at the Justice Department and delivered his reports directly to, you guessed it, Mr. Cheney's office.

For four years, until The Times revealed the warrantless wiretapping, Mr. Bush reauthorized the eavesdropping every 45 days based on memos from the intelligence community and Justice Department. The report said that when the "scary memos," as they came to be called, were not sufficiently scary, lawyers under the direction of Alberto Gonzales, White House counsel and later attorney general, revised them or ordered up additional "threat information." Each ended with a White House-written paragraph asserting that communications were intercepted from terrorists who "possessed the capability and intention" to

attack this country.

After Mr. Yoo and his boss, Jay Bybee, left the Justice Department, their replacements concluded that the wiretapping program was illegal. The White House did eventually change parts of the program and then demanded that Congress legalize it, but only after the White House tried to force the Justice Department to ignore its own conclusions and after Robert Mueller, the director of the F.B.I., threatened to resign.

Mr. Cheney has tried to head off a reckoning by claiming that the warrantless wiretapping saved thousands of lives. The report said the C.I.A. could point to little direct benefit. The F.B.I. said most of the leads it produced were false. Others never led to an arrest.

This is not an isolated case. Once the Bush team got into the habit of breaking the law, it became their operating procedure that any means are justified: ordering the nation's intelligence agents to torture prisoners; sending innocents to be tortured in foreign countries; creating secret prisons where detainees were held illegally without charge.

Americans still don't have the full story. Even now, most of what the inspectors general found remains classified, including other wiretapping that Mr. Bush authorized. Mr. Yoo's original memo is also classified.

President Obama has refused to open a full investigation of the many laws that were evaded, twisted or broken — pointlessly and destructively — under Mr. Bush. Mr. Obama should change his mind. A full accounting is the only way to ensure these abuses never happen again.

[Copyright 2009 The New York Times Company](#)

[Privacy Policy](#) | [Terms of Service](#) | [Search](#) | [Corrections](#) | [RSS](#) | [First Look](#) | [Help](#) | [Contact Us](#) | [Work for Us](#) | [Site Map](#)