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Column / Between the Lines **Jonathan Alter**

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Bush's Snoopgate

The president was so desperate to kill The New York Times' eavesdropping story, he summoned the paper's editor and publisher to the Oval Office. But it wasn't just out of concern about national security.



Joshua Roberts / Reuters

Bush says he had 'legal authority' to permit the National Security Agency listen in on American citizens without a warrant

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By **Jonathan Alter**

Newsweek
Updated: 6:17 p.m. ET Dec. 19, 2005

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Dec. 19, 2005 - Finally we have a Washington scandal that goes beyond sex, corruption and political intrigue to big issues like security versus liberty and the reasonable bounds of presidential power. President Bush came out swinging on Snoopgate—he made it seem as if those who didn't agree with him wanted to leave us vulnerable to Al Qaeda—but it will not work. We're seeing clearly now that Bush thought 9/11 gave him license to act like a dictator, or in his own mind, no doubt, like Abraham Lincoln during the Civil War.

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No wonder Bush was so desperate that The New York Times not publish its story on the National Security Agency eavesdropping on American citizens without a warrant, in what lawyers outside the administration say is a clear violation of the 1978 Foreign Intelligence Surveillance Act. I learned this week that on December 6, Bush summoned Times publisher Arthur Sulzberger and executive editor Bill Keller to the Oval Office in a futile attempt to talk them out of running the story. The Times will not comment on the meeting, but one can only imagine the president's desperation.

The problem was not that the disclosures would compromise

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national security, as Bush claimed at his press conference. His comparison to the damaging pre-9/11 revelation of Osama bin Laden's use of a satellite phone, which caused bin Laden to change tactics, is fallacious; any Americans with ties to Muslim extremists—in fact, all American Muslims, period—have long since suspected that the U.S. government might be listening in to their conversations. Bush claimed that “the fact that we are discussing this program is helping the enemy.” But there is simply no evidence, or even reasonable presumption, that this is so. And rather than the leaking being a “shameful act,” it was the work of a patriot inside the government who was trying to stop a presidential power grab.

No, Bush was desperate to keep the Times from running this important story—which the paper had already inexplicably held for a year—because he knew that it would reveal him as a law-breaker. He insists he had “legal authority derived from the Constitution and congressional resolution authorizing force.” But the Constitution explicitly requires the president to obey the law. And the post 9/11 congressional resolution authorizing “all necessary force” in fighting terrorism was made in clear reference to military intervention. It did not scrap the Constitution and allow the president to do whatever he pleased in any area in the name of fighting terrorism.



Micah Walter / Reuters (left); Alex Wong / Getty Images (right)

Called to the Oval Office: Sulzberger (left) and Keller

What is especially perplexing about this story is that the 1978 law set up a special court to approve eavesdropping in hours, even minutes, if necessary. In fact, the law allows the government to eavesdrop on its own, then retroactively justify it to the court, essentially obtaining a warrant after the fact. Since 1979, the FISA court has approved tens of thousands of eavesdropping requests and rejected only four. There was no indication the existing system was slow—as the president seemed to claim in his press conference—or in

any way required extra-constitutional action.

This will all play out eventually in congressional committees and in the United States Supreme Court. If the Democrats regain control of Congress, there may even be articles of impeachment introduced. Similar abuse of power was part of the impeachment charge brought against Richard Nixon in 1974.

In the meantime, it is unlikely that Bush will echo President Kennedy in 1961. After JFK managed to tone down a New York Times story by Tad Szulc on the Bay of Pigs invasion, he confided to Times editor Turner Catledge that he wished the paper had printed the whole story because it might have spared him such a stunning defeat in Cuba.

This time, the president knew publication would cause him great embarrassment and trouble for the rest of his presidency. It was for that reason—and less out of genuine concern about national security—that George W. Bush tried so hard to kill the New York Times story.

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