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Common Sense About the NSA “Scandal”

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The choreography of Washington “scandals” has become as precise – and as predictable – as a performance by the Radio City Music Hall *Rockettes*. And the latest so-called scandal – this one over disclosures that the NSA has been eavesdropping without warrants on international phone calls and emails between Americans and terrorists – is no exception.

First comes the leak itself, which is quickly followed by squeals of outrage by the President’s political opponents. Administration officials then jump in to provide an inept and painfully inarticulate defense of the President’s actions. Then come the television talk-show shouting matches, featuring solos by our country’s apparently-inexhaustible supply of perky blonde “political strategists” armed with talking points and teeth like Chicklets. This is followed by a barrage of learned and unreadable essays by legal scholars on both sides of the issue, always citing laws no one had previously heard of, and quotes from *The Federalist Papers* so obscure that James Madison himself probably couldn’t tell you what he’d meant. Then the Senate and the House each promise to hold hearings, and finally – last Friday, in fact – the Justice Department announces that it’s launched an investigation to determine who disclosed the secret project.

All this sets the stage for a stupendous *finale* of televised hearings, a grand jury, the jailing of one or two reporters who will portray themselves as martyrs to the First Amendment – while skillfully parlaying their martyrdom into million-dollar book deals – and perhaps even the indictment for perjury of some preppy third-level White House aide with an idiotic nickname.

And two years from now we still won’t know who leaked the story, or even whether or not the NSA operation itself is legal.

That’s because the one thing that’s always left out of the choreography is the one thing that would bring down the curtain and abort the whole miserable performance: common sense.

Common Sense Can Trump the Law

We pride ourselves on being a country of laws, and rightly so. But a country whose legal system leaves no room for common sense cannot survive. Let’s use a non-political anecdote to illustrate how common sense can sometimes trump the law:

Imagine that you're standing at a busy intersection with a small crowd of people waiting for the DON'T WALK sign to stop flashing so you can cross to the other side of the street. Next to you is a child holding a rubber ball in one hand and his mother's hand in the other. Suddenly the child's ball goes bouncing into the road and the child breaks free from his mother and runs after it. You see a truck barreling down the street – so you push through the crowd, run into the road, grab that child and bring him back to safety.

While the grateful mother thanks you, and while people in the crowd pound you on the back and say things like “Way to go,” and “Boy, did you move fast,” – a police officer comes up and starts to write a ticket for jaywalking.

“Officer,” you say, “perhaps you didn't see what happened. This kid suddenly...”

“Doesn't matter,” the officer replies. “You crossed against the light, and that's illegal. Keep arguing and I'll put you under arrest.”

Of course, this wouldn't really happen. Not even the most left-wing, lunatic city council in the country (that would be Berkeley, with San Francisco and Seattle tied for second place) ever intended a DON'T WALK sign to stop someone from saving a child's life. And it's impossible to imagine a police officer who, once he'd grasped what really had happened, wouldn't tear up that citation and shake the hero's hand.

Now, let's take a look at what the President authorized the NSA to do that – so we're told – breaks the law and threatens our civil liberties. He authorized the NSA to listen in on telephone calls between terrorists and American citizens that originate overseas. And while we haven't yet learned precisely how the NSA has used this authorization, it isn't hard to think back to what was happening in the weeks and months after 9-11 and to imagine a likely scenario:

Stopping a Second 9-11

We had learned that planning for the 9-11 attacks had been under way for years – and our greatest fear was that planning for a second attack on our country now was under way. We had to stop it. Meanwhile, our troops were rolling through Afghanistan, knocking over the Taliban and killing as many al Qaeda fighters as possible. Along the way they were picking up documents and computers left behind by fleeing terrorists that provided the telephone numbers of cell phones used by al Qaeda leaders. The NSA moved fast to lock onto those numbers in hopes of learning something – anything – that might prevent a second horrific attack.

Suddenly a call is placed on one of those phones, and as the numbers light up on the NSA officer's computer screen he sees the call is being placed to someone in Hamburg, Germany.

Will you be ready by Thursday?

In the name of Allah, we will be ready. And this time we will teach the Americans a lesson they won't forget.

While the NSA officer signals his team that he's onto something, a second call is placed. As the numbers light up on his screen he sees that this call is going to someone in Pakistan.

Our next project is set. We need only your final approval and I will give a green light to the mission commander.

You have my approval. This will be our greatest victory of all.

The NSA officer and his team are at full alert now, and scrambling to be sure they don't miss whatever comes next. Moments later a third call is dialed on that cell phone, and as the numbers on his screen light up the NSA officer sees that this call is being placed to someone in Chicago.

Now, what do you want that NSA officer to do – hang up?

Of course not. And neither would any of the elected officials who wrote the laws that govern what the President can, or cannot, order the NSA to do. In fact, all these laws were enacted before the Internet and cell phones came into general use – and before the existence of terrorist groups like al Qaeda with a global reach, with sleeper cells throughout the world including inside the US, and with a stated goal of killing as many Americans as possible. No one who wrote these laws – not even the most left-wing, lunatic member of Congress – ever intended them to stop a President from moving fast to save the lives of Americans.

Like the man on a street corner who ignores a DON'T WALK sign and uses common sense – and courage – to save a child's life, President Bush did what was necessary after 9-11 to prevent a second attack on our country. If his political enemies insist on ignoring common sense and making this a legal issue, that is their privilege. And it is our privilege to use our common sense to draw the obvious conclusion—that so deep is their hatred for the President that a second attack is precisely what they want, so they can claim the President has failed and gain a political advantage in the next election cycle.

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