Bush officials use soldiers case to argue for new spy powers

By Katherine Shrader, Associated Press Writer | August 3, 2007

WASHINGTON -- When three soldiers were abducted in Iraq in mid-May, U.S. government lawyers began drafting emergency warrants to try to monitor communications that could lead to the suspected captors.

The Bush administration and its allies, The Associated Press has learned, have argued that the legal work ate up precious hours because of an odd twist to a U.S. surveillance law. One of the soldiers was later found dead in the Euphrates River, and an al-Qaida offshoot has said the others -- including one from Massachusetts -- are dead as well.

Normally, warrants wouldn't be needed to eavesdrop on foreigners in Iraq or elsewhere. However, since a secret federal court ruling was issued earlier this year, the Bush administration believes the government must obtain legal approval to listen in on foreign suspects when their conversations cross into the extensive U.S. communications network.

The administration wants to amend the law to allow such monitoring without delay. Many Democrats agree that adjustments are needed, but skeptics say the soldiers' story is being misused.

The political debate about the highly classified surveillance hinges on crucial civil liberties questions: Who should be able to sign off on this eavesdropping -- the attorney general or a federal judge appointed to a secretive court? And at what point are approvals needed?

Democratic lawmakers are treading carefully as they contemplate new surveillance powers for the Bush White House, given their conviction that it has abused its authority and violated long-held protections for civil liberties.

It can't be known whether faster warrants would have helped rescue
the soldiers. One official, who like others spoke on condition of anonymity given the sensitive nature of intelligence collection, said the situation compares to issuing an Amber Alert hours after a child is reported missing. Delays may hinder the search because the best information often comes early in an investigation.

Rep. Heather Wilson, R-N.M., an intelligence committee member, wouldn't confirm the account concerning the soldiers. But she did say that classified examples exist -- documents which make a compelling case for changing the law. "We are putting ourselves through all kinds of contortions, when we are sitting on the infrastructure," she said.

Other officials dispute suggestions that the surveillance law would have hampered the search for the soldiers.

"In a situation like that, everyone wishes you would have had the information instantaneously," said Rep. John Tierney, D-Mass., also an intelligence committee member. "In that situation, I think you would find that they would have had the information at a very early time, but for the process that was set up."

Tierney thinks the problem is with the bureaucracy, not the law. He said the surveillance act makes clear that a warrant is not required to eavesdrop on foreign targets who are overseas, even if their communications cross into a U.S. network. But he and other Democrats are open to clarifying the confusion.

Still another official said the government could have obtained the necessary communications in a way that did not require a FISA warrant, and that procedure was used. The official declined to elaborate.

Asked to comment on the soldiers’ case, a spokesman for National Intelligence Director Mike McConnell declined.

Congress passed the Foreign Intelligence Surveillance Act (FISA) in 1978 to ensure the rights of U.S. citizens by providing rules for their surveillance within the United States and abroad. It created a category of warrants used to investigate suspected spies, terrorists and other national security threats.

Complicating the question of what constitutes domestic surveillance is a fact of modern communications: Millions of calls placed in other countries by one foreigner to another are routed through the United States because some of the world's most efficient communications networks reside here.

The debate over whether and how to update the surveillance law has been simmering for months. The administration and like-minded Republicans have argued that technology, such as disposable cell phones and the Internet, has outpaced the effectiveness of the law and thus has hampered the government's ability to go after threats quickly.

In a Fox News interview this week, House Minority Leader John Boehner, R-Ohio, went further than most officials in explaining the need for change. He blamed a court ruling earlier this year that prohibits U.S. intelligence services "from listening to two terrorists in other parts of the world, where the communication could come through the United States."

In recent days, the administration has pressured the Democratically
controlled Congress to act before it leaves this weekend for a monthlong recess.

Michigan Rep. Peter Hoekstra, the top Republican on the House Intelligence Committee, said the administration isn't seeking anything nefarious. "We just want to make sure that when we target foreign intelligence from a foreign terrorist in another country, we can do it immediately," he said.

Said Rep. Jane Harman, D-Calif., chairwoman of the House Homeland Security subcommittee on intelligence: "The tweaks that are necessary should be agreeable on a bipartisan basis -- and not be used as a political witch to game the system."

About 20 miles outside of Baghdad, insurgents in Iraq ambushed an Army unit from Fort Drum, N.Y., on May 12. Three soldiers disappeared, and five were killed, including an Iraqi.

The body of one missing solider -- Pfc. Joseph Anzack Jr. -- was found in the Euphrates River on May 23.

Thousands of U.S. and Iraqi forces combed through fields, neighborhoods and even sewage-polluted irrigation ditches, in a headline-grabbing effort to try to rescue Pvt. Byron W. Fouty and Spec. Alex R. Jimenez, of Lawrence, Mass. Two soldiers died during the search.

But the bodies of Fouty and Jimenez have yet to be found.

Calls to the families seeking reaction were not immediately returned.

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