THE STATUTE OF LIMITATIONS ON BUSH'S MARCH 11, 2004 ILLEGAL WIRETAPPING EXPIRES TODAY

Five years ago today, Andy Card and Alberto Gonzales rushed to John Ashcroft's ICU room to try to trick him into signing the re-authorization for George Bush's illegal wiretap program over Jim Comey's objections. Jim Comey arrived at the hospital in time to prevent Card and Gonzales from succeeding.

Five years ago tomorrow, George Bush re-authorized his illegal wiretap program with only the signature of Alberto Gonzales–then White House Counsel–to give it legal sanction.

Five years ago today and tomorrow, attorney Wendell Belew spoke to al-Haramain Director Soliman al-Buthi by telephone. Belew has reason to believe–and once had clear evidence that may have proved–those calls were wiretapped under Bush's illegal wiretap program.

As bmaz explained last year, in March 2004, FISA had a standard 5-year statute of limitation.

> The first question any criminal defense attorney is going to ask is "Gee, is this crime within the statute of limitations"? FISA is subject to the Federal general statute of limitation contained in 18 USC 3282, which is five years. And, remember, the statute starts to run when the crime is committed and/or when the government becomes aware of the conduct; in this case the Department of Justice knew about the conduct as, or before, it was being committed. When we, as citizens learned about it is not the relevant test.

That means that the statute of limitations on the potentially criminal March 11 wiretaps of Belew expire today. By all appearances, that means the statute will expire without George Bush being punished for illegally wiretapping an American citizen, even though clear evidence of that criminal wiretapping almost certainly exists.

Now, as it happens, a District Court Judge may have or may be about to judge whether or not that wiretapping was illegal. I'm referring, of course, to the al-Haramain suit currently before Vaughn Walker. The last known development in that suit came eleven days ago, when the 9th Circuit ruled that Walker should review the wiretap log to determine whether it shows that al-Haramain is an aggrieved party (meaning they were wiretapped illegally), and when the Obama Administration corrected "inaccurate" information on the wiretap program probably submitted three years ago. Since then, nothing has appeared in the docket for the case.

The absence of any activity in the docket could mean one of two things. First, Vaughn Walker may still be reviewing all the new information he received on February 27–the four new declarations about the program–as well as the rather astonishing OLC opinions revealed last Monday. In other words, by flooding Walker with new information, the Obama Administration may have prevented Walker from ruling quickly on whether the al-Haramain wiretapping was legal until after the statute of limitations expire. He may still be wading through new legal issues that go beyond those raised by the wiretap log itself.

Or, it's possible that Vaughn Walker has already ruled. As I pointed out over the weekend, the Obama Administration requested that Judge Walker show them in his order before he publishes it to the docket so they can conduct a classification review and decide whether to appeal his decision.

> Accordingly, the Government respectfully

> proposes that the Court utilize the following procedures. First, if the Court proceeds on an ex parte, in camera basis to review the Sealed Document in order to address the issue of standing, then regardless of how the Court would then intend to rule, the Government requests that the Court provide notice to the Government of any order it would place on the public record, so that the Government may conduct a classification review and determine whether to appeal before any information over which the Government claims privilege is disclosed to the public.

Frankly, if Walker said anything more than, "this suit may proceed" in his order, I would imagine he would respect DOJ's request. So it's possible he has ruled and DOJ has received his order.

If the latter scenario is the case, it would mean Eric Holder's DOJ would have received a judge's ruling that the wiretapping done five years ago was illegal. That is, DOJ may be sitting on a judge's order finding Bush's actions five years ago to be illegal under FISA.

Really depressing thought, isn't it, to think that DOJ may be sitting there gaping at not just the evidence that shows Bush broke the law, but even a judge's ruling that it did, even as the statute of limitations expires? Tick tock, tick tock, tick tock. Ding!!!!

Now, smart lawyers tell me there is still a way to hold Bush accountable for his actions five years ago—to charge the conspiracy to cover-up the criminal wrong-doing. I'll let bmaz challenge that stance in the comments—but suffice it to say that, since DOJ has known about these activities all along, it's going to be a hard case to make.

And, of course, there are later incidences of wiretapping (Belew also named a March 25 call,

for example, as one he believed had been wiretapped) that probably fall in the period when the program operated with no sanction from DOJ. But even that would be all-but-impossible to indict between now and March 24.

Congratulations George Bush, Dick Cheney, David Addington, and Alberto Gonzales! With your stonewalling and delay, you appear to have avoided legal consequences for this particular crime committed while in office. You have deliberately violated a law designed to check presidential abuse of power, and Mukasey and Congress and Obama have let you get away with it.