

Hardball with Chris Matthews, February 2, 2006

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

PORTER GOSS, CIA DIRECTOR: I'm stunned to the quick when I get questions from my professional counterparts saying, "Mr. Goss, can't you Americans keep a secret?"

(END VIDEO CLIP)

MATTHEWS: Welcome back to **HARDBALL**, that was CIA Director Porter Goss testifying today in front of the Senate Intelligence Committee, lamenting the leaks of secret operations. For more on that and a preview of the NSA's surveillance hearings Monday, that's when they're coming up—we turn to MSNBC political analyst Ron Reagan and Viet Dinh, former assistant attorney general in the Bush administration and one of the main authors of the Patriot Act.

The charge there, I take it, Viet, is that he doesn't like the fact that the president in his State of the Union address, talked about how two people were involved in 9/11, two of the 19 hijackers, the killers of 3,000 Americans, were on the phone. And he's giving away information we have that wasn't in the public arena before. Is that what he's talking about?

VIET DINH, FORMER ASSISTANT ATTORNEY GENERAL: No, I think what Director Goss is referring to is the persistent leak of classified information of operations that may or may not have been happening.

MATTHEWS: Isn't the president doing some of that by talking on television before 50 million Americans and the world about different things we've picked up about these hijackers from our surveillance?

DINH: I think once we have the unclassified information leaked to the public, I think that enters the public debate and of course the president will have to convince the American people what exactly is a product of these activities that garner.

But what Porter Goss is talking about is the very serious deprivation of intelligence that we do not get from our counterparts across the world, independent of the source and methods that we use, because over half of our intelligence comes from our friendly services. And they simply cannot trust us to keep it private and keep their sources and methods private.

MATTHEWS: Ron Reagan—Jay Rockefeller, the ranking Democrat on intelligence, said today that the CIA is getting politicized. What do you make of that? In other words, it used to be something of an independent agency in the old days, the Allen Dulles days. You had to keep control, and now it's become sort of a Dick Cheney operation, where he puts his people in there like Porter Goss.

RON REAGAN, MSNBC POLITICAL ANALYST: Well I think that became obvious in the run-up to the Iraq war, where you had George Tenet cherry picking intelligence. Your other guest mentioned foreign intelligence that we got.

Some of the intelligence that we got from them, they disavowed before we went into Iraq. They told our people, our CIA operatives, don't use this information about the aluminum tubes, for instance or meetings with—supposed meetings between Saddam Hussein's people and al Qaeda.

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Don't use that, it's no good. But we went ahead and used it anyway, even though they were telling us differently. So yes, it has become politicized and that's a very dangerous thing for this country as we've seen.

MATTHEWS: Let me ask you about power. What right does the president of the United States have in wartime? In other words, when we're under attack, like in the first several months after 9/11, when everyone admitted he had to do something big. Does he have the right to basically use the second article of the Constitution, say, "I'm commander-in-chief, I'm going to defend the country, whatever it takes?"

DINH: No question. It's not only his right under the Constitution, but also Congress has delegated authority when it authorizes him to use all reasonable force in order to defend America and repel the attacks that constituted 9/11. And so not only does he have inherent authority under Article II of the Constitution, but also Congress has delegated authority as commander-in-chief and also as the Congress's and the government's agent in a time of war.

MATTHEWS: Ron, what's wrong with the president being commander-in-chief when we're under attack?

REAGAN: It's fine for him to be commander-in-chief, but he doesn't have the right to break American laws. Congress makes the laws.

MATTHEWS: But Viet just said that the law was written by Congress, a resolution in 2001 saying the president must act to defend the country, whatever it takes.

REAGAN: Well that's all well and good but they didn't say, "and you can institute warrant less wiretaps on American citizens." There was nothing in that resolution about that, but the president simply interpreted it that way.

We have an administration now where the president is essentially saying "you can pass whatever laws you want, but in signing statements, I will interpret those laws as I please. And so they will become what I say they are." That's not the way the American government is supposed to work.

MATTHEWS: I wonder how broad this authority is the way you read it. If—there's a left-wing group out there, a group that's very critical of this administration and they're out there protesting Halliburton or any of the other targets of this war politically—is the president allowed to see whether these groups are seditious or not? Should he be allowed to just check on what they're saying on the telephone?

DINH: Absolutely not because...

MATTHEWS: ... but you said he could do what it takes.

DINH: The authorization for force was to aim at and repel against those persons who were responsible for the September 11th attacks. That's al Qaeda, that's the al Qaeda sympathizers throughout the world. The program that we're talking here, to be very clear, is limited to transnational, international communications where one party is outside of the United States and also where intelligence information indicates that one party in the conversation is an al Qaeda agent or sympathizer.

MATTHEWS: OK, you say that this Defense Department intelligence

operation that picked this was bugging this demonstration against

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Halliburton when they were handing out peanut butter and jelly sandwiches -

you're saying that was outside what they're entitled to do?

DINH: I do not know the details of this particular program, but certainly the terrorist surveillance program, as the facts have been confirmed by the government itself, seems to be reasonably calculated to the use of force.

MATTHEWS: So no political snooping? No snooping about American politics, period?

DINH: No of course not, of course not. It has to be related to the commander-in-chief's power and according to the delegation and the use of force, it has to be that it's not—the Congress authorizing the use of force doesn't mean force, but nothing short of force, because obviously there are many steps that Congress can authorize for force.

MATTHEWS: I have to say, our viewers out there, Ron and Viet, they said that was the most important topic, and they said that day after day on our site, that they want to hear more about it, is this NSA spying, and if people really are on left and right—the president may be winning the argument right now, but there's a long-term concern in this country as we all know from the Nixon era and the Bobby Kennedy era, about tapping people's phone lines.

Anyway, thank you Ron Reagan and Viet Dinh. Up next, President Bush versus the strawman, is oil the latest enemy he's concocted to make a political point? You're watching HARDBALL on MSNBC.

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