Written by **Thomas R. Eddlem** on February 15, 2009

Bush III: Obama on Torture & Wiretapping

Obama made a public spectacle of signing the executive orders banning torture and closing Guantanamo within a year. Flanked by a dozen former generals, the public show contrasted with Obama's quiet signing of an order overturning the "Mexico City policy" banning the funding of abortion providers abroad with U.S. foreign aid funds.

But for the second time in a week, the Obama administration maintained the "state secrets" defense the Bush administration used to shield torturers and other illegal activities from court scrutiny. This time the "state secrets" gambit protected warrantless (i.e., unconstitutional) wiretapping of terrorist suspects in San Francisco U.S. District Court on February 11.

"They have drawn a line in the sand between the executive and the judiciary, saying, 'You do not control these documents, we do,' " said Jon Eisenberg, the attorney for the Al-Haramain Islamic Foundation, which filed the suit against warrantless wiretapping. The Obama administration's assertion of the phony "state secrets" privilege strikes at the heart of the Constitution and justice system. Eisenberg is right in that if courts cannot get at the facts, they cannot decide justly. And if the executive branch can cover up crimes against the Constitution (as warrantless wiretaps are) by keeping all of the facts secret, then the court system itself becomes corrupted and irrelevant.

The Al-Haramain Islamic Foundation charged in the lawsuit that the U.S. government unconstitutionally wiretapped them. The irony of the "state secrets" argument in this case is that the federal government accidentally faxed a document to the foundation in 2005 proving it had been wiretapping the organization without a warrant before it had listed the organization as linked to terrorism. The organization seeks the document so that it can be submitted to the court as evidence — something the Obama administration does not want to do because it would supposedly jeopardize national security.

Here's the irony of the case: the Obama administration is essentially saying that even though organizations designated as terrorist have already had lengthy access to the document, it would jeopardize national security to allow U.S. district judges and lawyers to see the document as well. Imagine that. Terrorists can see our memoranda, but judges cannot. Such is the official Obama policy these days.

The same day that the Obama administration issued its second "state secrets" argument in federal court, the ACLU released copies of previously classified documents where Defense Department investigators admitted several detainees had been tortured to death. Most of the deaths occurred at the infamous secret prison at Bagram Air Force in Afghanistan, the site of most other publicized torture deaths.

Obama’s presidency started out on a positive note regarding the subject of torture, with executive orders commanding executive branch employees (including the CIA) not to commit felony torture. But his actions since that time tend to indicate that we may witness another term of lawless Bush administration policy. Americans have a clear choice of demanding their officials live under the chains of the Constitution or groveling under the dictatorial “leadership principle” where whatever the president says is law is legal. Obama’s recent embrace of "state secrets" policy suggests he’s a move in the latter direction.