

# U.S. Judge Finds Wiretapping Program Violates Law

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troit federal trial court.

She has ruled for the A.C.L.U. in a lawsuit challenging religious displays on municipal property. But she has also struck down a Detroit ordinance favoring minority contractors. "Her reputation is for being a real by-the-books judge," said Evan H. Caminker, the dean of the University of Michigan Law School.

The government said it would ask Judge Taylor to stay her order at a hearing on Sept. 7.

The Justice Department and the American Civil Liberties Union — which brought the case in Detroit on behalf of a group of lawyers, scholars, journalists and others — agreed that her order would not be enforced until then, but lawyers for the A.C.L.U. said they would oppose any further stay.

Administration officials made it clear that they would fight to have the ruling overturned because, they said, it would weaken the country's defenses if allowed to stand.

Attorney General Alberto R. Gonzales, at a hastily called news conference after the decision, said he was both surprised and disappointed by the ruling on the operation, which focuses on communications of people suspected of ties to Al Qaeda.

Administration officials "believe very strongly that the program is lawful," said Mr. Gonzales, a main architect of the program as White House counsel and the biggest defender of its legality in a series of public pronouncements that began after the program was disclosed by The New York Times last December.

"We're going to do everything we can do in the courts to allow this program to continue," he said, because it "has been effective in protecting America."

Tony Snow, the White House spokesman, also described the surveillance program as a vital and lawful tool. "The whole point is to detect and prevent terrorist attacks before they can be carried out," Mr. Snow said. "The terrorist surveillance program is firmly grounded in law and regularly reviewed to make sure steps are taken to protect civil liberties."

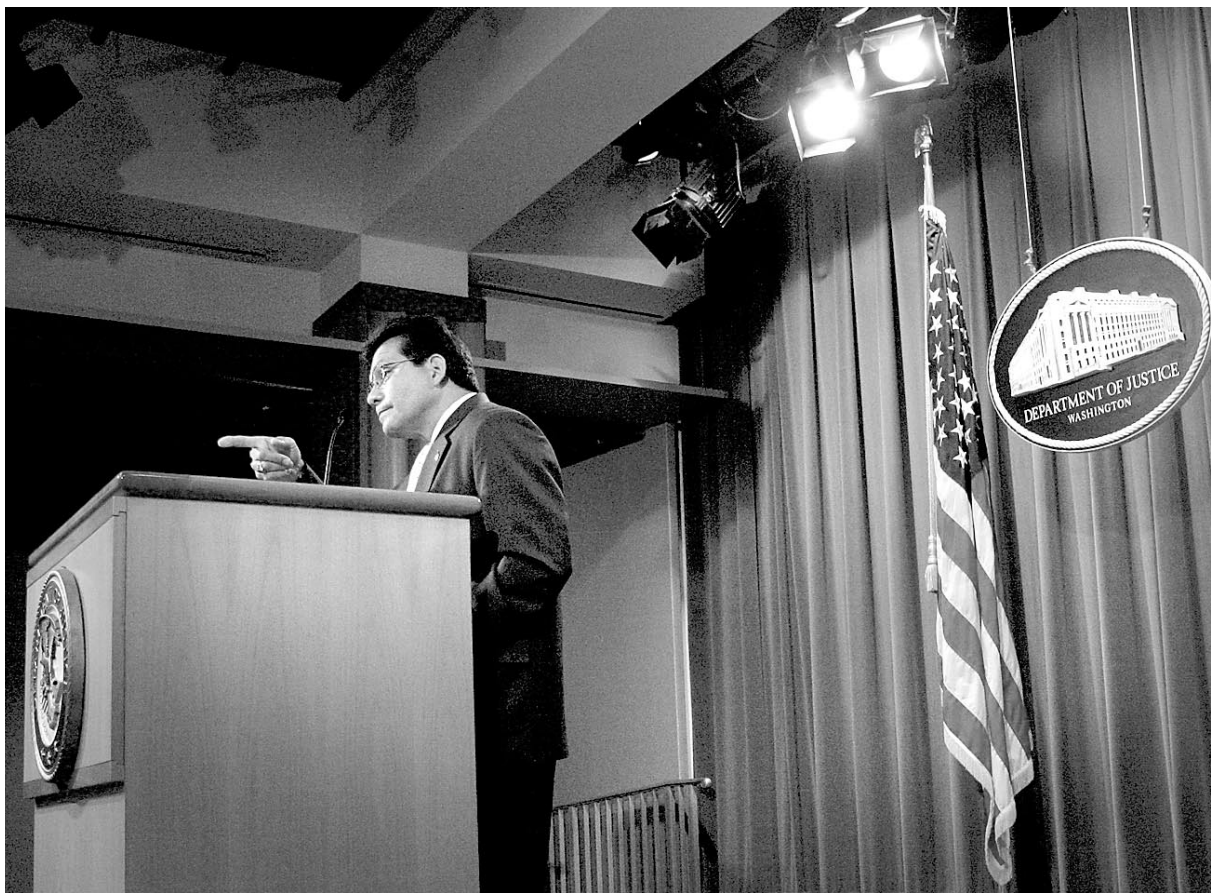
Democrats applauded the ruling as an important affirmation of the rule of law, while lawyers for the A.C.L.U. said Judge Taylor's decision was a sequel to the Supreme Court's decision in June in Hamdan v. Rumsfeld that struck down the administration's plans to try detainees held in Guantánamo Bay, Cuba, for war crimes.

"It's another nail in the coffin of executive unilateralism," said Jameel Jaffer, an A.C.L.U. lawyer.

But allies of the administration called the decision legally questionable and politically motivated.

"It is an appallingly bad opinion, bad from both a philosophical and technical perspective, manifesting strong bias," said David B. Rivkin, an official in the administrations of President Ronald Reagan and the first President Bush. "It is guaranteed to be overturned."

Mr. Gonzales would not say whether the program played any role in foiling a plot last week to set off bombs in airliners bound for the United States from Britain. But Speaker J. Dennis Hastert, Republican of Illinois, suggested that it did play a role in the investigation.



Harqaz N. Ghanbari/Associated Press

Attorney General Alberto R. Gonzales said yesterday that the administration would do all it could to continue an eavesdropping program ruled unconstitutional by Judge Anna Diggs Taylor of federal court.



Amy Leang/Detroit Free Press, via Associated Press

In a written statement criticizing Judge Taylor's ruling, Mr. Hastert defended the wiretapping operation and said that "our terrorist surveillance programs are critical to fighting the war on terror and saved the day by foiling the London terror plot."

His office declined to elaborate.

Mr. Gonzales said he expected that the ruling would play a role in the debate in Congress over how and whether to change federal eavesdropping laws. But he said the exact impact was "hard to predict."

Among competing proposals, Republican leaders have proposed legislation that would specifically permit the wiretapping program. Some Democrats, however, have introduced legislation that would restrict, or in some cases ban altogether, the government from conducting wiretaps on Americans without a warrant.

The White House is backing a plan, drafted by Senator Arlen Specter, Republican of Pennsylvania, with the blessing of President Bush, that would allow a secret court to review the legality of the operation.

But in the view of critics, it could also broaden the president's authority to conduct such operations. Mr.

Gonzales said it appeared to administration lawyers that the Specter legislation, if passed by Congress, "would address some of the concerns raised by the judge in her opinion."

Another element of the Specter legislation would force other lawsuits over the program — like the one brought by the A.C.L.U. in Detroit — to be consolidated into a single action to be heard by the secret court.

Judge Taylor rejected the government's threshold argument that she should not hear the case at all because it concerned state secrets. Dismissal on those grounds was not required, she wrote, because the central facts in the case — the existence of the program, the lack of warrants and the focus on communications in which one party is in the United States — have been acknowledged by the government.

The government also argued that the plaintiffs lacked standing to sue because they had not suffered concrete harm from the program. Judge Taylor ruled that the plaintiffs "are stilled in their ability to vigorously conduct research, interact with sources, talk with clients and, in the case of the attorney plaintiffs, uphold their oath of providing effective and ethical representation of their clients."

Some plaintiffs, the judge wrote, have had to incur travel expenses to visit clients and others to avoid possible monitoring of their communications.

Going beyond the arguments offered against the wiretapping program by many legal scholars, Judge Taylor ruled that it violated not only the 1978 law, the Foreign Intelligence Surveillance Act, but also the Fourth Amendment, which prohibits unreasonable searches and seizures.

The Supreme Court has never addressed the question of whether electronic surveillance of partly domestic communication violates the Fourth Amendment. Judge Taylor concluded that the wiretapping pro-

gram is "obviously in violation of the Fourth Amendment."

The president also violated the Constitution's separation of powers doctrines, Judge Taylor ruled. Neither a September 2001 Congressional authorization to use military force against Al Qaeda nor the president's inherent constitutional powers allow him to violate the 1978 law or the Fourth Amendment, she said.

"There are no hereditary kings in America and no powers not created by the Constitution," she wrote, rejecting what she called the adminis-

**In its first review by a judge, a domestic spying program is found wanting.**

tration's assertion that the president "has been granted the inherent power to violate not only the laws of the Congress but the First and Fourth Amendments of the Constitution itself."

Republicans attacked the decision. "It is disappointing that a judge would take it upon herself to disarm America during a time of war," said Representative Peter Hoekstra, Republican of Michigan, the chairman of the House Intelligence Committee.

Judge Taylor did give the government a minor victory, rejecting on national security grounds a challenge to a separate surveillance program involving data mining. That ruling is consistent with recent decisions of federal courts in San Francisco and Chicago.

Judges in those cases drew a distinction between the wiretapping program, which the administration has acknowledged and defended, and the data mining program, which has not been officially confirmed.

# Postmark Could Help Prove Rare Stamps Are Authentic

By MATTHEW HEALEY

Two philatelic experts have announced a discovery that seems likely to renew one of the longest-running controversies among stamp collectors.

Ken Lawrence and Richard C. Celler, both respected for their expertise in 19th-century stamps, have found evidence that a group of stamps long held to be fakes may be genuine and potentially worth as much as \$10 million.

"This is one of the most exciting stamp stories of the last 100 years," said Donald Sundman, president of the Mystic Stamp Company, which is holding the stamps on behalf of the owners and will put them on exhibit this month at a philatelic convention in Chicago.

The discovery concerns one of the early Hawaiian stamps known as the Missionaries, printed by the islands' nascent postal service in 1851 largely for correspondence from missionary settlers to the United States.

Hawaiian Missionary stamps are rare, with only about 200 certified as being genuine. They are highly coveted by collectors, and the rarest — an unused 2-cent stamp — was sold in 1995 for \$660,000.

A group of about 80 Missionary stamps was found in 1918 by a Los Angeles schoolteacher and stamp collector, George Grinnell, who believed the stamps were genuine and sold some of them to a New York dealer for \$65,000. One of the dealer's clients compared Mr. Grinnell's stamps with genuine Missionaries and declared them fake, because they differed in details from the printed design and postmarks. In a 1922 court case, a judge agreed that the Grinnell stamps were forgeries.

Mr. Grinnell and his descendants spent decades trying to prove otherwise. Many philatelic experts have said the stamps are genuine Missionaries, but many others, including the Royal Philatelic Society in London, have declared the opposite. Lab tests have proven that the stamps' paper and ink could date from the 1850's.

Mr. Grinnell had a compelling story about the stamps' origin, claiming to have received them from an old man whose mother's childhood friend had gone to Hawaii as the wife of a missionary.

Recent research points to the woman's son, a young printer's apprentice named William Emerson, who worked for the postmaster in Honolulu. Some people speculate that he could have had a hand in the Grinnell stamps' creation before he died at sea in 1852. A few Grinnell stamps were supposedly later found between the pages of Mr. Emerson's prayer book.

Fred Gregory, an expert in early Hawaiian stamps, says on his Web site, hawaiiastamps.com: "There are two ways to consider the Grinnells. One is to focus on the stamps and postmarks themselves and to wonder how, considering the numerous differences, they could be genuine. The other way is to look at the story of their find, the evidence accumulated to support a provenance and to wonder how, considering that evidence, they could be fake."

One of the passionate defenders of the Grinnell stamps is Mr. Lawrence, 63, a former vice president of the American Philatelic Society and a respected stamp researcher who lives in Spring Hills, Pa. In an article published Wednesday in Scott Stamp

Monthly, he discusses a postmark that he says supports the case that the Grinnell stamps are genuine. One of the postmarks previously known only on Grinnell stamps has also been found on a genuine Missionary stamp.

Mr. Lawrence believes this means the postmark could be real, and that other Grinnell stamps should also be real. The finding must be confirmed by other experts.

Mr. Grinnell's granddaughter, Carol Arrigo, 70, disclosed the newly identified stamp in April as part of a group of 10 that had not previously been known to the public. Two seem to be real Missionaries, but since Mrs. Arrigo is not a philatelist she had not realized it. "This vindicates Grinnell," said her husband, Vincent.



Images courtesy of Vincent and Carol Arrigo

The postmark on a stamp that was recently made public, top; and a stamp said to be fake, above.

"This is the equivalent of a fish with legs, and is the missing link between the Grinnells and 'accepted Missionaries,'" said Mr. Sundman, the dealer who is offering some of the Arrigos' stamps for sale. A price has not been determined.

But skeptics remain unconvinced. Scott Trepel, a stamp expert and president of Siegel Auction Gallery, a New York company that deals in rare stamps, considers the Grinnells to be forgeries and says the new find only indicates which stamps served as the model for the forgers. He said the postmark found on the real Missionary stamp could be fake, and argued that a genuine postmark on a Grinnell stamp would be far more convincing.

## National Briefing

### SOUTH



Tyler Hicks/The New York Times

**LOUISIANA: SUIT OVER STORM VICTIM'S DEATH** The son of a 91-year-old woman who died slumped in her wheelchair after Hurricane Katrina, an image, above, that came to symbolize the government's slow response to the catastrophic storm, sued the city and the state. The man, Herbert Freeman Jr., accuses numerous state agencies and the City of New Orleans of gross negligence and willful misconduct in the death of his mother, Ethel Freeman. Mr. Freeman claims he was ordered by the police to seek shelter at the city's convention center, even though no aid was available and there was no way out. John Paul Massicot, a lawyer for the family, said: "Let's not forget, she survived the storm. The storm didn't get her. She didn't survive the rescue." (AP)

**TENNESSEE: EX-LAWYER GUILTY IN WIFE'S MURDER** A former Nashville lawyer was convicted of killing his socialite wife, who disappeared 10 years ago. A jury convicted the man, Perry March, 45, of all charges — second-degree murder, abuse of a corpse and tampering with evidence — in the death of his wife, Janet Levine March, who disappeared in August 1996. Ms. Levine March's body was never found, but she was declared legally dead in 2000. Mr. March was also convicted this year of conspiring to kill his in-laws and stealing from his former law firm. (AP)

**TEXAS: CANDIDATE CHOSEN TO REPLACE DELAY** Republican precinct chairmen agreed to support a Houston city councilwoman, Dr. Shelley Sekula-Gibbs, as the write-in candidate on the November ballot in place of former Tom DeLay, the former House majority leader who is under indictment on charges of campaign finance violations. The state party decided to rally behind one write-in candidate after a federal appeals court ruled that Mr. DeLay must remain on the ballot. (AP)

**VIRGINIA: GUILTY VERDICT IN KILLING OF FAMILY** A man was convicted of the random mutilation killings of a musician and his family, a verdict that took just 30 minutes to reach and could bring the death penalty. Lawyers for the man, Ricky J. Gray, 29, presented no witnesses and acknowledged that he had confessed to the Jan. 1 slayings of the musician, Bryan Harvey, 49, his wife, Kathryn, 39, and daughters Stella, 9, and Ruby, 4. Opening the sentencing phase of the trial, the prosecution told jurors that in addition to the Harvey killings, Mr. Gray had confessed to killing his wife and a second Richmond family less than a week later. (AP)

### WEST

**CALIFORNIA: ACCUSED DRUG FIGURE IN U.S.** Francisco Javier Arellano Félix, whom the authorities called a top figure in one of Mexico's most notorious drug gangs, pleaded not guilty to racketeering and conspiracy charges in San Diego. Mr. Arellano Félix's court-appointed lawyer, Leila Morgan, pleaded not guilty on his behalf to racketeering, racketeering conspiracy, conspiracy to import and distribute controlled substances, and money laundering. Mr. Arellano Félix had been captured on a sport boat near Baja California with seven other men, including Arturo Villarreal Heredia, whom American authorities said was probably his second-in-command. (AP)

### ROCKIES

**WYOMING: FIREFIGHTERS MAKE HEADWAY** Firefighters have contained 30 percent of a wildfire that has destroyed four mountain cabins and

threatened 600 seasonal and year-round homes. More than 400 federal and local firefighters are clearing a firebreak around the blaze, but Kathy-Jo Pollock, spokeswoman for the federal inter-agency firefighting effort, said it might take significant rain to extinguish it. The four-day-old blaze has seared more than 11,000 acres on the top and base of Casper Mountain. The fire briefly forced the closing of a major east-west state highway when flames raced down a canyon and jumped the roadway. DOUG McINNIS (NYT)

### NEW ENGLAND

**NEW HAMPSHIRE: RULING ON NAME PLACEMENT** The State Supreme Court struck down a law mandating that an incumbent party's candidates be listed first on election ballots. The State Democratic Party, which brought the suit, said the practice had benefited Republicans. The court also ruled that the practice of listing each party's candidates in alphabetical order is unconstitutional, something that has stopped. The court ordered a lower court to devise a listing system. The ruling applied to general elections, but state officials were working to see what system should be used for a Sept. 12 statewide primary. KATIE ZEZIMA (NYT)

### WASHINGTON

**2 TRIALS FOR MEN ACCUSED IN REPORTER'S DEATH** The two men charged with murder in the case of David E. Rosenbaum, a retired reporter for The New York Times, will have separate trials. Prosecutors wanted separate trials for the men, Michael Hamlin and Percy Jordan, because the United States attorney's office plans to introduce statements from each man that will implicate the other. According to charging documents, Mr. Hamlin told the police that he took Mr. Rosenbaum's wallet and used his credit card, but says it was Mr. Jordan who hit Mr. Rosenbaum with a pipe. The documents also say that Mr. Jordan told the police that both men used the stolen credit card, but Mr. Jordan says he was not present for the attack in Northwest Washington. (AP)

## Mel Gibson Pleads No Contest To D.U.I. and Gets Probation

By DAVID M. HALBFINGER

MALIBU, Calif., Aug. 17 — Mel Gibson pleaded no contest here Thursday to one misdemeanor charge of drunken driving and was sentenced to three years' probation with a requirement that he spend the next year in a 12-step program for alcoholism.

Mr. Gibson, 50, will also pay more than \$1,600 in fines and fees as part of the sentence.

In the early hours of July 28, a sheriff's deputy clocked Mr. Gibson driving more than 85 miles an hour on the Pacific Coast Highway. A police report said that Mr. Gibson was belligerent and made anti-Jewish statements when pulled over.

He later issued a pair of apologies for his remarks and behavior, which had caused a furor in Hollywood.

Mr. Gibson did not appear at the proceeding, which was held mid-morning at the Los Angeles Superior Court branch here. Through his lawyer, he pleaded no contest to one count of driving with a blood alcohol level of 0.08 percent or higher.

A misdemeanor charge of driving while impaired, and a code infraction of driving with an open container — a bottle of tequila was found in his Lexus LS — were both dismissed under the plea deal.

Judge Lawrence J. Mira noted that Mr. Gibson had offered to make a public service message for broadcast, warning against the dangers of driving while impaired.

The judge also said that Mr. Gibson had "already engaged in an extensive amount of rehabilitation."

As part of the sentence, Mr. Gibson is required to attend a 12-step pro-

**The actor is required to attend a 12-step program for a year.**

gram five times a week for the next four and a half months and to continue attending three days a week for seven and a half months.

His driver's license was also restricted for 90 days, and he was ordered to undergo a state-mandated alcohol-abuse education program for three months.

Judge Mira said in court that while it was within his discretion to require Mr. Gibson to appear in court personally, "I believe this defendant should be treated like every other defendant" and be allowed to plead through counsel.

But the judge reserved the right to summon Mr. Gibson to court, "if I want to observe his progress."

During a 15-minute conference with Mr. Gibson's lawyer, Blair Berk, and the prosecutor, Deputy District Attorney Gina Satriano, the judge could be heard saying: "If he's struggling, I'm going to help him with his struggle. It's that simple."

Judge Mira said the case was transferred to his court after another judge recused herself because she is a neighbor of Mr. Gibson's in Malibu.

Ms. Satriano later called the sentence appropriate.

"This is what we do in normal D.U.I. cases," she said.

Ms. Berk did not respond to telephone messages after the court proceeding seeking comment.