ABOUT THAT MAY FISC RULING

In light of the weekend's news that there were actually two FISC rulings against the Bush Administration's warrantless wiretap program, I'd like to return to this James Risen article from May 2.

> Senior Bush administration officials told Congress on Tuesday thatthey could not pledge that the administration would continue to seekwarrants from a secret court for a domestic wiretapping program, as itagreed to do in January.Rather, they argued that the president had the constitutionalauthority to decide for himself whether to conduct surveillance withoutwarrants.
>
> As a result of the January agreement, the administration said thatthe National Security Agencyâ€™s domestic spying program has been broughtunder the legal structure laid out in the Foreign IntelligenceSurveillance Act, which requires court-approved warrants for thewiretapping of American citizens and others inside the United States.
>
> But on Tuesday, the senior officials, including Michael McConnell,the new director of national intelligence, said they believed that thepresident still had the authority under Article II of the Constitutionto once again order the N.S.A. to conduct surveillance inside thecountry without warrants.
>
> [snip]
>
> Mr. McConnell emphasized that all domestic electronic surveillancewas now being conducted with court-approved warrants, and said thatthere were no plans â€œthat we are formulating or

> thinking aboutcurrentlyâ€ to resume domestic wiretapping without warrants.
>
> â€œBut Iâ€™d just highlight,â€ he said, â€œArticle II is Article II, so ina different circumstance, I canâ€™t speak for the president what he mightdecide.â€

On Sunday, we learned that the FISC had twice refused the Administration a subpoena, once in March and once in May.

> But in a secret ruling in March, a judge on a special court empoweredto review the government's electronic snooping challenged for the firsttime the government's ability to collect data from such wires even whenthey came from foreign terrorist targets. In May, a judge on the samecourt went further, telling the administration flatly that the law'swording required the government to get a warrant whenever a fixed wireis involved.

Which mean this attempt to reclaim Article II authority as justification for warrantless wiretapping necessarily came after the first ruling against the program (it probably came before the second, since the hearing came only two days into May). McConnell claimed, at the time, that the Administration was still doing working through the court. But were they preparing to evade the court, knowing that it had found part of the program illegal?