

# DEAN AND BUSH AND PARDONS

John Dean's piece on FISA reads with all the angst of someone who—after a number of people have demonstrated his error—is hoping to persuade Barack Obama to get him out of the hole he created for himself. "Please, Obama," Dean seems to be saying, "hold Bush accountable so I don't have to admit immunity really is immunity."

One gaping problem with Dean's argument is the absence of any discussion of statutes of limitation. Even if Obama did what Dean wanted—and announced he would direct his AG to immediately review the warrantless wiretap program—the Republicans in the Senate could just filibuster approval of Obama's AG until, say, April 26, 2009 (five years and 45 days after the authorization signed by Alberto Gonzales on March 11), and the statute of limitations on the known crimes would expire.

But the proposition I find really ridiculous is Dean's contention that Bush isn't going to issue blanket pardons of all the law-breakers in his Administration.

Given the downside, it is not clear whether Bush would issue a pardon in this context.

If it were issued by Bush, however, a blanket pardon to his "national security" miscreants would require acceptance by them of the fact that they had broken the law, and thus an admission of guilt. Were Bush to issue such a remarkable pardon, it would, of course, cement his historical stature as several notches below even that of Richard Nixon, who refused to pardon those who (many "for national security reasons") engaged in the so-called Watergate abuses of presidential power

on his behalf. Not many presidents want to be viewed by history as worse than Nixon. And a blanket pardon would be an admission by Bush that his war on terror has been a lawless undertaking, operating beyond the bounds of the Constitution and statutes that check the powers of the president and the executive branch. It would be an admission by Bush, too, of his own criminal culpability (which is why Nixon refused to grant his aides a pardon.)

Bush is very politically savvy. He knows that a blanket pardon, or even the prospect of it, could give Obama and the Democratic Party a wonderful issue during the coming months of the general election. Most Americans are deeply concerned about Bush/Cheney's conduct of foreign affairs and national security, which ignores American laws and treaty obligations. So if Bush is forced to pardon his national security zealots, or if GOP standard-bearer John McCain was forced to embrace such action (as he likely would be), it raises the issue of whether Americans now want to elect a president who is subject to the law, or endure another temporary monarchy which ignores it. And that is no small issue in this 2008 election.

First, given that Nixon never really had to admit his guilt, I don't see why anyone would expect Cheney, Libby, Gonzales, Yoo, and Addington would have to either. Is anyone now talking about how guilty Cap Weinburger is?

Second, Bush already is viewed—even by historians—as worse than Nixon. His approval rating has been in the toilet longer than Nixon's, and he's not going to have a peace treaty or a China relationship to show for his time in office. And the damage Bush has done to the economy will linger in historical memory for quite some time.

More importantly, I expect that Bush's priority, as he leaves office, will be (as Nixon's was) on avoiding criminal prosecution rather more than on his historical legacy. And given Congress' determination not to impeach Bush for all his law-breaking, that puts Bush in precisely the opposite position as Nixon was in. Nixon **got** his pardon (again, without admitting culpability), which left him free, in turn, to deny his aides their pardon, because they couldn't do anything to him! Bush, on the other hand, is utterly dependent on Cheney and Addington and Gonzales on keeping silent about his own culpability. And the best way to keep them silent—as we've already seen with Libby—is to make sure they avoid any real legal consequences for their actions. We know that Bush authorized the illegal warrantless wiretap program himself, in spite of FISA's clear restrictions against it, so we know Bush is ultimately the one on the line. And the best way for him to avoid legal consequences for that act is to make sure his aides don't talk about it. All the more reason, then, for him to issue a boat-load of pardons as he leaves office, for this issue and for others. (And yes, I'm aware that these newly pardoned thugs would then not be able to invoke the Fifth if Congress were to call them to testify—but I think past behavior and Bush's frequent invocation of executive privilege suggests we're not going to see that happen).

Finally, I don't know why Dean believes that "a blanket pardon, or even the prospect of it, could give Obama and the Democratic Party a wonderful issue during the coming months of the general election." Obama frequently uses the phrase "Scooter Libby justice," so he's effectively already doing what Dean says he might do if Bush were to offer pardons (which, of course, wouldn't actually be issued until Obama has won the presidency anyway). But that "Scooter Libby justice" phrase really doesn't reflect on McCain. Furthermore, Bush's commutation for Libby proves that the electoral consequences of excusing law-breaking won't keep him from doing excusing law-breaking—so long as

his own ass is on the line.

And given that it is, on FISA more than on any of the Administration's other law-breaking, you can be sure Bush will issue the pardons to keep himself safe.