

EXHIBIT K

Newsweek

Scare Tactics?

Are White House allies playing election-year hardball on eavesdropping?

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An aggressive campaign by the White House and its allies to win approval of a new electronic spying bill is escalating partisan tensions on Capitol Hill. The contentious debate over the measure could spill over into this fall's election campaign.

The latest tactic employed by administration supporters involves a \$2 million television advertising campaign featuring sinister images of Osama bin Laden that started running this week in the home districts of about 15 Democratic members of Congress who are potentially vulnerable this fall. The ads, funded by a newly formed conservative advocacy group called defenseofdemocracies.org, charge that House Democrats have allowed "surveillance against terrorists" to be "crippled" because they failed to approve a version of the spying bill supported by the Bush administration.

The group, run by Clifford May, a former communications director of the Republican National Committee, has not disclosed the names of its donors. May told NEWSWEEK that he launched the campaign for the express purpose of ratcheting up pressure on House Democrats. (The ads call on voters to contact specific Democratic members and demand that they vote "to keep us all safe.") "I think it's important for Democrats to hear from their constituents on this issue," May said. "This is a national security issue."

Democrats complain that the administration is trying to politicize the electronic surveillance issue and use it for partisan advantage this fall. "If you look at these ads, they are not too different from the ads they ran against Max Cleland in 2002," said Meredith Salsbery, press secretary to Minnesota Democratic Rep. Tim Walz, whose district has been targeted in the advertising campaign. (Those notorious ads impugned the patriotism and national security credentials of the Democratic senator from Georgia, a Vietnam veteran and triple amputee who wound up losing his re-election bid.) "To a lot of our constituents, these ads look like fear-mongering and scare tactics designed to persuade the public that the Democrats are soft on national security."

May's newly formed advocacy group operates out of the same offices as the Foundation for Defense of Democracies, a nonprofit and historically nonpartisan think tank that May also heads. He confirmed Wednesday that partisan antagonisms on the issue have been so heated that a number of prominent Democrats—including Sen. Charles Schumer, Reps. Eliot Engel and Jim Marshall and veteran Democratic strategist Donna Brazile—have quit the foundation's board in protest over the ad campaign. The resignations were first reported by Spencer Ackerman in [the Washington Independent](http://the.washingtonindependent.com). "I'm disappointed that the political pressures have been such that several Democratic members of FDD's board of advisers—including several who I'm pretty sure agree with us on the substance of the issue—have decided to resign. The Senate bill passed with overwhelming bipartisan support, which persuaded us this was not a partisan issue," May said.

Even some Senate Democrats who tried to arrange a compromise with the White House are now accusing the administration of acting in bad faith. As chair of the Senate Intelligence Committee,

Sen. Jay Rockefeller, the West Virginia Democrat, guided an electronic spying bill through the Senate that included a key provision championed by the White House and the telecommunications industry: it would give telecom firms retroactive immunity against private lawsuits filed by civil liberties groups. The lawsuits seek damages from companies that secretly cooperated with the administration's warrantless wiretapping program in the wake of the 9/11 attacks.

The bill championed by Rockefeller and approved by a substantial Senate majority would essentially wipe out those lawsuits. But Democratic leaders in the House, under pressure from liberal activists and civil liberties groups, refused to include a retroactive immunity provision in their version of the bill. Democratic leaders say the administration has boycotted "multiple" meetings intended to find a compromise that would be acceptable to House and Senate leaders and the president. The administration's stand-tough attitude has so angered Rockefeller that he, along with House leaders, recently signed on to an op-ed article accusing the White House of exploiting an intelligence issue for political purposes. (Georgia Rep. Marshall, one of those who resigned from the Foundation for Defense of Democracies's board in protest over the ad campaign, wrote in a letter to May this week that "since the only real dispute involves retroactive immunity, I assume the Foundation's ads are funded by telecommunication companies or others seeking immunity." May, however, insisted that the money had come from individual donors, saying he had not received "one dime" from the telecom companies—though he did not rule out receiving money from them in the future to finance further ads.)

Some supposedly nonpolitical intelligence professionals and law-enforcement officials have also been drawn into the political fray. Late last week Attorney General Michael Mukasey and National Intelligence Director Mike McConnell sent (and then made public) a letter to senior House and Senate Democrats. In the letter they claimed that because Congress had allowed a temporary electronic spying law to lapse earlier this month, private sector "partners" had ["reduced cooperation" with intelligence agencies](#).

Mukasey and McConnell did not name the "partners." But NEWSWEEK has learned that AT&T and Verizon both conveyed such concerns to the government. According to a knowledgeable industry source (who asked for anonymity when discussing sensitive material), AT&T told intelligence officials that because the temporary eavesdropping law, passed by Congress last summer, had expired, it would no longer help government agencies launch eavesdropping measures against new targets for fear the company could be exposed to new lawsuits. Another telephone giant, Verizon, expressed similar "concerns" about eavesdropping on new targets, although the source said that Verizon did not go so far as to refuse to comply with new government surveillance requests. A day after the letter was released, however, administration spokesmen backed away from much of its substance, acknowledging that all private sector partners had now agreed to continue working with U.S. intelligence agencies.

Even so, some administration officials continued to claim this week that intelligence agencies may have missed important terrorist communications during the six days AT&T (and possibly other unidentified firms) balked at initiating electronic surveillance of new targets. A spokesman for AT&T refused to confirm or deny whether the company had balked and later relented, saying only, "AT&T is fully committed to protecting our customers' privacy. We do not comment on matters of national security." A spokesman for Verizon declined to comment. Some industry and congressional officials believe the telecoms' threats not to cooperate were part of their own lobbying strategy to win the lawsuit immunity. Sources at both Verizon and AT&T said their companies had nothing to do with the new TV advertising campaign by the pro-administration group.

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