

STATE OF MICHIGAN LAW DAY 2006 ESSAY CONTEST
“LIBERTY UNDER LAW: SEPARATE BRANCHES, BALANCED POWERS”
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Suppose that the President, acting on his own authority and without a court warrant, has ordered surveillance on suspected foreign terrorist operatives within the United States. Should the President be able to order federal officials to eavesdrop on people within the United States?

The President of the United States should be able to wiretap suspected foreign terrorist operatives within this country, but he must follow U.S. laws and be authorized by a court warrant before he proceeds. By acting without court permission, he is exceeding his constitutional authority. Also, in the case of the current President, special powers only come into effect under a formal declaration of war, not a military engagement authorized by Congress; this cannot be used to authorize unwarranted wiretapping.

The Supreme Court has previously ruled on domestic terrorism cases. According to the Supreme Court Case United States v. United States District Court, 407 U. S. 297, 324(1972), the Fourth Amendment requires “prior judicial approval . . . for the type of domestic security surveillance involved” and goes on to state that the “Fourth Amendment freedoms cannot properly be guaranteed if domestic security surveillances are conducted solely within the discretion of the Executive Branch.” Id. at 316-317. Section Three of Article Two of the Constitution states that “[the President] shall take care that the laws be faithfully executed”. Therefore the President is not fulfilling his Constitutional duties.

The President has stated that Congress cannot regulate executive interceptions of communications between United States citizens or residents and foreign individuals. This is in direct contradiction of Section Eight of Article One of the Constitution on Congressional powers that states, “To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other Powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.” This means that Congress was within its rights to pass the Federal Intelligence Surveillance Act (FISA) to regulate surveillance. By not obtaining warrants through this act, the President is violating a constitutionally valid law.

It is necessary for the courts to oversee the surveillances authorized by the Executive Branch to prevent the monitoring of people without cause. A notable instance of this is former FBI Director J. Edgar Hoover's unauthorized wiretapping of Reverend Martin Luther King, Jr. The purpose of this was to discredit King, not for a legitimate purpose. By following FISA, the President ensures that requested wiretaps are for legitimate purposes.

The President should be able to wiretap suspected foreign terrorist operatives, but not without a court order. By not obtaining a warrant, he is breaking US laws including the US Constitution. Therefore the President is not following his constitutional duties. The President currently has no right to be able to wiretap US citizens without court permission.