

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?

“Mr. President, foreign terrorists have been spotted in the United States.”

“Where were they last seen?”

“New York City, sir. Can we set up surveillance and track them down?”

“Not without a court warrant.”

“But sir, you're the President, you just tell us to go, and we will go.”

“With my own power I can't.”

“Why not?”

“Because nobody should have *all* the power.”

The President should not be able to order federal officials to eavesdrop on people within the United States. The Bill of Rights clearly states in the Fourth Amendment that people have the right to be secure against unreasonable searches and seizures. However, the amendment goes on to say that if probable cause is found that a warrant should be issued in order for the search and seizure to proceed. In the case of a foreign terrorist there is probable cause. If a terrorist is spotted in the United States action needs to be taken in order to apprehend the threat. Apprehending the threat means that the President needs to get a court warrant in order to gain intelligence about the terrorist threat. If the President could act on his own free will, freedom would be compromised for Americans. The United States Supreme Court agrees.

In the case of United States v. United States District Court, 407 U.S. 297(1972) the United States charged three defendants with conspiring to destroy government property. The United States government used wiretaps to gain intelligence without a court warrant. The District Court said that the government was in violation of the Fourth Amendment. The Supreme Court decided the “Fourth Amendment freedoms cannot properly be guaranteed if domestic security surveillances may be conducted solely within the discretion of the Executive Branch [...without the detached judgment of a neutral magistrate.]” Id. at 316-317.

Our Forefathers envisioned a government that was very different than the one they were used to in England. If we had wanted a monarchy we would not have fought the Revolutionary War. Allowing one branch of government to have sole authority over any matter breaks our policy of checks and balances, which could endanger our freedom.

After the terrorist attacks of September 11, 2001, the Patriot Act was approved to give the President power to search and seize without a court warrant. This is a violation of our privacy and should not be allowed. Domestic security should be enforced, but not at the expense of our constitutional freedoms.

“Mr. President, terrorists have been spotted in the United States. Can we begin surveillance?”

“Has the court warrant been issued?”

“Yes, sir, we're ready to go.”

“Then by all means, find out what they're up to.”