

STATE OF MICHIGAN LAW DAY 2006 ESSAY CONTEST
“LIBERTY UNDER LAW: SEPARATE BRANCHES, BALANCED POWERS”

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Separation: is it Necessary?

Suppose the President, acting on his own and without a court warrant, has ordered spying and wire tapping on suspected foreign terrorists within the United States. Should the President be able to order federal officials to eavesdrop on people within the United States?

No, the President should not be able to order officials to eavesdrop without a warrant.

Separation of powers is one of this country's core democratic values that holds that the governmental powers must be equally separated among the legislative, judicial and executive branches of our government. Separation of powers is critical to prevent one branch of government from getting too much power and turning our country into a dictatorship. Separation of powers requires that all three branches of government must act before the President can legally order officials to spy. The Legislative Branch acted by creating the Foreign Intelligence Surveillance Act (“FISA”) stating that the Executive Branch needs a warrant to spy on people in this country. The Executive Branch must prove in each case that the warrant is necessary, and the Judicial Branch decides whether there is sufficient evidence to issue a warrant.

The Bill of Rights, Amendment IV reads, “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause...” The Fourth Amendment requires a warrant be obtained by members of the Executive Branch to spy upon suspicious individuals within the United States. Members of the Executive Branch can only receive a warrant by going to court and convincing the judge that certain citizens are suspicious. If the judge agrees, he or she will sign the warrant authorizing the executive branch to spy. In this way, the Executive Branch is being checked by the Judicial Branch.

The United States Supreme Court has looked at this issue and addressed whether there are other ways for the President to spy (using wire tapping) without obtaining a warrant and still obey the Fourth Amendment and our core democratic values. In the United States v. United States District Court, 407 U.S. 297(1972), the court decided that the Executive Branch cannot wire tap without a legal court warrant. The court concluded that, “the government's concerns do not justify departure in this case from the customary Fourth Amendment requirement of judicial approval prior to initiation of a search or surveillance. Although some added burden will be imposed on the Attorney General this inconvenience is justified in a free society to protect constitutional values.” Id. at 321.

The Executive Branch of our government should not be able to wire tap without a court warrant because it interferes with our system of separation of powers, and the Fourth Amendment to the Constitution protecting people from unreasonable search and seizure. While the President may at times need to wire tap, he or she cannot order officials to do so without approval from the Judicial Branch.