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The Boston Globe

# On wiretapping, Bush isn't listening to the Constitution

By Edward M. Kennedy | December 22, 2005

THE PRESIDENT is not above the law; he is not King George. Yet, with sorrow, we are now learning that in this great land we have an administration that has refused to follow well-crafted, longstanding procedures that require the president to get a court order before spying on people within the United States. With outrage, we learn that this administration believes that it does not have to follow the law of the land.

Not just above the law, this administration seems to be saying that it IS the law. It contends that it can decide on its own what the law is, how to interpret it, and whether or not it has to follow it. I believe that such an arrogant and expansive view of executive power would have sent chills down the spines of our Founding Fathers -- as it does for every American hearing these startling revelations today.

The president, the vice president, the secretary of state, and the attorney general tell us that the president can order domestic spying inside this country -- without judicial oversight -- under his power as commander in chief. Really? Where do they find that in the Constitution? Time and time again, this president has used his express, but limited, constitutional power to command the military to justify controversial activities -- after the fact.

The president is the commander in chief of the military. That doesn't give him the power to spy on civilians at home without any judicial oversight whatsoever, without ever revealing those activities to even well-established courts that review these matters in secrecy. Otherwise, every phone and computer in America should now come with a warning label: Warning: the privacy of your communications can no longer be guaranteed, by order of President Bush.

The president has the constitutional obligation to protect and defend the American people. That is obvious -- but he also took an oath of office, to "preserve, protect and defend the Constitution of the United States." With his arrogant usurpation of power and refusal to follow well-established wiretapping laws, I believe that this president is not


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living up to that oath. By shunning the oversight of the courts and ignoring the express language of the laws passed by Congress, this president is, in my judgment, defiantly and stubbornly ignoring the Constitution and laws passed by Congress.

Our founders did not fight a Revolutionary War to give such expanded, unchecked powers to the executive. Quite the contrary. Their concern was precisely the abuse of executive power.

The president has admitted, without any remorse, that he has repeatedly authorized his own advisers at the National Security Agency to eavesdrop on individuals inside the United States, without the prior court approval required under well-established laws. This president is focused on scapegoating The New York Times for breaking the story that brought this questionable spying program into the light of day. Once again, he's telling us -- "trust us, we are doing whatever we can to protect you." Well, that's just not enough. We want real answers about this program. Why were the courts cut out of the process, when judicial oversight is required by law? Yesterday the vice president cut short his trip to the Middle East to break the tie in a vote on an irresponsible budget proposal that will hurt America's families, yet he couldn't find the time to level with the American people and tell them exactly where the president has the authority to spy on them.

This is not a new debate. Years ago, with bipartisan support, I spearheaded the passage of the Foreign Intelligence Surveillance Act (FISA), which specifically requires the attorney general to obtain prior authorization from a judge, in a secret expedited proceeding, before engaging in domestic spying or wiretapping. Now, the president says that that law is "insufficient" and "outdated" to meet the current threats in the war on terror because it was passed nearly 30 years ago. The Constitution took effect in 1789 -- and it is still good law today.

I hope the president doesn't continue to hide behind such transparent and irrelevant justifications. Congress has amended the 1978 FISA law over time, most recently with the passage of the PATRIOT Act -- and there is no reason to think we wouldn't do so again -- if we knew what the administration is doing. If the president needs more powers to lawfully protect the American people from terrorism, then he should come to Congress to seek modification of current laws. The president has failed to provide a sufficient legal basis for his actions; instead he and his Cabinet spent the week refusing to negotiate with Congress and opposing bipartisan efforts to extend the PATRIOT Act for three more months.

Just this past week there were public reports that a college student in Massachusetts had two government agents show up at his house because he had gone to the library and asked for the official Chinese version of Mao Tse-tung's Communist Manifesto. Following his professor's instructions to use original source material, this young man discovered that he, too, was on the government's watch list.

Think of the chilling effect on free speech and academic freedom when a government agent shows up at your home -- after you request a book from the library.

Incredibly, we are now in an era where reading a controversial book may be evidence of a link to terrorists.

Something is amiss here. Something doesn't make sense. We need a thorough and independent investigation of these activities.

The Congress and the American people deserve answers now.

*Edward M. Kennedy is the senior US senator from Massachusetts.* ■

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