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The Debate

By Emily Messner

WWFFD? Another Perspective on Surveillance

If I were to design my own line of inspirational T-shirts and bracelets, the theme would be "WWFFD?" -- "What Would the Founding Fathers Do?" In the case of domestic surveillance, James Madison offers some guidance, in the form of his 1792 exposition on "Property."

Madison wrote that property rights extend beyond physical objects, to thoughts, opinions, and one's very liberty:

"[A] man has a property in his opinions and the free communication of them. ...He has a property very dear to him in the safety and liberty of his person. He has an equal property in the free use of his faculties and free choice of the objects on which to employ them. In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights."

For officials of the government to monitor the communication of these thoughts and opinions -- making themselves privy to intellectual property without the owner's consent -- is an affront to our right to keep our property to ourselves or to share it with only a select few. Of course, such surveillance also violates the implied right to privacy [scroll down to Amendment IX [here](#)]. It limits one's liberty, too, in that with the knowledge of surveillance comes self-censorship, thus suppressing the right to free expression.

That is not to say these rights should be absolute, but if they're going to be infringed, the government needs to make a compelling case that there is a national interest in doing so. That is a case that should be made before a court -- even if it must be a secret court, like that established by the [Foreign Intelligence Surveillance Act](#). Thanks to our separation of powers, we can trust our government enough to have a secret court; we cannot trust one branch of government to go it alone.

Just as the three branches of government exist in a balance of power, so do our rights -- the protection of which is the primary [purpose of government](#). In this case the government must weigh our rights to life and safety against our rights to liberty and property -- but both sides have to be considered very carefully in order to achieve an appropriate balance.

By circumventing the courts (FISA and [beyond](#)), the president leaves our [liberty and property insecure](#), for a dubious claim that life is being protected. If the claim is not dubious -- that is, if a particular wiretap could very well save lives -- why not get a warrant for the surveillance by explaining its necessity in a court of law?

If the FISA standard of probable cause does not suffice in this age of terrorist threats, as has been argued by [William Kristol and Gary Schmitt](#) (among others), then that is an excellent reason to pursue a revision of the standard. I very much doubt that Congress would have argued with extending probable cause to include persons listed as contacts in the [cell phone of a known terrorist](#), for example. Had the president simply pursued

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the change by lawful means [back in 2002](#) when he first authorized the surveillance of U.S. persons, it's hard to imagine that Congress wouldn't have been accommodating.

Because the clearly legal route could have been so easily pursued yet was not even attempted, one might wonder: Was this just a power grab by the executive, as [Jonathan Alter contends](#)?

In "[Property](#)," Madison warns of the dangers of a [concentration of power](#): "Where an excess of power prevails," he explains, "property of no sort is duly respected. No man is safe in his opinions, his person, his faculties, or his possessions."

By Emily Messner | January 3, 2006; 5:16 AM ET | Category: [Beltway Perspectives](#)
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Comments

Please [email us](#) to report offensive comments.

Thank you Ms. Messner and the Washington Post

Posted by: [Impeach Bush et al.](#) | January 3, 2006 08:41 AM

Thank you for your article. I get really nervous, anxious and upset everytime I hear: "This is done for national security"

"We have to know what the enemy is thinking"

"We want to stop terrorism"

It also scares me how quiet congress is about all of this. Incrementally, we are losing privacy, freedom and inaccessibility to our government. I try to communicate and I feel like I'm wasting my time. I wrote an article (I'm a retired psychiatric social worker who for thirty years provided psychotherapy to combat vets) discussing the "Traumatogenic Effects of War on the Psyche of Combat Military and its Relationship to Torture and Abuse." I support the Geneva Convention and the McCain Bill etc. but no one is looking at how war stresses out the soul, judgment and decision making ability of the tired, combate weary soldier. I have sent this article, which I wrote, based on material which was shared with me during psychotherapy sessions with combat veterans during my 30 years with the VA.

This information is qualitatively different from what we hear from soldiers/vets on TV as my information comes from behind closed door healing/therapy sessions---no drama, no saying the politically correct thing--their motivation is to get help and peace of mind.) I would be glad to e-mail you a copy if you like--but give me please, an e-mail that gets to your desk. I know that this is a little off topic but it also relates to our/my inability to communicate effectively with the people who are elected to serve us.

Thank you for your time. Hope to hear from you.

Joseph A. Dennison MSW, MSM, MTh, LCSW

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Posted by: [joe dennison](#) | January 3, 2006 09:57 AM

Emily, one of the things our Founder's--like James Madison--understood was that such questions as those raised by Bush's "extra-Constituional" actions in this matter are far too profound and important to be left to the whims of public opinion.

I note that the media has already begun whipping up a set of opinion polls that will doubtless show that the public supports Bush on this question. That is why Bush and his sycophants are eagerly looking forward to those polls.

This is how liberty dies. Just as in the words uttered by Senator Amydala (played by Natalie Portman) in that recent Star Wars movie: "...to the sound

of resounding applause." Bush--being the pathetically unprincipled and cynical politician that he is--will use fear, anger and anything else his crafty, corrupt political aides can focus test, to bit by bit, disassemble our Constitution to give him the power that he craves.

Back in the early days of the republic, public opinion was on the side of those who told us that black human beings were not "persons" but "property". If we put such questions to the test of public opinion, we might just as well ask can this Constitution. The last place on earth one will find a reverence for the Constitution is with the American public who are not all that different from how HL Mencken described them a century ago when he declared that no one ever lost money betting against their intelligence.

Posted by: Jaxas | January 3, 2006 10:01 AM

What is your problem with this? Are you afraid that someone is going to find out about your "secrets?" I couldn't care less if someone is listening to my conversations. I don't say anything on the phone that I wouldn't say in public. This is a big bruhaha about nothing. The "right" to privacy is a myth. There is no such "right."

Posted by: Kenneth | January 3, 2006 12:10 PM

Kenneth,

Perhaps you failed to read Emily's article, above. According to Madison at least if there is no 'right' to privacy, then there is in fact no right to property.

Whatever rights exist in a constitutional democracy exist because they are outlined in the Constitution or they are enacted by statute. This not only applies to individual rights. For instance the Supreme Court has the 'right' to be the final interpreter of the Constitution because the Constitution gives it that right.

The problem here is NOT that people want to defend the terrorists, or even to impair the President in waging the 'war on terror.' The problem is that the Administration has admitted it will ignore the law if and when it sees fit.

This is an extreme position and a radical departure from American history, especially since the Executive branch is removing itself from the system of checks and balances so carefully crafted by the FFs not because of a temporary emergency but for the indefinite future. Already the President has kept an 'emergency' program running into it's fourth year. He admits that this was done in spite of legal restrictions, and claims the inherent authority to do so. Think about the implication of this. Any law can be suspended or ignored for any length time regardless of what Congress, the Courts or the Constitution say, so long as the President judges that it helps keep the nation secure.

This is clearly not WWFFD.

Posted by: Bullsmith | January 3, 2006 12:38 PM

Foolish statements from the Kenneths of our country (we should have lots of them here before long) have no value as arguments or in any debate setting, but are interesting as peeks inside the methods of such people. Kenneth, for example, starts out with the well-worn "if you don't have anything to hide..." line, followed by a proclamation of his own innocence. This is a standard bullying tactic used to change the subject from threats to liberty to the presumed guilt of the person bringing up these threats. It makes no point about the subject at hand.

Next comes a declaration that there is no issue in any case, and then, perhaps as a proof of this, a leap to the factually untrue assertion that there is no right to privacy. This gesture towards honest debate is, after all, only a gesture.

I'm betting that the rest of the Kenneths who attempt to join the debate will employ bullying, lying and similar tactics to make their "points." Why not ignore them until they learn how to make an argument?

Posted by: james | January 3, 2006 01:29 PM

At least Kenneth was brief.

Posted by: Bullsmith | January 3, 2006 01:32 PM

Jaxas and all,

How could public opinion polls support Bush? "What good fortune it is for those in power that people do not think."

One reason. The media is allowing the far right to frame the discussion dishonestly. They are allowing the Chris Fords to argue by fearmongering, crying that the traitorous left want to tie the president's hands and "block the surveillance" which in their arguement is the one thing that will make al Qaeda come (even though when they come they'll come through the ports and borders this administration has failed to secure).

And in their true dysfunctional form the opposition (which includes plenty of Republicans) has not been able to successfully articulate that its not about stopping the listening, its about regulating it. We don't want to tie the president's hands, we just want someone to keep an eye on them.

Even Chris Matthews let Pat Buchanan get away with it without challenging him. Until the media says "stop right there, you are arguing that the left is trying to stop the government from syying. But (quotes) only says they want the spying regulated. There's a big difference between stopping it and regulating it. Can you answer the charge why the president should have no oversight, and how that oversight lessens our security."

Posted by: patriot1957 | January 3, 2006 01:37 PM

Emily's piece gets right to the point. The NSA scandal cuts directly to the heart of the Constitution and the democracy it is made to guarantee. At stake is nothing less than the Constitution, beacuse if the President is allowed to ignore Congress and the Courts, then the Constitution is void and our democracy finished. More and more columnists and other writers are making this simple point and I thank Emily for joining them.

I think all the hair-splitting over whether Bush's law-breaking was justified, and all the outright lying saying it was allowed are desparate attempts to steer our attention away from the simple facts and their simple consequence, which is impeachment. Why is it that the obvious punishment for this obvious crime is not more widely discussed? Republicans, don't want this of course, but what about the rest of the country. What is so hard to understand about this case, and what is there to fear from punishing Bush with the jail time he deserves?

Even Molly Ivans suggested Bush get a chance to back away from his NSA policy and his assertion that as commander-in-chief he can ignore Congress. Why? He has, by his own admission, repeatedly committed a felony that calls for a \$10,000 fine and 5 years in jail. Do we normally offer a bank-robber a chance to put the money back, or do we put him on trial for his actions?

Posted by: james | January 3, 2006 01:49 PM

Bullsmith,

Sorry I taxed your intelligence with those three paragraphs. Oh, and sorry for the big words too. But I was writing for people who read over the second-grade level and think past the pre-school level, so you weren't being addressed. Have a nice day.
Was that too long?

Posted by: james | January 3, 2006 01:53 PM

Kenneth, isn't your real name George W. Bush?

Posted by: Chris | January 3, 2006 01:57 PM

james - play nice! as you so rightly said above, we're here to make good

arguments about the important issues of the day, not to attack each other.
(Besides, I doubt Bullsmith's remark was directed at you.)

Posted by: m | January 3, 2006 02:06 PM

Hey James,

Come on! I was referring to the Chris Fords and SiliconDocs, who have recently posted literally thousands of angry words on Debate threads. Angry angry words. I should've prefaced my little jab with "Good Post James" because I agree with pretty much everything you've said today.

Except the part about me.

Posted by: Bullsmith | January 3, 2006 02:18 PM

I thought the Washington Post has already admitted their polls are rigged, er, I mean they use "weighting". Make me laugh.

Posted by: Poling along | January 3, 2006 02:24 PM

A poll recently showed that 59% of respondents do not believe poll results. They are all the Republicans who got re-elected in states where the exit polls showed they lost but the Debolt voting machines said they won. WOW. Now I believe that one.

Posted by: Poling Along | January 3, 2006 02:29 PM

My apologies, Bullsmith. A little after my angry reply, I read your previous post and realized that you probably weren't taunting me but expressing relief that at least Kenneth didn't go on.

And I agree with your first post. When Pat Buchanan et al. say that criticizing Bush is the same as saying we shouldn't spy on terrorists, that's just another bullying, subject-changing tactic used by the right, and nobody should let them get away with that.

Either I need to ease up on the coffee or drink some more. More, I think. But I'm genuinely sorry that I took your post wrongly, and I'll try to save the barbs for the more deserving.

Posted by: james | January 3, 2006 02:39 PM

Re: Polls and their accuracy. Yeah, polls are tricky, especially when you take into account wording of the questions and the available answers. But the basic statistical science of polling is pretty well established (but not as well as evolution ;)). I'm no expert on sampling etc., but I've seen plenty of convincing and detailed blog entries on wp.com dealing with the basic science behind it.

I wonder what the poll results would be if the asker quickly explained the FISA law and the Constitutional separation and balance of powers, and then asked the a question about the significance of Bush's actions. The real problem may not be the polls but the unfortunate ignorance of so many Americans.

Posted by: james | January 3, 2006 02:49 PM

"Had the president simply pursued the change by lawful means back in 2002 when he first authorized the surveillance of U.S. persons, it's hard to imagine that Congress wouldn't have been accommodating."

How simplistic! and how naive to think the same outrage that is occurring now wouldn't have spread all over the world to our enemies through our leaky Congress and Press. Our enemies, who have adjusted since the leak occurred in print, would have adjusted in 2002 as CNN spread the word of our pending datamining. Secret is Secret! Our rights to freedom and security of property Rights were trashed by the Left leaning Supreme Court justices just a few

months ago. So now we let courts protect us from our enemies? The Executive - President Bush - is suppose to protect not only our rights but the Constitution as Commander in Chief. Not at the whim of the press, the Congress, or the Court. The Executive doesn't have much power, but it does have this power, and should use it to protect me and even you from destruction. The Congress has been informed regarding this issue, and the Congress passed a resolution giving the President the power(once again) to conduct a war against Al Qaeda "Using ALL available means" look it up.

Posted by: jeffc | January 3, 2006 02:50 PM

I am in need of constitutional scholarship. Kenneth contends we have no "right" to privacy, but isn't it more correct that the government has no "right", or restricted rights, to invade, or take, our privacy? Isn't the Constitution the manner by which the people convey rights to the government, versus the government conveying rights to the people? Further, do we honor our brave and courageous ancestors, who rejoiced at the dawn's early light that our flag was still there, or instead do we honor bin Laden, by giving up our liberties in our moment of fear?

Posted by: JSMill | January 3, 2006 02:50 PM

James, thanks for the kind words. I enjoy your posts no end.

Now to jeffc.

Just answer the question. Is the President above the law? If so what restrictions are there on his power?

Stop saying the President got authority for this. He didn't. The few people in Congress who knew were gagged and could not legally object. That's not 'tacit approval'. If the Afghanistan resolution authorized domestic spying then that's news to the vast majority of those who voted for it.

Now we have laws written in invisibly ink by an unsuspecting Congress? Please. Have some respect.

The FISA law is in plain English. The Constution is in plain English. All the President's horses and All the President's men have yet to find anything in plain English that authorizes this program.

And as for revealing secrets to the enemy. Please! Next thing you know the NYT will tell them we've got satellites way up in space. Ooops. Damn. Now they now.

Posted by: Bullsmith | January 3, 2006 03:01 PM

Two questions: one empirical and one theoretical.

Empirical question: JeffC claims, "Our enemies ... have adjusted since the leak occurred in print." How is this known? If even a scintilla of evidence (not dogma and not fiat) could be put forth that the release of this information changed the communication methods of terrorists, what is it.

Theoretical question: I've asked this two times already, but it's gone unanswered, so I'll make it three. Given that the ease of the FISA court and the allowances for retroactive warrants moots the issue of security vs. liberties, what is the compelling interest that necessitated the executive branch to seize power and remove review in this fashion?

Posted by: Matthew | January 3, 2006 03:05 PM

JSMills: Don't worry. You're not confused: Kenneth is (or is being intentionally obtuse). To give the benefit of the doubt, there is no specific right to privacy articulated in the Constitution or its Amendments. However, the SCOTUS has found in a long line of cases that the right to privacy is fundamental and one definitely envisioned by the FF. Therefore, the right is real; is the basis of many decisions; and does belong to the individual.

Posted by: Matthew | January 3, 2006 03:12 PM

Matthew,

IMHO here is no good answer to the empirical question. Either the Administration is not honestly describing the program or there is no obvious harm. Notice that the only new thing published here isn't some new form of surveillance, it's warrantless surveillance. The terrorists never had a say in the warrant process to begin with, so they haven't lost anything. American democracy probably has but well, as the Administration's defenders are so quick to point out: what has it done for you lately.

I fear the honest answer to the theoretical question is that the great powers behind the throne feel that the Executive should escape meaningful oversight. Reduce all the rhetoric and that's the argument I hear. And just like with tax cuts or using the war to smear Democrats, this is something these people deeply believe in. Of course they also believe in the permanent Republican majority.

But then again, I'm obviously in love with death and terrorism or I'd stop talking like this.

Posted by: Bullsmith | January 3, 2006 03:14 PM

What is really amazing to me is how much any of this really lacks serious legal analysis. What the President did was perfectly legal? Why? Because when it comes to dealing with foreign policy, nations, or agents, he is the constitutional principal.

It is not Congress or the Courts, and just as the FISA Review Court wrote in 2002, the FISA statute cannot encroach on his authority. Let's make the plain and simple Article II gives him that authority. He may spy on any foreign agents he reasonably wishes to. What is more, nothing in the Constitution authorizes the federal courts to second-guess his judgment.

Were this pure domestic surveillance, I would concede that the Congress rules. However, all these calls are of international.

Furthermore, it is beyond judicial certainty that warrantless exceptions exist. If you doubt this proposition, then I suggest going to an airport and explain that a warrant is needed to inspect you or your luggage. Cross the U.S. border and explain to the customs agents that they need a warrant to inspect your car, its contents or your person. Anyone ever seen a ship in a port being inspected? Tell the Coast Guard or port inspectors that they must have a warrant. I'll assure you that your pleas will be instantly rejected.

Additionally, the courts have held that international mail may also be searched without a warrant. Someone please explain why a phone call to suspected Al Qaeda agents may not be intercepted, yet a package my friend in London may be? Any domestic party or U.S. citizen's conversation being overheard is simply incidental. As long as there is a reasonable pursuit with a good faith belief that the foreign target is a legit one, President Bush, like President Clinton before him, and the next President-elect in '08 has the constitutional authority

Yes, I believe that inherent in his power as commander-in-chief is the ability to gather intelligence to prevent attacks on U.S. interests. Still, the stronger argument is the President is responsible for the conduct of foreign policy, including the handling of foreign agents--friends or foes. Like it or not, understand it or not, his constitutional authority in dealing with them may not be extinguished by the Congress; nor is it subject to judicial review.

It's beyond silly to imagine that the President needs permission from a judge to determine spy on Al Qaeda.

Ms. Messner, I suggest leaving the legal analysis to people who actually attend law school.

Posted by: KMac | January 3, 2006 03:30 PM

Matthew,

I agree with Bullsmith on both questions. Adding to the empirical issue, there was a column in the WP Opinion section this Sunday (I'm pretty sure it was then) pointing out that NSA's kind of surveillance isn't nearly as useful as monitoring the web-sites used by Al-Quada operatives. Worth looking at. And I think the entire "yer givin the terrorists aid!" argument is assinine anyway. The administration said the same thing about the secret prisons and it doesn't wash. When fundamental liberties are at risk, the debate belongs wide out in the open. And the 1st Ammendment guarnatees this right. So there.

On the theoretical question, Bullsmith is right that certain members of the administration (Cheney and Rumsfeld) have believe for years that the executive should have completely unfettered power in wartime. They hadn't dreamed up an eternal War on Terror scenario back when they served Nixon, but the Vietnam war served the same purpose for them at the time. They haven't changed a bit. IMHO they're the ones who have, like two demons on GWBs right and left shoulders (they bumped off the angel), steered Bush down this road. But in any case Bush has to take responsibility.

Posted by: james | January 3, 2006 03:39 PM

KMac,

1. How do you know who's being spied on? How do you know it's purely international?
2. According to your arguments, the FISA laws are already unconstitutional, no?
3. If the FISA laws are unconstitutional isn't that a matter for the courts?
4. Assuming your arguments are correct (I don't) why can't the President submit himself to judicial review? Because he's so right he doesn't have to?
5. What law school do you go to where all the lawyers agree that this issue isn't even up for debate? None of the lawyers in my family see it your way.
6. Instead of leaving the judgements to people who 'actually attend law school.' How about leaving them to people who have 'actually been appointed to the Federal courts'?
7. Since when is the media no place to discuss the law?

Posted by: Bullsmith | January 3, 2006 03:40 PM

itis really fucking simple: the president has broken the law and according to the constitution he should be impeached. he also broke the law relative to the false 'intelligence' he used to justify iraq .. to lie to the congress for this purpose is a violation of law that requires impeachment. that is the fucking law. so why is this goon bush still in power ? the mainstream media ejaculated all over itself on a repeated basis relative to clinton and his blowjob. day and night. and now ?

Posted by: alias | January 3, 2006 03:42 PM

Mr. Madison and his colleagues made clear in many of their writings, not the least of which are the Constitution itself and the supporting documents known as the Federalist papers, that the claims of this administration are hogwash.

The President's argument, John C. Yoo's arguement are easily refuted by them and by more recents members of Congress, specifically those that wrote the War Powers act and the FISA legislation.

<http://thetenthousandthings.blogspot.com/2005/12/he-shall-take-care-that-laws-be.html>

Posted by: Andrew C. White | January 3, 2006 03:47 PM

KMac,

Your arguments are incorrect. First, while the President does have the right to conduct overseas surveillance without oversight, that situation ends once a US

citizen on US soil is involved. The NSA wiretaps involved, by the administrations admission, communications which included domestic participants on US soil and thus fall under FISA. Purely domestic surveillance may have also occurred, but in any case US citizens do not lose their Constitutional rights when they make an international call or e-mail. Emily is not the one who needs to brush up on the law.

The Coast Guard and International Mail analogies do not apply. Mail, bags, cargo, etc. coming into the country may be inspected in neutral territory designed for this purpose. And these, again, involve foreign items coming into the country, not domestic communications moving out.

And last, you don't address any central questions. The administration already had, through FISA the authority to conduct wiretaps on domestic-foreign communications, with secret judicial oversight. Emergencies wiretaps, etc. are allowed as long as the warrant is applied for within 15 days. Nobody here is questioning the executive authority to engage in legitimate, lawful spying. The questions are: 1) How, Constitutionally, can the president claim to have the power to ignore US laws when he feels like it, and 2) Why did the president choose to ignore FISA when it appears to give him all the tools he needs? The only semi-plausible, administration-friendly answer I can come up with to the second question is that the administration believes that some judges on the FISA court are leaking information to terrorist cells. But not even Cheney has tried that one yet.

Posted by: james | January 3, 2006 04:00 PM

My first feeling about this warrantless surveillance was absolute outrage. I even wrote a letter to my congresscritters about it. One of them even wrote back and referenced my note so I know that it has been read. (Of course, that same senator promptly voted for drilling in ANWR, and re-authorizing the Patriot Act...so take that with a large grain of salt.) Though I am still offended, I seem to have settled into a despairing state of acceptance. How many times has this happened? First the information is provided about, oh, whatever. The Bin Laden memo. Torture in Afghanistan, at Gitmo, at Abu Graib. The "fixing" of intel to support a predetermined policy. Kidnapping and rendition, the "ghosting" of suspected terrorists. Secret prisons. FBI surveillance of peace groups. The NYPD tactics during the Republican convention. All of it just outrageous abuse of government power. The blogosphere explodes in partisan finger-pointing and obfuscation. Nothing changes, the newscycle moves on, and within a few weeks, the public at large wouldn't be able to say what the keffuffle had been about in the first place. And so the palace coup continues and the Imperial Presidency marches on. Too many Americans are like Kenneth, blindly willing to cede their rights and freedoms to the government in exchange for "Big Daddy's" assurance that he and his are safe from the bad guys. I suppose it depends on which particular bad guy you fear the most.

Posted by: Mara | January 3, 2006 04:01 PM

KMac: I have attended law school; have a JD; and find your fiats unpersuasive.

When it comes to interpreting the U.S.C., even when it encroaches upon the definition and limits of presidential power, SCOTUS, and not POTUS, reign supreme. Sure, the Legislature is given the right to regulate interstate commerce, but it's up to SCOTUS to say whether or not that extends to home-grown wheat. So get off your plenary powers, don't question the administration horse.

And leave the analysis to us professionals. :)

Bullsmith and james, thanks for the responses.

Posted by: Matthew | January 3, 2006 04:03 PM

Anyone taken in by KMac's insistent arrogance should know a few things.

First, the airport and border analogies are not relevant. In those cases, the searches are conducted only where the subject has consented--that is, chosen

to board an airplane or cross the border. It is not an "exception" at all, but consent.

Second, a U.S. citizen does not concede his or her rights by engaging in communication with a non-citizen. That's just silly. The president's foreign policy power does not function like the Commerce Clause, triggering the limitless power of the executive whenever some connection to non-U.S. interests is implicated. When the executive listens to my phone calls without my consent, probable cause, or a warrant, it is violating the 4th Amendment, regardless of who is on the other end of the line.

Finally, the assertion that the Executive has unlimited power in the conduct of foreign policy is flat wrong. I doubt even Vice President Cheney would make that argument. The Fourth Amendment applies to all three branches of government, and contains no exceptions in the case of foreign spying. Nothing in Article II suggests that it supersedes other portions of the document, nor is there any judicial authority for such a proposition. The 2002 FISA court opinion referred to by KMac states that Congress cannot limit the executive's constitutional powers in this area. True enough. But it does not say that those powers include the right to conduct searches without consent, probable cause or a warrant on U.S. citizens.

Mr. KMac, I suggest leaving the legal analysis to those who are willing to frame and analyze the issues as they actually exist, relying on text and precedent as it actually exists, and not those who rely on improper analogies and misstatements of law.

Posted by: Bart | January 3, 2006 04:06 PM

A WWFFD t-shirt? How about one with a picture of Karl Rove ("BOO!!") with the caption: "Don't hate the Playa, Hate the Game". :)

Posted by: | January 3, 2006 04:12 PM

An interesting article! Emily has opened quite a door.

Nice to hear Liberals like Messner are interested in Madison, Locke and Jefferson on the issue of private property. Given this new found revelation, I'm sure we Libertarian-leaning Conservatives can expect support on property issues like an end to inheritance (private property) taxes - which are an obvious and egregious example of double taxation, an end to "wetland" laws - which paralyze farmers, and an end to "imminent domain" land grabs - which are the most modern affronts to private property rights.

Welcome home Emily.

Posted by: Omar | January 3, 2006 04:23 PM

Omar:

If we could just get away from these knee-jerk labels of conservative and liberal, just maybe everyone could start having an INTELLIGENT conversation (as opposed to a monitored INTELLIGENCE conversation, aka wire tap) about the issues. Studies show that cooperation, not competition, is the most efficient and effective way to grow abundance for all peoples. IMPEACH BUSH !!!

Posted by: New Day | January 3, 2006 04:41 PM

Hi Omar,

You've left us hanging. What is the libertarian conservative position on a President having 'plenary' powers that extend so far as to abrogate sections of the Constitution? Or am I misunderstanding his claim of powers somehow?

(Another question that's puzzled me. All taxes on after-tax income are 'double taxation.' How come the inheritance tax and/or investment income gets a bye before sales taxes, or property taxes, or gas taxes or so many others? How come only the first \$80,000 (I think) of income are subject to the Social Security deduction? Isn't that essentially more double taxation, but only on those earning 80 grand or less?)

Posted by: Bullsmith | January 3, 2006 04:54 PM

"However, all these calls are of international. "

KMac, how would you know this? Because Bush told you so? Please, I'm ROFLMAO. How do you know if Bush has exceeded his legal authority if there is no oversight?

Coast Guard and border guards (and agricultural inspectors etc etc) are directed in their duties by laws, not by the desires of the inspector. And if an inspector believes it is his duty to do a full body cavity search on everyone in his line, he would have to answer to his superior for that as well as to the lawyers of those who were abused by this inspectors abuse of his authority.

The President has determined that he shall have no legislative or judicial oversight, and that on his word alone he can spy on you for any reason he deems makes you a threat (you know, like those violent insurrectionist Quakers they were spying on) and that you can be named an enemy combatant and held without charges or legal recourse on his whims.

Only an idiot would give a leader a blank check for absolute power without oversight. The founding fathers were not idiots.

Posted by: p | January 3, 2006 05:04 PM

Emily's ill-informed misuse of the term "domestic surveillance" notwithstanding, there's been nothing disclosed that provides a basis upon which anyone can conclude that the program has violated the law. To the extent that the FISA warrant procedure wasn't used, it's likely that the President had the constitutional power to engage in the type of intercepts that have been identified as the subject of the surveillance program at issue, particularly in light of the joint resolution authorizing the use of force (not that the intercepts are necessarily "force," but the joint resolution amounts to a Congressional acknowledgment of a foreign enemy threatening the US). If Congress decides that the program violates the law, Congress will act to curtail the program. The fact that that hasn't happened already, in spite of the fact that Congress has been fully informed regarding the program since its inception in 2002, should suggest that the hysteria we're hearing now is unfounded or, in the case of some, just a symptom of the derangement the left has been suffering since Bush was elected (as in the case of what New Day thinks might pass for "intelligent conversation").

Just because a tool of our nation's intelligence services has the potential of being abused doesn't mean it has been abused; congressional oversight is What the Founding Fathers Would Do, and, despite the fevered imaginings of those calling for Bush's impeachment, it's what Congress has been doing -- so far without any apparent demand that the surveillance program be stopped or significantly reduced.

Emily, are you really suggesting that a FISA warrant is required to permit the government to listen to communications that cross the US border and involve a foreign person on one end, when the purpose of the surveillance is to protect from a Congressionally acknowledged foreign threat? That's the type of communications identified by the White House as being subject to the intercepts at issue.

Posted by: RC | January 3, 2006 05:17 PM

Mark Twain once said and I may be paraphrasing a little bit, but:
 "Americans have a Constitution that guarantees the freedom of speech and religion and Americans have the good sense to practice neither."

It seems this may again be true of Americans today. Regardless, the Constitution of the United States is an engine of freedom forged with the blood of many patriots over the entire history of man-kind. It is a truly unique and most beautiful invention of man-kind which embodies the knowledge of the Ages that tyranny is just a breath way and it provides the mechanism to prevent such tyranny. Checks and Balances.

It is a wise creation in its understanding of human nature because it recognizes that it is hard for men to be objective about themselves and to accept that there are no easy ways out and eventually you have to do what is right. For example, free the slaves like my hero George Washington did when he died.

The requirement of checks and balances is fundamental to our Constitution and to insuring our freedoms. The price of freedom is constant vigilance.

IMPEACH BUSH!!!

Posted by: Dr Watson | January 3, 2006 05:20 PM

RC you say "Congress has been fully informed" and has been exercising oversight of the program. If that were true, your defence would be plausible

But it's not true.

You say the President has not been engaging in domestic surveillance. But the leakers said exactly the opposite, and both the White House and the Justice Department have accused them of leaking the truth, not lying.

You present a defense where, since the White House says something, it is true. As Reagan said "Trust, but verify." Why won't the President allow verification?

The question isn't does the President have the power to spy, fight the terrorists or anything else. It's does the President have the power to pick which laws he will obey and what oversight he will accept?

Only the 'ill-informed' would say yes.

Posted by: Bullsmith | January 3, 2006 05:31 PM

If the House does not draw up articles of impeachment then I do not understand why they impeach Clinton for lying about a blow job. Hell, he had no choice, he's married to Hillary go goodness sakes.

If no impeach for Bush, the Bush needs to Pardon Clinton for the embarrassment of being investigated his entire Presidency for his involvement in a land deal already investigated and ending up being impeached for getting a blow job. Please, impeach Bush, the WHOLE WORLD IS WATCHING!!!!

Posted by: Pardon Me | January 3, 2006 05:38 PM

"That's the type of communications identified by the White House as being subject to the intercepts at issue."

Ah, but there's the rub - identified by the White House. How would we know if that's all that he's intercepting if there's no oversight? We're going to depend on Bush's honor? You're killing me.

No blanks checks to Bush. No blank checks to Hillary.

"particularly in light of the joint resolution authorizing the use of force " Well, except for that little tiny thing where the people who voted for the force say that Bush has re-interpreted their words and intent without their permission. Now be honest about that contention - you tell your teen he can go to Pat's party as long as Pats parents are home. Later you find out the party was in a hotel room, while pats parents were...at home. Your teen says "you said I could go to Pat's party as long as his parents were home". You answer..... Or, he goes to Mike's party where the pothead parents are home supplying pot. Your teen says "I thought it was a blanket ruling that I could go to parties as long as the parents are home".

"The fact that that hasn't happened already, in spite of the fact that Congress has been fully informed regarding the program since its inception in 2002, should suggest that the hysteria we're hearing now is unfounded"
Please don't make dishonest arguements here. Congress had no legal recourse here except to write a letter, handwritten so its not even in the computer. Gagging them does not constitute consent when they don't stop you.

Posted by: patriot1957 | January 3, 2006 05:43 PM

Omar,

As a leftie, I've thought for a long time that more dialogue between the left and the libertarian right would be fruitful, especially if it got more on the left to question their pro-big-government positions. While I don't buy the Reagan line that government is the problem, not the solution, I feel strongly that too much government in too many areas of life is a big problem. My biggest criticism of the left has been its overreliance on government power, some of the fruits of which have been predictably seized upon by the neo-fascist far right. The time has come for the left to rethink the role of government power in advancing our causes.

I don't think that everyone on the left, myself included, is going to jump over to the libertarian right campaign, but I do think that we can come to agree on many principles and have a healthy debate about particulars. So I look forward to some good, productive arguments. Cheers!

And to RC,

There isn't any doubt that FISA warrant is required to permit the government to listen to communications that cross the US border. That's part of the law. As Andrew C. White pointed out, interpretations that deny this are very shaky at best. Emergency monitoring is provided for, so no bona fide threat need go unchecked.

Your points seem to be an echo of KMac's, all of which, especially the supposed congressional authorization of unconstitutional presidential power, were refuted from several angles. If you can make a good argument (not just a restatement) for the either the President's unlimited wartime power, his legal ability to contravene FISA, or his powers of unwarranted domestic spying under FISA, please make it.

Posted by: james | January 3, 2006 05:54 PM

RC,

"Emily's ill-informed misuse of the term "domestic surveillance" notwithstanding, there's been nothing disclosed that provides a basis upon which anyone can conclude that the program has violated the law."

So, if you saw a 10 year old carrying a handgun, but you're not exactly sure the gun is able to fire real bullets, and you're not even sure if there are bullets in the gun, and you haven't heard any loud explosions or seen any dead bodies lying about, its okay?

Posted by: OhYeah | January 3, 2006 06:00 PM

While appeals to the Constitution and to the rule of law would seem, de facto, to settle this argument, you must realize that this Administration of recycled Nixonites is merely taking a second bite at the apple. They blame the post Watergate constraints on everyone but the executive branch.

It was not the media, it was not the left, it was not the Congress who overreached and ascribed absolute power to the President. The curtailment of assumed powers came after decades of escalating abuses, culminating with the Nixonian assertion that, "when the President does it, it's not illegal". The virtue of this administration, if it can be called that, is that they overreached so quickly and broadly that their stumbles occurred so rapidly as to present a clear picture of their incompetence. Remember the furor over the Poindexter data mining program? They saw that and decided the public outcry was just misguided, and they knew better.

As long as we allow them to stonewall, mislead and exaggerate, we will never know what we sacrificed in the name of retaining our "freedoms". For this President, a poster child for the incurious and inarticulate, to blithely say we should trust him is absurd in light of the program's magnitude. To those who say we have nothing to worry about if not engaged in wrongdoing, it must be pointed out that this turns the reality of civil liberties and privacy on its head. I need not prove I'm innocent; your job is to determine my guilt using evidence gathered within the boundaries of the law.

As for the Justice Dept investigation of the leak, does anyone really believe the

guilty should be pointing fingers at anyone?

Posted by: bklyndan | January 3, 2006 06:02 PM

From the last testimony go-round 30 years ago when the original McGovernites went after the NSA and the fascist evil Amerikkkan gov't out to destroy civil liberties:

"On May 21, 1940, President Franklin Roosevelt issued a memorandum to the Attorney General stating his view that electronic surveillance would be proper under the Constitution where "grave matters involving defense of the nation" were involved. The President authorized and directed the Attorney General "to secure information by listening devices [directed at] the conversation or other communications of persons suspected of subversive activities against the Government of the United States, including suspected spies." The Attorney General was requested "to limit these investigations so conducted to a minimum and to limit them insofar as possible to aliens." From 1940 to 1946, over 5,000 wiretaps and microphone plants were done in the USA. All international communications, inc. all from US areas under martial law (Hawaii, Alaska territories) to the mainland, were screened by military censors and copies retained."

From Chris Ford - Wow! The Long Dark Night of Fascism was launched by FDR. Because we ALL know that precious enemy liberties once lost, affect the entire American public eventually, and those lost American liberties are lost forever! (Lefty Dogma Talking Point # 7)

"The Attorney General (Levi) responded in part as follows: "The use of wiretaps and microphones involving trespass present more difficult problems because of the inadmissibility of any evidence obtained in court cases and because of current judicial and public attitude regarding their use."

From Chris Ford - Hmmmm. So the "harm" done to any American citizen or foreigner here from a warrantless wiretap of an international call directed to him or her is only in ID'ing whether or not that person in the US taking a call from Saudi Arabia or whatever is an enemy agent or otherwise assisting a hostile foreign power. Since all info gathered from a warrantless wiretap cannot be used against that person in the US in Court? Ohhhhhhh, the humanity, I can see the Leftie's great concern now! The principle of the thing, plus a concern for enemy rights. Since a computer may monitor my sisters family's call to me saying Italy sucked it has rained 5 days, oh, I'd rather have mass death in America from unmonitored Jihadis here than have my privacy violated so by a computer!!! Or poor Abdul the baker who WOULD get a closer look from FBI if the NSA flagged his brother-in-law in Pakistan asking how the big cake he was making for the US Capital was coming along - and involve actual human agents in finding yes, Abdul IS a baker in Bethesda, and he is making a big cake for John Kerry's bash for visiting Vietnamese dignitaries at the Hart Building..Not a problem for Abdul. In the end, it is about the right of Jihadis or Chinese spies here to remain anonymous the Left is concerned with, since they too wish to harm America and have the Left's support.

(Levi continued) "As I have stated, it is the Department's policy to authorize electronic surveillance for foreign intelligence purposes only when the subject is a foreign power or an agent of a foreign power. By the term "agent" I mean a conscious agent -- the agency must be of a special kind and must relate to activities of great concern to the United States for foreign intelligence or counterintelligence reasons. In addition, at present, there is no warrantless electronic surveillance directed against any American citizen, and although it is conceivable that circumstances justifying such surveillance may arise in the future, I will not authorize the surveillance unless it is clear that the American citizen is an active, conscious agent or collaborator of a foreign power."

From Chris Ford - Sounds quite reasonable. Who wishes the next Mohammed Atta or US citizen and Muslim jihadi Alema U-Ackbar to remain hidden and safe to plan mayhem. Or refuse to uncover a spy ring involving Chinese and Chinese-Americans here stealing secrets from Boeing?? Levi's 30-year old comments never thought we'd let a 9/11 happen here, didn't contemplate suicidal fanatic terrorists seeking nukes to destroy infidel cities, but reflected 200 years court decisions of what was permissible in fighting the enemy in light of the 4th. He also seems to be in the mainstream of thought before and

since his time on what a President is obligated under the Constitution to do to defend against a foreign enemy - a position opposed only by the Left fringe, civil liberties absolutists, and those Democrats seeking only to damage a sitting Republican President for partisan gain.

Posted by: Chris Ford | January 3, 2006 06:03 PM

Dear Emily,

Thank you so very much for your article, "WWFFD? Another Perspective on Surveillance", especially Madison's observations, so wise and rigorous.

Leo Lovelace

Posted by: Leo Lovelace | January 3, 2006 06:20 PM

This debate is definitely elevated by the quote from James Madison, and the surrounding comments from Emily.

We must remember that the courts have already narrowed property rights with thousands of examples of asset seizures from arrested persons who are never found guilty of a crime, and with imminent domain powers expanded to allow the forced replacement of one taxpayer with another preferred taxpayer. Again, I assert that the hiding culprit in the issue of domestic surveillance is the federal court system which is not functioning as a check or balance.

The Orwellian thing directly comparable to the fictional slogan "War is Peace" is the idea being deeply impressed upon citizens that "Surveillance is Safety."

Again, it is very important to bear in mind that the reason for bypassing flexible and existing laws was to escape record-keeping requirements.

Posted by: On the plantation | January 3, 2006 06:23 PM

Truly excellent Debate topic by Emily. The Founding Fathers were amazing people and true geniuses. Compare them to the bunch of corrupt dunderheads we have in government these days... if only we lived in an age of reason and enlightenment.

Emily also nailed it in that this is all about checks and balances amid our branches of government, nothing else. Like every issue, a great deal of partisan hot air will arise around the subject, but the bottom line is that the U.S. Constitution has a careful balance of power designed into it, and those in office are supposed to uphold that balance rather than challenge it. They swear to uphold the Constitution when they are sworn into office. To ignore the Constitution is to not live up to that vow, and may have legal ramifications. Time will tell if George Bush is guilty of such conduct. If so, and there is a Democratic Congress, he may face impeachment. The Founding Fathers designed impeachment into the Constitution for a reason as well: balance of power, what with the legislative branch exerting power over the executive branch as the head of the judicial branch presides. For all we know, this domestic surveillance scandal may have set off a constitutional process that will correct any imbalance of power that may have occurred in recent years between the branches of government. It will be interesting to see what all this leads to.

Posted by: ErrinF | January 3, 2006 06:30 PM

So I'm driving down the road. The police stop me in my driveway and ask for my license and registration, which I provide. They ask me to exit and then search my vehicle -- no permission, no probable cause. They find nothing.

They then enter my home and do the same. They search everything, but damage nothing. They find absolutely nothing incriminating.

What are my options? Other than the inconvenience and loss of my time, what are my damages? Virtually nil.

Now, what if I didn't even know that these searches were happening? I have done nothing wrong and will not be charged with a crime. What are my damages now?

Now applying this to phone intercepts with foreigners -- suspected terrorists no less -- what are the damages? (Not to mention the "border search" issue.)

Unless and until one of these "victims" is ever charged with a crime and such "evidence" is sought to be admitted in court, this is a nonissue. And even then a minimal issue at best.

All who condemn this action as Orwellian doomsday predictions are far too concerned with the hypothetical and not dealing with reality. A reality where a large portion of eastern culture would be very happy to have us all dead ... and some are even plotting and discussing such. I for one would like to know that my government is doing something about it.

Posted by: MOG | January 3, 2006 06:45 PM

Chris Ford, stop obfuscating every issue with your usual partisan distractions. While you're at it, can you make a post that doesn't include an army of exaggerated straw men? Right or Left; Who cares. Just make your arguments on the topic at hand for once without resorting to the same tired routine of sophistry and ad hominum attacks. Stop clinging to partisanship like a security blanket. Too insecure to debate without it?

Your points about Roosevelt have nothing to do with FISA, the law our current president was supposed to be following, a law he HAD to follow if he could not change it through the proper process. Roosevelt wasn't accountable to FISA because it wasn't law yet. Also, your historical references have time and time again been off the mark and selective in what they represent. This time, you fail to mention that FDR never authorized WARRANTLESS surveillance. One of the reasons this scandal is so controversial is because Bush is the first president to authorize warrantless searches. Emily even provided a link in her recent Debate topics that show how people are attempting to obfuscate the issue by claiming past presidents did what Bush recently did by ignoring FISA. Truth of the matter is, Bush is on his own when it comes to being a president that allowed electronic surveillance without warrants. All other presidents have respected and included the judicial branch when it came to surveillance policies.

Chris Ford, stop misrepresenting and obfuscating everything. Your constant manipulative conduct is wearing thin.

Posted by: ErrinF | January 3, 2006 06:53 PM

I am a strong defender of individual rights and liberties, but for goodness sakes, don't any of you remember that we are at war? Just because we don't "like" the war, doesn't mean it will go away. If Bush pulled out all of our troops, they would still try to kill us. All of us. Many rights were suspended during the Civil War, WW's I and II -- AND reinstated after it was over. I say kill all those bastards who would kill my family and mock their murders. P.S. Don't you people have day jobs???

Posted by: Tami | January 3, 2006 06:55 PM

I've already said more than my fair two cents today, but I had to note the excellent quality of posts on this topic. Emily really does a great job of providing a topic and some factual or historical context, and there are a number of comments that add further insight and information.

And then of course, there's Chris Ford.

To all those who are trying to find fact, expose falsehood or simply test their opinions (James, Matthew, Mara, Bart, ErrinF, patriot1957 and many others) thanks much.

Posted by: BullsMith | January 3, 2006 06:58 PM

MOG

And the reason you can't use a court to issue warrants is?

Posted by: BullsMith | January 3, 2006 07:02 PM

Errin the non-Lefty (he/she swears it is so!) writes:

"Chris Ford, stop obfuscating every issue with your usual partisan distractions."

How is quoting testimony from the 1975 NSA hearings involving specifically what FDR did and AG Levi's opinion an "obfuscation"?

Or is it the truth that hurts you so, Errin?

Errin - "This time, you fail to mention that FDR never authorized WARRANTLESS surveillance."

Even you can't be that dumb, Errin.

Errin - "Chris Ford, stop misrepresenting and obfuscating everything. Your constant manipulative conduct is wearing thin."

You repeat yourself, but otherwise excellent Marxist/Marcusian tactics. In debate, a good little Lefty like you is taught not to rebut the facts of FDR warrantless searches, Truman's, Levi's testimony and my take on it - but to "get to challenging the motive of the speaker" for the purpose of thought policing.

Sort of in the same vein of:

"Comrade, what is your purpose, what do you hope to gain by questioning the Party-published numbers of the 5 year Plan?"

"I think the numbers are off. Way low."

"Whether they are off or not is irrelevant. It is your motive in questioning them that is the crux of the issue we are debating, Comrade"

Posted by: | January 3, 2006 07:15 PM

"I for one would like to know that my government is doing something about it."
"

So would I. But without oversight, all you'll have is their word on what they've done to make you safe.

And given their failing 9-11 commission report card, all their blunderbuss about how safe they're making you safe isn't worth the paper its printed on, is it?

This is not about security, its about oversight.

Posted by: patriot 1957 | January 3, 2006 07:17 PM

Interesting debate on many levels, but there is one fundamental point that always seems to be missed or glossed over.

Bullsmith writes: "This is an extreme position and a radical departure from American history, especially since the Executive branch is removing itself from the system of checks and balances so carefully crafted by the FFs not because of a temporary emergency but for the indefinite future."

Not correct--it is not at all a radical departure from American history during a time of crisis. Lincoln went even further than Bush in extending the power of the Executive Branch and even defied an order by the Chief Justice of the Supreme Court who argued at the time, as many of you do now, that he had no right to do so. At the time Lincoln did this (1861), there was no way to know how long the Civil War would be or even who would win. There was also no FISA, but a president who defies the Supreme Court is not likely to have felt bound by a FISA court either.

Emily writes: "Thanks to our separation of powers, we can trust our government enough to have a secret court; we cannot trust one branch of government to go it alone." Yet that is what we did during the Civil War. As noted above, Lincoln did not cede the Judicial branch authority when he perceived it to involve the security of the Nation--there is even some scholarship that contends he considered having the Chief Justice (who was a staunch pro-slavery supporter) arrested in the name of national security.

The debate over the legalities and constitutionality of FISA and domestic surveillance is a good one, but the notion that Bush is the first U.S. president to assert Executive authority in such an aggressive manner is wrong. Lincoln believed that his first duty was to save the Union and he pushed the constitutional envelope in doing that. My guess is that, in this nuclear world of ours, Bush probably views himself in a similar role. You may not agree with such assertions of Executive power, but they are certainly not one devoid of precedent in U.S. history. Those of you who have such angst about Bush's actions should consider how you would have felt about Lincoln had you lived in the 1860s . . . and then consider how you feel about him now.

Yes, I would put Lincoln up against any of our Founding Fathers as one of our greatest presidents.

Posted by: KB | January 3, 2006 07:20 PM

Tami

"Terrorism is the best political motivator, for nothing drives people harder than a fear of sudden death."

Go look up who said it.

Tami you've been suckered by the dishonest who want you to believe we want to tie the President's hands so Osama can come get you. Actually, we want the President to do his job and really secure the country instead of just say he did - ports, borders, chemical and nuclear plants, to name a few. And given that the bird flu is likely to kill about 100X more people than Osama could we'd like some plans for that too - an all out effort funding molecular vaccine technology would be a good start so you can make vaccine in days or weeks instead of current technology that takes six months. A couple million of us will be dead withing six months. This flu is similar to the 1918 flu, when people woke up healthy and were dead by nightfall. Securing this country goes a lot farther than Osama and Bush gets a failing grade.

Which is what makes his fearmongering so galling when he tries to sucker nice people like you into thinking that legal oversight/checks and balances on his power will be what makes Osama come get you, not his utter failure to actually secure us.

We believe the President can accomplish all the surveillance that he claims is necessary by legal, constitutional means and with appropriate oversight. Not in defiance of the courts and laws and without oversight.

You have to remember this started in 2002. In 2002 the nation was still reeling from the fear of sudden attack, the President was telling us we would be attacked again any day now, and Congress passed the (un)Patriot Act without even reading it with only ONE dissenting vote. If he told Congress he needed the law changed to enable him to safeguard us, it would have been changed, probably without the lawmakers even reading it.

But he didn't ask Congress to change the law, did he? Instead he found a Chris Ford who could spin legal arguements so complex that it would muddy the waters enough to get him off the hook, and decided to act without oversight. And Tami you need to be worried about that.

Posted by: patriot 1957 | January 3, 2006 07:40 PM

KB,

Bush is Lincoln?

Al Qaida is a threat equal to the dissolution of the union?

You are right about the extemity of Lincoln's leadership, but wrong in the comparison of these leaders or their wars. The nuclear threat is not a new one, nor is terrorism. Is the balance of powers to be suspended until neither exits? Or simply until a Democrat is elected President?

Pragmatically, Bush has demonstrated sufficient incompetence in the areas we do know about that it is now time for the other branches of government to reassert themselves. The civil war had a foreseeable end. The war on terror

does not. At the least the branches of government must come to a more lasting accomodation of Mr. Bush's program than simply leaving him unaccountable until he declares the threat passed.

What if he needs to suspend elections? After all, would Lincoln have let the Confederates vote him out?

Posted by: Bullsmith | January 3, 2006 07:42 PM

Sorry, that quote is "Terrorism is the best political weapon, for nothing drives people harder than a fear of sudden death."

Posted by: | January 3, 2006 07:43 PM

Stop with Lincoln. I mean, really. It's getting old. If the best comparison you can find for the state of the nation as it is today is 125 years ago when one half of the nation had ceded from the other, you have problems. And a lack of analytical skill.

Much more apropos is the Reagan era. There was an ongoing menace (I'm assuming that those arguing for Bush's war powers aren't referencing Iraq) but the enemy was really an ideology, adopted by some nations certainly, but an ideology nonetheless. Given that technology and the development of the nation are also much closer (20 years versus 120), it is also a better analytical fit.

Unless all this hubbub over Lincoln is, in reality, just a gloss over, "But so-and-so got to stay out until 4. Why do I have to be home by 11.30?"

Posted by: Matthew | January 3, 2006 07:49 PM

You can make your empty accusations about my being a Leftist all you like. You have no proof, because I'm not a Leftist. Not that you desire proof, as yours is a world of guilty until proven innocent with no case necessary beyond an accusation.

I have already stated I am a progressive libertarian. All the stances I have taken here on The Debate have been consistant with that, not with any position that is specifically of the left. I have argued against torture as policy (libertarian), for withdrawal from Iraq (libertarian), and against domestic spying (libertarian). That I have taken right wing extremists around here to task does not make me automatically of the left wing. I equally dislike manipulative partisanship from both sides, but it is only the right wing extremists that I seem to encounter here. I don't bother much with any blog that is deliberately partisan.

The worst lie put forth from this McCarthyite Chris Ford is that I'm somehow a Marxist. There isn't a single post I've made that in anyway promotes Marxism. I don't even think Marxism is relevant AT ALL these days. And yet, just try and convince the thoroughly delusional Chris Ford that I am not the witch or the red or the whatever he thinks I may be. Not that he cares; He just likes to point the finger and accuse, with little regard for the truth of the accusation or it's consequences. Honestly, Chris Ford is just a snake in the grass hiding behind politic partisanship. The way he constantly lies and accuses is reprehensible. Just another coward disguising their hatred of their fellow man as political speech. Pathetic.

Posted by: ErrinF | January 3, 2006 08:11 PM

You guys are so right that the Supreme Court would have the final say over who has control over foreign policy. Although, it was dicta, you cannot deny that the FISA Review court said that the FISA statute could not encroach on the President's authority to do this kind of surveillance. If the Supreme Court's word is the final say, then there is no doubt that the President reigns unequal in the foreign powers authority.

Here is what the Court said in U.S. v Curtiss-Wright Export Corp. (299 U.S. 304) 1936, "It is important to bear in mind that we are here dealing not alone with an authority vested in the President by an exertion of legislative power, but with such an authority plus the very delicate, plenary and EXCLUSIVE (emphasis added) power of the President as the sole organ of the federal

government in the field of international relations."

I will respond to some of the criticisms. First, I did not mean to belittle Ms. Messner, it's just that often the media, instead of helping, muddy the waters. To the extent that I offender her or others, I apologize. I should have been gentler with my words.

How do I know that this wasn't ever purely domestic spying? I do not know. I am only relying on published accounts. To date, I've not heard of any such purely domestic surveillance. In any event, I made it clear earlier, but absent some exigent circumstance, the President would must definitely have to yield to FISA or any other statute. With that much, I agree.

First of all, ports of entry are not "neutral" places in any sense; they are under U.S. sovereignty.

Second, it is true that people who enter those ports consent to having their contents or persons searched and are free to simply not go to those places, if they wish to be search-free. Likewise, someone send parcels to or from the United States consent to the same searches. I cannot understand why emails or phone calls aren't subject to the same measure. An international bound parcel may or may not be inspected. Likewise, the same rule applies to email or electronic signal leaving or entering the country. One has no constitutional right to mail (electronically or snailmail) to foreign shores. Bottom line is when one sends anything to a foreign agent, and that foreign agent is the reasonable target of the executives SOLE power to deal with foreign agents, then I will argue that you are simply unfortunately but lawfully intercepted.

As for the argument that the President may not listen to a U.S. citizen's phone call, the answer is that is absolutely true. He cannot because FISA has said that he cannot. However, the President may intercept the phone call of any suspected foreign agent he desires, and if that foreign agents happens to be calling you, you are simply incidental. If a foreign person is the legitimate target of the interception, I will repeat that Congress cannot so limit the President's authority by statute.

This next statement, however, is critical. To say that such power gives the executive unlimited authority is vastly overstated. Even if a citizen's phone call is intercepted and it is found that the citizen is participating in some illegal activity, could not congress simply enact allow disallowing for incidental domestic intercepts to be disallowed as evidence in any criminal or civil matter. Or couldn't Congress simply give that person blanket immunity? It surely could.

As for my framing the issue properly, it seems to me that the only real issue here is whether or not FISA or the President rules. I don't even see the Fourth Amendment argument here. The President doesn't need a warrant or even probable cause to spy on foreign persons. Amendment Four requires that his search be reasonable. Warrant requirements generally pertain to criminal matters, and probable cause is the standard upon which they are granted. Unless you are arguing that it is inherently unreasonable to spy on foreign agents when a citizen's chatter might be overheard or also intercepted, then I don't really see how the Fourth Amendment carries any part of this argument.

Would you guys agree that the President could spy on purely international phone calls? A phone call from Afghanistan to Iraq would be ok to intercept? Or could Congress forbid the President from doing so? If you believe that Congress has that authority over the President, then we might not ever agree, but you'd have to admit that the weight of case law abides with me. However, if you agree that the executive could intercept an international phone call, I cannot understand why the international agent gets protected simply because she decides to communicate with a citizen, unless you believe at that point the President's authority to deal with that person simply vanishes.

I am aware in no other matter involving searches how the executive loses power to search just because an otherwise innocent or privileged person may be incidentally exposed to the search.

Yes, I know that Congress could ban a pure criminal search like that. But herein lies the whole matter, Congress doesn't give the President the authority to spy on foreign persons, and it cannot take it away, not even if it incidentally infringes upon a domestic person. But even if you still disagree, I cannot understand how you can think this is a slam dunk against the President. I'd

think my argument is surely reasonable.

Posted by: KMac | January 3, 2006 08:19 PM

From an Andrew McCarthy original with some additions:

What makes this president think he can invade the privacy of Americans without a warrant? I don't know. Could it be the powers, long recognized by federal law, to:

Conduct warrantless searches of suspects for officer safety and process incidentally found contraband as evidence.

Ability of Federal poultry inspectors to, for investigative purposes and the protection of the public health and safety, conduct warrantless searches of all poultry raising and processing establishments.

Detain American citizens for investigative purposes without a warrant;

Arrest American citizens, based on probable cause, without a warrant;

Conduct a warrantless search of the person of an American citizen who has been detained, with or without a warrant;

Conduct a warrantless search of the home of an American citizen in order to secure the premises while a warrant is being obtained;

Conduct a warrantless search of, and seize, items belonging to American citizens that are displayed in plain view and that are obviously criminal or dangerous in nature;

Conduct a warrantless search of anything belonging to an American citizen under exigent circumstances if considerations of public safety make obtaining a warrant impractical;

Conduct a warrantless search of an American citizen's home and belongings if another person, who has apparent authority over the premises, consents;

Conduct a warrantless search of an American citizen's car anytime there is probable cause to believe it contains contraband or any evidence of a crime;

Conduct a warrantless search of any closed container inside the car of an American citizen if there is probable cause to search the car -- regardless of whether there is probable cause to search the container itself;

Conduct a warrantless search of any property apparently abandoned by an American citizen;

Conduct a warrantless search of any property of an American citizen that has lawfully been seized in order to create an inventory and protect police from potential hazards or civil claims;

Conduct a warrantless search -- including a strip search -- at the border of any American citizen entering or leaving the United States;

Conduct a warrantless search at the border of the baggage and other property of any American citizen entering or leaving the United States;

Conduct a warrantless search of any American citizen seeking to enter a public building;

Conduct a warrantless search of random Americans at police checkpoints established for public-safety purposes (such as to detect and discourage drunk driving);

Conduct warrantless monitoring of common areas frequented by American citizens;

Conduct warrantless searches of American citizens and their vessels on the high seas;

Conduct warrantless monitoring of any telephone call or conversation of an American citizen as long as one participant in the conversation has consented to the monitoring;

Conduct warrantless searches of junkyards maintained by American citizens;

Conduct warrantless searches of hospitals, nursing homes, nuclear power plants, chemical plants, coal mines and so on maintained by American citizens;

Conduct warrantless searches of docks maintained by American citizens;

Conduct warrantless searches of bars or nightclubs owned by American citizens to police underage drinking;

Conduct warrantless searches of auto-repair shops operated by American citizens;

Conduct warrantless searches of the books of American gem dealers in order to discourage traffic in stolen goods;

Conduct warrantless drug screening of American citizens working in government, emergency services, the transportation industry, and nuclear plants;

Conduct warrantless drug screening of American citizens who are school officials;

Conduct warrantless drug screening of American citizens who are school students;

Conduct warrantless drug searches of property and belongings American citizens who are school students for school safety;

Conduct warrantless searches of American citizens who are on bail, probation or parole.

=====

Why are some on the Left more exercised about the rights of sick terrorists than the property rights of some family raising possibly sick game hens? Or school kids knapsacks?

Because knapsacks are a bigger threat than Islamoids? Recreational boaters?

Because the privacy rights of Chinese spies here getting phone calls from Beijing are more important than the privacy rights of American nursing home owners?

Or is it all about Bush?

Which would explain why the media and the Left is not crying about ANY of these other warrantless searches nor the national security ones done in previous Democratic Administrations.

Posted by: Chris Ford | January 3, 2006 08:32 PM

Matthew--perhaps with your vast knowledge of history you could enlighten us about a Soviet attack on the United States that killed thousands of our citizens. Unless you can, I submit to you that the Civil War era is far more relevant than an analogy to a "cold war" in which the "enemy" never attacked the U.S.

The nuclear threat with the USSR was certainly real, but both sides knew where the missiles would come from. Given the nature of Al Qaeda, who do we retaliate against if they manage to detonate a nuclear device in a city? What is to deter them?

The reason you get tired of the Lincoln analogy is because you have no good arguments to refute it--which only reflects on your own analytical shortcomings.

Bullsmith--I wouldn't say Bush is Lincoln, but submit to you that the terrorism we face today dovetailing with the availability of nuclear technology/weapons makes the potential threat equal to the dissolution of the Union. Remember that some 600,000 - 700,000 Americans died in the Civil War, but one nuclear device could kill millions in New York today. Also, back in 1861, there was no foreseeable end to the Civil War--hindsight is 20/20.

By the way, had the South not seceded and had they the votes, they could have voted Lincoln out and I haven't heard anyone argue that he would have refused to step down. I'm not arguing, however, for an unchecked presidency, only that it is unwarranted to claim that some type of dictatorial regime is emerging as a result of Bush's actions.

Posted by: KB | January 3, 2006 08:50 PM

I guess I should rebutt point for point as well, else Chris Ford might get away with his misrepresentations. I'd rather expose him for the liar he is. Here's from his last post:

Errin the non-Lefty (he/she swears it is so!) writes:

"Chris Ford, stop obfuscating every issue with your usual partisan distractions."

How is quoting testimony from the 1975 NSA hearings involving specifically what FDR did and AG Levi's opinion an "obfuscation"? - Chris Ford

Nice innocent act. Anyone can read your post to see you hardly limited yourself to 'quoting testimony'. You tried to use the 'testimony' to obfuscate the issue in your usual partisan manner. While we're on it, you still fail to address that FDR and FISA have nothing to with each other, or how the actions of FDR somehow let George Bush off the hook.

More from Chris Ford:

Errin - "This time, you fail to mention that FDR never authorized WARRANTLESS surveillance."

Even you can't be that dumb, Errin. -Chris Ford

That's all you can say? What a dodge! Here's a link Emily provided recently that details that Bush is guilty of warrantless surveillance whereas other presidents have not:

<http://mediamatters.org/items/200512240002>

And that's warrantless surveillance against Americans, Chris Ford. I know you'll twist the facts every chance you get, so don't even try using the fact that warrantless surveillance has been used by other presidents against non-Americans. Your historical analogies are often slective in what they exclude and what they include, probably because they are merely well crafted lies on your part. Anybody can claim historical precedence by being selectively dishonest like you. You rely on people's ignorance of history when using such a tactic, but the majority of the time you are disproven time and time again by other debaters who do know the full history of what you often partially describe. Why, you are guilty of just about everything the article in the link I just provided says. It's all about myths and falsehoods put forth surrounding this domestic spying scandal, a pretty good description of your common tactics.

One more thing from Chris Ford:

Errin - "Chris Ford, stop misrepresenting and obfuscating everything. Your constant manipulative conduct is wearing thin."

You repeat yourself, but otherwise excellent Marxist/Marcusian tactics. In debate, a good little Lefty like you is taught not to rebut the facts of FDR warrantless searches, Truman's, Levi's testimony and my take on it - but to "get to challenging the motive of the speaker" for the purpose of thought policing.

-Chris Ford

Notice how he never actually defends his actions as being misrepresentative and obfuscating. He just misrepresents and obfuscates the issue of his own knack for misrepresentation and obfuscation. I obviously challenged him on FDR's warrantless search claim he made, as he dismissed my rebuttal with 'you can't be that dumb' earlier in his post, then he turns around and says I never rebutted him but only attacked 'the motives of the speaker'. What complete bull. Just goes to show what a reckless liar he is, so much so that he contradicts one lie with another.

This has nothing to do with Left or Right. This has everything to do with trying to have an honest debate here, while others are introducing lies and misrepresentations into the debate. I'm not questioning motives as a Marxist tactic; I'm exposing a liar for being a liar so that other people here can form their opinions fairly and openly without deliberate misrepresentation corrupting the process. Chris Ford frequently cites historic examples that he doesn't represent in their truthful entirety. He tried it with Lincoln and I called him on it, now he's trying it with FDR. What a shame his viewpoints have to rely so heavily on ignorance and lies.

Posted by: ErrinF | January 3, 2006 08:51 PM

KB: "A Soviet attack that killed thousands?" Well, if we generalize a bit to saying that this is really an ideological struggle, which was my original point,

then how about.... Korea? Vietnam? Sorry; those were well-hidden gems in the bowels of history. No reason they should have sprung to mind.

Anything else?

Posted by: Matthew | January 3, 2006 09:03 PM

James wrote:

1) How, Constitutionally, can the president claim to have the power to ignore US laws

James.....I have to differ with you here. He has the power to ignore a Congressional statute which infringes on a power granted to him by the Constitution. Now in the particular case we are discussing the FISA statute and legislative history of it carefully concedes to him such powers as the Constitution gives him; and does not purport to define those, only to neither add nor subtract from them. So there should be two main issues to decide. First, does he have the constitutional authority he claims. Second, does what he is doing, whether it comports with FISA or not, lie within the scope of the power claimed. One of the legal eagles in this thread may know much better than I how to frame this (I am no lawyer, not even a single class in law), but it cannot be seen as a given that he is currently violating the law. Challenging it, certainly; but to that he is entitled. I do of course hope and expect that he will lose his challenge.

To those who would have him impeached on this basis An impeachable offence is anything the House of Representatives in its wisdom decides it is. I do not believe this merits impeachment whichever way the Supreme Court might decide on the underlying issue in the future. The President is operating on the basis of his interpretation of the Law and the Constitution. The Courts have yet to speak clearly to this specific issue and he is entitled to his interpretation until it does. Truman was not impeached for seizing the steel mills from their rightful owners, even though this seizure was ultimately ruled (6 to 3) an unconstitutional exercise of his powers. And to Pardon Me..... Clinton was not impeached for a blow job. He was impeached, among other things, for lying under oath, and what was at issue there was not a claimed power under the Constitution to do so. As I mentioned earlier, the House is not bound by any statute or court in its impeachment proceedings so it certainly could have impeached him for this form of sexual behavior had it dared.

To those who would assert that this program is without merit.....

We simply do not know that. We only know what has been leaked and the details have been sparse at best and anything but definitive. As of yet, there is no smoking gun, to use the lovely media phrase. If the administration has a reasonable case to make it is conceivable that security requirements constrain them from making it. I don't necessarily believe this is likely, but I don't think we can yet close that door. The facts are not yet fully known and until they are I don't think the administration should be lynched. That can wait.

Posted by: Cayambe | January 3, 2006 09:11 PM

Well said Ms. Messner. Civics 101 - 1) Separation of powers, 2) Checks and balances, and 3) as the founding fathers wanted it to be; that no person would be subjected to search or seizure of one's person, place or thing without a showing of probable cause to a court of record.....

Posted by: Rich | January 3, 2006 09:14 PM

To respond a bit less tongue-in-cheek to KB, though, and to really drive the point home: only in the operation of the Executive Office is the United States on a "war footing." The chill of the Cold War which prompted people to buy their own fall-out shelters really isn't present. The underlying tension that, at any time, something really could get driven to the brink? Not there. In 2001 and parts of 2002, probably. But not now. And the idea of a collective tightening of the belts? No.

We really are in a 1980s period. There's a thought of danger, but it's relatively calm (and again, I'm excluding Iraq from this analysis as it doesn't seem to be where those who would grant Bush war powers seem to derive them). And we're engaged in a conflict of ideologies, not a war of nations, and much less

a war amongst our own several states. There is no bright-line (or even dim-line) way to know if the "war" has been won. If anything, it is even more nebulous than the Cold War since that, at least, more or less ended with the collapse of the Soviet Union.

So, to bring back to the original point, our state of the nation is not one in which the executive should be being granted emergency powers. It's simply not an accurate reflection of where we are at. And the fact that some extra-Constitutional powers were seized by Lincoln in the midst of a United States Civil War does not mean that anything less is acceptable today.

Posted by: Matthew | January 3, 2006 09:40 PM

KB,

I can understand why a Lincoln parallel is attractive, but you fail to show how the Al Qaida threat is greater than that of the Cold War. Because you knew where the missiles were (but couldn't stop them)? Because the enemy ideology was threatening to spread to a majority of the world's population, not hiding in caves in Afghanistan? How many Americans died in wars with Communists? The State was in constant peril, but the Constitution wasn't. It shouldn't be now.

Look, it is true Presidents have argued for and/or taken power in wartime. But this one did it by fiat, in secret, gagging every person who knew about it and deliberately avoiding a secret court that could have at least provided a leak-proof avenue to quiet judicial review.

If the President were arguing for these powers, his arguments would have much more credibility. But he tried to completely avoid oversight here and, when outed, he blamed the messenger.

That is not the behaviour of an Abraham Lincoln.

Besides, the issue is electronic surveillance. The Lincoln comparisons are tangential at best.

Posted by: Bullsmith | January 3, 2006 09:58 PM

"Amendment Four requires that his search be reasonable..."

Here's my point - who gets to decide what's "reasonable"? The colonists had enough of King George deciding, and the founding fathers wanted to make sure that the new executive didn't have that kind of power again. Its not OK if the sole determiner of "reasonable" rests with one person in one branch of government - an American version of "King George". Its the old check and balances thing.

They also recognized that genuine emergencies might occur when the president needed to have the freedom to act decisively if regular rules couldn't be applied.

In this case you might be able to make an argument that Bush might have ordered the spying for a month or two after 9/11 until the country settled down and the threats were better understood and the matter could be properly conducted.

But once it was determined how malleable Congress was, there was no excuse for not coming to Congress and making his case for how the law needed to be changed to keep up with technology or how compliance with FISA made the country less safe. He STILL hasn't answered those questions. Congress probably would have "sunsetting" the power and provided some kind of guidelines and oversight. We might still be having a debate about whether or not the powers should be renewed like we are for the unPatriot Act. But the process would be defined and there would be oversight.

But then, the law making Hitler dictator sunsetted every four years too, but his lockstep control over the legislature ensured its constant renewal.

"Would you guys agree that the President could spy on purely international phone calls? ..."

Well, who is overseeing the spying to make sure its all international? The President can spy on anyone so long as there are checks and balances on what

is considered reasonable justification, on who has access to the data and on how that data can be used. The President's whims are not enough, especially when that President now has the power to incarcerate you without charges or legal recourse and throw away the key because he, based solely on his own opinion, thinks you are a "threat". Its not OK for George, its not OK for Hillary.

Posted by: patriot 1957 | January 3, 2006 10:19 PM

As a practical matter the executive needs a legal process in order to use NSA intelligence domestically. Without that, the executive is limited to it's military powers to wage the WOT, even though rendition of Liberals is somewhat appealing.

Posted by: chris | January 3, 2006 10:34 PM

"The chill of the Cold War which prompted people to buy their own fall-out shelters really isn't present."

Americans need to get some perspective. When avian flu mutates to spread person to person it could easily kill 16 million people in the US, sicken millions more and destroy our economy. That would be like al Qaeda setting off nuclear bombs in about 20 cities - (of course it wouldn't seem like so much of a threat if our ports and cargo were secure (ABC news smuggled enough uranium to make a dirty bomb - twice).)

There is so much more to securing the country than fearmongering about al Qaeda. And Bush isn't getting the job done.

Bush says his primary duty is to make us safe (its actually not, its to preserve, protect and defend the Constitution). So what is doing to make us safe from guns?

- there were 12,000 homicide related firearm deaths in the US in 2002. That's like four 9-11's every year. Where is the war on gun violence, perpetuated on Americans by Americans. How has the President made us safe from gun related homicide?

38,000 Americans die every year from regular old influenza. That's like 12 9-11's every year. Where is the war on influenza? They are almost all preventable with vaccine.

No, I'm not ready to turn over my civil rights yet.

Posted by: patriot 1957 | January 3, 2006 10:48 PM

Erin - You're a flaming Lefty and a silly twat to boot. You dispute FDR did warrantless seaches after I quote testimony saying he did? I credit you for adherence to blind ideology as well as renaming yourself "progressive" since "Marxist" and "Stalinist" are now so out of favor in your circles.

Emily - "By circumventing the courts (FISA and beyond), the president leaves our liberty and property insecure, for a dubious claim that life is being protected."

Ed Morrissey writes: "Even most of the Democrats in this country would have a problem with candidates adopting the "Let DC Burn As Long As International Calls Don't Get Checked" platform. I, for one, would rather have the NSA checking on valid leads on al-Qaeda terrorists here in the US than to have my granddaughter vaporized by Islamofascists at the Mall of America."

Emily - "If the claim is not dubious -- that is, if a particular wiretap could very well save lives -- why not get a warrant for the surveillance by explaining its necessity in a court of law?"

If court meddling is so simple and non-obstrusive in "checking the other branches" from too much power, and in a superior position frankly, from ruling on what is permissible for the other branches to do - Then robed judges and teams of lawyers should sit in the House and Senate well. Have them wisely rule on each Congressional budget item, for example, as meeting the Courts approval or overruling it after lawyers take the Congressional vote and present arguments if it is good or bad. And civilian appellate courts could ride in our aircraft carrier groups and set up in Army bases to rule on the legality of

each troops actions that could violate the civil liberties of the enemy. Let's adopt the Israeli model of lawyers overseeing all government actions. Sound good? And, if the courts are so easy to insinuate in overseeing the President and Congress and such a wonderful check on excessive powers, then by all means let them take up occupancy guiding the unchecked power of the media. Set up courts in newrooms and TV stations to hear arguments from reporters and editors, then rule on matters of bias, factual errors, spiked stories, hiring practices, and national security issues. But then who will check the unchecked power of lawyers given supremacy over America? Would Congress have the power to vote down a court decision? A President the power to shoot 1 judge and 3 trial lawyers a month on a random basis to keep them checked?

Emily - "Had the president simply pursued the change by lawful means back in 2002 when he first authorized the surveillance of U.S. persons, it's hard to imagine that Congress wouldn't have been accommodating."

The Left and the Democrats were in full campaign mode in 2002 and already obsessing about enemy human rights and enemy civil liberties. Ceding war powers that were the President's to Congress to grant or not grant the President permission to use and to the courts after 9/11 would be a wet dream to Schumer, Feingold, the ACLU and others whose wet dream is a weakened opposite Party Presidency giving up powers to a divided Congress and a gang of lawyers. And might have given the Left the side benefit of disclosing NSA, CIA sources and methods being used against the Islamoids in testimony as they fought amending FISA.

Posted by: Chris Ford | January 3, 2006 10:49 PM

The root problem of domestic surveillance without some judicial check (such as getting a warrant from a judge) is that the power simply will not be restrained to the purpose claimed for the warrantless intrusion.

Punishing those citizens on the wrong side of issues is too great a temptation for those holding power, if that power is unchecked, unquestioned.

A question for those who suggest that the President's hands must not be tied by such modest procedures like justifying the need and seeking warrants for domestic surveillance - because we're at war ...

... what liberty would you NOT give up to feel a little safer? What freedom, if any, would you be willing to die to defend for yourself, and for others you care about?

Mill

Posted by: Mill_of_Mn | January 4, 2006 12:40 AM

To both Patriot 1957 and Mill,

I will answer you both. First Mill, your argument is simply one about abuse of power, but the potential for abuse is always present in power. That potential does not mean that the power doesn't exist or isn't sole authority. I mean the police, the military, the President, Congress and even the courts can abuse authority. Again, that doesn't mean the authority doesn't exist.

Why can't the President simply get a warrant? The question is simply because if Article 2 empowers him, he doesn't need a warrant, nor can congress require such a thing. Separation of powers means that another branch cannot intrude into your sphere of power.

Whether or not you agree that the President has this particular power, it seems beyond argument that Congress, cannot for example, require his getting permission from a judge before he orders a particularly military air strike against an enemy target. Congress cannot either by statute itself or by purportedly shifting to the judiciary the power to oversee executive authority to recognize or not the legitimacy of other nations. The President could, for example, recognize Taiwan as an independent nation-state or not. Congress cannot stop him nor enlist the courts to stop him.

The notions above are completely accurate and current jurisprudence. Okay, so, if Article II gives the President this care, how can Congress invade his ambit or require his reporting to a magistrate?

The Constitution does not permit Congress to require the President to plead with a magistrate before he can spy on Osama Bin Laden, Al Qaeda, The Pope, or Tony Blair.

Congress has several options, it can de-fund whatever program exists at the NSA, and it can give degrees of immunity to any protected person, U.S. Citizen or otherwise, who is the incidental subject of spying. Those are just two ways to check his authority.

Of course, he gets to determine the reasonable of his authority. Any injured party could, in fact, petition a court if he were the intentional subject of unlawful activity, but that is a high hurdle to jump. Lest we forget, Congress could always impeach. That remains a mighty check on the executive.

Posted by: Kmac | January 4, 2006 02:01 AM

Regarding wiretapping: The Bush administration is defending its right to creative surveillance based on a Memo written by a California attorney. Can't remember his name.

Can anyone post the Memo or provide directions to access the full text of the Memo?

Posted by: Alphonsus | January 4, 2006 09:43 AM

"Lest we forget, Congress could always impeach. That remains a mighty check on the executive."

You're kidding, right? This congress? This white house?

This "war" on terrorism is a brilliant political ploy. Remember the cold war - this is more of the same. It is a vehicle, a means to an end.

Patriot, you make some good points. Too bad there's not an ounce of outrage over your topics in the general electorate.

Good discussion here, too bad the voters don't see it this way. BTW, labels are irrelevant in this day and age when factoids and facts are a few clicks away.

Posted by: gonzo | January 4, 2006 10:14 AM

Bullsmith,

Hang no more.

Bush's program apparently is extremely limited to intercepting communication with the enemy during time of war. (Anything beyond this would indeed be outrageous.) Clearly, this program falls under his limited - but clear - role as Commander in Chief. If Roosevelt had discovered communication with Hitler during WWII by US citizens, it's impossible to imagine Emily and others raising such a stink. Therein lies the problem then from the vantage point of the Bush supporters: too many Americans think we are not at war.

One's attitude towards the seriousness of the War on Terror coincides with the degree of outrage over the wiretapping of enemy communication.

As for the "double taxation" points you made, you are on the money. Double (and triple) taxation is a serious modern burden on working class people. The Inheritance Tax though is especially despicable because it leads to the loss of family farms by sons and daughters who must sell to pay taxes. And, of course, the IT runs contrary to Madison's points (as stated in Emily's article) about the beauty of private property.

Omar

Posted by: omar | January 4, 2006 10:17 AM

I think Kmac has made the best argument so far in support of Bush when he says that international-to-US calls may be monitored without oversight if the target is on the international side. I still disagree that this is the case we're dealing with, but I the argument itself has logic and deserves more discussion.

Cayman's argument isn't bad, but I find it too vague on the supposed presidential powers that Bush is exercising. I can't find in the Constitution that

the president is given the power to ignore laws passed by Congress that he thinks impinge on his power. He must first bring them to the Courts, who then decide whether or not they pass muster. And I disagree completely with the statement that Bush hasn't broken the law. Executive orders authorizing an agency to circumvent a law break that law. If the actions authorized by that executive order should have fallen under FISA court supervision (KMac says they don't) then I can't see any way to say that Bush hasn't broken the law.

Everybody following this issue knows that eventually, the only opinion that's going to count on this question is that of the SCOTUS. I don't think they'll look very kindly on Bush in this case, just as they didn't on detaining citizens indefinitely without charges (only Thomas thought he could). Scalia, who I think is the most emotionally-ruled juror on that bench, is not very fond of GW Bush right now, and I doubt seriously that he will do him a favor. By the time this is all settled, Bush may already be out of office, but it still needs to be settled.

Posted by: james | January 4, 2006 10:21 AM

Again, I want to point out that all of those who are supporting Bush in this matter, are now obligated to provide that same level of support to the next democrat in the Oval Office who sets himself (or herself) above the law in the same way Bush has done.

I oppose any President who does that.

Posted by: Jaxas | January 4, 2006 10:22 AM

To KMac:

I have to say I have been impressed by the quality of your most recent posts.

That said, in reasonable disagreement:

(1) Article II may not be overruled by Legislative enactments, but it is on equal, not superior, footing to the 4th Amendment. And the 4th Amendment, the last time I read it, did not say that the Government may not subject its citizens to unreasonable searches and seizures in order to present evidence in a criminal case, but simply, that the citizens shall be safe from such intrusion. There is no "override" on this. And there has never been contemplated a limitation on it. The remedy of the poisoned fruit is a remedy on a wrong action: it is not a circumspection of the right itself.

(2) Please show me where in Article II that the President is empowered to spy on American citizens.

Chris Ford, you've become completely unhinged. Thankfully, everyone can now read your posts for the unvarnished vitrol which they truly are.

And chris (not ford?): The rendition of liberals is appealing? Are you purposely evoking thoughts of Nazi Germany?

When scared, it is easier to lay down your liberty than your gun, but you only end up shooting yourself.

Posted by: Matthew | January 4, 2006 10:33 AM

The lack of consistency is one of the things that disappoint me about conservatives. All of those limited government, libertarian positions they used as a sledgehammer against Clinton, they have abandoned with George W.

Bush has actually done very little for them except make a few blathery comments about his hokey born again values which are little more than window dressing to keep all of those dumb evangelicals in the south behoden to him.

Posted by: Jaxas | January 4, 2006 10:47 AM

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Bush has actually done very little for them except make a few blathery comments about his hokey born again values which are little more than window dressing to keep all of those dumb evangelicals in the south behoden to him.

Posted by: Jaxas | January 4, 2006 10:57 AM

Many focus on the erosion of individuals right to privacy. While that is incontrovertable, what about the right to NOT be harmed in the next terrorist attack.

Whether we like it or not, freedom and security are at odds in our society. Even so, it bears mentioning that not a single account of "abuse" of the this domestic intelligence has come to light.

We must be vigilant of our government and protect our freedoms, no argument, but dont hamper law enforcement from protecting us!

Posted by: Adam | January 4, 2006 11:00 AM

Adam, there is nothing in our existing structure for military and national security procedures that prevents our leaders from collecting the necessary intelligence required to prevent another attack.

What Bush is doing is not giving us any additional protection. He is deliberately doing it to create a national security issue to use in the 2006 and 2008 elections. That is the only reason that makes any sense. Otherwise, he would be opening himself up to all sorts of investigations for doing unilaterally what with very little cost in time he could get legally anyway.

Trust me on this. This is pure Karl Rove political machination. He has made the calculation that political gain is more important that Constitutional purity.

Posted by: Jaxas | January 4, 2006 11:12 AM

Adam,

The NSA issue is NOT security vs. liberty. It is executive vs. judicial. It is not whether or not the NSA can conduct surveillance. It is whether or not they have to tell a separate branch of government about it (even retroactively).

Posted by: Matthew | January 4, 2006 11:16 AM

Also, how many hundreds of billions of dollars have been spent on anti-terror measures and the invasion of Iraq? How much consumer loss has there been in extra time lost in lines? How many times over could we have saved 3,000 lives if we had dedicated those time and resources to fighting hunger instead of each other?

People die each day (even in America) of malnourishment. It is not as sensational as a plane hitting a building, but to me, their lives, and deaths, matter just as much.

Posted by: Matthew | January 4, 2006 11:20 AM

ErrinF,

What in the world is a "Progressive Libertatian?" And if you are truly Libertarian-leaning, then you must oppose gun laws, oppose overtaxation in all forms, oppose the IRS, oppose imminent domain, and oppose U.S. over-reliance on the UN.

True?

And James, I think you are on to something. There may be a unique coalition forming in 2006 between Libertarian-leaning, "Reagan" Conservatives and 60's, "Hell no..." liberals. Both seem to be genuinely - and rightly - suspicious about oppressive government policies/laws. Interesting.

Omar

Posted by: omar | January 4, 2006 11:21 AM

Rove is not content with having simply served in the office for two terms. What he fears is that once this ugly little toad is gone from the scene, the grownups in the old foreign policy establishment will step back in to re-establish a more moderate, sensible policy in line with the realities of the modern world.

Rove--and his pathetic little sock puppet Bush--cannot abide the thought that on January 20, 2008, they will have no more control over the track of the nation and the world. Even now they are attempting to lay the groundwork to ensure that whomever ascends to that office, they will be beholden to their quirky, wild-assed, faith-based view of the world. It would destroy both of them if someone from the old order gets back in and re-establishes sensibility into world affairs. It drives them nuts at night. The clock is ticking.

Posted by: Jaxas | January 4, 2006 11:25 AM

Omar,

Thanks for the clarification. But you slightly miss the concerns over the wiretapping issue. It's not that the wiretapping should be restricted, or that the war is not as dire as the President affirms (those are separate debates.) The objection is that if this kind of program is going to be indefinite, then it must involve at least some participation with the other branches of government. So far, it has not. Yes a few Congressmen have been told some things and gagged, but there is no long term accomodation to war powers. If the target is simply potential terrorists, as claimed, then some sort of reasonable oversight can surely be trusted to do it's part to keep the nation safe.

This is the problem. As I noted before, Reagan's "Trust, but verify" is a quintessentially American attitude. Why can Mr. Bush not allow ANY verification at all?

If the program is as limited as he says it is, there is simply no reason whatsoever why not. So is there not some cause to doubt his description?

There is also no long term political or social accomodation to the war. Tax cuts continue, the economy is not on a war footing, there is no draft. It is disturbing to see an emergency declared that only seems to affect the balance of powers, and not politics in general.

If the War on Terror is to be taken seriously then it must be acknowledged it is in many ways a Cold war as well as a Hot one. The nation must find ways to cope with an enduring threat, one that the President says will not end with a treaty signing.

It is ludicrous to assert that either Congress or the Judiciary are on the side of the Terrorists. They are clearly supportive of keeping the nation safe and they deal with classified issues on a regular basis.

The problem here is that this is a nation of laws. If 9/11 changed the nation so that new laws are necessary, then so be it. If this is a new kind of war then the new kind of executive powers Mr. Bush demands should be codified. It is not what Mr. Bush has done (and remember we only have his word for that), it is how he has gone about it that gives rise to legitimate concern.

On the double taxation front- My wife's family are farmers (and there are hundreds of them on a dozen farms) and they don't believe family farmers lose their farms. They're not rich enough. However, personally I've always found the idea that the gov't should tax me while I'm alive, not wait till I die and steal from my kids to be very persuasive. So I'm no rampant IT supporter.

However, the tax issue that really bugs me is the growing disparity between tax on earned income and tax on investments. If I inherit millions and live off the proceeds, I end up paying FAR less in taxes, without ever working a day, than someone who earns every penny themselves. That's not right. Morally I simply don't buy that earned income should be taxed more than unearned income. For me the IT debate is bound up in this larger issue. I'm all for protecting what people earn themselves, and their right to pass it on. But to stack the deck against those who fight their way to third base, rather than those who are born there, is not consistent with the American values I was taught.

Posted by: Bullsmith | January 4, 2006 11:27 AM

Hm. I held off yesterday off of the Inheritance Tax issue, but since it's now come up again, my little spin on it.

1) Inheritance Tax is efficient: the whole idea against taxes is that it disincentives production and/or consumption. (One of my economics professors once said that if the government really wanted to maximize tax revenues, it would tax stupendously on insulin: no threat of changed behavior). Ditto for Inheritance Taxes; it's not like people are going to die less often.

2) Inheritance Taxes are pro-entrepreneur. Given that government revenues have to come from somewhere, it lessens the burden on people who are making the wealth during their lifetime and who therefore would deserve it, and increases the burden on their progeny who have done nothing to earn it other than being born in the correct crib.

3) Inheritance Taxes do not generally represent double-taxation. When you are looking at the type of wealth which really matters in Estate Taxes, you are looking at corporations and large investments which are getting passed on. As it is getting passed on, it has never been sold so no capital gains has ever been realized and taxed on it. So a tax at a generational transfer would be the first taxation on it. It's not like we're talking about someone who paid income taxes on their \$50,000/year wages; saved \$120,000, and passed that onto their kids. The minimum threshold is, I believe, \$7,000,000.

Sorry to get off-topic: just a pet peeve of mine.

Posted by: Matthew | January 4, 2006 11:43 AM

Jaxas,

Wow. Karl Rowe leaked the President's NSA program to the NY Times so that the Times could run a hit-piece on the eve of the Patriot Act vote. All in the hopes that the national debate in 2006 would center on National Security!?!?

Brilliant.

Omar

Posted by: omar | January 4, 2006 11:54 AM

Adam, you're being scammed. You are being led to believe that we are somehow tying the President's hands to stop him from doing his job safeguarding the nation.

I know its hard to see your way in the deliberate muddying of the water, but here it is. The President has long had Constitutional authority to spy internationally and we are not desiring to tie his hands to spy on al Qaeda. However the newest accusations are that this administration has been spying on Americans without getting a warrant first - domestic spying, apparently "just in case" some American citizens are in league with al Qaeda. We do not wish to restrict his power to do this, either, so long as the spying is limited to "reasonable" invasion of privacy. And the founding fathers, in their wisdom, did not think that the sole authority to decide what is a "reasonable" infringement on rights should rest solely in the one person who most wants to know. What we object to is warrantless spying on American citizens.

Warrantless domestic spying is against the law. Further, the law even recognizes that the President might not have time to get a warrant, and gives him 72 hours to get a warrant retroactively if he deems it an emergency to spy now and ask questions later, and his leeway is expanded even further to a few weeks when war is declared. And to further provoke the question, if the President believed existing law tied his hands, why didn't he ask Congress to change it? Congress was pretty much writing him a black check in 2002.

The President and his cronies have thrown a lot of mud in the water - previous presidents have done it, if you turn the Constitution upside down and sideways see it says he can do it, Congress gave him power for warrantless spying when they said he could use force against al Qaeda (most of Congress says no, that's not what they meant.) But not once have they answered the question why he believed the law against domestic spying without a warrant would

make us less safe, and if he believed that why he did not ask the lockstep Congress to change the law.

You should indeed be worried about your right not to be harmed in the next terrorist attack. Our national security is a sieve - did you read the 9-11 report card? Ports, borders, chemical and nuclear facilities, wide open. Which remedy makes more sense given American history and values - you demanding that the President secure our glaringly obvious security deficiencies or the President demanding you lay down your civil rights?

You stand a much higher chance of having your right to "not be harmed by preventable things" violated by many other preventable things than by Osama. The annual number of gun homicides in the US is equivalent to four 9-11's each and every year. You should be much more worried about your chance to be killed by a gun. So should the president have the power to ban guns? Hmm, I guess the second amendment trumps the fourth? Flu kills 38,000 per year, the equivalent of over twelve 9-11's per year, nearly all preventable deaths. Should your President have the authority to compel you to get a flu shot to protect you from preventable death? If the avian flu mutates into person to person spread tens of millions will be toast, worse than al Qaeda exploding nuclear bombs in 20 of our major cities - maybe the President should use his authority to seize the patent on tamiflu and set up production of this in the US, instead of depending on a supply from a foreign country for which we are well down a long line of countries who got their orders in before us? The President actually has this authority in times of crisis, so long as the royalty payments are made on the patent. avian flu will spread around the world at the speed of a 747, there won't be time to start up production of it once the pandemic hits. These constitute much more immediate and greater risks to your safety than al Qaeda.

Jaxas is right, its a scam. This same scam got people to look past the total failure of this administration to secure our nation while at the same time fearmongering to make us believe only they could protect us! Oh, that and gay marriage. It just goes to show that Hitler was a diabolical genius when he said "it is fortunate for those in power that people do not think".

Posted by: patriot1957 | January 4, 2006 11:54 AM

Matthew,

Explain how someone (or an evil corporation) accumulates wealth/land without being taxed at least once?

Also, your line "...who have done nothing to earn it other than being born in the correct crib" reeks of class envy.

Talk to the son of a farmer who loses the family farm due to inheritance tax and explain to him how the IT is "pro entrepreneur."

Finally, the IT comment was in the context of the private property debate. In studying Locke, Jefferson, Madison, etc, It's quite easy to argue that private property ought to be protected at all costs by the gov't - not taken (imminent domain) or taxed (PT, IT). Given the founders passion for protecting private property, estate taxes of all kinds are arguably the most repugnant.

Omar

Posted by: omar | January 4, 2006 12:22 PM

Irony, thy name is Omar.

Just last week my father finished closing up the trust set up his father, a family farmer. And my father and all of his siblings inherited the family farm. And I'm not sure how up you are on land valuations, but my grandfather's farm was worth about \$800,000, at the end of the day. Naturally, my father and his siblings paid no Inheritance Tax. Partially, since it has been suspended until 2010 but even if it hadn't been, the level at which it was at in 2000 was around \$3MM - \$4MM before it kicks in. Now, do I know anything about family farms?

How does someone accumulate wealth without being taxed? I'll spin it out for you. Bill Gates founds Microsoft and capitalizes it with 100,000 shares which

he divides 70,000 / 30,000 between himself and Steve Ballmer for which they put into the corporation \$1 per share. (No, these numbers aren't real, they're illustrative). Microsoft grows and they need more capital. So they enact a stock split. And, over the years, 4 more. So 70,000 shares has been doubled five times which comes out to approx. 2,000,000 shares. And, during the meanwhile, they've also taken it public and the share price appreciates up to \$100/share. At this point our Mr. Gates would be worth \$200MM. He sells some of his shares for necessary liquidity, but largely borrows against his shares, so when he dies he has \$190MM in stock. From his initial \$70,000 investment. Which he then passes on (in shares) to his progeny. Now: at what point did Mr. Gates pay taxes on this investment? Please identify.

The point is not that someone never pays taxes. I'm sure Mr. Gates pays some taxes on the stock which he does sell and on his nominal income as CEO of Microsoft. The point is that on the lion-share wealth accumulation which really is what is at stake in inheritance taxes, taxes are not paid. So it is not truly double-taxation to tax it at their demise.

And re: pro-entrepreneur, read my post above. Assume government revenues have to come from somewhere (really, they do, no matter how libertarian you are... roads, militia, that kind of stuff). Is it more pro-entrepreneur to tax the person who is going out and creating wealth (and theoretically disincentive such creation and so, as a result, end up with less created)? Or is it more pro-entrepreneur to tax the wealth when it gets passed on to their progeny who are not disincentived for anything (except, perhaps, the entrepreneur spending their wealth during their lifetime). I am frankly baffled how you cannot cede that the individual who has created the wealth deserves it less than their progeny who are simply born into it (or rather, survive into it). Even Ayn Rand would concede this point, I believe.

Posted by: Matthew | January 4, 2006 12:43 PM

Recommend you rethink your abbreviation for your t-shirts. When I first saw your headline I thought "What Would Felix Frankfurter Do?". He was Associate Justice from 1939 to 1962 and had helped to found the ACLU. I'm pretty sure what he would have done. (Perhaps WWTFD.?)

Posted by: Ted | January 4, 2006 01:04 PM

To James and Matthew,

Thanks for the compliment guys, and thanks for keeping the discussions civil and intelligent.

James, If you don't believe that all of this spying has at least included one foreign agent, then that is simply a disagreement on the facts. You very well may be correct. I do not know. I only know that the published accounts I've read from the NY Times, the Weekly Standard, Washington Post, Newsweek, other media and statements by the administration all have agreed that this was either all international spying (in which case, FISA is inapplicable anyway) or it was mixed domestic and international.

I take it that you agree that if there is at least one legitimate foreign target then the spying is okay. Is that you believe that there has been instances of purely domestic spying?

Matthew, you are right that the Fourth Amendment requires that all searches be reasonable. It does not require that all searches must have warrants. Among the categories of warrantless searches that SCOTUS has allowed is foreign intelligence.

So, there is no Fourth Amendment requirement for foreign intelligence searches. There is a requirement for targets of purely domestic surveillance. However, even if there were an argument that the Constitution doesn't require warrants for domestic surveillance, Congress by enacting FISA in 1978 has made it a federal law. I have no doubt that Congress reigns supreme and can grant Americans this right.

Herein lies the problem, SCOTUS has held, and I believe correctly, that President has sole constitutional authority to deal with foreign agents. He need not seek permission from Congress or the courts, and for that matter Congress cannot tell him to seek permission from it or the courts. So, to the

extent that FISA purports to instruct the executive to plead with the judiciary before intercepting foreign communication, FISA is simply out of bounds and will not be sustained.

The facts are crucial. If one of those persons is a foreign agent, the President is the sole constitutional organ for dealing with that agent. Again, any domestic person is simply incidental. Reasonable people may disagree. But if you disagree, then you believe that current state of law would allow for the following. President Bush could not intercept a phone call from Osama Bin Laden to me, if the FISA Court denies his petition. I just don't believe the Constitution will permit such.

I'm further confident that the Constitution gives the judiciary no role in national security matters. I'm also certain that beneath the smoke, the Fourth Amendment is not in play at all. What is at stake is simply whether or not the FISA statute can abrogate the President's constitutional authority. It's the ultimate civics' lesson because a statute does not and cannot override the Constitution.

But take heart. there are plenty of ways Congress can check the executive by protecting citizens. That is, in fact, the ultimate goal of FISA anyway.

Again, Congress could just give immunity from prosecution to any U.S. citizen who was incidentally intercepted. Furthermore, it could provide for civil remedies for any person who was the intentional victim of executive wrongdoing. It can impose criminal sanctions on any member of the executive branch that intentionally and solely targets a U.S. citizen, and get this, it can impeach the President, if he is ultimately involved. Congress' quiver is not emptied of weapons it can use.

As you can see, I am, in no way, arguing that the executive has unlimited powers. But the executive branch surely has some power that Constitution solely invests in it, just as the judiciary and legislatives branches do. Simply put, there are constitutional autonomous spheres in which other branches of government may not invade. Dealing with foreign agents is one of those spheres, and it's the President's power. Your thoughts?

Posted by: KMac | January 4, 2006 01:25 PM

KMac,

I think we're finally getting down to the nub of the issue now.

Assuming arguendo that all dealings with foreign relations fall to the Executive (even though Congress controls the purse, the Militia, and declares War), how does that spin out when you are also dealing with the rights of the individual? Without consulting any authority, my intuition is that a U.S. citizen has full rights until such time as they commit treason and they don't. And that the rights of the individual against the government are precisely therefore defined.

If you like, we could move the frame of discussion from warrantless searches to reasonable searches. However, under the current facts, what is reputedly going on in the NSA (and I have no better info than you) is still worrisome as there is no guarantee that even that minimum standard is being upheld. Not to say that they're not, but there's no check that they are.

Thoughts?

Posted by: Matthew | January 4, 2006 01:44 PM

I don't really understand all the fuss. First, the label "domestic spying" is a complete misnomer. These are international calls to suspected terrorists.

Yet Emily poses a justifiable question: "if a particular wiretap could very well save lives -- why not get a warrant for the surveillance by explaining its necessity in a court of law?"

I found this point troubling myself. I, like most Americans, inherently abhor government intrusion.

The answer two-fold: 1) Red tape: Listening in on several hundred calls, many with reasonable but not probable cause, would be impossible under the restrictions imposed by FISA. We are talking about acquiring hundreds of

warrants within a 72-hour window every day. 2) Most legal scholars (and former Clinton Assistant Attorney-General Jamie Gorelick) assert that FISA cannot restrict the broad war-making powers reserved for the Executive in Article II.

That being said, I understand the apprehensions of my friends on the Left who fear and aggressively oppose what they regard as an imposing "Big Brother." I have my own concerns and freely admit there are shades of gray in this area.

What I don't understand and cannot sympathize with are those who personalize (and therefore trivialize) this debate by unleashing a myriad of incoherent broadsides (and cries of "impeachment!") based on their personal dislike for this President's politics.

This course of action is being taken to protect American lives, not to spy on political opponents (Nixon and Watergate) or smear potential enemies (Clinton and FBI records).

Thus it should be compared to neither.

Posted by: Jon M | January 4, 2006 02:44 PM

James - "I can't find in the Constitution that the president is given the power to ignore laws passed by Congress that he thinks impinge on his power. He must first bring them to the Courts, who then decide whether or not they pass muster. And I disagree completely with the statement that Bush hasn't broken the law. Executive orders authorizing an agency to circumvent a law break that law."

1. After FISA, every President, starting with the weakest 20th Century one, Jimmy Carter, have said that FISA would not intrude on the Presidents Constitutional Article II Powers. Starting with Griffin Bell at Carter's behest, every President has said that FISA is constitutional only to the extent that it does not intrude on Presidential wartime powers, then it ceases to be legitimate. Congress has not challenged this 27-year long interpretation, and sadly for Lefties, the courts have upheld the Executive's view in 8 decisions. Congress can make no law usurping Executive Constitutional prerequisites, unless by formal Constitutional Amendment. Nor can SCOTUS make stuff up and instruct the Commander in Chief's conduct - as Andrew Jackson and Abraham Lincoln pithily shot back at overreaching Chief Justices as they ignored SCOTUS directives that crossed into usurping Article II powers - and SCOTUS acquiesced. Besides Lincoln and Jackson, in WWII, SCOTUS gave FDR tremendous latitude to snoop on both Americans who might be and only might be in communications with the enemy - and the enemy.

2. James thinks the process works as follows: Congress can pass a law checking the Executive, who must immediately cease and obey until a "court" and it's lawyers have time to study the matter and issue a "Omni Domni" blessing on either Congress or the Executive, and if it goes against Congress by being unconstitutional, they can simply issue a new law to paralyze the Executive all over again as the Exec is compelled to obey Congress's wishes until more lawyers can decide on the matter.

Obviously it doesn't work that way. If the SCOTUS or Congress intrudes, the Exec if they chose to under Constitutional powers, may proceed at their discretion and all Congress can do is impeach. The Constitution was written, according to background documents, in large part because the Articles of Confederation set up a weak President who could be paralyzed from executing duties by Congressional whim. The Constitution fixed that and left the judgement of Presidential conduct not up to Congress or a roomful of lawyers, but to the People via direct election.

3. In the case of FISA, Bush isn't even in defiance of Congress, but doing what the 4 other Presidents since FISA instructed Congress on how they would interpret FISA if it intruded on Article II war powers...they all wouldn't follow FISA in those circumstances. Even the wuss, Carter..If Congress disagreed with the Presidential viewpoint, they have had 27 years to raise this as a Constitutional question or press a Constitutional Amendment ending those War Powers. In neither case have they done so.

Posted by: Chris Ford | January 4, 2006 02:45 PM

Matthew and KMac,

I also think we've managed to identify least one central question of this whole mess, one that I think will be very much in the minds of SCOTUS when they take up the issue. Where and what exactly is the boundary between the president's unquestioned authority to conduct foreign surveillance and the limitations placed upon him regarding US citizens?

KMac, I disagree with you that involvement of a US citizen is merely incidental to an investigation of a foreign agent. I believe, and hope that SCOTUS will affirm, that US citizen's rights are still guaranteed even when an international party is being investigated. I do not believe that all communications between US citizens and foreigners are subject to unfettered presidential surveillance. Is the opposite your opinion, KMac? Please correct me if I'm misrepresenting you.

And again, nobody here is saying that domestic spying is unallowed, only unwarranted domestic spying. In the case of Osama calling up KMac for a chat, I'm sure that a FISA warrant, retroactive or otherwise, would be written out in a heartbeat (too bad for you, KMac! ;). The judicial check does NOT prevent any bona fide security investigation from taking place, but is meant to prevent the sort of abuses that Nixon engaged in and which Bush and Co. seem all too eager to revive.

Posted by: james | January 4, 2006 02:50 PM

I think most of us agree that purely international spying does not require a warrant.

And it would seem that most of us agree that purely domestic spying would require a warrant.

But what about that gray area - where one party is outside the US and one is domestic?

I believe that question has been answered. Project Shamrock had the NSA open every telegram entering or leaving the US in the 50's and 60's. When this was made public Congress considered this abusive and passed the FISA laws to put a stop to it.

Thus, the FISA laws that Bush flouted were specifically created after outrage at government spying on international communications coming to or going from the US - that is presumably involving a US citizen on one end.

And nothing in Bush's arguments answers the question of how warrantless spying in cases involving one domestic party made us less safe, or if it did why Bush couldn't go to a Congress that was writing him black checks to update the law, or why he didn't take up the matter before SCOTUS if he believed that Congress through the FISA laws usurped his Constitutional powers.

Posted by: patriot1957 | January 4, 2006 02:56 PM

Chris Ford,

Glad to see you're adopting a more civil tone.

I'll concede that the executive is not required in every instance of Congressional usurpation (that a word?) of Article II privileges to get a SCOTUS judgement. If there's any sort of judicially decided precedent, or if the Constitutional issue is very clear, an executive can safely ignore an unconstitutional law and dare Congress to do something about it.

This seems to be the stance that Bush is taking regarding FISA, except that he has no judicial precedent to go on. All the examples of pre-FISA presidents don't mean much in this case. At issue is the law itself and the authority of either Congress to enact it or the President to ignore it.

So here's another central question. Is FISA, at least in part, unconstitutional? As we've seen arguments have been made for both sides. I find the "unconstitutional" arguments weak. I just re-read Article II and I see no authorization for extra domestic powers granted to the president in wartime or any other time. A law that requires the president to obey the Constitution, and

which provides the means to insure that without impinging upon his ability to wage war, is not unconstitutional, IMHO.

But as I said before, if Congress decides to reject Bush's interpretation of his powers, then the SCOTUS will have to decide who is right.

Posted by: james | January 4, 2006 03:18 PM

Kmac.....Very well done. I certainly agree with you that the facts are crucial. I would also agree with you that tapping any foreign phone call, i.e. one originating from foreign territory by a non-US citizen is well within his constitutional power and FISA would not apply even if it claimed to. Second, I would also think that they might equally well intercept any phone call from the US, citizen or not, to a specific foreign number. The ACLU might take issue with that one but I wouldn't and I doubt that SCOTUS would.

Where it gets sticky is the scenario where Bin Laden has called you to congratulate you on the birth of your daughter and, based on existence of that communication, the NSA henceforth taps all communications to and from your phone, and maybe your email, and they tell the FBI to do a sneak and peak on your house to see what they might find. Of course it doesn't have to be someone as clearly a terrorist as Bin Laden to open this door. Any foreigner who becomes "suspected of terrorist connections" will do. Here is where we start down the slippery slope.

Again.....the real facts are crucial and the absence of independent oversight is really quite dangerous.

Again....very well done.

Posted by: Cayambe | January 4, 2006 03:21 PM

If I read one more overused word such as "fearmongering", "spewing hatred", or any other overembellished phrase that basically says "Stop being a meany" I'm going to have an aneurism.

Posted by: ktc | January 4, 2006 03:27 PM

Matthew,

I'm answering your questions in reverse order. Congress has oversight of the NSA and can monitor its activities. I mean I'd imagine that there would be closed hearings. Still, there is congressional oversight authority. I don't believe that the NSA or President could ultimately hide this matter from Congress.

But as for abuse, there is always the potential for abuse. Indeed, both the House and Senate exempted themselves from the 1964 Civil Rights Act. Recently, one of the houses amended its rules to include itself. I don't recall which one. Still, one of them is free from Civil Rights laws. Is that abuse?

The President could effectively pardon any and everyone in his administration convicted of a crime, and even his republican friends of any federal crimes. So, Scooter Libby and Jack Abrahamoff (sp) could run free today at Bush's decree. There is nothing that Congress or the courts could do to prevent it. I think that too would be abuse. Yet the authority for Congress to exempt itself Civil Rights laws, and the President's capacity to pardon and issue immunity is also uncheckable by the other branches.

As for the rights of U.S. citizens, you are right. But no one is targeting U.S. citizens here. Foreign agents are the targets, and U.S. citizens are simply incidental. So, there is effectively no violation of any citizen's rights.

Think about this example. If a civilian passenger plane, full of citizens and a couple of enemy militants, were heading directly for DC, could the President order that the plane be shot down, if the plane is said to be aiming at the White House or Capitol? Let's assume that he's only 50% sure. That's less than probable. Surely, the President cannot wage war against unarmed Americans. So, in his ordering the shooting down of the plane, would we say that he's violating the rights of unarmed Americans aboard? Could Congress stop him? Nearly all constitutional scholars would agree that Congress could not. Would

he have to seek permission from the courts? Let's say that there would be time to get court permission, so assume that the plane is six hours away still.

This is a fair comparison to the same power he possesses to target foreign agents. Just like the unfortunate citizens on the plane would be incidental victims, the overheard conversations of Americans are, likewise, incidental. The President has this authority.

Posted by: KMac | January 4, 2006 03:39 PM

All these hypothetical situations are pointless. Monitoring international calls does not require a warrant, and the only international calls being monitored are those being made by suspected terrorists and their supporters. It's well worth it if you ask me. Our government is not "out to get you." If you aren't participating in illegal activities then you have no reason to care if the government is listening to your phone calls. And why protect those who are participating in illegal activities? That's part of what's wrong with our country now. We give too many rights to people who don't deserve them. It's why we'll never "win" another war.

Posted by: | January 4, 2006 03:43 PM

Sorry that's "pointless."

Posted by: | January 4, 2006 03:46 PM

caymbe

"...tapping any foreign phone call, i.e. one originating from foreign territory by a non-US citizen is well within his constitutional power and FISA would not apply...they might equally well intercept any phone call from the US, citizen "

Actually FISA specifically regulates interception of international communications involving US citizens and requires a warrant to spy on the citizen, albeit a retroactive one in times of crisis.

Bush broke the FISA law.

What is at issue is not did he break FISA law or not, he did break it. The issue is what is the significance of this.

Some say FISA is unconstitutional and thus breaking the law has no meaning. IMHO these arguments are weak, but that's a decision for SCOTUS. If Bush wishes to cling to this defense he must take his case to SCOTUS or face impeachment. Some say it was Bush's obligation to break the law to keep us safe (a weak argument since his oath is to the constitution, not the people). Do the majority of Americans see the Constitution like Jewish law - you can break it at any time for health reasons? Some say Congress gave Bush permission to break the law by authorizing "force" against al Qaeda - again a weak argument since most of the people who cast the vote say they did not intend this with their vote.

We don't in fact impeach every president who has been found by SCOTUS to have abused his power. If Bush modifies the spying to include oversight to prevent abuses this will all blow over by morning.

Posted by: | January 4, 2006 03:51 PM

Bush will not be impeached for this. That's a joke. Come on people we can't be looking for a reason to impeach every President now just because the one we had before Bush was a child.

Posted by: | January 4, 2006 03:54 PM

Bullsmith & Matthew--Sorry for the length of this post in advance, not trying to be a blog hog just a few things that need to be pointed out.

Two of your concerns involve the necessity for this type of Executive behavior, i.e. Matthew's "our state of the nation is not one in which the executive should be being granted emergency powers" and how it was

executed, i.e. Bullsmith's "by fiat." Your arguments dovetail to suggest that Lincoln's actions are not a relevant precedent and that the Cold War era is a better analogy. I don't agree, but thought you might take a read on how two other post-Civil War presidents handled the issue of secret surveillance--specifically wiretapping:

<http://www.slate.com/id/117041/>

"In time, Congress grew concerned about the FBI's power, and after Prohibition's repeal it outlawed all non-consensual wiretapping (but not bugging) as part of the 1934 Communications Act. In 1939, the Supreme Court upheld that law, ruling that since taps were illegal, evidence obtained from using them was inadmissible in court."

"Even so, executive officials kept using wiretaps. In particular, Franklin Roosevelt sought to carve out a large exception to the statutory ban. In 1940, he wrote his attorney general, Robert Jackson, that while he accepted the court rulings that upheld the 1934 law, he didn't think those prohibitions applied to "grave matters involving the defense of the nation"--an increasingly high priority as world war loomed. On the contrary, Roosevelt ordered Jackson to proceed with the secret use of "listening devices" (taps or bugs) to monitor "persons suspected of subversive activities ... including suspected spies."

"Concerned about a German "fifth column" in the United States, Roosevelt specified that his order applied to espionage by foreign agents. But when Harry Truman succeeded FDR in 1945, America's enemies list was changing fast. The next year, as the Iron Curtain fell and the Red Scare flared, Truman's attorney general, Tom Clark, expanded FDR's national security order to permit the surveillance of "domestic subversives." Clark and Truman endorsed wiretapping whenever matters of "domestic security" were at stake, allowing taps to be placed on someone simply because he held radical views."

 As for your arguments that we are in no more danger than we were during the Cold War, such statements are really irresponsible and I say that in all seriousness. The Cold War retained that name because we never had an overt military clash with the Soviet Union. Sure there was the feeling of being under threat because everyone knew that if we went to war both sides, and for that matter the world, might be annihilated. Paradoxically, though, that understanding fed the concept of deterrence and ultimately kept us safer. We have no such paradigm when it comes to Al Qaeda, making deterrence unlikely, not to mention that, unlike the Soviets, Al Qaeda does not act in a rational manner--at least by Western standards (i.e., suicide attacks). If they detonate a nuclear device in the U.S., who do we retaliate against? A house in Pakistan? A cave in Afghanistan?

Sure Americans are not rushing to build fall-out shelters because unlike the Soviets, Al Qaeda would probably only be able to manage one nuclear strike and nobody knows where that would be. One strike, though, is all it will take to kill millions.

There are some areas where a greater balance favoring national security over civil liberties is acceptable in times of war and crisis--as it has been throughout our history. Americans, though, should not fear such a situation becoming permanent since individuals like yourselves will always be here to keep the pressure on to restore the balance toward civil liberties as a conflict wanes--and this one will eventually. Those who espouse your views have always been critical to maintaining the balance for this nation, but at this moment the priority has to be preventing another attack on the United States. If the NSA's surveillance program accomplishes that, than so be it.

 Posted by: KB | January 4, 2006 03:54 PM

Thank you Cambye. To James, Patriot 1957, and Matthew. Below is an quote from a Supreme Court case, and the case itself, quotes President Washington. Also, the second appearance of the word "ALONE" is emphasised by me, as the all caps is not in the original. The case is U.S. vs Curtiss-Wright Export Corporation, 299 U.S. 304 (1936). This case is very much on point with respect to spelling out just how broad the President's authority is. Without

further delay, here's the quote:

"It is important to bear in mind that we are here dealing not alone with an authority vested in the President by an exertion of legislative power, but with such an authority plus the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations—a power which does not require as a basis for its exercise an act of Congress, but which, of course, like every other governmental power, must be exercised in subordination to the applicable provisions of the Constitution. It is quite apparent that if, in the maintenance of our international relations, embarrassment—perhaps serious embarrassment—is to be avoided and success for our aims achieved, congressional legislation which is to be made effective through negotiation and inquiry within the international field must often accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs ALONE involved.

Moreover, he, not Congress, has the better opportunity of knowing the conditions which prevail in foreign countries, and especially is this true in time of war. He has his confidential sources of information. He has his agents in the form of diplomatic, consular and other officials. Secrecy in respect of information gathered by them may be highly necessary, and the premature disclosure of it productive of harmful results. Indeed, so clearly is this true that the first President refused to accede to a request to lay before the House of Representatives the instructions, correspondence and documents relating to the negotiation of the Jay Treaty—a refusal the wisdom of which was recognized by the House itself and has never since been doubted. In his reply to the request, President Washington said:

'The nature of foreign negotiations requires caution, and their success must often depend on secrecy; and even when brought to a conclusion a full disclosure of all the measures, demands, or eventual concessions which may have been proposed or contemplated would be extremely impolitic; for this might have a pernicious influence on future negotiations, or produce immediate inconveniences, perhaps danger and mischief, in relation to other powers. The necessity of such caution and secrecy was one cogent reason for vesting the power of making treaties in the President, with the advice and consent of the Senate, the principle on which that body was formed confining it to a small number of members. To admit, then, a right in the House of Representatives to demand and to have as a matter of course all the papers respecting a negotiation with a foreign power would be to establish a dangerous precedent.' 1 Messages and Papers of the Presidents, p. 194."

In summary, were this a domestic matter ALONE, the FISA statute would prevail, but the case above and our present situation are both mixed affairs. We see precisely what the Court held there. This is still valid and controlling authority. The President wins guys. Thoughts?

Posted by: KMac | January 4, 2006 04:07 PM

This site has a thoughtful legal analysis of the case:

<http://volokh.com/posts/1135029722.shtml>

It is really quite clear that FISA is indeed intended to cover international communications that involve a US citizen or resident. An excerpt from the above link:

Specifically, 50 U.S.C. 1809 prohibits "electronic surveillance" except as authorized by statutory law: "A person is guilty of an offense if he intentionally . . . engages in electronic surveillance under color of law except as authorized by statute." "Electronic surveillance" is defined in 50 U.S.C. 1801(f) to mean, in relevant part:

(1) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes;

(2) the acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire communication to or from a person in the United States, without the consent of any party thereto, if such acquisition occurs in

the United States. . . .

Posted by: patriot1957 | January 4, 2006 04:13 PM

KMac,

Nice points.

To answer your hypo and posit my own: If the President had reasonable belief that an airplane was going to strike the White House, I would agree with you that his authority extends to shooting it down, even though, as you point out, he doesn't have the authority to wage war against Americans. However, if the President began shooting down every plane he said he had gathered information on that may contain people linked to terrorists, sooner rather than later, his authority would expire.

And maybe this is the endpoint of this discussion. Ultimately, it is going to come down to the particular facts involved. Is the NSA monitoring all communications stemming from the U.S. to anyone in the world with the surname Atta? Or is the NSA being more discrete and restrained? Neither of know the answer to this question (nor, would I suppose, anyone on this board). But, and this is not to get political, this President in particular has not earned, from me at least, a well of trust to have his his assurances accepted unequivocally.

And I do not believe that we harm American intelligence efforts by having this debate in the public square at this level of generality. And many (not all, but many) of the people who have a problem with this it stems from the unilateral nature of it. Get Congress involved or use the courts. Do something other than simply holding everything to the small-knit group in the Oval Office. To date, the executive branch has not. The Congressional oversight already allowed is not meaningful and, per reports, the judiciary has just been ignored altogether.

Not a good way to run a democracy.

Posted by: Matthew | January 4, 2006 04:13 PM

Kmac - you are interpreting this as a license for the President to break any law he damn well feels like if it, in any way, involves a foreign power?

This quote about "international relations" and "negotiation". Are we negotiating and having delicately balanced international relations with al Qaeda now?

Is al Qaeda a foreign state that requires delicate diplomacy as described in your quote?

Posted by: patriot1957 | January 4, 2006 04:22 PM

Agree with Matthew. This is ultimately about oversight.

Bush chose to act outside of the FISA law and set up a surveillance system devoid of any meaningful oversight and has yet to provide a credible explanation of why that was necessary or even legal.

We have have only his reputation for honor to believe the communications he's monitoring without warrant are not domestic, or that following FISA would make us unsafe.

Its about the oversight, stupid.

If Bush is willing to submit his spying program to oversight this will all blow over by morning.

Posted by: | January 4, 2006 04:28 PM

KMac,

Yes, I read that case yesterday. Something about prohibition of trade or some such if I remember right (I did gloss through the fact pattern).

And you are correct to cite it in a Article I / Article II dispute: this would be clearly on-point caselaw for the constitutionality of FISA (and may carry the day: up to SCOTUS).

But I'd still go with the caveat that it doesn't resolve the Article II / 4th Amendment discussion we've been having more or less in parallel. Or that a possible way to do things is not always the best.

Still, good case; good quote. Parting thought: relevance, if any, that this was the HoR and not the Senate? The Washington quote was aimed at the idea that there were too many Representatives to trust but that the smaller number in the Senate made it a better body of oversight.

Posted by: Matthew | January 4, 2006 04:29 PM

Bush is most likely downplaying the extent of the domestic surveillance program. Looks to me like he removed warrants from the process because he wanted to cast as wide a net as possible. It is pretty common for all politicians to downplay the true scope of what's at core of the scandals that happen due to them. As time unfolds, we will see if there is a lot more to this than Mr. Bush has initially shared with the American public.

Posted by: ErrinF | January 4, 2006 04:41 PM

Kmac - Nice post that made mine redundant in large part a bit later. I did have one area of questioning for you, related to the "domestic part" of the call that FISA makes a problem, using your words:

"However, even if there were an argument that the Constitution doesn't require warrants for domestic surveillance, Congress by enacting FISA in 1978 has made it a federal law. I have no doubt that Congress reigns supreme and can grant Americans this right.....If one of those persons is a foreign agent, the President is the sole constitutional organ for dealing with that agent. Again, any domestic person is simply incidental."

The problem I see is that the domestic person may not be incidental. The person contacted may be involved, and just ID'ing them may not raise probable cause. We don't know who is being called at [914-331-8186](tel:914-331-8186) in California from a phone found in the remains of a suicide bomber who killed 5 US soldiers and 23 Iraqis ...but we would be keenly interested in learning if that domestic US party be it a Yemeni-American citizen, a Saudi student, or regular American. And in vetting them as being or not being a national security threat. This has nothing to do with criminal prosecution since this form of warrantless search is inadmissible in court outside mob, drug, and terror cases. And, without damning evidence on that call or no call made, just a tel# found, we may want to keep tabs on the person anyways in case the Al Qaeda operatives change phones and we can pick the bad's guys number and location up from a future call to the otherwise innocent party. So just being an associate of a known terrorist, while innocent, may be enough to justify eavesdropping or other monitoring, just as it is allowed in the case of the mob and international drug dealers.

An example might be Mrs. Laden, who is a Syrian now living in Saudi luxury, who was in regular contact with her little son Binnie until all those unfortunate events happened. A totally innocent woman. But you can be sure that we are watching for a lonely hearts call, the same with other Bin Ladens in their hundreds-large family, who were unlike Mamma Laden, are blessed with accidental US citizenship from being born here.

Jon M - (How FISA may not work)

"Red tape: Listening in on several hundred calls, many with reasonable but not probable cause, would be impossible under the restrictions imposed by FISA. We are talking about acquiring hundreds of warrants within a 72-hour window every day."

I think the problem of FISA is worse than that.

1. FISA predated the explosion of telecomm and computer technology, not just here, but in the rest of the world. Even 10 years ago, the typical radical Muslim had no access to international phone calls or computers. Now they do, with disposable phones you pay cash for and internet "cafes" and libraries here and abroad Muslims can use "almost" anonymously. Millions of phone calls, emails&text messages, and wire transfers of capital come and go from the US daily, not just hundreds. There is no way to hire the millions of lawyers

critics think should approve and "safeguard" each monitoring. The alternative is to stop monitoring. The solution seems to be to use monitoring to ID radical Islamist threats, then use warrants after vetting suspicious calls if we find an associate of a terrorist, and warrants if we are to press for evidence used in prosecution of an American citizen. Then the numbers become manageable, and the rights of a citizen from prosecution based on warrantless searches is honored, though innocent parties, like Mrs. Bin Laden, may be surveilled to get a bad guy.

Right now it appears the President has the Article II powers to continue defending against national security threats until any problems with FISA are fixed.

2. The last fix of FISA, of course, was tearing down the Jamie Gorelick Wall thrown up to block intelligence from working with law enforcement that chilled communications as career-threatening. As Coleen Rowley showed in the Moussaoui case, law enforcement lawyers became obsessed by success rates and preferred not to "risk" going to FISA and suffer job performance evals noting FISA rejected an agents warrant request. The notion that FISA was always cooperative and reasonable doesn't account for the fear factor that led law enforcement to avoid FISA whenever possible and the fear factor of any contact with intelligence agencies that could expose their asses to a future 70s style witch hunt. 9/11 was supposed to change that - but institutional memories are long and the memory of "enemy rights first" Leftists short.

Posted by: Chris Ford | January 4, 2006 04:47 PM

KB

Thank for the excellent arguments. I would strongly disagree that you mistake our analogy with the Cold war (apologies for speaking for you, Matthew.) Its not that we underestimate the terrorist threat, it's that we feel you underestimate the very real threats the nation has faced before, including from the Soviet Union. Total annihilation is not a lesser threat than a single nuke, deterrence was not by any means a guaranteed solution. and there were American hating terrorists then too. With better connections to nuclear powers. To paraphrase what you said about the civil war, hindsight makes things look simple.

The key difference between the War on Terror and the other wars you refer to is that there is no definition of victory in this war. Can you define it? It didn't take the benefit of hindsight to know what victory looked like in the Civil or World wars, or what it didn't look like in Vietnam.

The President's reasons for wanting this power are understandable, but what are his reasons for keeping it secret? If the balance of powers is dysfunctional and yet the crisis is indefinite, then is it really the best answer for the nation to decide to grant the President 'plenary' powers? Maybe it is, but he didn't want to give them the chance. Remember, if not for a criminal leak, not even the FISA judges would know about this. Nor would the vast majority of both House and Senate.

The war on terror crosses into civilian territory by definition, and yet the President is more and more functioning in his military role, and drawing authority from it to broaden executive power that is not strictly military. He is placing himself above congressional restriction and judicial review in ALL aspects of the War (note what he said signing the ban on torture.) What do the historical analogies suggest? Is this a good way to defend democracy?

I'm not in any way suggesting the country is going to become a dictatorship or a coup is taking place or anything like that. Just like I wouldn't for a moment suggest that impeachment is the appropriate response to the domestic spying debate.

Personally I think the President overreached, and I think the Supreme Court will eventually decide that way (I also presume they will accept he acted in good faith). The important thing is that SCOTUS will determine what the Constitution says. It is simply not reasonable for any President to be the sole and ultimate interpreter of the constitution or of statue. In an emergency, certainly. But not indefinitely.

Posted by: Bullsmith | January 4, 2006 05:23 PM

Matthew, Kmac, and others who have posted and who have a better knowledge of constitutional law than I do, I have a question that you can maybe help me to answer:

If the underlying facts of the situation (say the identity of a person as a foreign agent, or not, or as a US citizen or not, and so on) affect the constitutionality of an action, then can the degree of certainty that exists, or that is even possible about those facts, also impact the constitutionality of the action?

Or to ask pretty much the same question from a different angle, to what degree does a branch of the government's authority to deal with a particular field also grant it the authority to determine whether the issue at stake is, in fact, part of that field?

E.g.: If it's a simple totally obvious fact that person x is a foreign citizen in a foreign country, we all acknowledge that the president has constitutional authority to spy on him. If it's a simple, readily obvious fact that person y is a US citizen on US soil and is not the agent of a foreign power, then we all acknowledge that the executive has no authority to spy on him (without a warrant). But then, facts aren't always so obvious. Person z is on US soil and may or may not be a foreign agent. Who exactly has the authority to determine whether person z falls into class x or class y? What keeps whoever has that authority from also having the authority to determine (wilfully and mendaciously) that person y actually belongs in class x?

The constitutional separation of powers may be fairly clear when the facts that we're dealing with are clear. But what about when they're not? Can a lack of certainty create a new legal situation, and if so, what exactly is that legal situation?

Thus for example, people have pointed out, re: FISA, that if it interferes with the executive's monitoring of agents of a belligerent, it's an unconstitutional infringement on the president's war-powers. Fair enough (perhaps). But if it interferes with the executive's monitoring of US citizens who are not agents of a belligerent, then it's not at all an unconstitutional infringement of the president's war-powers. But part of the point of the FISA court is for it to serve as a determiner of facts.

In practice, both sorts of cases could be brought before the FISA court - those in which (since the exec. was right about the facts) the FISA court would really not be constitutionally justified in interfering, and those cases in which (since the exec. was wrong about the facts) the courts would be justified in intervening. (In a sense, isn't the FISA court actually ruling about whether or not it has a right to rule?)

Since both of these sorts of cases arise though, and cannot be simply and easily separated, and uncertainty exists, can that uncertainty, about whether or not the judiciary/legislature has a right to interfere, itself justify judicial involvement/oversight? It seems to me (again, I appeal to be better taught by those of you who know your constitutional law better than I do) that when we come to a matter that is on the disputed boundary between different branches of gvt., the judiciary has a presumption of competence to decide the matter, even if it is one of the branches involved in the dispute, still more if it is not.

Anyone care to enlighten me? Thanks in advance.

Posted by: Beren | January 4, 2006 05:45 PM

President George W. Bush swore to uphold and defend the Constitution of the United States of America (a document which, unaided, he cannot understand). The office of President places no one above the laws of the nation. No one. It seems that conservatives (and those who today claim to support that point of view) have been quick and enthusiastic in recent years to point out weakness of "liberal" attitudes without considering how their "strength" may undermine the country they so vocally profess to love. The founding "fathers" most specifically wrote into the Constitution protections against the kinds of unregulated supergovernment as was the dominant case in the Europe they had left behind. That a king or other powerful agent might arrest without just cause, stifle discussion, or engage in wars single-handedly were the precise points addressed in the pages of our Constitution. The did not intend a

"rubber-stamp" congress to blindly second the actions of an imperial president. Yet that is exactly the argument of those who support "the President" in his behavior now.

And lest you think that the idea of "data-mining" is just someone's fantasy, consider how exposed your comments are right here. Is the government justified in searching out the sites where I might post a reply to a blog, a letter to a congressional representative, an e-mail to a friend? Which of us will fit which "enemy-of-the-state" profile by some looney in NSA, the FBI, the CIA? Do you think that taking a position criticising this administration carries no risk? In the days of the American Revolution, Franklin is supposed to have said: "We must all hang together, otherwise most assuredly we shall all hang separately." Franklin, Paine, Washington, Jefferson, Madison, and so many others risked all for this country. They intended that Americans of all generations would do the same.

The true patriots now are those who are able to see truth and put the lie to illusion. We are supposed to be safer with the government snooping into our writings, our electronic connections, suspension of freedoms enjoyed for generations, and a war that has nothing to do with any threat to our liberty. Believe it who will!

It's tiring trying to point out stupidity to the ignorant. But praise to all you who persevere. It's beginning to take root. Cheers!

Posted by: Jazzman | January 4, 2006 11:44 PM

Jazzman -

"President George W. Bush swore to uphold and defend the Constitution of the United States of America (a document which, unaided, he cannot understand)."

Neither can you, Jazzman, unless you happen to be a Constitutional scholar widely accepted amongst your peers as impartial and very well versed in it.

Jazzman - "The office of President places no one above the laws of the nation. No one."

Which proves you aren't exactly a Constitutional expert after all. Congress can pass no law infringing of the duties of the SCOTUS or Executive as enumerated in the Constitution, not the Rights of the States, nor individual liberties. And seated members of Congress are above certain laws themselves as Sen Robert Byrd has reminding officers attempting to ticket him for speeding while Congress is in session.

Jazzman - "It seems that conservatives (and those who today claim to support that point of view) have been quick and enthusiastic in recent years to point out weakness of "liberal" attitudes without considering how their "strength" may undermine the country they so vocally profess to love."

Funny, who was it that normally opposes defense spending needed to safeguard our troops and prevail? Who have called the last 8-9 conflicts we have been in "hopeless Vietnam-like quagmires"? Who have been blind to the notion that if there is one country we want to find radical Muslims in and radioactive materials before they are used is the American Homeland, and instead fight for the privacy rights of the enemy and their coddling as prisoners? I know the liberal view is that the enemy and American traitors joining them in Jihad must be protected on the slippery slope notion that if we are allowed to war on the enemy, it is only a matter of time before all our lives and liberties are targeted in the Dark Night of Fascist Amerikkka. But the public really doesn't buy the liberal's "we are constitutionally obligated to be nice to terrorists and traitors" argument and we best not look for the enemy "lest we violate his civil liberties" proposition.

Posted by: Chris Ford | January 5, 2006 01:06 AM

Chris Ford,

Actually, in reference to your last post, I'd also be interested to know who has, as you say, "called the last 8-9 conflicts we have been in 'hopeless Vietnam-like quagmires'?" Which 8-9 conflicts were those, and who called them "Vietnam-style" quagmires? (Names and dates would help here.) The variations on the "Democrats don't want to defend America" line (which I'm

not sure that you would espouse, of course) are a really damaging thing to say. And by damaging, I mean "damaging to the long-term health of this country".

Dole (for whom I voted when he ran for president, btw, lest you call me a leftist) referred, in 1976, to several of the wars that I presume you approved of as "Democrat wars". Would you agree with his terminology?

It would be better to acknowledge that different parts of the political spectrum in this country agree about defending America but disagree about the strategy with which to accomplish this. Then we could have a strategic debate, based on the actual informed positions of real people.

Posted by: Beren | January 5, 2006 01:29 AM

To all of you.....Hey guys and dolls, this is just grand; not only civil but well focused, thoughtful, and above all, substantive. Jaxas and others.....take note. The intelligence of the American populace should not be so casually underestimated.

Matthew & KB your point about Lincoln and habeas corpus must be well taken. However, as I understand it, the habeas corpus suspension clause in the Constitution is silent as to who has the authority to exercise it. Lincoln took it upon himself to take that authority under the claimed powers of his office. The Supreme Court held against him and he defied the Court. Congress rescued the situation by passing legislation granting him the requisite authority, thus extracting both Lincoln and the Court from what would otherwise be a Constitutional crisis. So to the degree that it is a legal precedent, it falls on the side of a narrow reading of the President's Constitutional powers, not the broad one KB (and Chris Ford before) suppose. To the degree that it is a precedent of the raw power inherent in the Presidential Office, it falls on the imperial side of the scale. The essential point is that the outcome of this particular event did not establish a legal precedent; it established a political one. The current political issue to which it would be a precedent is whether Bush would be justified and/or successful should he defy the Court if it held against him in this case. Now for me personally, I would consider such defiance an eminently impeachable offense. Whether this particular Congress would agree with me is a whole different matter; they may rather do the same as was done by Congress during the civil war. As I've said before, impeachment is essentially a political act and judgment not a legal one.

In a later post Matthew raised the question of "emergency powers". As I have read various opinions of SCOTUS they would be most reluctant to address any powers not explicitly spelled out within the Constitution, which is brilliantly spare in its language. What they prefer is to apply its actual language to the facts of the case taken in context, and a state of war de facto would certainly be an important element of that context. Should there be a statute such as the "Emergency Powers Act" which might be relevant to the case then they would also look to the language of that Act that might define some explicit "emergency power" given the President by virtue of the statute. In practice, all of these adjectives, "plenary", "inherent", "emergency", "implied", etc. are invented and rhetorical in nature and not terribly meaningful in the actual legal consideration.

Kmac.....Your points to Mill and Patriot are well reasoned, but..... I would rephrase Mill's point as follows. The root problem of domestic surveillance without some judicial check is that it provides no shield for my 4th amendment rights which have as much standing in the Constitution as the Powers of the Presidents Office. Nowhere in the Constitution is the President given the power to effectively suspend those elements of the Constitution that he finds necessary or convenient. For this he would require a Constitutional amendment explicitly permitting such, as is the case with habeas corpus. I might also point out that this illustrates another problem with the Lincoln precedent as applied to this case. At least Lincoln was doing what the Constitution explicitly contemplated. Bush is not.

So the question becomes not, does the President have power and authority? The question before SCOTUS is, what are the limits of that power and authority relative to my rights in the Constitution that defines both?

You are certainly correct.....if his Article 2 powers trump the 4th

amendment entirely, he needs no warrant and Congress cannot impose such a requirement through FISA or any other statute. But it is only SCOTUS or a Constitutional amendment that can remove the "if". And you have well describe the Congressional remedies available to it to limit what SCOTUS might not.

James.....I don't know what specific powers the Solicitor General will cite on Bush's behalf if and when this case gets before the Supreme Court so I can only guess and take guidance from what other President's have asserted in similar circumstances (thus the Truman steel case provides guidance as to what was argued and how the Court responded to those arguments). In this respect my vagueness reflects my lack of psychic powers. What I can and did say was that if he has the powers he thinks he does, he has broken no statute as any such statute becomes an unconstitutional infringement of his constitutional powers. Now should the Court rule against him, I think you will find that the fact that he will have violated the FISA statute in question will not be a prosecutable offense. I believe he is immune from prosecution in his exercise of the legitimate powers and duties of his office and I am of the opinion that it would be held that in ignoring this law he was performing a legitimate duty of his office, whether he won or lost his case itself. Impeachment on the other hand, is not so constrained.

Now when it comes to those poor buggers in the NSA who are doing his bidding, I'm not so sure this immunity extends to them, and that may be the reason or one of the reasons for the leaks. We need one of these JD's to weigh in on this point. I'm well beyond my qualifications already.

Jaxas....."I oppose any President who does that." From the other side of the isle, I do too buddy. I do too.

Politically, I am a somewhat libertarian conservative. I am consistent. I don't believe in God. What do you say to evangelical born again liberals?

Matthew (to Kmac)..... I belabor your original point here. Happens some times.

Bullsmith and Matthew.....Yup, Bullsmith, the farmer stuff is mostly BS but it sells better than crying over what the government might steal out of Bill Gates 50 odd billion, or what's left when he fully funds his foundation.

Matthew, I agree with your point about capital gains. I would make two arguments. One is that the issue should not be whether to tax or not, rather it should be about at what rate the tax should be set (and I think 55% is unjustifiably high). Second, I would argue that the tax should only apply to the gain in the estate assets and not to the cost basis of them. This gets rid of the "double taxation" argument. But this is off topic.

Kmac (to James and Matthew).....Splendid Kmac, just splendid!

"So, there is no Fourth Amendment requirement for foreign intelligence searches. There is a requirement for targets of purely domestic surveillance." I don't think this is quite correct. The Fourth Amendment is attached to every US citizen (and I think to any legal permanent resident of the US, but I yield to any lawyer on this one). What is it that a warrant warrants? It warrants that the search is reasonable. It is the mechanism by which the judiciary insures that the executive (law enforcement) does not go beyond the limits of its powers in relation to mine. The fourth amendment right we all share is conditioned by the term "reasonable". With this mechanism, it is the judiciary and not the executive that determines whether the Constitutional condition meant by the term "reasonable" has been met. In that determination, the judicial branch is also bound to consider statutes passed by Congress addressing that question. The FISA statute does not define exactly the same conditions for reasonableness as is used in domestic courts so what is reasonable for FISA purposes is not necessarily reasonable for domestic courts. Now Congress does not necessarily reign supreme here. I might go to court and challenge the Statute on the basis that its definition of reasonable is unconstitutionally unreasonable. If the court agrees then there goes the statute and Congress starts over.

What this means is that my fourth amendment right is relatively stronger in a

domestic court than it is in the FISA court. Weaker conditions must be satisfied to tap my phone for intelligence purposes than for criminal investigation purposes, but in both, it is the judiciary that secures my constitutionally defined right.

Another technical aspect we must consider is the "scope" of the warrant. A physical search warrant might limit a search in a couple of ways anyway. One limitation is the premises or property to be searched. Another is the items or materials being searched for, or perhaps the purpose for the search. This too is an element of "reasonability". If your purpose is to find terrorist codebooks and instead you find child pornography but no codebooks can you use this evidence to prosecute the lowlife for porn? Probably not. (a little JD help here please)

Going on to wiretap type searches and migrating these concepts to those. The analogue to premises would be a phone number or an email address. Now as I understand it, the FBI felt real constrained with this definition and, with the Patriot Act, the notion of a "roving wire tap" substituted a person in place of a phone number or an email address. In other words, the "premises" equivalent limit becomes the collection of communications devices used by a person. Further, I would think that the search object would be limited to all of the communications by or to the suspect person on that collection of devices, i.e. it would not include communications on those devices between other people where none of the people included the suspect person. As a practical matter, in order to conform to these potential requirements one would have to listen to or otherwise examine (e.g. email) all communications on those devices in order to determine who the actual communicating parties were in order to separate which communications are not be subject to the warrant and which are. This gets us into Jon M's point about hundreds and hundreds, but not of warrants, of communications which must be presifted to the warranted conditions. It could get messy indeed to have to conform to warrants. I don't know that it does, but it wouldn't take much in the form of "reasonable" conditions to make it really difficult to comply in this technological communications world.

Lets think through the best case. The administration selects a suspect terrorist overseas and puts a tap on every communication device they can associate with him. FISA has nothing whatsoever to say about this. He has 50 communications this week, 40 to other overseas devices and 10 to other US devices. FISA only applies to those communications overseas where the other party was a US citizen and domestically where the other party is a US citizen or a legal permanent resident. We would classify all of these as international communications. Certainly in real time, and not knowing in advance with whom each communication will be, it would be practically impossible to know if this call required a FISA warrant or not since you have no instantaneous way of determining the citizenship or legal status of the person being communicated to, and certainly no way of getting one in advance. As a practical matter, I don't think they even try. I'll bet what the NSA is actually doing in this scenario is simply saving all such communications as computer files, examining them with software and then isolating those which might have positive indications of being worth looking at. Some analyst either listens, if it's a telephone call, or reads it, if it is an email or fax, then comes to some conclusion as to its worth for further investigation. He still doesn't likely know whether this requires a FISA warrant or not. To know, he must identify and then investigate the other party to the communication, time consuming and not so easily done.

If you think through the worst case, where the administration selects a domestic suspect terrorist to tap, you end up with a similar set of problems only worse because it will inevitably end up tapping purely domestic communications unless you tell the NSA computer to record only overseas communications. This, of course, would make one blind to this terrorist's domestic network.

Now let me be clear. I don't know any of this; I am speculating. But I can well believe that in this new world of communications there may well be legitimate and real practical problems conforming to FISA.

But lets suppose my speculation is the reality and the Supreme Court is asked to determine what would conform to reasonability within the context of the 4th amendment, the President's claimed power, and the war context. I would expect that they would not require a warrant for any communication

originating overseas regardless of the other parties location or citizenship. I would expect that they would require a warrant for intercepting or monitoring any communications originating domestically from or to a US citizen or permanent legal resident. That means you have no 4th amendment rights on international communications made to you, but retain them on all domestic or international communications made by you and all domestic communications made to you.

In this tedious detail, for which I apologize, I simply want to demonstrate that we really do need to have a much better grasp of the facts before the administration's case is dismissed out of hand. But again, having said that, throwing away all legal checks and balances on this particular executive authority is not an acceptable solution to me.

Kmac says....."I'm further confident that the Constitution gives the judiciary no role in national security matters."

No it doesn't, but it does give it the exclusive task of resolving the Constitutional conflict between my rights and the President's exercise of his national security powers. In the Constitution he has no more standing than I.

KD.....your no bloghog. It's the quality of content that counts, whatever the length.

Beren.....nice piece on class x, y, and z etc. As usual, gets to the important issues.

With that I say good night and I am just thrilled at the quality of the dialogue here.

Posted by: Cayambe | January 5, 2006 03:42 AM

Kmac - you made several good points, as others note.

i don't know the full details of constitutional law as you describe them

it occurs to me that the usual checks and balances have not restrained our current president in his conduct though. the congress is of his party as are most of the federal judges. the large media organizations had not done their job as the 4th estate.

my focus is on spying on Americans, here in this country. i don't trust any political party to do that without proper judicial oversight - if i talked with Osama (under FISA standards), of course they should tap my phone, but they better get an ok from someone independent, rather than simply dismissing the need.

It's the cavalier attitude that Mr Bush and Mr Cheney have about any second-guessing that concerns me frankly.

mill

Posted by: Mill_of_Mn | January 5, 2006 03:50 AM

64 % say democrats SHUT _UP !

Hurrah !

"I note that the media has already begun whipping up a set of opinion polls that will doubtless show that the public supports Bush on this question.

"If we put such questions to the test of public opinion, we might just as well ascan this Constitution. "

Well that means your opinion in this forum is in the ascan too.

LOL

Yep- we can toss yer opinion right in the trashcan. Thanks for the permission.

Not that anyone ever said in the government that we would immediately set the law in solid because the American People had spoken, even though Pelosi has tried that trick, she utterly failed.

LOL - Of course, as usual, we can then toss out the Bush approval ratings, the public opinion on whether or not we are winning the war in Iraq, the "withdraw

now" poll, the "was it worth it" poll, and BOTH TERMS OF CLINTONS PRESIDENCY, SINCE THE PUBLIC REALLY BLEW IT THEN AS WELL.

Yes, boy that horrible public opinion that is so terrible when it doesn't agree with you.

ROFLMAO

WHAT A WASTE OF TIME THIS POST WAS.

Posted by: SiliconDoc | January 5, 2006 09:37 AM

"WWFFD? Another Perspective on Surveillance

If I were to design my own line of inspirational T-shirts and bracelets, the theme would be "WWFFD?" -- "What Would the Founding Fathers Do?" In the case of domestic surveillance..."

Very good question. Let's go with a realistic answer, instead of some platitude from a single quote handpicked .

We have a large body of history, that shows "EXACTLY WHAT THE FOUNDING FATHER IN FACT DID DO ! "

I know, it's tough not to work it on a LIE.

What would the Founding Fathers DO - was the question, right ?

Yes, not " What is one line from a founding father hand picked from thousands of pages for choice agreement ". LOL

Ok- well, they wiped off the face of the USA the indigineous races(unless they betrayed their own,and became an oreo cookie), and in fact any tiny smattering of intel they could get on location or strength of the enemy they acquired through often grisly means at the end of a loaded shot barrel.

Did the same to the Brits, and leakers of defense information on our side(defectors), were often SHOT TILL DEAD, ON SIGHT.

Same thing in the Civil War, if you recall the fate of our "First Southern President " called IMPRISONMENT, and very nearly EXECUTION.

So, as far as the Founding Fathers go, my estimation in the curent situation is this:

The Founding Fathers would have rounded up EVERY SINGLE MUSLIM in the USA, at all the MOSQUES and other "ethnic muslim communities" across the USA, and given them several choices.

Be deported or shot immediately if you raise a peep about this, turn in any known subverses by a rat gets a break system, and get ready for a long trip to a southern nowhereland down somewhere in another hemisphere for whomevers left.

The intel they could gather would have a no holes barred approach of course, sifting and smoking out the "hidden caches" of those who fled or tried to avoid the round-up, including some pretty horrendous torture methods that make abu grhaib look like Disneyland with a thousand bucks cash..

That's probably what the Founding Fathers would do.

Glad I was the first person to actually answer !

:-)

Posted by: SiliconDoc | January 5, 2006 10:01 AM

What ? It's not so bad ! It's not like I'm WRONG, or something.

Heck, that Democrat president interred 100,000 foreigners in prison camps on our soil in the mid 20th century !

Sheesh, good thing we got past that democrat.

Given the population increases since then, it seems to me Bush is about 3 million prison camp interees behind.

Sure am glad Bush is a whole lot nicer than that terrible tyrannist death camp democrat president we had barely 50 years ago.

Posted by: SiliconDoc | January 5, 2006 10:06 AM

Still think I'm wrong? LOL

*"Alien and Sedition Acts:

The acts permitted the United States government to deport any foreign citizen that the government found displeasing. They also imposed fines and jail terms for up to 5 years "for those who uttered or published 'any false, scandalous, and malicious' statement against the United States government or its officials." Led by Hamilton, Washington and Adams.

Wowzie !

They didn't always get along either !

*Adams himself had long hated Hamilton and had declared him "great an Hypocrite as any in the U.S. a proud spirited, conceited, aspiring mortal always pretending to Morality, with as debauched Morals as old [Ben] Franklin."

Yikes! Old Ben has some skeletons.

*Adams had witnessed Hamilton not only try to embroil the United States in a war with France, but also to use the Virginia resolution as a means to goad Virginia into open rebellion so that Hamilton could personally lead an army to crush the independent spirit of Virginia permanently.

Hmm. Wow . Maybe I wasn't tough enough in my assessment of :

What Would the Founding Fathers DO.

* _Founding Fathers_ by Ryan McMaken

Posted by: SiliconDoc | January 5, 2006 10:29 AM

Cayambe,

Thank you for that great post. Great dialogue on this thread.

SiliconDoc. Thanks for waiting so long to start your public arguments with yourself. Please don't bother reading the rest of the posts. I'm sure you have nothing to learn.

Posted by: Bullsmith | January 5, 2006 10:36 AM

Cayambe, I say to anyone who claims to be "born again", that they are talking rubbish. My sister--a fundamentalist--has been born again so many times that it is no longer a matter for serious discussion. I had no idea that there were so many religious sects out there that one could be "born again" into.

I fully understand what Jesus meant by the term when he used it. But, I believe that Jesus himself was a bit of a lunatic. All of that judgemental crap about what was going to happen in the last days. Look. It seems reasonable to me that if any man has any real Divinity in Hims sufficient that he can actually tell us what is going to happen in the future and when it is going to happen, he does not need to couch such knowledge in mysterious, enigmatic rhetoric that can be interpreted (or misinterpreted) in a variety of ways and manipulated by crass ambitious men for their own selfish ends.

Having such foreknowledge as Christ claimed to have, it was incumbent upon him to share such knowledge in clear, unambiguous words that conveyed that knowledge to the rest of us. But, like most of these prophets, seers and revelators, he hid his meanings behind enigmatic parables that were and continue to be almost meaningless in their generality.

Beautifully and poetically spoken but essentially meaningless. Like his born again analogy, which was just an analogy for telling someone that they had to discard their own beliefs and accept whole cloth his beliefs based on nothing more than an outrageous claim that he was the Son of God!

Posted by: Jaxas | January 5, 2006 10:46 AM

I think this whole debate should be covered in an Impeachment trial. We impeached Clinto for havinh sex in private with an Intern, surely Bush screwed something far bigger by trashing the Constitution. Save our liberties, impeach Bush!!!!

Posted by: Harry | January 5, 2006 10:50 AM

Harry -

From what I remember, we impeached Clinton for Obstruction of Justice. Funny how the left always makes it out to be an impeachment over a blowjob. At least Bush doesn't lie directly to your face. You might not like what he says (I love the guy but sometimes I don't like what he says because he's not the greatest speaker), but he's always straight up. He sticks by his decisions and takes the blame when he makes a bad one. I'd rather have that than a conniving son of a bitch like Clinton in office.

Posted by: Alex Ham - America's Hero | January 5, 2006 11:14 AM

Beren,

You raise some good questions that I can't claim to be able to fully answer. Some things which I can say, however:

- (1) The judiciary is tasked with determining the extent of the powers of the other branches. So this would be a legitimate issue for SCOTUS to address without infringing on any rights of POTUS.
- (2) The magic word in law is "reasonable." And that's what I was getting at earlier in my discussion with KMac. I'm not 100% sure on how it would shake out, but my guess would be that how SCOTUS would rule would depend on how sensitively the Exec and the NSA weighed privacy concerns versus concerns of security. If they rode completely rough-shod over the former in favor of the latter, the program would probably lose. If, however, the NSA took extreme caution not to sweep up an American citizen's conversation (even though, inevitably, some were) the program as a whole will probably pass muster. Not much of an answer, I'm afraid, but the best I can give.

Cayambe asked about looking for codebooks and finding child porn. That question is easier. Yes, they can use the child porn as evidence against someone. Once a search is warranted, anything found within the scope of that search is ok. So, if you're looking for a stolen car, you can't go opening bedroom drawers and find cocaine. But, if you're looking for codebooks and search all areas where described codebooks could be, anything you find is fair game.

Posted by: Matthew | January 5, 2006 11:17 AM

Yes, excellent post Cayambe. I think you present good summaries of both sides of the issue, and I certainly agree with your conclusion, that the SCOTUS, as the only power authorized to do so, will have to make the final determination.

I have a friend at my work who calls himself a "libertarian conservative" and we have lots of debates over coffee. He's of the opinion that it's best to avoid having the SCOTUS rule on an issue, as such a ruling removes any flexibility from either side in the future. I see his point, but also see the necessity of forcing bad laws or actions under the scrutiny of the Constitution and getting an up or down, which is the job of SCOTUS.

So, does anyone here think that Congress and the Prez may try to come to some sort of pre-SCOTUS deal on this? Bush doesn't seem to be in the mood to deal, but I think that's a bluff. He has more to lose in a showdown, and I don't think the SCOTUS will give him nearly the scope of war power he wants. They've already sent some strong signals that war powers can not ride roughshod over the rights of citizens or the more limited rights of non-citizens. I guess it will depend on the mood of Congress. They still seem to be in the process of making up their minds about how to respond.

Posted by: james | January 5, 2006 11:30 AM

I don't think Bush is obligated to deal at all. Apparently all this discussion I've been reading went in one ear and right out the other. Bush acted within his powers and didn't break any laws. This whole situation is being blown out of proportion because the left is looking and waiting for a reason to destroy Bush's credibility and secure seats in the upcoming election. Bipartisan politics is all the left is interested in right now, not the well-being of our Union. This topic is moot in my opinion because there's nothing to really talk about. SCOTUS won't even get a chance to change law because it's not going to go that far. The left is just always looking for something to change. Instead of changing, try leaving.

Posted by: Alex Ham - America's Hero | January 5, 2006 11:39 AM

April 20th 2004 from the <http://www.whitehouse.gov/news/releases/2004/04/20040420-2.html> the President: "Now, by the way, any time you hear the United States government talking about wiretap, it requires -- a wiretap requires a court order. Nothing has changed, by the way. When we're talking about chasing down terrorists, we're talking about getting a court order before we do so."

This was not entirely honest.

Washington Post, May 31st, 2003 <http://www.washingtonpost.com/ac2/wp-dyn/A60140-2003May30?language=printer> The President: "You remember when [Secretary of State] Colin Powell stood up in front of the world, and he said Iraq has got laboratories, mobile labs to build biological weapons," "They're illegal. They're against the United Nations resolutions, and we've so far discovered two."

This was not entirely honest.

Thoughts?

Posted by: Will | January 5, 2006 11:42 AM

Looks to me like maintaining national security. We've already seen what happens when information gets in the wrong hands. The government shouldn't have to tell us shit.

Posted by: Alex Ham - America's Hero | January 5, 2006 11:47 AM

A Military Perspective on Iraq, and Intelligence Gathering

It's time to do a post-mortem on the Iraq war itself (not the police action we're currently in), and the methods in use, if we are to understand how to achieve our goal of a less volatile world and a safer homeland.

I want to note first we have some very good strategists in the military, and some did have the foresight predict the civil unrest after the war ended, and that it could turn into an active resistance. I remember watching CSPAN while General Eric K. Shinseki briefed congress we would need more troops at the ceasing of war than were needed for the war itself. Shinseki was the Army Chief of Staff and I think many should agree with many of his points about how the military needs to change from it's cold war footing, (see the future war : <http://www.pbs.org/wgbh/pages/frontline/shows/future/interviews/shinseki.html>)

This was because, in his experience (in Bosnia), once the lid was off the pressure cooker of a dysfunctional state, you needed a capable policing force to establish order before the explosion of tensions released condense into organized resistance. For this opinion Shinseki was pushed out by the current civilian bureaucrats running the Pentagon. Other line officers also got the point, if they had opinions other than the ones given to them in briefings, they had better keep them to themselves, or their carriers could be at stake.

While it is true a military is, as they say in cadet school, "a Dictatorship charged with protecting a Democracy." Sometimes it's not the military that is wrong, as we seem to have been conditioned to think after Vietnam, but the civilians who are overseeing the military.

As we look at the 21 century, we are probably looking at multiple states

acquiring the capability to enrich uranium with centrifuges. This requires no easily detected reactors, and the HEU produced is much easier to handle than plutonium (I'm not going to discuss how easy). Look at Pakistan, we found out they were enriching uranium when they detonated a bomb just to show India they could "wield a big stick." It almost caused a hot war between them in the late 90's.

This brings me to my point, deterrence is a useful tactic, but we must assume that it will fail sometimes. Unfortunately, deterrence is the only card we are playing. We will need informants in this war also (i.e. old fashioned spies, not just signal intercepts). To do this we must play better with the Arabs and Persians who are not inclined to live in a state as Al Qaeda would remake it (and there are more of them than you might think).

In a War, the best propaganda is that based on something the people inclined to side with you believe, because their experience justifies their beliefs. Case in point, what the Soviet Block people heard from Moscow did not match their experiences in real life. Some assisted the West just for the possibility that Democracy would be better (now some yearn for the 'bad old days' when life was predictably cruel).

Reliable informants can be more useful than an entire division of troops sometimes. And reliable informants are nurtured, as we did in the Cold War, on the milk of propaganda based on their experiences. We have been woefully inadequate in this so far. And don't blame the press for this; a good propaganda campaign expects bad press, and plans for it by planting the seeds of actual experiences that can ameliorate the inevitable bad news. (The Soviets made this easy for us). Unfortunately, the status quo in Iraq currently does not make this easy (and let's please not go into things are better than they appear, to say ops how they appear is how things are. That is your hand dealt, play it or fold. And a press that is demonstrably free is one of the best assets of sy ops. That's why the Soviet media was a paper tiger in the propaganda war).

There will come a time when we have to make a bold, clean break with our current state of affairs in Iraq to break the stalemate and our losing the propaganda war. And it will require follow through, not just bills passed outlawing torture that are fought by the other ideological side. (You just lost most of the value of this as propaganda because you have contradicted your countries image in public.) You must weigh the cost of losing some possible (questionable) intelligence from course nets to sweep up leads, to the future benefit of more reliable and useful intelligence. This is a war, and sometimes you have to make tradeoffs tactically to reach the strategic goal. If we continue on the current path, we will certainly lose opportunities for greater intelligence that will be reliable and useful for deterrence.

Lastly, the civilian military planners need to study the strategic lessons from Vietnam and the Soviet occupation of Afghanistan. The ability to occupy a country does not necessarily lead to favorable strategic results. The Viet Cong never won decisive battle (against the US, the French are an exception). Yet they waited us out, and took control in the end. You can argue this is a reason for us to stay, and there is some merit in this argument. But look at Vietnam now; they currently look to us as a market for their goods and as a foil against the Chinese military. (The Vietnamese have fought against the Chinese for the last 1,000 years on occasions, compared to that, we were just a single recent chapter in their history.)

The Iraqis have plenty of history to counter this unfortunate episode if we get out of the way. Iran of course sees Iraq as a puppet state, and in many arenas in Iraq they have the upper hand. But Iraqis did recently fight a very bloody war against Iran. The British were there under colonial auspices for much longer than us, and as I understand, Iraqis have passed down a distrust of anything that resembles colonialism.

There was equal merit to congressman Murtha's suggestion to attempt to move active forces 'over the horizon.' If we had done this gradually, preferably with blue helmets (UN peace keepers) filling the void, eventually as a trip wire, we might have been able to begin to make that break in the status quo. And before you argue against trip wire force like blue helmets, remember our forces in South Korea are trip wire forces. If a hot war were to start, they will only be an effective fighting force for about a week, and losses will be high. That buys the time needed to bring further tactical and strategic assets

online and determine targets.

So we have lost the opportunity in Murtha's suggestion to make a useful tactical change on the battle field by taking a valid option off the table in a very public way and making it propaganda for the enemy.

Until we make some shift in the status quo, we will continue to lose ground in the heart and minds war. And it is that battlefield which, in the end, will determine if Iraq is an ally or enemy of the United States and the West in general. Remember Vietnam, battles are fleeting, memories last for generations.

Posted by: Silence Dogood | January 5, 2006 11:48 AM

Alex Hamm-

"Bush acted within his powers and didn't break any laws."

This is not entirely true. There is no question that Bush broke a law, because the law states not-x and Bush authorized x.

http://www.law.cornell.edu/uscode/html/uscode50/usc_sec_50_00001802----000-.html this is a copy of the law.

(1) Notwithstanding any other law, the President, through the Attorney General, may authorize electronic surveillance without a court order under this subchapter to acquire foreign intelligence information for periods of up to one year if the Attorney General certifies in writing under oath that--

(A) the electronic surveillance is solely directed at--

(i) the acquisition of the contents of communications transmitted by means of communications used exclusively between or among foreign powers, as defined in section 1801 (a)(1), (2), or (3) of this title; or

(ii) the acquisition of technical intelligence, other than the spoken communications of individuals, from property or premises under the open and exclusive control of a foreign power, as defined in section 1801 (a)(1), (2), or (3) of this title;

The law was broken. This might not be a big deal for Bush because legal minds are making legitimate cases that the law itself was unconstitutional, which means Congress could not pass the law in the first place.

If the law is unconstitutional then the SCOTUS is the ultimate arbitrator of that, not the President.

Posted by: Will | January 5, 2006 11:54 AM

Alex Hamm-

"Looks to me like maintaining national security. We've already seen what happens when information gets in the wrong hands. The government shouldn't have to tell us shit."

Are you referring to the quotes or something else?

Posted by: Will | January 5, 2006 11:56 AM

Alex Ham,

You do discredit to the right with your nonsense.

(1) Bush certainly broke a law. There's no wiggle room around the clear text of FISA. Now, there's good debate as to whether the law was ineffective or an unconstitutional encroachment upon his powers, but that's a different thing. If someone is coming after you with a knife and you shoot and kill them, you've still killed someone even though you have an affirmative defense of self-defense and may not get convicted of murder. See the difference?

2) I really wonder with your, "this is all politics" rant whether you're trying to provide muddying cover or if you really see the world so one-dimensionally. If so, I'm sorry, because for the rest of the world, things are much more nuanced.

Posted by: Matthew | January 5, 2006 11:57 AM

Chris --

I don't recall claiming Constitutional expertise. I think it a valid point that the Constitution is written in common (not legal) language, a document that yields its broad meanings to careful reading and a reasonable historical understanding. It wasn't intended, probably, to be the kinds of legal "hair-splitting" in especially in vogue among conservative lawyers and judges (although some left-leaning jurists are not immune to temptation).

Mr. President Bush's acts, words, and general behavior toward Constitutional issues rather broadcast his contempt for many of the protections (explicit and implicit) contained therein. Do you need a Supreme Court interpretation to understand the general structural concepts of our country? Perhaps you do, and perhaps that's the problem in modern America; we've lost the ability to read and reason. Well look! I don't want to engage in this "fine point" niggling about the meaning of things.

Some of us are concerned about how others seem to know that they'll never be considered the "bad guys"; nor consorting with, talking to, or mistaken for the bad guys. African-American heritage has put me and my ancestors on the receiving end of things that were "for our own good." That may make my sense of what the Constitution asserts a little more meaningful in terms of individual and public civil rights.

I don't think George Bush much cares about my rights; he's quite certain his are protected. We have two nations here: one of power and privilege and one of subordination. You, Chris, apparently are not much aware of the second - possibly scornful of it as is George Bush and his close supporters. But it doesn't make that "second estate" or whatever it is any less real nor any less protected by the U. S. Constitution.

Posted by: Jazzman | January 5, 2006 12:23 PM

"What is your problem with this? Are you afraid that someone is going to find out about your "secrets?" I couldn't care less if someone is listening to my conversations. I don't say anything on the phone that I wouldn't say in public. This is a big bruhaha about nothing. The "right" to privacy is a myth. There is no such "right."

Posted by: Kenneth | Jan 3, 2006 12:10:37 PM "

You are exactly correct Kenneth.

The left also needs another Plame attack piece, and this is their ticket to pretend they know the laws.

The very best legal minds in the whole USA entirely disagree with them, as well as decades of precedent, and we saw in the Plame matter when they were told by the very same authorities that the law was not broken, they shrieked and babbled that Plame was in some foreign nightmare scenario where her death and others was imminent. Of course, they just lied, and lied, and lied, and lied.

Two years later they had their big boffy babbly balloon popped in full view of the entire public, but that didn't let them down off their high horse of arrogant incorrectness.

They're going for round number two.

LOL

It's HILARIOUS. It's theatre!

I have to add, in this particular case, they do have genuine personal fears. So great is their propagandized hatred for the Great President Bush, that they have been engaging in terribly untoward personal conduct, quite secretly and without detection by Echelon they have assumed since the Iraq war.

Unfortunately, that assumption they feel was now incorrect, so vulnerability and fear color their dialogue.

The only way they can restore their own personal feelings of safety, is to crush the Echelon NSA information machine, that may have picked up their less than honorable behavior.

This fear of course has a wide berth, it is not just compartmentalized to terrorist styled self insinuations of guilt.

That's why you hear things like, " We can't dissent against this government !" (the fear of Patriot Act combined with NSA US citizen Echelon takings hitting them personally, with drug law application, or "protest group internet membership", rarer statements of desire for Executive expiration, even their

own personal average under the table deals where they shirked the fine letter of the IRS laws,etc.)

It's a real horrifying experience for some of these people.

They speak of being ruled by fear, and frankly, it is more than plainly obvious that many of them are.

Given all that, they also like to feel mentally superior to their average citizen equivalent, and might take great pride in believing they are part and parcel of those who defend this "democracy", because they feel they are the only ones to have the requisite intellect to comprehend the slippery slope before us.

Partisan games of course is a factor, whereby that particular partisan may in fact have any or all of the above fears and defects to varying degrees, but the real agenda is to implement their perceived group back into power at all costs.

Posted by: SiliconDoc | January 5, 2006 12:34 PM

"Could it be the powers, long recognized by federal law, to:

Conduct warrantless searches of suspects for officer safety and process incidentally found contraband as evidence.

Which would explain why the media and the Left is not crying about ANY of these other warrantless searches nor the national security ones done in previous Democratic Administrations.

Or is it all about Bush?

Posted by: Chris Ford | Jan 3, 2006 8:32:22 PM "

BINGO ! Yes, Chris , it is all about Bush.

Therefore, no evidence to the contrary will ever be acknowledged, admitted to, properly and reasonably assessed, or even remembered within 10 seconds of it's cranially acquired integration on the left.

It's a feeling, it's a sensation.

It's a hope, it's pursuit of happiness !

LOL

Posted by: SiliconDoc | January 5, 2006 12:52 PM

Bullsmith,

I refer you the policy of Emily Messner, since you have issued two attacks in this thread:

Knock it off!

Ad hominem attacks have no place in what should be an intelligent, logical debate. (For those unfamiliar with basic Latin, the definition of ad hominem can be found here: <http://dictionary.reference.com/search?q=ad+hominem>)

Flinging mindless insults only betrays the insulter's lack of solid reasoning. There are so many compelling arguments on both sides of this issue that there is really no excuse for resorting to verbal abuse of those who disagree with your position.

If you don't have anything constructive to add to the Debate, please refrain from commenting. (In case I haven't been clear enough: name calling, gratuitous use of profanity, and suggesting various methods of self-fornication do NOT qualify as constructive.)

Let's keep it civil, shall we? Many thanks.

Posted by: Emily Messner | Jan 4, 2006 12:51:26 P

Posted by: SiliconDoc | January 5, 2006 12:58 PM

The hyperventilating is hilarious.

Echelon has been running for many years, as it ran fullbore under the criminal regime of Slick Willie Clinton.

No new data mined, just new abilities to look at what is mined.

It appears were looking at an Able Danger type system using not just public data, but the private data realm.

So, we have 500 to 1000 warrantless taps reported, I've seen both those numbers in print.

I guess that leaves out 294,999,000 US persons.

Gee, that's too bad. You won't win the lottery today.

LOL

Posted by: SiliconDoc | January 5, 2006 01:10 PM

Ahh, the solace of propagandized utopia.

" The Founding Fathers were amazing people and true geniuses. Compare them to the bunch of corrupt dunderheads we have in government these days... if only we lived in an age of reason and enlightenment."

ErrinF

Uhh, didn't those FF's like- endorse slavery ?

You women couldn't vote either. That was true genius!

Wasn't it you who screamed about them slaughtering the Indians ?

They hung black people from a rope till dead as well, in the public square or at the nearest tree, when they weren't rasing bloody welts on them with a horse whip, or flagrantly raping the young black women at will.

Yes, pure genius and enlightenment !

ROFLMAO !

*The term "Founding Fathers" does much to mislead us about the origins of American government. The term has long been used in a quasi-religious way in which invocation of the will of the "Founding Fathers" is supposed to inspire awe and obedience to whatever point one happens to be making: "The Founding Fathers wanted..." While it is expected that the use of the term will bring to mind names like Washington, Hamilton, Adams, and Jefferson, such vague images of men from the misty past tend to create an image of unanimity among all parties, ignoring the violent disagreements between them during the early years of the Republic.

The invocation of the Founding Fathers as a unified group singularly uncritical of the Constitution and godlike in their wisdom is quite convenient in creating myths of American exceptionalism.

*

Founding Fathers by Ryan McMaken

Oh yeah, they had duels to the death sometimes too, with real guns, at 30 paces!

Golly- too bad we aren't living in enlightenment now, the freedom fighter president and the black president could square off and settle things once and for all.

Posted by: SiliconDoc | January 5, 2006 01:35 PM

OUCH !

ROFLMAO - DID THEY ALL PRETEND THEY NEVER READ IT ?

ROFLMAO

"On May 21, 1940, President Franklin Roosevelt issued a memorandum to the Attorney General stating his view that electronic surveillance would be proper under the Constitution where "grave matters involving defense of the nation" were involved. The President authorized and directed the Attorney General "to secure information by listening devices [directed at] the conversation or other communications of persons suspected of subversive activities against the Government of the United States, including suspected spies." The Attorney General was requested "to limit these investigations so conducted to a minimum and to limit them insofar as possible to aliens." From 1940 to 1946, over 5,000 wiretaps and microphone plants were done in the USA. All international communications, inc. all from US areas under martial law (Hawaii, Alaska territories) to the mainland, were screened by military censors

and copies retained."

From Chris Ford - Wow! The Long Dark Night of Fascism was launched by FDR.

Posted by: SiliconDoc | January 5, 2006 01:37 PM

"Congress rescued the situation by passing legislation granting him the requisite authority, thus extracting both Lincoln and the Court from what would otherwise be a Constitutional crisis. ... The essential point is that the outcome of this particular event did not establish a legal precedent; it established a political one. "

The congress wrote the law. That's legal. If the Supremes don't challenge, and HAVE NOT since, well then the precedent of course is set in those cases that have upheld the congresses' support of Lincoln, which are many and have been posted.

"Falling on the imperial side of things" doesn't matter, merely shows your prejudice.

There was a constitutional crisis, according to your telling of the event, so claiming one was avoided is incorrect. Congress settled that crisis.

One musn't fall into the tired left's so often pabbled belief nowadays that all constitutional crisis are settled by a supreme court decision.

I merely wanted to be sure you understand that just because the supreme court hasn't overturned something you want overturned, does not mean it isn't settled, nor does it mean it isn't supported in other decisions in the court, therefore having a precedent.

Everyone on the left seems to be really begging for a supreme court case on this, in of course the stated hope that they can get W slammed on it, and then impeach him.

Well, guess what ? You've basically lost your majority in the SP, and if this is looming get ready for the nuclear option if you block Alito.

Better hope for a golden goose egg, another death you need to get the W in just the position you want him in.

Posted by: SiliconDoc | January 5, 2006 01:59 PM

Jaxas wrote, "Caycambe, I say to anyone who claims to be "born again", that they are talking rubbish."

Jaxas, you are more courageous than I; I usually limit myself to thinking that and reserve the saying of it to my Jesuit friends who understand it is not expressed to offend. But I was raised such that the very concept of a religion was not within my consciousness until age 6, and by then it was too late to be other than eternally bemused at how this nonsense could possibly be so credible to so many. But it is undeniable that it is, and the many are as entitled to their strange beliefs as I am to mine.

Matthew..... thanks for the correction, and for supplying a better formulation illustrating the essential point.

Silence Dogwood.....a very good post indeed, most thoughtful, and containing much with which I would agree; but off topic in this thread. I do sincerely hope you will reappear in a future thread where it will be on topic. Meanwhile save a copy will you?

James.....I would say to your libertarian conservative friend that what is "best" is that our individual constitutional rights, mine, yours, his, each and everyone of us, including Jazzman, including even SiliconDoc, have structural protection within the framework of the government we have authorized through the Constitution to protect them. If the President and Congress can negotiate an acceptable arrangement, that's great. If not, SCOTUS must insist upon it.

Jazzman.....the Constitution itself is color blind. Can't say that about its creators. Can't say that about the entire succession of its interpreters, but these have improved considerably over the course of our history; you might

even concede that they are getting quite close to the Constitution itself. The populace, the entire populace, is trending in the right direction, but has somewhat farther to go. We must keep the trend moving. The Constitution requires it. Whatever the individual faults of its creators, they did not write these into the Constitution. Remarkable, isn't it?

Posted by: Cayambe | January 5, 2006 02:21 PM

Sure, the Legislature is given the right to regulate interstate commerce, but it's up to SCOTUS to say whether or not that extends to home-grown wheat.

Posted by: Matthew | Jan 3, 2006 4:03:24 PM

If you are as you claim, then one can assume you understand the expansion set forth illegally by SCOTUS of the Interstate Commerce Clause. Recently one finds pot not wheat convincing apparently, as Wickard is a bolt in their eye.

One clearly is reminded as well of the recent flagrant powergrab supported by SCOTUS left concerning Eminent Domain.

Smile all you like and pray for a miracle against Alito, and no constitutional option employed due to more constitutional breaking by the left fillibusters.

I note Daschle got his due as he dithered in trade of a majority consent vote for declination of recess appointment powers.

One versed in law is well aware of these recent cases.

Clap your hands, click your heels three times and pray SCOTUS doesn't take it up, so you can whine endlessly about Bush, since the right five will be present.

Posted by: SiliconDoc | January 5, 2006 02:22 PM

SiliconDoc,

You're right about my two comments and I apologize.

But I do not personally find you further the debate very often, and am often insulted by your content and tone, just as I have wrongly insulted you.

Chris Ford, I owe you a particular apology as your posts on this thread have certainly contributed to this discussion.

Posted by: Bullsmith | January 5, 2006 02:25 PM

Er, not that it's on-topic, but Jaxas, you write:

=====
 "I say to anyone who claims to be "born again", that they are talking rubbish. My sister--a fundamentalist--has been born again so many times that it is no longer a matter for serious discussion."
 =====

I'd make a similar claim (of being reborn in Christ), actually. In some other post, on some other thread, I'd be interested to know how you know that I'm 'talking rubbish'. ;) Is it any more logical for you to reach a conclusion about evangelicals in general based on your sister and her acquaintances than it is for certain other posters on this blog to reach conclusions about 'liberals' in general, based on some that they have met?

But thanks for the honesty. I appreciate it.

Posted by: Beren | January 5, 2006 02:44 PM

Correction to previous: "of being" in the first line should read "of being, or of hoping to be". Thanks.

Posted by: Beren | January 5, 2006 02:49 PM

Posted by: Silence Dogood | Jan 5, 2006 11:48:34 AM

"There was equal merit to congressman Murtha's suggestion to attempt to

move active forces 'over the horizon.' If we had done this gradually, preferably with blue helmets (UN peace keepers) filling the void"

Sure, that's why it was voted down 403-3.

The blueheliions aren't capable of helping, forget that fantasy.

Three, it was only weeks before when the libs were screaming there weren't enough troops, the ING isn't trained properly, and all the rest, then suddenly, they decided to switch tactics(they finally relaized the plan to withdraw in 06 announced 6 months earlier by Rumsfeld on national Tv was for real), and in their switch, they tried to pretend they actually flip-flopped without flip flopping, and just decide to- umm.... uhhh...well, surrender really.

Call it quits and call it a total loss, and do it- uhh... YEP, the night before the IRAQ ELECTION TO THE FINALIZE THE NEW INDEPENDENT DEMOCRATICALLY ELECTED IRAQ GOVERNMENT !

ROFLMAO - THE WHOLE DEMOCRAT PARTY IN BLATANT STUPID FLIP-FLOP ON THE EVE OF WHAT THEY CONSIDERED THE ULTIMATE VICTORY- THE LAST OF 3 NATIONWIDE VOTES THAT ACTUALLY ESTABLISHED AN IRAQ FREELY ELECTED GOVERNMENT- AN ALL TIME FIRST IN THE ENTIRE KNOWN HISTORY OF THE MIDDLE EAST- A MILESTONE FOR THE MILLENIUMS !

Yes, the dirty rotten democrats, liars to their very core- traitors- decievers.

(No, I didn't forget the three dozen statements that were lofted to the public sphere by republicans that war detractor john Murtha had been yapping years prior !)

A HAWK - to democrats- is someone who is so scared they want to flee the whole area- because as Murtha put it " We are actually a target of insurgency !" as his little beedy eyes filled with fear.

LOL - I watched it on TV ! I saw it !

Shame on them.

Posted by: SiliconDoc | January 5, 2006 03:26 PM

I may be responding a little late to one thing I grasped on in Alex Ham's orgy of homophobic insults hurled at the posters on this blog and liberals in general, but he did actually say something true: He said that Bush doesn't have to bargain with Congress for a pre-SCOTUS solution to violating FISA. Only not for the reason you think, Alex.

Bush doesn't have to bargain because he really doesn't have to worry about what the public thinks of his policies and decisions. After all, he isn't seeking reelection.

I read an excellent op-ed piece in the NY Times this morning on Republican senators (I think it was F. James Sensenbrenner, but please correct me if Im wrong) who proposed repealing the 22nd Amendment, which restricts presidents to 2 terms. I think its a great idea, because just think how different things might be if 43 had to consider his decisions in the light of reelection strategy. When I found out Bush had won a 2nd term, I said that the country was going to hell in a basket now that Bush didn't have to be accountable to his constituency, and I was right.

Frankly, I'm a little surprised that he doesn't just take a 4 year vacation to Crawford, clear some brush, and let Cheney and Rove run the country. After all, he has clearly displayed a complete disregard for the principles this country was founded on, even the principles he ran on in 2000, like restoring truth and honesty to the White House. For you to say that the president is " straightforward man" must mean that either you are delusional, or you think the rest of us are.

Posted by: JK | January 5, 2006 03:49 PM

SiliconDoc, I have to thank you again. I was almost tempted to respond to one of your posts that was half-reasonable, but seeing that you're back to screaming, incendiary ways, I see I don't have to bother.

Posted by: Matthew | January 5, 2006 03:56 PM

"The Founding Fathers were amazing people and true geniuses. Compare them to the bunch of corrupt dunderheads we have in government these days... if only we lived in an age of reason and enlightenment."

ErrinF

Uhh, didn't those FF's like- endorse slavery ?

You women couldn't vote either. That was true genius!

Wasn't it you who screamed about them slaughtering the Indians ?

They hung black people from a rope till dead as well, in the public square or at the nearest tree, when they weren't rasing bloody welts on them with a horse whip, or flagrantly raping the young black women at will.

Yes, pure genius and enlightenment !

ROFLMAO

Posted by: SiliconDoc | Jan 5, 2006 1:35:02 PM

THAT'S how you view our Founding Fathers, Silicon Doc? Some American you are! Only a true fanatical dittohead nutcase like yourself would cast the Founding Fathers like that. I won't even honor that slimy diatribe by discussing it further.

By all means, Silicon Doc, continue to make an ass out of yourself by writing your hyperactive histrionic vitriole. Genius and enlightenment is something you will NEVER grasp. ROFL, LMAO, and LOL all you like... but GMAFB!

Posted by: ErrinF | January 5, 2006 04:01 PM

Posted by: Matthew | Jan 4, 2006 11:20:27 A

"Also, how many hundreds of billions of dollars have been spent on anti-terror measures and the invasion of Iraq? How much consumer loss has there been in extra time lost in lines? How many times over could we have saved 3,000 lives if we had dedicated those time and resources to fighting hunger instead of each other?"

People die each day (even in America) of malnourishment. It is not as sensational as a plane hitting a building, but to me, their lives, and deaths, matter just as much."

Thanks for the Judas style complaint. (Judas- the Betrayer- said the same thing when money was spent on Jesus)

Slick Willie Clinton told us he had all the criminals that injured 1,500 Americans and murdered 6 Americans from the 1993 WTC bombing under his watch in jail.

(HE LIED, the republican guard who made the bomb fled to Iraq- tattoo on arm- and was given a place and living expenses by Iraq Intelligence- but there is no connection to 911 - LOL)

He told us it was all taken care of and just a bad nuisance of crime.

Richard Clarke, Clinton's holdover, told us in his 911 commission whine that he was watching the chattering in the months before 911 and he decided it was going to be a hit in Israel or in Saudi Arabia. When Ben Veniste asked him if he checked if there were Al Qaeda cells in the USA, Richard Clarke replied, " This is going to sound bad, but , frankly I didn't think the FBI would have a clue about Al Qaeda in the US " .

Now we have the same thing going on.

Clintonites are clamoring that the threat is nothing and not much, it's a mere criminal nuisance.

Others are whining that FISA is good enough, and they won't find any terrorists otherwise, just do FISA. The war in Iraq they whine is lost, it never helped anything and there are more terrorists than ever (they must be confused- are there less or more- less threat or more?).

Well, that's what lefties want everyone to believe right now.

Nonetheless, serious research and Al Qaeda documentation found in Afghanistan, and in Iraq show they have been seeeking nuclear weapons. Chechnyen Mafia and 4 Soviet Satellite states have been approached by Al Qaeda in atempts to acquire nukes. A plutonium sealed metal cylinder was recovered from Al Qaeda in Afghanistan - used for testing of bomb designs- Pakistan IIS agents - have funneled nuclear scientists into Afghanistan for Al

Qaeda's use.

Our Government has been spreading around major cities with rad detectors- the recent story is unmissible in the DC area.

We found in Iraq- missing 350 tons of HDX,RDX,PETN explosive- capable of compressing and igniting a nuclear core- and dismantled nuclear facilities carted off, Botulinum - in test tube- capable of being seeded and deployed as BW weapon, Brucella, Crimean Hemmorrhagic fever, contiuning work on alfatoxin, Ricin test albs and areas- Salman Pak, Al Qaeda- NE - fighting the Kurdish gov., and on and on- not too long ago an underground facility 6 football fields in size recently abandoned with food still present.

We are otld there is no danger, not from Saddam was there - not Al qaeda- certainly not much.

In the next breathe- the same people- or their allies - will cry we are unprotected and Bush is doing a lousy job- well get hit again soon.

It really doesn't matter to these people.

Posted by: SiliconDoc | January 5, 2006 04:10 PM

The reason I hadn't posted anything on here for some time was due to all the bashing you get for stating your opinions (this is an opinion blog, right). Yet it continues to happen. I read what you monkeys write on here, feel a need to comment without attacking others' character, and still can't be treated like a decent human being.

Why is there a need to talk about the laws? Nothing will change. The country is going to hell in a handbasket? How in the hell do you figure that? I'm still a firm believer that this is by far the greatest country in the world, and if you don't like it then move.

I think it's time to move on to a subject with a little more meaning. If you don't think this is about politics then you are lost.

Sorry my 7th grade education rings true enough in your ears to require such hatred on your part.

Posted by: Alex Ham - America's Hero | January 5, 2006 04:25 PM

"I don't really understand all the fuss. First, the label "domestic spying" is a complete misnomer. These are international calls to suspected terrorists. What I don't understand and cannot sympathize with are those who personalize (and therefore trivialize) this debate by unleashing a myriad of incoherent broadsides (and cries of "impeachment!") based on their personal dislike for this President's politics. "

Posted by: Jon M | Jan 4, 2006 2:44:46 PM

Yes, thanks for the decent post from the left Jon M.

I suspect you will be ignored from the rest of the left like left Cayambe(a hero in other threads to the same left), because you won't go hysterical making litigious false arguments while totally denying realities, and then just repeating yourself ad naseum like none of it was ever went over in the first place.

I guess you're lucky, whereas if you were a Chris Ford, the whole mess of them would be lofting insults and shrieking you said nothing and none of it matters, while they rehash for the thousandth time their predictions that Bush broke the law, and SC will settle this, and none of it is American or neccessary or legal, and on and on and on, ignoring even Clinton's Jamie Gorelick, amongst many other experts who've already commented on it, and the vast body of presidents including Clinton and Carter who invoked the same type priveledge, all the while saying we aren't in a lot of danger so why anyhow.

It's amazing to watch purportedly intelligent adults pretend objective debate while vast swaths of information presented is entirely ignored or instantly forgotten.

It is one sick display, and of course the sicker it gets, the more the left praises their other left sickness, as if that reinforces the partisan tirade of Cleotic absolutism.

Yeah, thanks for being a decent person on the left.

Cayambe as well, it appears here in this thread from what I've read she is showing a decent amount of restraint and honesty even while admitting she hopes it gets Bush badly.

I'm about done with this topic. It's been beat to death, and I already made up my mind long ago, same way I did on the supposed Plame leak crime.

It has been nice to get a few sideline histrionics and other information, but this IMO has hit the bricks.

I don't see any new realities coming to light.

Thanks again for being moderate. I appreciate it when a left isn't off the limb on something.

Posted by: SiliconDoc | January 5, 2006 04:36 PM

The last comment was mine.

Posted by: ErrinF | January 5, 2006 04:38 PM

Not sure what's more laughable, Silicon Doc: Your innocent act or your persecution complex. LMAO! :)

Posted by: ErrinF | January 5, 2006 04:44 PM

Here, watch Curt Weldon give a video talk on Able Danger.

This is about mass data collection and citizens "rights" to not be collected by the government.

Thanks to those "rights", Mohammed Atta made it through to 911.

<http://www.intelligencesummit.org/news/CurtWeldon/CW061405.php>

That should give you something to refresh on.

Posted by: SiliconDoc | January 5, 2006 04:48 PM

Alex Ham-

You said: "Why is there a need to talk about the laws?"

The reason, Alex, is quite simple. Laws are important. They bind societies. Societies do not exist without a legal framework and I happen to be quite fond of the American one (if you aren't you are welcome to heed your own advice). The entity who decided, not arbitrarily, that there should be laws against Perjury and Obstruction of justice also decided that there should be a law against spying on Americans without a warrant.

You can make the case that this law is unconstitutional, but you cannot make the case that laws in general are stupid or pointless to discuss without demeaning the entire legal framework we live in. Again, though Americas legal system is not perfect, it is probably the best of all possible legal frameworks and if you don't like it well..

Not that anyone should answer your silly, trite question "Why is there a need to talk about the laws?" because it is so self-evident. We know that you, as a professed member of a lawful society, do very much care about the laws. You care if someone tries to kill your mother, or steal your credit card, or yes, obstruct justice.

But that isn't even important. I could interpret your question as dangerously ignorant, cavalier, or thoughtless. If the only thing you were guilty of was a terrifying lack of insight, then it would be forgivable.

But no, you were not just being cavalier or ignorant, you were being purposefully disingenuous and thus, sir, I can call you a liar. Why should we care about the laws? Because YOU cared about the law, Alex, not 5 hours ago. "Bush acted within his powers and didn't break any laws" you said this morning.

With all the elegance of a drunk eating his own puke you then lecture us on political machinations? Somehow the law is important when (you incorrectly

thought) the President hadn't broken any. When it was brought to light that he had, only then did the law become some trite unimportant matter so beneath discussion that you would ask us the ridiculous rhetorical question "Why is there a need to talk about the laws?"

If you were serious about not talking about the law then you wouldn't have brought it up in the first place. The only remaining conclusion one can make about you is that you are an actor/phony, and a damned poor one.

While I'm sure it pains you to no end that the this board jumps on your opinions "unfairly" I am reminded by something the great Alex Ham said about others, when they expressed their opinion about this country: "I'm still a firm believer that this is by far the greatest country in the world, and if you don't like it then move." If this board has treated you soooooo unfaaaaairly Alex, then why don't you just move? Is it not easier to leave a message board than it is to transplant from one's home?

Posted by: Will | January 5, 2006 05:10 PM

I refer you to Emily Messners policy.

"I was almost tempted to respond to one of your posts that was half-reasonable, but seeing that you're back to screaming, incendiary ways, I see I don't have to bother.

Posted by: Matthew | Jan 5, 2006 3:56:43 PM

"

Knock it off!

Ad hominem attacks have no place in what should be an intelligent, substantive debate. (For those unfamiliar with basic Latin, the definition of ad hominem can be found here: <http://dictionary.reference.com/search?q=ad+hominem>)

Flinging mindless insults only betrays the insulter's lack of solid reasoning. There are so many compelling arguments on both sides of this issue that there is really no excuse for resorting to verbal abuse of those who disagree with your position. This is a forum for deep discussion of complex topics; we're not here to be jackasses to one another.

If you don't have anything constructive to add to the Debate, please just read and learn from those who are making helpful contributions to the conversation. (In case I haven't been clear enough: name calling, gratuitous use of profanity and gratuitous use of capital letters do NOT qualify as constructive.)

Let's keep it civil, shall we? Many thanks.

Posted by: SiliconDoc | January 5, 2006 06:50 PM

SiliconDoc-

The only thing I called Alex Ham was ignorant or a liar. Both are demonstrably true.

Alex Ham is ignorant because anyone who thinks the legal foundations of America are silly, yet insists that America is the greatest nation in the world, lacks the ability to make consistent factual claims about their own position. A failure to understand one's own position, let alone positions that exist outside one's own mind, suggests a dangerous lack of insight.

Alex Ham is a liar because he claimed the law was important "Bush broke no law" only to hours later contradict that claim later by asking "Why do we care about the law?" Either Alex Ham mentioned the law first because it was important but later denied its importance because it failed to suit his argument (which would make it an insincere argument) or he brought up the law earlier full fell knowing he has no interest it, later denouncing.

In either case, Alex Ham either demanded we respect the law without meaning it or asked us to ignore the law disingenuously. Both would be acts of lying, and liars tell lies.

I stand by what I said as everything was well deserved. He either purposefully misled us or unintentionally revealed an inconsistency in his own position.

Therefore he is either a liar or ignorant.

Posted by: Will | January 5, 2006 07:03 PM

Beren -

1. In response to your query about names and dates of people calling 8-9 conflicts since Vietnam "another Vietnam" or "hopeless quagmire" as the first US soldiers in country engage the foe, I commend you to Google "Grenada + Quagmire" and work your way forward. If that is tedious, I link you a fairly funny essay by Jonah Goldberg of a 2465 sloth alien invasion of our Martian colonies and our counterattack on the Sloth planet that the NYTimes warns "eerily brings up images of another Vietnam" yet again.

<http://www.nationalreview.com/goldberg/goldberg200502021105.asp>

To be fair, it wasn't just liberals of dubious patriotism obsessed by Vietnam calling Grenada, El Salvador, Panama, Gulf War, Bosnia, Kosovo, Afghanistan, and Iraq - "Vietnam Quagmires to be avoided because the troops we love so much except socially or on our campuses might die". Certain isolationist Republicans hated Clinton's involvement in Haiti, calling it a potential quagmire, and no doubt worrying that Bill would bring back a few million high-breeding rate voodoo welfare mummies to further screw up America.

2. "Dole (for whom I voted when he ran for president, btw, lest you call me a lefty) referred, in 1976, to several of the wars that I presume you approved of as "Democrat wars". Would you agree with his terminology?"

Good man like Stockdale or Murtha, but just as confused back in 1976. Classic midwest isolationist who had 2 years of wound pain and morphine addiction to beat, then crippled by a war Kansans thought was partially Roosevelt's fault. But he should have been smarter in his debate with special interest whore Mondale. Later, of course, a wiser Dole's backing was critical for the Gulf War, Bosnia, and Kosovo.

3. "It would be better to acknowledge that different parts of the political spectrum in this country agree about defending America but disagree about the strategy with which to accomplish this."

I agree that there are liberals with American best interests in mind, but not all liberals or Leftists. Many, especially their heavily monied transnational elites, despise America, many of it's institutions, and seek to undermine the American power they distrust so and institutions they seek to transform into something entirely different than at present (Boy Scouts must embrace homosexuality - or we will destroy them by litigation) in favor of "international institutions of higher morality" so superior to the "American ones that have caused so much global harm". Within the Left, within the liberal community, there are certainly individuals and groups (Ward Churchill, Hollywood players, Chuck Schumer, John Conyers, George Soros, the ACLU, etc.) whose patriotism I strongly question.

Posted by: Chris Ford | January 5, 2006 07:25 PM

Silicon Doc - Liked your WWTFD take. Don't forget on top of their backstabbing and libels and killing those who we in this era give gourmet halal meals to and Korans handed over with white gloves so they are not made unclean by infidel touch - the Founders believed in seizing Loyalists land w/o trial and imprisoning Loyalists w/o trial. Lefties go "Well that was all before the Holy Parchement they wrote!!! But after 1789 the fun started with the redskins who lacked the advocacy of liberal Jews running the ACLU. A good thing, otherwise we would be - black and white - living in small enclaves we pay rent to the Indian landlords for and running Casinos, selling cheap cigarettes...

2. The Long Dark Night of Black Fascism MUST have started under FDR's wiretapping and his non-love of traitors and America's enemies. For the Lefties reflexively say that once civil liberties are taken away, they are forever gone, and the slippery slope that FDR started with Nazis and traitors surely slid into massive rights violations of soccer Moms in American Gulags. Of course the Leftys can't account for what happened to the past Dark Nights of Fascism caused by Washington, Jefferson, Madison, Lincoln and Wilson curtailing "absolute civil liberties" in their conflicts..

3. Good point on Able Danger and data mining, silicondoc. I do not find the Lefty argument that we shouldn't do it because we might find an American traitor working for Al Qaeda instead of a foreigner on the other end of a phone line a very persuasive reason not to data mine and sniff through hundreds of millions of phone calls. The Left's case for enemy privacy seems to be a Catch-22. We don't know who the Islamoids or China spies or Israel spies are, but you can't go looking for them without a warrant, but you can't issue a warrant because you lack probable cause, therefore the Constitutional and suicidal path we must take is to cease looking for our enemies or traitorous spies until a "crime" like 9/11 happens. Then lawyers in robes will sanctify the search. Fairly insane, deranged liberal/Lefty logic, but par for the course.

Posted by: Chris Ford | January 5, 2006 08:03 PM

ErrinF | Jan 5, 2006 4:01:23 PM

"Some American you are! Only a ... like you...

By all means, Silicon Doc, continue to make an ass

I refer you to Emily Messner's rules. Your entire response was multiple personal insults.

Knock it off!

Ad hominem attacks have no place in what should be an intelligent, logical debate. (For those unfamiliar with basic Latin, the definition of ad hominem can be found here: <http://dictionary.reference.com/search?q=ad+hominem>)

Flinging mindless insults only betrays the insulter's lack of solid reasoning. There are so many compelling arguments on both sides of this issue that there is really no excuse for resorting to verbal abuse of those who disagree with your position.

If you don't have anything constructive to add to the Debate, please refrain from commenting. (In case I haven't been clear enough: name calling, gratuitous use of profanity, and suggesting various methods of self-fornication do NOT qualify as constructive.)

Let's keep it civil, shall we? Many thanks.

Posted by: Emily Messner

Posted by: SiliconDoc | January 6, 2006 03:17 AM

ErrinF

"Here's a link Emily provided recently that details that Bush...:

<http://mediamatters.org/items/200512240002>

And that's warrantless surveillance against",

MediaMatters is a far left attack group, that is known for twisting the facts.

info: the organization takes its cues from its founder and CEO, the self-described former "right-wing hit man" turned left-wing hit man, David Brock.

A former dirt-dishing reporter for the conservative magazine The American Spectator in the 1990s, Brock today claims to have undergone a political epiphany. He has renounced his past writings, critical of liberal figures from Anita Hill to President Bill Clinton, as a confection of lies and slanders.

But the evidence suggests that while he now identifies with the political left, his modus operandi is unchanged.

As his tell-all books, *Blinded By The Right* and *The Republican Noise Machine* demonstrate, dishing dirt and distorting the facts remain his stock-in-trade.

A case in point is Brock's justification for Media Matters. In Brock's judgment, and against all evidence, the mainstream media has fallen under the sway of conservative ideology, thus explaining, in Brock's conspiratorial view, the many discussions about "liberal bias" in prominent media outlets. "The right wing in this country has dominated the debate over liberal bias. By dominating that debate, my belief is they've moved the media itself to the right and therefore they've moved American politics to the right," Brock says. Hence the supposed need for Media Matters: "I wanted to create an institution to combat

what they're doing."

Noting the last line is important.

He says, the whole point of his creating media matters is combat the right.

No objectivity, able to tell ripping lies, then years later totally retract them.

In other words, a WORTHLESS hack site.

Posted by: SiliconDoc | January 6, 2006 03:36 AM

Posted by: Will | Jan 5, 2006 7:03:39 PM

The only thing I called xxxx xxx was ignorant or a liar."

I refer you to Emily Messners policy, the policy that doesn't say it's ok to call someone names if you think they are what you are calling them.

It also doesn't say you can call names even if you can prove they are what you say they are.

Furthermore, it doesn't say you can continue calling those names by saying it all over again to someone else.

Knock it off!

Ad hominem attacks have no place in what should be an intelligent, logical debate. (For those unfamiliar with basic Latin, the definition of ad hominem can be found here: <http://dictionary.reference.com/search?q=ad+hominem>)

Flinging mindless insults only betrays the insulter's lack of solid reasoning. There are so many compelling arguments on both sides of this issue that there is really no excuse for resorting to verbal abuse of those who disagree with your position.

If you don't have anything constructive to add to the Debate, please refrain from commenting. (In case I haven't been clear enough: name calling, gratuitous use of profanity, and suggesting various methods of self-fornication do NOT qualify as constructive.)

Let's keep it civil, shall we? Many thanks.

Posted by: Emily Messner

I think it's pretty clear. I'm sure everyone can "prove" the claim you make about every other chatter.

Thank you.

Will " by asking "Why do we care about the law?" "

Obviously, since he already stated Bush didn't break the law, he asked why should all care about it.

Since he believes it wasn't broken, he also believes all shouldn't "care" about it in this case.

Pretty simple really.

Now, are you going to "care about Emily Messners law " ?

Posted by: SiliconDoc | January 6, 2006 03:53 AM

Posted by: Chris Ford | Jan 5, 2006 8:03:03 PM

Silicon Doc - Liked your WWTFD take. Don't forget... - the Founders believed in seizing Loyalists land w/o trial and imprisoning Loyalists w/o trial. Lefties go "Well that was all before the Holy Parchement they wrote!!!"

LOL- Did they suddenly become Holy Men ?

"But after 1789 the fun started with the redskins... otherwise we would be... living in small enclaves we pay rent to the Indian ...

Ahh, the Golden Years of FF perfection.

2. The Long Dark Night of Black Fascism FDR's wiretapping ...

For the Lefties reflexively say that once civil liberties are taken away, they are forever gone..."

Yes, I know. I've noticed all too much.

I suppose the 100,000 the Demo President interred in prison torture camps on

USA soil are still there somewhere...

..Leftys can't account for what happened to the past Dark Nights of Fascism caused by Washington, Jefferson, Madison, Lincoln and Wilson curtailing "absolute civil liberties" in their conflicts...

Yep, it's patriotic. I'm supposed to believe those people are trustworthy, intellectual, truth tellers, and out for our best interests.

"Stop that, that's silly." is what I believe.

"3. Good point on Able Danger..."

Thanks.

"I do not find the Lefty argument that we shouldn't do it because we might find an American traitor working for Al Qaeda instead of a foreigner on the other end"

LOL - It's amazing. I'm not sure they even understand the procedure, otherwise only pure partisan hacks could disagree openly.

"... The Left's case for enemy privacy seems to be a Catch-22. "

Exactly. That's why I have to believe they don't understand. I cannot imagine they actually want explosions, but then again perhaps some do.

" We don't know who the Islamoids or China spies or Israel spies are, but you can't go looking for them without a warrant, but you can't issue a warrant because you lack probable cause "

(FISA level) - Yep.

" ...we must cease looking ...until a "crime" like 9/11 happens. "

Yep, Bush gets it. The democrats on the Committees get it. I do not believe the Congresscritters will endanger themselves. Some of them might seem to be real dumb, but when it comes to their own skin, somehow I have confidence a large majority won't be suicidally foolish. (Cynthia McKinney and a few others will)

" Then lawyers in robes will sanctify the search. Fairly insane, deranged liberal/Lefty logic, but par for the course. "

I agree, no doubt about it. (I believe the majority, do not even understand.) They make claims showing they don't. Flat out incorrect statements, even after citing links with good data.

Just claim anything one hears is a lie when it's convenient, and then actually believe that!

Why not logically analyze the probability?

What is needed IMO is their party leadership to calmly explain why. The leadership is not willing to do so, IMO.

I've seen it a lot before, where they don't believe something until someone on their side repeats nearly exactly what someone on the other side said. Then suddenly, belief occurs.

It indicates to me the lack of ability to know on one's own analysis.

Posted by: SiliconDoc | January 6, 2006 04:30 AM

Posted by: KB | Jan 3, 2006 7:20:30 PM

"The debate over the legalities and constitutionality of FISA and domestic surveillance is a good one, but the notion that Bush is the first U.S. president to assert Executive authority in such an aggressive manner is wrong."

True. The only nearly decent dissenter I've seen so far on TV is one complaining that the reissue of emergency authority every 30 days is an issue. One could reasonably be disgusted, but without solid argument against effectiveness (Brooklyn Bridge bomber- and others caught), appropriate response would demand extension to solidify the process. Instead, incitement toward destruction becomes active, illogically.

"... You may not agree with such assertions of Executive power, but they are certainly not one devoid of precedent in U.S. history. "

Good luck getting any acknowledgement there.

" Those of you who have such angst about Bush's ... "

Exactly. IAAB.

Posted by: SiliconDoc | January 6, 2006 04:46 AM

Chris Ford is nothing more than a little White Supremecist who is completely controlled by his out of control emotions. How can anyone trust any of his historical references when he is unable to see beyond his own hate and a need to justify it. His hate is beyond a reaction to any discussion, it appears to be a medical condition. When someone has to justify their hate, and distaste for anything not white and a man, then the historical revisionism comes in. He already has an agenda-to prove his hate has a basis, which he will create with all his despicable disrespect for the majority of his fellow Americans, anyone opposing the government (even though we call that Democracy), and anyone with an opinion not his own.

Chris Ford does not learn from others, or share, he creates his own propaganda, and spends his time justifying it. Mr. Hate Crime waiting to happen, is just a weak little man caught up in his own personality disorder and too cowardly to take it to therapy.

It is an insult to read his hateful references for anyone of colour. Chris can deal with books, but not people.

To read him calling some ragheads (by the way, a person with a headscarf wrapped around their head, is Sikh).

This man's hate is out of control, when I read his postings I can almost see the spittle on the screen.

When someone hates someone they don't know, have never spoken to, don't even know their culture, then you are dealing with deep seated issues best resolved in intensive therapy. Or in Canada, one who rants against others because of their colour, tries to propagate hatred, and justify the Holocaust would end up charged. In jail would be the next step, because who needs his hate in their face daily. It is rude, ignorant, and a trifle deranged.

He represents everything that other countries fear of America. A nation of ignorant and racist blowhards, who will never see beyond colour. I see intelligent postings here, but when seething racism and hate are allowed to co-exist with progressive thought, there is an acceptance of the thought he represents.

Posted by: SpeakoutforDemocracy | January 6, 2006 10:53 AM

Look. We either believe in our Constitution or we don't. If you say that George W. Bush has war powers that allow him to violate the Fourth Amendment--that allow him to violate our rights to be secure in our papers and effects without a warrant based on probable cause--then you do not believe in the Constitution.

You can't simply out of some perverse partisan loyalty allow this President to exercise such unwarranted power, thinking that if some President we don't particularly like in the future--say Hillary Clinton or John Edwards--were to exercise it we can just as willy nilly take it away.

Giving the President this power is forever. None of this business of thinking that only Presidents of our particular ideological stripe are eligible for its use and application. Remember that.

Posted by: Jaxas | January 6, 2006 11:40 AM

"You can't simply out of some perverse partisan loyalty allow this President to exercise such unwarranted power, "

Well, same goes for the perverse partisan lewdness demanding it cease and desist.

"thinking that if some President we don't particularly like in the future--say Hillary Clinton or John Edwards--were to exercise it we can just as willy nilly take it away."

Whom says we have to wait till then for Hillary to exercise her powers ?

Do you really think NSA is filled with right wingers ? It's probably PACKED with Clinton hires whom arrived there in the 90's when Echelon and Computers TOOK OFF like wildfire and infiltrated every portion of our economy, making it easy to sweep large pools and sat data.

Ya think we ought to be concerned with rogue lefties doing the Clinton's bidding in NSA ?

Well, I SURE AS HELL do, since the clinton's were known for FBI and IRS political illegal application !

Their goddamned moles are still in the government, no doubt about it !

"Giving the President this power is forever. "

LOL - That's what the Clintons think. That's why they made huge firing swaths the call of the day, like at the travel office, so they could slam the government full of criminal lefties from their Arkancide roots, and have power even when their 8 years of corruption ended.

Not much different than the left's complaint about Cheney and others resurfacing, except that the Clinton's infiltrate the Bureaucracy, the unseen factor, so you wind up with things like the CIA fighting the republican administration.

How many loose cannon leftie Clintonites do you think are glued to NSA protocols due to the computer revolution occurring at the time it did ?

Maybe we need another spy agency to track those lefties so they don't go on a rogue mission after the neocons.

Posted by: SiliconDoc | January 7, 2006 02:21 AM

Or maybe we just need more effective oversight over NSA activities which is what you've been arguing against for over a week.

Do you have any idea how ridiculous you sound, at this point?

Posted by: Will | January 9, 2006 10:21 AM

Don't worry SiliconDoc has declared after a posting of disgusting abuse aimed at Emily, that he won't return. He knows that if he didn't choose it he would probably cut off. His repulsive vitriol should stay there for all to see.

Posted by: SpeakoutforDemocracy | January 10, 2006 11:09 AM

Emily,

Just landed in this site and am thoroughly entertained by the conspiracy whack job that has our President controlling binLaden.....that guy needs to open the window and throw the crack pipe as far away as he can.

As for the hole spying/listening/eavesdropping thing, if one does not have anything to hide.....what is the issue? I personally don't mind giving up a little privacy for heightened security, temporarily, in this time of "war" and then "we" can go back to more restrictive regulations..

What has not been published by responsible journalists is that this was not an "ad hoc" nilly willy tapping of any citizen.

The tapping was done on incoming calls that originated from a "suspect" foreign location that then followed subsequent outgoing transmissions back to that source/s that were linked to fundamentalist fundraising arms and attempted to follow those transmissions to their source. If one checks our history, this was perfectly legal and absolutely necessary during the Second World War, when there were German spies in the US and Britain. The whole code breaking activity at Blechely Park in Britain that changed the war against the Germans would probably be branded an invasion of privacy by the ACLU.....they (the ACLU) are becoming irrelevant.

Americans are generally pathetically`

Yeah, yeah we have liberals transliterating the Constitution for their own purpose, rather than interpreting the intent.

I highly doubt that the originators of our Constitution could have anticipated recent events and certainly would not have hesitated to breach whatever "high-minded" concepts that they would have liked to have seen in place at this time in order to protect our people.

Posted by: Herb Riedel | January 24, 2006 07:04 PM

Alex Ham says: Harry -

From what I remember, we impeached Clinton for Obstruction of Justice. Funny how the left always makes it out to be an impeachment over a blowjob. At least Bush doesn't lie directly to your face. You might not like what he says (I love the guy but sometimes I don't like what he says because he's not the greatest speaker), but he's always straight up. He sticks by his decisions and takes the blame when he makes a bad one. I'd rather have that than a conniving son of a bitch like Clinton in office."

Alex,

Do you go around like the three monkeys who: Sees nothing, Says nothing & Hears nothing?

Bush is upfront and does not lie? Where have you been throughout his incumbancy? Bush not only lies but when he does he gets his spin doctors to back up his "truth" and when he is at last found out as in his claim of Iraq's WMD as his excuse to invade and subsequently proved untrue, then blamed "faulty intelligence" for his mistakes, is nothing short of criminal bearing in mind the "faulty intelligence" was originally insisted by himself to be shaped the way it was presented to Congress and the nation to persuade the argument for war.

Sure, he had admitted he was wrong in going to invade sovereign Iraq over WMD on faulty intelligence but that does not excuse him from his criminal act of invading a sovereign nation which he later tried to justify by saying the dictator should be removed anyways.

Going by his very action, would any other foreign nation be justified in removing him as head of the United States because they don't like him acting like a dictator and his killing hundred of thousands innocent people classified as "collateral damage"?

Posted by: Rick | January 26, 2006 01:20 AM

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Posted by: Rick | January 26, 2006 01:20 AM

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