

# SPY STORY

## Does the President have the authority to order domestic surveillance without a court-issued warrant in times of war?

The revelation that President George W. Bush ordered secret surveillance in the United States without judicial approval has sparked a firestorm of controversy in Congress and among the American people. Everyone agrees that the President has broad power to protect the nation in times of war, but there is sharp debate over the extent of his power and whether the surveillance program violates the Constitution and federal laws.

After the attacks of September 11, 2001, President Bush authorized the National Security Agency (NSA) to intercept international phone calls

and e-mail messages if a supervisor believed there was a link to the Al Qaeda terrorist network. Under the spy program, the surveillance can be conducted on Americans without

first obtaining court approval.

The Bush Administration and its supporters say the President's powers as Commander-in-Chief and a resolution passed by Congress in the days after the 9/11 attacks

provide all the authority he needs to conduct foreign intelligence surveillance without a court order.

Administration critics say a law passed by Congress in 1978 requires the President to obtain approval from a special foreign intelligence court before engaging in domestic spying.

Civil libertarians have filed lawsuits to end the NSA spying program. At issue is the Constitution's delicate balance between protecting civil liberties and safeguarding national security.



Rex Babin, The Sacramento Bee

## Does the President have the authority to order domestic surveillance without a court-issued warrant in times of war?

### YES

- The President's war powers under Article II of the Constitution authorize him to obtain foreign intelligence information essential to the security of the United States.
- Congress's "Authorization for Use of Military Force" in the days after 9/11 gave the President the authority to approve domestic wiretaps without first obtaining a warrant.
- In an age of instant communication and terrorist threat, the President must be able to act quickly to intercept suspicious communications; the Foreign Intelligence Surveillance Act of 1978 (FISA) unconstitutionally ties his hands.

### NO

- Eavesdropping on American citizens without a court-issued warrant violates the Fourth Amendment's protection against unreasonable searches.
- The congressional authorization on the use of force was not meant to permit the President to conduct secret surveillance of American citizens for whom there is no evidence of involvement in terrorist activity.
- If the President thinks FISA needs to be fixed, he is obligated to work with Congress to change the law, rather than ignore it.