

## Oversight by Dan Jacoby

The time has come to impeach George W. Bush.

It was recently revealed that George W. Bush authorized the National Security Agency (NSA) to spy on Americans without court supervision. Bush himself has admitted it. He claims that everything he did was within his constitutional powers as commander in chief, and under the general authority given him by Congress shortly after 9/11. Bush also claims that he kept Congressional leaders fully briefed on his activities.

Since the secret wiretaps became public, the Bush administration has sent people all over the place to claim that Presidents Carter and Clinton did the same thing.

But the truth is somewhere else.

The fourth amendment to the U.S. Constitution makes it clear that the government may not, under any circumstances, go on a fishing expedition. People cannot be searched without reason. Court rulings have consistently ruled there must be oversight from the judicial branch of government in the form of search warrants. Period.

The power of commander in chief does not extend to police powers. It deals entirely with the military, which is forbidden by the Posse Comitatus act from acting as a police force. So Bush's claim to authority as commander in chief is, at best, erroneous.

As far as combating terrorist threats is concerned, we already have sufficient safeguards in place that allow secret taping of U.S. citizens' phone conversations while providing judicial oversight. The Foreign Intelligence Surveillance Act (FISA) allows the government to monitor conversations involving U.S. citizens who are believed to be acting as members of terrorist organizations. All the government needs to do is obtain a secret warrant from the Foreign Intelligence Surveillance Court (FISC).

This monitoring (i.e. wiretapping) can also be done for up to 72 hours before a secret warrant is even applied for. In other words, if the NSA feels they need to listen in on a conversation happening now, they can do it now and apply for permission later.

Nothing in any Congressional action was designed to allow the President to violate our Constitutional protections. This is absolute. We know this because the Constitution is, by self-definition, the "supreme law of the land." Congress's power to act (and the President's, for that matter) is derived solely from the Constitution; therefore, no act that violates the Constitution is within the power of either Congress or the President.

So when George W. Bush claims that Congress gave him the power to violate the Constitution, he couldn't be more wrong.

As far as Bush administration claims that past Presidents did exactly the same thing, once again that is a complete lie. Both President Clinton and President Carter required that any search comply with 50 U.S.C. 1822. This section of United States Code (also known as Federal Law) states that warrantless search can only take place if "the Attorney General certifies in writing under oath that ... there is no substantial likelihood that the physical search will involve the premises, information, material, or property of a United States person." [Source: 50 U.S.C. 1822 (a)(1)(A)]

The Department of Defense's website defines a "United States person" as follows: "The term "U.S. persons" includes U.S. citizens, but is broader. It also includes permanent resident aliens, unincorporated associations substantially composed of U.S. citizens or permanent resident aliens, and corporations incorporated in the U.S. and not directed and controlled by a foreign government." (Source: <http://www.dod.mil/atsdio/faq.html>)

The problem here is that George W. Bush is attempting to authorize spying on U.S. citizens, which neither President Carter nor President Clinton even claimed the power to do, and which is specifically outlawed. Those people who claim that Bush is simply following in his predecessors' footsteps don't have their facts straight.

Before getting to impeachment, let's review the bidding.

George W. Bush signs a secret Executive Order granting permission for the National Security Agency to spy on U.S. citizens without a warrant. This order is a direct violation of the Fourth Amendment to the U.S. Constitution. When his order becomes public, he insists that his acts are legal, despite all evidence to the contrary. Meanwhile, his propaganda machine spreads lies about the circumstances surrounding his order.

Now we're ready to talk about impeachment.

The Constitution gives three possible reasons for impeachment. They are treason, bribery, and "other high crimes and misdemeanors." We are not concerned here with the first two, and will concentrate instead on that last one.

What does "high crimes and misdemeanors" mean?

In defending President Clinton when he was impeached (for lying about having an affair, for cryin' out loud!), former Senator Dale Bumpers clearly defined this term. He said, "And where did 'high crimes and misdemeanors' come from? It came from the English law, and they found it in an English law under a category which said, 'distinctly political offenses against the state.'" In this case, "the state" means the United States.

So is ordering the National Security Agency to spy on Americans without a warrant, in direct violation of the U.S. Constitution and Federal Law, a "distinctly political offense against the United States?"

You bet it is!

And that is ground for impeachment.

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