

U.S. Senator Robert C. Byrd

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No President Is Above the Law

Senator Byrd on Monday expressed his strong concerns about possible violations of the Constitution in the Bush Administration's admitted practice of spying on American citizens.

Americans have been stunned at the recent news of the abuses of power by an overzealous President. It has become apparent that this Administration has engaged in a consistent and unrelenting pattern of abuse against our Country's law-abiding citizens, and against our Constitution.

We have been stunned to hear reports about the Pentagon gathering information and creating databases to spy on ordinary Americans whose only sin is choose to exercise their First Amendment right to peaceably assemble. Those Americans who choose to question the Administration's flawed policy in Iraq are labeled by this Administration as "domestic terrorists."

We now know that the F.B.I.'s use of National Security Letters on American citizens has increased one hundred fold, requiring tens of thousands of individuals to turn over personal information and records. These letters are issued without prior judicial review, and provide no real means for an individual to challenge a permanent gag order.

Through news reports, we have been shocked to learn of the CIA's practice of rendition, and the so-called "black sites," secret locations in foreign countries, where abuse and interrogation have been exported, to escape the reach of U.S. laws protecting against human rights abuses.

We know that Vice President Dick Cheney has asked for exemptions for the CIA from the language contained in the McCain torture

amendment banning cruel, inhumane, and degrading treatment. Thank God his pleas have been rejected by this Congress.

Now comes the stomach-churning revelation through an executive order, that President Bush has circumvented both the Congress and the courts. He has usurped the Third Branch of government – the branch charged with protecting the civil liberties of our people – by directing the National Security Agency to intercept and eavesdrop on the phone conversations and e-mails of American citizens without a warrant, which is a clear violation of the Fourth Amendment. He has stiff-armed the People's Branch of government. He has rationalized the use of domestic, civilian surveillance with a flimsy claim that he has such authority because we are at war. The executive order, which has been acknowledged by the President, is an end-run around the Foreign Intelligence Surveillance Act, which makes it unlawful for any official to monitor the communications of an individual on American soil without the approval of the Foreign Intelligence Surveillance Court.

What is the President thinking? Congress has provided for the very situations which the President is blatantly exploiting. The Foreign Intelligence Surveillance Court, housed in the Department of Justice, reviews requests for warrants for domestic surveillance. The Court can review these requests expeditiously and in times of great emergency. In extreme cases, where time is of the essence and national security is at stake, surveillance can be conducted before the warrant is even applied for.

This secret court was established so that sensitive surveillance could be conducted, and information could be gathered without compromising the security of the investigation. The purpose of the FISA Court is to balance the government's role in fighting the war on terror with the Fourth Amendment rights afforded to each and every American.

The American public is given vague and empty assurances by the President that amount to little more than "trust me." But, we are a nation of laws and not of men. Where is the source of that authority he claims? I defy the Administration to show me where in the Foreign Intelligence Surveillance Act, or the U.S. Constitution, they are allowed to steal into the lives of innocent America citizens and spy.

When asked yesterday what the source of this authority was, Secretary of State Condoleezza Rice had no answer. Secretary Rice seemed to insinuate that eavesdropping on Americans was acceptable because FISA was an outdated law, and could not address the needs of the government in combating the new war on terror. This is a patent

falsehood. The USA Patriot Act expanded FISA significantly, equipping the government with the tools it needed to fight terrorism. Further amendments to FISA were granted under the Intelligence Authorization Act of 2002 and the Homeland Security Act of 2002. In fact, in its final report, the 9/11 Commission noted that the removal of the pre-9/11 “wall” between intelligence officials and law enforcement was significant in that it “opened up new opportunities for cooperative action.”

The President claims that these powers are within his role as Commander in Chief. Make no mistake, the powers granted to the Commander in Chief are specifically those as head of the Armed Forces. These warrantless searches are conducted not against a foreign power, but against unsuspecting and unknowing American citizens. They are conducted against individuals living on American soil, not in Iraq or Afghanistan. There is nothing within the powers granted in the Commander in Chief clause that grants the President the ability to conduct clandestine surveillance of American civilians. We must not allow such groundless, foolish claims to stand.

The President claims a boundless authority through the resolution that authorized the war on those who perpetrated the September 11th attacks. But that resolution does not give the President unchecked power to spy on our own people. That resolution does not give the Administration the power to create covert prisons for secret prisoners. That resolution does not authorize the torture of prisoners to extract information from them. That resolution does not authorize running black-hole secret prisons in foreign countries to get around U.S. law. That resolution does not give the President the powers reserved only for kings and potentates.

I continue to be shocked and astounded by the breadth with which the Administration undermines the constitutional protections afforded to the people, and the arrogance with which it rebukes the powers held by the Legislative and Judicial Branches. The President has cast off federal law, enacted by Congress, often bearing his own signature, as mere formality. He has rebuffed the rule of law, and he has trivialized and trampled upon the prohibitions against unreasonable search and seizures guaranteed to Americans by the United States Constitution.

We are supposed to accept these dirty little secrets. We are told that it is irresponsible to draw attention to President Bush’s gross abuse of power and Constitutional violations. But what is truly irresponsible is to neglect to uphold the rule of law. We listened to the President speak last night on the potential for democracy in Iraq. He claims to want to instill in the Iraqi people a tangible freedom and a working democracy,

at the same time he violates our own U.S. laws and checks and balances? President Bush called the recent Iraqi election “a landmark day in the history of liberty.” I dare say in this country we may have reached our own sort of landmark. Never have the promises and protections of Liberty seemed so illusory. Never have the freedoms we cherish seemed so imperiled.

These renegade assaults on the Constitution and our system of laws strike at the very core of our values, and foster a sense of mistrust and apprehension about the reach of government.

I am reminded of Thomas Payne’s famous words, “These are the times that try men’s souls.”

These astounding revelations about the bending and contorting of the Constitution to justify a grasping, irresponsible Administration under the banner of “national security” are an outrage. Congress can no longer sit on the sidelines. It is time to ask hard questions of the Attorney General, the Secretary of State, the Secretary of Defense, and the Director of the CIA. The White House should not be allowed to exempt itself from answering the same questions simply because it might assert some kind of “executive privilege” in order to avoid further embarrassment.

