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Ruling for the Law

Published: August 18, 2006

Ever since President Bush was forced to admit that he was spying on Americans' telephone calls and e-mail without warrants, his lawyers have fought to keep challenges to the program out of the courts. Yesterday, that plan failed. A federal judge in Detroit declared the eavesdropping program to be illegal and unconstitutional. She also offered a scathing condemnation of what lies behind the wiretapping — Mr. Bush's attempt to expand his powers to the point that he can place himself beyond the reach of Congress, judges or the Constitution.

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"There are no hereditary kings in America and no powers not created by the Constitution," wrote Judge Anna Diggs Taylor of the United States District Court in Detroit. Her decision was based on a lawsuit filed by the American Civil Liberties Union.

She said Mr. Bush violated the 1978 Foreign Intelligence Surveillance Act when he ordered the National Security Agency to spy without a warrant on international phone calls and e-mail by Americans and foreign residents of the United States. She noted that the surveillance law was passed to prohibit just this sort of presidential abuse of power and provided ample flexibility for gathering vital intelligence. She also said that the program violated the Fourth Amendment, which prohibits unreasonable searches and seizures, as well as the rights of free speech and association granted by the First Amendment.

The ruling eviscerated the absurd notion on which the administration's arguments have been based: that Congress authorized Mr. Bush to do whatever he thinks is necessary when it authorized the invasion of Afghanistan.

It's good news that this ruling exists at all. Mr. Bush's lawyers tried to have the entire suit thrown out on national security grounds, a tactic they have used in an alarming number of cases. In one particularly appalling example, they persuaded federal judges to refuse to hear a lawsuit filed by an innocent German citizen of Lebanese birth who was snatched out of his private life, illegally imprisoned for five months and tortured by American jailers.





In this case, the administration told Judge Taylor that merely arguing its case would expose top secret information. Judge Taylor said she had reviewed the secret material and concluded it was not relevant. The secrecy claim, she said, was "disingenuous and without merit."

No sooner had this ruling been issued than Mr. Bush's loyalists in Congress, who have been searching for ways to give legal cover to an illegal spying program, began calling for new laws to overcome Judge Taylor's objections. Republicans quickly pointed out that Judge Taylor was appointed by President Jimmy Carter and that some of the many precedents she cited were written by liberal judges. These efforts to undermine Judge Taylor's arguments will undoubtedly continue while the White House appeals the decision, and the outcome in the conservative Sixth Circuit Court of Appeals is uncertain.

But for now, with a careful, thoroughly grounded opinion, one judge in Michigan has done what 535 members of Congress have so abysmally failed to do. She has reasserted the rule of law over a lawless administration and shown why issues of this kind belong within the constitutional process created more than two centuries ago to handle them.

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