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Subject: Re: Patriot Act Renewal rejected by the Senate  
Posted by [Nodbugger](#) on Wed, 21 Dec 2005 04:05:19 GMT  
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SuperFlyingEngi wrote on Sat, 17 December 2005 23:01 Don't worry, President Bush is illegally authorizing spying anyways.

<http://www.dailykos.com/storyonly/2005/12/17/113212/10>

EDIT: Oh, and gbull, why'd you say no if you're in support of the War in Iraq? (You still are, right?)

You need to learn what the president can and can't do first.

The ability of the 1978 FISC act to limit the ability of the executive branch depends on how the 1972 United States v. United States District Court for the Eastern District of Michigan et al, (407 U.S. 297) is interpreted by the courts. The court stated  
<http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=407&invol=297>

Quote:We begin the inquiry by noting that the President of the United States has the fundamental duty, under Art. II, 1, of the Constitution, to "preserve, protect and defend the Constitution of the United States." Implicit in that duty is the power to protect our Government against those who would subvert or overthrow it by unlawful means. In the discharge of this duty, the President - through the Attorney General - may find it necessary to employ electronic surveillance to obtain intelligence information on the plans of those who plot unlawful acts against the Government.

Quote:Further, the instant case requires no judgment on the scope of the President's surveillance power with respect to the activities of foreign powers, within or without this country.

Based on this ruling, the President may have the authority to use warrantless wiretaps on Foreign National even if it involves US citizens, regardless of the FISC act. Additionally the FISC may be unconstitutional, because it may be an attempt by congress to impose restrictions on the executive Branch of the government outside of the constitutional amendment process.