



U.S. Department of Justice

Office of Legal Counsel

Office of the Deputy Assistant Attorney General

Washington, D.C. 20530

November 2, 2001

MEMORANDUM FOR THE ATTORNEY GENERAL

From: John C. Yoo
Deputy Assistant Attorney General

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FISA only provides a safe harbor
for electronic surveillance, and cannot restrict the President's ability to engage in warrantless searches
that protect the national security.

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FISA purports to be the exclusive statutory means for conducting electronic surveillance for foreign intelligence.

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Such a reading of FISA would be an unconstitutional infringement on the President's Article II authorities.

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Thus, unless Congress made a clear statement in FISA that it sought to restrict presidential authority to conduct warrantless searches in the national security area - which it has not - then the statute must be construed to avoid such a reading

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we do not believe that Congress may restrict the President's inherent constitutional powers, which allow him to gather intelligence necessary to defend the nation from direct attack.

intelligence gathering in direct support of military operations does not trigger constitutional rights against illegal searches and seizures.

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A warrantless search can be constitutional "when special needs, beyond the normal need for law enforcement, make the warrant and probable-cause requirement impracticable."

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...no governmental interest is more compelling than the security of the Nation." *Haig*
v. Agee, 453 U.S. 280, 307 (1981).

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