

The 4th Amendment

Privacy, FISA, and the 21st Century



Presented by the
Mummy Range Institute

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The 4th Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Do we need constitutional
protection of privacy?

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Alexander Hamilton: NO

- “Bills of rights are, in their origin, stipulations between kings and their subjects.”
- “Here, the people surrender nothing, and as they retain everything they have no need of particular reservations.”
- “[Bills of rights] would sound better in a treatise of ethics than in a constitution of government”

**from The Federalist Papers #84*

Do we need constitutional protection of privacy?

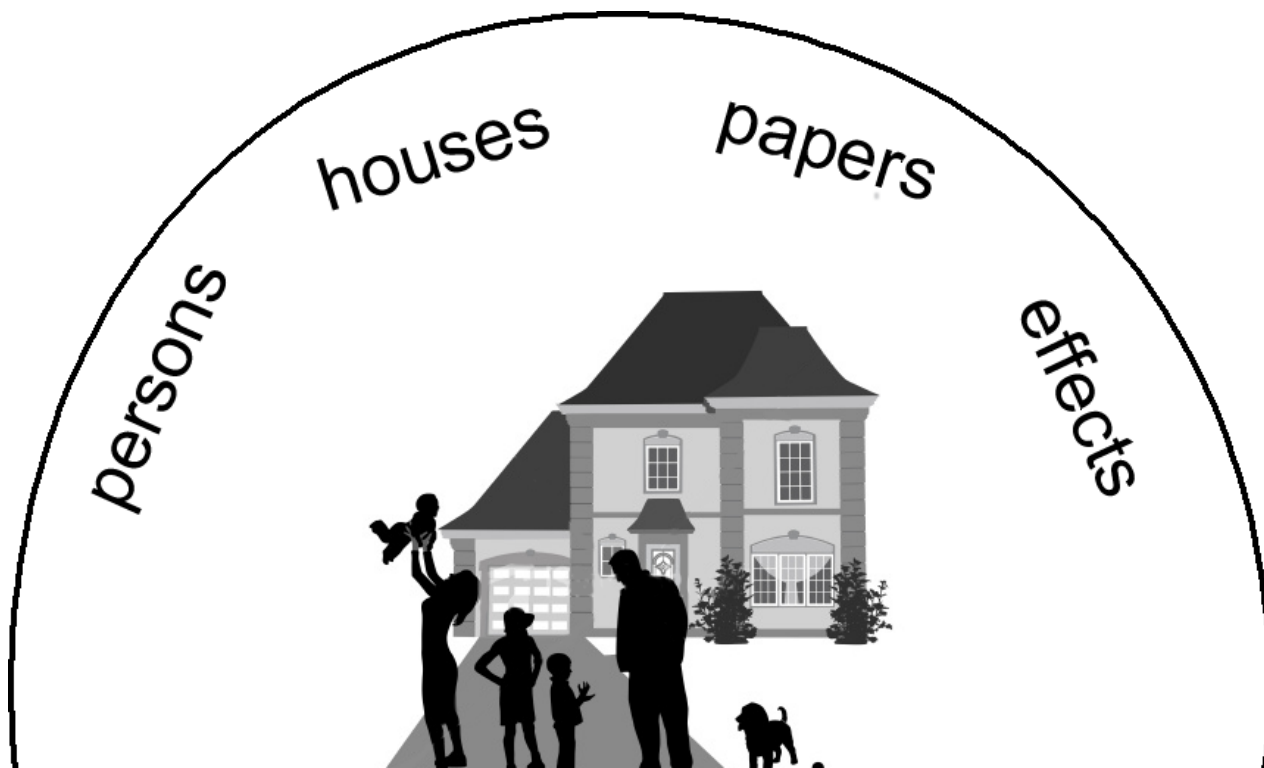
Thomas Jefferson: YES

- “A bill of rights is what the people are entitled to against every government on earth [...] and what no just government should refuse or rest on inference.”
- “I consider all the ill as established, which may be established. I have a right to nothing, which another has a right to take away.”

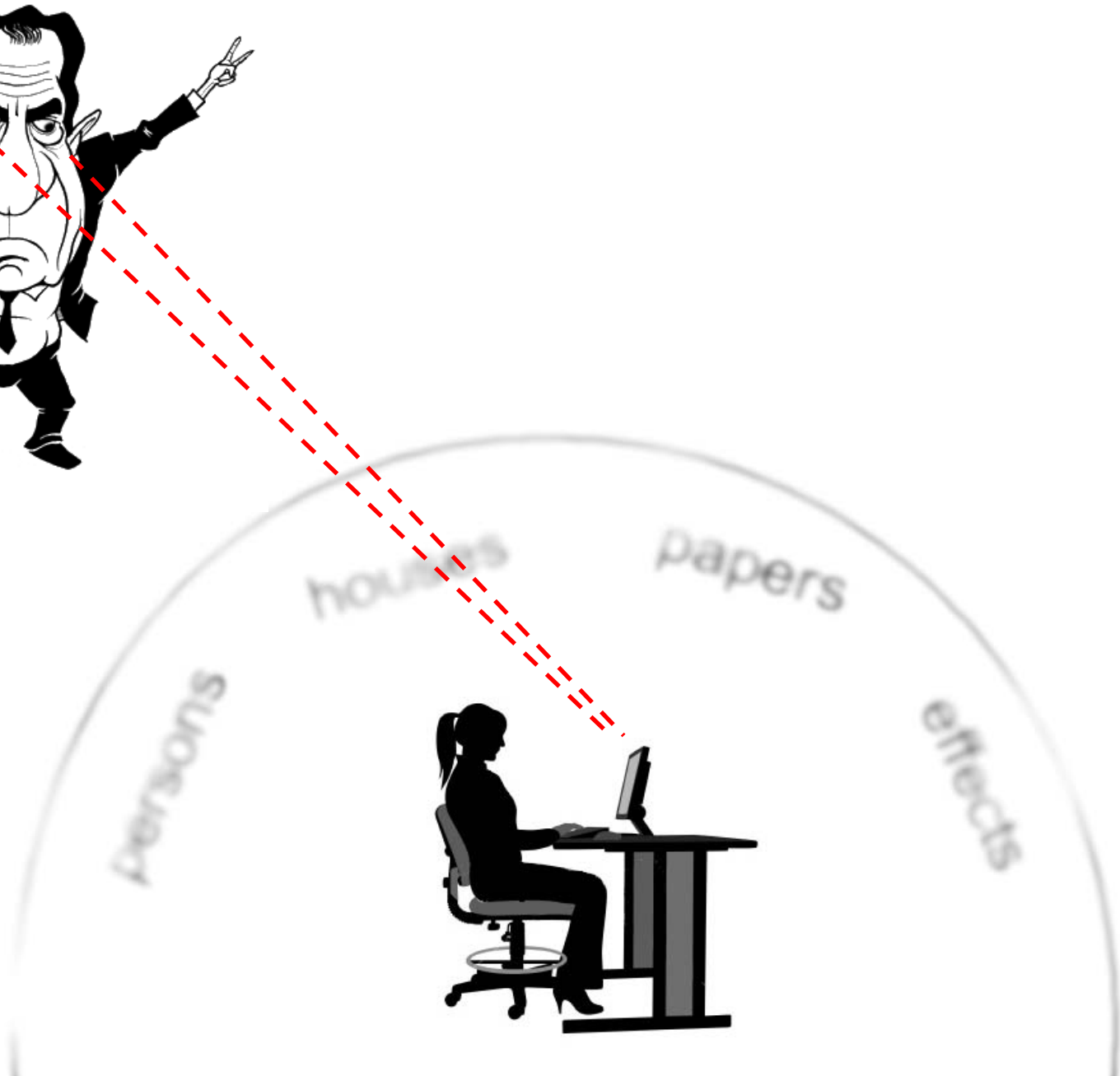
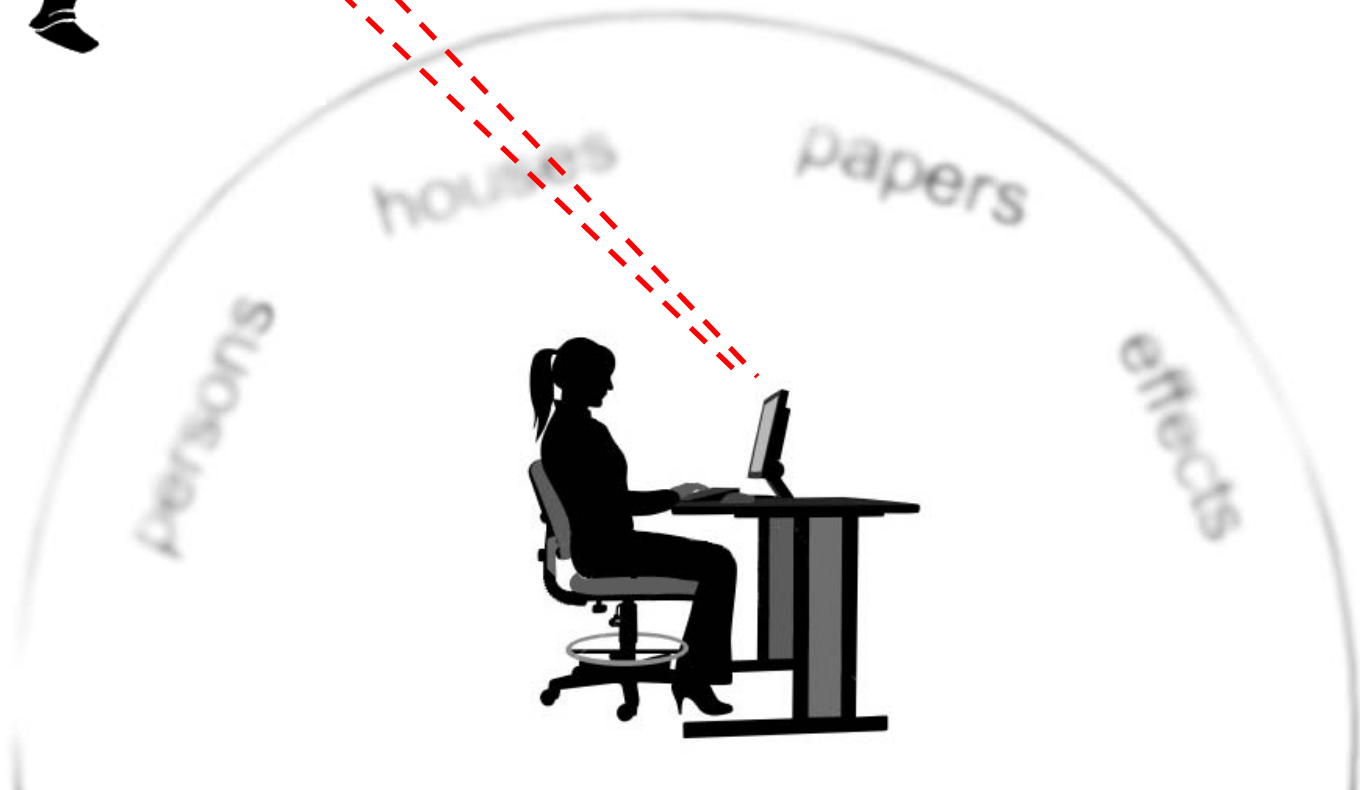
**Letter to James Madison, 1788*

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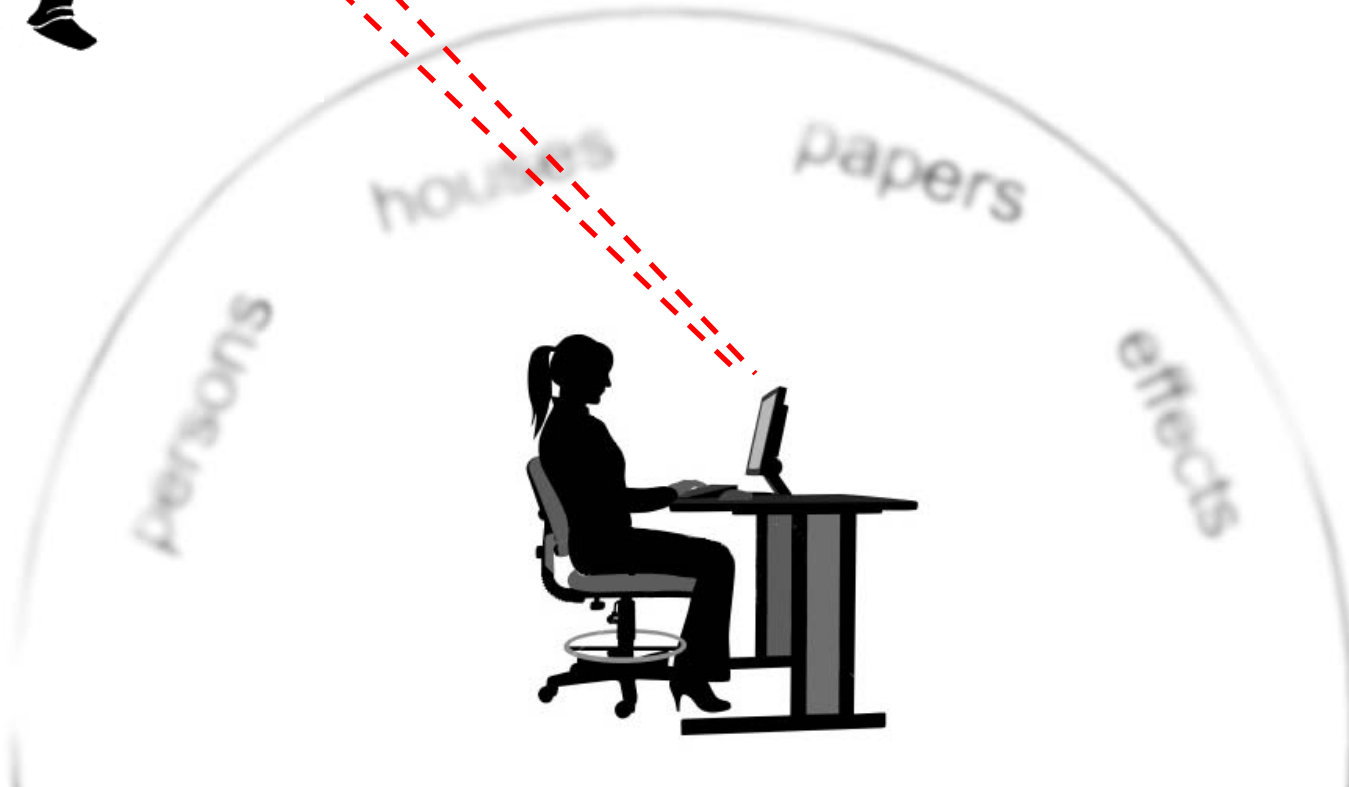
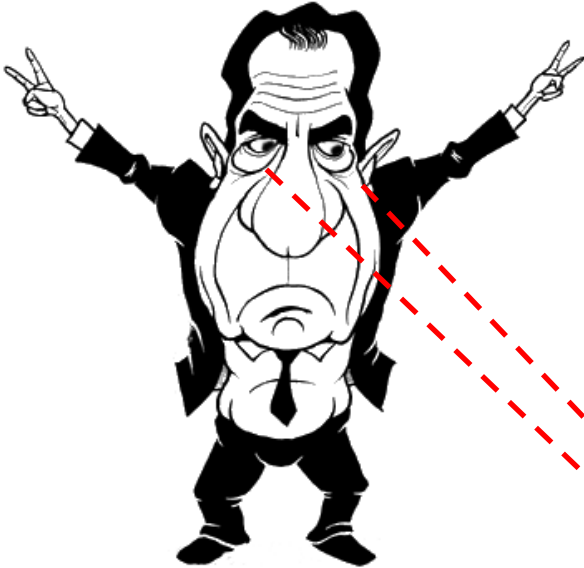






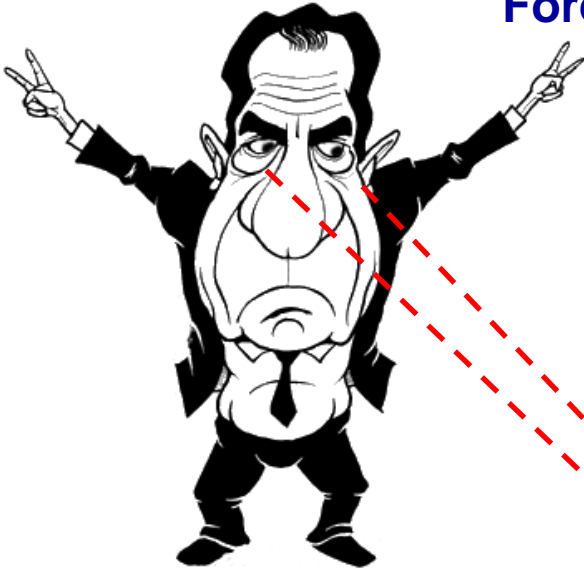
1978 Bill by Sam Ervin and Frank Church to address:

- Threat of further unconstitutional spying by federal agencies on political and activist groups.
- Lack of judicial oversight on surveillance activities by the executive.
- Confusion over 4th amendment applicability to electronic surveillance.



FISA

Foreign Intelligence Surveillance Act

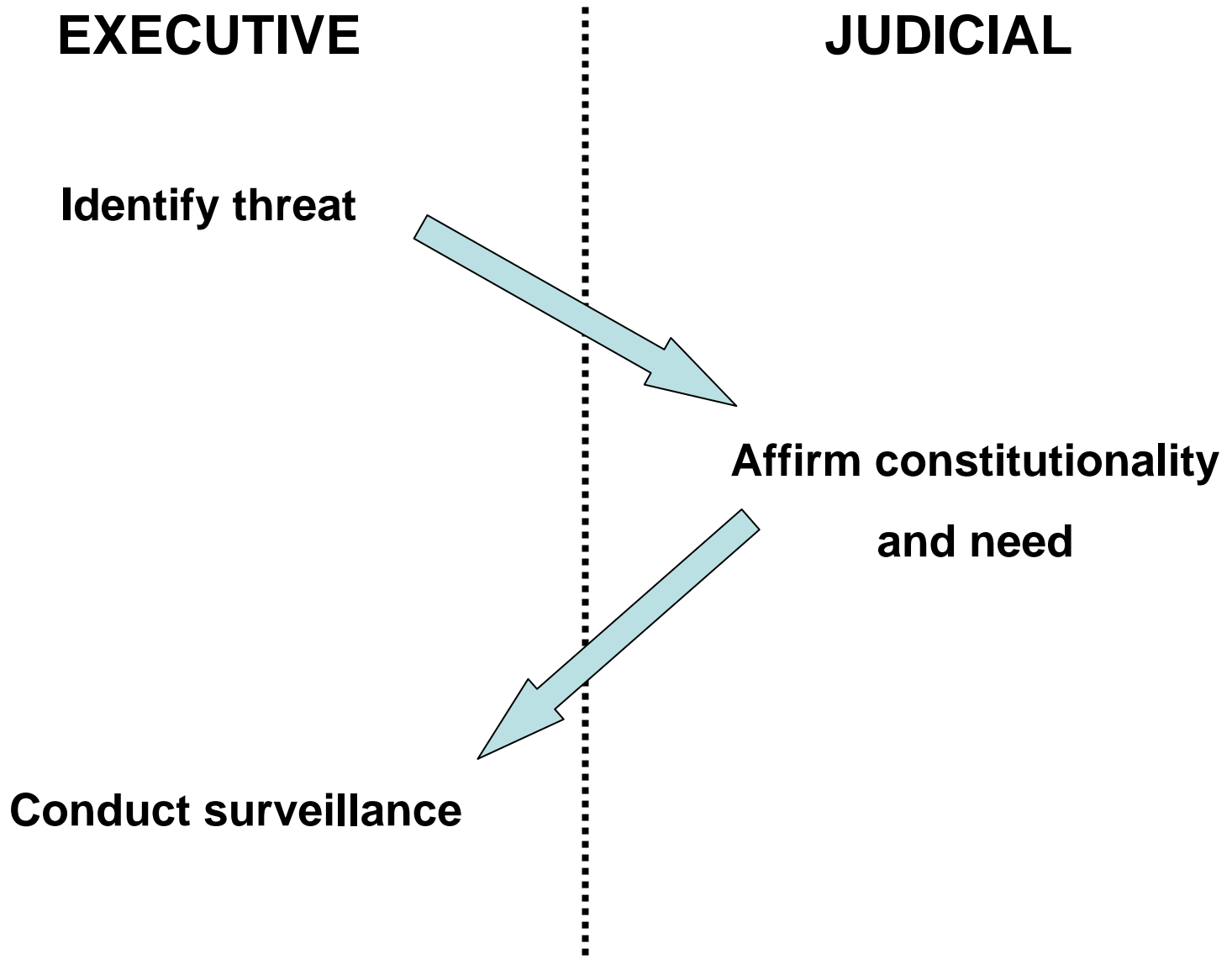


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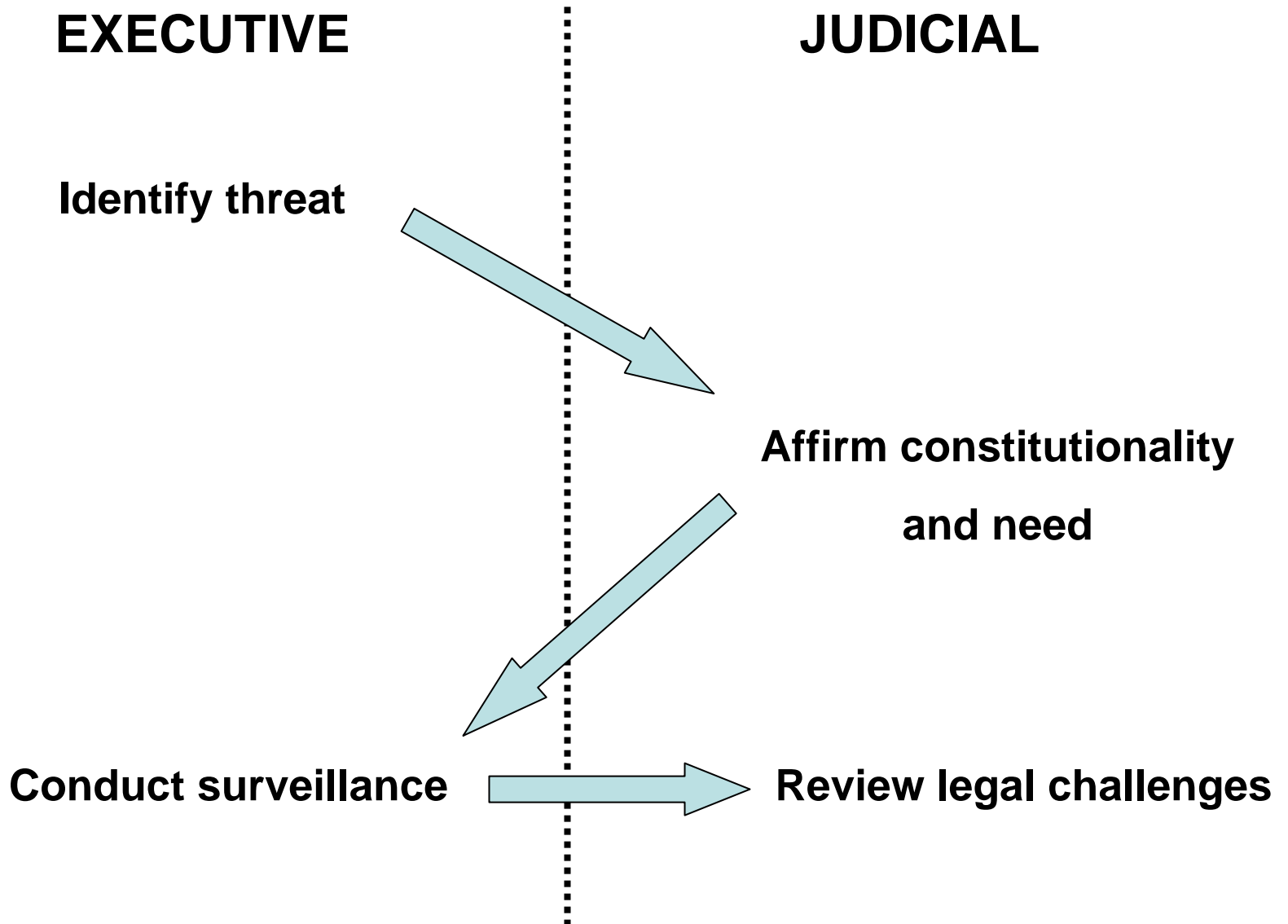
Foreign Intelligence Surveillance Act

- Provide a legal framework for surveillance of foreign powers.
- Establish a judicial process (the FISA Court) to oversee surveillance activities.
- Provides criminal and civil penalties for unauthorized surveillance of U.S. persons.

The FISA surveillance model



The FISA surveillance model



FISA

Foreign Intelligence Surveillance Act

In the 21st Century...

USA PATRIOT ACT

Protect America Act



FISA

Foreign Intelligence Surveillance Act



**Authorization for Use of Military Force
Against Terrorists**

USA PATRIOT ACT

Protect America Act



FISA

Foreign Intelligence Surveillance Act



**Authorization for Use of Military Force
Against Terrorists**

Authorization for Use of Military Force Against Terrorists

- Signed into law September 18, 2001

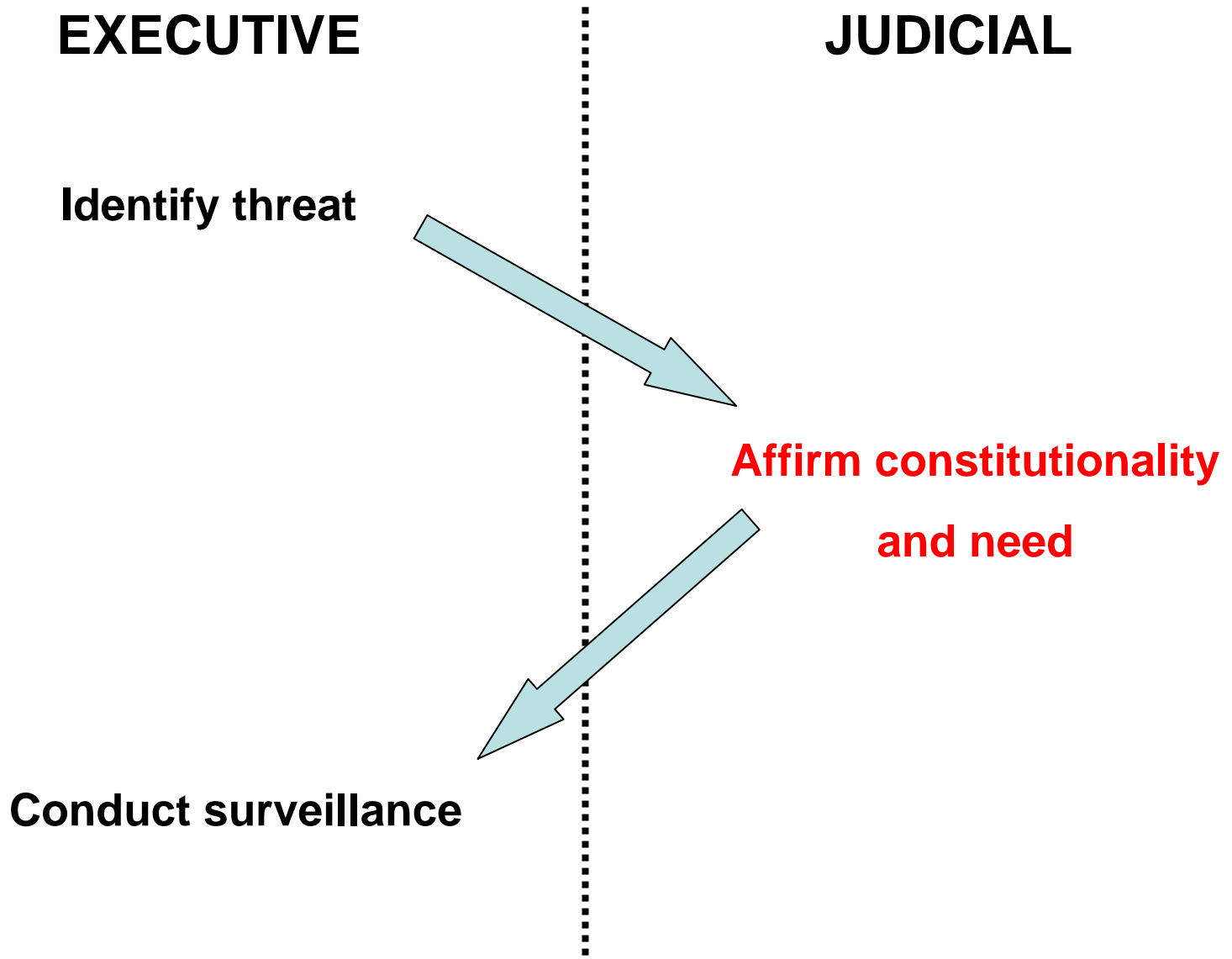
Authorization for Use of Military Force Against Terrorists

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- Used as original justification for NSA domestic wiretapping program.
 - Executive authorization for warrantless monitoring of all electronic communications (including phone, email, “texting,” internet, etc.) where one side of conversation was outside the U.S.

The FISA surveillance model



USA PATRIOT ACT

Protect America Act



FISA

Foreign Intelligence Surveillance Act



**Authorization for Use of Military Force
Against Terrorists**

USA PATRIOT Act

(Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001)

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- Sec 215. order to produce “books, records, papers, documents, and other items”
 - [American Library Association resolution](#)
 - Library Awareness Program revisited

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Intellectual Freedom

- ▶ [Basics](#)
- ▶ [First Amendment](#)
- ▶ [Statements and Policies](#)
 - ▶ [Library Bill of Rights](#)
 - ▶ [Code of Ethics](#)
 - ▶ [Freedom to Read Statement](#)
 - ▶ [Freedom to View Statement](#)
 - ▶ [Libraries: An American Value](#)
- ▶ [IF Resolutions](#)
- ▶ [Other Policies and Guidelines](#)
- ▶ [Core Values](#)

Resolution on the USA Patriot Act and Related Measures That Infringe on the Rights of Library Users

WHEREAS, The American Library Association affirms the responsibility of the leaders of the United States to protect and preserve the freedoms that are the foundation of our democracy; and

WHEREAS, Libraries are a critical force for promoting the free flow and unimpeded distribution of knowledge and information for individuals, institutions, and communities; and

WHEREAS, The American Library Association holds that suppression of ideas undermines a democratic society; and

WHEREAS, Privacy is essential to the exercise of free speech, free thought, and free association; and, in a library, the subject of users' interests should not be examined or scrutinized by others; and

WHEREAS, Certain provisions of the [USA PATRIOT Act](#), the revised Attorney General Guidelines to the Federal Bureau of Investigation, and other related measures expand the authority of the federal government to investigate citizens and non-citizens, to engage in surveillance, and to threaten civil rights and liberties guaranteed under the United States Constitution and Bill of Rights; and

Red Feather Lakes Community Library

- All circulation records cleared after 30 days.
- No patron records released without subpoena according to CRS 24-90-119

Personal Anecdote:

**British Columbia and the
*Freedom of Information and
Protection of Privacy Act***

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- Sec 215. order to produce “books, records, papers, documents, and other items”
 - [American Library Association resolution](#)
- Expands use of NSLs (National Security Letters) to apply to US citizens.
 - No check by judicial branch. Issued by FBI director or subordinates.
 - Built-in gag order

The Patriot Act: Business Balks

It's joining critics who seek to curb the law's wide-ranging investigative powers. And Capitol Hill is listening

by Richard S. Dunham

BusinessWeek NOVEMBER 10, 2005

Las Vegas Mayor Oscar B. Goodman loves to remind visitors of Sin City's oh-so-discreet tagline: "What happens in Vegas stays in Vegas." But since the New Year's celebrations ringing in 2004, he has had to modify the motto. Fearing a terrorist attack, the FBI descended on casinos, car rental agencies, storage warehouses, and other Las Vegas businesses with sheaves of "national security letters" demanding financial records covering about 1 million revelers. Startled business owners who questioned the action were told they had one choice: cough up their documents or wind up in court.

Now, a somber Mayor Goodman acknowledges, what happens in Vegas may end up staying in an FBI computer. "It's Kafkaesque," he says. "The central component to our economy is privacy protection. People are here to have a good time and don't want to worry about the government knowing their business."

STRANGE COALITION. The FBI carried out its document hunt under the Patriot Act, the anti-terrorism law passed hurriedly in the aftermath of September 11. The act allows investigators to demand that businesses turn over sensitive financial records, without specifying the investigation's target or why the files are needed. The outfit receiving a letter is permanently gagged, prohibited by law from ever disclosing that the feds came calling.

Indeed, the statute is silent on whether company officials who receive an order can call a lawyer or appeal to a judge -- although the Justice Dept. says it always allows businesses to seek legal

USA PATRIOT ACT

Protect America Act



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**Authorization for Use of Military Force
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Protect America Act

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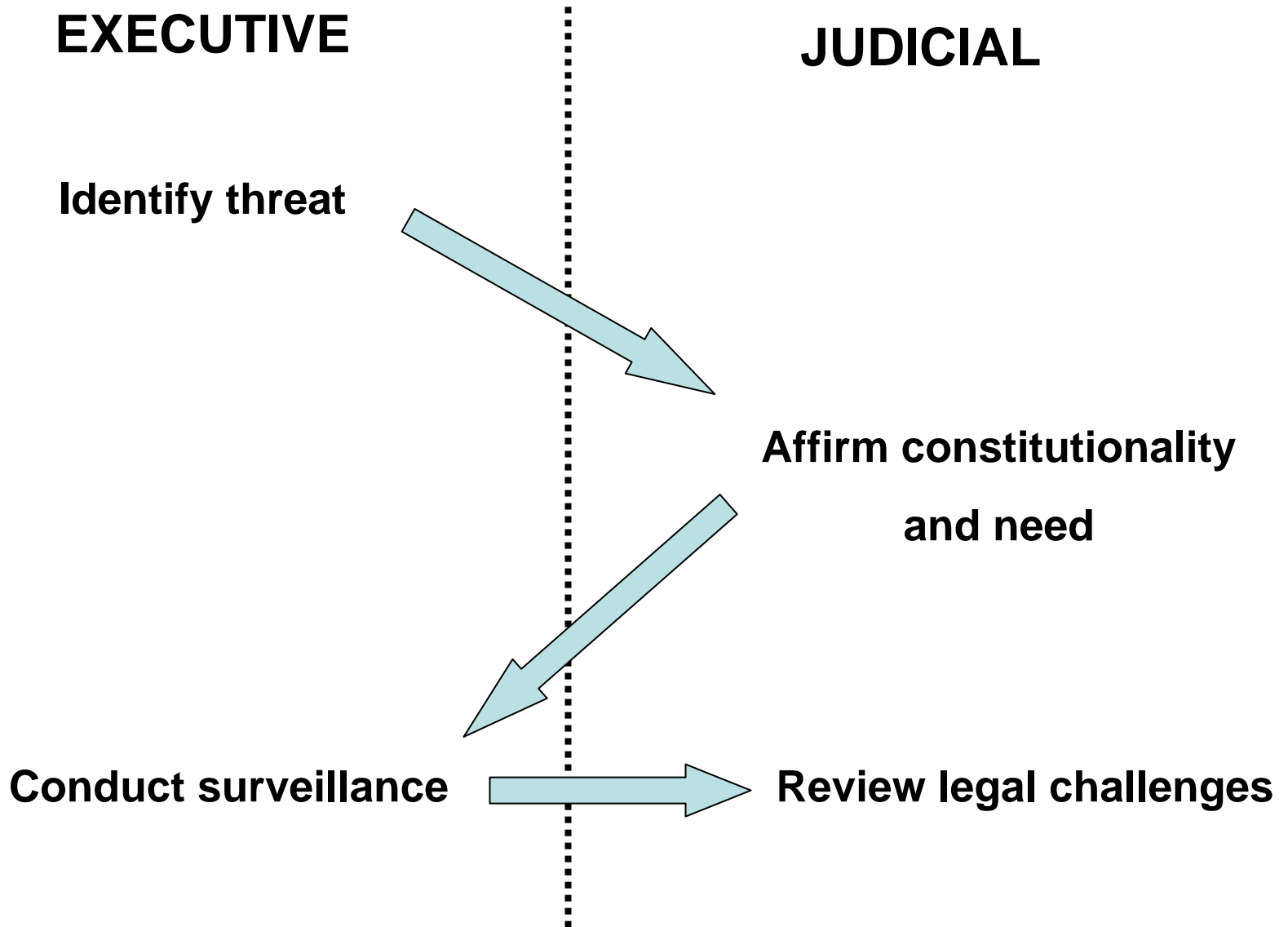
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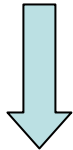
The FISA surveillance model



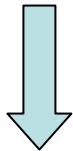
The FISA surveillance model

EXECUTIVE

Identify threat



NSA Review



Conduct surveillance

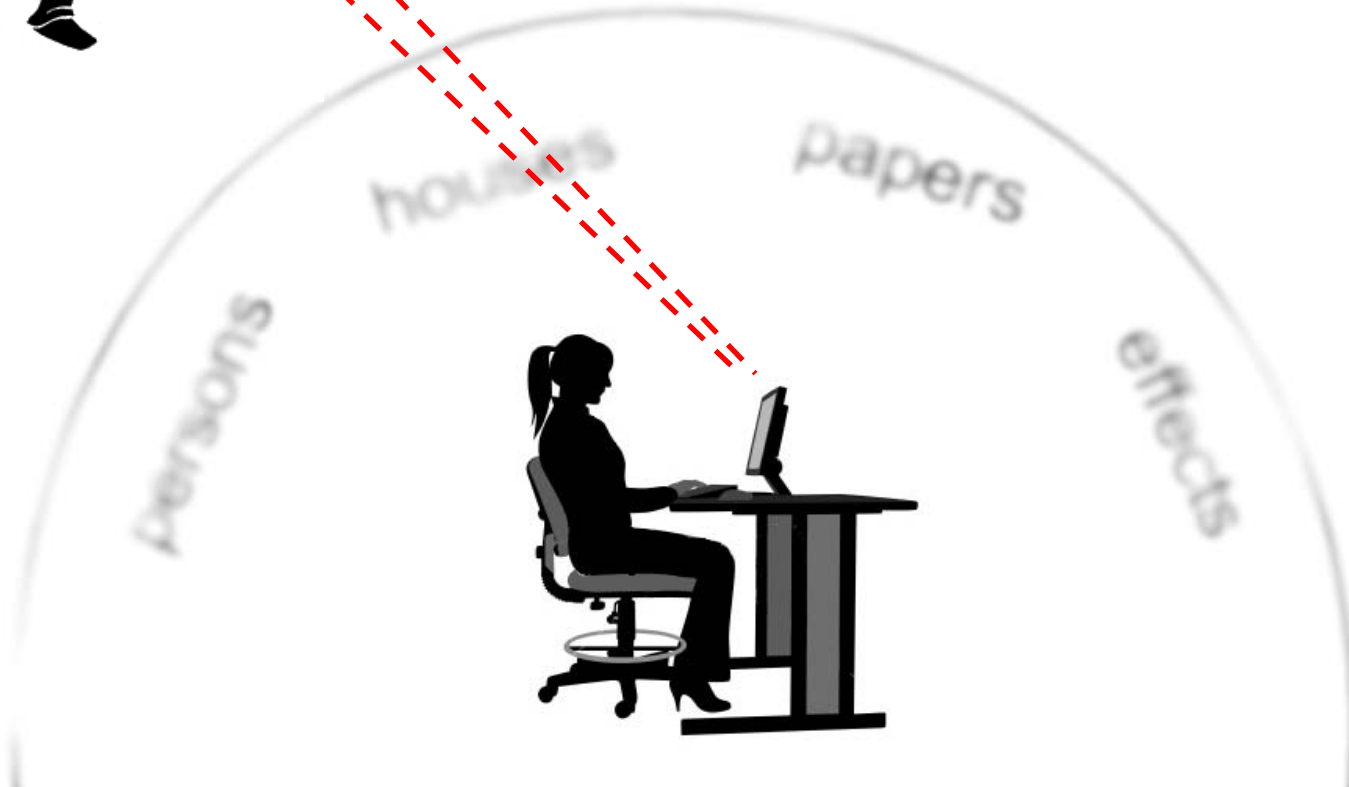
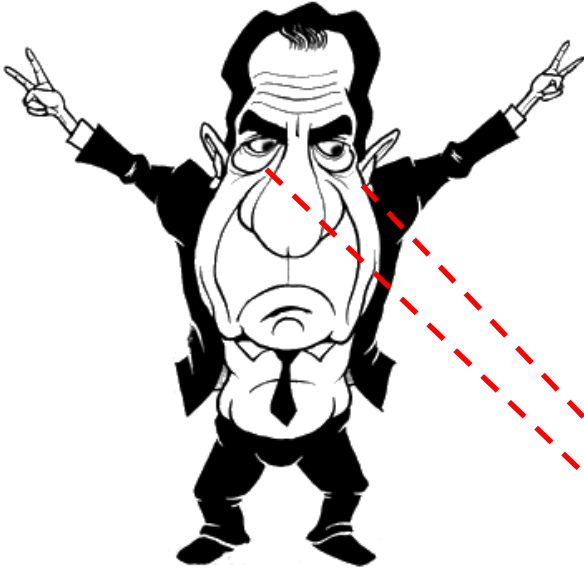
JUDICIAL

*Affirm constitutionality
and need?*

Review legal challenges?

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- Grants retroactive immunity for telecom service providers.
- **Sunset on Feb. 17, 2008**
 - February, 2008, the Senate passed the version of the new FISA that would allow telecom companies immunity.
 - March 14, 2008, the House passed a bill 213-197 that would not grant the immunity. (Not enough for the 2/3 majority required to override a Presidential veto.)

FISA

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- Provide a legal framework for surveillance of foreign powers ???
- Establish a judicial process (the FISA Court) to oversee surveillance activities ???
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4th Amendment of the Constitution of the U.S.

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Canadian Charter of Rights and Freedoms, Section 8

Everyone has the right to be **secure against unreasonable search or seizure.**



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European Convention on Human Rights, Article 8

1. Everyone has the right to **respect for his private and family life, his home and his correspondence.**

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.



Constitution of the Russian Federation

Chapter 2. Rights and Freedoms of Man and Citizen

Article 23

1. Everyone shall have the right to the **inviolability of private life**, personal and family secrets, the protection of honor and good name.
2. Everyone shall have the right to **privacy of correspondence, of telephone conversations, postal, telegraph and other messages**. Limitations of this right shall be allowed only by court decision.

Article 24

1. The collection, keeping, use and dissemination of information about the private life of a person shall not be allowed without his or her consent.
2. The bodies of state authority and local self-government, their officials shall ensure for everyone the possibility of acquainting with the documents and materials directly affecting his or her rights and freedoms, unless otherwise provided for by law.

Article 25

The home shall be inviolable. No one shall have the right to get into a house against the will of those living there, except for the cases established by a federal law or by court decision.



Constitution of the People's Republic of China

Article 39.

The **home of citizens of the People's Republic of China is inviolable.** Unlawful search of, or intrusion into, a citizen's home is prohibited.

Article 40.

The freedom and privacy of correspondence of citizens of the People's Republic of China are protected by law. No organization or individual may, on any ground, infringe upon the freedom and **privacy of citizens' correspondence** except in cases where, to meet the needs of state security or of investigation into criminal offences, public security or procuratorial organs are permitted to censor correspondence in accordance with procedures prescribed by law.



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What makes *our* rights stronger?



Constitution of the People's Republic of China

Article 39

What makes a constitutional guarantee a reality?



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Auth. for Use of Military Force Against Terrorists?

USA PATRIOT Act?

Protect America Act?

SAFETY =



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DISCUSS!

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The Mummy Range Institute

“To actively promote values that are indispensable in providing a compassionate society and a sustainable future for endless generations.”

Goals

- 1. To enhance member awareness through research and education.*
- 2. To advocate positions, solutions, and activities in support of our mission statement.*
- 3. To educate and challenge others.*

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