

THE 4TH AMMENMENT AND NSA WARRENTLESS SURVEILLANCE IN AN AGE OF SOPHISTICATED ELECTRONIC TECHNOLOGY

The recent revelations that the US government has been intercepting the electronic transmissions of every citizen in this country without warrants under the guise of mega-data collection in order to discover potential terror threats has come as a shock to many Americans who have not been aware of the fact that NSA and other intelligence agencies now have the capability to intercept and interpret all electronic data transmission be it by internet, telephone, ATM machines, charge card transactions, etc . Even encrypted messages using public keys shorter than 100 digits are vulnerable. This fact has been known to some of us for several years but it has not been true until recently that the actual analysis of such collected mega-data has become possible. Just think that they are collecting tens of billions of bytes of information each day. To many this form of surveillance is reminiscent of Big Brother in George Orwell famous novel and a clear infringement of a citizen's right to privacy. Many condone this warrantless data collection as a necessity for preventing terrorist attacks (Senator Dianne Feinstein of California, James Clapper of NSA, and Janet Napalitano of Homeland Security) while others (Senator Rand Paul of Kentucky, Senator Ron Whyden of Oregon, and Senator Mark Udall of Colorado) strongly oppose this data gathering because it violates the 4th amendment to the US Constitution. I find myself siding with the later while recognizing that as ever more and more sophisticated technology involving mega-data mining and interpretation is being developed , it is bound to be used by both domestic and foreign government and business organizations . Google is already using such data to send unwanted advertisements to internet users. The contradictory views on such surveillance are sure to initiate major legal battles in the coming years and bring into question the legality of other violations to the Bill of Rights in recent years by both Republican and Democratic Administrations and the Justice Department. In particular I am referring to violations involving the 1st(Freedom of Speech), 2nd(Right to Bear Arms), 6th(Speedy Trial) and 8th(No Torture) amendments.

Let us look a bit more at the recently disclosed revelation that the NAS has been secretly collecting all electronic communications of every citizen in this country under a new program termed PRISM. This action is clearly in

violation of the 4th amendment to the Constitution which explicitly states that-

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.

NSA has been carrying out surveillance of all electronic transmissions by individuals having any kind of an electronic presence without specified warrants. The excuse they are making for doing this is that they are searching for terror threats and are justified by the issuance of ex post facto warrants rubber stamped by the secret US Foreign Intelligence Surveillance Court (FISA) after something suspicious has been discovered. This is an illegal action against all Americans since the data searching is being done prior to issuing a warrant in clear violation of the wording of the 4th amendment. The only legal way around this dilemma is to change the Patriot Act in order to justify presently illegal searches or to revise the 4th amendment. Both actions would require the action of Congress and would be unlikely to pass at this date. We are presently in a position where American civil liberties are under attack under the guise of protection against terrorism. The question one must ask is "Is it worth it"? Does the loss of individual privacy justify the saving of just a few lives when in the US we yearly lose thousands of individuals through car accidents and homicide with little being done about the latter. I think a more reasonable alternative to warrantless mega-data mining by the government is for them to rely on a more efficient overseas spy network gathering information provided by informants and foreign governments. The recent Boston bombers were clearly on the radar with prior warnings having been given by the Russians. This information was ignored by the authorities in this country while broad surveillance and unwarranted TSA searches of innocent Americans at airports continues with ever increasing intensity. It is time to wake up. The smoke-screen being put up by the mass media and government officials that the number one priority at the moment should be the prosecution of whistleblowers for revealing secrets, is mainly intended as a distraction from the real problem. I am afraid if present trends continue, that in the not too distant future there will be a requirement for a national identity

card for every man woman and child in this country. The card will be required to be carried by all and will have tracking capability. At that point the concept of individual privacy and freedom will have been lost forever.

I leave you with the recent remarks by Senator Mark Udall-

We do need to remember, we're in a war against terrorism, but I also think we have to follow the Bill of Rights, and the Fourth Amendment, which prevents unlawful searches and seizures. This ought to be important to us. It should remain sacred. That is what I'm aiming for.