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The Bill of Temporary Privileges

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Global Research, May 05, 2022
Creators Syndicate

Region: USA
Theme: Law and Justice

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Last week, the Director of National Intelligence, the data-gathering and data-concealing arm of the American intelligence community masquerading as the head of it, revealed that in 2021, the FBI engaged in 3.4 million warrantless electronic searches of Americans. This is a direct and profound violation of the right to privacy in “persons, houses, papers, and effects” guaranteed by the Fourth Amendment.

For the past 60 years, the Supreme Court has characterized electronic surveillance as a search that can only be conducted pursuant to a warrant issued by a judge based on probable cause of crime, which itself must be presented under oath to the judge. The warrant must specifically describe the place to be searched and the person or thing to be seized.

By failing to comply with these constitutional requirements, the FBI violated the natural and constitutionally protected right to be left alone of millions of Americans.

Yet, all of this was perfectly lawful. How can government behavior be both lawful and unconstitutional at the same time and in the same respect?

Here is the backstory.

The Fourth Amendment was written in 1791 while memories of British soldiers searching colonial homes were still prevalent. The British used general warrants to justify their violation of colonists’ privacy. A general warrant was not based on probable cause of crime. It was generated whenever the British government persuaded a secret court in London that it needed something from foreign persons, the colonists. The British government did not even need to identify what it needed.

General warrants authorized the bearer to search wherever he pleased and to seize whatever he found. The Fourth Amendment was written expressly to outlaw general warrants and warrantless searches.

After President Richard Nixon used the FBI and the CIA to spy on his political opponents, Congress enacted the Foreign Intelligence Surveillance Act of 1978, which prohibited warrantless domestic surveillance. Since the Fourth Amendment did so already, the prohibition was superfluous.

It was also toothless, as the new law set up a secret court — the FISA court — which issued surveillance warrants based not on probable cause of crime as the Fourth Amendment requires, but on probable cause of communicating with a foreign person. And the court, over time, kept modifying its own rules to make it easier for the National Security Agency —America's 60,000 domestic spies — to spy on Americans.

Today, if you call your cousin in London, the Foreign Intelligence Surveillance Court can authorize the NSA to spy on you. And if you then call your sister-in-law in Kansas, FISC can allow the NSA to spy on her and on the folks she calls and the folks they call.

This massive invasion of privacy produced huge amounts of data, which FISA required the NSA to keep to itself and use only to anticipate breaches of national security. The data acquired from spying on all fiber optic transmitted communications could not be shared with law enforcement since it had been obtained in violation of the Fourth Amendment. That prohibition was known as the "wall" between the intelligence and law enforcement communities.

In 2008, after the Bush administration was caught in massive warrantless spying on Americans, Congress enacted amendments to FISA that removed the wall. Stated differently, the new law, Section 702 of FISA, which expires in 20 months, required all telecom and computer service providers to give the NSA unfettered access to their computers whenever the feds came calling — with or without FISA warrants — and also allowed the FBI access to the body of raw intelligence data that the NSA acquired.

The wall between the intelligence community and law enforcement is gone.

Every member of Congress has taken an oath to uphold the Constitution, yet by repeated majority votes and the signatures of all pre-Biden presidents since 2008 continually reenacting Section 702, Congress has permitted the FBI to bypass the Constitution. Thus, FBI spying is lawful because a statute authorizes it, but unconstitutional because the statute violates the Fourth Amendment.

Last week, the Director of National Intelligence, who is required by Section 702 to report all FBI access to the raw intelligence data, did so. But her record keeping is as sloppy as her fidelity to the Constitution. Thus, she reported 3.4 million FBI searches of raw intelligence data on Americans in 2021.

You'd think that meant that 3.4 million Americans had their emails, text messages, phone calls, medical and legal and personal records surveilled by the FBI. You'd be incorrect. To the feds, the word "search" refers to the input of a search term, like "Jan. 6" or "local militia" or "small government." One FBI search thus can lead to the records of thousands of Americans.

It is hard to believe that senior management of the CIA, NSA and FBI can perpetuate these egregious constitutional violations with straight faces. But they do. And Congress permits it. Why? Because the CIA, NSA, FBI and their collaborators have dirt on members of Congress.

Dirt.

The federal government is rotten to the core. Its officers and employees don't believe that the Constitution means what it says. They will lie, cheat, threaten, bribe and steal to cut constitutional corners and remain in power.

The Fourth Amendment was written to protect the quintessentially American right to privacy. It is a critical part of the structure of the Bill of Rights.

Rather, it was.

Today, in America, we have no rights. A right is an indefeasible claim against the whole world — to think as you wish, to say and publish what you think, to worship or not, to defend yourself, to experience your life and exercise your liberty and use your property without a government permission slip, and to be left alone.

The Constitution is the supreme law of the land, yet the rights it facially protects are now subject to government approval. The Bill of Rights is really a Bill of Temporary Privileges.

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