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The U.S. Supreme Court Is Marching in Lockstep with the Police State

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"[I]f the individual is no longer to be sovereign, if the police can pick him up whenever they do not like the cut of his jib, if they can 'seize' and 'search' him in their discretion, we enter a new regime. The decision to enter it should be made only after a full debate by the people of this country."--U.S. Supreme Court Justice William O. Douglas

The U.S. Supreme Court was intended to be an institution established to intervene and protect the people against the government and its agents when they overstep their bounds. Yet as I point out in my book A Government of Wolves: The Emerging American Police State, Americans can no longer rely on the courts to mete out justice. In the police state being erected around us, the police and other government agents can probe, poke, pinch, taser, search, seize, strip and generally manhandle anyone they see fit in almost any circumstance, all with the general blessing of the courts.

Whether it's police officers breaking through people's front doors and shooting them dead in their homes or strip searching innocent motorists on the side of the road, these instances of abuse are continually validated by a judicial system that kowtows to virtually every police demand, no matter how unjust, no matter how in opposition to the Constitution.

These are the hallmarks of the emerging American police state: where police officers, no longer mere servants of the people entrusted with keeping the peace, are part of an elite ruling class dependent on keeping the masses corralled, under control, and treated like suspects and enemies rather than citizens.

A review of the Supreme Court's rulings over the past 10 years, including some critical ones this term, reveals a startling and steady trend towards pro-police state rulings by an institution concerned more with establishing order and protecting government agents than with upholding the rights enshrined in the Constitution.

Police officers can use lethal force in car chases without fear of lawsuits. In *Plumhoff v. Rickard* (2014), the Court declared that police officers who used deadly force to terminate a car chase were immune from a lawsuit. The officers were accused of needlessly resorting to deadly force by shooting multiple times at a man and his passenger in a stopped car, killing both individuals.

Police officers can stop cars based only on "anonymous" tips. In a 5-4 ruling in*Navarette v. California* (2014), the Court declared that police officers can, under the guise of "reasonable suspicion," stop cars and question drivers based solely on anonymous tips, no matter how dubious, and whether or not they themselves witnessed any troubling behavior. This ruling

came on the heels of a ruling by the Tenth Circuit Court of Appeals in *U.S. v. Westhoven* that driving too carefully, with a rigid posture, taking a scenic route, and having acne are sufficient reasons for a police officer to suspect you of doing something illegal, detain you, search your car, and arrest you–even if you've done nothing illegal to warrant the stop in the first place.

Secret Service agents are not accountable for their actions, as long as they're done in the name of security. In *Wood v. Moss* (2014), the Court granted "qualified immunity" to Secret Service officials who relocated anti-Bush protesters, despite concerns raised that the protesters' First Amendment right to freely speak, assemble, and petition their government leaders had been violated. These decisions, part of a recent trend toward granting government officials "qualified immunity"–they are not accountable for their actions–in lawsuits over alleged constitutional violations, merely incentivize government officials to violate constitutional rights without fear of repercussion.

Citizens only have a right to remain silent if they assert it. The Supreme Court ruled in*Salinas v. Texas* (2013) that persons who are not under arrest must specifically invoke their Fifth Amendment privilege against self-incrimination in order to avoid having their refusal to answer police questions used against them in a subsequent criminal trial. What this ruling says, essentially, is that citizens had better know what their rights are and understand when those rights are being violated, because the government is no longer going to be held responsible for informing you of those rights before violating them.

Police have free reign to use drug-sniffing dogs as "search warrants on leashes," justifying any and all police searches of vehicles stopped on the roadside. In *Florida v. Harris* (2013), a unanimous Court determined that police officers may use highly unreliable drug-sniffing dogs to conduct warrantless searches of cars during routine traffic stops. In doing so, the justices sided with police by claiming that all that the police need to do to prove probable cause for a search is simply assert that a drug detection dog has received proper training. The ruling turns man's best friend into an extension of the police state.

Police can forcibly take your DNA, whether or not you've been convicted of a crime. In*Maryland v. King* (2013), a divided Court determined that a person arrested for a crime who is supposed to be presumed innocent until proven guilty must submit to forcible extraction of their DNA. Once again the Court sided with the guardians of the police state over the defenders of individual liberty in determining that DNA samples may be extracted from people arrested for "serious offenses." While the Court claims to have made its decision based upon concerns of properly identifying criminal suspects upon arrest, what they actually did is open the door for a nationwide dragnet of suspects targeted via DNA sampling.

Police can stop, search, question and profile citizens and non-citizens alike. The Supreme Court declared in *Arizona v. United States* (2012) that Arizona police officers have broad authority to stop, search and question individuals–citizen and non-citizen alike. While the law prohibits officers from considering race, color, or national origin, it amounts to little more than a perfunctory nod to discrimination laws on the books, while paving the way for outright racial profiling and destroying the Fourth Amendment.

Police can subject Americans to virtual strip searches, no matter the "offense." A divided Supreme Court actually prioritized making life easier for overworked jail officials over the

basic right of Americans to be free from debasing strip searches. In its 5-4 ruling in *Florence v. Burlington* (2012), the Court declared that any person who is arrested and processed at a jail house, regardless of the severity of his or her offense (i.e., they can be guilty of nothing more than a minor traffic offense), can be subjected to a virtual strip search by police or jail officials, which involves exposing the genitals and the buttocks. This "license to probe" is now being extended to roadside stops, as police officers throughout the country have begun performing roadside strip searches–some involving anal and vaginal probes–without any evidence of wrongdoing and without a warrant.

Immunity protections for Secret Service agents trump the free speech rights of Americans. The court issued a unanimous decision in *Reichle v. Howards* (2012), siding with two Secret Service agents who arrested a Colorado man simply for daring to voice critical remarks to Vice President Cheney. However, contrast the Court's affirmation of the "free speech" rights of corporations and wealthy donors in *McCutcheon v. FEC* (2014), which does away with established limits on the number of candidates an entity can support with campaign contributions, and *Citizens United v. FEC* (2010) with its tendency to deny those same rights to average Americans when government interests abound, and you'll find a noticeable disparity.

Police can break into homes without a warrant, even if it's the wrong home. In an 8-1 ruling in *Kentucky v. King* (2011), the Supreme Court placed their trust in the discretion of police officers, rather than in the dictates of the Constitution, when they gave police greater leeway to break into homes or apartments without a warrant. Despite the fact that the police in question ended up pursuing the *wrong* suspect, invaded the *wrong* apartment and violated just about every tenet that stands between us and a police state, the Court sanctioned the warrantless raid, leaving Americans with little real protection in the face of all manner of abuses by police.

Police can interrogate minors without their parents present. In a devastating ruling that could very well do away with what little Fourth Amendment protections remain to public school students and their families–the Court threw out a lower court ruling in *Camreta v. Greene* (2011), which required government authorities to secure a warrant, a court order or parental consent before interrogating students at school. The ramifications are far-reaching, rendering public school students as wards of the state. Once again, the courts sided with law enforcement against the rights of the people.

It's a crime to not identify yourself when a policeman asks your name. In *Hiibel v. Sixth Judicial District Court of the State of Nevada* (2004), a majority of the high court agreed that refusing to answer when a policeman asks "What's your name?" can rightfully be considered a crime under Nevada's "stop and identify" statute. No longer will Americans, even those not suspected of or charged with any crime, have the right to remain silent when stopped and questioned by a police officer.

The cases the Supreme Court refuses to hear, allowing lower court judgments to stand, are almost as critical as the ones they rule on. Some of these cases, turned away in recent years alone, have delivered devastating blows to the rights enshrined in the Constitution.

Legally owning a firearm is enough to justify a no-knock raid by police. Justices refused to hear *Quinn v. Texas* (2014) the case of a Texas man who was shot by police through his closed bedroom door and whose home was subject to a no-knock, SWAT-team style forceful entry and raid based solely on the suspicion that there were legally-owned firearms in his

household.

The military can arrest and detain American citizens. In refusing to hear *Hedges v. Obama* (2014), a legal challenge to the indefinite detention provision of the National Defense Authorization Act of 2012 (NDAA), the Supreme Court affirmed that the President and the U.S. military can arrest and indefinitely detain individuals, including American citizens. In so doing, the high court also passed up an opportunity to overturn its 1944 *Korematsu v. United States* ruling allowing for the internment of Japanese-Americans in concentration camps.

Students can be subjected to random lockdowns and mass searches at school. The Court refused to hear *Burlison v. Springfield Public Schools* (2013), a case involving students at a Missouri public school who were subjected to random lockdowns, mass searches and drug-sniffing dogs by police. In so doing, the Court let stand an appeals court ruling that the searches and lockdowns were reasonable in order to maintain the safety and security of students at the school.

Police officers who don't know their actions violate the law aren't guilty of breaking the law. The Supreme Court let stand a Ninth Circuit Court of Appeals decision in *Brooks v. City of Seattle* (2012) in which police officers who clearly used excessive force when they repeatedly tasered a pregnant woman during a routine traffic stop were granted immunity from prosecution. The Ninth Circuit actually rationalized its ruling by claiming that the officers couldn't have known beyond a reasonable doubt that their actions–tasering a pregnant woman who was not a threat in any way until she was unconscious–violated the Fourth Amendment.

When all is said and done, what these assorted court rulings add up to is a disconcerting government mindset that interprets the Constitution one way for the elite–government entities, the police, corporations and the wealthy–and uses a second measure altogether for the underclasses–that is, you and me.

Keep in mind that in former regimes such as Nazi Germany and the Soviet Union, the complicity of the courts was the final piece to fall into place before the totalitarian beast stepped out of the shadows and into the light. If history is a guide, then the future that awaits us is truly frightening.

Time, as they say, grows short.

John W. Whitehead is an attorney and author who has written, debated and practiced widely in the area of constitutional law and human rights. Whitehead's aggressive, pioneering approach to civil liberties has earned him numerous accolades and accomplishments, including the Hungarian Medal of Freedom. His concern for the persecuted and oppressed led him, in 1982, to establish The Rutherford Institute, a nonprofit civil liberties and human rights organization in Charlottesville, Va. Whitehead serves as the Institute's president and spokesperson.

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