

Trump wants to give government Permanent 'Authority' to Spy on ALL Americans

by Judge Andrew Napolitano via shirl - ICH *Monday, Aug 26 2019, 8:24pm*

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While most of us have been thinking about the end of summer and while the political class frets over the Democratic presidential debates and the aborted visit of two members of Congress to Israel [media distraction], the Trump administration has quietly moved to extend and make permanent the government's authority to spy on all persons in America.

The president, never at a loss for words, must have been asked by the intelligence community he once reviled not to address these matters in public.

These matters include the very means and the very secret court about which he complained loud and long during the Mueller investigation. Now, he wants to be able to unleash permanently on all of us the evils he claims were visited upon him by the Obama-era FBI and by his own FBI. What's going on?

Here is the backstory.

After the lawlessness of Watergate had been exposed — a president spying on his political adversaries without warrants in the name of national security — Congress enacted in 1978 the Foreign Intelligence Surveillance Act. It prescribed a means for surveillance other than that which the Constitution requires.

The Fourth Amendment to the Constitution — written in the aftermath of British soldiers and agents using general warrants obtained from a secret court in London to spy on whomever in the colonies they wished and to seize whatever they found — was ratified as part of the Bill of Rights to limit the government's ability to intrude upon the privacy of all persons, thereby prohibiting those procedures used by the British.

Thus, we have the constitutional requirements that no searches and seizures can occur without a warrant issued by a judge based on a showing, under oath, of probable cause of crime. The courts have uniformly characterized electronic surveillance as a search.

I am not addressing eyesight surveillance on a public street. I am addressing electronic surveillance wherever one is when one sends or receives digital communications. FISA is an unconstitutional congressional effort to lower the standards required by the Fourth Amendment from probable cause of crime to probable cause of foreign agency.

Can Congress do that? Can it change a provision of the Constitution? Of course not. If it could, we wouldn't have a Constitution.

It gets worse.

The court established by FISA — that's the same court that President Donald Trump asserts

authorized spying on him in 2015 and 2016 — has morphed the requirement of probable cause of being a foreign agent to probable cause of communicating with a foreign person as the standard for authorizing surveillance.

What was initially aimed at foreign agents physically present in the United States has secretly become a means to spy on innocent Americans. In Trump's case, the FISA court used the foreign and irrelevant communications of two part-time campaign workers to justify surveillance on the campaign.

Add to all this the 2002 secret order of President George W. Bush directing the National Security Agency to spy on all in America all the time without warrants — this is what Edward Snowden exposed in 2013 — and one can see what has happened.

What happened?

What happened was the creation of a surveillance state in America that came about by secret court rulings and a once-secret presidential order. As a result of this, part of the government goes to the secret FISA court and obtains search warrants on flimsy and unconstitutional grounds and part of the government bypasses FISA altogether and spies on everyone in America and denies it and lies about it.

Bill Binney, the genius mathematician who once worked for the NSA and now is its harshest critic, has stated many times that, as unconstitutional as FISA is, it is a pretext to NSA spying on all persons in America all the time.

How pervasive is this unlawful spying? According to Binney, the NSA's 60,000 domestic spies capture the content and the keystrokes of every communication transmitted on fiber optic cables into or out of or wholly within the United States. And they do so 24/7 — without warrants.

Now, back to that quiet late summer proposal by the Trump administration. Some of the statutes that govern who can go to the FISA court and under what circumstances they can go are about to expire. Inexplicably, the president once victimized by FISA wants to make these statutes permanent. And he wants to do so knowing that they are essentially a facade for spying. That would institutionalize the now decades-long federal assault on privacy and evasion of constitutional norms.

It would also place Trump in the same category as his two immediate predecessors, who regularly ordered government agents to violate the Fourth Amendment and then denied they had done so.

Some of my Fox colleagues joke with me that I am shoveling against the tide when it comes to defending the right to privacy. They claim that there is no more privacy. I disagree with them. As long as we still have a Constitution, it must be taken seriously and must mean what it says. And its intentionally stringent requirements for enabling the government to invade privacy remain the law of the land. The president has sworn to uphold the Constitution, not the NSA.

The late Supreme Court Justice George Sutherland once wrote that we cannot pick and choose which parts of the Constitution to follow and which to ignore. If we could, the Constitution would be meaningless.

Did he foresee our present woes when he wrote, "If the provisions of the Constitution be not upheld when they pinch as well as when they comfort, they may as well be abandoned"?

Is that where we are headed?

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