

Speech on the Surveillance State, amended November 30, 2013

My topic today is the Fourth Amendment to the United States Constitution:

“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.”

We now know that the federal government has embarked upon a vast program of collecting data about every American

- We know they take pictures of everything that is mailed. We find statements about this in FBI affidavits.
- We know they record the numbers, duration and location of every telephone call made. We know this from the secret judicial opinion from the Secret Foreign Intelligence Surveillance Court.
- We know they record every e-mail, and every web search. We know that some of the Internet providers got dragged in front of the secret court because they resisted this, and lost. But you didn't hear about it when it happened, because it was secret.
- We know they can attach devices to your car to report your locations
- We know they can turn your cell phone on remotely and listen to you.
- We know they can turn your computer on remotely and listen to you and even watch you. A school district in Pennsylvania did that. The Obama Administration probably did it to that CBS reporter, Sharyl Attkisson, who dared to push the “Fast and Furious” story

[You remember that, right? Obama wound up buying assault rifles for Mexican drug gangs. If you start adding up all the pieces, with his war on the medical marijuana folks down in California, and the recent solicitations targeting those who steal from drug gangs, it starts to look a lot like he's doing favors for some very bad friends. But I digress . . .]

- We know they are gathering records of every single credit card transaction.

- We know they do this by just tapping into giant fiber optic cables and sucking it all in. These are immense, complicated technological endeavors that have never been the subject of a vote by any representative of the American people

They are building giant computer systems five times the size of the U.S. Capitol to store and process all this information. How big?

1,000 megabytes is a gigabyte (well, 1024 for your technies . . .)

1,000 gigabytes is a terabyte.

1,000 terabytes is a petabyte.

1,000 petabytes is an exabyte.

1,000 exabytes is a zettabyte.

Some people project that global Internet traffic will reach a zettabyte in a few years

1,000 zettabytes is a yottabyte.

For you scientific notation fans, that's 10^{24}

And so somehow, and again, without any real involvement by our so-called representatives, we are now trying build yottabytes of spying capacity.

So the question arises, what does the Fourth Amendment mean? Now some of you are going to say, well, maybe we should ask some expert in Constitutional law. I want to suggest to you that any citizen who is not a fool can read the plain language of the Constitution. The thing that might be harder for you to believe is that nearly any judge can't read the Constitution. Because believe it or not, all of us lawyers are trained in law school to deny the plain meaning of the document.

The question we face as Americans is what *should* the Fourth Amendment mean. And the more serious question is what should we do when we have a ruling class that wants it to mean nothing. When it comes to the government, it will tell you, hey, you reached outside the house with your telephone call, and your e-mail is not printed on paper, and so what's your problem? You're secure in your houses and papers.

At least until they drive down the street with their new radar that can look inside the house to see if you have a gun. Or use the new smelling technology to see if there is a single cartridge's worth of powder in the house. You see, technology lets the government reach further and further into your life unless you tell the Government to stop it.

The great freed slave Frederick Douglass once said: "Find out just what any people will quietly submit to and you have found out the exact measure of injustice and wrong which will be imposed upon them, and these will continue till they are resisted with either words or blows, or with both."

Once upon a time, our Presidents used to warn us about government power. Dwight D. Eisenhower said in his farewell speech: "In the councils of government, we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex. The potential for the disastrous rise of misplaced power exists and will persist."

And his successor, President Kennedy, warned: "We decided long ago that the dangers of excessive and unwarranted concealment of pertinent facts far outweighed the dangers which are cited to justify it. Even today, there is little value in opposing the threat of a closed society by imitating its arbitrary restrictions. Even today, there is little value in insuring the survival of our nation if our traditions do not survive with it. And there is very grave danger that an announced need for increased security will be seized upon those anxious to expand its meaning to the very limits of official censorship and concealment. That I do not intend to permit . . ."

Well, we all know what happened to him. And it has been a long time since we had a President who warned us against the dangers of excessive government power. Maybe not since Reagan.

And so things have gotten worse and worse to the point where wheelchair-bound ninety-year olds have to remove leg braces before boarding a plane, and kindergartners have to stand patiently while the TSA pokes around in their pants. But I digress . . .

If we want a *reasonable* interpretation of the Constitution, why don't we admit that it is *reasonable* to say that people's "papers" include their e-mails, and just as the Colonists didn't want the British sending spies to their homes, we don't want the Government listening in when we talk to our friends on the phone.

Now in addition to being unconstitutional, I want to make it clear that the program of gathering data on each and every American without specific cause is absolutely illegal.

These spying programs are supposed to be authorized by § 215 of the Patriot Act. This is a law that anyone can look up; it is codified at 50 U.S.C. § 1861.

50 U.S.C. § 1861(a) Application for order; conduct of investigation generally

(1) Subject to paragraph (3), **the Director of the Federal Bureau of Investigation or a designee . . . may make an application for an order requiring the production of any tangible things (including books, records, papers, documents, and other items) for an investigation to . . . protect against international terrorism**

“

Each application under this section—

“

(2) shall include—

(A) a statement of facts showing that there are reasonable grounds to believe that the tangible things sought are relevant to an authorized investigation . . . to protect against international terrorism . . . such things being presumptively relevant to an authorized investigation if the applicant shows in the statement of the facts that they pertain to—

- (i) a foreign power or an agent of a foreign power;**
- (ii) the activities of a suspected agent of a foreign power who is the subject of such authorized investigation; or**
- (iii) an individual in contact with, or known to, a suspected agent of a foreign power who is the subject of such authorized investigation . . .”**

So in order to get anything, it has to be relevant to an investigation. And one way we know that its relevant is if it involves some foreign agent, or suspected foreign agent. But how did we get from that to, hey, recording everybody’s phone calls is “relevant to an investigation”?

We now know that a special definition of relevance has been put out by government lawyers. “the Government has reason to believe that conducting a search of a broad collection of telephony metadata records will produce counterterrorism information—and that it is necessary to collect a large volume of data in order to employ the analytic tools needed to identify that information—[so] the standard of relevance under Section 215 is satisfied.” But we only know this because the Administration decided to release a White Paper (August 9, 2013) revealing this.

Why would any self-respecting Judge agree that information is relevant because if we gather it, we might find something about someone? In my mind I see the government lawyer saying well, it’s simple, see. We have an ongoing investigation of the American people, and it’s relevant to that, so what’s your problem? Do you have a problem? Do you want to shut up about that problem, or we’ll start telling people about all your web searches about how to cure herpes? Or accidentally release those credit card charges for that kinky website you visited? ... But I digress.

In general, we now have secret law, says the government. We are now at the point where the government can secretly ask secret courts to do secret things on the basis of secret powers that nobody knows it has.

What does it mean to have secret law? What does it mean when the administration says it can’t reveal its legal interpretation of parts of the Patriot Act? It means we are no longer a nation of law at all. There are people with power, and people without power.

As a lawyer litigating against the government, I fight government secrecy every week of my life. Over and over again, I find that what my clients and their families need to defend themselves from the government is a secret.

Why does anything in the Department of Agriculture have to be secret at all? Why does anything in the Department of Education have to be secret at all? Why does anything in the Department of Commerce have to be a secret?

And once what these agencies are doing is secret, we suddenly find that they need their own SWAT Teams? The Social Security Administration seems to need 174,000 rounds of ammunition and its own SWAT teams. We have agencies all over the federal government buying literally billions of rounds of hollow-point bullets, and lying about it, and saying it’s for target practice. It is obvious what the

goal here is. It is to intimidate citizens of the State of Oregon and the United States, and shoot them if it comes to that. But I digress . . .

Knowledge is power, and secrecy is power, and we have a larger and larger class with secret power.

All this secret power is a profoundly anti-American development. Thomas Jefferson thought, and I quote:

“The general spread of the light of science has already laid open to every view the palpable truth, that the mass of mankind has not been born with saddles on their backs, nor a favored few booted and spurred, ready to ride them . . .”

But now the light is not spreading. It is darkening, and it is darkening faster and faster. The U.S. Senate now proposes to throw open our borders and add to the Nation’s voting rolls people who are aliens to the American ideals, and are not required to learn them at all in order to become a citizen and vote. But I digress. . .

I think we need a new American Revolution that opens up the files of the government. I think that for 99.9% of government employees, we should be able to surf right into their computers and see what they are doing. All of their job duties and performance should be an open book. They are public servants.

Now there are many Republicans on the wrong side of the Fourth Amendment issue, and here is their argument: well, it would be nice if we could still have all this privacy, but we live in a dangerous world, and we need to be protected.

Don’t they sound a lot like the gun-grabbers, by the way? If we take away the rights of the law abiding citizens, that will protect us from the criminals. But I digress. . .

All of this monitoring and recording of citizen conversations isn’t going to help us catch the real dangerous, competent terrorists at all. Here’s one reason why: for the last forty years, the art of code-making has surpassed the art of code breaking. Anyone can buy voice and internet communications software that will encrypt communications in a way that not even the government can break. Anyone can buy prepaid cell phones, and remove the battery between calls, and throw them away before any patterns develop.

Get over the idea that building this [Forbin Project](#) of a spy system is about protecting you. There may be lots of agents out there who might like to protect

you, but the people at the top are doing nothing but taking step after step to put you in harm's way.

- We know they don't focus their efforts on the Muslim extremists who are causing most of the problems all over the world. Did you ever see those visa applications from the 9/11 hijackers? "I go to Boston, live in Hilton." OK, no problem, you're in. My girlfriend from Germany has to go through several rounds of interviews and background checks to get in. Tourists from Europe all complain about harassment. They get turned back after landing because the Customs agents are focusing on their Facebook pages. But they don't have any problem with the people who might actually be terrorist.
- We know they don't pay any attention to the warnings from foreign governments, hey, you might have a terrorist here. How many times can the U.S. Government be warned about somebody? How many foreign governments have to sound the alarm? But we let them blow up the Boston Marathon.

You want to know what the cops in Boston were focusing on that day? They ignored the Chechen Muslim brothers with ties to incendiary imams and jihadist groups in Dagestan. No, they were having a drill involving bombs by a group of right-wing militiamen called "Free America Citizens". That's where the focus is: what is really a threat as far as our leaders are concerned: a group with a name with words like "free," "America," and "citizens". (And aren't these the same kind of words that trigger an IRS investigation?)

- We know they don't pay any attention if terrorists they carry around big signs saying I want to kill Americans. Now here I am exaggerating a little. But remember Major Hasan. He killed 13 people and wounded 30 at Ft. Hood. You know what it said on his business card? Soldier of Allah.
- We know that if someone actually does want to protect us by, let's say, visiting the Boston mosque where the Marathon bomber was making pro-terrorism statements during what they call "worship", the agent can't do it without seeking approval from something called the Sensitive Operations Review Committee high up in Eric Holder's Department of Justice. The Sensitive Operations Review Committee is so sensitive

nobody knows who's on it. You might get approved, or you might get sentenced to extra sensitivity training for asking.

- Now we learn that after funding Muslim terrorists in Syria who are likely to lose the war, we plan to let them all come and live here, probably at public expense.
- There is no nationwide entry-exit system for foreigners so we have any idea who is overstaying their visa. Bush built a pilot program, NSEERS (National Security Entry-Exit Registration System), registering only those from jihad-friendly countries. It stopped a lot of questionable and criminal foreigners from coming in, but Obama suspended it.

And after our leaders have taken all these steps to fill the U.S. with terrorists, and then put blindfolds and handcuffs on the honest law men who want to protect us, *they have the gall to say now we have to spy on your every move to protect you?* Do you really trust this people?

You can't. They are proven liars.

Consider General Clapper, the director of national intelligence. On March 12th, he testified in Congress. Senator Wyden asked him whether the National Security Agency collects “any type of data at all on millions or hundreds of millions of Americans.”

General Clapper said: “No sir.”

It turns out he even got the question in advance from Senator Wyden, so it's not just some accident lie. It's a premeditated, evil lie. And according to the New York Times, Senator Wyden knew it was a lie, and sat there like a potted plant. We only know about the lie because the evidence to the contrary was published in a newspaper in London.

Senator Mark Kirk of Illinois recently asked Attorney General Holder if he's spying on members of Congress and thereby giving the executive branch leverage over the legislative branch. Eric Holder answers:

“With all due respect, senator, I don't think this is an appropriate setting for me to discuss that issue.”

At this point, if I were a Senator, I would have asked the House police to arrest the Attorney General for contempt of Congress. But Senator Kirk sat there like a potted plant.

I think Senator Kirk already knew the answer to his question. Another whistleblower, Russ Tice, said this month (June 19, 2013):

“They went after—and I know this because I had my hands literally on the paperwork for these sort of things—they went after high-ranking military officers; they went after members of Congress, both Senate and the House, especially on the intelligence committees and on the armed services committees and some of the—and judicial”

“But they went after other ones, too. They went after lawyers and law firms. All kinds of—heaps of lawyers and law firms. They went after judges. One of the judges is now sitting on the Supreme Court that I had his wiretap information in my hand. Two are former FISA court judges. They went after State Department officials. They went after people in the executive service that were part of the White House—their own people.”

Because knowledge is power. A lot of people wonder why Justice Roberts upheld Obamacare, as gross a betrayal of the Constitution as we’ve seen for many years. Well, God knows what they caught him doing. God and the NSA.

So the Fourth Amendment is not just about protecting your privacy. It’s a bad thing if you can’t get an artificial hip because of the blog post you wrote ten years ago. But it’s worse thing if all of our elected officials are corrupt puppets of the folks running the machines.

With all of these recent revelations, maybe you can understand why our government is writing checks for hundreds of billions of dollars to bail out the super rich for their bad investments. They’ve got power. You don’t. And they will keep looting the Republic until we all rise up and stop them.

This whole Fourth Amendment thing is simple, folks. You know why it says, and I quote, “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”? The Fourth Amendment promises us a government *that*

focuses on the bad guys. We have a Constitutional right to a government that figures out who the bad guys are, rather than treating us as the bad guy.

The idea that we need to treat everyone as the bad guy is unacceptable. The people who accept this idea should be chastised and ostracized as un-American. You have the power to get angry with people who say these things and make what they say socially unacceptable. These ideas are beyond the pale, and people who advance them should be shamed and even intimidated into silence. Just like the Leftists have shut down overt expressions of racism.

You are either on the side of freedom, liberty, truth, transparency and the U.S. Constitution or you are on the side of mindless obedience, oppression, deception, corruption and tyranny.

If you are on the side of secret law and secret proceedings, all I can say to you is the same thing Samuel Adams said: "If ye love wealth better than liberty, the tranquility of servitude better than the animating contest of freedom, go home from us in peace. We ask not your counsels or arms. Crouch down and lick the hands which feed you. May your chains set lightly upon you, **and may posterity forget that ye were our countrymen.**"

As these secret ruling powers get more and more brazen, I think they are going to be surprised. In the words of Daniel Webster:

"There is something on earth greater than arbitrary or despotic power. The lightning has its power, and the whirlwind has its power, and the earthquake has its power; but there is something among men more capable of shaking despotic thrones than lightning, whirlwind, or earthquake, and that is, the excited and aroused indignation of the whole civilized world."

That day is coming faster and faster. It is time for you to:

Rise like Lions after slumber
In unvanquishable number,
Shake your chains to earth like dew
Which in sleep had fallen on you-
Ye are many — they are few

Thank you.

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