

The Pottstown Mercury (pottsmmerc.com), Serving Pottstown, PA

Opinion

Obama takes spying on us to a new level

Monday, October 11, 2010

By Nat Hentoff, columnist

Before his forced resignation, President Richard Nixon declared, “When the president does it, that means it is not illegal.” Our current chief executive, however, speaking this year at the Pentagon on Sept. 11, said of our terrorist enemies: “They may seek to exploit our freedoms, but we will not sacrifice the liberties we cherish or hunker down behind walls of suspicion and distrust.”

By contrast, on Sept. 27, Pulitzer Prize-winning reporter Charlie Savage, the press’s Paul Revere guardian of those cherished liberties, broke a story in The New York Times that next year President Obama will send Congress “sweeping new regulations for the Internet, arguing that their ability to wiretap criminal and terrorism suspects is ‘going dark’ as people increasingly communicate online instead of by telephone.”

And this is how our individual privacy, already on life support, is going to be further violated, not only on the Internet, as former constitutional lawyer Glenn Greenwald reports (salon.com, Sept. 27), relying on Savage’s disclosure:

Commander Obama “would require all communications, including ones over the Internet, to be built so as to enable the U.S. government to intercept and monitor them at any time when the law permits.”

Keep in mind that next year after the midterm elections, it will be that Congress determining what the law is.

If Obama’s lockstep Democrats are still in control next year, Glenn Greenwald continues, “Internet services could legally exist only insofar as there would be no such thing as truly private communications; all must contain a ‘back door’ to enable government officials to eavesdrop.”

Would this still be America?

There’s more to Obama’s euthanizing of the Fourth Amendment in Charlie Savage’s reporting: “Essentially, officials want Congress to require all services (ALL services) that enable communications — including encrypted e-mail transmitters like Blackberry, social-networking sites like Facebook, and software that allows direct ‘peer-to-peer’ messaging like Skype — to be technically capable of complying if served with a wiretap. The mandate would include (the government) being able to intercept and unscramble encrypted messages.”

As Sen. Frank Church said long ago when he was the first to discover the omnipresent spying on us of the National Security Agency, eventually, “no American would have any privacy left, such is the capability to monitor everything. ... There would be no place to hide.”

Not at all surprisingly, President Obama has extended the reach — and just about total lack of accountability — of the NSA.

But if the Republicans take control of Congress after the midterm elections — and then under a new Republican president in 2012 — is there any certainty that we may begin to be under the protection of the Fourth Amendment again?

Insofar as the tea partiers will continue to be an influence on the Republicans — having already been instrumental this year in re-electing some — I have not, as I've reported, seen much concern among them about our vanishing privacy (though I admire the tea partiers declared devotion to the Constitution).

As of this writing, I have no idea who will be the Republican presidential candidate in 2012, but I'm not aware that any of the potential leading Republican candidates are impassioned about the Fourth Amendment.

Even if she's not a candidate, the perennial newsmaker Sarah Palin will be an influence on the 2012 elections. She probably doesn't remember, but I was the first national columnist to recommend to John McCain that she be on his ticket, having read of her independence of party orthodoxy in Michael Barone's invaluable "Almanac of American Politics," as governor of Alaska.

Anyway, I strongly recommend to firebrand Palin what Justice Louis Brandeis wrote in his dissent in the first Supreme Court wiretapping case, *Olmstead vs. United States* (1928):

"Discovery and invention have made it possible for the Government, with means far more effective than stretching upon the rack, to obtain disclosure in court of what is whispered in the closet. ... The progress of science in furnishing the Government with means of espionage (on American citizens) is not likely to stop with wiretapping."

Was he ever right!

"Ways may some day be developed," Brandeis continued, "by which the Government, without removing papers from secret drawers, can reproduce them in court." (He didn't foresee the Patriot Act's giving the FBI permission to sneak into our homes when we aren't there and photograph those papers.)

The time did come, as Brandeis prophesied, when the Government "will be enabled to expose to a jury the intimate occurrences of the home" -- and any of our communications in almost any form, if this Obama legislation becomes and remains law.

What Brandeis also warned -- and this should be remembered during the midterm and 2012 elections: "The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man's spiritual nature, of his feelings, and of his intellect. ... They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone -- the most comprehensive of rights, and the right most valued by civilized men. To protect that right, every unjustifiable intrusion by the Government upon the privacy of the individual, whatever the means employed, must be deemed a violation of the Fourth Amendment."

And must be deemed as being at the core of what Barack Obama continuously subverts in "the liberties we cherish."

I deeply hope the tea partiers will add Justice Louis Brandeis to their reading as they work to restore the Constitution's separation of powers. Consider the effect on new generations growing up under government insisting on back doors into what we say, feel and think. Sending Obama -- and any Democrat or Republican who supports his "big brother" mentality -- back into private life is the change we must believe in to get our basic freedoms back.

Nat Hentoff is a nationally renowned authority on the First Amendment and the Bill of Rights. He is a member of the Reporters Committee for Freedom of the Press, and the Cato Institute, where he is a senior fellow.

URL: <http://www.pottstownmercury.com/articles/2010/10/11/opinion/doc4cb30a88a806f574498625.prt>

© 2010 pottsmerc.com, a **Journal Register** Property