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Obama vandalized Fourth Amendment

USA Patriot Act applied to all of us

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The Fourth Amendment's barriers to unreasonable searches and seizures don't get the attention the First Amendment does, but they're at least as important as a guarantee of liberty. And during his White House years Barack Obama vandalized the Fourth Amendment. His glittering words blinded the media to his unprecedented assault on the right to be let alone—the most cherished right among civilized people.

The American Revolution was ignited by British invasions of the right to privacy. James Otis protested British Writs of Assistance that empowered every petty official to rummage through colonial businesses and homes on a hope and a prayer that smuggled goods or other incriminating evidence of wrongdoing might be discovered:

“Custom-house officers may enter our houses when they please; we are commanded to permit their entry. Their menial servants may enter, may break locks, bars, and everything in their way; and whether they break through malice or revenge, no man, no court can inquire. Bare suspicion without oath is sufficient.”

William Pitt the Elder, speaking to the British Parliament, captured the heart and soul of what came to be ratified as the Fourth Amendment:

“The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail, its roof may shake; the wind may blow through it; the storms may enter, the rain may enter,—but the King of England cannot enter; all his forces dare not cross the threshold of the ruined tenement.”

The Fourth Amendment protects “reasonable” expectations of privacy from government surveillance, and in *Olmstead v. United States* (1928), Justice Brandeis (dissenting) said that, “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.”

The government cannot invade a person's privacy without documenting a particularized and urgent criminal justice or foreign intelligence need to a neutral and impartial magistrate. The prohibition does not bend even in cases of homicide or international terrorism where its shield might enable serious wrongful conduct to escape detection. Our Constitution is anchored to the

high principle that it is better to risk being the victim of injustice than to risk being complicit in it.

That is, until now. President Obama's dragnet collection of internet and phone metadata on every American citizen obliterated the Fourth Amendment's privacy fortress. Without getting a court warrant, Mr. Obama's National Security Agency's "Stellar Wind" program indiscriminately collected internet metadata, i.e., the accounts to which Americans sent and from which they received emails. The metadata detailed the internet protocol (IP) addresses used by people inside the United States when sending emails. Julian Sanchez of the CATO Institute explained the magnitude of the invasion of privacy:

"The calls you make can reveal a lot, but now that so much of our lives are mediated by the internet, your IP logs are really a real-time map of your brain: what are you reading about, what are you curious about, what personal ad are you responding to (with a dedicated email linked to that specific ad), what online discussions are you participating in, and how often?... Seeing your IP logs – and especially feeding them through sophisticated analytic tools – is a way of getting inside your head that's in many ways on par with reading your diary."

President Obama also collected metadata on every phone call made by Americans, under a tortured interpretation of section 215 of the USA Patriot Act. Among other things, the telephony metadata included the time, duration, number called, and routing information of every phone communication in the United States. The database would enable the government to create a personal profile of citizen.

U.S. District Judge Richard Leon found a high probability that the dragnet collection of telephony metadata violated the Fourth Amendment in *Klayman v. Obama*.

"I cannot imagine a more 'indiscriminate' and 'arbitrary invasion' [of privacy] than this systematic and high-tech collection and retention of personal data on virtually every single citizen for the purpose of querying and analyzing it without prior judicial approval. Surely, such a program infringes on 'that degree of privacy' that the Founders enshrined in the Fourth Amendment. Indeed, I have little doubt that the author of our Constitution, James Madison, who cautioned us to beware "the abridgment of freedom of the people by gradual and silent encroachments by those in power,' would be aghast."

President Obama's own Privacy and Civil Liberties Board similarly found Stellar Wind unauthorized by section 215 the USA Patriot Act. It amplified that it could not find "a single instance" in which the program "made a concrete difference in the outcome of a terrorism investigation... [and added]... we are aware of no instance in which the program directly contributed to the discovery of a previously unknown terrorist plot or the disruption of a terrorist attack." The United States Court of Appeals for the Second Circuit also concluded that Stellar Wind was illegal in *ACLU v. Clapper*.

President Obama's presidency was unprecedented in its scorched earth tactics against the Fourth Amendment. And we're only now beginning to find out how he weaponized this information against political enemies.