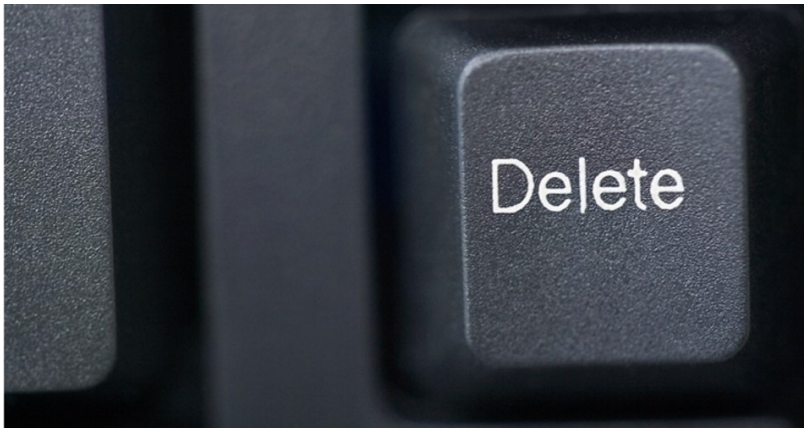
Written by **Joe Wolverton, II, J.D.** on August 7, 2013

Feds Instruct Law Enforcement to Cover Up Investigations of Americans



Agencies of the federal government are sharing the massive database of personal information being obtained by surveillance, and police are being taught how to hide the details from judges and lawyers, a Reuters report reveals.

The documents obtained by Reuters:

> show that federal agents are trained to "recreate" the investigative trail to effectively cover up where the information originated, a practice that some experts say violates a defendant's Constitutional right to a fair trial. If defendants don't know how an investigation began, they cannot know to ask to review potential sources of exculpatory evidence — information that could reveal entrapment, mistakes or biased witnesses.

There is nothing more fundamental to the pursuit of justice than due process, and there is no principle suffering from more sustained attacks from all fronts.

From unwarranted wiretaps to the indefinite detention under the National Defense Authorization Act (NDAA), the federal government is consistently depriving Americans of the right of due process guaranteed by the Constitution.

The Fifth Amendment to the Constitution mandates that "no person shall be deprived of life, liberty, or property without due process of law."

This amendment is a protection of a timeless principle of liberty and justice. In fact, due process as a check on monarchical power was included in the Magna Carta of 1215. This list of grievances and demands codified the king's obligation to obey written laws or be punished by his subjects. Article 39 of the Magna Carta says: "No freemen shall be taken or imprisoned or disseised [dispossessed] or exiled or in any way destroyed, nor will we go upon him nor send upon him, except by the lawful judgment of his peers or by the law of the land."

Over the years, the Magna Carta was occasionally revised and amended. In 1354, the phrase "due process of law" appeared for the first time. The Magna Carta as amended in 1354 says: "No man of what state or condition he be, shall be put out of his lands or tenements nor taken, nor disinherited, nor put to death, without he be brought to answer by due process of law." This fundamental restraint on the royal presumption of the power to lop off heads on command was incorporated by our Founders in the Bill of Rights, particularly in the Fifth Amendment.

The Sixth Amendment contains additional protections of individual liberty. The Sixth Amendment reads:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

In light of the procedures disclosed by the Reuters article, it seems unlikely that any target of government surveillance would ever know of the true "nature and cause of the accusation" against him. Furthermore, if the records, methods, and details of the investigation are covered up by law enforcement, how would an individual ever have a fair trial? It would be impossible to conform to the Sixth Amendment standards of justice if judges and defense lawyers are prevented from discovering the "potential sources of exculpatory evidence — information that could reveal entrapment, mistakes or biased witnesses."

Harvard Law professor and former judge Nancy Gertner considers the Reuters revelations more disturbing than the recent disclosures of the dragnet surveillance being carried out by the National Security Agency (NSA). "It is one thing to create special rules for national security," said Gertner. "Ordinary crime is entirely different. It sounds like they are phonying up investigations."

There is an indisputable trend toward erosion of the basic protections against injustice provided by the Constitution.

For example, as *The New American* reported, the Supreme Court handed down a decision on June 17 that has been ignored by most media outlets, despite its devastating effect on one of the most fundamental rights protected by the Constitution.

In a 5-4 ruling, the justices ruled that a person no longer has the right to remain silent as guaranteed by the Fifth Amendment. In relevant part, the Fifth Amendment mandates that no one "shall be compelled in any criminal case to be a witness against himself."

Thanks to the Supreme Court's decision in *Salinas v. Texas*, that part of the Bill of Rights has been excised — and has joined the list of so many other fundamental liberties that now lie on the scrap heap of history.

Regarding the deprivation of rights caused by the command to cover up investigations and change the evidence to fit the judgment, the Reuters piece outlines how the various agencies of the federal government are colluding to shred the Constitution. Reuters reports:

> The unit of the DEA that distributes the information is called the Special Operations Division, or SOD. Two dozen partner agencies comprise the unit, including the FBI, CIA, NSA, Internal Revenue Service and the Department of Homeland Security. It was created in 1994 to combat Latin American drug cartels and has grown from several dozen employees to several hundred.
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> Today, much of the SOD's work is classified, and officials asked that its precise location in Virginia not be revealed. The documents reviewed by Reuters are marked "Law Enforcement Sensitive," a government categorization that is meant to keep them confidential.

"Remember that the utilization of SOD cannot be revealed or discussed in any investigative function," a document presented to agents reads. The document specifically directs agents to omit the SOD's involvement from investigative reports, affidavits, discussions with prosecutors and courtroom

testimony. Agents are instructed to then use "normal investigative techniques to recreate the information provided by SOD."

Recreate the information? That's hardly the standard set by the Bill of Rights. Rather than spending time recreating evidence, why not just present it as it is and allow judges, lawyers, and most importantly, the accused, to review it before it goes through the law-enforcement laundry?

Finn Selander, a former DEA agent, echoed the laundry analogy I used above. "It's just like laundering money — you work it backwards to make it clean," Selander said.

Legal experts quoted in the Reuters article are lining up to lambast the law-enforcement techniques laid out in the piece.

> Lawrence Lustberg, a New Jersey defense lawyer, said any systematic government effort to conceal the circumstances under which cases begin "would not only be alarming but pretty blatantly unconstitutional."
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> Lustberg and others said the government's use of the SOD program skirts established court procedures by which judges privately examine sensitive information, such as an informant's identity or classified evidence, to determine whether the information is relevant to the defense.
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> "You can't game the system," said former federal prosecutor Henry E. Hockeimer, Jr. "You can't create this subterfuge. These are drug crimes, not national security cases. If you don't draw the line here, where do you draw it?"

The answer is that the lines aren't being moved, they are being erased. In the United States of 2013, the establishment recognizes no limits on personal morality, no limits on the authority of the state to watch and record your every action, and no limits on the tactics available to government for the prosecution of any person it categorizes as an enemy or threat to the status quo.

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