Written by **Joe Wolverton, II, J.D.** on March 14, 2014

FISA Court Continues Collusion with Federal Surveillance Programs

The documents leaked by Edward Snowden revealed more than just the National Security Agency's nearly unchecked surveillance of millions of people worldwide. Another important aspect of the story was described in a recent *New York Times* article.

Charlie Savage and Laura Poitras write:

> Previously, with narrow exceptions, an intelligence agency was permitted to disseminate information gathered from court-approved wiretaps only after deleting irrelevant private details and masking the names of innocent Americans who came into contact with a terrorism suspect. The Raw Take order significantly changed that system, documents show, allowing counterterrorism analysts at the N.S.A., the F.B.I. and the C.I.A. to share unfiltered personal information.
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> The leaked documents that refer to the rulings, including one called the "Large Content FISA" order and several more recent expansions of powers on sharing information, add new details to the emerging public understanding of a secret body of law that the court has developed since 2001. The files help explain how the court evolved from its original task — approving wiretap requests — to engaging in complex analysis of the law to justify activities like the bulk collection of data about Americans' emails and phone calls.

Although its use has been perfected by the current occupant of the Oval Office, the so-called FISA Court (officially the Foreign Intelligence Surveillance Court) began to be used as a tool for rubber-stamping unwarranted surveillance in the Bush administration.

The FISA Amendments Act was signed into law by President George W. Bush on July 10, 2008 after being overwhelmingly passed 293 to 129 in the House and 69-28 in the Senate. Just a couple of days prior to FISA being enacted, Representative Ron Paul led a coalition of Internet activists united to create a political action committee, Accountability Now. The sole purpose of the PAC was to conduct a money bomb in order to raise money to purchase ad buys to alert voters to the names of those congressmen (Republican and Democratic) who voted in favor of the act.

George W. Bush's signature was but the public pronouncement of the ersatz legality of the wiretapping that was otherwise revealed to the public in a *New York Times* article published on December 16, 2005.

That article, entitled "Bush Lets U.S. Spy on Callers Without Courts," described the brief history of the "anti-terrorist" program:

> Months after the Sept. 11 attacks, President Bush secretly authorized the National Security Agency to eavesdrop on Americans and others inside the United States to search for evidence of terrorist activity without the court-approved warrants ordinarily required for domestic spying, according to government officials.
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> Under a presidential order signed in 2002, the intelligence agency has monitored the international telephone calls and international e-mail messages of hundreds, perhaps thousands, of people inside the United States without warrants over the past three years in an effort to track possible "dirty numbers" linked to Al Qaeda, the officials said.
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> The agency, they said, still seeks warrants to monitor entirely domestic communications.

One of the orders most damaging to our constitutional system and the rule of law was approved by this court prior to the FISA Amendments extension, however. As *The New York Times* reports:

> Ten months after the Sept. 11 attacks, the nation's surveillance court delivered a ruling that intelligence officials consider a milestone in the secret history of American spying and privacy law. Called the "Raw Take" order — classified docket No. 02-431 — it weakened restrictions on sharing private information about Americans, according to documents and interviews.
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> The administration of President George W. Bush, intent on not overlooking clues about Al Qaeda, had sought the July 22, 2002, order.

Remarkably, the Raw Take order remains classified.

The article describes the Raw Take order as appearing "to have been the first substantial demonstration of the court's willingness after Sept. 11 to reinterpret the law to expand government powers." It wasn't the last, however.

As *The New American* reported last May:

> As required by provisions of the Foreign Intelligence Surveillance Act Amendments of 2008 (FISA) and the Patriot Act (as amended in 2005), the Department of Justice revealed to Congress the number of applications for eavesdropping received and rejected by the FISA court.
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> To no one's surprise (least of all to the architects and builders of the already sprawling surveillance state), the letter addressed to Senator Harry Reid (D-Nev.) reports that in 2012, of the 1,789 requests made by the government to monitor the electronic communications of citizens, not a single one was rejected.
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> That's right. The court, established specifically to judge the merits of applications by the government to spy on citizens, gave a green light to every government request for surveillance.
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> Not content to be a mere formality for electronic surveillance, the FISA court also held the coats of the FBI while that agency carried out the searches and seizures set out in 212 applications.

Speaking of the FISA court's collusion in the construction of the surveillance state and the accompanying de facto repeal of the Bill of Rights, one attorney quoted in the *New York Times* article said, ""It seems that at the same time the government has been touting the minimization requirements to the public, it's been trying behind closed doors to weaken those requirements."

Behind closed doors is a place for secret courts, not for hearings designed to protect the constitutional rights of citizens. The abuse and anonymity is reminiscent of another secret tribunal — the Star Chamber.

The Star Chamber was an English court of the 14th to 17th centuries that met in secret, with no record of indictments, no identification of witnesses, and no transcript of the proceedings.

Eventually this court was used as a political weapon, a way for the king and Parliament to secretly bypass the ancient English constitution and prosecute their enemies, keeping the dirty details hidden from the public.

The analogy of the FISA court's absolute approval of requests by the government to monitor citizens' electronic communication to the decisions of the Star Chamber is apt and accurate on many points, it seems.

Finally, the *New York Times* story describes the creation of an additional federal agency that would be in on the sharing of personal data collected by the NSA and FBI. This new intelligence agency is called the National Counterterrorism Center (NCTC).

Regulations signed into effect by Attorney General Eric Holder in late 2012 allow the NCTC to monitor records of citizens for any potential criminal activity, without a warrant and without suspicion.

According to a report published at the time in the *Wall Street Journal*, the records that will be subject to seizure and examination by the NCTC include "flight records, casino-employee lists, the names of Americans hosting foreign exchange students and many others."

Furthermore, prior to the promulgation of the 2012 regulations, this information could only be stored for five years; under the current scheme, however, that information will be stored indefinitely, so that the data can be analyzed by federal agents for signs of potential criminal behavior.

Presumably, then, this permanently stored data will be the common property of all branches of the federal domestic spying organization.

The policies that permit this data sharing and grant such secret authority to the NSA and the FISA court are such a shameful disregard for our long history of individual-based human and civil rights (including the freedom from unwarranted searches and seizures) that it shocks the conscience even when the source is considered.

There seems to be no end in sight, however. On March 10, a federal judge in San Francisco issued an order permitting the NSA to retain records it has obtained, regardless of questions of constitutional violations in the collection of the data.

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