Written by **Joe Wolverton, II, J.D.** on March 23, 2012

Intelligence Agencies Pass New Police State Spying Guidelines

Maybe now we know the true purpose for that giant domestic spy complex being built by the NSA in Utah. Attorney General Eric Holder approved a new list of guidelines for how long agencies of the federal government tasked with combatting "terrorism" may retain data gathered about American citizens. Basically, this information may be saved even if it contains no connection to criminal activity whatsoever.

According to the new regulations, the National Counterterrorism Center (NCTC) (headquartered at the Liberty Crossing complex in McLean, Virginia, left) can store and "continually assess" this information "for a period of up to five years." Before the promulgation of these new guidelines, the NCTC was under instructions to destroy "promptly" (typically defined to mean within 180 days) this cache of material gathered from U.S. citizens if there was nothing related to terrorism found in it.

Speaking fondly of the new time restraints, Paul Rosenzweig, a former official at the Department of Homeland Security, was quoted in the *Washington Post* saying:

> Five years is a reasonable time frame. I certainly think 180 days was way too short. That's just not a realistic understanding of how long it takes analysts to search large data sets for relevant information.

The *Washington Post* quoted other "officials" as saying that the new framework has been under construction for more than a year.

An indicated by the text of the guidelines, Matthew Olsen, the head of the NCTC, and James Clapper, director of U.S. National Intelligence, approved them on Wednesday and Attorney General Eric Holder followed suit on Thursday.

As expected, such an extraordinary expansion of the power of the federal government over private information and communications of citizens not suspected of committing a crime has riled up the segment of our Republic concerned with the rapid repeal of our civil liberties.

The New American faithfully has reported these frequent assaults on constitutional freedom. For

example, there is the story that:

> [t]he Department of Homeland Security's National Operations Center (NOC) released its Publicly Available Social Media Monitoring and Situational Awareness Initiative last year and in that report the intelligence-gathering arm of the DHS, the Office of Operations Coordination and Planning (OPS) gives itself permission to "gather, store, analyze, and disseminate" data on millions of users of social media (Twitter, Facebook, YouTube) and business networking sites (Linkedin).

Other federal affronts to privacy, security, and the Bill of Rights are listed in the *Washington Post* piece:

> Those [civil liberties] advocates have repeatedly clashed with the administration over a host of national security issues, including its military detention without trial of individuals in Afghanistan and at Guantanamo Bay, its authorization of the killing of U.S.-born cleric Anwar al-Awlaki in a drone strike in Yemen, and its prosecution of an unprecedented number of suspects in the leaking of classified information.

As readers will recall, al-Awlaki was assassinated by a Hellfire missile fired from a CIA Predator drone — and his son was killed by the same type drone two weeks later — on orders from President Obama, who had included the names of the two Americans on his infamous kill list. Notably and tragically, neither of these men was ever accused of a crime (other than speaking against American foreign policy) nor afforded any of the due process protections guaranteed by the Constitution.

Intelligence officials march on toward the police state undeterred, however. They insist that this new leeway in the gathering and collection of information is necessary to make sure that the homeland is safe from terrorists in training. Tellingly, none of them can explain how this consideration outweighs the Fourth Amendment's guarantee of "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."

In defense of his endorsement of the new guidelines, the Director of National Intelligence, James R. Clapper Jr., trotted out his legal mouthpiece, Robert S. Litt.

"A number of different agencies looked at these to try to make sure that everyone was comfortable that we had the correct balance here between the information-sharing that was needed to protect the country and protections for people's privacy and civil liberties," said Litt, the general counsel in the Office of the Director of National Intelligence.

As even a cursory review of the guidelines reveals, the scope of relevant data is enormous. Records of where one travels, how one travels, whom one visits, and how one pays for the tickets are all now the property of the federal government's intelligence complex.

Furthermore, the NCTC and its intelligence-gathering partners are permitted to "access and review datasets that are identified as including non-terrorism information in order to identity and obtain 'terrorism information….'" That means the Obama administration's vast (and growing) domestic spying network may collect, catalog, and collate every last scrap of personal information about citizens and then sort through it to determine if it is indicative of any terrorist activity. This is precisely the opposite of the principle of the prohibition against "unreasonable search and seizure." Under this new rubric, the

government has deemed all searches and seizures reasonable unless they determine that they are not.

And then, even if the person whose information has been gathered is found to be innocent (again, note the contravention of the timeless legal principle of innocence until guilt is proven), his or her data may be kept for years, just in case something happens later on to place the person back under the prying eye of the Potomac.

This situation is described by Litt. He complained to the *Post* that the former framework was "very limiting." "On Day One, you may look at something and think that it has nothing to do with terrorism. Then six months later, all of a sudden, it becomes relevant."

This concept is undeniably violative of the Constitution's mandate that "no . ..ex post facto law shall be passed." If the monitored behavior is legal when the record of it is made, then the person committing the act may not then be subject to prosecution for the same if the act is subsequently outlawed. Or, to use Litt's words, if "all of a sudden, it becomes relevant."

Alexander Hamilton warned against this type of mercurial legislating: "The creation of crimes after the commission of the fact, or, in other words, the subjecting of men to punishment for things which, when they were done, were breaches of no law, and the practice of arbitrary imprisonments, have been, in all ages, the favorite and most formidable instruments of tyranny."

Lest anyone suffer under the delusion that the Republican Party opposes the passage of such unconstitutional powers, read the opinion of one federal lawmaker from the GOP on the recent liberalization of the spying program rules:

"We have been pushing for this because NCTC's success depends on having full access to all of the data that the U.S. has lawfully collected. I don't want to leave any possibility of another catastrophic attack that was not prevented because an important piece of information was hidden in some filing cabinet," said Representative Mike Rogers (R-Mich.), chairman of the House Intelligence Committee.

Constitutionalists note that it is tragic that the Constitution must be defended by privacy advocacy organizations rather than by the nation's elected representatives, each and every one of whom has solemnly sworn to "preserve, protect, and defend the Constitution from all enemies, foreign and domestic."