



Written by [Joe Wolverton, II, J.D.](#) on March 21, 2014

## NSA Surveillance of Past Phone Calls Likened to “Time Machine”

The National Security Agency (NSA) has the ability to record “100 percent” of the phone calls of a foreign country and then access those calls, replaying them months after they were made, according to documents released by Edward Snowden.



A *Washington Post* story on the newest revelations from the former contractor’s cache of secret NSA documents [reports](#) “a senior manager for the program compares it to a time machine — one that can replay the voices from any call without requiring that a person be identified in advance for surveillance.”

Not only can the federal government listen and watch every move of every person anytime they choose, but they have the ability to store the sounds and images and review them at some future date.

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There’s more than just a Fourth Amendment problem with such a scheme.

In a statement to the *Washington Post* in 2012, Robert Litt, general counsel in the Office of the Director of National Intelligence, complained that the former framework governing NSA surveillance 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,” Litt lamented.

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.”

This is no theoretical argument, now, however, in light of the disclosures concerning the extraordinary recording and reviewing capacity of the NSA. The federal government can literally record every word and although something said might not be illegal now, if in some future day the message violates some new law, the government could retrieve evidence of the “crime” and punish the accused.

Curiously, the voice recording program described in the Snowden documents and described in the *Post* story was already functioning when Litt made his statement two years ago. As the *Post* reports:



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The voice interception program, called MYSTIC, began in 2009. Its RETRO tool, short for “retrospective retrieval,” and related projects reached full capacity against the first target nation in 2011. Planning documents two years later anticipated similar operations elsewhere.

In the initial deployment, collection systems are recording “every single” conversation nationwide, storing billions of them in a 30-day rolling buffer that clears the oldest calls as new ones arrive, according to a classified summary.

The slides prepared by an NSA agent for a briefing on MYSTIC promises agents the ability to “retrieve audio of interest that was not tasked at the time of the original call.” Such ability is an obvious opening to systemic violations of the Constitution’s proscription on the passing of ex post facto laws.

The “retrospective retrieval” aspect of MYSTIC is called RETRO for short.

When it comes to collecting data on individuals not subject to any warrant, the NSA may be greedy, but it isn’t stingy. The *Washington Post* story reports that “with up to 30 days of recorded conversations in hand, the NSA can pull an instant history of the subject’s movements, associates and plans. Some other U.S. intelligence agencies also have access to RETRO.”

According to the *Washington Post*, it has refused to reveal the country or countries where the NSA planned to deploy this tyrannical tool. We do know, however, that somewhere agents of the Obama administration are gobbling up the entirety of phone traffic and sending “millions of voice clippings,” or “cuts,” to a database for review and cataloging.

Additionally, with massive supercomputers such as those housed at the Utah Data Center coming online recently, the NSA undoubtedly could use this tactic in the United States, should they choose to do so. It’s not as if they or their executive branch boss are particularly concerned with the Constitution.

Regardless of whether reporters choose to identify the target of this phone call recording program, the irrefutable fact is that there will be times that calls to and from the United States would be caught in the overseas dragnet.

This fact stands in bright contrast to the standard announced on January 17 by President Obama:

The bottom line is that people around the world, regardless of their nationality, should know that the United States is not spying on ordinary people who don’t threaten our national security, and that we take their privacy concerns into account in our policies and procedures.

As is now widely believed, the government’s infringement on the rights protected by the Fourth Amendment are obvious and odious. By “vacuuming up” all electronic data being generated around the globe, the NSA knowingly violates the right of all men to be free from having their conversations searched and seized by the government, in the absence of a constitutionally valid warrant.

Despite these intrusions into Americans’ private business, many Americans dismiss the federal government’s surveillance activities, saying, “I’ve done nothing wrong. Why should I worry?” This is the question often put to opponents of the NSA’s various monitoring programs.

Perhaps what is more tragic, many Americans accept the surveillance state with rationalizations such as: “The government is protecting us from terrorism, so I think it’s fine that they keep an eye out for extremists. If they happen to listen to my phone calls or read my e-mail, that’s just the price we pay for safety.”

In light of the protections afforded by the Fourth Amendment, these mentalities look at the surveillance



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from the wrong angle.

Americans are endowed by their Creator with the right to be free from unwarranted searches and seizures. When the government takes away these rights, then there is no liberty, regardless of pretexts and purposes put forth by the federal government.

While it's true that most Americans have "done nothing wrong" criminally speaking, it is equally true that most of us have done many embarrassing things that we would prefer not to have put in a file for future use by political enemies — inside or outside the government. What are these possible peccadilloes? Think bad credit, poor scholastic performance, Web surfing habits, sensitive medical diagnoses, etc.

It is now clear that the NSA can capture, keep, and cull any recorded evidence of these events and use them when it becomes beneficial to their cause.

Another statist tool is secrecy and the fact that Snowden's revelations have pulled the curtain back on much of the government's routine violations of constitutional restrictions on its power is bothersome to the bureaucracy that depends of the protection of shadows.

In a statement sent to the *Washington Post*, NSA spokeswoman Vanee Vines said, "the continuous and selective reporting of specific techniques and tools used for legitimate U.S. foreign intelligence activities is highly detrimental to the national security of the United States and of our allies, and places at risk those we are sworn to protect."

Such statements notwithstanding, the most important thing to remember that there is no evidence that the government's massive surveillance and deprivations of rights has made us any safer. What, then, is the true purpose of the surveillance?

It isn't security. Demanding freedom in exchange for safety is the trade of tyrants. When the federal government — or any government — robs citizens of their basic civil rights, then that government has become despotic by definition.

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