



Written by [C. Mitchell Shaw](#) on December 15, 2014

Well-respected Federal Judge Says Privacy Is Overrated

The most cited legal scholar of the 20th century, Judge Richard Posner, says the NSA should have free range to “vacuum all the trillions of bits of information that are crawling through the electronic worldwide networks.” Furthermore, the only reason anyone would object, according to the judge, is because they are “just trying to conceal the disreputable parts of [their] conduct.”

The comments were made December 4 during a panel discussion on *The Future of the Fourth Amendment* at the Georgetown University Law Center’s conference, *Cybercrime 2020: The Future of Online Crime and Investigations*. Judge Posner went on to say, “Privacy interests should really have very little weight when you’re talking about national security,” because “the world is in an extremely turbulent state — very dangerous.”



Other panelists, including David Cole, who is a professor of national security and criminal justice at the Georgetown University Law Center, disagreed with Judge Posner. “Your original question, ‘what’s the value of privacy unless you’ve got something to hide?’ that’s a very short-sighted way of thinking about the value of privacy,” Cole said. Michael Dreeben, deputy solicitor general in the U.S. Department of Justice, said, “A certain degree of privacy is perhaps a precondition for freedom, political freedom, artistic freedom, personal autonomy, It’s kind of baked into the nature of the democratic system.”

Judge Posner, who was called the most cited legal scholar of the 20th century by *The Journal of Legal Studies*, was unmoved by the pro-liberty arguments of his less draconian colleagues. “I think privacy is actually overvalued,” he said. “Privacy is mainly about trying to improve your social and business opportunities by concealing the sorts of bad activities that would cause other people not to want to deal with you.”

His rationale, like that of so many today who have lost the principled understanding of liberty, is that unless you are doing something wrong, you should not be concerned about mass surveillance by a myriad of government agencies. After all, what have you got to hide? He attempted to bolster his position by explaining how good people — people like him — have nothing to hide. “If someone drained my cell phone, they would find a picture of my cat, some phone numbers, some email addresses, some email text. What’s the big deal? Other people must have really exciting stuff. Do they narrate their adulteries, or something like that?” *The New American* addressed the question of [why law-abiding citizens should be concerned about government surveillance](#) in a previous article.

On the topic of cellphones, he expressed shock and concern that companies such as Google and Apple would make encryption available on Android and iPhone devices. “I’m shocked at the thought that a



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company would be permitted to manufacture an electronic product that the government would not be able to search.” Remember, this was a panel discussion about *The Future of the Fourth Amendment*. One is left to wonder whether “the most cited legal scholar of the 20th century” has any respect for the Fourth Amendment, which he swore to defend when President Reagan appointed him to the Seventh Circuit Court of Appeals. Of course, his views on the power and scope of government put him in good (or bad) company with other Reagan appointees such as Sandra Day O’Conner, who said the Supreme Court should look to international law when making decisions, and Antonin Scalia, who recently defended CIA torture tactics.

The inconsistency of Judge Posner’s position is best demonstrated in an exchange between him and an ACLU attorney in a case in 2011. The case dealt with citizens’ rights to video police officers in the performance of their duties. As reported by [The Intercept](#), he interrupted the oral argument of the ACLU attorney and the following exchange took place:

JUDGE POSNER: Once all this stuff can be recorded, there’s going to be a lot more of this snooping around by reporters and bloggers.

ACLU ATTORNEY RICHARD O’BRIEN: Is that a bad thing, your honor?

JUDGE POSNER: Yes, it is a bad thing. There is such a thing as privacy.

So, he does believe in privacy, he just has it backward. He seems to think the government has the right to protect its privacy from the prying eyes of citizens, but we are to acquiesce, without a second thought, to having all our private matters laid bare at the whim of that same government.

To what does he credit his shift toward the type of thinking that is normally attributed to Judges and politicians on the other side of the aisle? In an [interview with NPR](#) in 2011, the judge blamed it on conservatives: “I’ve become less conservative since the Republican Party started becoming goofy.”

If Judge Posner were alone in his thinking, this would be little more than an occasion for freedom-loving Americans to shake their heads in wonder. Unfortunately, his thinking is pandemic among those in power. Perhaps his continued presence on the bench is the best evidence of this. Congress has the power to impeach him, since the Constitution says that federal judges “shall hold their Offices during good Behavior.” Considering his recalcitrant attitude regarding the Fourth Amendment, he is certainly not demonstrating “good Behavior.”



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