

## COMMENTARY

## GOVERNMENT EAVESDROPPING

## NOW HEAR THIS

With so much of modern life digitalized, we must maintain a sense of privacy from an overreaching government.

By RAND PAUL  
FOR THE REGISTER

Our government has been caught red-handed. It was caught snooping, and now the American people are outraged. In response, some government officials are trying to scare the American public into submission. They want you to think that their complete disregard for our right to privacy is for our own good, as if this will protect us.

I would argue that our Founding Fathers wrote the Bill of Rights to protect us, and our current Administration is trampling all over these protections. This Administration and some government officials think that violating American citizens' right to privacy is essential for national security and that proves just how out of touch and out of control our government has become. People are deeply suspicious of a government that can take away their rights and

SEE PAUL • PAGE 5

## Digital superstate useless when it matters



MARK STEYN  
SYNDICATED COLUMNIST

Every time I go on his show, my radio pal Hugh Hewitt asks me why congressional Republicans aren't doing more to insist that the GOP suicide note known as "the immigration deal" include a requirement for a border fence. I don't like to tell Hugh that, if they ever get around to building the fence, it won't be to keep the foreigners out but to keep you guys in.

I jest, but only very slightly, and only because the government doesn't build much of anything these days – except for that vast complex five times the size of the Capitol the National Security Agency is throwing up in Utah to house everybody's data on everything everyone's ever done with anyone ever.

A few weeks after 9/11, when government was hastily retooling its 1970s hijacking procedures for the new century, I wrote a column for the National Post of Canada and various other publications that, if you're so interested, is preserved in my anthology "The Face Of The Tiger." It began by noting the observation of President Bush's Transportation Secretary, Norman Mineta, that if "a 70-year-old white woman from Vero Beach, Florida" and "a Muslim young man" were in line to board a flight, he hoped there would be no difference in the scrutiny to which each would be subjected.

The TSA was then barely a twinkle in Norm's eye, and in that long ago primitive era it would have seemed absurd to people that, one day, in America it would be entirely routine for wheelchair-bound nonagenarians to remove leg braces before boarding a plane or for kindergartners to stand patiently as three middle-age latex-gloved officials poke around their genitals. Back then, the idea that *everybody* is a suspect still seemed slightly crazy. As I wrote in my column, "I'd love to see Norm get his own cop show:

"Capt. Mineta, the witness says the serial rapist's about 5'10" with a thin mustache and a scar down his right cheek."

"Okay, Sergeant, I want you to pull everyone in."

"Pardon me?"

"*Everyone*. Men, women, children. We'll start in the Bronx and work our way through to Staten Island. What matters here is that we not appear to be looking for people who appear to look like the appearance of the people we're looking for. There are 8 million stories in the Naked City, and I want to hear all of them."

A decade on, it would be asking too much for the new Norm to be confined to the airport terminal. There are 300 million stories in the Naked Republic, and the NSA hears all of them, 24/7. Even in the wake of a four-figure death toll, with the burial pit still smoking, the formal, visible state could not be honest about the very particular threat it faced, and so, in

SEE STEYN • PAGE 5

## Fix Patriot Act to stop mass spying

By ERWIN CHEMERINSKY  
FOR THE REGISTER

The Obama administration's defense of the massive interception of electronic information from innocent Americans misses the point: It is wrong for the government to spy on people when there is no suspicion that they have done anything wrong. The Obama administration's position is that the government can keep track of whom anyone is calling, for how long they talk and from where. This simply cannot be right in a nation that believes in privacy and freedom, and Con-

gress must review the law that makes this possible.

The Guardian newspaper revealed this month that

“Above all, the Fourth Amendment was meant to prevent the practice of 'general warrants,' where a whole community of people could be searched.”

that FBI and the National Security Agency used authority under the Patriot Act to obtain a secret warrant to compel Verizon to turn over data on every call that went through its system. Apparently, this has been going on for years, and

there is no reason to believe that this demand is limited to Verizon. Even Rep. James Sensenbrenner, R-Wis., one

of the co-sponsors in 2001 of the Patriot Act, declared that “[s]eizing phone records of millions of innocent people is excessive and un-American.”

In response to expressions of outrage from both sides of the political aisle,

the Obama administration has tried to defend this eavesdropping. The initial response was that the practice has prevented terrorist acts. Obviously, without more information than is publicly available, it is not possible to confirm or refute this assertion. Nor is there any indication that these terrorist acts could not have been stopped with traditional law enforcement methods.

More importantly, there is no stopping point to this assertion of national security. The government undoubtedly could better stop ter-

SEE PATRIOT • PAGE 5

## How trusting should we be?



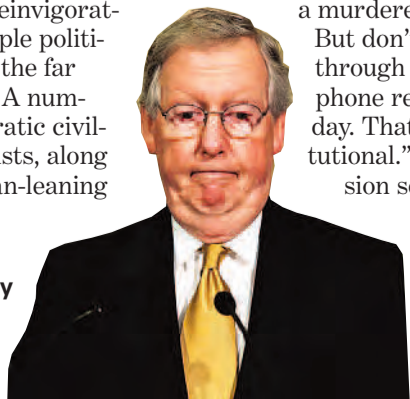
STEVEN GREENHUT  
REGISTER COLUMNIST

While the nation's two major parties have their differences, the real divide is, and always has been, between Americans who reflexively trust the authorities and those who recognize that their own government can pose the gravest threat to their liberties.

Revelations from a whistleblower about two National Security Agency programs that gather the phone and computer records of Americans in a fishing expedition designed to find links to terrorists has jump-started this debate. As the Associated Press reported, this has “reinvigorated an odd-couple political alliance of the far left and right. A number of Democratic civil liberties activists, along with libertarian-leaning

Senate Minority Leader Mitch McConnell.

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Republicans, say the government actions are too broad and don't adequately protect citizens' privacy.”

The most vocal spokesman for this group, Republican Sen. Rand Paul of Kentucky, recently said, “Get a warrant, and go after a terrorist, or a murderer or a rapist.

But don't troll through a billion phone records every day. That is unconstitutional.” That conclusion seems obvious, but not many other political leaders are joining with Paul.

Since the story broke,



JOEL KOTKIN

His column appears today on Page 4

the establishment has been telling the public that the government is not violating anyone's privacy. They tell us the program has “safeguards.” The NSA chief and others claim the surveillance has foiled terror plots. Yet, we already see the unraveling of official claims about this and

SEE GREENHUT • PAGE 5



GETTY IMAGES FILE PHOTO

Former Transportation Secretary Norman Mineta is shown in 2011.

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# STEYN: Politically correct Big Brother sees all, and nothing

FROM PAGE 1

the shadows, the unseen state grew remorselessly, the blades of the harvester whirring endlessly but, don't worry, only for "metadata."

As I wrote in *National Review* in November 2001, "The bigger you make the government, the more you entrust to it, the more powers you give it to nose around the citizenry's bank accounts, and phone calls, and emails, and favorite Internet porn sites, the more you'll enfeeble it with the siren song of the soft target. The Mounties will no longer get their man, they'll get you, instead. Frankly, it's a lot easier."

As the IRS scandal reminds us, you have to have a touchingly naïve view of government to believe that the 99.9999 percent of "metadata" entirely irrelevant to terrorism will not be put to some use, sooner or later.

Along the way, alas, Secretary Mineta's dream of a world in which "a 70-year-old white woman from Vero Beach" and "a

Muslim young man" are subject to equal scrutiny has not come to pass. The Vero Beach grandma gets a lot more attention than the guy from the Yemeni madrassah, especially if she's made the mistake of attending a Tea Party meeting or two.

The other day, the *Boston Globe* ran a story on how the city's police and other agencies had spent months planning a big training exercise for last week-end involving terrorists planting bombs hidden in backpacks left downtown. Unfortunately, the Boston Marathon bombers preempted them, and turned the cops' hypothetical scenario into bloody reality.

What a freaky coincidence, eh? But it's the differences between the simulation and the actual event that are revealing. In humdrum reality, the Boston bombers were Chechen Muslim brothers with ties to incendiary imams and jihadist groups in Dagestan.

In the far more exciting Boston Police fantasy, the bombers were a group of right-wing mili-

tia men called "Free America Citizens," a name so suspicious that it can only have been leaked to them by the IRS. What fun the law enforcement community in Massachusetts had embroidering their hypothetical scenario: The "Free America Citizens" terrorists even had their own little logo – a skull's head with an Uncle Sam hat. Ooh, scary! Meanwhile, back in the real world, Tamerlan Tsarnaev was training in Dagestan, posting terrorist videos on YouTube, and getting fingered by the Russians to the FBI. Who did nothing.

If you had the misfortune to be blown up by the Tsarnaev brothers, and are now facing a future with one leg and suddenly circumscribed goals, like those brave Americans featured on the cover of the current *People* magazine under the headline "Boston Tough," you might wish Boston had been a little tougher on Tamerlan and spent less time chasing the phantoms of "Free America Citizens." But, in fact, it would have been extremely diffi-

cult to track the Tsarnaevs at, say, the mosque they attended.

Your Granny's phone calls, your teenager's Flickr stream, your Telecharge tickets for two on the aisle at "Mamma Mia!" for your wife's birthday, and the MasterCard bill for dinner with your mistress three days later are all fair game, but, since October 2011, mosques have been off-limits to the security state.

If the FBI guy who got the tip-off from Moscow about young Tamerlan had been sufficiently intrigued to want to visit the Boston mosque where he is said to have made pro-terrorism statements during worship, the agent would have been unable to do so without seeking approval from something called the Sensitive Operations Review Committee high up in Eric Holder's Department of Justice. The Sensitive Operations Review Committee is so sensitive nobody knows who's on it. You might get approved, or you might get sentenced to extra sensitivity training for the next three months. Even after the bombing, the

cops didn't set foot in the lads' mosque for four days.

Three hundred million Americans are standing naked in the NSA digital scanner, but the all-seeing security state has agreed that not just their womenfolk, but Islam itself, can be fully veiled from head to toe.

We're told that universal surveillance has prevented all kinds of atrocities we can never hear about – an answer straight out of Orwell. Yet, oddly, in the ones we do hear about, the bad guys are hiding in plain sight (Maj. Hasan with "Soldier of Allah" on his business card), the intelligence services do nothing (the Pantybomber known to the CIA but still permitted to board the plane), and the digital super-state is useless (the Tsarnaev photo rang no bells with the facial-recognition software, but was identified by friends who saw it on TV).

And thus, the bozo leviathan blunders on. Big Politically Correct Brother sees everything ... and nothing.

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## PAUL: Time to take a stand

FROM PAGE 1

they are even more suspicious when these acts are done in secret.

Some politicians have criticized me and falsely claimed that I do not believe in national security protections of any kind. Let me be clear, I support surveillance when national security agencies suspect domestic or international terrorist activities, but invading the privacy of every individual who uses a cell phone or the Internet is unnecessary and illegal.

Our government is monitoring personal interactions and billions of phone calls a day without a warrant or probable cause. Our government shouldn't have unlimited reign to spy on its citizens.

President Obama describes this surveillance as "modest encroachments on privacy." This doesn't sound to me like a modest invasion of privacy, but rather an astounding assault on our Constitution.

So, in light of this, I introduced the Fourth Amendment Restoration Act of 2013. The purpose of the bill is in its name – to restore what has been taken from us – our right to personal privacy.

There is always a balance between se-

curity and liberty and the American tradition has long been to err on the side of liberty. America's founders feared a government powerful enough to commit unreasonable searches and seizures and crafted a Constitution designed to protect citizens' privacy.

Under this administration, the Internal Revenue Service has targeted political dissidents, the Justice Department has seized reporters' phone records, and now we've learned the NSA seized an unlimited amount of Verizon's client data. Just when you think it can't get any worse under this president, it does. These overreaching acts are unacceptable under any president, whether Democrat or Republican.

Over the past 30 to 40 years, our government has decided that, once we give our records to our bank or our credit card company, that they're no longer private. I disagree vehemently with that. In today's world, so much of our life is digitalized, and we must maintain a sense of privacy from an overreaching government.

I do not think this is what Verizon customers had in mind when they signed up



MCT PHOTO

**Sen. Rand Paul, R-Ky., announces legal action against government surveillance and the National Security Agency's overreach of power, Thursday, June 13, at the Capitol Hill Club in Washington, D.C.**

for the "shared plan," and I want these customers to join me in filing a class-action lawsuit against the NSA. I'm asking all of the Internet providers, all of the phone companies and their customers to join me in protecting our rights to privacy. If we get 10 million Americans saying we don't want our phone records looked at, then maybe we could change the way

Washington is working. This administration has consistently violated our Constitution, and it is time we take a stand. I encourage all Americans to stand with me in this fight to protect our constitutional right to privacy.

Rand Paul is a Republican U.S. senator from Kentucky.

## PATRIOT: 4th Amendment specifically targeted general warrants

FROM PAGE 1

rorist attacks if it could search any person or any home anytime police wanted. Allowing the government to listen to every conversation or read every email also would prevent terrorist attacks.

But that would be clearly unconstitutional. Above all, the Fourth Amendment to the Constitution was meant to prevent the practice in England of "general warrants," where a whole community of people could be searched. The framers of the Constitution knew that this would prevent and solve crimes, but that was not enough to justify the infringement of privacy.

For more than 200 years, the law has required that the government can infringe a person's privacy, such as with a search or electronic eavesdropping, only if there is individualized suspicion. This

requires that there be reasonable grounds for believing that the person has violated the law or has evidence of violation of the law. It is true that, at times, this is an obstacle to law enforcement, but the alternative is truly a police state where any individual can be subjected to police searches and eavesdropping at any time.

At a press conference June 7, President Obama emphasized a different defense: The government wasn't actually listening to any conversations, it was just monitoring the numbers called, the length of the conversations and the location of the callers. But this rationale minimizes the loss of privacy when the government engages in such eavesdropping. Knowing who called suicide prevention lines or HIV hot lines or divorce lawyers can reveal a great deal about a person that he or she wants to keep secret.

For almost 50 years, the Supreme Court has said that the Constitution protects our "reasonable expectations of privacy." Shouldn't people be able to assume that their communications are not being monitored by the government, at least until they are suspected of wrongdoing?

The Obama administration also has repeatedly claimed that it briefed Congress about what it was doing. Again, it is unclear who was briefed, when they were informed, and what they were told. But even if Congress was fully informed, and quotes from many members of Congress indicate that it wasn't, that does not excuse the massive invasion of privacy. Loss of our freedom is not made more excusable by congressional inaction in the face of executive abuses.

A final line of defense by the Obama administration has been that its actions

were legal. A federal judge apparently issued a secret warrant under the terms of the Patriot Act. The Supreme Court has held that just monitoring the numbers called is not a search within the meaning of the Fourth Amendment. But the fact that the administration's actions are legal does not mean that they are right.

Congress should amend the Patriot Act to limit electronic surveillance to people who are reasonably suspected of a crime or of having evidence of a crime. No longer should general warrants of the exact type the framers condemned be allowed. The actions of the Obama administration may have been legal, but they are wrong, and Congress should change the law to make them illegal.

Erwin Chemerinsky is dean of the UC Irvine School of Law.

## GREENHUT: Power and secrecy a recipe for abuse

FROM PAGE 1

other scandals. The only real institutional restraint on the spying is supposed to come from a secret court, which almost always approves the government's requests. Americans have reason to worry.

"Given the scope of these programs, it's understandable that many would be concerned about issues related to privacy," Republican Sen. Mitch McConnell of Kentucky, the Senate minority leader, said about whistle-blower Edward Snowden. "But what's difficult to understand is the motivation of somebody who intentionally would seek to warn the nation's enemies of lawful programs created to protect the American people. And I hope that he is prosecuted to the fullest extent of the law."

McConnell has been feigning concern about abuses of federal power while taking shots at Snowden. But Democrats have been no better. President Obama has mocked concerns about privacy, while Senate Majority Leader Harry Reid has said, "Everyone should just calm down

and understand that this isn't anything that is brand new."

I can hear Reid, during the American Revolution: "Calm down. British troops have been engaging in unreasonable searches for years, so what's the big deal?"

There always will be some threat that's used to justify government's demand for more power. But when that government operates in secrecy, how is the public supposed to make sure officials don't abuse their authority? Defenders of uncontrolled federal snooping depict as traitors anyone who exposes what is going on, but that's the only way for us to learn the details when the government overreaches. At least we can see firsthand the kind of mindset that, in other times and other places, has allowed despotic regimes to fester.

Many Americans embrace the notion of "If you haven't done anything wrong, you have nothing to fear." But it keeps getting easier to "do something wrong" when one considers all the regulatory rules that govern most every aspect of our lives.

Even these naïve souls ought to wonder about the next program that Big Brother might enact to make it easier to fight enemies.

U.S. citizens are supposed to have natural rights that are inalienable – i.e., that government cannot trample upon. Yet now we are all subject to whatever a bureaucrat in a federal agency decides, and anything we say or write on our computer can be subject to monitoring. We are supposed to just trust them. Revealing details of a program that should have been always publicly disclosed, apparently, is an act of treason. That same government, by the way, claims the right to use a drone to kill anyone it determines to be an enemy of the nation. At what point does this echo a dystopian movie?

I've reported on government at the local and state level and have seen firsthand that agencies tend to grab as much power as they can. The most secretive agencies often turn out to be the ones rife with abuse, and those agencies often cover up the misdeeds of their agents. People often are drawn to power for less-than-

noble reasons. That's the nature of humanity and of government, although such lessons – at the core of the nation's founding – seem lost on the likes of McConnell and Obama.

As Fox News analyst Andrew Napolitano wrote for Reason, "The modern-day British soldiers – our federal agents – are not going from house to house; they are going from phone to phone and from computer to computer, enabling them to penetrate every aspect of our lives. If anything violates the lessons of our history, the essence of our values and the letter of the Constitution, it is this."

That coalition of Left and Right needs to expand rapidly, or else this program will just be a stepping stone to another bigger and more effective governmental intrusion designed to "protect" us from terrorists while destroying our liberties in the process.

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