



Written by [Joe Wolverton, II, J.D.](#) on July 15, 2016

Republicans Push to Put FBI Surveillance Power Outside of Oversight

Some Republican senators are calling on their colleagues to approve a plan that would give the FBI vastly expanded surveillance powers and would place those powers beyond the oversight of the people and their representatives.

As reported by the *Washington Post* on July 14: “Sens. John McCain (R-Ariz.) and Richard Burr (R-N.C.) offered an amendment eight days after the Orlando shooting that would allow FBI agents — without a court order — to capture a person’s email logs, IP address and Internet browsing history. To obtain a user’s records from a service provider, FBI investigators would need only their field supervisor to issue an administrative subpoena, known as a national security letter (NSL).”



In other words, the Fourth Amendment could be repealed by a bureaucrat; an unaccountable, unelected, untouchable bureaucrat.

This reminds one of the statement made by the imminent historian Gary Wood. “Democracy, factional control, and bureaucracy are delivering what they always have, a shift toward tyranny,” he wrote recently in an article on the importance of the Ninth and 10th Amendments.

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Although the stats fell two votes short of passing this bill the first time around, the *Washington Post* reports that Senate Majority Leader Mitch McConnell (R-Ky.) “has reserved the option to reintroduce the McCain-Burr amendment at a later date.”

Should the second attempt fail, there are a couple of other bills with “almost identical language.”

Before analyzing the specifics of this bill’s policies, one must ask why sitting senators, ostensibly representatives of the people, would promote a proposal that so openly violates the guarantees against such activity set out in the Fourth Amendment.

Could it be that the warning pronounced by Patrick Henry at the Virginia Ratifying Convention has now proven prescient? “This government will operate like an ambush. It will destroy the state governments, and swallow the liberties of the people, without giving previous notice,” Henry declared.

Will every aspect of human affairs come under the watchful and the omnipotent control of federal agents, none of whom is known to the people, answerable to the people, or punishable by the people for their offenses against the rule of law and the Constitution?

Now, as for these National Security Letters, the Electronic Frontier Foundation (EFF) provides the



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following answer to the frequently asked question regarding the definition of an NSL:

A national security letter (NSL) is a law enforcement investigative tool similar to a subpoena and is most commonly issued by the FBI. NSLs are used to obtain information from companies as part of national security-related investigations. They allow the FBI, and in limited circumstances other federal agencies, to demand that companies turn over data about their customers' use of services such as banking, telephone, and Internet usage records.

What's wrong with the use of NSLs? EFF answers that follow-up question, too:

"By using NSLs, the FBI can directly order companies to turn over information about their customers and then gag the companies from telling anyone that they did so. Because the process is secret, and because even the companies can't tell if specific NSLs violate the law, the process is ripe for abuse."

In March 2013, we reported that, as a result of a lawsuit filed by EFF against the use of NSLs, [federal judge Susan Illston ruled them unconstitutional](#):

Petitioner contends that the NSL provisions lack the necessary procedural safeguards required under the First Amendment because the government does not bear the burden to seek judicial review of the nondisclosure order [the gag order] and the government does not bear the burden of demonstrating that the nondisclosure order is necessary to protect specific, identified interests....

Petitioner also argues that the judicial review provisions violate separation of powers principles....

The Court finds that the NSL nondisclosure and judicial review provisions suffer from significant constitutional infirmities....

As such, the Court finds [the relevant sections of the NSL law to be] unconstitutional....

The Government is therefore enjoined from issuing NSLs ... or from enforcing the nondisclosure provision in this or any other case.

So much for separation of powers and the concept of the rule of law.

How often does the FBI use these unconstitutional fiats? Last year, the agency issued about 20,000 of them and they have been used more than 300,000 times in the last 10 years.

This isn't the first time, however, the feds and their cronies in Congress have sought to place all electronic communication of all Americans under the eye of some g-man.

In July 2015, FBI Director James Comey told the members of the Senate Judiciary Committee that in order to stay a step ahead of the bad guys, the FBI should have access to any available technology to decode encrypted data. And that the government should be the arbiter of when decryption is necessary or not.

Comey made these statements during testimony he gave as part of a panel of experts invited to speak at a hearing labelled "Going Dark: Encryption, Technology, and the Balance Between Public Safety and Privacy."

Tech specialists warned, however, that giving the FBI such access would necessarily open doors to data that could be exploited by "bad actors."

Comey wasn't persuaded. "It is clear that governments across the world, including those of our closest allies, recognize the serious public safety risks if criminals can plan and undertake illegal acts without fear of detection," he told the committee.



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Once again, the agents of the autocracy are demanding that Americans sacrifice individual liberty on the altar of “national security.”

That’s nowhere made clearer than in the following question posed by Comey: “Are we comfortable with technical design decisions that result in barriers to obtaining evidence of a crime?”

But Jacob Sullum asked in a blog posted by *Reason*, “Are we comfortable with forcing technical design decisions that make sensitive information more readily available to people with ill intent, including people who happen to work for the government?”

Of course, Comey did pay passing respect to the “requirements and safeguards of the laws and the Constitution.” But then again, the NSA and the dozen or so other federal agencies involved in erecting the Panopticon always find a constitutional pretext for their deprivations of freedom.

The fact is, the feds really believe (or claim to believe) that they have this power. As Comey explained at last year’s hearing, “We are not asking to expand the Government’s surveillance authority, but rather we are asking to ensure that we can continue to obtain electronic information and evidence pursuant to the legal authority that Congress has provided to us to keep America safe.”

See? They don’t want to violate your most cherished civil liberties, but they have to in order to keep you safe.

The problem is that Comey, McCain, and McConnell don’t see themselves, the FBI, or any of the other servants of the surveillance state as being the source of our danger.



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