

Senate Bill Would Allow More Government Snooping Using National Security Letters

May 29, 2016 – Since a 2008 directive from the Justice Department, the FBI has not had the ability to use National Security Letters (NSLs) for the collection of email of people being investigated by the agency. But a bill being considered by the Senate Intelligence Committee could change that. And if it wasn't for one senator who takes his oversight responsibilities seriously, it is doubtful that anyone would know about it because the bill is being debated behind closed doors and its contents are secret. So much for the 4th Amendment.

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In the event you are unfamiliar with NSLs, they are an unconstitutional work-around to avoid the need for a court supervised search warrant. They were a gift bestowed on the country by the erroneously named Patriot Act.

To generate and NSL, all the FBI has to do is claim that they are investigating someone suspected of being involved in terrorism. The suspect doesn't even need to have a direct involvement in terrorism. An ancillary involvement will do. Something like "we're looking at a guy who is the second cousin, twice removed, of the uncle of the cousin of a suspected terrorist," and they are golden. Then, the FBI issues the NSL on their own isn't that nice and without any of that pesky court interference.

If that doesn't make you feel like we've gone a little banana republic, then this may. The best part about NSLs isn't they avoid the courts entirely. No, the best part is that they are issued in secret and that it is illegal for anyone presented with an NSL to talk about it. So if you get an NSL from the FBI asking for your mother's financial records, you can be put in jail if you dare to tell Mom! Nice!!!!

The one exception to the secrecy provision is that you can talk to your own attorney. You don't have that right because the FBI wants you to have it. In fact, when NSLs first appeared on the scene, the law said that it was illegal for anyone receiving them to talk to anyone else about them including your own attorney. Fortunately, some brave librarians yes, you read that correctly decided risk jail time and to file a law suit over that provision and they won in federal court. The reason that librarians did this is because the FBI was using NSLs to walk into libraries and demand to know what books were being checked out by certain customers both creepy and Orwellian.

After the Patriot Act was first put into law, the FBI routinely looked at email and the web surfing habits of suspects by using NSLs. But ever since the justice department put an end to that in 2008, the agency has been complaining about the change. Never mind that if they have good reason to suspect someone is involved in terrorism, they can still go to the secret FISA (Foreign Intelligence Surveillance Act) court and get a federal search warrant. And never mind the fact that

the FISA court almost never turns down such requests. The FBI wants to read your mail and see which websites you're visiting without the hassle. And it seems that the Senate Intelligence Committee is ready to let them.

Fortunately for us, Oregon Senator Ron Wyden has let the cat out of the bag. In a written statement Wyden said, "This bill takes a hatchet to important protections for Americans' liberty. This bill would mean more government surveillance of Americans, less due process and less independent oversight of US intelligence agencies." He went on to say, "Worse, neither the intelligence agencies, nor the bill's sponsors have shown any evidence that these changes would do anything to make Americans more secure. I plan to work with colleagues in both chambers to reverse these dangerous provisions."

There is no evidence that FBI use of NSLs has had an impact on terrorism. There is however ample evidence that the agency has abused the use of them for its own ends. Allowing any agency of the government to surveil citizens without court supervision is simply a frightening proposition. I can't think of a single country that has allowed this where it has turned out well for their citizens. There is no reason to believe that we would have a different outcome here in the United States.

by Jim Malmberg

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