

Why the Michael Flynn Case Should Frighten Anyone Concerned With Privacy Matters

May 14, 2020 - Just imagine the following scenario. You decide to make a phone call to someone you know overseas. It could be a business associate or a relative. It doesn't really matter. You either misdial the phone number and get someone on the phone you don't know, or you get to the correct person. Either way, unbeknownst to you, the person answering the phone is on a US Government watch list and their phone calls are being monitored by the NSA. You have a short conversation about some mundane subject and get off the phone. You don't think much about it, but what you don't know is that your name is now located in a government database, and it is now associated to the person with whom you were speaking? What are the consequences of that?

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Well, there shouldn't be any consequences to you. That's because US law makes it illegal to publically reveal the names of American citizens who inadvertently get swept up in foreign intelligence operations - something commonly referred to as "masking" the names of Americans. The exception to that is if a US federal FISA (Foreign Intelligence Surveillance Act) Court issues a search warrant.

That isn't to say that nobody will learn the names of those swept up in such an investigation. When the NSA provides reports on the phone calls of foreigners who are being monitored by them, the names of the Americans on the calls are redacted. But intelligence agencies such as the CIA, DIA and officials in the administration (up to and including the President) can ask to have names unmasked if there is a legitimate national security interest. But they have to fill out forms stating why that information is needed and they can't make that information public. That would be illegal.

In the case of Michael Flynn, the man was a national security advisor to an incoming president. And he had a phone call with the Russian Ambassador to the United States prior to the inauguration. That's nothing unusual. In fact, it would have been much more unusual if he hadn't spoken to the ambassador of one of the world's strongest military powers.

And the fact that the United States monitors the calls of the Russian ambassador isn't news either. Certainly Michael Flynn knew that.

What is unusual though is that shortly after the presidential inauguration, Flynn's name and details of his phone call started to be printed in the press. But no FISA warrant had been issued to reveal his name, which means that the only way it could have appeared in a newspaper was if someone had unmasked it and then leaked it to the press. That's a felony.

Requests to unmask a name are exceedingly rare. But as it turns out, this week we discovered that 39 people in the prior presidential administration had made requests to unmask Flynn's name for one single phone call. That's unheard of. It's also corrupt. It's what you might expect to find in some banana republic.

This isn't a political argument. It doesn't matter what party holds the White House or congress. What happened here was illegal. But that didn't stop people from bringing the full weight of the US Government down on a US Citizen with constitutional rights and then ruining him both in reputation and financially. Moreover, this wasn't just an average citizen. This was someone who had risen to the highest ranks in the military, who had served this country with distinction, and who had been called to serve again at the highest levels of a new administration. If the government can do this to Michael Flynn, is there anything preventing the government to do that to any other American citizen who gets on their bad side?

This is frightening stuff. So why aren't privacy advocates screaming about it from the roof tops? They should be. Unfettered government power doesn't have any respect for parties or ideologies. You may not like the current administration. You may not like Michael Flynn. But this country has changed political paths numerous times over the past two and half centuries, and it will change again. Just because your point of view may be in favor today, doesn't mean that it will be tomorrow. If you forget that, or fail to see it, you do so at your own peril.

Someone, and perhaps multiple people, need to be indicted of the treatment of Flynn. Right now, there are 39 suspects. We hope that the Justice Department can narrow that pool down some in very short order. And we sincerely hope that other groups claiming to be pro-privacy, start getting a little more verbose about their positions in this case.

by Jim Malmberg

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