

The events of september 11

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The events of September 11 exposed just how vulnerable America was/and is in the face of international terrorism. Congress responded almost immediately as one would expect in such a situation.

This was through a provision of the PATRIOT Act, Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001. This measure was intended to enable the use of certain important measures in ensuring national security such as the elimination of the limitations for terrorism offenses statute. However, these measures also empowered the government by increasing its ability to conduct surveillance that does not require any warranting on innocent people. This surveillance is not subject to any guidelines that would ensure that abuse of power is prevented. Politicians, the media as well as scholars have been against the tactics that are furthered by the proponents of the PATRIOT Act terming it as undemocratic. The provisions allow congress to pass laws in sessions that are closed from the public which allows for very little debate on matters of proposed legislature.

These events have contributed to the debate today that pits the needs of the citizens to their right to privacy as provided for by the fourth amendment and well as those who push for some sort of surveillance in the quest to safeguard national security. This paper provides an argument on the ills that are present in upholding national security while ignoring provisions made by the Fourth Amendment to protect civil liberties. It explores the basis for most of the surveillance that has unwarrantedly been carried out unconstitutionally in order to argue for the case of upholding civil liberties of the United States population as the true embodiment of a democratic nation.

RELATION BETWEEN THE FOURTH AMENDMENT, NATIONAL SECURITY AND COUNTER TERRORISM
In matters concerning national security, congress is fully within its right to make all laws that are deemed necessary. However, the Fourth Amendment provides for the peoples right to be protected against seizures and searches that may be deemed unreasonable.

The protection of national security in the name of counterterrorism where the victim is civil liberties sets a dangerous precedence: this is the experience in totalitarian nations. With the same respect, it would also be very dangerous to uphold civil liberties at the expense of national security as this leaves the country more vulnerable to terrorism attacks. Either extreme with respect to this dilemma threatens liberty and weakens the nation.

During a super bowl event in January 2001, all 100, 000 attendees were scanned by hidden cameras on entering the stadium. Unknowingly, the images of the attendees were compared to FBI, local and state files of known terrorists and criminals.

Considering that this happened eight months before 9/11, it raises many questions due to the constitutional tension that is inherent in the process of preserve national security and also preventing the government encroachment on liberties of innocent citizens that is apparently unwarranted. This case also indicates that civil liberties erosions was actually underway long before the PATRIOT Act and will undoubtedly continue being enforced even after the controversial components therein are expunged. The division that this issue has created in the nation is wide as it presents a difficult challenge in the quest to find a balance appropriate enough to ensure both privacy interests and national security co-exists harmoniously.

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FOURTH AMENDMENT JURISPRUDENCE IN RELATION TO NATIONAL SECURITY

ISSUE The fourth amendment provides for the right of the citizens of America to be secure in their houses, effects, papers and persons, guiding against any unreasonable seizures and searches. The fourth amendment jurisprudence defines the activities that are potentially constituted as searches.

Under the jurisprudence, government action is termed as search when it becomes an intrusion on an individual's "reasonable expectation of privacy." In essence the person must hold expectations of privacy on the searched object. This expectation must also be deemed by society as being reasonable. The fourth amendment in effect limits the ability of the government to conduct various activities. This includes the physical search of offices or homes or even listening to conversation carried out over the phone. As such, before conducting a search, probable cause should be demonstrated by the government as well as a warrant obtained unless exceptions on warrant that are recognizable apply.

The Supreme Court indicates that personal information, when exposed to a third party, loses any protection it might have under the fourth amendment. This is explained by the third party doctrine which can be traced back to the pro-privacy case *Katz v. United States* (389 U. S. 347 [1967]) case.

After this, several other cases and their rulings have so far continued to a very inconsistent jurisprudence of the current amendment. As such, transactional or addressing data is currently not under any protection

allowing the government access to telephone numbers that call our phones and those we call as well as the details on envelopes. Protection is only afforded to the content data. As such, this indicates that once information is held by a third party then an individual has a lesser expectation of this information's privacy. The reasonable expectations jurisprudence currently allows for a variety of intrusive searches by not providing any protection in its interpretation. According to the court, there is no reasonable privacy expectation against aerial video surveillance that is popular in national security issues.

Technological advancement has made the problem of surveillance worse. Under the fourth amendments jurisprudence modern means of storing most of our information is different from when the amendment was instituted. Most of the information today is held by third party, be it e-mail, telephone service providers as well as storage capacity providers such as cloud computing. The advances in such communication tools such as social media where most people do not even think about what they write bring this jurisprudence in question. The jurisprudence of the fourth amendment on matters other than criminal investigation is not clear. Neither congress nor the Supreme Court has so far taken any measure that would ensure the regulation of the surveillance of oral or wire communication in matters of national security as is the case with criminal investigation.

Electronic surveillance of organizations registered as domestic because of national security that is warrantless has so far been invalidated. This does not however apply when the target is a foreign power or one of their agents. It is important to note that even in situations where surveillance for national

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security does not need to acquire a warrant, it is paramount that such searches still be subject to reasonableness test under the Fourth amendment. FOREIGN INTELLIGENCE SURVEILLANCE ACT (FISA) AND PRESIDENT GEORGE W. BUSH'S WARRANTLESS WIRETAPPING PROGRAM The foreign intelligence surveillance act was first introduced in 1977 and has undergone several amendments with the latest in 2008.

This was in response to activities of domestic intelligence that were taking place at the time. This included the usage of federal resources by the then President Nixon in an effort to spy on activist and political groups. Under the Fourth Amendment, this constituted a violation of the constitution. The act provides congressional and judicial oversight on covert surveillance activities by the government on individuals and entities that are foreign within the country while at the same time maintaining secrecy which is paramount in national security protection. This act allows surveillance without the requirement of a court order within the country for a period of up to one year. The exception is in situations where the surveillance is used to acquire information whose content a citizen of the United States is party whereby judicial authorization is required within a period of within 72 hours of the surveillance commencing.

In 2005, a New York Times article describing the bush administration sanctioned, warrantless domestic wiretapping brought the Act into public debate. This had been happening since 2002 under the National Security Agency. However, the secret nature of the surveillance has in the end been blamed for the lack of oversight provided by FISA. Evidence in reports investigating the warrantless wiretapping as having been used for other <https://assignbuster.com/the-events-of-september-11/>

reasons not related to national security. This included use of information obtained for non-national security as well as law enforcement purposes as well as authorized concealment of records by the Federal Bureau of Investigation.

This makes the wiretapping program unconstitutional as well as the provisions of FISA create a direct conflict with the fourth amendment. No statute or the constitution for that matter, can anticipate advances in future that may raise privacy issues. It is apparent that in current matters of national security, a certain amount of surveillance is necessary. As such, the balance between the government's need necessitating it to conduct surveillance on individual with the aim of ensuring public safety in the national security realm as well a democratic nations require to maintain individual liberties of its population should evolve to a point where transparency in the use of new surveillance technology should be promoted along with thee legislative and judicial oversight as a form of accountability on any surveillance rules passed. This is the only way a dynamic equilibrium can be maintained between public safety and privacy.