



C.L. "BUTCH" OTTER
GOVERNOR

OPINION

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CONTACT: Jon Hanian
(208) 334-2100

SECRET PROGRAMS RAISE QUESTIONS ABOUT GOVERNMENT'S RELATIONSHIP WITH CITIZENS

By Governor C.L. "Butch" Otter

It's been almost 12 years since I first debated against, voted against and warned against the potential dangers of the USA PATRIOT Act. Back then, some Democrats cited the potential for abuse they saw in a sweeping new anti-terrorist law administered by a Republican president. Most Republicans – including the one then in the White House – rejected concerns from civil libertarians about government invasions of privacy.

Today it's mostly Republicans who are questioning the federal government's secret surveillance and data-gathering programs, with their enormous, seemingly pervasive scope. And it's mostly Democrats who are defending the Obama administration's handling of the unprecedented power ceded to government by Congress.

It's interesting how time, technology and politics change people's perspectives.

As I wrote in February 2004, early in my fourth year in Congress, "I ascribe the purest of motives to those currently using the PATRIOT Act in the war on foreign terrorists. ... My concerns are more prospective in nature: Can I trust the law will be used as judiciously, with as much care to protecting civil liberties, once the public's attention has turned to other matters."

Matters like wars in Iraq and Afghanistan, the Great Recession, natural disasters, Europe's economic meltdown, the Arab Spring, the killing of Bin Laden, and of course the merry-go-round of national politics.

But this is not a Bush administration or an Obama administration problem. Congress passed the law and has repeatedly reauthorized it. Some members of Congress – in both the Republican-controlled House and the Democrat-controlled Senate – have been regularly briefed on what the National Security Agency (NSA) and more than a dozen other intelligence operations have been doing.

We can be shocked but perhaps should not be surprised by the recent revelations, or by the responses being recycled by the current administration from those used in the early 2000s about judicial oversight or checks and balances. They are as unsound and unsatisfactory now as they were then. The difference is, what then was prospective now is all too disturbingly proven.

As Justice Louis Brandeis wrote in 1928, “Experience should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding.”

Lawsuits already are being filed challenging the NSA programs, and some members of Congress once again are preparing legislation to rein in what the leaders of our national security apparatus insist are necessary and harmless efforts to make America more secure. I did my best, even winning House approval for my amendment to withdraw funding for the no-knock “sneak and peek” searches allowed by the PATRIOT Act. So I wish today’s members of Congress well with their renewed efforts, and more luck than I had.

As much as such changes are needed, my concern is more fundamental than the specific programs now in the news. It goes to the very nature of our government’s relationship with citizens, whether we are doing serious damage to the idea of a government based on the consent and trust of the governed, and whether what Brandeis called “the right to be let alone” truly is not only embedded in but protected by our Constitution in an age of virtually unlimited opportunities to find out what anyone – or as it turns out, everyone – is doing.

I understand that polling indicates the NSA surveillance and “metadata” programs have at least marginal public support. That is unfortunate yet perhaps understandable in a dangerous world where privacy has become a fungible commodity. But it is wholly incompatible with our traditional and well-founded skepticism about imbuing government with more power than the people can reasonably hold accountable.

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