

Today is Bill of Rights Day, the anniversary of the ratification of the first ten amendments to our nation's Constitution. Since the Bill of Rights seeks to defend our freedoms from encroachment by government authority, that document's birthday seems like the perfect time to examine those freedoms, and see how well they are holding up under the strain of 210 years of growing government (and 3 months of ballooning "wartime" government).

Take the 4th Amendment, for example. It's the amendment that has been hit hardest, particularly in the past 3 months. The 4th Amendment was designed to ensure our right to be secure from "unreasonable search and seizure." In the past, the government has tried to comply with the 4th Amendment by ensuring that only criminal suspects were subject to search and seizure. Aside from a few major exceptions, like asset forfeiture laws, and the surveillance of "subversive" activist groups, the government has largely taken steps to ensure that searches and seizures were reasonable. Until now.

The new "USA PATRIOT Act" has legalized the use of "Carnivore," an FBI Internet wiretapping tool that searches the e-mails (and web surfing, and instant messages, and more) of thousands of non-suspects each time it searches the e-mail of a potential criminal. What's more, the 4th Amendment requirement of "probable cause" has been ratcheted down to "reasonable suspicion" in many instances. And if that wasn't enough, warrants that used to require a judge's approval now only require approval from a state Attorney General or a federal attorney. In other words, instead of convincing an impartial judge that a suspect needs to be searched, police and D.A.s need only convince fellow law enforcement officials and prosecutors.

The 4th amendment has more to say. Aside from insisting that warrants are based on probable cause, it also states that they must specifically describe "the place to be searched, and the person or things to be seized." For the most part, the government has tried to obey that rule. Until now.

Carnivore, mentioned above, has the capability to scan the communications of every subscriber to an ISP, and search for keywords, names, e-mail addresses, or anything else that's going through the pipeline. By its design, it doesn't just search the communications of one suspect, it searches hundreds or thousands of people's communications. A "real world" parallel would be if police were able to use a search warrant for one person's apartment to search all of the building's apartments, looking for anything related to their suspect. What happens if they stumble upon unrelated "suspicious" activity in the process? We'll have to wait and find out, as the courts try to make constitutional sense out of the most significant and disturbing law-enforcement legislation of our generation.

Another major blow to the 4th Amendment is the notion of "roving wiretaps." In the past, in order to obey the 4th Amendment, law enforcement was required to get a warrant for each phone line they wanted to tap. In other words, they had to "particularly describe the place to be searched," as the amendment says. Until now.

The “USA PATRIOT Act,” that wolf in sheep’s clothing, gives the green flag to “roving wiretap” warrants— open-ended warrants which allow police to tap into any phone which can be associated with their suspect. That includes pay phones, friends’ phones, cell phones, pagers, faxes, e-mails- any medium which can be related in some way to the person they are investigating. This amounts to interpreting “particularly describing the place to be searched and things to be seized” as permission to say, “we will search and/or seize anything that the suspect comes in contact with, if we choose.”

Lately, the federal government is disrespecting so many of the limits imposed by the Constitution and the Bill of Rights that it can’t be covered in one column or article. I focused on the 4th Amendment because it has been disregarded the most. There will be hundreds of thousands of pages written about the aggressive “wartime” law enforcement measures being employed, and their impact— on our right to due process and public trial by jury, freedom of speech and the press, attorney-client confidentiality, the rights of non-citizens in our country, and many more issues. We as citizens need to get informed and join in the dialogue.

We should celebrate our Constitutional freedoms, on Bill of Rights Day, and every day— but we must also stand up for them, or they will continue to be disregarded, and eventually forgotten altogether.

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