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## A Conspiracy So Vast

By Andrew P. Napolitano

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Readers of this site are well aware of the revelations during the past six months of spying by the National Security Agency (NSA). Edward Snowden, a former employee of an NSA vendor, risked his life and liberty to inform us of a governmental conspiracy to violate our right to privacy, a right guaranteed by the Fourth Amendment.

The conspiracy he revealed is vast. It involves former President George W. Bush, President Obama and their aides, a dozen or so members of Congress, federal judges, executives and technicians at American computer servers and telecoms, and the thousands of NSA employees and vendors who have manipulated their fellow conspirators. The conspirators all agreed that it would be a crime for any of them to reveal the conspiracy. Snowden violated that agreement in order to uphold his higher oath to defend the Constitution.

The object of the conspiracy is to emasculate all Americans and many foreigners of their right to privacy in order to predict our behavior and make it easier to find among us those who are planning harm.

A conspiracy is an agreement among two or more persons to commit a crime. The crimes consist of capturing the emails, texts and phone calls of every American, tracing the movements of millions of Americans and foreigners via the GPS system in their cellphones, and seizing the bank records and utility bills of most Americans in direct contravention of the Constitution, and

pretending to do so lawfully. The pretense is that somehow Congress lessened the standard for spying that is set forth in the Constitution. It is, of course, inconceivable that Congress can change the Constitution (only the states can), but the conspirators would have us believe that it has done so.

The Constitution, which was written in the aftermath of the unhappy colonial experience with British soldiers who executed general warrants upon the colonists, forbids that practice today. That practice consists of judges authorizing government agents to search for whatever they want, wherever they wish to look. By requiring a warrant from a judge based on probable cause of criminal behavior on the part of the very person the government is investigating, however, and by requiring judges to describe particularly in the warrants they issue the places to be searched or the persons or things to be seized, the Constitution specifically outlaws general warrants.

This is more than just a constitutional violation; it is a violation of the natural right to be left alone. When that right is violated, when all of our private movements are monitored by the government, the menu of our free choices is reduced, as we surely alter our private behavior to compensate for being watched. And just as surely, the government expands its surveillance, knowing that it is not being watched.

As a result of these revelations, no one has been fired, except Snowden, and the conspiracy has grown. Earlier this week, The Washington Post reported that the Federal Bureau of Investigation is now spying on us. It seems that the FBI, no doubt jealous of the unpunished lawlessness of the NSA, has acquired software that permits it to utilize the tiny cameras in many home computers to observe whoever or whatever may be in front of the computer screen. The FBI doesn't only look at whoever is using the computer screen; it also captures the words and images on the screen. It seems to have an affinity for monitoring online gaming, even the lawful variety.

In 1949, when George Orwell predicted in his terrifying novel *1984* the future use of television sets to watch us in our homes, many thought he was a delusional paranoid. It turns out that he was just off by a generation. His predictions have come to pass.

Like many growing conspiracies, this one has spawned others. The Washington Post also reported this week that local cops, too, are jealous of the NSA and its ability to break the law with impunity. In an effort to catch bad guys, local police in half a dozen American cities have begun to ask local telecom providers for a "tower dump." A tower dump consists of digital recordings of all cellphone usage from a given cell tower.

When some telecoms balked at these requests, the cops went to judges, some of whom unlawfully authorized these dumps and some of whom declined. Frustrated that the NSA seems to get whatever it wants, some local police have used their own technology to spy. They've purchased a \$400,000 device that mimics cellphone towers, drawing cellphone signals to it and enabling the cops to capture telephone calls without the cooperation of telecoms or permission from federal judges. That's called hacking; it is a federal crime and in most areas a state crime, as well.

The assaults on personal freedom never seem to end. The very concept of violating the rights of many in order to catch a few – a practice perfected by tyrannical regimes – has been prohibited for 222 years by the same Constitution that the perpetrators of these practices and the conspirators in these schemes have sworn to uphold.

Sometimes, dissents in Supreme Court decisions articulate American values better than majority opinions do. Here is one from Justice Louis Brandeis that did: “The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man’s spiritual nature, of his feelings, and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the government, the right to be let alone – the most comprehensive of rights and the right most valued by civilized men.”

If we permit the government to destroy that right, we will live under tyrannies similar to the ones we thought we defeated.