

WHO WATCHES the WATCHERS?

America: land of the free, home of the brave. To others, America is a great beacon of light at the end of a dark tunnel, where all things are possible. People arrive every day for a variety of reasons such as education, money, and security. Whatever it may be, the United States Constitution is the supreme law of the land. It guarantees certain fundamental rights for all of its citizens. The First Amendment states: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances”.¹ The First Amendment protects the freedom of press. Allowing an individual to express him or herself, whether it is through religion, speech or press is the main essence of the First Amendment. It is understood that to guard and protect the privacy of others, this Amendment may be limited. However, when government action violates this right and citizens are not aware that it is being infringed upon, this is when society must evaluate and weigh the interest of national security versus their freedom of press. James Madison, the “Father of the Constitution,” said: “Liberty may be endangered by the abuse of liberty, but also by the abuse of power.”² What happens when the government constantly begins to find excuses for violating other citizens’ rights? There should not be any loophole for any of the citizens’ rights. Otherwise, these rights are only there for show and tell.

¹ http://www.law.cornell.edu/constitution/first_amendment

² <https://www.goodreads.com/quotes/597799-liberty-may-be-endangered-by-the-abuse-of-liberty-but>

There have been several cases over the past few years where the government has placed the interest of national security over the freedom of press and did not inform the organization of their actions. One of the most recent cases occurred in May 2013. According to the *New York Times*, the Associated Press was informed that federal officials had collected over 20 telephone lines of its offices and journalists, including their home phones and cell phones. The records were seized throughout the year without any notice.³ The Associated Press was not informed of the reason for the seizure of these records. The main concern with this case is not only the violation of the protection of freedom of the press, but that the Associated Press was not informed. This became a serious concern to the Associated Press because of the safety issues regarding the identity of their sources. This incident alerted more than one organization about the Justice Department's means of enforcing national security. It is understandable that this information had to be obtained. However, it was wrong that the Associated Press was not informed. This whole process could have remained confidential and out of the media if they were aware of what was going on.

Although national security does affect all of us, the government should still not violate the protection of freedom of the press. The government needs to keep in mind how their actions can affect and even put others at risk. An important factor has always been the confidentiality of journalistic sources. The need for discretion may be so the person does not appear to be a snitch or whistle-blower. For more delicate subjects, the main concern is safety. In many parts of the world, journalists and their sources have been threatened or killed for working with the U.S. news media. Pakistan is one of the

³ <http://www.nytimes.com/2013/05/14/us/phone-records-of-journalists-of-the-associated-press-seized-by-us.html?pagewanted=1&r=0>

most dangerous countries for a journalist to live in. Sana ul Haq, a freelance journalist for the *New York Times*, was abducted, beaten and interrogated about his work.⁴ It is possible that many of his sources were Pakistani citizens. If their identities were revealed it could mean very dangerous consequences for them. Just as the government does not want their classified information leaked or the identity of certain officials known, journalists should be provided the same courtesy because they are taking the same risks. This applies to our government violating the Constitution's First Amendment protection of freedom of the press. By violating this freedom, we are putting the lives of our journalists and their sources at risk.

The *U.S. vs. Sterling* case is an example of how the freedom of the press is being devalued more and more as time passes. A recent court ruling made by the U.S. Court of Appeals has overturned Judge Brinkema's decision in this case to "...decline to compel Mr. Risen to reveal a confidential source in the trial of Jeffrey Sterling, former C.I.A. employee."⁵ This ruling alarmed many Americans, especially reporters. The protection of their confidential sources is more at risk every day. This ruling may have been pressed forward due to the importance of Sterling's case. Federal authorities accused him of "leaking information to a New York Times reporter who published discussing Iran's suspected weapons program."⁶ Certain measures must be taken in order to protect national security, but not when it violates the First Amendment protection of freedom of the press. Many people speculate that the government violates the protection of freedom

⁴ <http://www.nytimes.com/2013/11/11/world/asia/danger-persists-for-reporters-in-pakistan-despite-vow-to-protect-them.html?ref=freedomofthepress>

⁵ <http://www.nytimes.com/2013/07/23/opinion/a-terrible-precedent-for-press-freedom.html>

⁶ <http://online.wsj.com/news/articles/SB10001424052748704415104576066064192256024>

of press for the “sake of national security”, meaning when they do not want the public to hear about certain government issues for the sake of their own reputation. Interfering or impeding the free flow of important information to the public is a very dangerous road for the government to take. It is permissible for the government to attain information with consent and a valid reason; key word: consent.

Now, the White House under the Obama administration is pushing the News Media Shield Law with greater force. The News Media Shield Law will protect journalists from being penalized for refusing to give out confidential sources to federal officials.⁷ This law is now being pushed because of the attention the Associated Press’ issue raised. The American people’s confidence and trust in the Justice Department will slowly disintegrate if they feel their rights are being violated. It is a positive thing that this law will protect the identity of many sources. However, when weighing the interests of national security, the citizens should volunteer to relinquish this information. If government officials go about a different means of obtaining information, the American people would not be so outraged. There are so many other acts that are supposed to protect the public. The Privacy Act guarantees the right to see records about yourself, the right to amend that record if it is inaccurate, and the right to sue the federal government if it allows unauthorized individuals to access your records.⁸ It also establishes control over how the federal government collects personal information and how it is used. The Electronic Communications Privacy Act of 1986 protects wire, oral, and electronic communications while those communications are being made, in transit, and when they

⁷ <http://www.nytimes.com/2013/05/16/us/politics/under-fire-white-house-pushes-to-revive-media-shield-bill.html>

⁸ <http://www.foia.cia.gov/privacy-act-1974-5-usc-§552a-amended>

are stored on computers.⁹ Both of these acts clearly protect the public, yet more cases spring up every year about the interception of these acts.

A chilling thought on everyone's mind lately has been: *what will the government do next?* All these issues tie back to "who watches the watchers?" and in some cases are the watchers even aware they are being watched? It was recently discovered that the National Security Agency (NSA) was running a program used to spy on German Chancellor Angela Merkel's phone and other world leaders without the Obama administration's full knowledge.¹⁰ Simply knowing that the leader of the country was not aware of this surveillance is a daunting thought. After this incident raised international outrage, the White House cut off some of these monitoring programs. Even when consent is given, it is important to emphasize exactly what is and is not allowed to be investigated. In the case of Jill Kelley, the FBI violated her rights by unlawfully searching her private emails after she clearly only allowed them to look at one threatening email she received.¹¹ This is a clear violation of the FBI collecting information.

A clear example of the government's interference with information being relayed to the public is the case of the *Guardian* newspaper being prosecuted for its publication of information based on National Security Agency documents that were leaked by Edward Snowden.¹² The *New York Times* had also published on this issue. It is important that the public know about the NSA's spying on private communications. In Britain there

⁹ <http://it.ojp.gov/default.aspx?area=privacy&page=1285#contentTop>

¹⁰ <http://www.cnn.com/2013/10/28/politics/obamacare-nsa/>

¹¹ <http://online.wsj.com/news/articles/SB10001424052702303482504579179670250714560>

¹² <http://www.nytimes.com/2013/11/15/opinion/british-press-freedom-under-threat.html>

is no constitutional guarantee of freedom of the press. For this reason, British journalists have a harder time doing their jobs. If the U.S. government continues to violate the freedom of the press, we will closely resemble Britain's freedom of press policy and more cases like these will arise.

The U.S. Constitution's First Amendment protection of freedom of the press is just as important as our freedom of religion, speech, and assembly. When government action violates this right and citizens are not aware that it is being infringed upon, this is when society must evaluate and weigh the interest of national security versus their freedom of press. All citizens must be able to exercise their freedoms without any restrictions. These privileges are the base of our democratic society. If they are deprived or restricted, there is nothing left to protect the citizens. In this free society, citizens should not be penalized for uncovering daunting truths.

Works Cited

- Cornell University Law School. "First Amendment." *Law.cornell.edu*. N.p., n.d. Web. 20 November 2013.
- Editorial Board. "A Terrible Precedent for Press Freedom." *NYtimes.com* The New York Times, 22 July 2013. Web. 21 November 2013.
- Editorial Board. "British Press Freedom Under Threat." *NYtimes.com* The New York Times, 14 November 2013. Web. 22 November 2013.
- "Federal Statutes." *It.ojp.gov*. DHS/Office for Civil Rights and Civil Liberties, 21 March 2012. Web. 22 November 2013.
- Kelley, Jill. "How the Government Spied on Me." *Onlinenwsj.com*. The Wall Street Journal, 5 November 2013. Web. 22 November 2013.
- Kim, Alyssa. "Dissecting the A.P. Phone Log Seizure." *NYtimes.com*. The New York Times, 13 May 2013. Web. 20 November 2013.
- Madison, James. "James Madison Quotes." *Goodreads.com*. N.p., n.d. Web. 20 November 2013.
- Masood, Salman. "Danger Persists for Reporters in Pakistan, Despite Vow to Protect Them." *NYtimes.com*. The New York Times, 10 November 2013. Web. 20 November 2013.
- Perez, Evan. "Ex-CIA Official Charged in Leak on Iran Program." *NYtimes.com*. The New York Times, 7 January 2011. Web. 21 November 2013.
- Savage, Charlie. "Criticized on Seizure of Records, White House Pushes News Media Shield Law." *NYtimes.com* The New York Times, 15 May 2013. Web. 21 November 2013.

Shoichet, Catherine. "Obamacare and NSA spying: What did Obama know, and when did he find out?" *CNN.com*. Cable News Network, 28 October 2013. Web. 22

November 2013.

"The Privacy Act of 1974 5 USC § 552a As Amended." *Foia.cia.gov*. N.p., n.d. Web. 22

November 2013.