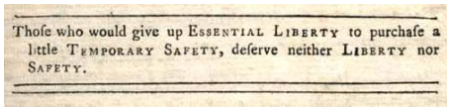
Privacy and National Security


Thoſe who would give up ESSENTIAL LIBERTY to purchaſe a little TEMPORARY SAFETY, deſerve neither LIBERTY nor SAFETY.

- "Civil liberties, as guaranteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses." Hughes, C.J., *Cox v. New Hampshire*

FISA

- Foreign Intelligence Surveillance Act, 1978
- Authorizes searches of parties who are "foreign powers" or "agents of a foreign power"
  - Upon showing of probable cause that the person to be searched is a foreign power and a significant purpose of the investigation is to gather "foreign intelligence information"
  - **Reviewed *ex parte* by FISC court**

50 U.S.C. Sec. 1801

- Definitions: http://www4.law.cornell.edu/uscode/50/1801.html
- e) "Foreign intelligence information" means—
  - (1) information that relates to, and if concerning a United States person is necessary to, the ability of the United States to protect against—
    - (A) actual or potential attack or other grave hostile acts of a foreign power or an agent of a foreign power;
    - (B) sabotage or international terrorism by a foreign power or an agent of a foreign power; or
    - (C) clandestine intelligence activities by an intelligence service or network of a foreign power or by an agent of a foreign power; or
- (2) information with respect to a foreign power or foreign territory that relates to, and if concerning a United States person is necessary to—
  - (A) the national defense or the security of the United States; or
  - (B) the conduct of the foreign affairs of the United States.

- (h) "Minimization procedures", with respect to electronic surveillance, means—
  - (1) specific procedures, which shall be adopted by the Attorney General, that are reasonably designed in light of the purpose and technique of the particular surveillance, to minimize the acquisition and retention, and prohibit the dissemination, of nonpublicly available information concerning unconsenting United States persons consistent with the need of the United States to obtain, produce, and disseminate foreign intelligence information;
  - (2) procedures that require that nonpublicly available information, which is not foreign intelligence information, as defined in subsection (e)(1) of this section, shall not be disseminated in a manner that identifies any United States person, without such person's consent, unless such person's identity is necessary to understand foreign intelligence information or assess its importance;
  - (3) notwithstanding paragraphs (1) and (2), procedures that allow for the retention and dissemination of information that is evidence of a crime which has been, is being, or is about to be committed and that is to be retained or disseminated for law enforcement purposes; and
  - (4) notwithstanding paragraphs (1), (2), and (3), with respect to any electronic surveillance approved pursuant to section 1802 (a) of this title, procedures that require that no contents of any communication to which a United States person is a party shall be disclosed, disseminated, or used for any purpose or retained for longer than 72 hours unless a court order under section 1805 of this title is obtained or unless the Attorney General determines that the information indicates a threat of death or serious bodily harm to any person.

The Wall

- National Security

- Ordinary Crime

Security tradeoffs

- Balancing the harm averted
  - including the probability of that harm occurring
- With the costs of security measures
  - including loss of privacy