

## The Rule of Law Is On Life Support

by William A. Cohn via jill - ICH *Friday, Jan 24 2014, 9:08am*

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After reading this morning's NYT report which revealed that the Foreign Intelligence Surveillance Court legitimized NSA metadata collection for more than seven years without providing a legal rationale I thought of: The Emperor's New Clothes; The torture memos from Bush 43's Office of Legal Counsel; Putin's release of his high profile foes from prison; and light vs. dark (aka Snowden et al. vs. secrecy).



The releases of Putin's high profile foes underscored the arbitrariness of the Russian justice system. The rule of law requires an engaged civil society with the breathing space to demand accountability of those in power, which in turn requires independent institutions serving the people. That Putin could so rapidly get Parliament to pass an Amnesty law and the Judiciary to order the release of prisoners exposes the travesty of Russian justice. As a Pussy Riot musician said, "They put me in, they let me out," noting that the timing was "ridiculous" coming so close to the end of her sentence. Both released musicians said they asked to be allowed to finish their sentence, but were forced to leave prison as part of Putin's PR campaign for the upcoming Sochi Olympics.

With Obama's Jan. 17 speech on NSA Spy-Gate failing to quell civil unrest, the Privacy and Civil Liberties Oversight Board today released its findings that NSA metadata collection is unlawful and should stop. Most revealing was Charlie Savage's reporting that from May 2006 to August 2013 the FISC authorized Patriot Act Sec. 215 overriding the Electronic Communications Privacy Act without any legal opinion to support the clear violations of the ECPA, let alone the Fourth Amendment. Yes, secret law is an oxymoron - meaning lawlessness.

The torture memos by John Yoo, Jay Bybee, and Steven Bradbury were written because CIA criminality was exposed by leaks, so the Bush cabal felt they needed legal cover. Had Jane Mayer and Dana Priest not used leaked information to write about the outsourcing of torture and secret CIA-run prisons in Europe, no such twisted law, logic and morality as evinced by those memos would be needed. Likewise, but for Ed Snowden and Glenn Greenwald, the FISC would still be the secret handmaiden of the national security state.

Belief in the "trust us" rationale for secret law-making requires belief that the world is black and white, with clear good guys vs. bad guys. Thanks to transparency abetted by technology, we see that all powerful states are dirty. And so, when the Emperor claims that he is well-robed in his language of democracy and rule of law, we clearly see him naked.

Judge Claire Egan's August 29, 2013 opinion endorsing the legality of NSA metadata surveillance is an abdication of the duties of an independent judiciary. She calls the issue a political question, not a legal one: "a matter for the political branches to decide." The statutory analysis in the opinion is flawed. Indeed, it is for the courts to decide when an act is unconstitutional. Three co-equal branches, right? And, the power of judicial review is the final constitutional check against abuse. Yet for more than seven years, the law was completely silent as the national security state accreted ever-greater illegitimate power. Her lame legal justification for NSA metadata collection was compelled by public protest.

It is indeed a ripe time for the people of the world to raise their voices. For we, are the ultimate check against tyranny. The evidence is clear that we are needed. Law demands accountability. Secrecy affords impunity. While big brother is zooming you, zoom on him and tell the world what you see. Let the sun shine in. From Sochi to your home state raise your voice at this travesty of justice, while you still can.

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Jungle Drum Prose/Poetry. <http://jungledrum.lingama.net/news/story-975.html>