Balance of Security and Liberty

Specific guidelines are hard to define to create a proper equilibrium between the overall security of the nation state and the liberties not relinquished to the government. Natural rights have been a staple of the United States since Thomas Jefferson, under the inspiration of John Locke, penned that idea in the Declaration of Independence. Any set of guidelines for security of the country should respect this idea by neither abridging the natural rights of the people nor the rights guaranteed to the people in the 4th and 5th Amendments to the Constitution. The courts established under FISA should be more closely regulated by the judicial branch, and once regulated more tightly, should help to guide the process of domestic intelligence gathering as well.

The 4th and 5th Amendments limit the federal government actions in invading a citizen’s personal life. The 4th Amendment protects the citizens from reasonable searches and seizures of person and property without probably cause. This protection should also apply to the data that American citizens add to the internet and transmit via phone lines – the target of many of these FISA warrants. Currently, the government, without changing the Constitution, has lowered the requirement to obtain this personal material. This is an unbalanced approach to security and should be revisited by the U.S. Courts.

The Due Process clause of the 5th Amendment protects a citizen’s liberty from undue burden by the government. This also affects modern uses of the internet and cell phones. FISA could arguably be infringing on this right by burdening citizens’ liberty without going through the correct judicial process. In order to establish true and proper guidelines for cyber security, respect must be given to the due process of law including using the correct standards for searches.

Intelligence gathering is an absolute necessity for the security of the country and, given the modern technological age, the vast majority of the information resides on the internet and cell phones. Intelligence agencies must be given the tools to swiftly and accurately detect threats within those intelligence hot beds. The premise of having a separate court, such as the FISA court, to respond quickly to the needs of these agencies does not, in and of itself, violate either the 4th and 5th Amendments. Most of the current system for domestic intelligence gathering does work and is necessary. However, removing the standard oversight by judicial branch is troubling. Congress and our intelligence agencies must devise a system which quickly grants these agencies access to information needed to protect the country while, at the same time, protects the citizen’s rights under the 4th and 5th Amendments as intended by the founders of the United States. This goal can easily be reached if correct standard of probable cause applied to warrants granted by the FISA Courts.