

## ODNI Review Group Comments Skyfall

Discontinuing suspicionless mass surveillance programs is the best way for the US to “employ its technical collection capabilities in a manner that optimally protects our national security and advances our foreign policy while respecting our commitment to privacy and civil liberties, recognizing our need to maintain the public trust, and reducing the risk of unauthorized disclosure.”

First, mass surveillance of innocent people without individualized suspicion is the problem. No matter how well government agents of intelligence agencies such as the NSA and FBI follow the rules of such a program, it is inherently un-American and unconstitutional. One of the founding fathers’ chief complaints against England was general warrants (writs of assistance)—that’s why the Fourth Amendment was included in the Bill of Rights. Merely increasing the transparency or oversight of mass surveillance will not solve the problem because these programs inherently disrespect privacy and civil liberties.

Second, public trust is eroded not only by government intelligence agencies breaking the rules they are supposed to work under, but also by following the rules that “allow” mass surveillance. When government officials describe thousands of rules violations as inevitable and as representing just a small percentage of the communications surveilled, it follows that the only way to decrease the number of violations is to decrease the scope of the surveillance program. A program that can produce so many violations is inherently monstrous and must be discontinued.

Related to this, many people, including President Obama, have acknowledged that such a broad collection of data could very easily be abused by an unscrupulous president. Our founding fathers designed the Constitution so no one person could rule the US and oppress its people as the king of England had the American colonies. The executive branch’s holding such vast powers also subverts the separation of powers: if the executive can monitor everything the members of the legislative and judicial branches do in private, the latter will not be free to provide meaningful oversight of the executive. An unscrupulous executive could even use these surveillance powers to blackmail members of the other two branches. Sadly, we cannot rule out such a possibility in the future: see the Nixon presidency and the FBI under J. Edgar Hoover.

Third, the way to “optimally protect[] our national security” is by letting hardworking government agents track down real threats, not directing them to engage in a dragnet search of millions of innocent people. As past terrorist or violent attacks have shown, the problem is the failure to connect the dots, not a lack of relevant information. For example, a “top FBI expert on the al-Qaeda terrorist network testified in court . . . that the agency knew before the Sept. 11, 2001, attacks that the group’s leader, Osama bin Laden, had sent followers to an Oklahoma flight school to train as pilots and was interested in hijacking airplanes.” Further, “the FBI knew in the early 1990s that al-Qaeda members were getting combat training in how to use short knives.”

[<http://www.washingtonpost.com/wp-dyn/content/article/2006/03/07/AR2006030700216.html>] In fact, “CIA analysts and FBI agents tr[ie]d to sound the alarm about the rising threat,” but were ignored. [<http://abcnews.go.com/Blotter/ten-years-ago-today-countdown-911/story?id=14191671>]

In another example, one of the Boston marathon bombers, Tamerlan Tsarnaev, had been investigated previously by the FBI, and Russia warned the FBI that he “had embraced radical Islam and intended to travel to Russia to connect with underground groups,” but this information was not shared with Boston police.

[<http://www.nytimes.com/2013/05/10/us/boston-police-werent-told-fbi-got-warning-on-tsarnaev.html>]

The dedication of what one imagines must be thousands of agents to programs that surveil innocent people (given the 300 internal compliance officers the NSA has, according to its statement [[http://www.washingtonpost.com/world/national-security/nsa-statements-to-the-post/2013/08/15/f40dd2c4-05d6-11e3-a07f-49ddc7417125\\_story.html](http://www.washingtonpost.com/world/national-security/nsa-statements-to-the-post/2013/08/15/f40dd2c4-05d6-11e3-a07f-49ddc7417125_story.html)]) diverts resources from following up on real, known threats. Thus, real, time-sensitive leads are buried in an algorithmically driven avalanche of data on innocent Americans whose behaviors cause them to be flagged for some erroneous reason. The intelligence community seems to think that if only it has all the data, and the perfect algorithm to analyze it, it could detect terrorists before they strike. However, the National Research Council, in a 2008 study funded by the Department of Homeland Security, concluded that “[a]utomated terrorist identification is not technically feasible because the notion of an anomalous pattern—in the absence of some well-defined ideas of what might constitute a threatening pattern—is likely to be associated with many more benign activities than terrorist activities.” [Protecting Individual Privacy in the Struggle Against Terrorists, National Research Council of The National Academies, 2008]

Fourth, mass surveillance has detrimental effects on American people, companies, and foreign policy. Mass surveillance makes Americans less free: people feel constrained in what they say and write when they know they may be monitored at any time. Such self-censorship will lead to decreased creativity and stasis in society. For example, the civil rights movement was once considered dangerous; had this pervasive mass surveillance existed during the 1960s, the movement might have been stymied (as the FBI attempted to do by individually surveilling Martin Luther King Jr.). US companies suffer a loss of trust, and thus income, when potential customers know that their communications, handled by those companies, are prone to surveillance by the US government. For example, Facebook CEO Mark Zuckerberg said that “trust metrics” for all the big Internet firms “went down with PRISM.” [<http://qz.com/125915/mark-zuckerberg-says-people-trust-facebook-less-after-nsa-revelations/>] Finally, the US government itself is hurt by mass surveillance in at least two ways. The US government will suffer a brain drain if qualified people are uncomfortable working for it because it spies, including on Americans, without individualized suspicion. Also, the US’s standing and trust worldwide are hurt when we spy on foreign individuals, governments, and companies. For example, our foreign policy was not advanced but

hindered when the president of Brazil cancelled a state visit due to surveillance by the US. Surveillance thus hurts our foreign policy: other countries and agencies will not follow the US's suggestions if they do not trust the US.

For all these reasons and more, mass surveillance of innocent people without individualized suspicion is the problem: it erodes public trust, diverts resources from more fruitful investigations, and hurts American people, companies, and the government itself. It must be discontinued for the sake of our national freedom and security.