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3 Questions About NSA Surveillance

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By John Mueller and Mark G. Stewart



A number of questions have been raised in the last few days about the civil-liberties implications of the National Security Agency's seven-year-old programs to gather data on telephone and e-mail conversations—the programs characterized by President Obama on Friday as “modest encroachments” on privacy. Three questions ought to be given more thorough examination.

1. Why were the programs secret?

It is difficult to see how earlier exposure of the programs' existence would have aided terrorists, who have known at least since the 1990s that U.S. intelligence was searching communications worldwide to track them down. It is possible, however, that the secrecy of the programs stems from the Obama administration's fear that public awareness of “modest encroachments” on privacy would make further efforts to encroach more difficult.

A former Air Force secretary told Reuters that a “growing unease about domestic surveillance could have a chilling effect on proposed cyber legislation that calls for greater information-sharing between government and industry.” Since the revelation, more lawmakers have signed on to legislation that would strengthen the privacy protections in the 1986 Electronic Communications Privacy Act. The notion here, then, is that the programs were secret not to protect people from terrorism, but to protect the government from inconvenient public and Congressional opposition.

2. What have the programs accomplished?

There has been a lot of ominous stammering from Congress and the Obama administration about terrorist plots that have been disrupted by the programs. But thus far, only two concrete examples have been mentioned

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—not a great many for seven years of effort.

First, there have been suggestions that the NSA programs helped apprehend an American who had done surveillance work for the terrorist gunmen in Mumbai, India, in 2008. His efforts, however, were of limited importance to the event, and his eventual arrest didn't prevent the attack.

The second was the 2009 Zazi case, in which three Afghan-Americans trained in Pakistan before returning to the United States and plotted to set off bombs in the New York subway system. Given the perpetrators' limited capacities, it is questionable whether the plot would ever have succeeded. Furthermore, the plot was disrupted not by NSA data-dredgers but by standard surveillance: British intelligence provided a hot tip about Zazi based on e-mail traffic to a known terrorist address—one that had long been watched.

At that point, U.S. authorities had good reason to put the plotters on their radar. Having NSA's megadata collection may have been helpful, but it seems scarcely to have been required. Actually, it is not clear that even the tip was necessary because the plotters foolishly called attention to themselves by using stolen credit cards to purchase large quantities of potential bomb material.

[A set of case studies](#) of the 53 post-9/11 plots by Islamist terrorists to damage targets in the United States suggests this is typical. Where the plots have been disrupted, as in the Zazi case, the task was accomplished by ordinary policing. The NSA programs scarcely come up at all.

When asked on Wednesday if the NSA's data-gathering programs had been "critical" or "crucial" to disrupting terrorist threats, the agency's head testified that in "dozens" of instances the database "helped" or was "contributing"—though he did seem to agree with the word "critical" at one point. He has promised to provide a list of those instances. The key issue for evaluating the programs, given their privacy implications, will be to determine not whether the huge database was helpful but whether it was necessary.

3. How much do the programs cost?

After 9/11, U.S. intelligence concluded that there were thousands of Al Qaeda operatives in the country. That perspective impelled a vast and hasty increase in spending on intelligence and policing, and at least 263 military and intelligence agencies have been created or reorganized. For its part, the Department of Homeland Security has set up a vast array of "fusion centers" to police terrorism, but is unable to determine how much they cost. It estimates that somewhere between \$289-million and \$1.4-billion were awarded to them from 2003 to 2010—a gap of over a billion

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dollars that is impressive even by Washington standards.

As it turned out, the number of Al Qaeda operatives actually in the United States registered at zero or nearly so, and the threat of terrorism in the country proved to be far more limited than initially feared. Accordingly, there might logically have been some judicious cutbacks in the funds devoted to the expensive quest to find terrorists who mostly didn't exist—a process some in the FBI call “ghost chasing.”

However, the reaction has continually been to expand the enterprise, searching for the needle by adding more and more hay. Far overdue are extensive openly published studies that rationally evaluate homeland-security expenditures.

The NSA's formerly secret surveillance programs have been part of the expansionary process. If they have done little to prevent terrorist attacks in the United States, and if we are now having what President Obama has characterized as a “healthy” debate about the programs, it seems reasonable to suggest that the debaters should at least be supplied with information about how much the programs cost.

Knowing the cost would scarcely help the terrorists. It might, however, amaze American taxpayers. Perhaps that's another reason the programs have been kept secret.

John Mueller is a political scientist at Ohio State University and a senior Fellow at the Cato Institute. He is the author of *Overblown* (Free Press, 2006) and *Atomic Obsession* (Oxford University Press, 2010). Mark G. Stewart is an Australian Research Council professorial fellow and a civil engineer at the University of Newcastle, in Australia. They are authors of *Terror, Security, and Money: Balancing the Risks, Benefits, and Costs of Homeland Security* (Oxford, 2011).

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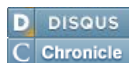
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