Government Intelligence and Surveillance in the United States

While many citizens have a general understanding of-or at the very minimum-access to information on gun control debates and other similar subjects, it is incredibly difficult to argue about the role of government intelligence when the majority of individuals do not have complete access to such information. Though espionage and government intelligence between countries trying to gain covert information on each other has nearly always existed, it was the events of September 11, 2001 which truly began the “War on Terror”, a declaration of commitment against fighting and destroying terrorism through new actions and policies. Yet, the debate concerning government intelligence is far more than simply whether the United States government should make an attempt to stop terrorist attacks, but rather to what lengths they may go in doing so and what consists a “violation of privacy”. A careful analysis of anti-terrorism legislation and events after September 11 will reveal that, despite the Intelligence Community’s efforts to protect against attacks in a world where technology constantly changes, their ability to monitor and collect private information oversteps privacy boundaries. Regardless of the boundaries they may overstep in closely monitoring digital and spoken conversations, it is likely that government intelligence agencies will continue surveillance practices in a similar manner.

The Office of the Director of National Intelligence describes intelligence as information gathered that pertains to the safety of the nation, ranging from threatening individuals to weapons of mass destruction (“What Is Intelligence?”). This information may be gathered within or outside the United States by a total of sixteen departments and agencies in order to protect the United States and its citizens (“What Is Intelligence?”). Intelligence is gathered in six different forms, SIGINT (from intercepted signals), IMINT (which includes photography and videos), MASINT (data which locates or identifies certain targets), HUMINT (information gathered from human sources), OSINT (open-sourced information), and finally GEOINT (gathering of geospatial information) (“What Is Intelligence?”).

While the government believes that they are simply protecting the nation by following policies in place which regulate intelligence, organizations such as the ACLU find fault in invasive practices which allow for the surveillance of private communication of innocent citizens (“Privacy and Surveillance”). The dilemma is not whether the United States government should be allowed to challenge threats to national security in order to protect citizens, but rather the means with which they collect it. Oftentimes, citizens are unaware of surveillance practices in the United States, and how it affects them directly. The secrecy clouding intelligence allows individuals to be subjected to a violation of their rights without realizing it. Overall, terrorism and government intelligence is a complex subject with no ideal solution. Especially given that part of the government’s ability to effectively collect intelligence is by doing so covertly, it is difficult to argue against their actions despite it preventing citizens from being aware of potential abuses because of the lack of transparency. Those who argue against increased government surveillance find fault in the intelligence community’s ability to easily investigate large numbers of citizens placing them on watchlists and barring them from certain freedoms without any real justifications (“Privacy and Surveillance” ). Advocates of further government intelligence feel that currently, the American government has not taken strong enough measures towards preventing further terrorist attacks. They believe that the US is in fact, unable to handle such events. Therefore, they advocate for more watch lists and are unconcerned with allowing the government to expand their reach as it pertains to surveillance of private communications.

A critical analysis of *US v Falvey* reveals a situation where the government was able to use their power to unfairly target individuals (Lischer 77). In 1980, the FBI began conducting surveillance on US citizens of Irish descent-including Falvey and Harrison-in accordance with regulations provided by the Foreign Intelligence Surveillance Act (FISA), intercepting and tapping phone conversations until they had evidence sufficient for prosecution for the smuggling of arms (Lischer 77). The government began conducting surveillance on them because of their involvement with the Irish Republican Army, an unpopular group, and the defendants argued their Fourth Amendment rights were violated (Lischer 77). Though the arguments from the United States and the defendants had many more parts, one of the most striking reasons the surveillance tapes were not omitted was because probable cause standards for investigations related to national security are “less precise” (Lischer 79). Despite other more specific regulations surrounding FISA, when all the players are surrounded by secrecy and protected by loose regulations, it can become easy for them to act in discriminatory ways.

Those placed on watch lists can also be subjected to great deals of surveillance by the government in ways which violate their privacy. The ACLU carefully analyzes the regulations the government has placed on watch lists and determined several areas where rights may be violated (“What's Wrong With the Government's Rules for Watchlisting”). First, watch lists cover both known and suspected terrorists, however, only “less than reasonable” suspicion of being involved in terrorist activities is required (“What's Wrong With the Government's Rules for Watchlisting” 2). Significant discrimination can occur here seeing as “concrete facts are not necessary” (“What's Wrong With the Government's Rules for Watchlisting” 2). Remarkably, 280,000 of the 1.1 million individuals on watch lists had, according to the government, no connection to terrorist groups (“What's Wrong With the Government's Rules for Watchlisting” 4). This demonstrates that despite evidence to prove otherwise, even acquittal from trials, does not necessarily warrant the removal of an individual from a watchlist as they continue to gather data on them (“What's Wrong With the Government's Rules for Watchlisting”4).

While certain US citizens are concerned that the government has too much power and secrecy when handling investigations of national security, others believe they need *more* power because they are unprepared to adequately handle threats. The hijacking of planes by Islamic terrorists to crash into New York’s Twin Towers and the Pentagon on September 11, 2001 profoundly impacted the nation, due to the loss of precious lives and a new feeling of unsafeness in America. Yet the knowledge the Intelligence Community had prior to the attacks is severely concerning (US Cong. Joint Inquiry Staff on Intelligence 2). Of the nineteen individuals involved in the attacks, sixteen had been linked to terrorist groups (US Cong. Joint Inquiry Staff on Intelligence 4). The US government also had knowledge that Al-Qaeda, the terrorist organization responsible, had been planning an attack, though they did not know where or when (US Cong. Joint Inquiry Staff on Intelligence 2). After the events, the government reviewed collective information from different agencies and determined that if watch lists and no fly lists had existed or been more prominent, the individuals responsible for the attack wouldn’t have been able to even board a plane to the United States (US Cong. Joint Inquiry Staff on Intelligence 5). Furthermore, it was discovered that several agencies had different pieces of information which would have been critical to preventing such attacks. For example, the CIA knew the exact whereabouts of certain hijackers while the NSA had connected them to Al-Qaeda (US Cong. Joint Inquiry Staff on Intelligence 6). As a result, 9/11 sparked new legislation and government action as Americans demanded the US government be more proactive in protecting citizens from terrorist attacks.

The events of 9/11 left American citizens feeling unsafe in their own country and doubtful of the government. The very fact that such a tragedy could have occured proved that the current system was ineffective and the government needed to make serious changes to better combat terrorism. Almost immediately, the government took action, from passing new laws to taking more aggressive military stances in Afghanistan (Lygutas 145). Yet, while the implementation of new policies was created to improve the situation, academics question whether the US government reacted so quickly that policies were not well planned, in turn allowing for easy violations of rights (Lygutas 145). First and foremost, a new federal agency was created, the Department of Homeland Security (DHS), with the intentions of better coordinating matters of national security between agencies (“Creation of the Department of Homeland Security”). After the Homeland Security Act passed through Congress in 2002, DHS opened in 2003 (“Creation of the Department of Homeland Security”). In 2004, the Intelligence Reform and Terrorism Prevention Act was passed, leading to the inception of the Director of National Intelligence position, again tasked with better coordinating matters of national security and piecing intelligence in a way that allows the government to stop attacks from occurring (“9-11 Commission, Homeland Security, and Intelligence Reform”). Perhaps most significant was the passing of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism, otherwise known as the Patriot Act in October of 2001, just weeks after the 9/11 attacks (“The USA PATRIOT Act: Preserving Life and Liberty”). Those in support of the government's argument claim that the Patriot Act was necessary because it eliminated several legal barriers inhibiting intelligence agencies abilities to easily share information or use intelligence gathering techniques without the previous lengthy warrant process required in different districts (“The USA PATRIOT Act: Preserving Life and Liberty”). However, there is significant concern from groups such as the ACLU particularly with Section 215 which allows the government to collect vast amounts of information about personal finances, purchases, and medical history while prohibiting those giving that information to inform the target (“End Mass Surveillance Under the Patriot Act”). Despite the Patriot Act requiring intelligence gatherers to receive an order from the Foreign Intelligence Surveillance Court before proceeding, its secrecy and lack of transparency does not provide a thorough check of legitimacy (“End Mass Surveillance Under the Patriot Act”). Conversely, this speed and secrecy is critical to ensuring certain procedures are followed while keeping potentially dangerous targets unaware, as if they are tipped off, critical information could easily be destroyed or altered (“The USA PATRIOT Act: Preserving Life and Liberty”).

In 2013, Edward Snowden, a man who once worked for the NSA, released several documents and highly sensitive information to the public exposing methods of government surveillance used on citizens domestically (Burke 1). As a whistleblower, Snowden believed abuses were occurring and released the information so that American citizens themselves could come to a conclusion about its ethicality (Hodgson). The concerns surrounding the material released were not so much about the government conducting surveillance on individuals to gain potentially useful information, but rather the breadth in their ability to do so. The majority of individuals assume that communications by phone or other messaging systems are private and that it would require judicial approval to intrude on those conversations covertly (Burke 2). However, the Snowden documents revealed that the NSA has contracts with several telecommunication companies such as Verizon, allowing for easy access to phone records and more (Burke 2). As technology has changed overtime, legislation has not, giving the government the ability to conduct surveillance as they see fit rather than create new rules each time (Hodgson). FISA, as explained earlier, operates under a certain degree of secrecy, utilizing its own court to approve or deny surveillance on certain individuals (Hodgson). In an interview with the New York Times, Snowden revealed that in the approximately 33 years of operations and 34,000 requests, only 11 were denied (Hodgson). This raises suspicion as to how closely the FISA court scrutinizes request to ensure rights of those investigated. However, supporters may argue that requests would not be brought to the court unless they were plausible and justifiable. Furthermore, if a lengthy process were to be established, threats to national security may become aware of the government’s interest in them and become harder for the government to track.

In January of 2017, President Donald Trump issued Executive Order 13769: “Executive Order Protecting the Nation from Foreign Terrorist Entry into the United States” (Exec. Order No. 13769). This prevented individuals from Iran, Iraq, Libya, Somalia, Sudan, Syria, and Yemen from entering the United States, regardless of whether or not they have legal visas or green cards (Ayoub et al., 220). The order explains that since the 9/11 attacks, several individuals used legal channels through visitor or student visas to enter the United States and commit acts of terrorism (Exec. Order No. 13769). It also explains the potential for terrorists to enter the US through a refugee status and thus lowered the acceptance of Syrian refugees to only 50,000 (Ayoub et al., 225). This lead to the indefinite detainment of several Muslim green card and visa holders at airports (Ayoub et al., 226). While it is critical that the United States prevents any individual with ties to terrorist groups from entering the United States, it is discriminatory to prevent individuals from select countries from entering the US after they have gone through proper legal channels. If the United States is concerned that individuals seeking visas and green cards have malicious intent, it would be more ethical for the government to use the application process as an opportunity to critically investigate individuals and any potential ties to terrorist groups, as opposed to a blanketed ban. Should they find no ties, individuals would be granted green cards or visas and allowed to enter the United States. This Travel Ban not only targeted very select countries and individuals that were not threats to national security, but promoted Islamophobia (as it disproportionately targeted those of a certain faith) and helped to create a stereotype of terrorists. It is necessary to realize that a vast majority of people of African and Middle Eastern origin are not terrorists, and that there exists more than a single type of threatening and potentially terrorist. When the government focuses heavily on a single type of person as a threat, they may miss the threats other individuals pose.

The future of the "War on Terror and anti-terrorism legislation is uncertain, however it appears to be headed towards increased secrecy. Given that the government holds a stake in guaranteeing the safety of Americans by preventing events such as 9/11 and acting according to public interest, it is likely they will continue taking quick action to fight terror in the United States. Since the public expects the government to decrease the possibility of attacks, they will advocate for legislation like the Patriot Act which was not only created quickly after 9/11 but provides the government with greater ability, considering a violation of privacy a small price to pay for public safety. Given that the public is not highly aware of the implications of certain policies like Section 215 of the Patriot Act which allow for the gathering of personal information or the loose regulations on the Foreign Intelligence Surveillance Courts, it is unlikely they will advocate for greater transparency (“End Mass Surveillance Under the Patriot Act”). Additionally under the Patriot Act, the government is likely to continue detaining several individuals of Middle Eastern descent for period of 6 months without trial or legal representation (Lygutas 148). In fact, since immigrants aren’t afforded the same rights as legal US citizens, and President Trump has already made efforts to prevent individuals of certain descent to enter the US through the Travel Ban, future legislation is likely to exacerbate this issue and allow detainment for several more months.

However, there are improvements which can be made to improve the current system and create a better balance of transparency and secrecy. First, citizens should be aware of the types of information the government can and is collecting. As Snowden revealed, the government has contracts with companies that have access to individuals private information and can easily access it without the customer being notified (Hodgson). Providers such as Verizon should be able to disclose to customers that the government has a right to collect information on the phone calls, contacts, etcetera of a certain user. It is evident that in order to protect the government's effectiveness, companies should not inform a customer when the government does seek that information. Second, Foreign Intelligence Surveillance Courts should create more definite guidelines as to what would grant government officials the right to begin collecting information on citizens. Rather than providing loose definitions, citizens should be conscious of the court’s structure, while still allowing requests to be entered in such courts in secrecy. Finally, if individuals on watchlists are found to have no ties to terrorist groups, they should be removed from surveillance lists . The government should only be able to conduct surveillance on individuals who may pose real threats to the United States. If an individual has been confirmed to have no relationship to terror groups, those gathering intelligence no longer have the proper justification to continue surveillance. By creating legislation and regulations with thought and caution, the United States will have anti-terrorism legislation that protects both the rights and the interests of citizens, without reacting quickly and creating unforeseen consequences.

Ultimately it is important for the United States government to gather intelligence and conduct surveillance in order to to protect citizens from becoming victims of terror attacks. However, it is important to recognize when privacy boundaries are overstepped since the government is not always transparent about how it collects intelligence. Understanding the importance the Intelligence Community plays in preventing attacks such as 9/11 and also the immense power they have in conducting surveillance on various citizens is key to forming a solution to a complex issue with many possibilities. By allowing the government the ability to gather valuable information, the nation is shielded from certain threats. However, it is unjust to provide the government with unadulterated access to American citizens with little scrutiny or transparency. It is imperative that the government conduct surveillance while simultaneously informing citizens of the guidelines surrounding their ability to do so.

Works Cited

Ayoub, Abed, and Khaled Beydoun. "EXECUTIVE DISORDER: THE MUSLIM BAN, EMERGENCY ADVOCACY, AND THE FIRES NEXT TIME." *Michigan Journal of Race & Law*, vol. 22, no. 2, 2017, pp. 215-241*. ProQuest*, <http://proxyau.wrlc.org/login?url=https://search.proquest.com/docview/1973005563?accountid=8285>.

Burke, Colin. *State-Corporate Crime in the Digital Age: A Case Study of U.S. Government Surveillance, 2001-2013*, Northern Arizona University, Ann Arbor, 2015*. ProQuest*, <http://proxyau.wrlc.org/login?url=https://search.proquest.com/docview/1697862196?accountid=8285>.

“Creation of the Department of Homeland Security.” *Department of Homeland Security*, 24 Sept. 2015, [www.dhs.gov/creation-department-homeland-security](http://www.dhs.gov/creation-department-homeland-security).

“End Mass Surveillance Under the Patriot Act.” *American Civil Liberties Union*, American Civil Liberties Union, [www.aclu.org/issues/national-security/privacy-and-surveillance/end-mass-surveillance-under-patriot-act?redirect=node%2F29187](http://www.aclu.org/issues/national-security/privacy-and-surveillance/end-mass-surveillance-under-patriot-act?redirect=node%2F29187).

Exec. Order No. 13769, 3 C.F.R. *Executive Order Protecting the Nation from Foreign Terrorist Entry into the United States.* (2017).

Hodgson, Sam. “Edward Snowden: 'Do I Think Things Are Fixed? No.'.” The New York Times, The New York Times, 7 Dec. 2016,

[www.nytimes.com/2016/12/07/opinion/edward-snowden-do-i-think-things-are-fixed-no.html](http://www.nytimes.com/2016/12/07/opinion/edward-snowden-do-i-think-things-are-fixed-no.html).

Lischer, Tracy Kenyon. "United States v. Falvey: A Constitutionality Test for Foreign Electronic Intelligence Surveillance," *North Carolina Journal of International Law and Commercial Regulation* vol. 8, no. 1 (1982-1983): p. 77-86. *HeinOnline*, <https://heinonline.org/HOL/P?h=hein.journals/ncjint8&i=95>.

Lygutas, Andrius. "Human Rights in the Context of Counter-Terrorism Measures: United States of America." *Jurisprudencija*, no. 3, 2009*. ProQuest*, <http://proxyau.wrlc.org/login?url=https://search.proquest.com/docview/1426947957?accountid=8285>

“Privacy and Surveillance.” *American Civil Liberties Union*, [www.aclu.org/issues/national-security/privacy-and-surveillance](http://www.aclu.org/issues/national-security/privacy-and-surveillance).

“The USA PATRIOT Act: Preserving Life and Liberty.” *Preserving Life and Liberty*, [www.justice.gov/archive/ll/highlights.htm](http://www.justice.gov/archive/ll/highlights.htm).

United States Congress House Permanent Select Committee on Intelligence Joint, Inquiry Staff, and United States Congress Senate Select Committee on Intelligence Joint, Inquiry Staff. *The Intelligence Community's Knowledge of the September 11 Hijackers Prior to September 11, 2001.* , 2002*. ProQuest*, <http://proxyau.wrlc.org/login?url=https://search.proquest.com/docview/1679104158?accountid=8285>

“What Is Intelligence?” *Office of the Director of National Intelligence*, [www.dni.gov/index.php/what-we-do/ic-policies-reports](http://www.dni.gov/index.php/what-we-do/ic-policies-reports).

“What's Wrong With the Government's Rules for Watchlisting.” *American Civil Liberties Union*, [www.aclu.org/other/whats-wrong-governments-rules-watchlisting](http://www.aclu.org/other/whats-wrong-governments-rules-watchlisting).

“9-11 Commission, Homeland Security, and Intelligence Reform.” *Homeland Security & Governmental Affairs*, [www.hsgac.senate.gov/issues/9-11-commission](http://www.hsgac.senate.gov/issues/9-11-commission).