Dropping Eavesdropping
PRO Case by "Coach Vance" Trefethen



The National Security Agency is tasked with collecting “signals intelligence.” It spies on electronic communications around the world much like the CIA gets information using human agents in other countries. Ending National Security Agency surveillance of US citizens and lawful permanent residents is the right thing to do. Intelligence agencies used to be directed to focus their surveillance and spying on foreign entities in foreign countries. US citizens are supposed to be protected from such activities by the 4th Amendment to the Constitution. In the 1970s, under investigation by a committee headed by Sen. Frank Church of Idaho, startling revelations came out about domestic spying. New legislation was enacted and reforms were put in place. Everyone thought the problem was solved. Then came Richard Snowden, a contractor working for NSA, who in 2013 published classified information detailing massive NSA spying on Americans. The Agency was collecting phone information, internet data, and other electronic records of Americans. Some of this ended up in the hands of the FBI, which happily took this as a back door way to conduct warrantless searches for crime investigations (or just for fun with no suspicion of crime at all) without the pesky interference of the Constitution. Americans’ freedoms are infringed, speech rights are chilled, and a state of fear descends on society when everyone thinks everything we say is being monitored.

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Respect for the Constitution and the human rights it guarantees requires us to affirm that *The NSA should end its surveillance of U.S. citizens and lawful permanent residents.*

There used to be a sharp division between the work of “law enforcement” (like the FBI) and the intelligence agencies (like NSA and CIA). Intelligence agencies were supposed to do their work outside the US and targeting foreign citizens. Law enforcement was supposed to follow the Constitution and get warrants to target US citizens here in this country.

It makes sense that we don’t expect a CIA agent to get a warrant to break into a foreign military outpost and steal some documents. And we don’t expect the NSA to get a warrant to tap the phones of a foreign official in a foreign country.

But spying in foreign countries on foreign people has gradually evolved into spying on everyone, including US citizens in this country, as we see in…

# Contention 1. Crossing the line

NSA has crossed the line from foreign intelligence collection to spying on American citizens. We see this in two sub-points.

## A. NSA is collecting communications of American citizens

Anna Ker writes in 2020 QUOTE[[1]](#footnote-1):

“In January 2018, President Trump signed the FISA Amendments Reauthorization Act of 2017 into law, which extends foreign intelligence collection powers under the controversial section 702 of the FISA Amendments Act until 2023. While section 702 officially governs foreign intelligence by U.S. authorities, it allows for a back door into the communications of U.S. citizens through programs like the NSA’s PRISM. The Reauthorization Act of 2017 further extended the NSA’s powers by allowing the interception of communications that are not only to or from a target of surveillance, but also communications which simply mention that target.”

END QUOTE. But they’re not only spying on Americans, they’re sharing the results with law enforcement, as we see in sub-point B...

## B. NSA shares data with the FBI for warrantless searches that bypass the 4th Amendment

Human Rights Watch reported in 2017 QUOTE:

“Once the government has gathered data under Section 702 for “foreign intelligence,” the FBI can search it for evidence of a criminal offense – any criminal offense. To do so, it can use search terms that identify or relate to US persons, such as their e-mail addresses. Nongovernmental  groups often refer to these queries using US-person information as “backdoor searches,” since they effectively evade protections imposed by the Fourth Amendment to the US Constitution.”[[2]](#footnote-2)

END QUOTE. And that leads us to…

# Contention 2. Harming our country and our freedoms

We see this in 2 sub-points…

## A. Rights violated

Mass surveillance of Americans that bypasses the Constitution harms our nation by compromising privacy rights and First Amendment free expression rights. Human Rights Watch explained in 2017 QUOTE:

“In authorizing massive surveillance programs and failing to put strong safeguards in place to prevent the abuse of these highly intrusive monitoring powers, the law violates the human right to privacy. It also jeopardizes free-expression rights, since people who know the government may spy on them without good reason may be less likely to express or explore controversial views or discuss sensitive personal matters.”[[3]](#footnote-3)

END QUOTE. And when rights are constantly violated, we find ourselves at Subpoint B…

## B. State of fear

The National Coalition Against Censorship explained the further impact in 2017 QUOTE:

 “Government surveillance throws a shadow over all communication, including social media, by making people afraid that the government is looking over their shoulders. In order to protect all individuals’ rights to free speech and expression, we must resist attempts to allow blanket surveillance techniques under the guise of security.”[[4]](#footnote-4)

END QUOTE. And what benefits do we get in exchange for giving up our privacy and our freedom and living in fear? Nothing, as we see in…

# Contention 3. No justification

Fear of terrorism and the assurance that the government is protecting our safety by all this spying is the usual justification. Except that it doesn’t actually make us safer. Anna Ker summarized the futility of this argument in 2020 when she wrote QUOTE:

 “In response to the international public outcry triggered by the Snowden revelations, the Obama administration went to great lengths to justify the U.S. intelligence community’s invasion into the private lives of its citizens. In a speech during a visit to Berlin in 2013, Obama claimed he knew of over 50 terrorist threats that had been thwarted due to the information collected by the NSA’s unlawful spying operations, but did not offer examples. In October of the same year, the then-NSA director, General Keith Alexander, was called to testify before the Senate Judiciary Committee and failed to substantiate the stated justifications for the surveillance programs. “Alexander cited only one instance when an intercept detected a potential threat: a Somali taxi driver living in San Diego who sent $8,500 to al-Shabab, his home country’s notorious terrorist group,” [reported](https://foreignpolicy.com/2016/09/07/every-move-you-make-obama-nsa-security-surveillance-spying-intelligence-snowden/) Foreign Policy. In December 2013, a panel established to review NSA operations came to the conclusion that zero terrorist attacks were prevented by the NSA under any legislation that was claimed to have been passed for the purpose of twarting attacks.”[[5]](#footnote-5)

END QUOTE.

So in conclusion, NSA should stop surveillance of US citizens and lawful permanent residents because it’s an unjustifiable infringement on our freedoms.

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# SCOPE OF THE PROBLEM

## Amount of US citizen surveillance is not just “incidental,” it’s “large” and invades privacy

Human Rights Watch 2017. (international human rights advocacy NGO) 14 Sept 2017 “Q & A: US Warrantless Surveillance Under Section 702 of the Foreign Intelligence Surveillance Act” [https://www.hrw.org/news/2017/09/14/q-us-warrantless-surveillance-under-section-702-foreign-intelligence-surveillance#](https://www.hrw.org/news/2017/09/14/q-us-warrantless-surveillance-under-section-702-foreign-intelligence-surveillance)

The government describes this surveillance of US persons as “incidental,” but it potentially includes a vast number of calls, e-mails, chats, text messages, and other conversations. Executive branch officials have claimed it would not be feasible for them to provide estimates of the size of this “incidental” snooping on US persons, but David Medine, who then chaired the independent Privacy and Civil Liberties Oversight Board, testified before Congress in 2016 that it is “large” and might include “family photographs, love letters, personal financial matters, discussions of physical and mental health, and political and religious exchanges.”

# INADEQUATE SAFEGUARDS

## FISA warrants are issued in secrecy

Anna D. Ker 2020. (Berlin-based writer/editor and digital rights advocate with an academic background in law and politics) 22 Jan 2020 “United States of Surveillance” <https://theprivacyissue.com/government-surveillance/united-states-of-surveillance-us-history-spying>

Signed into law in 1975, the Foreign Intelligence Surveillance Act (FISA) establishes procedures for the government’s collection of foreign powers and their agents. It also permits surveillance against U.S. citizens and other people on U.S. territory if the surveillance agency can demonstrate probable cause that the person is engaged in espionage or terrorism on behalf of a foreign power. While the Fourth Amendment of the U.S. Constitution ordinarily requires law enforcement to apply for a court-issued warrant to conduct a search, warrants issued under FISA are processed by a specially-established court, the Foreign Intelligence Surveillance Court (FISC), which conducts its hearings in utmost secrecy.

## FISA 702 contains a loophole allowing mass surveillance

Trevor Aaronson 2019 (journalist) 10 Oct 2019 “A DECLASSIFIED COURT RULING SHOWS HOW THE FBI ABUSED NSA MASS SURVEILLANCE DATA” <https://theintercept.com/2019/10/10/fbi-nsa-mass-surveillance-abuse/>

Under traditional FISA authorities established in 1978, the U.S. government may intercept the communications of agents of foreign governments and terrorist organizations if the intelligence community can demonstrate legal justification to the FISA court. The expansion of FISA authorities, known as Section 702, allows for monitoring to be approved in bulk by the court through what is essentially a recipe for mass surveillance. This surveillance cannot legally target Americans but sweeps up all communications that fit the so-called selectors — akin to search terms, as well as other data based on patterns — and can produce enormous amounts of incidentally collected information, including communications from U.S. citizens. This data is stored and can later be searched by government agencies.

## FISA protections don’t work – too much room for abuse

Kieran McCarthy 2020 (journalist) US Congress: Spying law is flawed, open to abuse, and lacking in accountability – so let's reauthorize it 12 March 2020 THE REGISTER <https://www.theregister.com/2020/03/12/us_congress_spying_law/>

At the heart of that issue was the targeted surveillance of one of the Trump campaign's key figures, Carter Page, whom the FBI feared was collaborating with the Russian government. A subsequent review of the process run through to authorize and then renew surveillance on Page revealed that FBI agents had purposefully misled judges at the secret court that approves such measures and even doctored documents in order to keep the surveillance going. Due to an almost entirely opaque process in which there is rarely an opportunity for counter-arguments, critics have long warned that the process is wide open to abuse. Efforts by civil liberties groups to even find out what the process is have been met with years of procedural delays and obfuscation.

## Loopholes allow surveillance of communications of US persons

Human Rights Watch 2017. (international human rights advocacy NGO) 14 Sept 2017 “Q & A: US Warrantless Surveillance Under Section 702 of the Foreign Intelligence Surveillance Act” [https://www.hrw.org/news/2017/09/14/q-us-warrantless-surveillance-under-section-702-foreign-intelligence-surveillance#](https://www.hrw.org/news/2017/09/14/q-us-warrantless-surveillance-under-section-702-foreign-intelligence-surveillance)

By law, the government must adopt “targeting procedures” that are “reasonably designed” to prevent it from gathering communications that are solely between people the intelligence agencies know to be in the United States – or US persons abroad. However, this restriction leaves plenty of legal room for the government to sweep up potentially huge numbers of communications to or from Americans.

## Not solved yet: Mass surveillance still ongoing

Robert E.G. Beens 2020 (member of Forbes Technology Council; Co-Founder and CEO of Startpage, a search engine) 25 Sept 2020 “The State Of Mass Surveillance” <https://www.forbes.com/sites/forbestechcouncil/2020/09/25/the-state-of-mass-surveillance/?sh=5596d1d9b62d>

So, what’s the state of mass surveillance by the U.S. government today, and where might it all go from here? The rise of internet usage has certainly made it significantly easier for mass surveillance to take hold in a greater way. Just think about the amount of data people reveal about themselves when they use nonprivate search, for example. It’s disappointing, but perhaps not surprising, that the U.S. Senate voted to allow law enforcement to continue collecting citizens’ search and browsing history.  Big tech companies in particular often overlap with State interests by getting called upon to provide information in a “surveillance intermediary” role, but really this law suggests that any company based out of the U.S. can be forced to operate as a front post for U.S. government agencies.  Beyond nonprivate search, the data grasp easily expands with new social media and technology tools. And even when these technologies aren’t based on U.S. soil, the American government often still manipulates mass surveillance to its advantage.

# NO JUSTIFICATION

## NSA surveillance isn’t fighting terrorism

Aaron Holmes 2020 (journalist) 2 Sept 2020 “The NSA phone-spying program exposed by Edward Snowden didn't stop a single terrorist attack, federal judge finds” BUSINESS INSIDER <https://www.businessinsider.com/nsa-phone-snooping-illegal-court-finds-2020-9>

The NSA's program to collect phone records was first brought to light by the former NSA contractor Edward Snowden in 2013. Amid public outrage following the revelation, the agency defended the program by claiming it had helped thwart terrorist attacks. But the NSA could point to only one example: the case of Basaalay Moalin. On Wednesday, the appeals court ruled that not only was the collection of Moalin's phone records illegal, but it was ultimately irrelevant to the conviction. n other words, there is zero evidence the NSA's phone-records program stopped a terrorist attack, contradicting the public statements of US intelligence officials following Snowden's revelation, Judge Marsha Berzon said in the ruling. "To the extent the public statements of government officials created a contrary impression, that impression is inconsistent with the contents of the classified record," she wrote.

1. Anna D. Ker 2020. (Berlin-based writer/editor and digital rights advocate with an academic background in law and politics) 22 Jan 2020 “United States of Surveillance” https://theprivacyissue.com/government-surveillance/united-states-of-surveillance-us-history-spying [↑](#footnote-ref-1)
2. Human Rights Watch 2017. (international human rights advocacy NGO) 14 Sept 2017 “Q & A: US Warrantless Surveillance Under Section 702 of the Foreign Intelligence Surveillance Act” https://www.hrw.org/news/2017/09/14/q-us-warrantless-surveillance-under-section-702-foreign-intelligence-surveillance# [↑](#footnote-ref-2)
3. Human Rights Watch 2017. (international human rights advocacy NGO) 14 Sept 2017 “Q & A: US Warrantless Surveillance Under Section 702 of the Foreign Intelligence Surveillance Act” https://www.hrw.org/news/2017/09/14/q-us-warrantless-surveillance-under-section-702-foreign-intelligence-surveillance# [↑](#footnote-ref-3)
4. National Coalition Against Censorship 2017. (alliance of more than 50 national non-profit groups, advocating for First Amendment rights) 26 Oct 2017 “GOVERNMENT SURVEILLANCE THREATENS FREE SPEECH: SUPPORT FOR THE USA RIGHTS ACT AND OPPOSITION TO DHS SOCIAL MEDIA PROTOCOLS” https://ncac.org/news/blog/government-surveillance-threatens-free-speech-support-for-the-usa-rights-act-and-opposition-to-dhs-social-media-protocols [↑](#footnote-ref-4)
5. Anna D. Ker 2020. (Berlin-based writer/editor and digital rights advocate with an academic background in law and politics) 22 Jan 2020 “United States of Surveillance” https://theprivacyissue.com/government-surveillance/united-states-of-surveillance-us-history-spying [↑](#footnote-ref-5)