Much Ado About Nothing  
CON 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. Intelligence agencies are/were supposed to focus their efforts on foreign targets, while law enforcement agencies were supposed to follow the Constitution and get search warrants before eavesdropping on American citizens.

In 2013, a contractor working at an NSA facility, Richard Snowden, published classified information showing the agency was collecting data, not just on foreign entities, but on American citizens. This opened the door to great controversy over the extent to which the US government should be spying on its own citizens.

This “CON” case argues that ending National Security Agency surveillance of US citizens and lawful permanent residents is the wrong thing to do. The data NSA is collecting on US citizens is data that’s already in the public domain anyway, since your bank, phone company, internet provider and Facebook already have it. By participating in the modern world, you long ago abandoned any claim of privacy on data you are sending out into cyberspace. People who report on the internet their love life, meals, political views and every other minor event in their lives can hardly complain their privacy is being invaded when such information is read by people they don’t know. There are already safeguards in place to prevent abuses of NSA data collection. And collection of large amounts of information can help spot patterns or identify anomalies that can thwart terrorists or other threats before they strike, saving lives and improving our national security.

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We will deny that *The NSA should end its surveillance of U.S. citizens and lawful permanent residents.* People who report on the internet their love life, meals, political views and every other minor event in their lives can hardly complain their privacy is being invaded when such information is read by people they don’t know. There are already safeguards in place to prevent abuses of NSA data collection. And collection of large amounts of information can help spot patterns or identify anomalies that can thwart terrorists or other threats before they strike, saving lives and improving our national security. We’ll cover this in 3 Contentions, starting with…

# Contention 1. No big deal

The data NSA is surveilling about American citizens is simply no big deal. We see this in two sub-points. First, Sub-point A…

## A. The data was never “private” to begin with

Univ. of Chicago law professor Richard Posner was asked his opinion about NSA surveillance shortly after the Snowden revelations broke in 2013. His reply was insightful, because he said QUOTE:

“We already give the government an enormous amount of information about our lives, and seem to have gotten used to the idea that an Internal Revenue Service knows our finances, or that an employee of a government hospital knows our medical history, or that social workers (if we are on welfare) know our relationships with family members, or that public school teachers know about our children’s abilities and personalities. The information vacuumed up by the N.S.A. was already available to faceless bureaucrats in phone and Internet companies — not government employees, but strangers just the same. Many people write as though we make some great sacrifice by disclosing private information to others, but it is in fact simply the way that we obtain services we want — whether the market services of doctors, insurance companies, Internet service providers, employers, therapists and the rest, or the nonmarket services of the government like welfare and security.”[[1]](#footnote-1)

END QUOTE. There’s a lot of hype in the media about “losing our privacy” but the fact is we lost it long ago. All of that data has been in the public domain for years – it’s the price we have chosen to pay to live in the modern technological world. And that explains the results in Sub-point B…

## B. Americans feel no impact.

Americans are not having their freedoms “chilled,” their rights oppressed nor are they lying awake at night frightened by NSA surveillance. In 2016 Jeremy Kommel-Bernstein wrote QUOTE[[2]](#footnote-2):

“With a population that is largely ambivalent about government intrusion into their lives, there is always the opportunity for the National Security Agency, Federal Bureau of Investigation (FBI), or any of the other intelligence and law enforcement agencies to push the boundaries of acceptable conduct in their ongoing quest to secure the United States and American citizens abroad from the threat of a terrorist attack. Following the publication of articles in 2006 regarding illegal NSA activities, Americans split fairly evenly on the issue of whether the U.S. government should conduct domestic surveillance as part of its counterterrorism strategy. After the Snowden leaks, by contrast polls showed a significant majority said secret domestic surveillance was acceptable.”

END QUOTE. Yes, you heard that right. After the Snowden revelations, MORE Americans supported surveillance than did before.

# Contention 2. Safeguards

Even if the data we already put out there were private, and even if it were bad that NSA saw it, there are safeguards in place to prevent violations of civil rights. First, sub-point A…

## A. Effective safeguards in place

NSA mass surveillance programs have several oversight and risk reduction processes in place to minimize the threat to the civil rights of American citizens. Former Defense Intelligence Agency chief David Shedd explained in 2018 QUOTE:

“As for the accusation regarding violation of privacy rights and civil liberties, there is no evidence that the data collection program run by [National Security Agency](https://www.nsa.gov/) deliberately targets Americans. The agency follows rigorous procedures established to ensure that any suspect targeted for surveillance is neither inside the United States nor an American citizen. Those procedures must be approved by the [Foreign Intelligence Surveillance Court](http://www.fisc.uscourts.gov/). What if the NSA, either incidentally or as part of an authorized investigation, collects information on someone subsequently determined to be a U.S. citizen? The agency must take extraordinary measures to protect that person’s identity. Following a minimization procedure, it will determine whether such information can even be retained. If the information pertains to an American in whom there is no national security interest, it may be deleted.” [[3]](#footnote-3)

END QUOTE. So the threat to civil rights is already minimal. But if you’re still worried, focus your worry at the real source of concern. It’s not NSA, as we see in Subpoint B…

## B. The Real solution is reform the FBI

Collecting data is NSA’s job. Misusing it is what the FBI does, and we need to solve the real problem rather than pursue false solutions that make our nation less safe and don’t help anyone. Ed Meese and Charles Stimson explained in 2020 QUOTE:

“While there may well be a need for Congress to take action to address the very real misuses of FISA authorities by a select few former or current FBI officials in recent years, changing core authorities that protect the safety of our citizens—or leaving them expired—is absolutely the wrong approach. Similarly, making changes that have little real benefit for the American public—who want the protection of these national security authorities, while also maintaining appropriate safeguards for their privacy and civil liberties—is also unwise.”[[4]](#footnote-4)

END QUOTE. And that leads us into our final contention…

# Contention 3. National security

David Shedd summarized our entire position in 2018 as he explained how the safeguards protect our rights while the intelligence protects our lives. He wrote QUOTE:

“The program authorizes U.S. intelligence officials to mount and sustain surveillance on foreigners outside the country who are suspected of presenting a national security threat to the United States, friends and allies. The surveillance program has uncovered all kinds of invaluable information, from terrorist plots and changes in terrorist tactics to plans to spread weapons of mass destruction and escalate cyberattacks. In the course of gathering this information, the Section 702 program has also uncovered information about American citizens in contact with the foreigners under surveillance. The architects of the law foresaw this happening and took pains to make sure that the program would be conducted in a way that respects the constitutional rights and privacy interests of all U.S. citizens. They even gave all three branches of government oversight responsibilities, to safeguard against abusive practices taking root in the program.”[[5]](#footnote-5)

END QUOTE. So in conclusion, it does no harm; it has adequate safeguards; and it makes us safer. If there have been abuses, reforming the system with better oversight of the FBI is the answer, not gutting NSA’s ability to protect national security. With everything to gain and nothing to lose, the NSA should certainly not stop surveillance of US citizens and lawful permanent residents.

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# NO BIG DEAL

## ACLU lawyer admits: Problem, if it exists, isn’t big enough to justify ending collection. Just need good safeguards

Timothy Edgar 2018 (senior fellow ) 25 June 2018 “The Supreme Court just struck a blow against mass surveillance” WASHINGTON POST <https://www.washingtonpost.com/opinions/the-supreme-court-just-struck-a-blow-against-mass-surveillance/2018/06/25/1b5ee510-7653-11e8-b4b7-308400242c2e_story.html>

I knew, because the intelligence community had taken a chance on hiring me — a lawyer for the American Civil Liberties Union and a critic of surveillance — in a new office dedicated to ensuring privacy protections in intelligence programs. My work included reviewing some of the NSA’s most sensitive programs, including the massive telephone records program that was now dominating the headlines. I urged strong privacy safeguards for the program. Still, it was surprisingly hard to argue that such a sweeping program of domestic data collection should be ended altogether. The notion that we surrender our privacy by providing our information to telephone companies made no sense in the digital age, but it was deeply embedded in the law. According to the secret [court](https://fas.org/irp/agency/doj/fisa/fisc-082913.pdf) that reviews intelligence surveillance, there simply was “no Fourth Amendment interest” in metadata provided to phone companies. It didn’t matter whether the government was looking for the records of 300 million people or just one. Any number multiplied by zero was still zero, the court reasoned.

## No worries about “backdoor” warrantless searches nor political abuse

David Shedd 2018 (former acting director of the Defense Intelligence Agency) 1 Jan 2018 “Securing the Homeland Means Reauthorizing Bulk Surveillance” <https://www.heritage.org/homeland-security/commentary/securing-the-homeland-means-reauthorizing-bulk-surveillance>

The Section 702 program cannot be easily abused for political purposes, nor is it a “backdoor” that allows the warrantless collection of information. FBI Director Chris Wray recently likened placing limits on the Section 702 program to a “[self-inflicted wound](https://www.myheritage.org/news/directors-of-dni-nsa-and-fbi-come-to-heritage/).”

## Privacy is dead. Get over it.

Adam Cochran 2020 (journalist) 3 March 2020 “You have zero privacy. Get over it.” <https://www.beaconseniornews.com/2020/03/03/327977/you-have-zero-privacy-get-over-it->

Scott McNealy, co-founder and former CEO of Sun Microsystems, famously told a group of reporters, “You have zero privacy anyway…Get over it!” The year was 1999. The Internet as we know it was barely five years old. There was no Facebook, Google or Twitter. eBay was four years old, but they were barely starting to accept credit cards. Paypal wouldn’t exist for another three years. If McNealy observed that privacy was obsolete in 1999, what must he think of today’s world of social media, smartphones and international commerce via the Internet? Over the next 10-20 years, it will be virtually impossible to live off the grid or be a digital hermit.

# SAFEGUARDS

## Multiple safeguards prevent abuse of data collection at NSA

David Shedd 2018 (former acting director of the Defense Intelligence Agency) 1 Jan 2018 “Securing the Homeland Means Reauthorizing Bulk Surveillance” <https://www.heritage.org/homeland-security/commentary/securing-the-homeland-means-reauthorizing-bulk-surveillance>

To forestall the possibility of personal vendettas or other non-security interests leading to surveillance requests, no single individual at the NSA is authorized to make a collection request. Any request for a phone number or email address to be monitored undergoes independent review by at least three people before it is tasked within the NSA. Every collection request made by the NSA is independently reviewed by the director of national intelligence’s legal team and by the Department of Justice. Every year, the Department of Justice and the director of national intelligence must give the FISC written descriptions of how NSA proposes to use this legal provision in the coming year and describe the controls that are in place to ensure that the proposed collection is lawfully implemented. Many other safeguards are in place as well.

## Solution is fixing FBI abuses, not blocking intelligence we need to stop security threats

Ed Meese and Charles Stimson 2020. (Meese – former US Attorney General. Stimson - Senior Legal Fellow & Manager, National Security Law Program. Letter is signed by 9 other former national security and defense experts and former officials, including Michael Mukasey, another former US Attorney General) 3 June 2020 “An Open Letter to Congress on Foreign Intelligence Surveillance Act Reform” <https://www.heritage.org/defense/commentary/open-letter-congress-foreign-intelligence-surveillance-act-reform>

“Instead of continuing to pursue the current course, which has left us exposed to serious threats for months, Congress ought to act now to reauthorize the expired authorities and then separately take the time necessary to fully consider limited changes—such as perhaps making certain FBI internal procedures statutorily required—that are directed at actual problems that have taken place in recent years.  In addition, Congress should focus its efforts on conducting strong oversight of existing authorities and holding the FBI and Justice Department responsible for disciplining—and, where appropriate, prosecuting—those involved in prior abuses. That approach, in our view, is vastly better than continued delay and any legislative approach that would take out, brick by brick, the key authorities that are the bedrock of the American public’s protection against terrorists, spies, and other agents of a foreign power who would seek to destroy our way of life.”

# NATIONAL SECURITY

## 1) FBI is to blame for abuses, not NSA. 2) New safeguards are being put in place. 3) Over-reacting will damage our ability to block terrorists

John Malcolm and Zack Smith 2020 (Malcolm - Vice President for the Institute for Constitutional Government and Director of the Meese Center for Legal & Judicial Studies; J.D. from Harvard Law School. Smith - legal fellow in the Meese Center for Legal and Judicial Studies at The Heritage Foundation; J.D. from Univ of Fla.) 4 Apr 2020 “FBI’s Failure to Be "Scrupulously Accurate" With FISA Information Undermines Public Trust and the Process “ (brackets added) <https://www.heritage.org/crime-and-justice/commentary/fbis-failure-be-scrupulously-accurate-fisa-information-undermines>

The new report states that in connection with its ongoing audit, the inspector general’s office “will conduct further analysis of the deficiencies identified in our work to date and of FBI FISA renewals,” and will be “expanding the audit’s objective to also include FISA application accuracy efforts performed within NSD [National Security Division of the Justice Dept.].”  As a result of all this, the FBI may well have undermined the intelligence community’s ability to use some FISA-related tools in the future. A tough [debate](https://www.heritage.org/crime-and-justice/commentary/house-oks-fisa-reforms-wake-fbis-carter-page-fiasco) has been raging in Congress about the propriety of re-authorizing certain [controversial](https://www.nationalreview.com/2020/03/no-to-fisa-reform/) FISA provisions.  By failing to be “scrupulously accurate” with the information provided to the FISA court, the FBI has given ammunition to FISA’s opponents, potentially damaging our ability to conduct thorough investigations against foreign governments and terrorists who mean us harm.

1. Prof. Richard Posner 2013 (professor at the University of Chicago Law School) 9 June 2013 “Is the N.S.A. Surveillance Threat Real or Imagined?” NEW YORK TIMES <https://www.nytimes.com/roomfordebate/2013/06/09/is-the-nsa-surveillance-threat-real-or-imagined> [↑](#footnote-ref-1)
2. Jeremy Kommel-Bernstein 2016 (master’s degree candidate, Univ. of Missouri, Defense & Strategic Studies) LAW V. SAFETY: BALANCING DOMESTIC SURVEILLANCE’S LEGAL DEFICIENCIES AGAINST THE NECESSITY OF COUNTERTERRORISM May 2016 <https://bearworks.missouristate.edu/cgi/viewcontent.cgi?article=3360&context=theses> [↑](#footnote-ref-2)
3. David Shedd 2018 (former acting director of the Defense Intelligence Agency) 1 Jan 2018 “Securing the Homeland Means Reauthorizing Bulk Surveillance” <https://www.heritage.org/homeland-security/commentary/securing-the-homeland-means-reauthorizing-bulk-surveillance> [↑](#footnote-ref-3)
4. Ed Meese and Charles Stimson 2020. (Meese – former US Attorney General. Stimson - Senior Legal Fellow & Manager, National Security Law Program. Letter is signed by 9 other former national security and defense experts and former officials, including Michael Mukasey, another former US Attorney General) 3 June 2020 “An Open Letter to Congress on Foreign Intelligence Surveillance Act Reform” <https://www.heritage.org/defense/commentary/open-letter-congress-foreign-intelligence-surveillance-act-reform> [↑](#footnote-ref-4)
5. David Shedd 2018 (former acting director of the Defense Intelligence Agency) 1 Jan 2018 “Securing the Homeland Means Reauthorizing Bulk Surveillance” <https://www.heritage.org/homeland-security/commentary/securing-the-homeland-means-reauthorizing-bulk-surveillance> [↑](#footnote-ref-5)