

Tuesday, October 1, 2013

PF November 2013 - NSA Introduction and Definitions

Resolved: The benefits of domestic surveillance by the NSA outweigh the harms.

Introduction

We knew the topic was going to focus on domestic spying and so we begin our analysis of the resolution an overwhelming majority of you want to debate. While I personally thought the debate should have been broadened beyond the activities of the NSA, there is nevertheless, plenty in this resolution which promises a balanced debate between Pro and Con. It is a classic debate over whether or not national security interests outweigh the citizens' right to privacy (if indeed there is such a bona-fide right), especially in this age of terrorism as a means of achieving political ends. At minimum we are pitting the Fourth Amendment of the U.S. Constitution against the duty of the government to protect itself and its people. This debate will be fought in the courts since the [American Civil Liberties Union \(ACLU\) has brought a lawsuit against the NSA](#) claiming they have violated the first and fourth amendments.

As is usual here on the Everyday Debate Blog, before discussing the possible Pro and Con positions, we will first break-down the resolution; extract its meaning and discuss the intent behind it.

Definitions

benefits

Merriam-Webster;
something that promotes well-being; useful aid

domestic

Merriam-Webster
of, relating to, or made in your own country ;relating to or involving someone's home or family; relating to the work (such as cooking and cleaning) that is done in a person's home

surveillance

Merriam-Webster
the act of carefully watching someone or something especially in order to prevent or detect a crime

domestic surveillance

Small 2008:

Domestic surveillance is a subset of intelligence gathering. Intelligence, as it is to be understood in this context, is "information that meets the stated or understood needs of policy makers and has been collected, processed and narrowed to meet those needs" (Lowenthal 2006, 2). In essence, domestic surveillance is a means to an end; the end being intelligence. The intelligence community best understands domestic surveillance as the acquisition of nonpublic information concerning United States persons (Executive Order 12333 (3.4) (i)). With this definition domestic surveillance remains an overly broad concept.

This paper's analysis, in terms of President Bush's policies, focuses on electronic surveillance; specifically, wiretapping phone lines and obtaining caller information from phone companies. Section f of the USA Patriot Act of 2001 defines electronic surveillance as:

[T]he acquisition by an electronic, mechanical, or other surveillance device of the contents of any wire or radio communication sent by or intended to be received by a particular, known United States person who is in the United States, if the contents are acquired by intentionally targeting that United States person, under circumstances in which a person has a reasonable expectation of privacy and a warrant would be required for law enforcement purposes; by the NSA

National Security Agency

The NSA works under the authority of the Executive branch of the U.S. Government. It is an arm of the Department of Defense. Its Executive Director is James Clapper, appointed by President Obama.

The role of the NSA according to its own website is as follows:

The National Security Agency/Central Security Service (NSA/CSS) leads the U.S. Government in cryptology that encompasses both Signals Intelligence (SIGINT) and Information Assurance (IA) products and services, and enables Computer Network Operations (CNO) in order to gain a decision advantage for the Nation and our allies under all circumstances.

Executive Order 12333 originally issued 4 December 1981, delineates the NSA/CSS roles and responsibilities. In part, the Director, NSA/Chief, CSS is charged to:

- Collect (including through clandestine means), process, analyze, produce, and disseminate signals intelligence information and data for foreign intelligence and counterintelligence purposes to support national and departmental missions;
- Act as the National Manager for National Security Systems as established in law and policy, and in this capacity be responsible to the Secretary of Defense and to the Director, National Intelligence;
- Prescribe security regulations covering operating practices, including the transmission, handling, and distribution of signals intelligence and communications security material within and among the elements under control of the Director of the National Security Agency, and exercise the necessary supervisory control to ensure compliance with the regulations.

EO 12333 was amended on 31 July 2008 in order to:

- Align EO12333 with the Intelligence Reform and Terrorism Prevention Act of 2004;
- Implement additional recommendations of the 9/11 and WMD Commissions;
- Further integrate the Intelligence Community and clarify and strengthen the role of the DNI as the head of the Community;
- Maintain or strengthen privacy and civil liberties protections.

[Details of EO 12333 can be found here.](#)

outweigh(s)

Merriam-Webster

to be greater than (someone or something) in weight, value, or importance

harm(s)

Merriam Webster

physical or mental damage or injury; something that causes someone or something to be hurt, broken, made less valuable or successful, etc.

Interpretation and Intent

Unless you have been living in a cave, you have no doubt heard of Edward Snowden, former employee of an NSA contractor who revealed information about the formerly top-secret activities of the NSA with respect to its domestic surveillance programs. So we interpret the resolution to mean the clandestine intelligence gathering activities of the NSA from non-public sources (i.e. private citizens) has advantages which are more important than any damages which arise as a consequence.

The one thing troubling about the wording of this resolution is, it does not specify, "warrantless". By this I am referring to the legal document commonly called a search warrant which authorizes the agents of the government to collect information which may constitute evidence in your criminal prosecution. For the most part, we are accustomed to the idea that prosecutors may seek warrants from the court in order to seek information or items which are ordinary protected by the fourth amendment. But in this case, the "warrants" are granted by the so-called FISA (Foreign Intelligence Service Agency) court which is another agency under the authority of the executive, not the judicial branch of government. So the question is, if you are not accused of a crime, if there is no probable cause, is it acceptable in the interests of national security for an agency to collect your private information? In order to answer the question, the resolution does not necessarily ask us to debate the legality per se. It asks us to debate whether or not the benefits outweigh the harms and before that can be done, the benefits and harms must be identified. When the benefits and harms are identified, the debaters must then supply criteria for the judge to make a decision.

One such criterion is a cost-benefit analysis as perfectly setup by Mueller and Stewart.
Mueller and Stewart 2013:

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...

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—not a great many for seven years of effort...

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 dollars that is impressive even by Washington standards...

.As I have many people say when discussing the activities of the NSA and domestic spying in general, "hey as long as I have nothing to hide why should I care if the government reads my internet posts or collects my calls?" At the other extreme of this argument is idea the loss of rights puts us on the slippery-slope to complete government intrusion into private lives. The real issue in this debate, what kind of negative impacts can Con truly invoke and what is the framework the judge needs to decide?

[The Pro position is posted here.](#)

Domestic Surveillance for International Terrorists: Presidential Power and Fourth Amendment Limits
RICHARD HENRY SEAMON, 2008

<http://www.hastingsconlawquarterly.org/archives/V35/I3/seamon.pdf>

His Eyes are Watching You: Domestic Surveillance, Civil Liberties and Executive Power during Times of National Crisis

MATTHEW L. SMALL, United States Air Force Academy, 2008

<http://www.thepresidency.org/storage/documents/Fellows2008/Small.pdf>

National Security Agency

<http://www.nsa.gov/>

National Archives

Executive Order 12333--United States intelligence activities

<http://www.archives.gov/federal-register/codification/executive-order/12333.html>

3 Questions About NSA Surveillance; The Chronicle of Higher Education

John Mueller and Mark G. Stewart; June 13, 2013

<http://chronicle.com/blogs/conversation/2013/06/13/3-questions-about-nsa-surveillance/>