

Do the NSA's Phone and Internet Monitoring Programs Make Sense?

By: Jeffrey A. Miron- June 13, 2013

The National Security Administration's monitoring of Americans' phone calls and internet communications raises a fundamental question: when is increased security worth reduced privacy or civil liberty?

The answer depends, in part, on how often these NSA actions prevent terrorist attacks. If the NSA could provide multiple, convincing examples of terror attacks unambiguously prevented by its phone and internet surveillance programs, many Americans would regard the implied privacy and civil liberty infringements as an acceptable price of fighting terror.

But the NSA has not provided such examples. The NSA does claim that phone or internet data from its monitoring efforts -- as opposed to its targeted searches of phone records or emails, backed by specific warrants -- have stopped terrorist attacks, but the number of claimed successes appears to be small.

Even in these cases, moreover, the "foiled attacks" were not ones well underway or inevitable, diffused only because the NSA's information allowed authorities to intervene. Instead, the known incidents were at intermediate stages and might never have come to fruition.

Similarly, many avoided attacks or plots have been foiled by means other than NSA's broad-based, routine monitoring. The Shoe Bomber, for example, was stopped by fellow airplane passengers. The Times Square Car Bomber was foiled by street vendors who noticed the car bomb and informed police.

Real attacks do occur, but for each there may be dozens or hundreds of would-be terrorists with delusions of grandeur, hatching hypothetical plots with their friends, yet lacking the means or true intent to carry them out. By monitoring so many phone calls and emails, the NSA is mainly wasting its time.

The absence of convincing evidence for these NSA programs is all the more striking because the NSA faces strong incentives to publicize its successes, if they exist. Such evidence would quiet criticism and generate public kudos. The NSA might fear that publicizing recent successes would compromise future efforts, but this concern diminishes as time passes, allowing for eventual, safe disclosure of successfully prevented attacks.

The obvious inference, therefore, is that the NSA monitoring programs prevent few if any terrorist attacks.

Whether these programs make sense, therefore, depends on whether the implied privacy infringements are miniscule or substantial. Some Americans would accept a minor reduction in privacy for even a small decrease in terrorism.

The risks to privacy and civil liberty, however, are not trivial. United States intelligence authorities have misused their powers in past, as when J. Edgar Hoover used the FBI to spy on "subversives" or Richard Nixon encouraged the IRS to investigate his political enemies. The recent IRS targeting of conservative 501c(4) applications also illustrates the scope for politicization of government actions.

And anyone tempted to trust one political party or the other to use its security powers wisely should remember that the other party will someday be in charge and have access to these same powers.

In considering the NSA's monitoring of phone and internet communication, therefore, the tradeoff Americans face is not between large and easily demonstrated benefits to national security against modest and easily limited costs to privacy and civil liberty.

The choice is between uncertain and plausibly minor benefits against significant, even disastrous costs.

The case against these NSA programs is weaker still because the United States has an alternate method of reducing terrorist attacks: stop invading, occupying, stationing troops in, or launching drone strikes in the Middle East.

The vast majority of foreign terrorists come from countries where the U.S. has an active and unwanted presence, thereby stimulating the demand for terrorism.

Countless examples -- drug use, prostitution, gambling, immigration, and terrorism - show that when countries use "supply side" (cost-increasing) policies to deter behavior for which substantial demand exists, those policies fail. For most of these behaviors, we therefore have no choice but to accept them.

For terrorism, however, we can save money, avoid infringements on civil liberties, and reduce the demand for terrorism in one fell swoop. The 2009 New York Subway terrorist that the NSA claims it caught because of its phone monitoring has stated that he planned his attacks because of the U.S. presence in Afghanistan. And this theme -- anger over a U.S. presence in a Muslim country -- echoes repeatedly from terrorists and their spokesmen.

So the NSA's phone and internet monitoring programs are a costly and dangerous non-solution to a problem that could be reduced markedly by eliminating other costly policies. How can the latter approach not make more sense?