

# Paranoia

# Topicality-

## **1. Less than 50% is insubstantial**

**Brown 94** (Mark R., Professor of Law – Stetson University College of Law, “The Demise of Constitutional Prospectivity: New Life for Owen?”, Iowa Law Review, January, 79 Iowa L. Rev. 273, Lexis)

n241 I am assuming here that "foreseeable" means "probable," as in "more probable than not." This appears to be a safe assumption given the proliferation of cases granting immunity to officials who offend the Constitution. If this definition is correct, deterrence only works and liability should only attach if one's conduct, viewed ex ante, is more likely illegal than legal: the risk of illegality must be more than fifty percent. In other words, one cannot face deterrence, and liability will not attach, if the risk of illegality is less than fifty percent. (When viewed in this fashion, one might perceive a risk of illegality but still not be deterrable because the risk is not substantial, i.e., not greater than fifty percent.) Lawful conduct, of course, need not be probably lawful. That is what risk is about. Situations might arise where the objective risk is that conduct is unlawful, but ex post it is lawful. Least judicial reasoning be completely askew, a fairly strong correlation exists, however, between action that is ex ante probably lawful and that which is lawful ex post in the courts. If this is not true, then courts are reaching objectively improbable conclusions, and the whole idea of reliance is illusory.

## **2. Legal experts agree**

**Davignon v. Clemmey 1** (Davignon v. Clemmey, 176 F. Supp. 2d 77, Lexis)

The court begins the lodestar calculation by looking at the contemporaneous billing records for each person who worked on the plaintiff's case. The absence of detailed contemporaneous time records, except in extraordinary circumstances, will call for a substantial reduction in any award or, in egregious cases, disallowance. What is a "substantial reduction"? Fifty percent is a favorite among judges.

**3. Violation- The aff does not reduce 50% of the surveillance mechanisms in the United States- Topical examples of this being Meta data, Insider Threat, 4<sup>th</sup> amendment ruling affs, etc.**

## **4. Standards/Voters-**

**A. Ground- Anything with less than a 50% reduction gives the aff the availability to spike out of core generics such as the terror D.A, and politics, giving the aff an unfair advantage**

**B. Limits- The aff explodes the topic, and would allow for cases such as ending the surveillance of one store or one singular program, making the negatives research burden impossible**

# Politics-

## **1. Republicans will work with Obama and avoid a shutdown now:**

Rudy Takala, 9/5/2015 (staff writer, "Obama: I'll veto any budget if it limits spending,"

<http://www.washingtonexaminer.com/obama-ill-veto-any-budget-if-it-limits-spending/article/2571507>, Accessed 9/11/2015, rwg)

President **Obama** praised the monthly jobs report during his weekly address Saturday and **called on Republicans to pass his budget when Congress reconvenes next month**. He also threatened to veto any budget that did not increase spending. "The unemployment rate dropped to 5.1%, the lowest it's been in seven years," Obama said, noting the August jobs report released on Friday. "This month, Congress has an opportunity to continue that progress. As always, **the deadline for Congress to pass a budget is the end of September.**" **"And if they don't, they'll shut down the government for the second time in two years,"** said Obama. "If Congress wants to support working Americans and strengthen our middle class, they can pass a budget that invests in, not makes cuts to, the middle class. If they pass a budget with shortsighted sequester cuts that harm our military and our economy, I'll veto it. If they make smart investments in our military readiness, our infrastructure, our schools, public health, and research, I'll sign that budget." Critics have pointed out that the job growth figures are inflated due to declining labor force participation. The number of Americans who were not participating in the labor force reached a record 94,031,000 in August, an increase of 261,000 over July. As a percentage, the participation rate was 62.6 percent, the lowest since 1977. More from the Washington Examiner Obama will press China on cyber rules By Nicole Duran • 09/11/15 7:21 PM Conservatives have argued that increasing the national debt whilst the economy is shrinking is unsustainable. President Obama's budget proposal would increase discretionary spending again this year from \$1.017 trillion to \$1.091 trillion, a 6.4 percent increase split roughly evenly between domestic and military spending. Congress passed the Budget Control Act in 2011, implementing sequestration. It allowed President Obama to spend \$2 trillion immediately under the pretense that cuts would be made to offset the spending over the ensuing decade. However, Democrats say that the cuts are no longer feasible, which has led to annual autumn battles on the budget. **If Congress fails to approve a budget by September 30, some federal operations would shut down** until a budget is approved. **However, Republican congressional leaders are largely expected to go along with Obama's plan.**

## **2. Curtailing surveillance and even creating the perception as going soft on terror is political suicide**

**National Journal 9/19/2014** Alex Roarty, "Republicans Airing Ads Attacking Democrats as Being Soft on Terrorism," <http://www.nationaljournal.com/politics/republicans-airing-ads-attacking-democrats-for-being-soft-on-terrorism-20140919>

September 19, 2014 **House Republicans** are making a big bet that in the final weeks of the midterm election they **can exploit doubts about President Obama's foreign policy to persuade** late-deciding **voters** to support Republicans. The National Republican Congressional Committee announced Friday a quartet of new ads focusing on national security. One, airing against Rep. Dan Maffei of New York, accuses the congressman of "backing constitutional rights for foreign terrorists." Another, in a bellwether Iowa district, claims that Democratic candidate Staci Appel supports "passports for terrorists." These ads open with footage from Islamic State fighters. 'DAN MAFFEI PUTS US AT RISK' (NRCC) At a breakfast hosted by the Christian Science Monitor the same morning, the group's chairman, Greg Walden, made clear it's a topic voters can expect to see more of from Republicans before Election Day. **Foreign policy and terrorism**, he said, **have seen a "big uptick" in polls**, Walden said, and are **contributing to a big shift among voters toward the GOP in recent weeks.** **There is just this growing sense that things are a little out of control,** he said. "And I don't mean .... they don't like Washington. Fifty-seven percent of the American people don't think President Obama is doing a good job on the terrorist question. That points to a real, real problem for all concerned." The NRCC chairman pointed specifically to "security moms"—women whose worries about national security nudged many of them to vote for the Republican Party in the 2002 midterms—as a bloc who have been sensitive to the issue. There's a real debate within the GOP, in both Senate and House races, about how prominent a role foreign policy should play in the campaign's closing weeks. Many of **the party's** candidates have **used the topic to argue that Obama is incompetent**, but others have shown hesitation to distract their airtight message on domestic issues. The NRCC, apparently, no longer shares those worries. Asked if **foreign policy** had overtaken the economy as voters' primary issue of concern, Walden demurred. "I don't

know that I could answer that at this point," he said. "I'd want to see more data." He added that [it's a "very potent and important issue."](#) "In campaigns, you want to be talking about issues people care about."

### 3. Obama's political capital is key to winning the budget battle

**Dennis 9/9/2015** (Steven, "Democrats Want Ransom to Keep Government Open", <http://blogs.rollcall.com/white-house/democrats-want-ransom-keep-government-open/?dcz=>, Accessed 9/14/2015, rwg)

[The Planned Parenthood funding fight may have garnered the most headlines, but a bigger fight over the budget — prompted by an emboldened President Barack Obama — could just as easily result in a government shutdown later this fall.](#) The tables have turned from four years ago, when newly minted Speaker John A. Boehner was the one demanding a ransom — and getting it. The short-lived "Boehner Rule" amounted to a shakedown of Obama: Either he deliver dollar-for-dollar spending cuts for debt-limit increases or the GOP would toss the nation into the first-ever default on its obligations. [Obama, facing a potential economic and political catastrophe heading into his re-election, blinked and handed Boehner north of \\$2 trillion in spending cuts over a decade,](#) including nearly \$1 trillion in so-called sequester spending cuts that all sides said they wanted to replace with smarter deficit cuts. Earnest on Shutdown: GOP 'Judged by Actions' [Obama](#) likewise [blinked during the fiscal cliff deal shortly after winning re-election, giving Republicans permanent tax cut extensions for 99 percent of taxpayers](#) — even for the heirs of billionaires — without meaningful concessions on his demands for more spending in infrastructure, research, education and the like. [Since then, Obama has driven a harder bargain,](#) vowing to never again bow to the Boehner Rule. And this year, he's the one making ransom demands. Whereas four years ago Republicans demanded spending cuts or else, now Obama is demanding the GOP reverse some of those cuts or else. [Leverage has shifted in the direction of the short-timer in the West Wing who no longer has to worry about re-election](#) or trying to hold onto a Senate majority by saving the hides of a handful of red-state Democrats. Obama first made his threat back when he introduced the budget, as CQ Roll Call noted at the time. He has repeated it several times since, and his aides have sent a mountain of veto threats down Pennsylvania Avenue for good measure. Senate Democrats have backed the president by filibustering Republican attempts to bring up appropriations bills without a deal for more spending. Press Secretary Josh Earnest repeated Monday the threat not to sign a bill keeping sequestration-level spending caps in place — though he noted that applied to a long-term spending bill as opposed to the short-term measure needed by the end of the month. The only question seems to be whether Democrats will stand firm behind the president when push comes to shove. Sen. Patty Murray of Washington, who negotiated the 2013 budget deal after the government shutdown drama ended, sounded ready for battle. "Our principle from the start has been we are not going to allow sequester to go into effect and it has to be equal defense and non-defense and our members are really strong about it," she said. And she warned Republicans about pursuing a long-term bill keeping the sequester level spending in place. "The Republicans would not want to shut down our government over implementing sequestration. It is not a policy this country supports," she said. Minority Whip Richard J. Durbin, D-Ill., likewise said Democrats were heartened by Obama taking a tougher stand. "I think [the resolve of Senate Democrats is there, and has been throughout this process and I think this resolve is strengthened by the position of the president.](#)" he said. "I think [this president has shown](#) repeatedly now in the closing two years of his presidency that [he is going to stand up and take on the leaders on the Republican side in a different way. I think it makes a difference."](#)

### 4. Delay in passing a continuing resolution undermines the economy:

**Jeremy Stahl, 8/27/2015** (staff writer, "Obama Calls Out GOP Over Possible Government Shutdown Threat in Katrina Speech", [http://www.slate.com/blogs/the\\_slatest/2015/08/27/obama\\_calls\\_out\\_gop\\_over\\_possible\\_government\\_shutdown\\_threat\\_in\\_katrina.html](http://www.slate.com/blogs/the_slatest/2015/08/27/obama_calls_out_gop_over_possible_government_shutdown_threat_in_katrina.html), Accessed 9/11/2015, rwg)

President Obama took some time at the start of his remarks to commemorate the 10th anniversary of Hurricane Katrina on Thursday to preemptively bash congressional Republican rivals over another possible government shutdown fight next month. Saying he was asserting "presidential privilege" to begin his remarks by discussing the economy, Obama threatened to veto any funding bill that threatened additional austerity or extra measures. "Congress needs to fund America in a way that invests in our growth and our security and not cuts us off at the knees by locking mindless austerity or shortsighted sequester cuts to our economy," Obama said. [Citing this week's turmoil in the financial markets and in the Chinese economy](#) — as well as a sunnier report that showed the economy grew in the second quarter at a much faster rate than previously thought — [Obama said that failing to pass a clean budget would further harm global economic stability.](#) "Eventually we're going to do it anyways, so let's just do it without too

much drama,” Obama said of a potential budget showdown. “Let’s do it without another round of threats to shut down the government. Let’s not introduce unrelated partisan issues. Nobody gets to hold the American economy hostage over their own ideological demands.” Senate Majority Leader Mitch McConnell, a Kentucky Republican, has previously said there would be no shutdown, but the New York Times reported Monday that might be easier said than done. With only 15 legislative days on the Senate calendar for the month, a brewing fight over whether to end federal funding for Planned Parenthood, and a raft of senators running for president, it could be difficult to pass even a short-term funding measure despite vows by senior Republican legislators that they will not support a shutdown. As the Times noted, the next fight could come over the efforts of conservative backbenchers to remove federal funding for Planned Parenthood as a condition of passing a budget. Politico reported on Tuesday that Speaker John Boehner still hadn’t settled on a strategy for passing a budget, and that 18 Republican lawmakers in the House have said they wouldn’t vote for any spending bill that did not cut Planned Parenthood spending. Republican presidential candidates and senators Rand Paul and Ted Cruz have said they will try to pass measures to defund the group, which would not likely get past a Democratic filibuster in the Senate. The uproar over Planned Parenthood comes in the wake of secretly recorded videotapes of Planned Parenthood officials that have reignited the debate over research on fetal tissues. Obama was adamant that any delay over the issue could potentially harm the economy. “My message to Congress is pass a budget, prevent a shutdown, don’t wait until the last minute” Obama said. “Don’t worry our businesses or our workers by contributing unnecessarily to global uncertainty. Get it done.”

## **5. Economic decline causes multiple scenarios for nuclear war:**

Geoffrey **Kemp, 2012** (Director of Regional Strategic Programs at The Nixon Center) , The East Moves West: India, China, and Asia’s Growing Presence in the Middle East. 2012, 2032.

The second scenario, called Mayhem and Chaos, is the opposite of the first scenario; everything that can go wrong does go wrong. The world economic situation weakens rather than strengthens, and India, China, and Japan suffer a major reduction in their growth rates, further weakening the global economy. As a result, energy demand falls and the price of fossil fuels plummets, leading to a financial crisis for the energy-producing states, which are forced to cut back dramatically on expansion programs and social welfare. That in turn leads to political unrest and nurtures different radical groups, including, but not limited to, Islamic extremists. The internal stability of some countries is challenged, and there are more “failed states.” Most serious is the collapse of the democratic government in Pakistan and its takeover by Muslim extremists, who then take possession of a large number of nuclear weapons. The danger of war between India and Pakistan increases significantly. Iran, always worried about an extremist Pakistan, expands and weaponizes its nuclear program. That further enhances nuclear proliferation in the Middle East, with Saudi Arabia, Turkey, and Egypt joining Israel and Iran as nuclear states. Under these circumstances, the potential for nuclear terrorism increases, and the possibility of a nuclear terrorist attack in either the Western world or in the oil-producing states may lead to a further devastating collapse of the world economic market, with a tsunami-like impact on stability. In this scenario, major disruptions can be expected, with dire consequences for two-thirds of the planet’s population.

# Terror-

## 1. Terror threats are imminent- surveillance is key to stop attacks

**Lewis '14** [James Andrew Lewis is a senior fellow and director of the Strategic Technologies Program at the Center for Strategic and International Studies in Washington, D.C., where he writes on technology, security, and the international economy, "Underestimating Risk in the Surveillance Debate," [http://csis.org/files/publication/141209\\_Lewis\\_UnderestimatingRisk\\_Web.pdf](http://csis.org/files/publication/141209_Lewis_UnderestimatingRisk_Web.pdf)]

The phrase "terrorism" is overused, and the threat of terrorist attack is easily exaggerated, but that does not mean this threat it is nonexistent. **Groups and individuals still plan to attack American citizens** and the citizens of allied countries. The dilemma in assessing risk is that it is discontinuous. There can be long periods where no activity is apparent, only to have the apparent calm explode in an attack. The constant, low-level activity in planning and preparation in Western countries is not apparent to the public, nor is it easy to identify the moment that discontent turns into action. There is general agreement that as terrorists splinter into regional groups, the risk of attack increases. Certainly, the threat to Europe from militants returning from Syria points to increased risk for U.S. allies. The messy U.S. withdrawal from Iraq and (soon) Afghanistan contributes to an increase in risk.<sup>24</sup> European authorities have increased surveillance and arrests of suspected militants as the Syrian conflict lures hundreds of Europeans. Spanish counterterrorism police say they have broken up more terrorist cells than in any other European country in the last three years.<sup>25</sup> The chairman of the House Select Committee on Intelligence, who is better placed than most members of Congress to assess risk, said in June 2014 that the level of terrorist activity was higher than he had ever seen it.<sup>26</sup> If the United States overreacted in response to September 11, it now risks overreacting to the leaks with potentially fatal consequences. A simple **assessment of the risk of attack** by jihadis **would take into account a resurgent Taliban, the power of Islamist groups in North Africa, the continued existence of Shabaab in Somalia, and** the appearance of a powerful new force, the Islamic State in Iraq and Syria (**ISIS**). Al Qaeda, previously the leading threat, has splintered into independent groups that make it a less coordinated force but more difficult target. On the positive side, the United States, working with allies and friends, appears to have contained or eliminated jihadi groups in Southeast Asia. Many of these groups seek to use adherents in Europe and the United States for manpower and funding. A Florida teenager was a suicide bomber in Syria and Al Shabaab has in the past drawn upon the Somali population in the United States. Hamas and Hezbollah have achieved quasi-statehood status, and Hamas has supporters in the United States. Iran, which supports the two groups, has advanced capabilities to launch attacks and routinely attacked U.S. forces in Iraq. The United Kingdom faces problems from several hundred potential terrorists within its large Pakistani population, and there are potential attackers in other Western European nations, including Germany, Spain, and the Scandinavian countries. France, with its large Muslim population faces the most serious challenge and is experiencing a wave of troubling anti-Semitic attacks that suggest both popular support for extremism and a decline in control by security forces. The chief difference between now and the situation before 9/11 is that all of these countries have put in place much more robust surveillance systems, nationally and in cooperation with others, including the United States, to detect and prevent potential attacks. Another difference is that the failure of U.S. efforts in Iraq and Afghanistan and the opportunities created by the Arab Spring have opened a new "front" for jihadi groups that makes their primary focus regional. Western targets still remain of interest, but are more likely to face attacks from domestic sympathizers. This could change if the well-resourced ISIS is frustrated in its efforts to establish a new Caliphate and turns its focus to the West. In addition, the al Qaeda affiliate in Yemen (al Qaeda in the Arabian Peninsula) continues to regularly plan attacks against U.S. targets. <sup>27</sup> The incidence of attacks in the United States or Europe is very low, but we do not have good data on the number of planned attacks that did not come to fruition. This includes not just attacks that were detected and stopped, but also attacks where the jihadis were discouraged and did not initiate an operation or press an attack to its conclusion because of operational difficulties. **These attacks are the threat that mass surveillance was created to prevent.** The needed reduction in public **anti-terror measures** without increasing the chances of successful attack **is contingent upon maintaining** the capability provided by communications **surveillance to detect, predict, and prevent attacks.** Our opponents have not given up; neither should we.

## 2. Surveillance checks terror attacks

**Medine et al '14** [David Medine, Chairman of the Privacy and Civil Liberties Oversight Board, Rachel Brand, Elisabeth Collins Cook, James Dempsey, Patricia Wald also contributed to the report, "Report on the Surveillance Program Operated Pursuant to Section 702 of the Foreign Intelligence Surveillance Act," <https://www.pclob.gov/library/702-Report.pdf>]

The efficacy of any particular counterterrorism program is difficult to assess. Even when focusing only on programs of **surveillance**, such programs **can serve a variety of functions that contribute to the prevention of terrorism.** Most obviously, a **surveillance** program **may reveal the existence of a planned terrorist attack, enabling the government to disrupt the attack.** But the number of "plots thwarted" in this way is only one measure of success. Counterterrorism **surveillance** programs **can enable the government to learn about the identities and activities of the individuals who make up terrorist networks. They can help the government to understand** the **goals and intentions** of those organizations, as well as the ways in which the organizations fund their pursuits and coordinate the activities of their

members. All of this knowledge can aid the government in taking steps to frustrate the efforts of these terrorist organizations — potentially stymieing their endeavors long before they coalesce around the plotting and implementation of a specific attack. Because the nature of counterterrorism efforts can vary, measures of success may vary as well.

### **3. Strong intelligence gathering is key to discourages initiation of nuclear, biological, and telectrical gri**

**Pittenger '14** US Rep. Robert Pittenger, chair of Congressional Task Force on Terrorism, “Bipartisan bill on NSA data collection protects both privacy and national security” - Washington Examiner, 6/9/14, [http://washingtonexaminer.com/rep.-robert-pittenger-bipartisan-bill-on-nsa-data-collection-protects-both-privacy-and-national-security/article/2549456?custom\\_click=rss&utm\\_campaign=Weekly+Standard+Story+Box&utm\\_source=weeklystandard.com&utm\\_medium=referral](http://washingtonexaminer.com/rep.-robert-pittenger-bipartisan-bill-on-nsa-data-collection-protects-both-privacy-and-national-security/article/2549456?custom_click=rss&utm_campaign=Weekly+Standard+Story+Box&utm_source=weeklystandard.com&utm_medium=referral)

This February, I took that question to a meeting of European Ambassadors at the Organization for Security and Cooperation in Europe. During the conference, I asked three questions: 1. What is the current worldwide terrorist threat? 2. What is America’s role in addressing and mitigating this threat? 3. What role does intelligence data collection play in this process, given the multiple platforms for attack including physical assets, cyber, chemical, biological, nuclear and the electric grid? Each ambassador acknowledged the threat was greater today than before 9/11, with al Qaeda and other extreme Islamist terrorists stronger, more sophisticated, and having a dozen or more training camps throughout the Middle East and Africa. As to the role of the United States, they felt our efforts were primary and essential for peace and security around the world. Regarding the intelligence-gathering, their consensus was, “We want privacy, but we must have your intelligence.” As a European foreign minister stated to me, “Without U.S. intelligence, we are blind.” We cannot yield to those loud but misguided voices who view the world as void of the deadly and destructive intentions of unrelenting terrorists. The number of terrorism-related deaths worldwide doubled between 2012 and 2013, jumping from 10,000 to 20,000 in just one year. Now is not the time to stand down. Those who embrace an altruistic worldview should remember that vigilance and strength have deterred our enemies in the past. That same commitment is required today to defeat those who seek to destroy us and our way of life. We must make careful, prudent use of all available technology to counter their sophisticated operations if we are to maintain our freedom and liberties.

### **4. A nuclear terror attack would kill billions, collapse the global economy, and cause miscalculation**

**Schwartz 2015** (Benjamin [Worked at the Departments of State, Defense and Energy]; Right of Boom: The Aftermath of Nuclear Terrorism; The Overlook Press; p. 1-2; kdf)

IN AN OTHERWISE CALM AND UNEVENTFUL MORNING, A small nuclear weapon explodes in downtown Washington, DC. The device generates a yield of fifteen kilotons, roughly the same force unleashed by the bomb Little Boy over Hiroshima. The casualty count rises to over a hundred thousand, and the destruction is measured in hundreds of billions of dollars. The blast’s electromagnetic pulse burns out electrical components across the metropolitan area. Radiation leaves the center of the city uninhabitable for the first time since it was declared America’s capital in 1790, and the scientific community predicts that it will remain so for a decade. The stock market plunges as investors anticipate draconian customs regimes that will choke global trade. Fear of further attacks paralyzes America and much of the Western world. Hours after the

explosion, a little unknown terrorist group claims responsibility. It is the first time the president, who was not in Washington at the time of the blast, and his surviving cabinet members, including the director of national intelligence, have heard of the group. After searching intelligence databases, analysts report that the group is linked to three hostile governments, all of which have issued statements condemning the attack and denying involvement. It will take weeks for the remnants of the US intelligence community to assess that one of these three governments is probably lying, but even then the US government won't have irrefutable evidence of complicity. Unlike a ballistic missile or bomb delivered by enemy land-, air-, or seacraft, the origin of what analysts will call a "container-based improvised nuclear device" is difficult to determine and impossible to prove. Nuclear forensics will ultimately provide strong evidence that the fissile material used in the device originated from the country under suspicion. Signals intelligence will record celebrations and praise of the attack by midlevel officials in that country's military and intelligence establishment. However, the intelligence reporting taken as a whole will suggest that negligence within that country's weapons industry and at its nuclear complexes is at least as plausible a scenario as a deliberate transfer by government officials to the terrorist group. Yet there is no conclusive reporting that points to either willful negligence or human error. Either way, there is no way to know if the transfer occurred through official policy, the machinations of a venal or ideologically motivated individual, or simple incompetence. There is almost nothing about the origins of the attack that the president of the United States knows for certain.

## 5. Empirically - a terror attack leads to greater surveillance, turns the aff

**Tuccille 2015** (J.D. [Managing Editor, Reason.com]; What's a terrorist attack if not an excuse for domestic spying?; Jan 14; [reason.com/blog/2015/01/14/whats-a-terrorist-attack-if-not-an-excuse](http://reason.com/blog/2015/01/14/whats-a-terrorist-attack-if-not-an-excuse); kdf)

Following on last week's terrorist attacks in France, the British government has dusted off a long-sought "snooper's charter"—better known as the Data Communications Bill—to ease the power of officials to track people's private communications. "It is too soon to say for certain, but it is highly probable that communications data was used in the Paris attacks to locate the suspects and establish the links between the two attacks," Home Secretary Theresa May told Parliament. "Quite simply, if we want the police and the security services to protect the public and save lives, they need this capability. You get that? There's no evidence that the bill would have prevented the Charlie Hebdo attack, but that incident is why you should pass the bill. Prime Minister David Cameron even says that messaging services that can't be intercepted should be banned. Using the latest outrage to inject new life into old security-state legislation isn't a British specialty. When the Patriot Act was introduced in 2001, then-Senator Joseph Biden boasted, "I drafted a terrorism bill after the Oklahoma City bombing. And the bill John Ashcroft sent up was my bill." This is a game in which politicians everywhere can participate. Never mind that, as Reason's Ron Bailey pointed out in November, "there is very little evidence that the Internet is making terrorism easier to do." But pretending otherwise, and passing legislation that empowers security services, lets government officials accumulate power and give the appearance of doing something when the public is frightened. Added Bailey: As [David Benson, a political scientist at the University of Chicago] argues, exaggerating the Internet's usefulness to terrorism has "egregious costs."Some officials, for example, have been calling for a "kill switch" that would allow the government to shut down the Internet in an emergency. Noting how much Americans depend upon the Net for commerce, communication, medical care, and so forth, Benson points out that "It is difficult to imagine a terrorist attack being as costly as turning off the Internet would be."Terrorism also gives officials an excuse to tighten censorship—especially in jurisdictions, including many democratic countries in Europe, where the whole free speech thing has relatively shallow roots. So get ready for the ride. Driven by a need to appear proactive, and a preexisting taste for accumulating power, government officials once again exploit a murderous incident to increase their authority over us. Which escalates the ongoing cold war between people who want to be left alone, and the governments that seek to control them.

# Wyden C.P-

**1. The United States federal government should conduct a full, public investigation into the domestic surveillance of Americans by United States intelligence agencies. This investigation should be modeled after the Church Committee, headed by Senator Ron Wyden, and tasked with producing a report to Congress outlining recommendations for appropriate legislative and regulatory reforms.**

**2. The counterplan solves the case and is net-beneficial.**

**3. First, it results in sustainable reforms and rebuilds public trust in government.**

**Church Committee Alums 14** — Counsel, Advisers, and Professional Staff Members of the Church Committee including Chief Counsel Frederick A.O. Schwarz Jr., Loch Johnson, John T. Elliff, Burt Wides, Jim Dick, Frederick Baron, Joseph Dennin, Peter Fenn, Anne Karalekas, Michael Madigan, Elliot Maxwell, Gordon Rhea, Eric Richard, Athan Theoharis, and Christopher Pyle, 2014 (Open Letter to Congress and the President, March 17<sup>th</sup>, Available Online at [https://www.eff.org/files/2014/03/16/church\\_committee\\_-\\_march\\_17\\_2014\\_\\_0.pdf](https://www.eff.org/files/2014/03/16/church_committee_-_march_17_2014__0.pdf), Accessed 07-08-2015, p. 1-2)

In 1975, the public learned that the National Security Agency (NSA) had been collecting and analyzing international telegrams of American citizens since the 1940s under secret agreements with all the major telegram companies. Years later, the NSA instituted another "Watch List" program to intercept the international communications of key figures in the civil rights and anti-Vietnam War movements among other prominent citizens. Innocent Americans were targeted by their government. These actions were only uncovered—and stopped—because of a special Senate investigative committee known as the United States Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities, commonly known as the Church Committee.

We are former members and staff of the committee and write today as witnesses to history and as citizens with decades of collective experience in Congress, the federal courts, the executive branch, and the intelligence community. We write today to encourage Congress to create a Church Committee for the 21st Century—a special investigatory committee to undertake a thorough, and public, examination of current intelligence community practices affecting the rights of Americans and to make specific recommendations for future oversight and reform. Such a committee would work in good faith with the president, hold public and private hearings, and be empowered to obtain documents. Such congressional action is urgently needed to restore the faith of citizens in the intelligence community and, indeed, in our federal government.

The actions uncovered by the Church Committee in the 1970s bear striking similarities to the actions we've learned about over the past year. In the early 1970s, allegations of impropriety and illegal activity concerning the intelligence community spurred Congress to create committees to investigate those allegations. Our committee, chaired by Senator Frank Church, was charged with investigating illegal and unethical conduct of the intelligence community and with making legislative recommendations to

govern the intelligence community's conduct. The bipartisan committee's reports remain one of the most searching reviews of intelligence agency practices in our nation's history.

Our findings were startling. Broadly speaking, we determined that sweeping domestic surveillance programs, conducted under the guise of foreign intelligence collection, had repeatedly undermined the privacy rights of US citizens. A number of reforms were implemented as a result, including the creation of permanent intelligence oversight committees in Congress and the passage of the Foreign Intelligence Surveillance Act.

Even though our work was over 30 years ago, our conclusions seem eerily prescient today. For example, our final report noted:

We have seen a consistent pattern in which programs initiated with limited goals, such as preventing criminal violence or identifying foreign spies, were expanded to what witnesses characterized as "vacuum cleaners," [end page 1] sweeping in information about lawful activities of American citizens. The tendency of intelligence activities to expand beyond their initial scope is a theme, which runs through every aspect of our investigative findings.

The need for another thorough, independent, and public congressional investigation of intelligence activity practices that affect the rights of Americans is apparent. There is a crisis of public confidence. Misleading statements by agency officials to Congress, the courts, and the public have undermined public trust in the intelligence community and in the capacity for the branches of government to provide meaningful oversight.

The scale of domestic communications surveillance the NSA engages in today dwarfs the programs revealed by the Church Committee. Indeed, 30 years ago, the NSA's surveillance practices raised similar concerns as those today. For instance, Senator Church explained:

In the case of the NSA, which is of particular concern to us today, the rapid development of technology in this area of electronic surveillance has seriously aggravated present ambiguities in the law. The broad sweep of communications interception by NSA takes us far beyond the previous Fourth Amendment controversies where particular individuals and specific telephone lines were the target.

As former members and staff of the Church Committee we can authoritatively say: the erosion of public trust currently facing our intelligence community is not novel, nor is its solution. A Church Committee for the 21st Century—a special congressional investigatory committee that undertakes a significant and public reexamination of intelligence community practices that affect the rights of Americans and the laws governing those actions—is urgently needed. Nothing less than the confidence of the American public in our intelligence agencies and, indeed, the federal government, is at stake.

#### **4. Second, investigation *before* legislation is the only way to avoid circumvention. The counterplan solves; the plan doesn't.**

**Bump 13** — Philip Bump, Staff Writer at the *Wire*—an *Atlantic* publication, former Writer for *Grist*, former Senior Designer at Adobe Systems, 2013 ("How Do You Solve a Problem Like NSA?," *The Wire*—an *Atlantic* publication, November 1<sup>st</sup>, Available Online at

<http://www.thewire.com/politics/2013/11/how-do-you-solve-problem-nsa/71154/>, Accessed 07-08-2015)

Legal roadblocks

Advocates of the NSA's surveillance, like Feinstein, are quick to point out that what the NSA is doing is legal. It is overseen by (largely acquiescent) intelligence committees in the House and Senate. It is approved by the Department of Justice and White House. It is given a stamp of approval by the Foreign Intelligence Surveillance Court in a purposefully one-sided process. But, as American history has repeatedly shown, "legal" doesn't always correlate to "appropriate." And in this case, the assessment that the tools fall within the boundaries of the Fourth Amendment essentially hasn't been challenged before the Supreme Court.

The NSA says it wants to collect metadata on every phone call in the United States, and that the Patriot Act's Section 215 lets it do so. The FISC agrees. Therefore, these activities are legal — despite the author of the Patriot Act asserting that the data collection exceeds the boundaries of the law. Doesn't matter. The NSA and a secret court interpret the law to allow the NSA to conduct all of the activity that's mentioned in this article. A majority of members of Congress are not disposed to challenge this interpretation. There exist proposals that, unlike Feinstein's, would actually block certain NSA behavior, but they aren't likely to be made into law without being watered down by amendments.

We reached out to staff attorneys from two of the organizations that have been most fervent in their critiques of the NSA's surveillance tools, asking them how, given the power, they'd revise the government's surveillance tools to ensure that public privacy was maintained. The question we posed: Knowing that the NSA is experienced at massaging laws to meet their needs, what legislation might prevent that?

Alex Abdo, staff attorney at the American Civil Liberties Union, advocated transparency above all else. "Our country's founders believed that tyranny could be prevented through checks and balances. I think the same holds true today." For that to happen, though, people need to know what's happening.

[I]t should mean that the public has access to significant or novel legal interpretations issued by the FISC. That would have gone a long way toward preventing the 215 program, because Congress and the public would have been able to judge the lawfulness and necessity of the government's programs for themselves.

"In short," Abdo said, "our privacy rights shouldn't be interpreted away in secret. ... Secrecy has its place, but it should not be used as an excuse to keep any branch of government or the public out of the debate entirely. This type of solution is also key to long-term legitimacy."

In the 1970s, following revelations of domestic surveillance by the NSA — and rampant abuses by other intelligence services — the Church Committee was formed in the Senate in an effort to better determine the guidelines under which the agencies should operate. There were eventually other steps: the 1978 Foreign Intelligence Surveillance Act itself, which codified some of the committee's findings, and President Ronald Reagan's 1981 executive order extending the agencies' power while adding some new boundaries. (The vast majority of the NSA violations revealed in the Snowden leaks were violations of this order.)

Kurt Opsahl, senior staff attorney at the Electronic Frontier Foundation, suggested revisiting the idea of forming a new Congressional commission to tackle these issues. "If Congress has the political will," he told us, "it can easily write language to stop bulk collection." **But:**

[T]o really be sure that Congress can legislate well, we really need a new Church Commission. ... The key idea behind a new Church Committee would be to investigate first, and then legislate later with a better understanding. It may not result in restrictions that will be effective for all time, in light of technologies not dreamed about now, but it's the right thing to do now.

Neither Opsahl nor Abdo, you'll notice, are advocating specific proposals since without further exploration of what's actually happening, it's difficult to draw policy. The most important part of Opsahl's statement, though, is the first part. "If Congress has the political will." The Senate Intelligence Committee, in passing the tweaks encompassed in the FISA Improvements Act has shown a lack of will to try and figure out how to create new limits on the NSA's activity. But perhaps the most obvious example of a lack of will comes from Feinstein's House counterpart, Rep. Mike Rogers of Michigan. In a hearing this week, he confronted American University law professor Steve Vladeck, as reported by MSNBC.

Rogers: I would argue the fact that we haven't had any complaints come forward with any specificity arguing that their privacy has been violated, clearly indicates, in 10 years, clearly indicates that something must be doing right. Somebody must be doing something exactly right.

Vladeck: But who would be complaining?

Rogers: Somebody who's privacy was violated. You can't have your privacy violated if you don't know your privacy is violated.

This is a corollary to the Supreme Court's rejection, earlier this year, of a lawsuit targeting the NSA. The Court ruled that the plaintiffs weren't affected by the surveillance and therefore couldn't sue; assured by the government that those being watched would be told — and so could knowingly bring a suit — the Court threw out the case. It then turned out that the government wasn't informing people that NSA surveillance generated the evidence against them.

Rogers lacks the political will to figure out how to rein in the NSA so that the privacy of Americans using email or Google or Tor is ensured. The will to study the problem may emerge as leaks continue and political pressure builds. As Rogers might note, **you can't fix your surveillance system until you know that your surveillance system needs to be fixed**. Assuming it can be fixed at all.