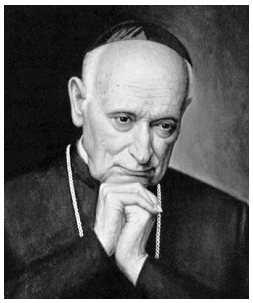
Mindszenty Report



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What You Need to Know about Terrorism and Surveillance

Americans should expect more terrorist attacks in the future. This is a given. These attacks will take many forms and come from different actors, all aimed to weaken and destroy their avowed enemy, the United States of America. Attacks could range from massive and coordinated strikes such as those of September 11, 2001 (9/11), to individual acts of violence by jihadist-inspired extremists against civilians and public authorities, to penetration by hackers into government, financial, public and private computer systems.

To warn of these threats is not alarmist or hyperbolic. The Trump administration and an extensive national security network of federal, state and local officials already understand the threat to the nation and its citizens. But ongoing actions by the President, as commander-in-chief, national and local security agencies, Congress, state legislatures and private industry are required.

Extensive efforts have been taken already to protect the nation. As security measures have tightened, political debate has focused mainly on security versus individual privacy. Framing the tradeoff as security versus privacy can be misleading. Given that more security is going to be necessary, the focus of the debate should be on the questions "How effective are these new security measures?" and "Does the public trust government officials enough to further strengthen security measures?" This last question is fundamental to future security legislation and policies and to the protection of individual rights of citizens living in a constitutional republic.

Are We Being Protected or Just Surveilled?

The extent of homeland terrorist attacks is frightening. Political debate over national security has left the American public confused about whether Big Brother is reading their emails and tweets. At the same time, reports that the FBI knew of these terrorists before the attacks raise questions about the effectiveness of government surveillance. This public confusion has been exacerbated by revelations that American intelligence agencies are collecting data on average American citizens.

The politicization of national security has created even more frustration.[1] The unmasking of Trump campaign associates and Republicans in the incidental collection of phone conversations with foreign agents has inflamed conservative bloggers, activists and average Americans, many of whom previously defended robust intelligence collection. Distrust of the "deep state" and persistent leaks to the media of alleged involvement of Trump campaign officials and family members with Russia has further politicized—and distracted—the public from serious issues involving national security.

The public disclosures by Edward Snowden and Wikileaks of vast amounts of classified Central Intelligence Agency and National Security Agency materials gave much of the public an impression that a police state is being constructed inside government.[2] The politicization of national security by the Obama administration affirmed to many conservatives that Democrats were more interested in defeating Trump, and are now trying to bring his presidency down, than in protecting Americans from jihadists.

Recent jihadist terrorist attacks in Brussels, Paris, Nice, Berlin, Manchester and London have attracted international media attention and widespread condemnation. The United States has experienced numerous terrorist attacks, many of which have gotten lost in the headlines. While these attacks have made the news, behind the headlines are terrorist plots thwarted by the FBI and local police.

Missed Signals with the Tsarnaevs

Each attack raised Americans' anxieties about their own safety at home. They were not reassured when the press reported that in several instances, these self-proclaimed jihadist warriors had been on the FBI radar. For example, the FBI interviewed Tamerlan Tsarnaev in 2011, two years before the Boston Marathon bombing, in response to a tip received from Russian officials concerned that Tamerlan and his mother might be involved in radical extremism. Based on this interview and a search of law enforcement databases and online sources, the FBI could not find any evidence of terrorist activity. It asked the Russian Federal Security Service (FSB) for more information but did not receive a response and closed the inquiry after three months.[3]

Several months later, the FSB shared with the CIA similar information previously given to the FBI, which led the CIA to alert the FBI, the Department of Homeland Security, the State

Department and the National Counterterrorism Center. The latter placed Tamerlan on a watchlist. Three months later, Tamerlan boarded a plane for Dagestan, Russia, a region known for its ties to al Qaeda. This triggered a notification to a Customs agent assigned to the Boston Joint Terrorism Task Force who is believed to have alerted the FBI agent who led the earlier inquiry. But it did not trigger an outbound inspection of Tamerlan by Customs or a follow-up inquiry by the FBI.

Upon his return to the United States, Tamerlan was different both in appearance and in manner. He had grown a full beard and began wearing a traditional Muslim paper cap on his head. He was more reserved with his friends and expressed anger towards America's engagements in Iraq and Afghanistan. In August 2012, Tamerlan launched a YouTube page under the name "muazseyfullah" and began posting radical Islamic videos. That same month, he applied for U.S. citizenship.

In vetting his application, federal officials concluded that they did not possess any "derogatory" information that would preclude Tamerlan's request for naturalization. The vetting process did reveal, however, that Tamerlan had been arrested for assault and battery in 2009. This information prompted a request to the local police about whether the arrest had resulted in a conviction, a request that had yet to be fulfilled when Tamerlan and his brother Dzhokhar bombed the marathon crowds on April 15, 2013.

No Internet Searches

Neither the FBI nor other government agencies conducted an open source search of Tamerlan on the Internet following his application for citizenship. Although he launched his YouTube page under a pseudonym, he changed his user name to Tamerlan Tsarnaev on February 12, 2013, two months prior to the bombing.

San Bernardino, CA terrorists Syed Farook and Tashfeen Malik, a married couple who murdered 11 people and wounded 22 others at the San Bernardino County Department of Public Health facility, became radicalized prior to their marriage, a radicalization that went undetected by American intelligence agencies and immigration officials. The San Bernardino attack came in 2015, when most Americans were feeling reasonably safe from domestic jihadism, despite warnings of the rise of the Islamic State (ISIS) and the recent terrorist attack in Paris. The complacency of the American public was understandable. Since 9/11 American domestic counterterrorism appeared astonishingly effective. The 2009 Fort Hood, TX shootings by Army Major Nidal Hasan looked like an anomaly confined to a military base.

This relative calm was due in no small part to the proliferation of counterterrorism measures employed by the U.S. following the 9/11 terrorist attacks 16 years ago, including robust intelligence-gathering programs.[4] Not surprisingly, these programs came under fire from civil libertarians and many in Congress. In fact, six months prior to the San Bernardino attack, Congress, in response to the Snowden revelations, mandated a halt to the NSA bulk telephone metadata program.

Despite concerns about the breadth of NSA intelligence-gathering, many Americans and Congress were quick to question how the government failed to identify and apprehend Farook and Malik. How is it that with all of this sophisticated technology, Farook and Malik went undiscovered prior to their attack, even though both had consumed online terrorism propaganda prior to their marriage?[5] Indeed, their relationship appears to have been built, at least in part, upon their shared commitment to jihad.

Failures of Visa Screening

Malik entered the United States through the K-1 fiancé visa program. She underwent extensive national security and criminal background screenings, including a check against American law enforcement and national security databases. The State Department checked her fingerprints against other databases. After her marriage to Farook, she received another round of criminal and security checks. She had two in-person interviews, one with a U.S. consular officer in her native Pakistan and a second with an immigration officer in the United States when she applied for her green card.

Although trained to identify applicants who pose a national security threat to the country, immigration officials clearly were unsuccessful in unearthing Malik's radical views. The morning of the attack, Malik pledged her allegiance to ISIS and its leader Abu Bakr al-Baghdadi on Facebook. Having met on a dating website, Farook and Malik communicated online prior to their engagement, discussing their shared views on jihad and martyrdom. But these communications and their online radicalization went undetected not just by immigration officials but by intelligence officials as well. Despite what many in the U.S. and around the world believe about the breadth and scope of U.S. intelligence collection, the NSA and FBI do not track everyone's Internet searches. And the couple's communications were not through open social media platforms but via direct private messaging, something the government is not privy to and cannot access without a court order.

The failure to prevent Omar Mateen from killing 49 people at a nightclub in Orlando in June 2016 gave rise to further criticism of the FBI and local law enforcement agencies.[6] The FBI had become aware of Mateen in 2013 when co-workers reported that he was making remarks claiming his family was tied to al Qaeda and Hezbollah. The FBI investigation involved interviewing witnesses, physical surveillance and record checks. He was interviewed twice by FBI agents. Unable to uncover evidence of criminal activity, the FBI closed the investigation.

Mateen was placed on the terrorist watchlist during the pendency of the FBI's counterterrorism investigation, a routine practice. His name came up again when he was identified as being associated with American suicide bomber Omar Abu Salah, but again no evidence of terrorist activity was found. Following the massacre at the Pulse nightclub, details emerged of the FBI's previous contact with Mateen, sparking criticism that the FBI dropped the ball and should have had Mateen on their radar. It was also revealed that the FBI had been contacted by a gun store owner about a suspicious man attempting to buy body armor and ammunition who turned out to be Mateen.

Did the FBI Really Drop the Ball?

How could the FBI have repeated contact with Mateen, including a ten-month investigation, and yet uncover nothing indicating that he was plotting an attack? Critics charged that Mateen's placement on a watchlist during the 2013 investigation should have prevented him from purchasing a firearm. Many in Congress called for extending watchlisting for as long as five years beyond an investigation. Placement on a watchlist would have triggered a notification to the FBI when he purchased firearms from a licensed dealer.

In the aftermath of a terrorist attack, many are quick to call for laws that they believe would have prevented the attack, often with little regard for the constitutional or legal implications. If the FBI determines that they have insufficient evidence to recommend criminal charges to the Justice Department, should that person nonetheless be deprived of his constitutional right to bear arms and right to travel? (Yes, Americans have a constitutional right to travel!) Should we promote the detention or interrogation of U.S. citizens indefinitely? Should Americans be taken off the streets because they might commit a crime?

In the Boston, San Bernardino and Orlando cases, there was a good deal of "Monday morning quarterbacking" of why the attack wasn't prevented and who messed up. But in each of these instances, the attackers were not just terrorists, they were also U.S. citizens or legal residents who enjoyed the full panoply of constitutional and statutory rights designed to protect individuals from government overreach. Understanding the legal limitations imposed on the FBI and other agencies, which in some cases may be overly restrictive, is important to properly analyze America's ability to prevent homegrown terrorism.

A technological war on terror is underway. As ISIS and other terrorist groups ramp up their use of the Internet and social media platforms, U.S. intelligence agencies pursue new methods of tracking the terrorists' propaganda.[7] In turn, jihadis move their recruiting efforts to encrypted platforms and the war is on. But American intelligence-gathering is not without controversy. Electronic surveillance, also known in the spy world as signals intelligence or SIGINT, dates back to World War II when the British and American governments worked feverishly to crack encrypted German codes disguising air campaigns and troop movements. Modern-day electronic surveillance was first codified in 1978 with the enactment of the Foreign Intelligence Surveillance Act (FISA). Traditionally used to spy on foreign and domestic spies in the U.S., FISA took center stage in American counterterrorism efforts in the aftermath of 9/11.

Just 45 days after the 9/11 attack, Congress passed the USA PATRIOT Act, which amended portions of FISA and federal criminal law to expand intelligence-gathering capabilities and placed sunsets on 16 of these authorities.

Simultaneously with the PATRIOT Act, President George W. Bush authorized what came to be known as the Terrorist Surveillance Program (TSP). Led primarily by the National Security Agency, the TSP entailed a three-pronged approach to targeting the communications of foreign terrorists overseas in contact with persons inside the United States. The existence of this classified program was first revealed to the public by the *New York Times* in 2005. The government subsequently transferred operation of the TSP to various portions of FISA, placing them under the purview of the FISA Court.

Congress ultimately codified one facet of the TSP—the collection of foreign communications that travel across American cables or are stored by American providers—as part of the FISA Amendments Act of 2008.[8] The existence of a program operated under this law, known as PRISM, was subsequently leaked by NSA contractor Edward Snowden in June 2013.

Separate from the FISA Amendments Act, Congress reauthorized the PATRIOT Act in 2006, making all but three of the temporary provisions permanent. Congress extended the three remaining temporary provisions in 2009, 2010 and 2011. One of these temporary provisions, known by its place in the PATRIOT Act, Section 215, was the basis for another program leaked by Snowden in 2013 by which the NSA collected telephone metadata in bulk. This metadata program was also a remnant of the TSP transferred to the purview of the FISA Court in 2006.

Four years later, in June 2015, Congress enacted the USA FREEDOM Act, primarily to end the NSA bulk metadata program. The law replaced it with a targeted program that now requires prior court approval to collect telephone records.

More Vetting, Less Leaking Needed

No matter how much surveillance the government develops and implements, we are going to see more terrorist attacks. If the past is a prelude to the future, Americans will endure more homeland terrorism and the continued growth of the surveillance state. This seems inevitable. Better intelligence could have prevented and will prevent some terrorist attacks, but some are not going to be prevented. It is questionable whether the Boston, San Bernardino or Orlando

attacks could have been prevented. The hair-trigger change from militant Islam to terrorism is difficult to discern prior to the terrorist attack itself.

Knowing that we will encounter future terrorist attacks and the continued expansion of the surveillance state is not reassuring. What can we do as average citizens in these circumstances? *American citizens should insist on three things: demand that our core cultural values be taught in our schools; impose strict standards as to who enters this country; and depoliticize intelligence.*

Many homegrown Islamic terrorists in America, Britain and Europe were educated in Western schools. In these schools, they learned that all cultural values are relative, but that racism and imperialism are the core values of the West. Little wonder that some impressionable Muslim youths reject Western values and turn to terrorism.[9]

The second step is to support President Trump's demand that immigrants and political asylum seekers be properly vetted. Tashfeen Malik should never have been allowed into this country. Finally, we need to be on our guard lest increased surveillance erect an Orwellian state. This means we need to depoliticize intelligence agencies, which means that those involved in "unmasking" Trump campaign people and public officials should be themselves unmasked.[10] Eternal vigilance is the price we pay for liberty.

1 Jennifer Gramick, "Who Sets the Rules of Privacy and the Security Game, *Just Security*, February 22, 2016.

2 Paul Szoldra, "This Is Everything Edward Snowden Revealed in One Year of Unprecedented Top-Secret Leaks," *Business Insider*, September 16, 2016.

3 One of the best books on homeland terrorism is Peter Bergen, *United States of the Jihad: Investigating America's Homeland Terrorists* (2016).

4 Jack Goldsmith, "Ever-Expanding Theories of Unilateral Article II War Power," *Lawfare*, September 18, 2015, https://www.lawfareblog.com/topic/war-powers.

5 Chuck Ross, "Whistleblower: Feds Shut Down Terror Investigation that Could Have Prevented San Bernardino Attack," *The Daily Caller*, December, 12, 2015.

6 David Gomez, "How Did the FBI Miss Omar Mateen?" *Chicago Tribune*, June 24, 2016.

7 Peter Bergen, *United States of Jihad: Investigating America's Homegrown Terrorists* (2017).

8 Asha Rangappa, "It Ain't Easy Getting a FSA Warrant: I Was an FBI Agent and Should Know," *Just Security*, March 9, 2017.

9 Worth reading on this point is Dr. Zuhdi Jasser, *A Battle for the Soul of Islam: An American Muslim's Patriotic Fight to Save His Faith* (2013).

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10 **The extent of homeland terrorist attacks in the last eight years is worth reviewing:**

- **January 31, 2017, Denver, CO:** a contract security officer with the Denver transit authority was assassinated by Joshua Cummings, a self-described "radical Muslim" in what authorities believe was a targeted attack against law enforcement.
- **November 28, 2016, Columbus, OH:** Abdul Razak Ali Artan, a 20-year-old Somali refugee, attempted to run over other Ohio State University students on campus with his car. When his vehicle was thwarted by a barrier, he began stabbing people with a butcher knife until he was shot and killed by a campus police officer.
- **September 17-19, 2016, New York and New Jersey:** Ahmad Khan Rahimi is suspected of carrying out four bombings or attempted bombings in Seaside Park, NJ, Manhattan, NY, and Elizabeth, NJ over a two-day period. Thirty-one people were injured in one of the bombings. Three police officers were injured in a shootout during Rahimi's apprehension on September 19.
- **September 17, 2016, St. Cloud, MN:** Dahir Ahmed Adan, a 20-year-old Somali refugee, injured ten people with a steak knife at the Crossroads Center shopping mall before being shot dead by an off-duty police officer. According to witness accounts, Adan was heard exclaiming "Allahu akbar" (Allah is the greatest) and inquiring whether victims were Muslim before stabbing them.
- **August 20, 2016, Roanoke, VA:** Wasil Farooqui stabbed a man and a woman at an apartment complex in a suspected terror attack.
- **June 31, 2016, Orlando, FL:** 49 people were killed and 68 were injured when Omar Mateen, an American citizen of Afghan descent, opened fire in a gay nightclub. During a standoff with police that lasted several hours, Mateen professed his allegiance to ISIS and its leader, Abu Bakr al-Baghdadi, to a 911 operator and on his Facebook page.
- **January 7, 2016, Philadelphia, PA:** Edward Archer shot and injured a police officer sitting in his cruiser. Archer later pledged his allegiance to ISIS.
- **December 2, 2015, San Bernardino, CA:** 14 people were killed by Chicago-born Syed Rizwan Farook and his Pakistani wife, Tashfeen Malik, who had just received her green card, when the couple opened fire at a training and holiday party for the County Department of Public Health, where Farook worked. The couple also attempted but failed to detonate a bomb at the event. They were killed four hours later in a shootout with police.
- **November 4, 2015, Merced, CA:** Faisal Mohammad stabbed four people on a University of California campus before being shot and killed by police.
- **July 16, 2015, Chattanooga, TN:** Muhammad Youssef Abdulazeez opened fire at a military recruiting center and a naval reserve center. Four marines and a sailor were killed and a Marine and police officer were wounded in the attack. Abdulazeez is believed to have been inspired by ISIS.
- **June 2, 2015, Boston, MA:** Usaama Rahim threatened police with a military-style knife when they attempted to question him in connection with a terror plot on police. Rahim was shot and killed by police during the confrontation. A co-conspirator of Rahim's, David Wright, was subsequently arrested and charged with planning a terror attack.
- **May 3, 2015, Garland, TX:** Inspired by the 2015 Charlie Hebdo and Copenhagen shootings in retaliation against artwork and cartoons perceived as disrespectful to Mohammed, Elton Simpson and Nadir Soofi opened fire at the Curtis Culwell Center, which was staging a Mohammed cartoon contest. The two were killed by police. ISIS later claimed responsibility for the attack on Twitter.
- **October 23, 2014, Queens, NY:** Zale Thompson, a self-radicalized Muslim, used a hatchet to attack four police officers posing for a picture, injuring two, one critically, before being killed by the police.
- **September 25, 2014, Moore, OK:** Alton Alexander Nolen aka "Jah'Keem Yisrael," a self-radicalized Muslim, beheaded a female employee and stabbed another at a Vaughan Foods plant.
- **April-June 2014, Washington and New Jersey:** Ali Muhammad Brown, a Muslim convert who was on the terrorist watchlist and had pledged allegiance to ISIS, went on a killing spree, killing 4.
- **April 15, 2013, Boston, MA:** Two pressure cooker bombs were detonated near the Boston Marathon finish line by Chechen-American brothers Tamerlan and Dzhokhar Tsarnaev, killing 3 people and injuring 264 others. Three days later, the brothers assassinated MIT police officer Sean Collier. A subsequent shootout with police in nearby Watertown injured a transit police officer and Tamerlan, who was then killed by his brother Dzhokhar, who drove over him while fleeing the scene. Dzhokhar was apprehended the next day.
- **May 1, 2010, New York, NY:** Faisal Shahzad attempted to detonate a car bomb in Times Square, but the bomb failed to go off and was successfully disarmed by police. He was apprehended aboard a flight headed for Dubai.
- **December 25, 2009, Detroit, MI:** Umar Farouk Abdulmutallab, also known as the Christmas Day bomber, attempted to blow up Northwest Airlines flight 253 using plastic explosives sewn into his underwear on a flight from Amsterdam.
- **November 5, 2009, Fort Hood, TX:** Nidal Hasan, radicalized through the Internet, killed 13 fellow soldiers.
- **June 1, 2009, Little Rock, AR:** Abudulhakian Mujahid Muhammand, born in Memphis, assassinated one soldier in an effort to kill as many U.S. military personnel as possible.