

Feinstein's Phony Excuse for NSA Spying

After 9/11, the excuse for missing clues was too much data trying to sip from a fire hose but with the priority now excusing NSA spying, the metaphor is for more data you can't find a needle in a haystack without a haystack a shift ex-FBI agent Coleen Rowley dissects.

By Coleen Rowley

More than a few bizarre aspects jumped out at me when I attended the Senate Judiciary Committee's hearing on Oct. 2. Instead of providing needed oversight of the Foreign Intelligence Surveillance Act (FISA) in light of shocking whistleblower disclosures about National Security Agency's secret (and arguably illegal) interpretations that led to military surveillance and massive collection of metadata about innocent American citizens, it seemed much of the hearing went in the direction of overlook instead of oversight.

For starters, the two fact witnesses, Director of National Intelligence James Clapper and NSA Director Keith Alexander, were not even asked to swear to tell the truth before they testified even though both have been discovered to have previously answered similar questions from Congress less than honestly. By weird contrast, the three professors, who testified after Clapper and Alexander and who merely provided their views of the law and technology, were asked to raise their right hands and were sworn in.

Some senators also went out of their way to make the two spy agency heads feel even more comfortable with a favorite observation: "If you want to find a needle in a haystack, you first must have a haystack." What?! Of course self-righteous builders of massive haystacks are not inclined to point out that it's inherently easier to find a needle if it isn't covered with hay.

There's no scientific evidence that adding more hay (i.e. non-relevant data about innocent people) to any pre-existing database makes it easier to discern criminal actors. In fact, in the trillions of pieces of data gathered, there is only one such instance which the government has thus far been able to identify. According to the FBI, it's the only case involving a "terrorist plot" with a "homeland nexus" where the NSA's telephone program played a "critical" role. But making the best of that dismal statistic, on July 31, an FBI official testified to this same Senate Committee: "In order to find the needle that matched up against that number, we needed the haystack."

Senators apparently are seizing upon this upside-down logic to justify the NSA's massive data collection. Even worse, Sen. Dianne Feinstein, D-California, who

also serves as the Intelligence Committee chair, was allowed, about halfway through, to give a passionate but factually inaccurate narrative of the 9/11 attacks, insisting any curtailment of NSA data collection would risk another 9/11.

Sen. Feinstein is actually going a step further and seeking expansion of NSA surveillance on U.S. soil. In her speech, Feinstein described the desperate, pre-9/11 warning from Director of Central Intelligence (DCI) George Tenet and then referred to the case of the (arrested) "terrorist who wanted to learn to fly without taking off or landing."

She also mentioned al-Qaeda pilot Midhar's entry into California but attributed the lack of sharing of that key information to the problem of "stove-piping" of intelligence that kept agencies from learning that al-Qaeda terrorists had entered California. Her implicit conclusion was that if more metadata had been collected prior to 9/11, the attacks could have been prevented. (Stove-piping usually refers to raw, unevaluated intelligence being sent directly to higher-ups and policymakers without being shared with analysts who can put the data in context.)

With all due respect, Sen. Feinstein has it completely wrong! In a nutshell, the main finding of the 9/11 Commission, based upon the earlier findings of the Joint Intelligence Committee's Inquiry (JICI) which Sen. Feinstein participated in and to whom I actually addressed my "whistleblower memo" of May 21, 2002, about the FBI's pre-9/11 failures (and also based upon the Senate Judiciary Committee's investigation which Sens. Patrick Leahy, D-Vermont, and Charles Grassley, R-Iowa, led in the spring-summer of 2002; and the lengthy Department of Justice's Inspector General Investigation of FBI failures) was that the lack of sharing of information within agencies, between agencies and with the public was the major problem that enabled the 9/11 al-Qaeda terrorist attacks to occur.

Many examples of these failures to share information (which include but are broader than mere "stove-piping") were documented. They range from the Moussaoui case in Minnesota to the case of two (not one) terrorist suspects entering California, Al Midhar and Al Hazmi, whom the CIA had long been following, since their al-Qaeda-related meeting monitored by the CIA in Kuala Lumpur.

The CIA knew of the terrorist suspects' entry into California but failed to notify the FBI in a timely manner, not until a few weeks before 9/11. To this day, the facts are murky as to how and why this critical information was not shared.

Moussaoui, who was later convicted of conspiring in the 9/11 plot, was arrested in Minnesota on Aug. 16, 2001, and was quickly suspected of involvement in

terrorism. But FBI Headquarters supervisors failed to share this information with the proper Justice Department office to seek a FISA order to search Moussaoui's belongings despite 60 to 70 detailed requests via telephone, email and written draft declaration.

The FBI case agent later testified at Moussaoui's trial that this FBI/HQ failure ("stove-piping" or maybe the more accurate term would be "stonewalling") constituted "criminal negligence." Sens. Leahy and Grassley may also recall that the Senate Judiciary Committee (at which I testified on June 6, 2002) later uncovered the fact that the FBI's National Security Law Unit Chief failed to read the detailed, written draft declarations submitted by Minnesota FBI agents in the Moussaoui case but simply relied upon a short verbal briefing.

A couple of years ago, former New York Times reporter Phil Shenon (who also authored *The Commission*, a book about the 9/11 Commission) discovered a related "terrible missed chance" involving a prior written memo addressed to then-FBI Director Louis Freeh written in April 2001 explicitly warning of upcoming terrorist attacks by Osama bin Laden's group.

The up-to-then unnoticed memo also stated that bin Laden was "heavily entwined" with the Chechen leader Ibn Al Khattab. However, several of the high-level FBI executives, to whom this April 2001 memo was addressed by name, later denied having read it.

It turned out the missed information linking Al Khattab to bin Laden was precisely the reason FBI/HQ supervisors failed to appreciate the foreign power connection (for which they later were faulted). The FBI supervisors were held at fault for failing to recognize the foreign power connection but their own supervisor claimed he had not read this April 2001 memo and therefore had not shared it with them.

There are so many more examples that were adduced and documented of the U.S. intelligence agencies already possessing critical pieces of information and intelligence, most importantly also including the NSA's interception of conversations between al-Qaeda terrorist planners that were intercepted before 9/11 about the upcoming attacks. But the intercepted conversations were not translated or understood until after the attacks occurred.

Obviously some senators have forgotten the general excuse given by many law enforcement and intelligence officials for why they did not share or act upon the key information they already possessed – and in some cases, did not even read – until after 9/11. That excuse was that "intelligence is like a firehose and you can't get a sip from a firehose." In other words, the earlier officials' excuse for not even reading key intelligence memos, let alone properly sharing

and disseminating such information or acting upon it, was that there was already too much intelligence pouring in before 9/11.

Related to the “firehose” excuse for why the existing, pre-9/11 intelligence data was not read, shared or acted upon is the claim it was impossible to make sense of so much intelligence, to prioritize the importance of the various data, and “to connect the dots” when there is so much flowing in.

Then-DCI George Tenet, whom Feinstein described as having stridently warned her intelligence committee of upcoming attacks during the summer of 2001, was himself briefed about terrorist suspect Moussaoui in Minnesota as an “Islamic fundamentalist who learns to fly” on Aug. 23 or 24, 2001, yet Tenet could not later easily explain to the 9/11 Commission why he took no action.

By the way, when such relevant intelligence flows so quickly, within a week up to the very top to the DCI responsible for all U.S. intelligence agencies, this would indicate that the problem is not “stove-piping,” but rather a failure of senior levels of government to act effectively on crucial information. It’s never even been determined if DCI Tenet warned the President or anyone else of this information that he received almost three weeks before 9/11.

So Sen. Feinstein is very wrong when she implies that the 9/11 attacks occurred as a result of not possessing the NSA’s current massive surveillance programs. U.S. intelligence officials did not read, share or act upon the key pieces of info they already had. And their excuse then was that they were getting too much data to even be able to read, or intelligently share or act upon this intelligence.

Now that the “firehose” has become more like Niagara Falls can it be any easier for them to “get a sip?” The Boston Marathon bombing and other botched cases documented in a recent ACLU report, [“FBI: Unleashed and Unaccountable,”](#) would suggest not.

Feinstein’s account is wrong and the truth is that this massive government surveillance is making things worse. Adding more hay has made it harder for analysts and agents to find the needle in the haystack. Tellingly, agents and analysts reportedly call the non-relevant data collection “white noise” or “Pizza Hut” (false) leads.

Can it be too much to ask for meaningful congressional oversight? Twelve years after 9/11, it’s time to stop using it to justify illegal and counterproductive policies.

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How Shutdown Hurts National Security

The Republican-induced shutdown of the federal government underscores the Right's populist contempt for the nation's democratic institutions. But the fiasco also has undercut America's standing in the world and thus undermines U.S. security and global leadership, writes ex-CIA analyst Paul R. Pillar.

By Paul R. Pillar

The outrageous shutdown of the federal government's operations has multitudinous effects on foreign relations and national security. Some of the effects are easy to see. Others are less discernible or measurable but may over the long term be more important.

Most apparent are the direct effects of work not being done because it takes money that has not been appropriated or would have been done by federal employees who have been laid off. Sometimes this is clearly visible in the form of things such as presidential trips abroad being curtailed. Even this category of consequences, however, goes beyond what is immediately visible and what can easily be counted right away as an opportunity that would otherwise have been seized or a calamity that would otherwise have been avoided.

Much of the work of people in the State Department, the Department of Defense, the intelligence community and elsewhere in the government cannot be counted that way even though it is important in contributing to the seizing of opportunities, the avoiding of calamities, and other ways of advancing the national interest. It is work that builds long-term foundations for advancing those interests, maintains preparedness to deal with the unexpected, or contributes to knowledge and information that can be acted upon in the future.

This aspect of what federal personnel do, day-in and day-out, is insufficiently understood. Much public discussion of counterterrorism, for example, is couched in terms of how many terrorist plots have, or have not, been foiled lately. In fact, most of the work of officials in the counterterrorist community does not consist of detecting and foiling ongoing plots. It is nonetheless work that is critical to developing the knowledge of terrorists and terrorist networks that makes possible the preventing or foiling of plots.

If the shutdown has a cost in the form of anti-U.S. terrorism, it will less

likely be seen in the form of attacks that occur during the shutdown than in ones that take place later.

A more general impact of the shutdown concerns how it may shape the attitudes of foreign governments about dealing with the United States. A concern that commentators already have expressed is that there will be increased reluctance of foreign states to negotiate agreements and commitments with a government whose own house is so out of order.

The concern is valid. It represents a cost that may be substantial in the form of lost opportunities for the United States even though it will be hard to prove conclusively a direct connection between the shutdown, attitudes of foreign governments, and a particular missed opportunity.

How the shutdown story ends up will affect how much of this type of harm there will be; if the President can confirm the principle of not caving in to disorderly and extortionate houses, this will help the credibility of the United States as a negotiating partner.

Even more general and harder to measure, but ultimately of high importance, are the effects on attitudes not just of foreign governments but of foreign populations, or at least of elites who are sufficiently aware of what is going on in Washington for it to make any difference in their thinking. At stake is the image and standing of the type of political system that the United States, when it is not crippling itself by shutting down its own government, represents.

This in turn is important because it affects the political choices foreigners make and the objectives they seek, especially during times of upheaval such as has prevailed in the Middle East for the past three years.

U.S. interests are tied to all this in two basic ways. First, when foreigners choose liberal representative democracy this is good for the United States as a matter both of values and of more policy-specific consequences such as those of which the democratic peace theorists speak.

Second, the United States has enjoyed standing as the leading and most powerful exemplar of this form of governance. This is a major ingredient of America's soft power, its attraction for those foreigners who *ipso facto* are more inclined to associate with it, to emulate it, and to follow its lead.

The liberal democratic model has always had competition based on other criteria. Totalitarian regimes have won admiration for making trains run on time. Now in Washington things are not only not running on time but not running at all.

Many people in other countries, and this has repeatedly been demonstrated in the

Middle East, as well as elsewhere, opt for undemocratic formulas if they see them as more likely to provide services they expect from government, including among other things physical and economic security. When the leading (ostensible) liberal representative democracy shows it cannot provide governmental services, the undemocratic solutions look more attractive by comparison, and the United States loses some of its soft power.

Of course, what has led to the shutdown in the United States is not democracy but instead some very undemocratic behavior. The situation was caused by one political element's decision to pursue its agenda not through democratic methods but instead by threatening to inflict harm on the United States itself.

But that distinction may be lost on some foreign observers. The response will be somewhat similar to how many people in the Middle East reacted to the mess in Iraq that followed the U.S. invasion by saying that if that is a birth pang of democracy, they want nothing of it, even though what they were observing was not democracy but instead some of the consequences of an ill-considered military expedition.

If there is more of a foreign turn away from democratic models as a result of the situation today in Washington, it will involve a perverse symmetry. Those who brought about this situation have shown that they have so little regard for liberal representative democracy that they place lower priority on maintaining it in the United States than they do on pushing their particular political and policy agenda.

This fiasco thus becomes another example of how unseemly behavior in American politics can stimulate echoes of that behavior in other countries.

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