



Written by [Jack Kenny](#) on January 19, 2014

Obama on the NSA: Spies 'R' Us

If he were to borrow a slogan his old rival and former Secretary of State Hillary Clinton helped popularize, President Obama in his January 17 speech might have said, "It takes a village" to run a surveillance state. In his much-heralded [speech](#) on the reforms he proposes for the National Security Agency's metadata collection of billions of phone call records and electronic message transmissions every day, the president attempted to put a friendly, neighborly face on the agency's domestic spying program.



"After all," Obama explained, "the folks at NSA and other intelligence agencies are our neighbors. They're our friends and family." And NSA Director General James Clapper is sort of a national Andy of Mayberry, just trying to keep the village safe for little Opie and all the rest of us. Knowing that the eyes of a government agency can survey our medical records, our bank accounts, and the records of our communications with one another, all without reason for suspicion, probable cause, or a particularized warrant, should give us a warm, friendly feeling of security. In America in 2014, we are being asked to consider "Big Brother is watching" as less a warning than a word of comfort and assurance.

Yes, those nice, patriotic "folks" at the NSA have family and friends. Many no doubt have children they tuck into bed at night. They are probably kind to animals and good stewards of the environment. Some may have spouses who serve on the PTA or local school boards and lead community fundraising drives. All that is wonderful, but irrelevant to the topic at hand.

"Well that was true in East Germany under the Stasi as well," [wrote](#) Daniel McAdams at LewRockwell.com. "Is that supposed to reassure us? Are we supposed to feel better that our neighbors, friends and family are part of an enormous domestic spying network looking into the lives of others?"

The president's speech at the Justice Department came just days after [news reports](#) of the NSA's gathering of 200 million text messages a day from around the world and its planting of software in nearly 100,000 computers that allows officials to spy through those devices. But perhaps the reference to the Stasi is an unfair comparison to our good friends and neighbors at the NSA. From the very outset of his January 17 speech, the president drew a direct line of descent from Paul Revere to James Clapper.

"At the dawn of our Republic, a small, secret surveillance committee, born out of the Sons of Liberty, was established in Boston," Obama reminded his audience. "And the group's members included Paul Revere. At night, they would patrol the streets, reporting back any signs that the British were preparing raids against America's early patriots. Throughout American history, intelligence has helped secure our country and our freedoms."

"In the Civil War," the president continued, "Union balloons' reconnaissance tracked the size of Confederate armies by counting the number of campfires. In World War II, codebreakers gave us insights into Japanese war plans. And when Patton marched across Europe, intercepted



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communications helped save the lives of his troops.” And on he went through the Cold War and the establishment by President Truman of the NSA, to the terrorist attacks of 9/11 and the urgent need to know what our enemies worldwide are up to.

To Obama, the constitutional scholar now enamored of executive power, it may seem of little importance that Truman created the NSA without the consent or even the knowledge of the U.S. Congress. Its very existence was supposed to be a secret from the American people as well as our enemies abroad. Those who knew of it would joke that NSA stood for “No Such Agency.” Perhaps Americans should have assumed one or more secret agencies in Washington would be carrying out a program of surveillance on the entire nation. After all, domestic spying, in Obama’s telling of it, is as American as, well, Paul Revere.

“Maybe I didn’t pay enough attention in history class,” [wrote](#) J.D. Tuccille at Reason.com, “but my memory of Paul Revere was that he, and the Sons of Liberty, were pretty active in warning Americans about the unsettling activities of the government officials of their day. Pretty Edward Snowden-ish, really.” And the colonists who rebelled against the crown had among their grievances the Writs of Assistance that authorized officials to search homes and businesses at random for anything that might be contraband. It is why, soon after the the U.S. Constitution was adopted, the states ratified a Bill of Rights that included the following amendment:

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

The protections of the Fourth Amendment are a far cry from the Foreign Intelligence Surveillance Court’s routine renewal of warrants authorizing the NSA or FBI to collect data on billions of phone calls for months at a time. “Today new capabilities allow intelligence agencies to track who a terrorist is in contact with and follow the trail of his travel or his funding,” the president said. But when an intelligence agency or agencies are able to identify a terror suspect and want to know whom he might be calling, why not subpoena records for that suspect’s calls rather than collect data on everyone’s phone calls?

Former FBI Director Robert Mueller [told](#) the House Judiciary Committee last fall that the if the NSA had been conducting its metadata collections in the months before the 9/11 attacks, authorities might have discovered that one of the plotters had been calling an al-Qaeda safe house in Yemen. But if the intelligence officials knew the number or numbers of the safe house, could they not have obtained records for calls to that location, without searching through daily records of all the calls made to, from, and within the United States? No one doubts that uncovering a terrorist plot is often as difficult as finding the proverbial needle in a haystack. But the solution seized upon by the nation’s “intelligence community” is to add more hay.

“New laws allow information to be collected and shared more quickly and effectively between federal agencies and state and local law enforcement,” the president said. “Relationships with foreign intelligence services have expanded and our capacity to repel cyber attacks have [sic] been strengthened. And taken together, these efforts have prevented multiple attacks and saved innocent lives — not just here in the United States, but around the globe.” That may be true of “these efforts” in the aggregate, but it is worth recalling that recently a federal judge, in [ruling the metadata collections to be unconstitutional](#), declared the government had been unable to show that a single imminent attack



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had been prevented through those collections. A panel appointed by the president to review the NSA program offered a [similar assessment](#) to the Senate Judiciary Committee on January 14.

Not surprisingly, Obama invoked the “horror of September 11” as a justification for the expansion of the government’s surveillance activity. “We were shaken by the signs we had missed leading up to the attacks, how the hijackers had made phone calls to known extremists and traveled to suspicious places.” But an impressive number of reports since then indicate the signs were not so much missed as [ignored](#) — [unheeded rather than undetected](#).

Obama did promise some reforms of the data collection regime. For one, he said the United States will no longer eavesdrop on heads of state or on governments of U.S. friends and allies. Recent disclosures have confirmed that the NSA had monitored the mobile phone of German Chancellor Angela Merkel, and Brazilian President Dilma Rousseff postponed a state visit to Washington in protest of the NSA spying on her e-mail and cellphone. “The leaders of our close friends and allies deserve to know that if I want to learn what they think about an issue, I will pick up the phone and call them, rather than turning to surveillance,” Obama said. That raises the question of who ultimately is in charge of the nature and extent of the NSA’s electronic snooping. Either the president did not know the heads of state were under surveillance, or he has just now arrived at the discovery of the telephone as an alternative to spying on “our close friends and allies.”

As an additional reform, Obama promised each search of database of phone calls will be subject to judicial review by the Foreign Intelligence Surveillance Court. The history of that court’s [rubber-stamp approval](#) of virtually every search request renders that assurance essentially moot. The president also said the government will not hold the metadata, but did not say how or where it would be stored. His advisory panel had recommended that it be controlled by a third party, such as the telephone companies. Obama has asked Attorney General Eric Holder and the intelligence community to report to him on the options for preserving the metadata program without the government holding the records.

“One thing I’m certain of: this debate will make us stronger,” Obama said. All of this came with the usual denunciation of former NSA contractor Edward Snowden’s public disclosure of a highly classified program of massive, indiscriminate government surveillance of the nation’s citizens. “If any individual who objects to government policy can take it into their own hands to publicly disclose classified information, then we will not be able to keep our people safe, or conduct foreign policy,” the president said.

Yet the debate Obama says he welcomes would not otherwise have occurred. Either the threat to liberty posed by the NSA program is real and the president’s reforms, modest though they may be, are important, or the national debate that Snowden’s revelations created was never needed and the reforms are merely politically expedient window dressing. The president cannot logically have it both ways.

Photo: AP Images

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