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Editorial: In wake of NSA reveal, 'who will guard the guards?'

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Editorial

The revelations of recent weeks that the U.S. government indiscriminately collects phone data of U.S. citizens and gathers other intelligence information from major tech companies layer a chilling immediacy to the warning by President Barack Obama during his May 23 foreign policy speech. Without a readjustment of the way we think and act, he said, we may "continue to grant presidents unbound powers more suited for traditional armed conflicts between nation states."

Some of the powers he warned against, one suspects, are the same ones that resulted in the practices he is now forced to defend as legal. That the practices may be legal doesn't begin to satisfy the questions that have arisen about whether they should be legal or whether we need to seriously "discipline our thinking and our actions," and how quickly and to what degree.

Startling revelations reported in quick succession by *The Guardian* newspaper in London and *The Washington Post* established that the National Security Agency, an operation that exists beyond a thick blanket of secrecy, collects data on phone calls among U.S. citizens on a regular basis -- essentially on the frequency of calls, to whom and from where they are made. Obama and others assure that the massive surveillance project does not include listening in on calls or reading the content of email, text messages and the like.

To go beyond the basic collection of phone data, according to the Obama administration and members of Congress supportive of the programs, requires a warrant that can only be issued after review by a secret court established by the Foreign Intelligence Surveillance Act (FISA). That law was passed in 1978 to address abuses of government surveillance that came to light in the post-Watergate era. The act was expanded under the Bush administration following the 9/11 attacks.

In his May 23 speech, Obama emphasized that the war on terrorism -- at least the part of it that puts soldiers in combat on foreign soil -- had ended. But that was only one dimension of the legacy of President George W. Bush that Obama inherited by successfully campaigning against it. Another portion was the elaborate national security apparatus that he apparently has expanded and used to a far greater extent than his predecessor had.

When, following the most recent disclosures, the president was forced to defend practices as they now exist, he answered that Americans could not expect 100 percent security and 100 percent privacy. Choices would have to be made, he said, and "I welcome the debate."

The debate sharpened and landed on his doorstep when Edward Snowden, an ex-CIA technical assistant who was working as a contractor for Booz Allen Hamilton at the National Security Agency, came forward as the source of the information that appeared in the papers. He said he acted out of conscience.

Snowden, who appeared to have minimal education (a GED and little college) and experience given the type of work he did and the security clearance he must have had, nevertheless came off sometimes eloquently in voicing his concern that "the NSA has built an infrastructure that allows it to intercept almost everything." In an

interview, he said, "With this capability, the vast majority of human communications are automatically ingested without targeting. If I wanted to see your emails or your wife's phone, all I have to do is use intercepts. I can get your emails, passwords, phone records, credit cards."

He also claimed, and reporters involved verified, that he was not after money. While Pfc. Bradley Manning is being tried for indiscriminately dumping secret documents to Wikileaks, Snowden was concerned that the reporting be prudent, not endanger anyone and not provide information that would aid enemies of the United States. Time will tell how all of that is evaluated. Snowden, said to be in Hong Kong, is under investigation by federal authorities.

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If all of this seems terribly Orwellian and futuristic, it might be good to step back to gain some perspective. There are historical analogs, insofar as the current situation has to do with a war, even if it is largely of the cyber sort. The shared phenomenon, whether speaking of the Cold War or the current war on terror, is the degree to which we allow war to alter who we are. In terms of our resources, our attitudes, our deepest religious convictions, our very lives, war and the concomitant fear of being vulnerable to an enemy can be powerfully transformative.

Our religious leaders can read the beatitudes one day and the next day celebrate wars that popes have condemned. We U.S. Catholics have an entire global diocese dedicated to the military. The chaplains we supply are uniformed officers. Our coreligionists are spread throughout the defense industry, designing, building and marketing some of the most destructive implements of war in the history of the universe.

Many of the universities so worried these days about Catholic identity are recipients of research money that comes from and for militaristic pursuits. Soldiers train on our campuses and warriors are lauded in our sanctuaries.

There are arguments, some of them lofty, that provide rationale for all of it. But we have to find a rationale precisely because we go to such great lengths to accommodate the state, not our God or our sacred texts, when we perceive our security is at stake.

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The realization that we are willing to make enormous concessions even at the level of religious belief doesn't nullify the significant questions that now confront the country as it ponders the massive capabilities of the state to mine personal information. It only provides a bracing backdrop for calculating how much more we're willing to concede.

Making those calculations, however, is nearly impossible because at the moment we have such little information that we are left with only more questions.

Critics of the secret intelligence-gathering programs, including a few members of Congress, claim that the checks put in place to protect people's rights are hollow. Indeed, the issue at the moment is a monumental Catch-22: These programs are secret, they have to do with national security, so all we can tell you about them is that they exist and that we do not, trust us, violate people's privacy.

The central check on this is a FISA court, which reviews any requests for deeper investigations of personal correspondence than collecting numbers. The court's chief judge, Reggie Walton, told *The Guardian* that "there is a rigorous review process of applications" and the court does not rubber-stamp requests. Still, a report the court submitted to Congress says that of the 1,789 surveillance requests it received in 2012, it approved all but

one.

The court proceedings are secret and, the critics say, it is hardly a court in the conventional sense, because the only entity that appears before it (it is secret, remember) is the government. Those being investigated, including American citizens, don't know about it and aren't represented.

Apparently, no accounting exists for the types of requests made, the reasons for the requests, and the court's justification for granting the government's wishes nearly every time.

One of the questions during the Cold War, when we were asked to trust a strategy of mutually assured destruction, harkened back to the ancients: "Who will guard the guards?"

The question seems even more appropriate today. At the moment, far more questions than answers are apparent. A principal obligation of government is to protect its people. At the same time, what remains of personal liberties, human dignity and a way of life free from undue government incursion has to be worth securing. It is a tender balance to achieve in this era of nationless warriors, freelance terrorists and the demonstrated limits of conventional power.

The most demanding question, then, is whether we are capable of the kind of robust discussion necessary to decide what we're willing to concede to this latest evolution in war.

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