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# SOCIETY UNDER SURVEILLANCE? STRIVING FOR A BALANCE BETWEEN SECURITY AND PRIVACY

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Some intrusions into personal privacy are inevitable in the quest for better security.

Not all good security measures intrude into privacy.

Not all intrusions into privacy advance security.

Good privacy and good security are sometimes synonymous.

There are tools for diminishing the tension.



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It is therefore pointless to argue that privacy and security never conflict or that privacy never must give way to security.

The consistent lesson of recent history is that if privacy and security compete head-to-head, privacy loses.



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In the quest to manage the conflict between privacy and security, strong laws and effective, independent enforcement are essential, indispensable tools.

There are many other tools: technologies, training, education, etc., but without legal requirements for their use they are easily circumvented.



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Why? Because strong laws and effective, independent enforcement are necessary to establish limits that are necessary to protect privacy.

Limits on volume and types of data used,  
how data are gathered  
duration of retention and use,  
purpose of use (“mission creep”),  
who can access the data,  
how data are corrected and systems improved,  
etc.



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Legal limits are also necessary to ensure that data-based systems address real threats and are effective at doing so.



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And legal limits are also necessary to ensure that data-based systems are implemented and used effectively and appropriately, and continue to be over time.



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In the absence of evidence that personal data and systems that intrude into privacy are necessary to address effectively a real threat, and are, in fact, being used that way, the invasion of personal privacy is *per se* unjustifiable.



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The experience of the United States—and other countries—  
in this regard is not comforting.

2008 report from the U.S. National Academy of Sciences,  
“Protecting Individual Privacy in the Struggle Against Terrorists”

A series of reports from the U.S. Government Accountability Office and the  
Inspector General of the U.S. Department of Justice and other federal agencies

Privacy Impact Assessments

Private-sector and press reports

Practical experience with security measures



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“Security” has taken on a talismanic significance against which not only privacy, but even rationality seems to fall.

As the NAS recommended in 2008: *while “[t]he policy impulse to do something . . . is understandable . . . [p]rogram deployment and use must be based on criteria more demanding than ‘it’s better than doing nothing.’”*



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The risk is not only that we are intruding unnecessarily into privacy, but that we are compromising good security as well.

Wasting scarce resources  
Distracting attention away from real threats  
Overwhelming ourselves with data we cannot analyze  
Undermining public and political support  
True not only of national security, but information security



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## Recommendations

1. Demonstrate effectiveness.
2. Use appropriate technologies and systems to minimize/anonymize data, provide audit trails, etc.
3. Provide redress.
4. Ensure external (as well as internal) oversight and, to the greatest extent possible, transparency.
5. Update the law to set appropriate, clear, substantive limits.



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Thank you.



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