September 2013

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Surveillance of Islamic communities in the United States has become a controversial issue in recent years. This article examines the reasons offered for the legitimacy of such surveillance, specifically the historical precedent and inherent beliefs associated with the Islamic worldview and the legal and practical considerations thereof. Finally, it examines the real-world implications and functions of surveillance like that practiced by the New York City Police Department in the aftermath of 9/11.

In 2011, it came to light that the New York City Police Department had engaged in investigation and surveillance of local mosques, Islamic organizations, and communities throughout the city. Subsequent evidence, some as recent as 2013, revealed that this surveillance had begun shortly after the attacks on 9/11. It consisted of measures like mapping of Muslim communities, businesses, and religious, educational, and social institutions. Furthermore, the NYPD deployed officers and informants to infiltrate mosques and monitor the conversations of congregants and religious leaders. Online postings were also monitored while information collected from these activities was entered into intelligence databases. Surveillance extended further to monitoring and investigating specific people who were perceived as respected or influential in the Islamic community.[79]

Reaction to these revelations was swift and mostly negative. Regardless, a crucial question was neglected: Was this surveillance, and other surveillance like it, warranted? An open-minded review of the facts shows that this surveillance and investigation framework seems reasonable, as a Muslim community is more likely to

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[79] Hina Shamsi, "Raza v. City of New York," American Civil Liberties Union, accessed September 2, 2013, https://www.aclu.org/sites/default/files/assets/nypd_surveillance_complaint_-_final_06182013_1.pdf.

produce a terrorist for two primary reasons. The first of two subpoints here is historical precedent. Anti-American violence from assorted Muslim groups has been a factor of the status quo since the 1970s, to say nothing of the destruction wrought against a variety of other opponents. The second subpoint is the violence inherent in the Islamic worldview. As unpopular as it is to speak in such a manner in this day and age, the unfortunate fact is that Islam, when followed to its logical extent, demands a violent slaughter of all those who believe otherwise. This will be examined in greater detail later, as will the obvious fact that clearly not all Muslims choose to become violent. As the second main point, it is therefore not unreasonable to posit that those who hold to and attempt to order their lives by way of an ideology that promotes violence and seeks to destroy that which opposes it should be watched with greater scrutiny than those who do not. This article will examine both of these points in turn, in addition to legal and practical considerations and implications of such surveillance.

The first reason that the Muslim Ummah (a term referring to the super-national worldwide Islamic community[80]) is more likely to produce a terrorist is that of historical precedent. If it can be shown that there is a repeated, focused, and damaging campaign of violence against the United States (to say nothing of attacks against other countries) by Muslim groups, then it is reasonable to expect Muslims to be a source of potential trouble. Since the failed triple car-bomb plot by Khalid Al-Jawary in 1973,[81] there has been an extensive series of violent incidents against the United States, the most damaging committed by Muslim groups. These groups have been united under a series of different banners, but all have been explicitly Muslim. Supporting this point via an in-depth examination of the quantity and impact of terrorist incidents with regard to the motivation or orientation of the attackers is beyond the scope of this article, but a cursory examination reveals the same conclusions.

The watershed event was clearly the suicide attacks in September 2001, but there have been other incidents both before and after. For example, the two bombings in Beirut by the Islamic Jihad Organization in 1983 killed 304 Americans,[82] and the *USS Cole* bombing in Yemen by al-Qaeda operatives in October 2000 killed seventeen sailors.[83] All of these incidents and others like them indicate an unusual and increasing level of violence from Muslim groups.

It is worth noting at this point that while Muslim terrorist attacks on the United States may be outnumbered in quantity by those of other orientations (far left-wing, far right-wing, pro-earth, etc.), they are not outdone in the area of quality. Organizations whose motivations for violence stem from something other than that of Islamic terrorist groups tend to inflict fewer casualties and reflect less sophistication than that of Muslim groups, according to a survey of the University of Maryland's Global Terrorism Database. A query of the top twenty deadliest terrorist attacks worldwide by casualty rate since 1970 reveals that Islamic groups hold three of the top five slots, and are the only transnational ideology featured in the top twenty.

Center for Defense Information researcher, Mark Burgess, notes:

> *The modern terrorist, most particular the religiously motivated one, [is] . . . notably less restrained in his methods and willingness to inflict*

[80] Encyclopedia Britannica Online, "Islam," accessed November 27, 2013, http://www.britannica.com/EBchecked/topic/295507/Islam.

[81] Adam Goldman and Randy Herschaft, "AP IMPACT: Freedom Looms for Terrorist," *Associated Press*, accessed September 2, 2013, http://www.personal.psu.edu/glm7/m316.htm.

[82] Global Terrorism Database, GTD Identification Numbers 198304180001 & 198310230007, University of Maryland, http://www.start.umd.edu/gtd/.

[83] Ibid., GTD Identification Number 200010120001, GTD Identification Numbers 200912250024 & 201005010001.

casualties than many of his predecessors.[84]

Continuing this line of argumentation, he discusses al-Qaeda's quest to obtain WMDs, saying:

Religious terrorists' willingness to use such weapons reflects a readiness and eagerness to inflict mass casualties that secular terrorists would likely balk at as counter-productive. This inclination towards higher levels of violence has emerged as one of religious terrorism's defining characteristics.[85]

The situation here can be compared to that of a sexual assault committed in a large city. If an old man, a middle-aged woman, and a middle-aged man are brought under suspicion by the investigation; the police will naturally look more closely at the middle-aged man than the other suspects. This is not a result of a preexisting bias against all middle-aged males, but simply due to the fact that, historically, people that fit his profile have shown themselves more willing to engage in conduct of the type that just occurred. In other words, this middle-aged man is more likely to have committed the sexual assault due to the fact that middle-aged men make up the majority of U.S. sexual offenders. In the same manner, it would not seem unreasonable to argue for "keeping a closer eye" on the Muslim Ummah due to its historic tendency to produce particularly violent offenders.

The second reason increased attention should be paid to Muslim communities in the course of guarding against terrorism is the issue of the fundamental violence of the Islamic worldview. When the already-established fact of the amplified danger of religious terrorist groups over their secular counterparts is coupled with the Islamic

worldview's preexisting inherent violence, the danger is increased. The first indicator of this point is the many violent passages in the Koran, particularly verses like Surah 9:5, which instructs Muslims to:

fight and slay the Pagans wherever ye find them, and seize them, beleaguer them, and lie in wait for them in every stratagem (of war); but if they repent, and establish regular prayers and practise regular charity, then open the way for them: for Allah is Oft-forgiving, Most Merciful.[86]

Standing in opposition to this is the fact that most Muslims do not appear violent. On the contrary, out of the estimated 1.5 billion Muslims in the world today,[87] most have chosen not to engage in violence. To support this perspective of Islam as fundamentally nonviolent, Muslims are quick to point out the peaceful verses in other parts of the Koran. Unfortunately, they neglect mentioning a key Muslim doctrine known as the doctrine of Abrogation. Surah 2:106 says:

None of Our revelations do We abrogate or cause to be forgotten, but We substitute something better or similar: Knowest thou not that Allah Hath power over all things?[88]

This references the primacy that more recent surahs take over the older ones. The problem arises when one consults a chronological list of the Koran's surahs and notes that the newer Surahs are increasingly violent, calling for proselytization and forced conversion, presumably as the fledgling religion gained power and popularity in the Arab peninsula. Milder, more moderate verses like Surah 2:256, which says:

Let there be no compulsion in religion: Truth stands out clear from Error: whoever rejects evil and

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[84] Mark Burgess, "Explaining Religious Terrorism Part 1: The Axis of Good and Evil," *Agentura.Ru Studies and Research Centre*, May 20, 2004, accessed September 2013, http://studies.agentura.ru/centres/cdi/explaining1/.
[85] Ibid.

[86] The Holy Qur'an, M.H. Shakir (trans.), *University of Michigan Online Book Initiative*, accessed September 2, 2013, http://quod.lib.umich.edu/k/koran/.
[87] Encyclopedia Britannica Online.

[88] Ibid.

believes in Allah hath grasped the most trustworthy hand-hold, that never breaks.[89]

and was written 87th out of 114, have been abrogated and replaced by verses like the previously mentioned Surah 9:5, which was written 113th. Violence trumps peace in the Koran.

Another point on the issue of inherent violence and therefore increased danger in Islam is the fact that Islam is not merely a religious faith, but rather a worldview system with sweeping implications for all of life. Iranian refugee Azam Kamguian writes:

In countries ruled by Islamic law and where political Islam holds sway, writers, thinkers, philosophers, activists, and artists are frequently denied freedom of expression. Islamic regimes are notorious for the violent suppression of free thought. Often, as a government allies itself closely with Islam, any critics of the government will be accused of blasphemy or apostasy.[90]

These troubling manifestations in domestic governance, coupled with the disturbing nature and perception of Islamic Sharia law,[91] mark Islam as more than a simple religion, and indicate it deserves closer observation. Secular terrorist groups generally have as their motivation nothing more than a seat at the table in deciding how things are done in the status quo. However, religiously-motivated Islamic terrorists intend to destroy the table, everyone else at it, and the status quo itself, to paraphrase R. James Woolsey.[92]

As Islam appears to be an ideology that influences individuals to commit acts of

terror, the problem then is the religion itself and the ideas therein. Since it is impossible to fight an idea itself, which exists only in the minds of its followers, it must be countered by engaging its practitioners who choose to live it out to its fullest extent. In this case, a worldwide community of practitioners of this religion has produced offenders who have wrought more violence against the United States and its allies than other violent ideologies. Further, these practitioners hold to an inherently violent worldview, one that is based on subjugation. The odds, then, are simply higher that future terrorists will be found in a Muslim community. That which is nearest and dearest to every Muslim's hearts (their faith) demands that they wage jihad, and as such, they seem more likely to do so than someone who has no such powerful internal stimulus pressuring him to violence. It is therefore not unreasonable to watch a worldwide community and its local concentrations for trouble when that community has shown itself prone to violence and holds to a forceful worldview which pushes its practitioners towards terrorist action. As such, it appears apparent that surveillance such as that practiced by the NYPD is reasonable.

In the abstract, the surveillance is reasonable, but in the concrete, it may still face obstacles. In the United States, citizens enjoy a variety of rights and legal protections that would seem to prohibit the government from an uninhibited campaign of surveillance, investigation, and counterterrorist action. Increased scrutiny of Muslims appears sensible, but the legal questions still remain.

A preliminary note should be addressed. Very rarely in the so-called legal discussions

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[89] Ibid.

[90] Azam Kamguian, IHEU, "The Fate of Infidels and Apostates under Islam", *International Humanist and Ethical Union*, accessed September 2, 2013, http://iheu.org/content/fate-infidels-and-apostates-under-islam-0.

[91] Kevin Bywater, "Liberty or Islamic Law?" *Summit Oxford Study Centre*, June 28, 2013, accessed September 2, 2013,

http://www.summit.org/blogs/summit-announcements/liberty-or-islamic-law/.

[92] R. James Woolsey, Director of Central Intelligence (fmr.), "Countering the Changing Threat of International Terrorism," August 2, 2000, accessed September 2, 2013, http://www.gpo.gov/fdsys/pkg/GPO-COUNTERINGTERRORISM/pdf/GPO-COUNTERINGTERRORISM-1-3.pdf.

of this matter do actual references to the law or serious legal dialogue occur. In its place is reasoning like that used by the American Civil Liberties Union, which is leading the legal charge with a class-action lawsuit against the NYPD. The ACLU repeatedly says in its court complaint that the main problem the courts should have with the NYPD's surveillance program is that it is done "because of [the plaintiffs'] religious beliefs and practices."[93] Specifically, they object to how in preliminary studies the NYPD conducted before beginning surveillance, they specifically set aside other religions (for example, distinguishing between the American-Egyptian Muslim community and the American-Egyptian Coptic Christian community) in order to focus in on the Islamic community.

The other key issue organizations like the ACLU (and the 125-group coalition that supports their lawsuit)[94] take issue with in the NYPD surveillance is that it watches and records conduct that is not illegal, and has not averted a single terrorist attack. However, they again ignore the fact that the Islamic faith appears to be a historically and inherently violent worldview. What defense can there be against something like this other than to watch its practitioners to see when the next terrorist plot will materialize? Further, they fail to point to any specific law that prohibits law enforcement from doing this.

The main legal issue in play, then, seems to be the legality of law enforcement surveillance in the absence of an already-committed crime or reasonable suspicion thereof. Previously, the NYPD played under a set of legal guidelines known as the Handschu rules. These guidelines stated that police could investigate constitutionally protected activities (speech, religious

goings-on, etc.) only when they had specific information that a crime had been committed or was imminent. Undercover officers could be used only when necessary to a case, not as a way to subtly keep tabs on groups that that may pose a threat in the future. In addition, police were prohibited from building dossiers on people or keeping their names in files without specific evidence of crimes.[95] In the days after 9/11, believing a change was needed, the NYPD formally requested that the federal court system do away with the Handschu rules. Matt Apuzzo and Adam Goldman write,

> *The judge presiding over the Handschu case, Charles Haight . . . did away with the requirement that the NYPD launch investigations only when it had specific evidence that a crime was being committed. And he eliminated the rule that police could use undercover officers in political investigations only when they were essential. Most important for the secretly planned Demographics Unit, Haight ruled: 'For the purpose of detecting or preventing terrorist activities, the NYPD is authorized to visit any place and attend any event that is open to the public on the same terms and conditions as members of the public generally.[96]*

In terms of the Handschu rules, which appear to be the only legal precedent in this arena, the NYPD's conduct is legally acceptable.

The key question remains: Is this surveillance legal? The answer is multifaceted. First, there is no law declaring it to be so, and no court has ruled that it is. In fact, what appears to be the only legal precedent available on the issue (the aforementioned Handschu rules revision) indicates this surveillance is perfectly legal.

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[93] Shamsi, "Raza v. City of New York."

[94] Noa Yachot, "125 Groups ask DOJ to Probe Un-American NYPD Surveillance," *American Civil Liberties Union*, accessed September 2, 2013, https://www.aclu.org/blog/national-security-religion-belief-technology-and-liberty/125-groups-ask-doj-probe-un-american.

[95] Matt Apuzzo and Adam Goldman, "The NYPD Division of Un-American Activities," *New York Magazine*, August 25, 2013, accessed September 2, 2013, http://nymag.com/news/features/nypd-demographics-unit-2013-9/.

[96] Ibid.

As such, in one sense it is legal simply because it has not been declared to not be so. There is another aspect to this question, though, and it is the spirit in which most ask it: *Should* this surveillance be legal? However, attempting to answer this question by offering a legal opinion in this murky context is beyond the scope and authority of this article and author.

The facts, then, seem to indicate two main points. First, Islam appears to be a historically and inherently violent faith that has shown a tendency to motivate its followers to violence. Second, surveillance therefore appears to be both reasonable and legal. As such, the final section of this article will seek to address the practical implications of the points made therein.

Since most Muslims are not terrorists, courses of action such as open hostilities against or declaring war on the entire Ummah are morally reprehensible and out of the question, not to mention cost-prohibitive and inefficient. Surveillance and investigation would be the more appropriate measure, and the surveillance methods practiced by the NYPD appear an excellent place to start in reference to communities or geographical concentrations of Islam in America. Those sources cited at the beginning of this article provide a good overview of this surveillance. To these, it would seem reasonable to add an additional investigative layer; one that could focus on the bigger picture, the fact that it is not just a regional flavor of Islam that has a historical and inherent predisposition to violence. This level could seek to detect and investigate individual Muslims on a more personal level.

Specifically, a nationwide program such as this could look for one or more personal "stressors" that, absent an Islamic affiliation, would be a non-issue, or at least, less of a concern. These stressors could include originating from a questionable country, seeking advanced degrees, being a member of a more fundamentalist sect, or professing anti-American or anti-Western tendencies. For example, a secularist from Yemen seeking to immigrate might not be an issue, but a practicing Muslim from Yemen would be, as that particular country has a high level of terrorist activity at this time. A secularist seeking a degree in nuclear engineering might not be important, but a practicing Muslim doing the same could be grounds for quiet investigation and surveillance, to assist in the preclusion of the AQ Khans of the future. Being a member of a more fundamentalist Muslim sect (Wahhabism or Qutbism, for example) could also be grounds for concern. In an example of multiple stressors, a practicing Muslim (first stressor) with anti-American sentiments (second) from a hostile country like Iran (third) seeking postgraduate education in chemical engineering (fourth) could be grounds for strong concern. In this way, surveillance and investigation could be appropriately and proportionately applied where needed most.

As noted near the beginning of this article, this topic is unpopular. It is also apparent that it is a complex topic that merits more research and analysis than it is possible for it to receive here. Many, if not all, of the topics addressed and points made could be examined much better if given more space and time. Unfortunately, to do so here would be beyond the purview of this fairly limited article. This article is only intended to offer a new perspective or spark debate, not to provide an exhaustive review and analysis of this many-sided situation.