

# **Inquiring Minds topic – June 7, 2013**

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## **Homeland Insecurity: After Boston, The Struggle Between Liberty and Security**

*By Massimo Calabresi and Michael Crowley / May 01, 2013 – TIME magazine issue of May 13, 2013*

**The contest between liberty and security has been with America since its founding. It has been fought on the public stage by every President from George Washington to Barack Obama. Each generation, from those facing rebellion in the 1860s to those pushing back against government intrusions a century later, has debated where to strike a balance. But in the dark world of 21st century law enforcement, where terrorist threats can hide behind our most cherished freedoms, the battle sometimes takes place in government documents so obscure that they escape public notice.**

**Take the case of the FBI's Domestic Investigations and Operations Guide. In October 2011, Obama's Justice Department, mindful of increasing signs of homegrown terrorism, quietly granted FBI agents new powers that disturbed civil libertarians. Federal agents could now data-mine vast stores of information about individuals without making a reviewable record of their actions. They could conduct extensive physical surveillance of suspects without firm evidence of criminal or terrorist activity. They could interview people under false pretenses. They even had wider freedom to rummage through the trash of potential sources.**

**But the new guidelines also featured added restrictions on an especially sensitive area of FBI counterterrorism work: mosques. Under the new rules, agents could no longer enter a religious organization without special new approval—in some cases directly from FBI headquarters. Moreover, according to still-classified sections of the new rules made available to Time, any plan to go undercover in a place of worship—a tactic employed by the bureau after Sept. 11, 2001, that drew protests from Muslim Americans and at least one lawsuit from a California mosque—would now need special approval from a newly established oversight body at Department of Justice headquarters called the Sensitive Operations Review Committee, or SORC.**

**On January 18, 15 months after those guidelines were issued and just a few days before Martin Luther King Jr.'s birthday, a young immigrant from the Russian region of Dagestan, Tamerlan Tsarnaev, stood up in his mosque in Cambridge, Mass., and confronted his imam when the religious leader extolled King's greatness. Tamerlan yelled that the preacher was a "nonbeliever" and was "contaminating" his followers' minds. The congregation shouted Tamerlan down and hounded him out the door. The FBI didn't learn about the episode, or the fact that Tamerlan had been posting radical Islamic videos on his YouTube page, until after three people were dead on Boylston Street.**

**There's no telling whether closer monitoring of Tamerlan's mosque might have stopped him. But the Tsarnaev case raises, once again, hard questions about how we want to apply the Bill of Rights and the post-Civil War guarantees of equal protection in our time. Where is the limit to what Washington should do in the name of our security? Do Americans want undercover agents spying on their prayers? What aspect of privacy might we give up in the interest of better security? Perhaps the FBI agents who were alerted to Tamerlan's radical turn by Russian intelligence in 2011 should have monitored his Internet activity long enough to spot his terrorist sympathies. Should Americans let the government sniff through their communications? According to a new Time/CNN/ORC International poll, nearly twice as many Americans are concerned about a loss of civil liberties as are worried about a weakening of anti-terror policies.**

**It is still unclear whether Tamerlan Tsarnaev, whose body is being released to his relatives, and his younger brother Dzhokhar, now in custody, were self-radicalized and acted independently—or whether they acted at the behest of an ideological mentor or foreign organization. Congress and U.S. intelligence agencies are now studying whether warning signs were tragically missed. But it seems increasingly clear that the activities of the Tsarnaev brothers and many other would-be homegrown terrorists can be detected not through travel records and financial transactions but only through the more opaque realm of online activities and religious attitudes.**

**With al-Qaeda weakened abroad but self-taught, wi-fi-empowered jihadis increasingly a threat at home, balancing freedom and security is an old problem we'll have to get used to once again.**

### **The Road to Radicalization**

**In hindsight, Tamerlan Tsarnaev followed a gradual path toward radicalization that authorities have seen many times before. His identity was not religious when he moved to the U.S. from Dagestan, a province in southern Russia, in 2003. He became an avid boxer who dreamed of a professional career. He was also a bit of a libertine, a drinker and smoker who sported reflector sunglasses, tight jeans, even white fur—"dressed like a pimp, kind of Eurotrash," as one neighbor told the Washington Post. He played violin and piano. While waiting to register for a boxing tournament, he once sat down at a piano in the room and played an impromptu 20-minute classical piece, according to a New York Times account, leading the gathered boxers to erupt into applause.**

**Long before the blasts on Boylston Street, however, people around Tamerlan could see him changing. He stopped smoking and drinking and started to complain about the U.S. government. He began to study the Koran. His boxing career hit a dead end. The next year his parents moved back to Russia. Although he had married an American woman (who converted to Islam), he was becoming isolated and said he had no American friends. Soon his flashy style of dress was gone and he sometimes wore a beard. He was also angry and increasingly confrontational, especially on matters of religion and society.**

**In 2011, Russia's Federal Security Service contacted the FBI to warn that Tamerlan had turned toward radicalism. The alert was prompted by a phone conversation the Russians had recorded between Tamerlan and his mother, then living in the republic of Dagestan, in which they discussed jihad.**

**That's when the FBI conducted its assessment of Tamerlan, tapping post-9/11 powers to investigate potential threats without opening a formal inquiry. The FBI ran Tamerlan's name through a federal counterterrorism database of known Islamic-extremist websites, a senior law-enforcement official tells Time. The bureau also checked whether Tamerlan had called telephone numbers associated with known**

Islamic extremists, the official says. The FBI took 10 different investigative steps, the senior law-enforcement official says, including interviewing Tamerlan, but after finding no sign of terrorism, the bureau closed its case file, concluding he was not a danger.

In January 2012, Tamerlan took his notorious trip to Dagestan, where his parents live in the capital, Makhachkala. His precise activities there are unclear. His father says Tamerlan visited a conservative mosque popular among the republic's Islamist fighters. "I would be lying if I told you that everyone who gathers there is an angel," Magomedtagir Temirchiev, a local attendee of the mosque, tells Time. U.S. officials are now investigating whether Tsarnaev met with local militants, including a Russian-Canadian boxer and convert to Islam named William Plotnikov, who was killed in a firefight with Russian forces on July 14, 2012. Tamerlan flew back to the U.S. two days later.

Tamerlan's overseas trip set off no alarms at the FBI. When he landed at New York City's JFK airport, the Department of Homeland Security notified Boston's Joint Terrorism Task Force. An agent there reviewed the automated alert but took no further action.

Now back home in Cambridge, Tamerlan was an occasional visitor to the Islamic Society of Boston mosque, an ornately decorated, low-slung building on a residential street. Here, the burgeoning radical could not stomach the mosque's message of relative moderation. When an imam sermonized at a weekly prayer session in mid-November that it's appropriate for Muslims to celebrate such secular American holidays as July 4 and Thanksgiving, Tsarnaev stood up and declared that Islam forbids it, an argument he continued with the preacher after his sermon ended. Two months later, on the Friday before Martin Luther King Jr. Day, Tamerlan had his big confrontation with the imam over the approaching holiday. After being warned by mosque leaders to stop interrupting or stop attending, Tamerlan chose the former.

Picking a fight with your imam is hardly illegal—in fact, it's protected by the First Amendment. Perhaps even more telling was Tamerlan's Internet activity. In August 2012 he created a YouTube account, and in subsequent months he posted several videos promoting militant Islam. One of them, listed under the header "Terrorists," featured militants with automatic weapons. Another, titled "The Emergence of Prophecy: The Black Flags from Khorasan," celebrated the defeat of infidels by jihadi fighters. Still another featured a radical Islamic cleric who attacks the Harry Potter series as evil and argues that the books promote "the drinking of unicorn blood and magic." Looking back now, it is tempting to conclude that an alert federal agent might have spotted a dangerous pattern here.

### **Not-So-Big Brother**

What to make of Tamerlan's radicalization, however, and whether it should have been monitored and acted upon, became the subject of angry debate in Washington within days of his death. The failure to detect the brothers' plot seemed to some like a replay of 9/11, when communication failures between U.S. intelligence and law-enforcement services blew a chance to stop the attacks. "There still seem to be serious problems with sharing information, including critical investigative information," said GOP Senator Susan Collins, a member of the Senate Intelligence Committee.

In fact, if there was any interagency problem this time around, it may have been oversharing. After the Russians flagged Tamerlan as a concern in the spring of 2011, U.S. officials put his name on the National Counterterrorism Center's Terrorist Identities Datamart Environment list (TIDE). Nominally a clearinghouse for names of possible or suspected terrorists, the TIDE list has become more of an

interagency dumping ground. With more than 740,000 names, it is rarely consulted or monitored by U.S. investigators.

The harder question raised by the Tsarnaev case is how deep into his private life investigators would have had to go in order to piece together the brothers' plot. America redrew the boundaries between privacy and security in the years after 9/11. Rather than create a powerful new domestic intelligence agency, like those in Canada and the U.K., the U.S. decided to give the FBI increased powers. That meant entirely new rules for domestic counterterrorism investigations, which were unveiled in 2008 under George W. Bush's last Attorney General, Michael Mukasey. The rules broke down the divide between strictly criminal and more wide-ranging national-security investigations, allowing FBI agents to hunt terrorists with all the authority available to both criminal and national-security officials. They also granted the FBI the power to investigate more aggressively and pre-emptively, allowing for action even on the basis of thin evidence, with the goal of breaking up terrorist plots before their execution. It was a little noticed but significant change in the way the FBI did business.

After a 2008 presidential campaign in which he vowed to hunt down al-Qaeda leaders overseas, Barack Obama took office having said little about domestic terrorism. He soon found that the threat at home was growing. Where authorities had identified a total of 21 homegrown jihadist-inspired terrorist plots and two attacks in the eight years after 9/11, U.S. law enforcement made 42 arrests from May 2009 to December 2012. Those arrested included Faisal Shahzad, whose SUV bomb nearly exploded on a Saturday night in New York City's Times Square, and Army major Nidal Hasan, who allegedly killed 13 people in a November 2009 shooting rampage at Fort Hood in Texas. When the Administration issued its new FBI guidelines in 2011, it expanded many of the bureau's terrorist-hunting powers.

But it cranked others back. The Obama team's core strategy for rooting out homegrown Muslim extremists was to gain the trust of Muslim communities. The White House created a new position on its National Security Council staff for Quintan Wiktorowicz, an expert on Muslim radicalization, who has interviewed hundreds of Islamists in Europe. A top aide, Denis McDonough, visited a Virginia mosque in 2011 to promote the strategy. "The most effective voices against al-Qaeda's warped worldview and interpretation of Islam are other Muslims," McDonough, now Obama's chief of staff, said.

This attitude helped inform the 2011 investigative guidelines. So, perhaps, did Muslim-American anger over alleged ethnic and religious profiling. Earlier that year, for instance, the ACLU and the Council on American-Islamic Relations sued the FBI for violating the civil rights of Muslims in Southern California by hiring an undercover agent to infiltrate mosques there and conduct what the plaintiffs claimed was "indiscriminate surveillance." Under the new guidelines, an agent wanting to "identify, obtain and utilize information about actual or potential national security threats" in a mosque showing he had a specific reason to believe something untoward was happening there had to get approval from the special agent in charge of his region. And if agents wanted to go in undercover, they'd have to get permission from the newly created SORC, the special committee in Washington. Most of the details of the SORC remain classified, including the names of its chair, members and staff, its process for reviewing requests and overseeing investigations and its ability to issue emergency authorizations.

These new authorities came into effect only after the FBI checked out Tamerlan in the spring and early summer of 2011. In that assessment, the FBI didn't conduct surveillance on Tamerlan, scour the trash of potential sources or interview those who knew him without identifying themselves as fed, according to a senior law-enforcement official familiar with the investigation. Had they pushed harder and turned

up troubling evidence, they might have won permission to wiretap his phone or even sought a warrant from the Foreign Intelligence Surveillance Act court, which oversees sensitive investigations against foreign spies and terrorists. “If you surveilled him for six months, maybe it would have turned something up,” says the senior law-enforcement source. “You never know. But everything now suggests it just wasn’t there in the spring of 2011.”

What kind of blanket monitoring might flag an emerging radical like Tamerlan? Officials in New York City point to their extensive counterterrorism program, which looks specifically for signs of behavioral changes that suggest radicalization. Last year an Associated Press investigation revealed how a New York Police Department intelligence unit, led by an active-duty CIA official, employed a diverse group of undercover officers, called “rakers,” who assimilated into ethnic communities and university campuses looking for “hot spots”—cafés, mosques and other local hangouts they could tie to potential extremism.

It’s possible such a program would have exposed Tamerlan’s warping mind. Although his mosque says he never “expressed any hint of violent sentiments or behavior” and insists it would have contacted the FBI if he had, a law-enforcement observer who knew about his twin outbursts might have acted. Among domestic radicals with violent ambitions, “some behaviors repeat time and time again,” says Mitchell Silber, a former New York Police Department counterterrorism official. “One of those is a break with the mosque.”

But the type of intense ground-level sleuthing practiced by the NYPD can carry a steep cost. The AP’s revelations, which won it a Pulitzer Prize, drew furious protests over privacy and profiling and may have cost the NYPD trust among local Muslims. An NYPD official “testified that the information collected through the NYPD’s program did not produce any leads for terrorism investigations,” says Anthony Romero, executive director of the ACLU. “Instead, predictably, the NYPD’s actions wrongly stigmatized law-abiding Muslims.” For its part, the Boston Police Department says it does not surveil Muslim worship. “We don’t do racial profiling, or any kind of profiling that would target mosques,” a Boston police spokesperson tells Time.

The Obama White House continues to believe that cooperating with Muslim communities is crucial to detecting radicals. “You are actually better able to protect our security if you can enlist mosques and Muslim communities as our partners,” says Ben Rhodes, a deputy national security adviser to Obama. “There is no substitute for having people in these communities who will come forward.” That’s what happened in November 2010, when a bomb plot in Portland, Ore., was foiled after a local teenager’s father tipped off authorities to his son’s growing fixation with jihad. In an April 30 press conference, Obama said he had urged his aides to continue “engaging with communities where there’s a potential for self-radicalization of this sort,” adding, “But all of this has to be done in the context of our laws, due process.”

As Washington debates what lessons to draw from Boston, Americans say they’re more concerned about protecting liberty than attaining perfect security. Support for public surveillance cameras may be up substantially over the past decade, but Americans are warier than ever about government monitoring of their private cell-phone and e-mail communications, with 59% opposed to such actions.

Can we ever achieve perfect security? “Even if we wanted to, we could not investigate every radical in this country,” says Philip Mudd, former top CIA and FBI terrorist hunter. But we don’t want to: “The

**Founding Fathers were radical,” Mudd says, and therefore, “We’ve got a Constitution that says you can be a radical here. Speak however you want to speak.”**

**One thing we would certainly get for trying to exchange liberty for security is more lawsuits. But we may assume we have more protected rights than we do. The Bill of Rights is explicit about a lot of things, but it is silent on the subject of privacy (though the Supreme Court has found a privacy right implicit in the Constitution). And while the Fourth Amendment prevents unreasonable searches, it seems fair to ask what’s a reasonable search in a world where a lone actor can create a bomb from a pressure cooker. Perhaps the greatest Constitutional concern should be equal protection under the law: do we unfairly target Muslims if we look for those who break with an imam but not those who disagree with their pastor?**

**Many intelligence professionals are resigned to the idea that just as we’ll never stop every deranged school shooter, we simply won’t catch everyone with a violent ideology and some explosives. Not while we refuse to make it easy for the government to snoop through our e-mails and phone records. And not if we agree that it’s wrong to spy on places of worship that on exceedingly rare occasions attract people who can do tremendous harm. “We may find this was preventable,” says former CIA chief Michael Hayden. “But let me also tell you, this was inevitable.” The same could be said for our struggle to find the right balance between liberty and security.**

*—With reporting by Alex Altman, Zeke Miller, Alex Rogers and Michael Scherer/Washington and Simon Shuster/Dagestan*