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Fred Fleitz

## In Defense of NSA Surveillance: A Response to Conor Friedersdorf



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In a May 19, 2015 [article](#) in *The Atlantic*, "The Last Defenders of the NSA," Conor Friedersdorf offered a rebuttal to my recent National Review [article](#) defending the NSA's metadata program, a counterterrorism intelligence collection effort which tries to establish connections between terrorist groups using phone records but not the contents of phone calls.

The metadata program is controversial and has split both political parties over claims that it infringes on the privacy rights of Americans. Majorities of both congressional intelligence committees have and continue to support this program. Most Republican congressmen support it, although the GOP is divided due to a perception that the Obama administration has abused government power and noisy opposition from a libertarian minority led by Senator Rand Paul.

It is hard to conduct a rational debate on the metadata program due to the anti-NSA fear-mongering sparked by the huge number of classified documents leaked to the press by former NSA technician Edward Snowden. Although this program has been carefully overseen by the Executive Branch, the courts and Congress, hysterical attacks by the left, privacy advocates and libertarians like Paul have turned the American people against it.

As a result, the Senate, when it reconvenes on May 31, is likely to pass a House bill, the [USA Freedom Act of 2015](#), that would continue this program past a June 1 expiration date but significantly limit its usefulness. The Senate was unable to take action to extend the metadata program before it left for its Memorial Day recess since Senate GOP leaders were pressing for



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legislation that would do less damage while many opponents of the metadata program (including Senator Paul and Friedersdorf) want it ended.

Friedersdorf has written many articles critical of NSA and the metadata program. His rebuttal to my article is interesting since it exposed how the case against this program is mostly based on politicized assertions and hearsay but little substance.

It easy for people on both sides of this debate to produce people who support their position. That's why my article relied on two sources with bipartisan credibility – Senator Dianne Feinstein and former CIA Deputy Director Michael Morell.

Feinstein is the former Chairwoman of the Senate Intelligence Committee. Morell, who recently retired from the CIA, has strongly defended the Obama administration's foreign policy in his recent book and has been criticized by Republicans for providing political cover for Obama officials in the aftermath of the terrorist attack on the U.S. consulate in Benghazi in 2012. President Obama named Morell to a panel to review NSA collection in the aftermath of the Snowden leaks.

My article quotes statements Feinstein made at a January 14, 2014 Senate Judiciary Committee hearing in which she defended the metadata program and noted how it helped stopped three terrorist attacks against the New York Stock Exchange, and a Danish newspaper.

Feinstein's statements at this hearing came after an even stronger endorsement of the metadata program in a statement she issued on January 17, 2014 that said:

"We are also pleased the president underscored the importance of using telephone metadata to rapidly identify possible terrorist plots, a gap that existed on September 11, 2001, and which has been closed through the NSA's collection of telephone metadata under Section 215 of the USA Patriot Act. As the president said, this is a capability that is 'critical' and must be 'preserved.'"

My article also included a claim made by Morell in a December 27, 2013, Washington Post [op-ed](#) that "Had the [metadata] program been in place more than a decade ago, it would likely have prevented 9/11. And it has the potential to prevent the next 9/11."

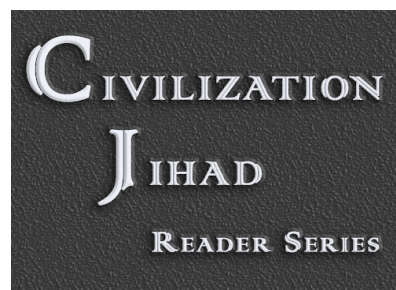
Friedersdorf tries to rebut my citations of Feinstein and Morell by quoting investigations by the Associated Press and the Kansas City Star, neither of which had full access to information on the metadata program like Feinstein and Morell did. He also quotes libertarian Julian Sanchez and left wing sources such as Pro Publica and Peter Bergen, both of which have ties to George Soros.

I think it is fairly obvious that Feinstein and Morell have far more credibility on this issue than Friedersdorf's less informed, partisan sources. But more importantly, Friedersdorf ignores the elephant in the room: if the metadata program is so bad, why do these credible, center-left experts support it? This is a major flaw in Friedersdorf's argument since he ignores this question.

Friedersdorf and I disagree on the significance of a recent New York Court of Appeals ruling that found the metadata program was not authorized by the Patriot Act. However, the court did not find the program unconstitutional nor did it issue an order to halt the program.

This is a "gotcha!" moment for Friedersdorf who thinks this decision proves the metadata program is illegal although he doesn't explain why the court didn't find it unconstitutional. I am not troubled by this decision since it is one of only three legal decisions against the metadata program — another 35 have upheld it. Moreover, since the New York Circuit's decision was made on a statutory basis, it will be rendered moot if the Senate passes the USA Freedom Act on Sunday.

Friedersdorf's hapless attack on my NRO article appears to stem from his overall hostility to U.S. intelligence agencies and operations. For example, he wrote in a May 11, 2015 Atlantic [article](#) "secret government programs are an abomination in our democracy." This position would do away with all U.S. intelligence agencies and is too extreme for most members of Congress and the American public who realize that the United States needs a robust U.S. intelligence capability to



defend itself in an increasingly dangerous world.

Blinded by his obsession about non-existent abuses by secret government operations and the need for a U.S. intelligence capability, Friedersdorf seems unable to consider arguments by people like Feinstein and Morell who believe that while intelligence programs like the metadata program sometimes pose ethical and legal questions, they still may be necessary and legal counterterrorism tools. As long as Friedersdorf refuses to explain why the majority of both intelligence committees and people like Senator Feinstein and Michael Morell support these types of intelligence program, his criticism of U.S. intelligence efforts will continue to lack credibility.

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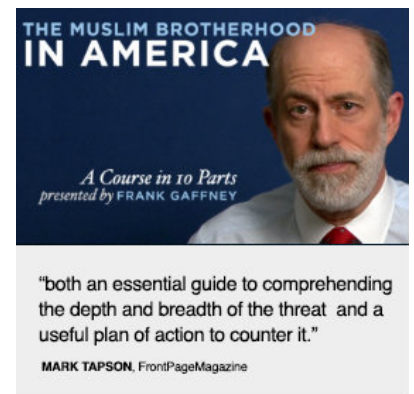
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