MEET 3 PATRIOT ACT FALSE POSITIVES INVESTIGATED FOR BUYING BEAUTY SUPPLIES

Both Mike Rogers and Ron Wyden made claims about the efficacy of the surveillance scoops of the last few days, especially the use of Section 215 to collect the phone data — and other tangible stuff, including credit card records — of every American.

The assessment of efficacy ought to consider a number of factors: Whether this surveillance has prevented any attacks (Rogers says it has, but mentions only one in the entire 7 year span of the program). Why it didn't prevent an attack like the Boston Marathon bombing, which was carried out by two guys whose lives and extremist interests were splashed all over social media, and one of whom was discussed in international texts that would have been fair game for collection under PRISM.

But an efficacy assessment also needs to find a way to quantify the costs such surveillance has on false positives.

So let's consider what may have happened to three probable false positives who had their lives thoroughly investigated in 2009 after being — wrongly, apparently — tied to Najibullah Zazi's plot to bomb the NYC subway.

We first learned of these three people when they appeared in the detention motion the FBI used to keep him in custody in Brooklyn. As part of the proof offered that Zazi was a real threat, FBI described 3 people in Aurora, CO, who bought large amounts of beauty supplies.

> Evidence that "individuals associated with Zazi purchased unusual quantities

> of hydrogen and acetone products in July, August, and September 2009 from three different beauty supply stores in and around Aurora;" these purchases include:
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> - *Person one: a one-gallon container of a product containing 20% hydrogen peroxide and an 8-oz bottle of acetone*
> - *Person two: an acetone product*
> - *Person three: 32-oz bottles of Ion Sensitive Scalp Developer three different times*

Unlike just about everything else cited in the detention motion, there was no obvious means by which these individuals were identified.

During the debate on PATRIOT Act reauthorization later that fall, Dianne Feinstein used the Zazi investigation to insist that Section 215 retain its broad "relevant to" standard. Given her insistence Section 215 had been important to the investigation, and given that the identification of these beauty supply buying subjects appeared to work backwards from their purchase of beauty supplies, I guessed at the time that the FBI used Section 215 to cross reference all the people who had bought these beauty supplies in Aurora, CO — which are precursors for the TATP explosive Zazi made — with possible associations with Zazi.

Just days later, as part of the debate, Ben Cardin discussed using National Security Letters to track people who buy "cleaning products that could be used to make explosive device." And

John Kyl discussed wanting to "know about Joe Blow buying hydogen peroxide." Acetone and hydrogen peroxide, the same precursors used to implicate these three people.

In February 2011, Robert Mueller confirmed explicitly that Section 215 had been used to collect "records relating to the purchase of hydrogen peroxide."

That seems to suggest that the government used Section 215 or NSLs to search on all the people who bought acetone and hydrogen peroxide in Aurora (by all public reporting, Zazi kept to himself the entire time he lived in CO).

But here's the thing: these three people never appeared again in the legal case against Zazi and his co-conspirators. The only one from CO ever implicated in the plot was Zazi's father, who had lied to protect his son.

Poof!

They were three known associates buying dangerous explosives precursors one day, and apparently became either cleared innocents or recruited confidential informants the next day.

In other words, they appear to be false positives identified by the Section 215 dragnet celebrated by Obama and DiFi and everyone else implicated in it now as a great way to prevent terrorism (Zazi, remember, was discovered through legal FISA intercepts obtained after we got a tip from Pakistan).

Now, no one, as far as I know, has ever found these three probable false positives to ask them what they went through during the period when they were suspected of being co-conspirators in the biggest terrorist attack since 9/11. But given the likelihood that the association with Zazi went through his mosque (the other likely possibility is another driver from the airport), I imagine that their neighbors and employers got awfully suspicious when the FBI showed up and started asking questions. How badly does being actively — and, apparently, falsely —

investigated for being a terrorist ruin your life if you're an American Muslim? Do you lose job security? Do other kids' parents refuse to let their kids play with yours? Does your homeowners association try to cause you trouble?

That's what this debate about efficacy needs to quantify. Data mining is never completely accurate, and given the small number of terrorists and therefore the high degree of guessworks that goes into what counts as an association, you're going to have false positives, as appears to have happened here.

Lots of apologists are saying they never do anything wrong, and therefore they don't have to worry. But it appears that doing something as innocent as buying hair bleach can get you sucked into this dragnet.