

Surveillance, the War on Drugs and the War on Terrorism

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1

Agenda

- What is the “war on drugs?”
- Privacy intrusions associated with the “war on drugs”
- Use of war on drugs powers in the war on terrorism; use of war on terrorism powers in the war on drugs
- How governments link the war on drugs to the war on terrorism
- Normalization of these surveillance powers in other contexts
- Other approaches that might lessen the need for surveillance?

2

Basic Concepts

- “War on Drugs”
 - ▶ Generally, the use of the criminal justice system to attempt to suppress the possession (use), production, sale, import, export of *certain* drugs
 - ▶ The converse of a regulatory model employed to deal with other drugs (tobacco, alcohol, pharmaceuticals)
- “Prohibition”
 - ▶ See “war on drugs” – the use of the criminal justice system to prohibit possession (use), production, sale, import, export of *certain* drugs

3

Consider the Parallels

- Dynamics leading to acceptance of surveillance
 - ▶ War on drugs
 - ▶ War on terrorism
- Our approach to both drugs and terrorism has resulted in a “need” to employ massive levels of surveillance and intrusion in response

4

Drugs: The rhetoric behind justifications for increased powers of surveillance

“Fear Factors”

- “Persons using this narcotic [cannabis] smoke the dried leaves of the plant, which has the effect of driving them completely insane. . . . While in this condition they become raving maniacs, and are liable to kill or indulge in any form of violence to other persons, using the most savage methods of cruelty”

▶ Edmonton magistrate Emily Murphy, in 1922, in *The Black Candle*, one year before cannabis was added to the Schedule of the *Opium and Narcotic Control Act*

5

6



7



8

Ongoing scares keep the fear alive

- 1980s – crack “epidemic”
- 1990s - ecstasy
- 2000s – crystal meth “epidemic”
- 2007 – “skunk” (UK)

- Leads to acceptance of extreme measures, including increased levels of surveillance

9

The Classic Myth – Crack Babies

- Typical cost to you and me is \$125,000. Again and again and again the mother disappears in three days and the child becomes a ward of the state because he's permanently and genetically damaged.
 - H. Ross Perot, US presidential candidate (*Cracked Coverage*, 211)
- Babies “like no others, brain damaged in ways yet unknown, oblivious to any affection.”
 - *Rolling Stone Magazine*, Oct 8, 1990

10

Dehumanizing drug users/sellers

- “Scum”
- “Air should be illegal if they breathe it.”
- “If you’re a casual drug user, you’re an accomplice to murder.” – Nancy Reagan

- Leads to acceptance of extreme measures against them, including violations of privacy rights

11

The consequences of buying into Prohibition and the criminal justice rhetoric about drugs?

1. Increased tolerance of privacy intrusions in pursuit of the war on drugs.
2. Calls for ever greater powers of intrusion as the war on drugs remains unwon and unwinnable.

12

Canadian Courts

- Sometimes buying into the rhetoric that leads to acceptance of surveillance as an important part of the prohibitionist “solution”

13

It [selling drugs] is a crime that has devastating individual and social consequences. . . . This crime is a blight on society and every effort must be undertaken to eradicate it.

R. v. Silveira, (1995) 97 C.C.C. (3d) 450 at page 496 (SCC).

[T]his Court must also consider the societal interest in law enforcement, especially with regard to the illicit drug trade. This pernicious scourge in our society permits sophisticated criminals to profit by inflicting suffering on others.

R. v. Grant, (1993) 84 C.C.C. (7d) 173 (SCC).

14

Illicit drug trafficking now threatens peace and security at a national and international level. It affects the sovereignty of some states, the right of self-determination and democratic government, economic, social and political stability and the enjoyment of human rights.

Pushpanathan v. Canada (Minister of Citizenship and Immigration), [1998] 1 S.C.R. 982, para. 144, per Cory and Major JJ., dissenting.

15

What the Supreme Court of Canada should have said:

Drug prohibition now threatens peace and security at a national and international level. It affects the sovereignty of some states, the right of self-determination and democratic government, economic, social and political stability and the enjoyment of human rights.

Drug prohibition has devastating individual and social consequences. . . . **Prohibition** is a blight on society and every effort must be undertaken to eradicate it.

16

Examples of drug war surveillance

The informer society

- Landlords as spies?
- Mandatory reporting of hydroponic equipment sales?

EAST KOOTENAY WEEKLY APRIL 14-20, 1999



CRIME STOPPERS
WEED KILLER

During a recent drug investigation police in the City of Cranbrook identified the ease at which marijuana can be purchased. Police suspect there are several active marijuana grow operations in and around the City of Cranbrook. Help stop the spread of drugs to our young people.

Do you know who is responsible for this type of activity? If so, Crime Stoppers will pay a reward up to \$2,000 for information leading to the arrest of the person or persons responsible for these crimes. If you have any information about this crime or any other crime, call Crime Stoppers. You don't have to reveal your identity. Crime Stoppers does not subscribe to call display.

Call Crime Stoppers at
1-800-222-8477 (TIPS)
YOU COULD QUALIFY FOR A REWARD
REMEMBER - CRIME STOPPERS TIPS GENEROUSLY
Visit our website at: www.cintek.com/crimestoppers
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17

18

Interference with solicitor-client relationships (United States)

- “The best offence – get the defence counsel”
 - ▶ Searches of law offices, bugging of offices, tapping of phones
 - ▶ Using “traitorous” defence lawyers or coercing them to obtain incriminating evidence against clients
 - Steven B. Duke, Albert C. Gross, *America’s Longest War: Rethinking the Tragic Crusade Against Drugs* (Tarcher, Putnam, New York 1993) at 128-33.
 - ▶ Planting informants in law offices (Canada)

19

Property surveillance and searches

R. v. Tessling, SCC
(2004)

- Forward Looking Infra-Red overflight did not violate the accused’s constitutional right to be free from unreasonable search and seizure.



20

Rover goes to school, to the airport, to the BC Ferries, to the bus station, to the hotel room. . .



21

THE OTTAWA CITIZEN Friday, December 11, 2003

CITYLIFE

SECT D
BUSINESS • PAGES D13-D17

Police search 12 schools for drugs

Western communities targeted

“We were in the middle of class and all of a sudden, we heard a dog bark, and we all ‘What the...?’” said Connie O’Neill, 17, a Grade 12 student at Earl of March Secondary School in Kanata.

The surprise drug sweeps, announced by the school boards to families, targeted students that drugs are not welcome, took place Tuesday and Wednesday at six high schools and six elementary schools in the western sector.

All but one of the schools, Holy Trinity Catholic High, belong to the Catholic Board of Education.

Parents at half a dozen school councils and many students had high praise for the operation.

An 18-year-old was charged with possession after marijuana was allegedly found in her purse.

Out of 4,100 lockers, seven were searched, and one car was searched after dogs detected the smell of marijuana.

“Tragedy hit seemed to be a favorite explanation,” said OPP Const. Ken Hawkins.

He said some students claimed their clothes smelled of marijuana because they had attended the Tragedy Hit concert last week where, they said, drugs were being smoked.

Hawkins said drug use is increasing among younger students and police wanted to send the message that schools are not a haven for drugs.

Drugs are the best way to root out drugs in schools, he said, because it is difficult for police officers to catch and arrest young drug dealers.

“We can’t find undercover officers going through to make a ‘hot’ from them,” he said.

The OPP approached the CBE and the Catholic Separate School Board to participate in the sweep, Hawkins said. In some cases, the sweep took less than 15 minutes.

At larger schools, it took as long as 30 minutes.

Update
The latest drug in schools. What’s new: Ontario Provincial Police searched 12 schools every school in Kanata, Oshawa and West Cayton this week. Six drugs were confirmed to mislead officers with trained dogs searched hallways and locked lockers. One 18-year-old student was charged with possession of marijuana.

What’s next: More sweeps, if necessary. Police want to give students the message that schools are not a haven for drugs.

POLICE continued on page F4

22

Luzetta Zilch knows the drill as well as any of the other Greyhound Bus drivers.

She wheels her bus in for a half-hour layover at the Post House Cafeteria, a rest stop at this turnpike interchange made of rest stops. After passengers file off, plainclothes state troopers appear, asking if their drug dog can sniff the luggage in the bus cargo bay.

She agrees. Every time it’s happened to Zilch, the drug dog comes up empty, the search goes no further, the passengers trickle back and the bus wheels back out of the parking lot.

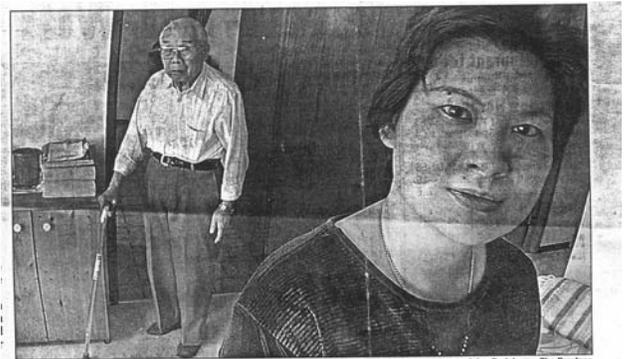
“Most people don’t seem to get bothered by it,” she said. . . . “But a few of the passengers, people from Europe, get a little upset, though.”

“They think it’s strange that people in a free country would be doing this.”

“Are Random Drug Searches at a Bus Stop in Breezewood Appropriate?” *Pittsburgh Post-Gazette*, 09 Apr 2000

23

Vancouver – September 2002



Rowena Liu and dad Yat Wah Pang were victims of a botched raid that police have apologized for.

24

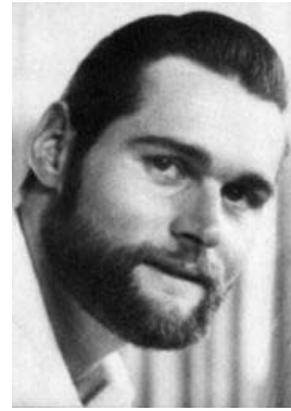
[86-year-old] Pang, who walks with a cane, and his daughter Rowena Liu had just returned home from lunch last Wednesday when members of the police's Grow Busters team showed up at the door with guns drawn.

Police pointed a gun at Liu's face and put her in handcuffs while Pang was told to sit in a chair until police finished searching "They put a gun to my head and handcuffed my hands behind my back and ordered me to sit down. They were very rough"

Chief Constable Jamie Graham . . . said policing is not an "exact science," and police make mistakes.

"Botched Grow-op Raid Illustrates Need to Wind down 'Nutty War' on Drugs," *Vancouver Courier*, September 25, 2002, "Raid Rattles Family," *The Province*, September 20, 2002

25



Donald Scott

26

Racism/"differential treatment"



27

Searches of the Person

28

Strip searches, body cavity searches, "bedpan" vigils, sniffer dog searches



29

Drug testing (urinalysis)

"I am a forty year old mother of three and nothing I have ever done in my life equals or deserves the humiliation, degradation and mortification I felt."

– comment by US? woman after being required to urinate in front of an observer for an employment drug test

B. Feldthusen, "Urinalysis Drug Testing: Just Say No", [1988] *Canadian Human Rights Yearbook* 81 at 84.

30

Teach the kids about surveillance

A Cedar Rapids [Iowa] high school has joined a local hospital to help parents test their suspicions about teen drug use

The new program lets parents of Xavier High School students have free drug tests performed on their children, day or night

[The principal] said, "This is not about the school trying to act as a parent. This is about our school trying to help our parents be a parent."

"School Helps Parents Test Kids for Drugs," *Des Moines Register (IA)*, September 25, 2002

31

- Surveillance becomes the norm
- Children are "born into" this norm, making it all the more difficult to challenge
- Softens up the public for surveillance in other contexts

32

Surveillance of the physician-patient relationship

- Surveillance of pain control, including opiates and therapeutic cannabis
- Surveillance of prescription databases
- Reporting drug users to the police when users seek medical care
- Drug courts? – court-supervised "treatment"

33

Surveillance of pregnancy

- US cases on delivering drugs to a minor, etc.
- Dissent of Sopinka, Major JJ. in *Winnipeg Child and Family Services (Northwest Area) v. G. (D.F.)* (SCC) 1997 – "intoxicating substances"

34

Profiling

- "Driving while black;" racial basis for profiling
- Air travel example
- Industry co-operation (Amtrak)
- Sharing of databases

35

Financial Transactions Monitoring and Reporting

Proceeds of Crime (Money Laundering) Act*



*Later the Proceeds of Crime (Money Laundering) and Terrorist Financing Act

36

Identity Cards

Australian Royal Commission – early 1980s – examined the manner in which international drug traffickers established and maintained sufficient identities that they could escape detection. Despite the security inadequacies which the looseness of birth certificate, citizenship certificate and passport issue entail, the Commission recognised that a free society like Australia's would not be prepared to accept tight controls, and decided not to recommend major changes, nor any form of national identification scheme (Stewart 1982, cited by Roger Clarke).

Stewart (1982) 'Royal Commission of Inquiry into Drug Trafficking, Interim Report No.2: Passports', Aust Govt Publ Serv, 1982

37

Use of Military in Civilian Law Enforcement

- Canada: Canadian Forces/National Defence in drug control
- US: *Posse Comitatus Act*
 - ▶ Congress created a “drug exception”
 - ▶ 1981, Congress created an exception to the PCA to allow military involvement in drug interdiction at US borders.
 - ▶ 1989, Congress designated the Department of Defense as the "single lead agency" in drug interdiction efforts
 - “THE POSSE COMITATUS ACT: A PRINCIPLE IN NEED OF RENEWAL,” 75 Wash. U. L.Q. 953

38

Electronic Surveillance

Electronic surveillance plays a crucial role in the battle against organized crime, especially with respect to the offence of drug trafficking. . . . [T]he majority of authorizations granted by the courts allow for the use of electronic surveillance in relation to trafficking in a controlled substance.

Solicitor General of Canada, *Annual Report on the Use of Electronic Surveillance* (1998) (Cited in the Report of The Senate Special Committee on Illegal Drugs: Cannabis)

39

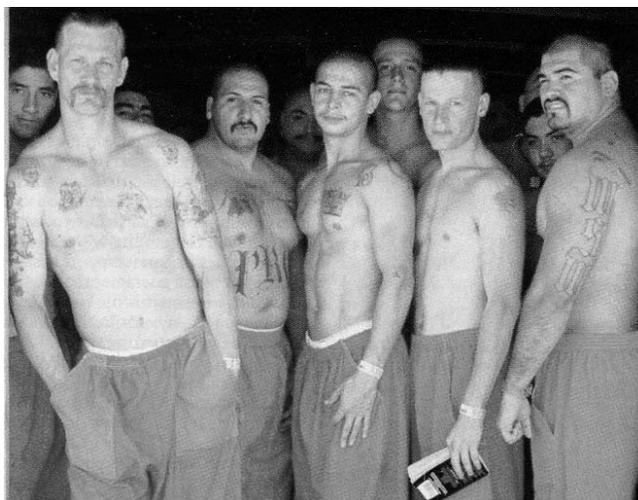
The ultimate form of surveillance?



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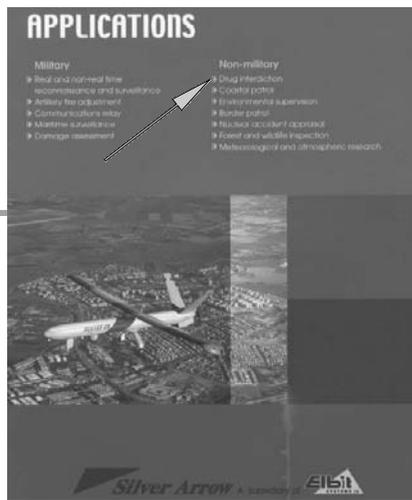


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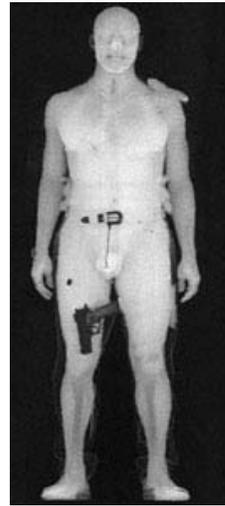


42

The war on drugs surveillance industry



43



44

Other war on drugs technologies of surveillance

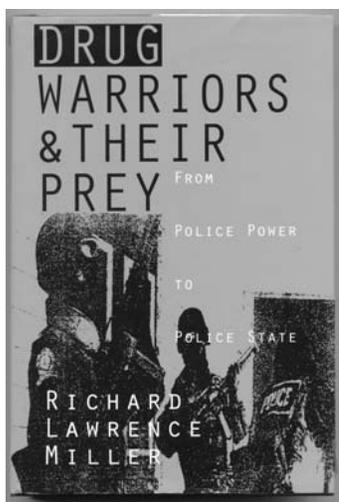
- Forward looking infrared
- Urine, hair, saliva, sweat, blood analysis
- RFIDs?

45

Success or failure as a justification for increased surveillance

- Win-win for surveillance advocates
- Lose-lose for privacy
- Will it enhance security/reduce the harms associated with drugs?

46



47

... and all this because we choose to deal with drugs through a criminal justice system that hasn't worked, is not working, and will not work

Our response is to call for more powers of intrusion, more powers of surveillance – more of what doesn't work.

And so the cycle continues.

48

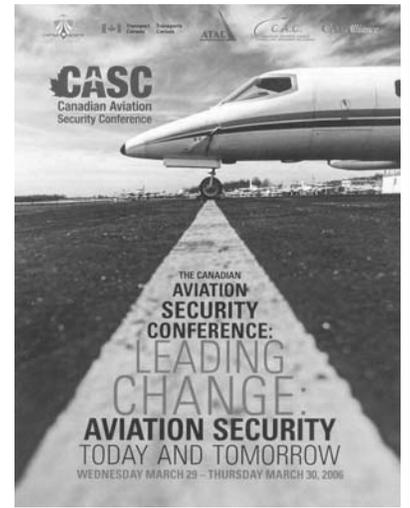
The Surveillance Template

From War on Drugs to War on Terrorism

- The rhetoric of fear; softening up (conditioning) the public for surveillance in other contexts
- Dehumanizing the “others” – Muslims, “insurgents,” “terrorists,” “Islamic fundamentalists,” leading to tolerance for abrogating rights
- Success or failure as a justification for increased surveillance – “win-win” for advocates of surveillance
- Embracing surveillance as the solution while downplaying/ignoring root causes of the problem
- Supported by a persuasive surveillance industry

49

War on Terrorism Surveillance Industry



50



51

Symbiosis: Marrying the war on drugs and the war on terrorism to justify greater surveillance in both situations

52

Using the tools of the war on drugs for the war on terrorism

- State of the Union Address 2006

53

Use of Military in Civilian Law Enforcement

- US: John Warner Defense Authorization Act of 2007
- Use of military troops as a domestic police force in response to national disaster, terrorist attack or any “other condition”
- Violation of *Posse Comitatus Act*
- The model for this type of exception? War on Drugs
 - “Fascist America in 10 easy steps,” *The Guardian*, April 24, 2007

54

Other examples?

- Financial reporting legislation
- Profiling

55

Using the tools of the war on terrorism for the war on drugs

- Homeland security will make America not only stronger, but, in many ways, better. . . . Stricter border enforcement will help combat illegal drugs. (Applause.)
- State of the Union Address, January 29, 2002

56

Using the tools of the war on terrorism for the war on drugs?



Andrew Feldmar

57

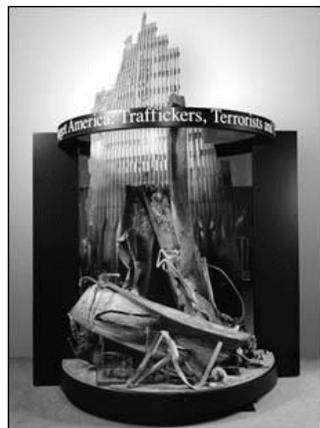
Go after terrorists to stop drugs



58

Go after drugs to stop terrorists #1

“The DEA Museum will open a powerful new exhibit on September 10, 2002 that traces the historic and contemporary connections between global drug trafficking and terrorism. . . .”



59

Go after drugs to stop terrorists #2

“Make no mistake about it, if you're buying illegal drugs in America, it is likely that money is going to end up in the hands of terrorists. . . . When we fight drugs, we fight the war on terror.”

Remarks by US President George W. Bush on the 2002 National Drug Control Strategy, February 12, 2002

“Drug consumers are . . . supporting . . . terrorist and insurgent groups.”

RCMP, *Drug Situation in Canada* — 2001

60

Drugs as a tool of conquest

Historically

- Alexander (at 10, 12, 63):
 - ▶ Cocaine and heroin as a German weapon (NYT 1918)
 - ▶ Opium as a tool for other races conquering the world (Emily Murphy)
 - ▶ “Red” China’s attempts to destroy Western society by shipping large amounts of heroin to US (1950s)
 - ▶ Goal of communist drug dealers in Latin America to destroy US democracy

61

Drugs as a tool of conquest

Today

- Flooding the West with high-potency heroin from Afghanistan (2001)
- “Drugs are a weapon of mass destruction that can be used against Western societies and help bring them down.”
 - DEA intelligence chief Steven Casteel, DEA conference, December 2001, "Target America: Traffickers, Terrorists and Your Kids"

62

Super Bowl Ads (U.S.)

- Ad 1: “Where do terrorists get their money? If you buy drugs, some of it may come from you.”
- Ad 2: Images of teenagers claiming drugs are “just fun” and images of other teens taking the blame for atrocities committed in other countries. “I helped murder families in Colombia,” says one kid, “I helped the bomber get a fake passport,” claims another.

– White House spends \$3.2 million to air two 30-second commercials during 2002 Super Bowl.

63

Terrorism-Propaganda

- Drugs help supply the deadly work of terrorists. That's so important for people in our country to understand. . . . [T]he drug trade supports terrorist networks. When people purchase drugs, they put money in the hands of those who want to hurt America, hurt our allies.

– Remarks by US President George W. Bush on the 2002 National Drug Control Strategy, Office of the Press Secretary, February 12, 2002

64

The economics of prohibition

Adding value

Drug price per kg, \$

Heroin*

Farmgate (opium)	90
Domestic wholesale	2,870
US wholesale	80,000
US retail	290,000

*Origin Pakistan, 1994 †Origin Bolivia, 1995-96
Source: 1997 World Drug Report UNODCCP

322 times the farmgate price of opium (converted to heroin) -- a 32,000% increase in value.

65

The Reality

- Without prohibition, the drug trade would not be a source of income for terrorism or organized crime.
- Because of prohibition, the drug trade is a major source of both terrorist and organized crime finances.

66

The lesson

- We cannot maintain prohibition and yet still hope to deprive terrorist and criminal organizations of the profits associated with the drug trade. Law enforcement cannot overcome this immutable law of economics.
- It is as simple as that.

67

Treating drug offences as terrorist acts in law

- “Police arrested Justin Rhoden, 18, on Tuesday and said they charged him with manufacturing methamphetamine, two counts of possession, and possession of a weapon of mass destruction.”
 - ▶ Charlotte Observer (NC), October 19, 2005

68

One evil begetting another

- War on drugs finances terrorist/insurgent groups who may be opposed to certain Western powers
- Money obtained through drug trade profits created by prohibition finances attacks
- This in turn necessitates a security response, which inevitably involves increased

69

One evil begetting another #2

- War on drugs leads to
- Harm to other countries (Colombia, Afghanistan), which leads to
- Anger at those prosecuting the war on drugs, which may lead to
- “Terrorist” violence, which will lead to
- Calls for increased surveillance in fighting the War on Terrorism.

70

“Normalizing” anti-drug and anti-terrorism powers



71

- Walter Wolfgang, 82
- Criticized Jack Straw at 2005 Labour Party conference
- Kicked out
- Refused entry again under the Prevention of Terrorism Act
- 2006 – Andrew Feldmar – Homeland Security Act

72

The never-ending cycle

- Failures or successes both driving calls for additional powers of surveillance
- Surveillance powers as a one-way door; very difficult to go back once a power is introduced
- What are the limits to this? Charter limits?

73

The need for a more critical analysis of our underlying approaches



74

Rethinking our Approach to Certain Drugs



75



"Gentlemen, the fact that all my horses and all my men couldn't put Humpty together again simply proves to me that I must have more horses and more men."

Figure 1. Drawing by Dana Fradon; © 1978 The New Yorker Magazine,

76

Rethinking our Approach to Terrorism

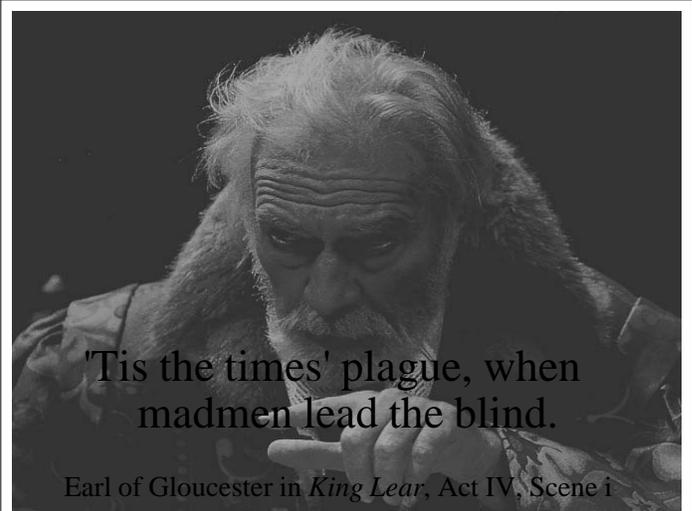
From:

Activities abroad, often involving violence, that create a need for surveillance to address resulting hostility towards us and threats to our security

To:

A rethinking of what we are doing to cause others to want to harm us, resulting in less need for extraordinary surveillance measures *in the long run.*

77



78

The End

Canadian Foundation for Drug Policy
www.cfdp.ca

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