

EDWARD SNOWDEN –

TRAITOR OR HERO

AND WHETHER

OR WHEN

PRESIDENTS SHOULD LIE TO THE

AMERICAN PUBLIC

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In the fall of 1944 Franklin Delano Roosevelt was elected to an unprecedented fourth term as President of the United States. Just five months later, in Warm Springs Georgia, he felt a massive pain in the back of his head, passed out and later died. As a result of his death three things came to be known. One, when elected he was deathly ill and hid that fact from the American public. Two, the United States was on the verge of perfecting the atomic bomb, which would effectively end the war against the Japanese. And three, dangerously on Roosevelt's part, Harry Truman, now president, had no knowledge of the bomb he would have to use in a few months. So presidents do lie or at least keep the truth from the public. Sometimes this needs to be done and at other times maybe not. The public and the world did not and should not have known about the bomb, based on what was known at the time. But, the voting public should have known that they were electing someone in Roosevelt's condition and Truman of all people should have been up to speed on the atomic bomb. With that in mind, flash forward to the fall of 2008. A young Senator from Illinois, Barack Obama, was just elected President of the United States and was set to succeed George Bush.

Full disclosure: In their respective elections I voted for both men. I appreciate their strengths and shake my head at their obvious weaknesses. In the aftermath of the election George Bush was adamant that the President-elect know as much as possible about the current world situation.

Using literary license, I have always imagined that when someone becomes President, "they" take you into a basement room several layers beneath the White House with no windows, and with one chair for the new guy to sit in. Then within the limits of plausible deniability they tell you all the secrets. Well, when the NSA guy made his presentation he would have told the president-elect, in a lot of detail, about the collection of metadata, metadata being all the characteristics of communication between not only foreigners and Americans, but in some cases Americans and Americans – the who, when and

where. He would also have been advised that there was some actual monitoring of communication with further technological advances coming. Well, right there Mr. Obama made a very important and tide changing decision. He had campaigned as a left of center candidate seeking transparency in government, but at this point when presented with “The Facts” he said yes – I get it. Now I doubt that this is exactly what happened, but we do know that Mr. Obama was disparaged by some as a far left candidate, basically agreed with a lot of what Mr. Bush had been doing. So much so that Obama’s time in office has been referred to by some pundits as the third and fourth Bush administrations.

While the Bush Administration felt that it was doing what had to be done at a very dangerous time in our history, as a constitutional scholar, it surely must have occurred to Mr. Obama that these practices were bumping right up against the Constitution. What made Mr. Obama, if not lie to the American people, at least decide to be less than candid about some of the issues he had campaigned about? Part of that decision probably comes about when the new president more clearly sees the world situation and finally begins to understand the awesome responsibility of the Presidency. Ari Fleischer, a Bush press secretary, was quoted recently on NPR saying something to the effect that the world looks a lot different from the oval office than it does from a hotel room in Iowa. Whatever the thinking, all of this played a large part in the geeky appearance of Edward Snowden.

Edward Snowden was born in 1983 in North Carolina. His father and others in his family had been in the Coast Guard for several generations. His mother worked various jobs and by 2013 was a clerk in the Federal Court in Baltimore. His parents divorced when Snowden was three and he moved to Fort Meade Maryland with his mother. Fort Meade is coincidentally where the National Security Agency is located.

A less than mediocre student and sort of a fringe personality Snowden eventually dropped out of high school. He then briefly attended community college to try and get GED credits as well as some college. After a short time he dropped out of there as well.

Edward Snowden is however, one of those very intelligent people who was able to educate himself, largely on the computer and the internet. He spent endless hours on the computer blogging and chatting, asking questions about how the internet worked and about how things worked with regard to computers and programming.

When he expressed political views on the internet they were often conservative and libertarian. He gave money to and supported Congressman Ron Paul in his campaigns for president.

In the aftermath of the 9/11 attack, Snowden like a lot of young people, felt an intense need to join the armed forces and help set the world straight. Snowden's goal was to join the Army Special Forces. After a freak training accident left him with two broken legs he was released from the Army.

Back in Fort Meade, with no formal education and not many prospects, he was able to land a job with the National Security Agency as a security guard. Later when the Central Intelligence Agency was casting about for young people with computer skills he secured a job as a low level analyst with the CIA. While it seems odd for Snowden with no formal education to have gained employment with the CIA, the agency was less concerned with credentials and more concerned with technical ability. Eventually he was assigned to a job in Geneva Switzerland with diplomatic credentials. After discovering a distaste for the agency's methods of undercover work, Snowden left the CIA after disagreements with his superiors over computer security. While this reflected poorly on his job history, his job file was never transferred when he went to work for Dell Computer as a contractor for the NSA. After the first Gulf War, many services of the government had been contracted out and intelligence work was no different. First in Japan and then in Hawaii Snowden was well paid, in the \$100-200 K range and

as a well-regarded and trusted systems supervisor and analyst; he could look at just about any secret that he wanted to. In other words he was inside – deeply inside. (1)

In his last job before going to Hong Kong to meet with journalists, Snowden worked in Hawaii for another contractor, Booz Allen. In this job he had even more access to government secrets.

What Snowden felt he had been seeing in his work for Dell and Booz Allen was a government willing to use the latest technology to move ahead of their legal authority. To be sure obscure and secret legal opinions and authority were given, but still...

But still, you have to remember back to 2001. America had been caught flat footed by an enemy with no national presence, in a place called Afghanistan. At the time I wasn't exactly sure where that was. A couple thousand people died, our economy faltered, and the sky was eerily quiet. We were injured, we were insulted and we wanted justice, but more than that we wanted revenge. Our government would give the people – the voters – what they wanted.

I watched the PBS program Frontline this summer and they recounted some of the activity in the Intelligence Community post 9/11. It went something like this: The Vice President's office reached out to Michael Hayden, at that time head of the NSA and asked what more could be learned about the attackers from 9/11? Hayden replied that, well we can get you this, this and this – but because of legal constraints there are some things we can't do. The caller from Cheney's office basically said: what if you don't have the legal constraints? The jist of Hayden's response was that a lot could be done in order to track down the terrorists. (2)

By the spring of 2013 Edward Snowden had seen a lot of what had been done and was, he said, concerned that the US Government was violating the Fourth Amendment of the Constitution, the one that talks about freedom from warrantless search and more. As early as 2008 and before, Snowden had been concerned about the legality of the intelligence gathering methods that he was seeing. But he had

opted to wait to see what the new President would do. Five years later Snowden was convinced that at best President Obama was a Bush clone and probably in some ways worse.

So, Snowden collected his thumb drives and computers and made byzantine plans to meet the “Guardian” reporter Glenn Greenwald and independent film maker Laura Poitras. In May 2013 he boarded a plane for Hong Kong. In doing so he abandoned his job, his girlfriend and his life style. He eventually ended up in Russia, used as a political pawn for Vladimir Putin. (3)

A question that comes to mind is – why didn’t Snowden go to the proper authorities? A few news articles and a couple of stories on NPR by David Welna have shed some light on the situation for a whistle blower in an intelligence agency. Because of the top secret nature of their work whistleblowers in the intelligence field are not afforded as much protection as others in sensitive areas, contract workers receive even less protection.

Time Magazine has an interesting feature each week called “10 Questions”, where questions are asked of a news worthy person, some you know and some you don’t. In the June 16th issue that person was Jack DeVine, a 32-year veteran of the CIA who has recently authored a book on his career called Good Hunting. He looks like a good public servant, mid seventies, big, probably eastern educated and wearing one of those Wall Street type bold pin stripe suits. All in all a pretty good government servant. In the article he was asked whether or not Snowden should be pardoned. His answer: “Not in your wildest dreams. He would be right on my list of potential defectors.” (In light of Snowden now being in Moscow you sort of wonder) “He knew what the system was, that there are ways to bring a problem up. Every defector has some big story, but at the end of the day, they’re usually under performers.”

But how do you raise the issue to the very people who are doing the perceived illegal activity? When you enter the headquarters of the National Security Agency at Ft. Meade Maryland a large sign on the briefing room proclaims, “Fully committed to protecting the privacy rights of the American People”.

According to Welna, he was told by an NSA briefer that everything they do is looked at from top to bottom with plenty of watchdogs.

However, Thomas Drake, a former employee, turned whistle blower, remembers a war room being set up at the NSA to deal with requests from Congress. The idea of the war room was to release as little information as possible to Congress. The personal story of Thomas Drake is interesting because he says that he tried to follow the rules. He went to the NSA and Congress about illegal monitoring of US citizens but nothing was done. He eventually leaked to a newspaper reporter. In the fall of 2007 his home was raided by the FBI. He was charged in secret and indicted for violating the Espionage Act. In 2011 days before his trial the federal government's case fell apart. He plea bargained to a misdemeanor charge and basically broke, now works at an Apple Store.

Bill Binney was a programmer for the NSA and designed a program to search through electronic communications while protecting persons not connected with the activity being looked at. When he discovered that his program "Thin Thread" was being used to collect information on ordinary Americans and without a warrant, he went to Congress, but as with Drake nothing was done. In July of 2007 the FBI raided his home and with guns drawn they nabbed him as he was coming out of the shower. And like Drake nothing much really happened to Binney and at age 70, his security clearance revoked, he is retired and pretty much broke as well. (4)

Snowden, however, felt that with the amount and importance of the documents that he had, a long prison term was inevitable.

I think that a certain amount of the public equates Snowden with Bradley Manning the Army soldier. Manning released thousands of documents and cables concerning actual operations and communications between diplomats. He did this through Wikileaks and Julian Assange. What Assange eventually did was to dump the documents en masse on the internet. No attempt was made to redact or

otherwise protect secrets or individuals that might be harmed. Manning has been tried and received a sentence of thirty-five years. Assange, the head of Wikileaks, remains in the Ecuadoran embassy in London avoiding sexual charges in Sweden.

Snowden for sure wanted to “out” the federal government and the type of things they were doing, but he wanted to do it in a careful way that would keep individuals safe. While you can still debate his motives, it should be noted that most of Snowden’s documents dealt with signal intelligence programs and metadata, and Manning’s dealt more with human communication.

To accomplish this “outing” Snowden had approached Glenn Greenwald, an American living in Brazil and working for the U.S. Office of the British newspaper, the Guardian. He also approached filmmaker Laura Poitras and later Barton Gellman of the Washington Post. Near the end the New York Times was involved to lend the Guardian some 1st Amendment Protection, Great Britain having no similar protection.

There is a strong tradition among mainstream American media of largely responsible journalism. An example of that took place in 2004. As reported by Frontline on P.B.S. New York Times reporter James Risen was about to publish a story on massive government metadata collection, some of it on Americans and without warrants. Risen by the way has a Fort Wayne connection. His first job out of journalism school was as a reporter for the Journal Gazette. When the Times contacted the Bush White House about the Risen Story, President Bush invited Arthur Suelzberger, the Times publisher and Bill Keller, the editor to the White House. At the meeting the President, according to Front Line, indicated that the data gathering was legal and an important part of the terrorist watch program. The Times agreed to at least delay publishing. The data collection continued and the Election of 2004 came off with one less bit of controversy. By 2005, when it looked like other outlets were going to publish ,

Risen told the Times that he was going to publish his own book about the incident. The Times, faced with being scooped by their own reporter decided to publish. (5)

Snowden, by dealing with responsible and legitimate news outlets instead of those like Wikileaks was insuring that the information would be carefully edited and self redacted, and the federal government would be notified. This is not to say that the feds would have editing privileges nor that they would like it, but they were aware.

As noted with the Risen reports and with others, the collection of electronic data was generally known. But it never captured the public's imagination as to the depth and width of the government's ability to collect almost everything, everywhere in terms of electronic communication.

Given that the United States has this darned thing called the Constitution which says among other things, that we are protected from warrantless search and I would guess from over the top – Rube Goldberg type legal interpretations of existing law, it could be said that the government should not engage in this kind of spying. I fully understand that 345 million and some odd people cannot sit down with the president and plot strategy. But still at some general level we as voters can and should be aware of the broad strokes of what this policy of balancing security and personal rights is all about. Since the Snowden revelations we have shown that we can have a national conversation on issues like this.

We need to stay away from situations like that of director of National Intelligence James Clapper when prior to the Snowden release he testified under oath to the senate intelligence committee. Sen. Ron Wyden of Oregon who had submitted questions to Clapper the day before, asked Clapper “Does the NSA collect any type of data at all on millions or hundreds of millions of Americans?” Clapper’s answer: “no sir”. It does not”? asked Wyden. “Not wittingly”, answered Clapper. When the Snowden documents later proved this to be untrue, Clapper said that it was “the least untruthful” statement he

could make about the secret program. (6) In other words Clapper lied to Congress. I'm not sure but I think that if caught, lying like this would get most people in big trouble. It is interesting to note that this was a democrat administration really continuing similar policies from the Bush republican administration. Some of the domestic spying goes beyond everyday Americans. Earlier this year the senate intelligence committee was investigating possible torture by the CIA of terrorism suspects. Sen. Dianne Feinstein, intelligence committee chair, accused the CIA of spying on the committee's computers. The CIA director John Brennan called the accusation "beyond the scope of reason". He later insisted, "The CIA would not break into senate computers". A CIA Inspector General's probe found that the CIA had in fact improperly searched the Senate's computers. Brennan apologized to Feinstein. Now, spying on the senate by another branch of government was a pretty big deal. The illegal spying on millions of Americans- not so much. I say illegal because again the spying on millions was based on some broad and questionable interpretations of the 2001 Patriot Act and Foreign Intelligence Surveillance Act. (7)

When the Snowden scandal first broke and the information on spying on millions of Americans once again became public knowledge house speaker John Boehner (who presumably had some insight into intelligence operations) called Snowden a traitor. In Boehner's defense Sen. Wyden (democrat) says that time and again the intelligence community has said one thing in public and done another in private. Wyden has admitted that he knew for years that a secret legal interpretation of the Patriot Act was being used. He was however restricted by law from discussing it publicly.

In June of this year after considerable public outrage the House passed legislation that would purportedly rein in the collection of metadata by the federal government. Now, according to Speaker Boehner "the people are a lot more comfortable that the government is not storing all of this metadata that we were", and he endorsed the reforms. Now remember that this is not law yet. Given that the

debate only came about because of the Snowden revelations, Boehner's current comments are somewhat ironic. But, in the interest of fairness we need to remember that this was happening under a democrat administration. (8)

In the meantime the Senate is considering a bill proposed by Sen. Patrick Leahy and a bi-partisan group of Senators that would go even further in restraining the NSA. Of course if that bill, or something like it, passes, the Senate will have to reconcile with the House Legislation.

In 1952 when the National Security Agency was created its mission was "to acquire information from overseas sources to protect the United States from her enemies". In 1978 the Foreign Intelligence Surveillance Act (FISA) was passed and signed into law. It specifically allows the surveillance of Foreign Powers and their agents. It also sets up what is essentially a secret FISA court to oversee the issuance of warrants to carry out this surveillance. At the time there were Fourth Amendment concerns.

On September 11, 2001 the terrorist attacks occurred. By October 26th Congress had passed The Patriot Act, in response to overwhelming and legitimate concern by the public for the safety of our country. On reflection and as mentioned earlier, this is probably when the government, in trying to do its job, started stretching interpretations of FISA and then The Patriot Act.

To me the sticky point centers around the Fourth Amendment which says as follows: The Right of the People to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated and no warrants shall issue but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched, and the persons or things to be seized". A reasonable question might be whether a secret court with little outside oversight or input can meet the spirit of the Fourth Amendment. Since my entire knowledge of the Constitution and its various issues would fit on the head of a pin, I'm not the one to answer the question.

But, we as informed citizens can demand to know the broad general issues as they affect our constitutional rights. No, we don't need to know all of the operational details. We should insist however, that the proper elected and appointed officials in the Executive and Legislative Branches know and share relevant information. We are not there right now. I've listed two examples of executive branch officials lying to their legislative overseers, and other than embarrassment and some outrage, there was no punishment.

I really believe that the Bush and Obama Administrations have been driven by the best of intentions in trying to protect the country. But, if these surveillance practices are allowed to set presidential precedent without proper oversight who's to say that a future administration might not use these practices against Americans in a manner never intended by Bush or Obama. I'm sure none of us wants our lives to be an open book.

So, in the last year and a half what has become of the journalists and Edward Snowden?

Laura Poitras has produced three films on Snowden. Glenn Greenwald and The Guardian were awarded the Pulitzer Prize for breaking the NSA revelations. The Washington Post was also awarded a Pulitzer for its work on the story. Both papers along with the New York Times acted in best traditions of American Journalism. They carefully analyzed the material being released, they sought and received legal advice and they informed the Federal Government of their intentions. Again, this is not to say that the government was happy with these revelations, but it was better than in Great Britain where, with no First Amendment, The Guardian had to physically smash all of their computers containing Snowden information.

Edward Snowden has receded into the shroud of what is modern day Russia, with little being heard from him lately. However, in the last year he has appeared via video at the University of Glasgow, the South by Southwest Conference and in March at the TED Conference in Vancouver, but sadly and

stupidly Vladimir Putin has most successfully used him as a propaganda tool. In April of this year Snowden took part in a televised program with Putin where he asked some naïve questions about Russian domestic spying and Putin gave reliably untrue answers. While the positives of his information release (in my opinion) still stand, his personal reputation is about as low as you can get.

Experts on American ex-pats in Russia figure that at this time Snowden is probably homesick, lonely and is under constant surveillance and his movements are severely restricted. In the United States a long jail term probably would await. President Obama has this year issued an Executive Order giving new protections for Whistle Blowers. In January 2014 the New York Times however, in an editorial reported that the order does not apply to contractors. So, at least for now what awaits Snowden is probably boredom unless Putin figures out more ways to use him. In the old USSR it was not unusual for Americans in Snowden's position to struggle with alcohol; end up in a psychiatric ward or to simply disappear. In August Russia granted Snowden an additional three-year visa with the future possibility of Russian Citizenship. On October 13 of this year Gregory Wallace writing in USA Today calls for leniency for Snowden, but even then he suggests at least a few years in prison.

Has it been worth it? As always with situations like this there are pluses and minuses, with no clear answer. As reported on NPR on August 1, 2014, Al-Qaida has changed their encryption system in their communications. Though with the reporting prior to May 2013 they had to suspect that the NSA was looking and listening. In fact the Obama Administration was able to kill Osama Bin Laden by following a human courier, not an electronic trail.

On the plus side we needed to have this "National Conversation" about what the NSA has been doing, but again done in a general and broad way. Congressional overseers are now more aware that the public expects them to do a better job at doing their job. As for the Executive Branch, much like FDR there are some things we should know and others that we simply can't know about. But surely massive

data collection on millions of ordinary Americans is not something we can or should tolerate. In their efforts to protect us the NSA and others can't flaunt laws and the Constitution, inconvenient as that may be. In USA Today on the 16th of this month it was reported that a recent Pew Research Center poll found that 54% of Americans disapproved of the NSA collection of materials on Americans.

A few final thoughts:

- 1) It is not unusual for Presidents to expand their power or even break laws – or violate the Constitution. In his book “American Lion” author John Meacham points out that it was Andrew Jackson who created the basis for a strong Executive at the center of government, something it had not been prior to that. When Jackson left the office it did not recede back to what it had been. During the Civil War, President Lincoln suspended the Writ of Habeas Corpus (literally: You shall have the body) when he refused to bring to federal trial and kept imprisoned a Maryland State Legislator accused of interfering with the movement of federal troops. Even when the Supreme Court issued a ruling against him, he held his ground. (9) President Truman in April of 1952 ordered the Federal Government to seize the Steel Industry. Eventually the Supreme Court in a 6-3 decision ruled against him even though all nine justices had been appointed by FDR or Truman. (10) For pure speculation, imagine what President Nixon could have done with metadata collection when compiling his enemies list. In 1971 Daniel Ellsberg released the Pentagon Papers, 7,000 pages documenting some of the untruths and half-truths of the Kennedy and Johnson administrations about our involvement in Viet Nam. The Nixon administration had Ellsberg arrested and indicted. Incidentally when Ellsberg surrendered to federal authorities he said “I am prepared to answer to all of the consequences of this

decision”. All charges were eventually dismissed. (11) Nixon and Henry Kissinger pursued the secret and illegal bombing of Cambodia and most of us remember Watergate. President Reagan was involved in the Iran Contra scandal. And we know for sure that Bill Clinton lied, but that was more tabloid fodder than anything else. It is certain that Presidents do struggle with the proper exercise of their power and what they tell the public.

- 2) I have tried to present this subject as sort of a non-partisan problem. Administrations of both parties have actively participated. It is also a very complex problem that does not lend itself well to sound bites on network news or the silly yelling sessions on cable TV and talk radio. The basis of the NSA spying lies in complicated algorithms that allow computer programs to analyze millions and even billions of pieces of information on communications around the world. I found myself fascinated, but at other times not sure of what I had just read because of all the acronyms for program names and agencies. We have complex relationships with our allies and with other less friendly nations that we spy on. And of course we also spy on some of our allies. I’m thinking here of Angela Merkel of Germany and Delma Rouseff of Brazil. Both of whom had their cell phones hacked by the NSA. But in the end we, the public, need to have the option of being aware of what is being done in the name of protecting us. With the House and Senate bills not yet reconciled or passed and murky assurances of “trust me” from the government, we are not there yet.
- 3) There is a wartime quote from Winston Churchill that may apply. He said “The Americans will always do the right thing....after they’ve exhausted all of the alternatives.”

- 4) And finally: Bill Clinton put it best when he said: “Edward Snowden is an imperfect messenger.”

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