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Edward Snowden and PRISM:

The NSA's Secret Surveillance Program

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Politics of US Intel Community POLS 4202

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Criminal or whistleblower? Traitor or hero? Former National Security Agency (NSA) contractor Edward Snowden stunned the world on June 6, 2013, when he sat down with the UK's *The Guardian*'s Glenn Greenwald in an exclusive interview where he publicly disclosed SIGAD US-984XN, also known as PRISM, the NSA's internal government computer system.ⁱ

Founded on November 4, 1952, the NSA is a national-level signals intelligence agency of the United States Department of Defense (DOD). Under the authority of the Director of National Intelligence, the NSA monitors, collects and processes global communication for intelligence and counterintelligence purposes.ⁱⁱ Formed by President Harry S. Truman as a unit to decipher code in World War II, the NSA has since become the largest U.S. intelligence organization in terms of personnel and budget.ⁱⁱⁱ

For years, the NSA has been using the PRISM program under the Special Source Operations Division of the NSA to collect foreign online communications including email, chat, VOIP communications and metadata of millions of phone calls, potentially revealing the location of each individual user. Operated under the United States Foreign Intelligence Surveillance Act of 1978 (FISA) and established in 2007, PRISM has enabled the NSA and the Federal Bureau of Investigation's (FBI) Data Intercept Technology Unit (DITU) to access and store information from the servers of major American companies including Microsoft, Yahoo!, Google, Facebook, YouTube and Apple.^{iv}

Edward Snowden, an NSA infrastructure analyst working as a contractor for Booz Allen Hamilton Inc., a management consulting firm for security, defense and intelligence agencies, told *The Guardian* that he "couldn't live with what the NSA was doing."^v Previously an intelligence

community systems engineer, systems administrator, senior advisor for the Central Intelligence Agency's (CIA) solutions consultant and a telecommunications information systems officer, "I, sitting at my desk, certainly had the authorities to wiretap anyone from you, your accountant, to a federal judge to even the President if I had a personal email," said Snowden.^{vi} Snowden is without a doubt credible—but the question remains, is he a criminal? Many have spoken out against Snowden asserting that he is delinquent. Former Vice President Dick Cheney, former Speaker of the House John Boehner, Senators Dianne Feinstein and the late Senator John McCain, have all publicly called Snowden a "traitor" who should be "tried for treason."^{vii} According to The Huffington Post, Former United Nations Ambassador John Bolton suggested that Snowden should, "swing from a tall oak tree," as punishment.^{viii} Former FBI Director Robert Mueller even assured members of the House Judiciary Committee that "all necessary steps" were being taken to track down Snowden, who is believed to be in Hong Kong.^{ix}

The Whistleblower Protection Act of 1989 (WPA) protects government employees from retaliatory action for voluntarily disclosing information about "dishonest or illegal activities occurring in a government agency."^x According to the WPA, Snowden is only a whistleblower if he disclosed information that contains illegal activities. While collecting personal information is highly unethical, is the NSA's PRISM program illegal? The White House, Congress and the NSA all say that it is not only legal, but that it is authorized by FISA, which was reauthorized in 2007, and by the Patriot Act, Section 215, both of which authorize the collection of phone records.

In 2008, Yahoo! fought the demand by the NSA and the Foreign Intelligence Surveillance Court to hand over their user communications—an order the company believed was

unconstitutional. That same year, Congress gave the Department of Justice authority to make unwilling companies conform.^{xi} The court upheld the predecessor to Section 702 of the Foreign Intelligence Surveillance Amendments Act and ordered Yahoo! to give the government the user data it initially requested. Judge William C. Bryson, presiding judge of the FISA Court of Review, ordered the documents from the case be unsealed. The day of the ruling, Ron Bell, Yahoo!'s general counsel, delivered the following statement in an online forum, "The released documents underscore how we had to fight every step of the way to challenge the U.S. Government's surveillance efforts... Our fight continues."^{xii} Yahoo! was forced to comply.

Director of The Heritage Foundation's Edwin Meese III Center for Legal and Judicial Studies and former deputy assistant attorney general in the Department of Justice's Criminal Division overseeing sections on computer crimes and other investigations, John G. Malcom, informed me of his expert opinion. "There are lower constitutional protections provided for metadata," said Malcom. "I think that again, 702 is in compliance with the Constitution. My guess is that the court upheld the Constitution."^{xiii}

However, The American Civil Liberties Union and Larry Klayman, the former Chairman of Judicial Watch, instituted a lawsuit claiming that the NSA was violating constitutional rights of citizens. According to the ACLU's website:

The complaint argues that the dragnet violates the right to privacy protected by the Fourth Amendment as well as the freedoms of speech and association protected by the First Amendment. The complaint also charges that the program exceeds the authority that Congress provided in Section 215 of the Patriot Act. In May 2015, the Court of Appeals for the Second Circuit ruled that the call-records program violates Section 215 of the Patriot Act. Weeks later, on June 1, 2015, Section 215 briefly expired for the first time since the passage of the Patriot Act in 2001. The next day, Congress passed the USA

Freedom Act, which amended Section 215 to prohibit the bulk collection of Americans' call records.^{xiv}

Former Congressman and member of The U.S. House Committee on Homeland Security Paul Broun was once a co-sponsor of the USA Freedom Act. However, that changed. After voting in opposition to House Resolution 3361, Broun released the following statement:

While the bill claims to end bulk collection of Americans' phone records, it now fails to adequately provide safeguards that would protect against mass, untargeted collection of Americans' private information. Furthermore, I am adamantly opposed to the USA Freedom Act's two-year extension of Section 215 of the Patriot Act. This section of the Patriot Act widely expands the FBI's ability to spy on Americans without probable cause, violating our Fourth Amendment rights.^{xv}

In a personal interview with the former Congressman, Broun said, "What the Federal Government is doing by storing data of all Americans' is totally against the intent of the act." "It is completely unconstitutional what the NSA is doing, and it must be stopped."^{xvi} According to Broun, it's clear that the Patriot Act does overreach constitutionally protected rights of United States citizens. With that overreach, Section 215 requires the government to "specify the records concerned are sought for an authorized investigation conducted in accordance with subsection (a)(2) to protect against international terrorism or clandestine intelligence services."^{xvii}

Arguably one of the best scenes in the movie "Snowden," Edward Snowden, portrayed by Joseph Gordon-Levitt, conceals a flash drive containing the intelligence files inside a Rubik's Cube, then uses his charm managing to trick security into allowing the toy past metal detectors. While we may truly never know how Snowden physically took possession of the documents, director Stone says that the Rubik's Cube scene in particular was Snowden's idea. "First of all, I

just wanted to say that none of us know [how it happened],” Stone said. “[Snowden]’s the only one who knows, and one day he may reveal it. And number two, it was his idea — it was a suggestion that we responded to and ran with.”^{xviii} While Hollywood is known for the dramatization of films, according to one report, sources inside the intelligence community say that Snowden only needed “a few thumb drives and the willingness to exploit a gaping hole in an antiquated security system.”^{xix} With random bag and purse checks at Fort Meade, the headquarters of the NSA, people’s pockets were never checked. An employee at the agency said that anything that could be fit into a pocket would simply be undetected.^{xx}

Shortly after Snowden presented his leaks to the world, “President Barack Obama appointed an independent group of experts to examine the issue.”^{xxi} Reform was, and still is, drastically needed within the intelligence community. Snowden’s revelations highlighted two key issues, an almost perfect level of security and in the other hand, privacy protections, accountability and transparency expected by the American people. There is no argument that intelligence collection and analysis must to be reformed. However, the issue lies with lawmakers agreeing on what steps to take. These impasses have led to intelligence failures due to legislative actions failing.

On March 15, 2020, Section 215 of the Patriot Act expired due to lawmakers failing to come to an agreement on reforming the FISA. Although Congress was unable to reauthorize the law, Section 215’s expiration clause comes with an exception.^{xxii} This allows the intelligence community to grandfather or continue using the law for investigations that were ongoing at the time of expiration. Courts, the U.S. Congress, media, and technology companies all began to quickly alter their behavior. Just three months before Snowden revealed classified information,

the U.S. Supreme Court dismissed a constitutional challenge to an NSA surveillance program. Investigative journalists were also not publishing their findings of which could have potentially altered elections.^{xxiii} While Greenwald reported on Snowden's documents from the NSA, he also provided commentary and his opinion on the state of journalism arguing that most journalists are complicit to keeping secrets that could have devastating impacts on states.^{xxiv} Legal battles began to surface between top law enforcement agencies such as the FBI and the world's most profitable corporation, Apple. Snowden's leaks were causing a tsunami-sized ripple effect throughout the country and within many industries. People began to take sides.

Professor Kevin Haggerty, PhD, of the University of Alberta, affirmed in *The Canadian Journal of Sociology*, that there are several justifications for surveillance programs of which fight against terrorism.^{xxv} Many still rely on and trust the NSA as a vital component to national security in order to protect the United States both home and abroad. Supporters of the bulk collection of phone records and metadata have argued that the NSA and other federal agencies including the FBI and the CIA are capable of stopping and preventing terrorist attacks and homegrown terrorism.

In contrast, according to an NBC News interview, Geoffrey Stone, a member of the White House review panel on NSA Surveillance, was "absolutely" surprised when he discovered the agency's lack of evidence that the bulk collection of telephone call records had thwarted any terrorist attacks." "The results were very thin," said Stone.^{xxvi} Former CIA imagery analyst Sheri Gilligan agreed with Stone.^{xxvii} "If they, referring to the NSA, had anything, then they would be rolling it out to defend what they are doing," said Gilligan. When asked in a personal interview if she believes that the PRISM program is necessary for counterterrorism

efforts, she said no. “I think that goes a step to far,” said Gilligan. “When I was in, we did not spy on Americans and when we coordinated with the Department of Defense to image military exercises, we had to request special permission to image the United States.”^{xxviii} As far as Edward Snowden and the WPA goes, Gilligan said that she has a problem with leaking classified information for any reason. “I may not like that it is classified, or the reason that it is classified, but if I leak it, then I should stand the punishment,” said Gilligan. “I think he could have blown the whistle without leaking classified information.”^{xxix}

The notion of Edward Snowden being labeled a whistleblower or traitor is one that simply rests on opinion and the concepts of subjectivity and interpretation. As long as judicial members including Supreme Court justices, court of appeals judges and district court judges, who, as humans, naturally hold biases, are nominated to their seats by the partisan Presidents and confirmed by partisan members of the United States Senate, as stated in the Constitution, the debate of his status will always correlate to how an individual interprets the Constitution. Although Edward Snowden has been charged with espionage by federal prosecutors^{xxx}, he has yet to stand trial for the crimes he has allegedly committed, therefore making it not possible to come to the conclusion on whether he is or is not a criminal or if he is protected under the WPA.

It is possible that among the three hundred million Verizon Wireless customers, there could have been cases where the NSA was investigating connections to terrorism, but what is not possible is that every single customer has made calls relating to terrorism. Even with the government overreach of the Patriot Act and what the NSA has been, and is still doing, the PRISM program is clearly illegal according to the ruling by a three-judge panel on the U.S. Court of Appeals for the 9th Circuit.^{xxxi}

If the Constitution guarantees individuals the freedom of speech, the freedom of association, the protection of unlawful searches and seizures and due process when charged with a crime, yet all of those rights can be suspended, not because you are a terrorist, but because the government wants to know if you might be a terrorist, then those rights never existed in the first place.^{xxxii} The truth is, when someone says, "If you are not doing anything wrong, then you have nothing to worry about," they are actually saying, "If I am not doing anything wrong, then I do not need to have rights."^{xxxiii} In a letter believed to have been written on behalf of the Pennsylvania General Assembly, Benjamin Franklin wrote, "Those who would give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety."^{xxxiv}

Notes

ⁱ Glenn Greenwald, “Edward Snowden: The Whistleblower Behind the NSA Surveillance Revelations,” *The Guardian*, June 11, 2013.

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ⁱⁱ National Security Agency, *The Early History of NSA*, George Howe. #7319, nsa.gov: National Security Agency, 2007. https://www.nsa.gov/Portals/70/documents/news-features/declassified-documents/cryptologic-spectrum/early_history_nsa.pdf (accessed April 26, 2021).

ⁱⁱⁱ Barton Gellman; Greg Miller, "U.S. Spy Network's Successes, Failures and Objectives Detailed in 'Black Budget' Summary". *The Washington Post*, August 29, 2013. https://www.washingtonpost.com/world/national-security/black-budget-summary-details-us-spy-networks-successes-failures-and-objectives/2013/08/29/7e57bb78-10ab-11e3-8cdd-bcdc09410972_story.html (accessed April 28, 2021).

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^v Glenn Greenwald, “Edward Snowden: The Whistleblower Behind the NSA Surveillance Revelations”.

^{vi} Glenn Greenwald, “Edward Snowden: The Whistleblower Behind the NSA Surveillance Revelations”.

^{vii} Brett LoGiurato, “Snowden: 'Being Called a Traitor by Dick Cheney is the Highest Honor',” *Insider*, June 17, 2013. <https://www.businessinsider.com/edward-snowden-dick-cheney-traitor-comment-guardian-chat-glenn-greenwald-2013-6> (accessed April 28, 2021).

^{viii} Mollie Riley, “John Bolton: Edward Snowden ‘Ought to Swing from a Tall Oak Tree’,” *Huffpost*, January 17, 2013. https://www.huffpost.com/entry/john-bolton-edward-snowden_n_4461196 (accessed April 28, 2021).

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^x Mary Pratt, “Whistleblower Protection Act,” *Search Compliance*, July 2018. <https://searchcompliance.techtarget.com/definition/Whistleblower-Protection-Act> (accessed April 28, 2021).

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- ^{xiii} Malcom, John. Interview by Michael-Chase Strollo. Personal interview. Atlanta, April 10, 2021.
- ^{xiv} “ACLU V. CLAPPER - Challenge to NSA Mass Call-Tracking Program,” ACLU, ACLU, October 29, 2015, accessed April 24, 2021, <https://www.aclu.org/cases/aclu-v-clapper-challenge-nsa-mass-call-tracking-program>.
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^{xxvii} Sheri, Gilligan. Interview by Michael-Chase Strollo. Personal interview. Atlanta, April 20, 2021.

^{xxviii} Sheri, Gilligan. Interview by Michael-Chase Strollo.

^{xxix} Sheri, Gilligan. Interview by Michael-Chase Strollo.

^{xxx} Peter Finn and Sari Horwitz, “U.S. Charges Snowden With Espionage,” *The Washington Post*, June 21, 2013. https://www.washingtonpost.com/world/national-security/us-charges-snowden-with-espionage/2013/06/21/507497d8-dab1-11e2-a016-92547bf094cc_story.html (accessed April 28, 2021).

^{xxxi} Devlin Barrett, “Surveillance Program That Gathered Americans’ Phone Data Was Illegal, Court Finds,” *The Washington Post*, September 4, 2020. https://www.washingtonpost.com/national-security/phone-records-surveillance-edward-snowden/2020/09/02/97f26498-ed67-11ea-99a1-71343d03bc29_story.html (accessed April 28, 2021).

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