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## The Fight for Justice;

### A Case Study of Edward Snowden and the Examination of his Criminal Charges

Edward Snowden has been labeled a pivotal social activist as well as the most noteworthy traitor in the history of the United States. Snowden, an American computer scientist, came to prominence in June 2013 when he released numerous highly classified National Security Association (NSA) documents to various media organizations. These documents contain proof of mass data collection conducted by the NSA and the U.S. government, which targeted millions of Americans as well as significant political figures in the international community. The public learned from the Snowden leaks that the NSA had been gathering intelligence on individuals by monitoring their phone calls, email messages, and contacts. To many, the Snowden documents clearly demonstrate the elaborate degree to which the U.S. and the NSA abused its authority and overstepped private boundaries, prompting public and political outrage. The document leak had the most impact on the U.S., as the government's reputation, credibility, and relationships were damaged, domestically and internationally. However, Snowden also endured consequences from releasing the NSA documents, as he was charged with several criminal offences by the U.S. government as a result of his illegal actions. Now that the initial shock from the release of the NSA documents has passed, the justifiability of Snowden's criminal sentence has come into question, as officials, politicians, journalists, and the public are realizing the enormous contribution the

Snowden leaks have made towards the fight for the freedom of information. Although Snowden's actions are unlawful, Snowden deserves a reduction in his charges because his actions to expose the NSA and U.S. government were morally right and advantageous to society. To effectively examine this argument, the reader must first understand Snowden's background, the information he exposed, his motivations to expose it, and the consequences he faces now.

### **1. SNOWDEN'S BACKGROUND**

In 2003, Snowden enlisted in the U.S. army and joined the Army Reserve Special Forces training program. Similar to the principles Snowden references to justify his leaks, he cites his reason to join the fight in the Iraq war to be because "I felt like I had an obligation as a human being to help free people from oppression (qtd. in Greenwald et al.). However, Snowden quickly found that the war's purpose was skewed from his original belief; he commented that "most of the people training us seemed pumped up about killing Arabs, not helping anyone" (qtd. in Greenwald et al.). After Snowden broke his legs in a training accident, his records show that he was discharged.

Shortly thereafter, Snowden landed a job working as a security guard for the NSA's covert facility at the University of Maryland. In 2006, the CIA hired Snowden as an IT security technician. Due to Snowden's talent as a technician and knowledge of computer programming, he quickly climbed the ranks of the CIA, and by 2007 he was stationed in Geneva, Switzerland under diplomatic cover. While in Geneva, Snowden worked as an IT and cyber security consultant, and his new authority granted him security clearance to a wide variety of classified documents. However, this access made Snowden begin to question the rightness of what he saw. Snowden says that his experiences in Geneva "disillusioned me about how my government functions and what its impact is in the world" (qtd. in Greenwald et al.). Snowden also commented on this revelation by saying, "I realized that I was part of something that was doing far more harm than

good” (qtd. in Greenwald et al.). Snowden admits that he first thought about revealing government secrets during his work in Geneva, but he decided hold back for two reasons: he did not feel comfortable disclosing information that had the potential to hurt people and he hoped that the newly appointed Obama Administration would instigate reform regarding cyber intelligence policies (Greenwald et al.). Snowden left the CIA in 2009 after a report was filed wherein Snowden’s supervisor suspected Snowden of trying to open classified documents that he was not authorized to access.

From 2009 to 2012, Snowden worked for Dell, a private contractor company, where he was assigned to work at NSA facilities in Japan and then Hawaii. These assignments at the NSA gave Snowden security clearance to classified government documents for a second time, which is when Snowden discovered that the clandestine intelligence operations of the U.S. government had not been reformed. Since 2008, Snowden had waited for the United States to reduce the ubiquity of its surveillance operations. However, Snowden describes how, during this time, he “watched as Obama advanced the very policies that I thought would be reined in” (qtd. in Greenwald et al.). Snowden says that this experience taught him an important lesson about leadership and how “you can’t wait around for someone else to act” (qtd. in Greenwald et al.). It was at this point that Snowden realized that he had to become the leader in order to instigate change.

In March of 2013, Snowden left Dell and was hired by Booz Allen Hamilton as a systems administrator at the NSA’s Threat Operations Center in Hawaii. Already planning to leak classified government documents, Snowden used this time to gain access to and copy additional NSA documents that he intended to release (Greenwald et al.). In May 2013, once Snowden believed the NSA surveillance net was soon irreversible, he took a medical leave from work and flew to Hong Kong. Then, on June 5, 2013, the first revelations from the Snowden leaks were published.

## 1.1 REVELATIONS

The hundreds of classified NSA documents that Snowden leaked resulted in numerous revelations regarding the confidential operations of the NSA and the U.S. government. The first revelation from the Snowden documents provided insight on the NSA's collection of domestic email and telephone metadata from Verizon. The confidential court order, which was leaked by Snowden, requires Verizon to transfer customer information to the NSA on a daily basis. While the White House has called the order a "critical tool in protecting the nation from terrorist threats", politicians and legal professionals find the secret blanket surveillance very worrisome (qtd. in Roberts). For example, Jameel Jaffer, deputy legal director at the American Civil Liberties Union, describes the revelation as "beyond Orwellian" and says "it provides evidence of the extent to which basic democratic rights are being surrendered in secret to the demands of unaccountable intelligence activities" (qtd. in Roberts). As Glenn Greenwald, a former columnist for the Guardian and notable media confidant of Snowden, comments in the article revealing the court order, "the document shows for the first time that under the Obama Administration the communication records of millions of U.S. citizens are being collected indiscriminately and in bulk – regardless of whether they are suspected of any wrongdoing" ("NSA Collecting").

Another significant disclosure as a result of the Snowden documents was the program Prism. Prism is a surveillance program that was launched in 2007 by the NSA and it collects the private information of internet accounts directly from the servers of nine flagship U.S. internet companies, such as Microsoft, Google, and Facebook. In addition to the NSA's covert court-approved access to internet accounts through Prism, the Snowden documents also revealed the NSA program Muscular. Muscular provides back door access to internal data centers of Yahoo and Google, which increases the NSA's ability to conduct secret surveillance and gather

information on private accounts. The involvement of internet companies in the clandestine intelligence programs Prism and Muscular add to the debate about the scale of surveillance by the NSA. In addition to Jaffer's comments on the Verizon revelations, he argues that the NSA's access to internet companies displays "unprecedented militarization of domestic communications infrastructure", which is "profoundly troubling" (qtd. in Greenwald & MacAskill, "NSA Prism"). Moreover, unlike the Verizon metadata collection, intelligence from the Prism and Muscular programs provides specific content of communications to the NSA, which further invades the privacy of individuals for the purpose of ambiguous intelligence gathering.

Furthermore, included in Snowden's leak were slides outlining Boundless Informant, a datamining tool used by the NSA to record and analyze the origins of the agency's intelligence. The slides released by Snowden show that the tool acts like a heat map, mapping and detailing by country the amount of information the NSA collects from computer and telephone networks. From a snapshot of Boundless Informant captured by Snowden, the program shows that the NSA collected 97 billion pieces of intelligence from computer networks worldwide during March 2013 alone, with the most intelligence reports originating from Iran with 14 billion reports and 3 billion reports originating from the United States. Not only does Boundless Informant reveal the degree of the NSA's data collection internationally, it also reveals the enormous scale at which the NSA collects domestic intelligence, an action that NSA and military officials denied repeatedly before the Snowden revelations (Greenwald & MacAskill, "Boundless"). These programs and documents are only a few of the key revelations Snowden made available to the media, but they successfully display the voracious operations of the NSA and U.S. government.

## 1.2 MOTIVATIONS

While the Snowden leaks clearly reveal disreputable activities of the U.S. government, uncertainty still exists around Snowden's motivations to leak the classified NSA documents. John Broder, a foreign affairs and defense expert, and Scott Shane, a journalist for *The New York Times* who often writes about U.S. intelligence, suggest that Snowden released the classified NSA documents because he had an "anti-authority spirit" and he wanted to be put in the spotlight in order to portray an image as "heroic whistleblower". Although Snowden has denied these allegations outright and insists that the focus of the media and public stay on the activities of the U.S. government, he has become very well-known from the release, agreeing to hundreds of interviews and allowing a documentary to be filmed on his life.

However, Snowden's argument regarding his motivations behind the leaks is convincing given the shocking content of the NSA documents he released. Through his security clearance at the CIA and NSA, Snowden says he learned that "the government had granted itself power that it was not entitled to" (qtd. in Greenwald et al.). Moreover, with the absence of public oversight, Snowden saw the problem worsening and further enhancing the capabilities of the "architecture of oppression (qtd. in Mazetti). Therefore, Snowden decided to release the confidential documents because he believed that "the public needs to decide [for themselves] whether these programs and policies are right or wrong" (qtd. in Mazetti). In a note that he released with the first wave of documents, Snowden wrote "I understand that I will be made to suffer for my actions," but "I will be satisfied if the federation of secret law, unequal pardon and irresistible executive powers that rule the world that I love are revealed even for an instant" (qtd. in Greenwald et al.). Moreover, Snowden has also disclosed that the leak did contain self-interest, as one of his goals of the document leak was to save the privacy of the internet and maintain exploration, creativity, and

freedom in the online world (Greenwald et al.). Therefore, even though Snowden knew that his intentions would be distorted, his decision to release the classified NSA documents remained resolute, as he was willing to sacrifice his life to fight for the freedom of information and expose the dubious activities of the U.S. government, regardless of the consequences.

### **1.3 CONSEQUENCES**

Soon after Snowden leaked the NSA documents and the revelations were published in the media, Snowden's consequences as a whistleblower became apparent. On June 11 of 2013, Snowden was fired by Booz Allen Hamilton. Then on June 14, the United States Justice Department charged Snowden with three violations of federal law: theft of government property, willful communication of classified communications intelligence, and unauthorized communication of national defense information. The latter two of these charges were classified as violations of the U.S. Espionage Act, which was originally created in 1917 in the efforts to constrain dangerous treason and sabotage in World War I. These criminal charges carry a combined minimum prison sentence of 30 years. The U.S. also filed a provisional arrest warrant for Snowden, but so far Snowden has been able to avoid extradition and arrest by residing abroad where U.S. law is not recognized.

In addition to the legal consequences presented to Snowden, the NSA's covert operations were also judicially evaluated as a result of the Snowden revelations. In December of 2013, U.S. District Judge Richard Leon found that the NSA's gathering of telecommunications violated the Fourth Amendment of the United States Constitution, which provides protection against unreasonable search and seizure of information. However, a few days later, U.S. District Judge William Pauley III reached the opposite conclusion, ruling that the NSA programs were lawful. Nevertheless, the incongruity regarding the constitutionality of the NSA's secret data collection

and surveillance operations at the judicial level, calls into question whether Snowden is deserving of the entirety of his criminal charges as the whistleblower.

## **2. DISCUSSION**

Based on the underlying morality of the Snowden leaks as well as the societal advantages the Snowden leaks present, Snowden deserves a reduction of his charges, if not full pardon, from the U.S. government. Snowden's actions to leak classified NSA documents were morally right because the NSA documents contain incontrovertible evidence of wrongdoing. Specifically, the contents of the leaked documents provide evidence of obvious privacy violations by the United States government as well as proof of the misrepresentation of NSA operations to other organizations and the public. As exemplified above by the NSA's confidential Verizon order and surveillance programs, the Snowden leaks lead to numerous revelations where the NSA exceeded its authority, broke privacy rules, and accessed information without consent.

However, the Snowden leaks also revealed that the true operations of the NSA had been kept secret from not only the public, but also other official organizations through lying and deceit. For example, the Snowden leaks revealed that James Clapper Jr., the director of national intelligence, outright lied to Congress when he denied that the NSA was conducting mass data collection and surveillance on innocent Americans (Shane). Additionally, in a ruling from 2011 that was released with the Snowden documents, the Foreign Intelligence Surveillance Court chastised the NSA for misleading the court several times regarding domestic NSA operations. Judge John D. Bates, a former chief judge in the Foreign Intelligence Surveillance Court, wrote that "the court is troubled that the government's revelations regarding N.S.A.'s acquisition of Internet transactions mark the third instance in less than three years in which the government has disclosed a substantial misrepresentation regarding the scope of a major collection program" (qtd.



in Savage and Shane). Judge Bates also declared at the time of the ruling that these undisclosed NSA programs violated the constitution. This means that the NSA had been acting unconstitutionally since 2008, yet its programs remained unknown and unchanged until Snowden revealed them in 2013. As a result of this impunity, it has been left to whistleblowers like Snowden to alert the public when a program oversteps the limits of the constitution. Therefore, Snowden's actions to release the classified NSA documents were morally right, as the leak clearly identifies evidence of public wrongdoing and his actions embody honorable moral principles such as honesty, justice, freedom, and fidelity to the American people.

Snowden's actions to release the NSA documents were also within the interests of society, as the leaks disclosed the extent to which the U.S. government oppresses information in society and invades the privacy of individuals. Similar to Jaffer's comments earlier, the U.S. District Judge Leon, who found that the NSA programs violated the Fourth Amendment of the United States Constitution, described the NSA programs as "almost Orwellian". Judge Leon also questioned the purpose of the surveillance programs by adding "I am not convinced at this point in the litigation that the NSA's database has ever truly served the purpose of rapidly identifying terrorists in time-sensitive investigations" (qtd. in Savage). Moreover, Snowden believes that the oppression of information poses "an existential threat to democracy" because when a society is unaware of the operations of the government, it can no longer function as a democratic society (qtd. in Greenwald et al.). Therefore, the exposure of the NSA's programs as a result of the Snowden documents was advantageous to society, as the leaks made the public aware of the surreptitious operations of the United States government and gives the public the power and ability to enact change.

Moreover, there has been clear progress and improvements regarding the legitimacy of the operations of U.S. intelligence agencies in the wake of the Snowden leaks. Even Holder, the Attorney General who charged Snowden with felonies of theft of government property and mishandling of intelligence information, has praised Snowden, saying that “I think that he actually performed a public service by raising the debate that we engaged in and by the changes that we made” (qtd. in Goldsmith). As a result of the Snowden leaks, the intelligence organizations have had to subject themselves to more scrutiny and program checks. New institutions were created in order to scrutinize and judge intelligence operations, such as the President’s Review Group and Privacy and Civil Liberties Oversight Board. Additionally, foreign and domestic intelligence collection processes were reviewed by programs such as the Presidential Policy Directive 28 and the USA Freedom Act. This newfound transparency has resulted in public authorization and approval of intelligence operations, which has provided intelligence organizations with legitimacy and longevity as well as society with more control over the privacy of information and a better ability to exercise democratic rights. As Jack Goldsmith, a professor at Harvard Law School, argues, “Despite undoubted intelligence losses, new collection barriers, and diplomatic embarrassments, the community has emerged as a stronger organization despite, indeed because of, Snowden”.

Although Snowden’s actions promote moral principles and the resulting revelations are beneficial to society, critics of Snowden argue that Snowden’s criminal charges are appropriate and necessary. Snowden’s critics, who are predominantly military and government officials, call for Snowden’s extradition and prosecution on the basis that Snowden’s disclosures were irresponsibly broad and they undermine United States security. For example, James Clapper Jr., the director of national intelligence who lied to Congress earlier, commented that it is “gut-

wrenching to see this happen because of the huge, grave damage it does to our intelligence capabilities” (qtd. in Mazetti). However, these denunciations of Snowden and the leaks are somewhat hollow as the leaked NSA documents have only revealed operations concerning constitutionally questionable spying. Snowden also defends the content of the NSA documents he released, as he claims that “I carefully evaluated every single document I disclosed to ensure that each was in the public interest” and he strengthens his argument by restating that “harming people isn’t my goal ... transparency is” (qtd. in Greenwald et al.). Furthermore, there is no evidence that shows that Snowden has shared any specific information with foreign adversaries and the government has not cited a single instance where the Snowden leaks have compromised their intelligence operations. Therefore, the claims that the Snowden leaks delegitimized U.S. intelligence and overly exposed intelligence operations are insignificant, as there is no proof that these arguments are true.

### **3. CONCLUSION**

Soon after Snowden was criminally charged, he traveled to Russia in order to avoid the U.S. extradition treaty with Hong Kong. Snowden has been residing in Russia for over three years now, and he has been granted temporary asylum until August 1, 2017. Although Snowden’s country of residence is currently foreign and his address unknown, it does not mean that Snowden is hiding. In fact, Snowden said himself that, “I have no intention of hiding who I am because I have done nothing wrong” (qtd. in Greenwald et al.). Snowden has remained in the public eye since releasing the classified NSA documents, predominantly acting as an advocate for government transparency and the freedom of information. The way that Snowden has continued to use his identity, audience, and publicity to speak to these issues has further enhanced his credibility as a whistleblower.

However, Snowden still remains a controversial figure; some people see him as a hero while others view him as the enemy. That being said, the clear and convincing evidence of public oppression and the ways in which the NSA and U.S. government overstepped the bounds of their executive authority emphasize two key aspects of Snowden's case: the moral intentions of Snowden's actions in the release of the classified NSA documents as well as the contributions the leaks made towards the fight for the freedom of information, democracy, and the privacy right of individuals. Therefore, although Snowden and the U.S. government are fighting for their own ideas of justice in this case, Snowden deserves a reduction in the consequences presented to him for being a whistleblower, and further, he should be thanked for the public services he inspired.

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