



# Mr. Snowden's Legacy

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**Edward Snowden's ongoing NSA disclosures seem to have the same effect on neoconservative and big-government politicians that a full moon has on werewolves—it just drives them crazy! What did he do to incur all of this acrimony?**

**M**any were introduced to South African President Jacob Zuma during international coverage of Nelson Mandela's memorial service in late 2013. Zuma is no stranger to scandal and was the target of jeers during the otherwise peaceful service.

In 2012, Zuma's hands were caught in the till when details of the \$21-million, taxpayer-funded "security improvements" made to his home were leaked to the media. A recent report revealed that these improvements included the addition of a visitor's lounge, 20 guest houses, a clinic, two helipads, an amphitheater, a cattle enclosure, a swimming pool, and a minimart for one of his wives.<sup>1</sup> These days, the misuse of public funds by an elected official isn't terribly newsworthy, and the story would have likely died quickly were it not for Zuma's reaction. The leaked exposures triggered a misinformation campaign that included posterous

justifications—including a claim that the swimming pool was a "water reservoir" for fighting fires. Perhaps the minimart was to provide snacks for the firefighters while they were using the pool. Such is the stuff of modern demagoguery.

The Zuma administration then outdid itself with a judicious application of intimidation by threatening to prosecute any journalist or media outlet that published photographs of the renovated property.<sup>2</sup> The administration justified its threats by invoking the National Key Points Act<sup>3</sup>—an apartheid-era security law used by white apartheid governments to suppress black dissent. Apparently, the Minister of Public Works can designate anything as a national key point, which deems it deserving of special protection and insulation from public scrutiny. What's more, the list of key points is a tightly held government secret. You won't know whether you've violated one until after you've been arrested and prosecuted. Currently,

there are a few hundred such key points, with Zuma's house being a relatively recent addition.

## FUNGIBLE TRUTHS AND INTENTIONAL MISUNDERSTANDINGS

Zuma must have been delusional if he thought that the invocation of apartheid-era laws to cover up his deception and chicanery would escape media scrutiny and public blowback. The Zuma story is a reminder to US citizens that governments lie to cover up misdeeds. Occasionally, a government official lapses into a spell of honesty. It doesn't happen often, but when it does, it can be a thing of beauty. To illustrate, in response to a reporter's complaint about the US government's misinformation campaign concerning the war in Vietnam, Arthur Sylvester, Assistant Secretary of Defense for Public Affairs under Robert McNamara, told a group of reporters, "Look, if you think any American official is going to tell you

the truth, then you're stupid. Did you hear that? Stupid."<sup>4</sup> (Or consider former CIA Director James Woolsey's comment about the NSA's use of Echelon to intercept European telephone communications: "Yes, my continental friends, we have spied on you.... Your governments largely still dominate your economies.... Get serious, Europeans. Stop blaming us and reform your own statist economic policies.... Then we won't need to spy on you."<sup>5</sup>

Though rare, such forthrightness is refreshing. These quotes suggest that whenever the hint of exposure or potential embarrassment is close at hand, deception and disinformation aren't far behind. That is the lesson learned from the Zuma story—and, as time will tell, Edward Snowden's as well.

## KNOWLEDGE AS JUSTIFIED TRUE SUSPICION

In advance of our discussion on Snowden's suspected crimes, I am herewith adding a new word to our political lexicon: *suspiciology*, the study of suspicion. It might not be important philosophically, but it's so critical to the understanding of politics that I'm surprised Plato didn't at least include a footnote on it in his dialogues.

Suspicion is different than belief in terms of grounding. Beliefs arise in a realm of human understanding where the primary shared components, perception and reason, are both mainly reliable and fairly predictable (and occasions when they aren't are minimal, random, and/or offsetting). With suspicion, unlike belief, there must be an additional assumption that perception is likely unreliable and/or incomplete, and thus unreasonable. Where belief is organized around order and regularity, suspicion relies on inconsistency and deceit—what Winston Churchill called the "bodyguard of lies."

On this account, Director of National Intelligence James Clapper's

admission to Senator Dianne Feinstein that he misled Congress about the gathering of information on US citizens—an event he later described as giving the "least untruthful answer"—was less an apology than the reconciliation of detected un-

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truths with not-as-yet-detected untruths.<sup>6</sup> He was just balancing the rhetorical ledger. See for yourself whether this is a more plausible explanation of Clapper's remarks.<sup>7</sup> In politics, getting caught in a lie is tantamount to a failed tactic, nothing more: truth, honesty, and integrity are considered quaint notions of a bygone era and destined for the dustbin of history.

## HELL HATH NO FURY LIKE A SURVEILLANCE STATE SCORNE

As I said in my July 2013 column, "Through the PRISM Darkly," (pp. 86–90), no one who has invested significant time studying the machinations of modern governments could be shocked by Snowden's NSA leaks. Investigative reporter James Bamford made a 30-year career out of NSA reporting at that level of granularity. In fact, his first exposé, *The Puzzle Palace*, dates all the way back to 1982! Ten years before that, Senator Frank Church warned Americans not to underestimate the NSA surveillance threat during the Church Committee Hearings. A clip of his 17 August 1975 *Meet the Press* interview is instructive in this regard.<sup>8</sup> Although some details have changed, the NSA's compass heading has been steady for 50 years.

that brings out so much political prejudice and rancor? Let's review the common accusations against him.

Did Snowden provide classified information to those not entitled to receive it (18 US Code § 793 (e))—in this case, reporters? Actually, this is irrelevant. This statute is broken every time a federal whistleblower leaks classified information to the press. Recent cases of passing on classified information to agents of foreign governments haven't been aggressively prosecuted. For example, Lawrence Franklin plead guilty to several charges of espionage ([www.fas.org/sgp/jud/aipac/franklin\\_facts.pdf](http://www.fas.org/sgp/jud/aipac/franklin_facts.pdf)) for giving top-secret information to agents of a foreign government and was ultimately sentenced to 10 months of house arrest. Ben-Ami Kadish was fined \$50,000 and set free after pleading guilty to similar charges.<sup>9</sup> The fact that you've likely never heard of either Franklin or Kadish suggests that 793 is selectively enforced for reasons other than national security.

Was it because Snowden exposed covert government operatives in clandestine services in violation of the Intelligence Identities Protection Act? No evidence of this has surfaced to date. However, there's ample evidence that George W. Bush

administration officials Scooter Libby, Karl Rove, Ari Fleishman, and Richard Armitage did just that when they outed undercover CIA operative Valerie Plame—with consequences for just one of the four ([www.washingtonpost.com/wp-srv/politics/special/plame/Plame\\_KeyPlayers.html](http://www.washingtonpost.com/wp-srv/politics/special/plame/Plame_KeyPlayers.html)). Although all have since admitted culpability, not one was prosecuted! Plame, who served the

Rockefeller, Bernie Sanders, and lately Jim Sensenbrenner can be ignored without penalty as long as their numbers remain small. Being a stalwart defender of the Bill of Rights doesn't mean much when faced with a strong unitary executive and a polarized Congress, so Snowden gets a pass on this one as well.

Perhaps it was because Snowden confirmed that the US was listening

Priest, to name a few, had all written books on NSA activities long before Snowden. [Democracynow.org](http://Democracynow.org), [Propublica.org](http://Propublica.org), and other online media outlets have covered NSA activities for years, and *Frontline* and *60 Minutes* have featured documentaries on the subject. No, there are no big surprises to be found here.

Perhaps it was simply that Snowden didn't follow proper procedures. Snowden knew that Daniel Ellsberg, Thomas Drake, William Binney, Kirk Wiebe, Edward Loomis, Diane Roark, and other notable federal whistleblowers all followed proper procedures when they reported what they believed was government wrongdoing. All of them were ignored by their supervisors and Congress, and their reward for coming forward was harassment, persecution, and prosecution.

The truth of the matter is that there are no real surprises in Snowden's revelations—unless you've made a concerted effort to stay in the dark (see the "Toward a Well-Informed Electorate" sidebar).

## WHAT SNOWDEN DID

So if the accusations are found to be groundless, what can account for the vitriolic attack on Snowden? Let's try this explanation on for size: what Snowden really did was take away the most cherished asset of hypocritical and autocratic governments—plausible deniability. Where before the public had *suspicion*, Snowden contributed a justification for it and provided tangible evidence. He gave us justified true suspicion—*knowledge*. Where the informed electorate had informed suspicion before Snowden, they had knowledge after. He added substance to claims of constitutional abuses by a government run by a Nobel Prize-winning president with a background in constitutional law. And what's simply intolerable? Snowden sparked a public debate! There's no greater threat to

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CIA under nonofficial cover (NOC), was placed at extreme risk. (The blank lines in the CIA Book of Honor represent NOCs killed in the line of duty with no CIA acknowledgment; these are the most vulnerable of agents.)

Was it because Snowden confirmed that the NSA stored massive amounts of data on US citizens in databases like PRISM and extracted same with sophisticated data-mining tools such as XKeyscore? If this were the reason, then Bamford and a host of other award-winning journalists who have been documenting such activities for 30 years would have been in prison long ago. So that's not the source of federal hostility.

Maybe it was because Snowden irreversibly exposed the NSA's culture of deception and misrepresentation? Nope, we've lived with the "never say anything" and "no such agency" culture since the Truman administration. Recent NSA disclosures were predictable to anyone concerned enough to read the newspapers.

Was it because Snowden provided fuel for the civil libertarian sympathizers in Congress? Although this might be true, Congress is so dysfunctional at present that the likes of Ron Wyden, Patrick Leahy, Jay

to personal phone calls of at least 25 foreign heads of state, including Germany's Angela Merkel, Brazil's Dilma Rousseff, and France's Francois Hollande.<sup>10</sup> That can't account for the venom, either, because some 14 years ago—27 February 2000, to be exact—*60 Minutes* reported that NSA analysts had listened to conversations of US political leaders such as Senator Strom Thurmond as far back as the 1980s from its Echelon listening posts (<http://cryptome.org/echelon-60min.htm>). Surveillance of world dignitaries has been routinely conducted for decades and was the reason why President Franklin D. Roosevelt wanted the San Francisco Conference that led to the United Nations held in the US—the opportunity to spy on foreign dignitaries was too great an opportunity to pass up. Let's face it, spyveillance has never been limited to military and industrial targets. We've been within what political scientist Theodore Lowi might call an "interest-group surveillance state" for the better part of a century.

Could it be because Snowden removed any uncertainty about what the NSA was doing? Close, but no cigar. After all, national security journalists such as Bamford, Tim Shorrock, James Risen, and Dana

politicians who circumvent the law of the land than a public debate. Just ask Jacob Zuma.

But the vitriol and persecution aren't limited to Snowden, Chelsea Manning, other whistleblowers, or the journalists who rely on them. On 18 February 2014, conservative US district court judge Amul Thapar sentenced Sister Megan Rice to three years in federal prison for her participation in a nonviolent break-in and defacement of a nuclear storage bunker at a Y-12 nuclear weapons plant in Oak Ridge, Tennessee.<sup>11</sup> Further, the George W. Bush appointee to the federal bench denied the 84-year-old nun and her 58- and 64-year-old codefendants bail while they awaited sentencing. They were delivered to court for sentencing in leg irons, waist chains, and handcuffs. Judge Thapar thereby sent a strong signal to senior citizens everywhere that he's no softy when it comes to nonviolent dissent.<sup>12</sup> The Dalai Lama, Mahatma Gandhi, and Mother Teresa have demonstrated that religiously motivated, elderly pacifists can be a global menace. Thapar made an example of such acts of symbolic civil disobedience. Failure to do so would send exactly the wrong message to the geriatric peace movement.

**A**s responsible citizens, we need to continuously remind ourselves that whenever truth stands up to autocratic power or tyranny, reprisals will follow. Thomas Jefferson anticipated our present situation in 1792 when he said "most codes extend their definition of treason to acts not really against one's country. They do not distinguish between acts against the government and acts against the oppressions of the government; the latter are virtues; yet they have furnished more victims to the executioner than the former; because real treasons are

rare; oppressions frequent. The unsuccessful strugglers against tyranny have been the chief martyrs of treason laws in all countries" ([www.worldpolicy.news.school.edu/wpi/globalrights/dp/treason.html](http://www.worldpolicy.news.school.edu/wpi/globalrights/dp/treason.html)). The same position was embraced by George Orwell and Aldous Huxley 150 years later. With the passage of time, Snowden's harshest critics will be shown to not only be on the wrong side of history, but the wrong side of evolution. ■

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## TOWARD A WELL-INFORMED ELECTORATE

**I**nsufficient public attention on our intelligence and security agencies' activities guarantees that we'll endure crisis after crisis, each spawned by disquieting leaks of classified information. This isn't good government.

What we need is public awareness and thoughtful, proactive consideration of the issues by elected officials. COINTELPRO, Watergate, the Church Commission, the Iran-Contra and the NSA warrantless surveillance scandals have established that the congressional default is deference to the Executive Branch until a scandal arises.

The following books are a good starting point for those who wish to engage in a thoughtful public debate on the surveillance state and its effects on personal privacy. All are written by respected, award-winning journalists affiliated with internationally recognized newspapers:

- James Bamford, *The Puzzle Palace* (Penguin, 1982), *Body of Secrets* (Anchor Books, 2002), and *The Shadow Factory: The NSA from 9/11 to the*

*Eavesdropping on America* (Anchor, 2009);

- Tim Shorrock, *Spies for Hire* (Simon and Schuster, 2009);
- Dana Priest and William Arkin, *Top Secret America: The Rise of the New American Security State* (Back Bay Books, 2012; Priest and Arkin have also produced a DVD of the same title); and
- James Risen, *State of War: The Secret History of the CIA and the Bush Administration* (Free Press, 2006).

Regular features on these topics can also be found in major newspapers such as *The New York Times*, *The Washington Post*, and *The Guardian*, to name but a few. In addition, eBay founder Pierre Omidyar has just launched a new online digital magazine, *The Intercept* (<https://firstlook.org/theintercept>), which features NSA coverage by Glenn Greenwald, Laura Poitras, and Jeremy Scahill.

A quotation attributed to Thomas Jefferson is appropriate here: "A well-informed electorate is a prerequisite to democracy."

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