



## Covert Activity: the *Washington Post*, Edward Snowden and the National Security Agency

The US press had long prided itself on investigating the secret doings of government. On occasion, the media honored government requests to hold back details or delay publication of a story if persuaded that disclosure would endanger a US operation or American lives. But journalists took seriously their role as watchdogs—and considered few institutions more important to watch than US intelligence agencies.

The *Washington Post* held an exalted position in the universe of watchdog media dating back to the days of Watergate, when its investigation resulted in the 1974 resignation of President Richard Nixon. Over the following decades, it fielded numerous sensitive national security stories, and as a rule published them after notifying the target institution of its intention to do so. Granted, there remained a tension between the public's right to know about national security operations, and the government's insistence that secrecy contributed to success and saved lives. The *Post* considered each case on the merits.

In June 2013, the *Post* found itself again with a story that had wide-ranging national security implications. Longtime national security reporter (and Pulitzer Prize winner) Barton Gellman, while no longer on staff, had brought the *Post* a dramatic story of widespread US government surveillance of "foreign communications" which incidentally had swept up millions of messages from private US citizens. Gellman had been working periodically since February, in collaboration with documentary filmmaker Laura Poitras, to check out whether their source—who continued to remain anonymous—was credible. They had never met, never talked on a telephone.

The source—who called him/herself Verax—had a classified document that demonstrated how, for a period of years, the National Security Agency (NSA) had been given access to the servers of nine major US Internet companies, and had secretly reviewed millions of communications. The targeted surveillance program, codenamed PRISM, had captured emails, texts, photos and documents of suspect individuals on an unprecedented scale and unbeknownst to the public or to most members of Congress. Over months of encrypted electronic conversations, Gellman had determined to the extent possible that Verax's information checked out.

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By early June, *Post* Executive Editor Martin Baron and the newspaper's legal team were prepared to publish the story. Gellman, per the *Post*'s custom, had notified the White House about the story and an official—after first asking that the article be killed—had requested that at least the *Post* not publish the names of the companies, on the grounds that publication would destroy the arrangement and hence threaten national security. As the *Post* debated its options, on Wednesday, June 5, the British *Guardian* newspaper published a story about Verizon (not one of the nine) collecting telephone records for the NSA. Gellman knew that the *Guardian* story was based on documents from the same source; it was only a matter of time before the *Guardian* had the PRISM story as well.

Gellman and the *Post* had a decision to make. Each Internet company vehemently denied knowledge of the PRISM program. The public might well react with outrage to the revelations, with severe economic consequences for the firms. The White House, meanwhile, was adamant that the names be withheld to preserve the program. The competitive pressure to publish was intense, but Gellman had to ask himself what the identities added to the story. Did the public's right to know include names? He had to draw on his wide experience reporting on national security matters to decide: identify the companies or not?

### ***Washington Post: a brief history***

The newspaper that dominated Washington, DC into the 21<sup>st</sup> century was founded in 1877 by Stilson Hutchins, a New Englander who later served as state representative in Missouri, to promote the agenda of the Democratic Party. Among others, the *Post* published Joseph Pulitzer and Theodore Roosevelt. But it fell on hard times and, in 1933, Republican financier Eugene Meyer bought it at bankruptcy auction. The paper, he said, was “mentally, morally, physically and in every other way bankrupt.”<sup>1</sup> Meyer set out to turn that around, and articulated the paper's guiding principles, including “tell ALL the truth so as far as it can learn it.”<sup>2</sup>

In 1946, Meyer stepped down to become president of the International Bank of Reconstruction and Development. His son-in-law, Philip Graham, became publisher and, in 1947 when the *Post* incorporated, president. In 1963, Graham committed suicide and his widow, Katharine Meyer Graham, took over the Washington Post Company (which then included *Newsweek*). Her son, Donald Graham, became publisher in 1979. In 2008, a fourth-generation Meyer descendant, Katharine Weymouth, was named publisher and CEO of a new division, Washington Post Media, which included the newspaper and washingtonpost.com; Donald Graham remained chairman and CEO of The Washington Post Company.

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<sup>1</sup> Katharine Graham, *Personal History* (New York: Vintage), 1998, p. 61.

<sup>2</sup> *Ibid*, p. 63.

During the Meyer-Graham years, the *Post* broke numerous stories and built a reputation that reached well beyond the confines of Washington. In 1971, it played a part in publishing the celebrated Pentagon Papers, a 7,000-page top-secret study of US involvement in Indochina and the Vietnam War. A military analyst (Daniel Ellsberg) had leaked the documents to the *New York Times*. When a court temporarily enjoined the *Times* from further publication, the *Post* (which had obtained its own copy) published regardless. The US Supreme Court eventually found in favor of the two newspapers. As Justice Hugo Black wrote,

In my view, far from deserving condemnation for their courageous reporting, the *New York Times*, the *Washington Post* and other newspapers should be commended for serving the purpose that the Founding Fathers saw so clearly. In revealing the workings of government that led to the Vietnam War, the newspapers nobly did precisely that which the founders hoped and trusted they would do.<sup>3</sup>

After the Supreme Court ruling, Graham said “we are extremely gratified, not only from the point of view of newspapers, which was not the least of our concerns, but gratified from the point of view of government, and the public’s right to know, which is what we were concerned with.”<sup>4</sup>

A year later, the Watergate scandal brought the *Post* global renown. In 1972, *Post* reporters Carl Bernstein and Bob Woodward investigated a curious break-in at the Democratic National Committee headquarters in the Watergate apartment complex; they found it led to President Richard M. Nixon and his reelection campaign. By following a money trail and with the help of a federal source nicknamed “Deep Throat,” the two reporters uncovered numerous illegal activities. Two years later, Nixon resigned. The *Post* won a 1973 Pulitzer for its coverage of Watergate.

Not all *Post* reporting was of such import. The *Post* liked to define itself as a local paper, and it worked hard to cover responsibly the area where its readers lived. However, given that Washington was also the nation’s capital, “local” in its case often meant issues of national or international scope. With the growth of the Web and online publishing, *Post* readers increasingly came from all over the world. Not surprisingly, the paper had developed expertise in a topic that regularly drew attention: national security.

### **National security reporting, post-9/11**

National security reporting had become more challenging since the September 11, 2001 attacks on the Pentagon and World Trade Center. First of all, the national security apparatus had

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<sup>3</sup> New York Times Co. v. United States, 403 U.S. 713 (1973). See: <http://www.law.cornell.edu/supremecourt/text/403/713>

<sup>4</sup> John P. McKenzie, “Court Rules for Newspapers, 6-3,” *Washington Post*, July 1, 1971. See: <http://www.washingtonpost.com/wp-srv/inatl/longterm/flash/july/pent71.htm>

grown exponentially. The Central Intelligence Agency (CIA), National Security Agency (NSA), Department of Defense and others had increased spending and hired more staff and contractors with top-security clearance. By 2011, the number of people with security clearance hit 4.2 million.<sup>5</sup>

The government's ability to spy on both foreign and domestic entities was also enhanced. The 1978 Foreign Intelligence Surveillance Act (FISA) already permitted warrantless electronic surveillance of individuals outside the US, as well as surveillance of US citizens after obtaining permission from the FISA court, a panel of judges that met in secret. With time, domestic surveillance increased. In October 2001, President George W. Bush secretly authorized the NSA to collect domestic Web, email and phone records. FISA amendments in 2007 and 2008 gave private companies immunity if they cooperated with US intelligence collection.

At the same time, the executive branch's reaction to security leaks had become more punitive. For example, in 2005 *New York Times* reporter Judith Miller was jailed for 85 days for refusing to identify the source that gave her the name of a CIA operative.<sup>6</sup> The Department of Justice under the administrations of both Presidents George W. Bush and Barack Obama threatened revitalized prosecution against leakers and recipients of classified information under the 1917 Espionage Act. In fact, from 2009 to early 2013, the Obama Administration brought felony criminal charges against six individuals under the Espionage Act for leaking information to reporters (by comparison, the total for all previous administrations was three).

As a result, many confidential sources dried up. "Several reporters who have covered national security in Washington for decades tell me that the environment has never been tougher or information harder to dislodge," then-*New York Times* Executive Editor Jill Abramson told the 2012 conference of Investigative Reporters and Editors.<sup>7</sup> Nonetheless, important stories went public. In December 2005, for example, the *New York Times* published a story by James Risen and Eric Lichtblau, which detailed how President George W. Bush had authorized the NSA to wiretap the international communications of Americans without court warrants.<sup>8</sup> In 2006, *USA Today* broke the story that the NSA under Bush had collected telephone records for millions of Americans.<sup>9</sup>

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<sup>5</sup> It is difficult to compare this number to previous years, because formal reporting was not required until 2010. The Government Accountability Office (GAO) kept rough estimates, which while not reliable were the only data available. In 1995, the GAO estimated 3.2 million people held security clearances. Source: Steven Aftergood, "Number of security clearances soars," *Secrecy News*, September 20, 2011. See: <http://fas.org/blogs/secrecy/2011/09/clearances/>

<sup>6</sup> Adam Liptak, "Reporter Jailed After Refusing to Name Source," *New York Times*, July 7, 2005. See: [http://www.nytimes.com/2005/07/07/politics/07leak.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2005/07/07/politics/07leak.html?pagewanted=all&_r=0)

<sup>7</sup> Dan Froomkin, "The Case for a secrecy beat," June 13, 2013, *Columbia Journalism Review*, [http://www.cjr.org/united\\_states\\_project/the\\_case\\_for\\_a\\_secrecy\\_beat.php?page=all](http://www.cjr.org/united_states_project/the_case_for_a_secrecy_beat.php?page=all).

<sup>8</sup> James Risen and Eric Lichtblau, "Bush lets US spy on callers without courts," *New York Times*, December 15, 2006. See: <http://www.nytimes.com/2005/12/16/politics/16program.html?pagewanted=all>

<sup>9</sup> Leslie Cauley, "NSA has massive database of Americans' phone calls," *USA Today*, May 11, 2006. See: [http://usatoday30.usatoday.com/news/washington/2006-05-10-nsa\\_x.htm](http://usatoday30.usatoday.com/news/washington/2006-05-10-nsa_x.htm)

Controversially, the *Times* had held its story for a year at the administration's request. White House officials contended that the story would alert would-be terrorists that they were being watched. The *Times* published—it claims coincidentally—as Risen prepared to release a book that included a chapter on the NSA wiretapping. Bill Keller, then the *Times*' executive editor, wrote: "We published the story when we did because after much hard work it was fully reported, checked and ready, and because, after listening respectfully to the administration's objections, we were convinced there was no good reason not to publish it."<sup>10</sup>

The government did subpoena Risen but, ironically, for information in his book other than the NSA material. Risen successfully fought a 2008 subpoena to testify to a federal grand jury about his source for an account in the book about a botched covert CIA program to feed misinformation to Iran's nuclear weapons researchers. Risen had written a story about it in 2003, but the White House asked the *Times* not to publish, and the paper complied.<sup>11</sup> But in 2010, former CIA officer Jeffrey Sterling was indicted under the Espionage Act for leaking classified information to Risen, and the subpoena for Risen was renewed in April. Risen again refused to testify, citing a reporter's privilege to keep sources confidential.<sup>12</sup>

*Wikileaks*. Meanwhile, national security reporting and the relationship between media and government again took front stage in 2010. From July through November, the *New York Times*—in partnership with *Der Spiegel* and the *Guardian*—broke three sets of stories based on secret US documents provided to the whistleblower website, Wikileaks. The third set revealed the contents of confidential diplomatic cables.

The *Times* and its partners, in contrast to Wikileaks on previous occasions, were scrupulous about redacting the material in order to refrain from harming individuals or ongoing operations. The *Times* also let the White House know in advance that it was publishing, and sought comment. In some ways, the Wikileaks series provided a textbook example of the US media's approach to national security stories: inform the government and listen to its concerns, protect individuals, and make public as much material as possible.

### First contact

It was against this background that reporter Barton Gellman in February 2013 received an encrypted email from his friend and colleague, Laura Poitras, an award-winning American documentary filmmaker who had reported extensively on the post-9/11 "war on terror." The two

<sup>10</sup> Margaret Sullivan, "More on the Eavesdropping Article," *New York Times*, posted December 31, 2005. Retrieved June 21, 2014. <http://publiceditor.blogs.nytimes.com/2005/12/31/more-on-the-eavesdropping-article/?module=Search&mabReward=relbias%3Aw>

<sup>11</sup> Michael Isikoff, "Ex-CIA officer charged with leak to *Times* reporter. CIA Gave Iran Nuclear Blueprints?," *Global Research*, January 21, 2011. See: <http://www.globalresearch.ca/ex-cia-officer-charged-with-leak-to-times-reporter-cia-gave-iran-nuclear-blueprints/22884>

<sup>12</sup> The case remained open in 2013.

had met in 2011 when both were fellows at New York University's Center on Law and Security. Poitras had moved to Berlin after repeatedly encountering intense scrutiny at the US border. "As a journalist who's trying to deal with work that the government is very interested in trying to keep secret, I feel an obligation to do whatever I can to protect the sources and the people that I'm working with who are taking great risks to talk to me," Poitras told National Public Radio. "At the moment, it feels safer for me to work outside of the United States, which is a sad thing to say."<sup>13</sup>

Poitras told Gellman she would be coming to New York City and asked whether they could meet on a confidential matter. Gellman was a two-time Pulitzer Prize winner. He had covered the military and national security for the *Washington Post* since 1990. In 1999, he moved to New York City, but continued to work on special projects for the *Post* as well as nonfiction books.

For his projects, Gellman often delved deep into classified material. In 2003, for example, he went to Iraq to write about whether it possessed weapons of mass destruction. "Trying to unpack the truth of the WMD question in Iraq in 2003, which took me a whole year and brought me to Iraq twice, that was ... really difficult reporting. Very murky. Lots of classified material to deal with," he recalls.<sup>14</sup> Another prominent project was a June 2007 series he co-authored about Vice President Dick Cheney, which eventually resulted in a book.<sup>15</sup> "Cheney for sure was the hardest project I had taken on [to date]," he comments.

Gellman learned a valuable lesson from those experiences—to do their job, national security reporters often had to rely on material declared classified. "If you want to know what's going on in foreign policy or wartime or intelligence policy-making or intelligence operations, everything that you want to know that isn't in Congressional testimony or a news conference is basically going to be classified," he notes.

Classification is rampant. Some of it's appropriate. Some of it's a close call. Some of it's clearly unnecessary or classified for reasons that we shouldn't sanction, like to cover up embarrassment.

But Gellman enjoyed any kind of reporting that examined power—how it was gained and how it was used. National security policy often involved jockeying for power among a variety of constituents. He muses:

I want to enable the normal checking powers that we say are important to us in the marketplace, in civil society, in politics, in law. None of those

<sup>13</sup> Melissa Block interview with Laura Poitras, "Sept. 11 Documentarian wins MacArthur Genius Grant," National Public Radio, October 2, 2012. Retrieved June 21, 2014. See: <http://www.npr.org/2012/10/02/162176992/sept-11-documentarian-wins-macarthur-genius-grant/>

<sup>14</sup> Cabe's interview with Barton Gellman in New York, NY, on April 21, 2014. All further quotes from Gellman, unless otherwise attributed, are from this interview.

<sup>15</sup> Barton Gellman, *Angler: The Cheney Vice Presidency* (New York: Penguin), 2008. The *Washington Post* series won the 2007 Pulitzer Prize for national reporting.

checks can operate without some transparency, without information. Information is power. And national security questions pose some special dilemmas and offer special challenges when you're trying to hold institutions accountable. For sure, big parts of what they do have to be secret. But when they make decisions in their kind of closed world that they're going to do something dramatically new, radically different from what has been done before, what has been sort of taken for granted as policy by the public for years... then that's something I think needs to be brought out.

In 2010, Gellman resigned from the *Post* to concentrate on long-form reporting and writing projects. He also secured a non-exclusive, renewable freelance contract with *Time* magazine. He taught courses at Princeton, and had an association with two policy centers at New York University. Eventually, he applied for and in March 2013 would be a senior fellow at the Century Foundation, a non-partisan think tank.

*Tradecraft.* In dealing with classified materials and confidential sources, Gellman had learned how to protect his notes. "Since at least 9/11 and probably before that, I've been very concerned about leaving digital trails to my sources," Gellman says. "Over the years, I've taught myself how to use the privacy and security tools that are out there and how to come up with a much more secure workflow to make it harder to get at my notes or to find out who I'm talking to." He used anonymity software, which disguised his digital footprint (his network identity and web address), and encryption software, which scrambled the content of his communications online while it was wending its way to his recipient.

During their fellowship, Gellman had taught Poitras how to encrypt her material, both online and on her computer. So receiving an encrypted email from Poitras was not unusual. "I know her to be a very cautious and level-headed person," Gellman says. "She said, 'Please, don't bring your phone.' So I knew when she said confidential, she meant really confidential." Cell phones, even when turned off, could be turned into a recording device without the owner knowing it.

### **Intriguing first impressions**

The pair agreed to meet at a café in Manhattan's Soho district at an appointed time.<sup>16</sup> From there, they moved to another venue and talked over coffee. Poitras told Gellman that in late December 2012, she had been contacted by an unidentified individual who purported to be a member of or closely connected to the US intelligence community. The person seemed purposely vague, but promised sensitive information about the National Security Agency. The NSA was a

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<sup>16</sup> Throughout this case, dates are vague because the interviewees declined to be specific.

defense intelligence agency established in 1952, but its origins dated back to code-breaking work conducted during World War II. The NSA was charged with monitoring, analyzing and decoding foreign data and information.

It was Poitras' impression over multiple exchanges that the anonymous individual was determining whether he or she could trust Poitras to publish information s/he had to offer. The person apparently was trying to establish whether Poitras could be discreet, was skilled at using privacy and security software, was competent to understand classified material and would be interested in writing about it. The contact had reached out to her because of her independence from mainstream media, her documentaries and her problems with US Customs. The stranger wrote, "You probably don't like how this system works, I think you can tell the story."<sup>17</sup>

The contact had expressed special concern that a news organization, under government pressure, might fail to publish what s/he had to tell. S/he cited as an example the *New York Times* and its one-year delay in publishing the Risen/Lichtblau NSA story, originally scheduled for just before the November 2004 presidential election. The source seemed to trust Poitras to make the material public. For her part, Poitras was trying to determine whether her contact was a crank or someone perpetrating a hoax. Even more chilling, this person could be someone trying to plant something false that could incriminate or embarrass her. With each message mentioning secret surveillance programs, the person claimed to have proof. Familiar with Gellman's extensive work and knowledge of national security and surveillance issues, Poitras sought his advice.

Poitras and Gellman talked at the café for a couple of hours about what Poitras knew, and how he might help her. She had seen no documents, but worried that if the source was legitimate, the story could be too much for her to handle alone. When they parted, Gellman didn't think much would come of it, but he was intrigued. "This is already in the top sort of one percent of blind tips I've ever seen," he says. What's more, the informer had told Poitras s/he was willing to reveal his or her name once a story on the classified documents was published. "Normally, people aren't," explains Gellman. "If they won't tell me, or if they won't let me tell the world, then authenticating and telling readers why they should believe this [information] becomes much harder."

Gellman left the meeting believing that the person seemed legitimate, but that confirming the facts would be difficult. "It looked, frankly, like the kind of thing that you would have to put a lot of time and energy into and might not pay off," he says. For now, the story belonged to Poitras. Gellman, however, offered to help. They agreed to tackle the next phase together.

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<sup>17</sup> Irin Carmon, "How we broke the NSA story," Salon, June 10, 2013. [http://www.salon.com/2013/06/10/qa\\_with\\_laura\\_poitras\\_the\\_woman\\_behind\\_the\\_nsa\\_scoops/](http://www.salon.com/2013/06/10/qa_with_laura_poitras_the_woman_behind_the_nsa_scoops/) Retrieved July 1, 2014.



## Pieces of a Puzzle

Gellman made it a practice always to try to deduce a source's situation and motivation: where did the source stand in the hierarchy of the organization, and at what stage in a career? Was a source an embittered, late-career individual seeking to settle scores, or a loser in some policy debate, or someone who wanted to undermine a hated boss? But the first step in this case was to verify whether the source had any credibility at all. So Gellman devised a system. He suggested questions for Poitras to ask to which Gellman already knew 80 percent of the answer. That way, Gellman could tell whether the person knew what he or she was talking about and might even glean a little more information in the process.

The first responses were encouraging. For one thing, the source used covert program names correctly. "I noticed that when [the person] used covert terms that I knew, [the person] used them right," says Gellman. For example, STELLARWIND was a series of warrantless surveillance programs conducted during the Bush administration. The NSA typically combined two words into one and capitalized all letters. The new word was then abbreviated into three or four letters for internal use: thus, STELLARWIND became STLW.

The source mentioned STLW, not the full word. Gellman had not used the shorthand in his book about Cheney, and he could find no reference to the abbreviation when he checked the Web. "One of the things about delving into a subject for a while is you know things that you don't ever publish, but they can become meaningful at a time like this where you say: this person actually does seem to be displaying some inside knowledge," says Gellman.

Poitras began passing verbatim questions and answers between Gellman and the source. To each question, the source's answers were methodical and articulate and demonstrated a breadth of knowledge. All the while, Gellman was getting a better, bigger picture. The insider continued to use NSA terminology and, more importantly, admitted to not knowing certain things. "That's always encouraging in a source—a source who doesn't claim to know everything," says Gellman. In a sign of confidence in Gellman, and even demonstrating a sense of humor, the source nicknamed him BRASSBANNER. The source in turn adopted the pseudonym "Verax," Latin for truth teller.

Gellman and Poitras had not yet received any documents. By April, however, Gellman believed they would come and that the documents would be a "big deal." They were most likely classified "special compartmented information," a category above "top secret." Under that classification, even someone with the highest security clearance could see compartmented material only on a "need to know" basis. Meanwhile, the subject was slowly coming into focus. Verax was suggesting that large private American communications companies were cooperating with the NSA, and hinted at their names. "Make a list of the top five or top 10 Internet companies, and they'll probably be on the list," Verax wrote.

Gellman became more specific in his questions about the documents themselves: “Who’s writing it to whom? For what purpose? What’s the subtext? What’s the context? What’s the motivation of the document writer? Is this a pitch for more budget?... Is it bragging to Congress? And how do you imagine that I could possibly authenticate that what’s said in the document is true?” Verax suggested that Gellman could find a couple of sources cleared for special compartmented information in the Federal Bureau of Investigation’s (FBI) Digital Intelligence Technology Unit. Even for a veteran national security journalist like Gellman, that would not be easy.

He also started to ask more probing personal questions: “What’s the worst thing people are going to say about you once they know what you are doing? Why are you doing this? Aren’t you worried that you’re going to be blowing secrets that could do harm to American national security?” Gellman still had no idea who the source was. “At this point, I still don’t know who [Verax] is,” Gellman says.

I want to understand more than I can tell my readers about who the source is so that I can find a way to triangulate the truth. I don’t care what anybody’s motives are. I don’t care whether they’re a good person. I don’t whether they have absolutely ill intent.... If you’re telling me something that’s true and important, I just need to figure out which part of what you’re saying is true and why it’s important.

*PRISM*. Finally, in mid-May, Verax sent Poitras and Gellman a single document, and soon thereafter others (which they had not expected).<sup>18</sup> The two reporters decided to scrutinize the first one first, a PowerPoint of 41 slides titled *PRISM*. It was very recent—dated April 2013. They were amazed by its classification category. By executive order, there were three classification levels: confidential, secret and top secret. This was above top secret. “I knew that this was going to be the most sensitive story I’d ever had,” recalls Gellman.

There have been a few times in my career when I have had information that was probably as sensitive or as highly classified, but never a whole document with those stamps on it. The *Washington Post* had never had in its possession, I don’t believe, in its entire history a document with stamps like that on it. The Pentagon Papers were classified secret, which is actually what they used for Navy laundry instructions.

Poitras and Gellman met to read the document together. Then they read it twice more. After several hours, Poitras said she understood 10 percent of it at most. “I understood about half of it by the end of that night,” recalls Gellman, “but getting the rest of it would be hard.” Many of the slides were filled with bureaucratic jargon. While it took Gellman and Poitras time to

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<sup>18</sup> Gellman declines to be specific about the dates.

understand the details of what they were reading, the presentation seemed to be a briefing for senior analysts in the NSA's Signals Intelligence Directorate. The slides described how the NSA, along with the FBI, had built systems to pull information about tens of thousands of people from nine major US Internet companies. By obtaining user data from the servers where it was stored, rather than trying to catch it on the fly as it crossed the Internet, the government could extract all manner of foreign communications data, including chats, photos, email and documents, that crossed those servers.

PRISM, Gellman recognized, was unprecedented in its scope. Intelligence agencies could never before have obtained so much data so easily for the simple reason that the companies collecting it, such as Google and Facebook, had not existed until recently. The technology that had swept the world into the digital age was as useful for government surveillance as it was for businesses and individuals.

### **Now what?**

With the documents in their possession, Poitras and Gellman knew they had an important story to tell the world. They decided to focus on the PRISM program because they got that document first, and had already discussed it in a hypothetical way with the source. The other documents would have to wait. First, however, they had to find the right outlet to publish the story. Then they had to contact government officials to seek 1) confirmation that the documents were authentic and 2) official comment.

*Exposure?* All three—Poitras, Gellman and Verax—felt an urgency about publication. By May, the parties had been in contact for some three months. Despite their precautions, it was entirely possible that Verax would be caught. Gellman was stunned to learn that Verax was reaching out to journalists while still working as an NSA contractor and continuing to extract information from classified systems. Intelligence employees and contractors signed a contract promising never to disclose classified information. “[The person] is trying to drop a dime on the surveillance state without being surveilled,” Gellman said. The stakes were high. Verax feared exposure any day.

For his part, Gellman worried that Verax would vanish. “Now I’m asking questions because I’m always afraid that each communication will be the last,” Gellman says. What if Verax were caught? What if s/he became unreachable close to publication time? At the same time, Gellman could not rush unduly. It would take time to contact a news outlet, win its confidence, complete reporting on the story and obtain government reaction.

*Direct line.* On May 16, 2013, Verax finally opened a direct, encrypted channel of communication with Gellman. They sometimes corresponded by email. Sometimes, using cloaking technology, they communicated at length in real time chats. Gellman became even more cautious,

adding extra layers of protection when they were “conversing”—typing to each other—and when taking notes. (Voice communication, Gellman says, is “never secure enough.”) “I had to make some decisions about whether I should keep [notes] at all,” he says. Whatever he kept, he was aware that the notes could be taken from him.

As Gellman considered where to publish, he was careful to warn the Century Foundation—where he was a fellow—that he was involved in a risky enterprise. “I’m getting caught up in something that’s going to be very sticky and sort of stressful legally in terms of security,” he told the foundation president. She expressed her support and even offered him legal counsel. Gellman opted not to accept the offer, fearing legal jeopardy for the foundation.

Gellman did not have to ponder his choices long. He could have tried to go it alone and publish online. But that seemed unwise. “I knew that we were in a riskier time for sources and reporters on national security stories,” he says. “I knew that I was going to need legal representation and I knew that I didn’t want to be Bart Gellman, freelancer, on this story.” He could place the story with *Time* magazine, where he was affiliated. But he felt the article, which was breaking news, would be better suited to a newspaper.

In the end, the *Washington Post* seemed the obvious first choice. After a 21-year association, Gellman knew the paper’s editors well, and they knew him. “I wanted experienced colleagues and a risk-taking institution behind me,” clarifies Gellman.

There was going to have to be an enormous amount of mutual trust in this journalistic relationship. I mean, I was asking people to believe that I had a confidential source whose name I did not yet know, but thought I soon would. And that I’d received these documents in the way that I described and that they meant what I said they meant.

Poitras reminded Gellman that Verax distrusted the mainstream media. So Gellman made his case to Verax. Verax asked pointedly: what if the *Post* balks? “I admit to you that I do not know the new editor [Martin Baron],” Gellman responded. “But his reputation is outstanding. He has already stood up to an enormous amount of pressure. If you’re going to be the editor of the paper in Boston and take on the Catholic Church, that’s pretty close to taking on God himself.” (Baron was *Boston Globe* editor when the newspaper broke the Boston archdiocese sexual abuse scandal, for which it won a Pulitzer Prize in 2003.)

Gellman assured Verax and Poitras that if he disagreed with the *Post* on its handling of the story, or if it elected to publish only a small portion and hold the rest, he would walk away. “I had very firm ideas about how this story had to be handled,” says Gellman.

## Enter the *Post*

Late Sunday night, May 19, a tired Jeff Leen, investigative editor for the *Post*, answered his phone. Gellman was on the line; he wanted to meet about a national security matter but could not be specific on the phone. It's urgent, Gellman told his former boss; there might be only a few days to prepare a story. Gellman also asked if Leen could set up a meeting with Executive Editor Baron, who had taken the job only five months earlier, on December 31, 2012. "Well, I need to know more in order to get all that started," Leen recalls replying and told Gellman to stay in touch.<sup>19</sup>

But when Leen woke up Monday morning, the tone and urgency of Gellman's voice had registered. Leen thought he even detected a note of fear. "I've got to get in touch with [the paper] right way," he thought, "because in my subconscious the thing had percolated." He called Gellman back to arrange a meeting and apologized for seeming standoffish the night before.

Gellman outlined his terms. Nobody could see him in the newsroom. He needed to meet with Washington Post Co. Chairman and CEO Donald Graham, and with the *Post's* in-house lawyers. Leen agreed, and on the morning of Wednesday, May 22, arranged for Gellman to enter the building undetected. Gellman met first with Graham for five minutes. "I know you don't get involved in newsroom details and editors will tell you when they're ready to, but I'm bringing you what I think is a pretty big, important story and a risky one, and I'm going to ask them if they want it and if they want to embrace it fully," Gellman told the CEO. "And I want you to hear that from me, and I hope they will stand behind me." Graham expressed his support and that of the *Post*.

Leen took Gellman to meet with the managing editor, Kevin Merida, and two other senior editors. Also present were the newspaper's general and deputy general counsel and Kevin Baine, a partner at Williams and Connolly. "This material was so sensitive that Bart [Gellman] felt we could only discuss it in the presence of lawyers, because we needed the attorney-client privilege to protect our conversations," says Leen. Neither the editor nor the reporter had ever made such an arrangement before. On the advice of the lawyers, Leen took scant notes. To gauge the *Post's* appetite for risk, Gellman says he sometimes spoke hypothetically about what he had and did not reveal everything he knew. "I was very careful never to lie to them or to mislead them, but I think that everyone was perfectly comfortable with me kind of unwrapping it one piece at a time," he says.

The next morning, Thursday, May 23, Gellman met Baron for the first time (the editor had been on vacation). Three lawyers and a few top editors joined the meeting. Gellman told Baron he had a secret source. "I don't know his name, but I expect to find it out any day now," he said. "I'm

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<sup>19</sup> Cabe's interview with Jeff Leen in Washington, DC, on May 14, 2014. All further quotes from Leen, unless otherwise attributed, are from this interview.

probably not going to tell you right away, although he has told me that he expects to unmask himself soon.” Gellman added: “I have a document that has scary stamps all over it. It’s more highly classified than anything this paper’s ever possessed. We all know what the legal environment is, and I need to know that I’m going to be fully under your umbrella on this. We’re also going to have to walk carefully.”

Gellman then asked Baron to take a step that would demonstrate the *Post*’s commitment.<sup>20</sup> One of the lawyers said he could not advise Baron to agree. But Baron disregarded him, and said yes. “That was a huge emotional moment for me,” says Gellman. “Marty’s [Baron] choice showed me that this was still the *Post* I remembered, willing to take risks for a big story—and to share the risks that I was already taking.”

Gellman laid out the ground rules. He would need a private place to work. The number of people working with him would have to be limited. There would be no emails among them about the story until everyone learned to use PGP, a standard encryption tool. None of the classified material could touch the *Post*’s servers, or any other network. . He had to convince the lawyers that writing “attorney-client communication” in the subject line of an unencrypted email did not prevent the government from intercepting and reading it. “Everyone had to change their way of thinking about security and change their workflow a bit,” he said.

In a conference room and off the paper’s network, Gellman walked the senior editors through the PRISM PowerPoint presentation and explained what he thought the story was going to be. Baron listened carefully. “[PRISM] seemed like a policy shift on the part of the US government to collect information in a way that was far more expansive than it had been before,” recalls Baron. “It vacuumed up a fair amount of communications by individuals who are not themselves specific targets of a terrorism investigation or anything like that. It raised significant issues of individual privacy.”<sup>21</sup>

Baron gave Gellman the go-ahead and accepted his terms. They worked out the provisions of a short-term contract, including legal protection. Because Poitras had been the initial point of contact and had developed Verax as a source, Gellman felt she deserved to share a byline and should have a similar contract. “What she did bring was way beyond what people need for a byline,” says Gellman.<sup>22</sup> Baron asked for a chance to meet her. He and Leen also both took a look at her documentaries and journalism. The next day, Friday, May 24, Poitras joined Gellman for her first meeting at the *Post*. The editors accepted the request to give her a byline. “She had had run-ins with the government, but so do a lot of reporters,” says Baron.

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<sup>20</sup> Neither man was willing to disclose what the step was at the time of this writing.

<sup>21</sup> Cabe’s interview with Martin Baron in Washington, DC, on May 14, 2014. All further quotes from Baron, unless otherwise attributed, are from this interview.

<sup>22</sup> Lundberg’s telephone interview with Gellman on September 23, 2014.

*Bombshells.* On that same Friday, Verax in an email to Gellman made a surprise declaration. The source wanted “to embolden others to step forward” by setting an example of coming forward and seeking asylum in a country like Iceland “with strong Internet and press freedoms.”<sup>23</sup> For the time being, Verax announced, s/he was in Hong Kong. At the same time, Verax stated that s/he had no intention of giving the documents to a foreign government. Gellman was startled to learn where Verax had gone. “That was the most stressful moment of the whole story [production],” he says.

I was glad to hear from Verax, but it was alarming to discover that he was overseas under the jurisdiction of one of the US government’s primary intelligence targets. I did not know Verax well, and had no proof of his intentions.<sup>24</sup>

Verax was out of the country, but now became more anxious than ever that the material be published before his/her departure was noticed and acted on. Verax wanted Gellman to guarantee that the newspaper would publish all of the PRISM slides within 72 hours. The source said the *Post* was taking too long, and expressed concern that lawyers were involved. S/he also wanted Gellman and Poitras to fly to Hong Kong so they could meet in person.

Gellman, however, could not promise what the *Post* would publish, nor when. As to Hong Kong, the editors, lawyers and Gellman discussed the editorial and legal risks and benefits of a trip. “It was a close call,” recalls Gellman. “I decided to stay back and work on reporting out and writing the PRISM story instead.”<sup>25</sup> Gellman did worry that knowing where Verax was physically located might in some way jeopardize their communications. He consulted the *Post*’s lawyers twice a day on this and other matters.

## Reporting the Story

Meanwhile, Gellman worked on the story, alone. He was either sequestered on the seventh floor of the *Post* building, or wrote in his hotel room. He faced the daunting task of authentication and verification. Over weeks of studying the PRISM document with Poitras, he had understood more and more of it, but he wanted to feel confident about it all. As he told Baron: “I’m morally certain that my source is for real and that this document is authentic and that what it says is true. I’m morally certain of that, but I’m not telling you right now that I could vouch for it in a way that you should publish it. We still have to get there.”

In the best-case scenario, Gellman would make contact with various sources to gain insight into the slides, and then ask the NSA for comment. He hoped its response would be along the lines

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<sup>23</sup> Barton Gellman, “Code name ‘Verax’: Snowden, in exchanges with *Post* reporter, made clear he knew risks.” *Washington Post*, June 9, 2013.

<sup>24</sup> Quote from email Sept. 22 and telephone interview Sept. 23, 2014.

<sup>25</sup> From email Sept. 22.

of “we would like a chance to tell you why you shouldn’t write that story.” That alone would authenticate the PRISM program. But first, he and Baron had to decide what to leave unpublished. Several slides gave examples of PRISM in use, and provided names of targets, email accounts and what had been learned. Such material, the journalists decided, should remain classified. “The potential harm seemed high and the value for public policy debate seemed low,” comments Gellman.<sup>26</sup>

Gellman sent unencrypted emails to two of his contacts: one was a senior person in the White House, the second worked in the intelligence community. “I have a very highly sensitive story that you’re going to want to know about and want to talk to me about,” he wrote. “Tell me how you’d like to proceed. I’m not going to say it here.” The message got the government’s attention. Gellman got a phone call, not from either of his two contacts, but from a high-ranking official in the Executive Branch. “What’s up?” the official asked the reporter. “Why don’t you go get a copy of a document with this title, this author, this date and then let me know how you’d like to proceed,” Gellman says he responded.

The official called back, document in hand. “Now that you’ve read it,” Gellman told him, “I imagine you have a lot of concerns. So I think we can shorten the conversation somewhat when I tell you that everything between pages 17 and 24 we’re not even considering publishing.” The official seemed relieved. He also acknowledged, first implicitly and then explicitly, that the document was in fact authentic. But he made it clear that the administration did not want the *Post* to do the story at all. With that request on the record, the two continued to go through the material. In their several conversations, they coped with the unsecure telephone line by making veiled references to the document. Typically, Gellman gave the official a slide number and specified a spot on the page.

Gellman also checked with his own sources. As he neared the end of his authentication process, other reporters were brought in to call the nine Internet companies for comment. Public relations representatives at Microsoft, Yahoo, Google, Facebook, PalTalk, AOL, Skype, YouTube and Apple all denied having any knowledge about PRISM. Gellman was not surprised. The denials were carefully ambiguous, there was no reason for companies to know the cover name “PRISM,” and spokesmen probably were not cleared to know anything. Each gave the *Post* vague, brief prepared statements. “We were trying to reconcile the company statements and the evidence we had from the NSA about what was going on,” remembers Gellman.

*Competition.* Poitras, meanwhile, had been in touch with freelance national security journalist and constitutional lawyer Glenn Greenwald, whose work often appeared in the *Guardian* (UK).<sup>27</sup> The two became acquainted when Greenwald in 2010 wrote a piece about her detainment at

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<sup>26</sup> *Ibid.*

<sup>27</sup> No one to date has spoken on the record about why Poitras contacted Greenwald in addition to Gellman.



airports for *Salon*. Verax had told Gellman and Poitras that he had sought out Greenwald first, in late 2012. In an email dated December 1, 2012, “Cincinnatus”—another name chosen by the source—wrote: “The security of people’s communications is very important to me” and asked Greenwald to use encryption software known as PGP, or “pretty good privacy,” so that they could communicate.<sup>28</sup> Greenwald, who was contacted regularly by all kinds of people purporting to have government secrets, had rudimentary technical skills; he chose not to follow up.

Verax, however, wanted to involve Greenwald, and asked Poitras to try him. The source still worried that the material might not see publication, and wanted to double the chances. On April 18, 2013, Poitras emailed Greenwald, who happened to be enroute to New York City.<sup>29</sup> The two met, and Poitras showed him sample emails from Verax. After reading them, Greenwald was intrigued but skeptical. Plus he knew Poitras was already working with the *Post* and her reasoning: that working with a newspaper in Washington, DC, would get the federal government’s attention.

Nonetheless, at Poitras’ prompting Greenwald on May 20 contacted Verax.<sup>30</sup> Just days later, after learning his whereabouts, Poitras wanted to go to Hong Kong to meet Verax—but not alone. Greenwald agreed to join her and, in the first days of June, they flew to Asia.<sup>31</sup> By then, Verax had given Gellman and Poitras some identifying details to prove his bona fides. They knew his name was Edward Snowden. They also had his social security number, the Hawaii address where he had lived, and some details about his job history as a contractor for the NSA. All the information checked out.

Gellman and his editors knew about the Hong Kong trip, and that the *Post* now faced immediate competition. So Gellman was not surprised when, on Wednesday, June 5, the *Guardian* published an exclusive by Greenwald: “NSA collecting phone records of millions of Verizon customers daily”—revealing for the first time that a Bush Administration order had continued under the Obama Administration.<sup>32</sup> The story was based on a document from the same archive Snowden gave Gellman. The *Post* assumed that the *Guardian* would be interested in the PRISM story as well. Gellman redoubled his efforts to fully vet the story for publication.

## On Hold

Throughout Wednesday, Gellman held several conversations with his government contact. They had arrived at an impasse. “We flat out disagreed on the biggest ‘ask’ the government made

<sup>28</sup> Glenn Greenwald, *No Place to Hide* (New York: Henry Holt), 2014. p. 7.

<sup>29</sup> *Ibid*, p. 10.

<sup>30</sup> Verax subsequently sent Greenwald detailed instructions on how to install encryption software on his computer, which he did.

<sup>31</sup> The chronology of these events is not yet public knowledge.

<sup>32</sup> Glenn Greenwald, “NSA collecting phone records of millions of Verizon customers daily,” *Guardian*, June 5, 2013. See: <http://www.theguardian.com/world/2013/jun/06/nsa-phone-records-verizon-court-order>

for this story,” Gellman recalls. They did not want the *Post* to publish the names of the nine US Internet companies. Asked why, the official explained that disclosing the names might lead the companies to stop cooperating. Gellman stood his ground. If the government’s definition of “harm” was that the companies might change their policies in response to objections from customers, Gellman regarded that as more reason to publish. Gellman suggested that the official call Executive Editor Baron if he wanted to plead the government’s case at a higher level. “You’re welcome to go straight to the top on this one,” Gellman told him. It was standard practice at the *Post* for reporters to handle official comments on their own stories; editors became involved only if the government approached the paper. The official asked for more time to consult inside the government.

The next day, Thursday, June 6, Gellman, exhausted and stressed, accidentally contacted Snowden on the wrong channel, alarming him. Snowden by this point was jumpy. He told Gellman that police had showed up that morning at the house he had occupied until recently in Hawaii. Gellman told him the story would post online that day.

Gellman had given his government contact a deadline of Thursday afternoon to make any final requests or arguments. He wondered whether the White House would indeed call Baron or *Post* Chairman Graham. By then, Gellman was no longer ensconced on the seventh floor. He had moved to the fifth floor newsroom, where he either huddled with Leen in his glass-walled office, going over the story—finally on the newspaper’s server—or sat in the newsroom talking to his government contacts.

At Leen’s urging, Gellman had written most of the story. The company information could be dropped in at the last minute. Leen did not want to pressure Gellman, but he, too, wanted to publish. Leen had to walk a fine line with Gellman: get what you need, but work as quickly as possible. “It’s not easy to do these [investigative] stories on deadline,” says Leen. “We knew we were in a competitive situation to get this story.”

While Gellman waited, he made a final review of the government’s arguments against publishing the company names. “The government has told you: you shouldn’t name these companies because it’ll harm the government’s relationship with those companies in a secret program,” he recapitulates. Was that the real reason? Or did the government worry that the companies would take a stock market hit? Did the White House fear a public opinion backlash?

Of course the story would run. The public was entitled to know how NSA activities had changed. But Gellman wanted to be responsible and not gratuitously injure national security or needlessly reveal operational details. How could the story and the companies’ denials be true at the same time? If he did publish the company names, was that really a service to readers? Did the public need to know?