

State Surveillance is a Legitimate Defense of our Freedoms

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Abstract— In May of 2014, a Munk Debate was held in Toronto, Canada regarding state surveillance. State Surveillance is a legitimate defense of our Freedoms. The Pro side consisted of Michael Hayden, a retired Four Star General and former Director of the CIA, and Alan Dershowitz a Professor of Law from Harvard University. The Con side consisted of Glenn Greenwald, a Journalist and columnist for First Look Media, and Alexis Ohanian internet entrepreneur and Co-founder the popular social media site Reddit. This paper will analyze both sides of the argument and formulate an opinion based on presented facts and arguments from both sides of the debate.

I. INTRODUCTION

THE topic of State Surveillance has been a heated topic ever since Edward Snowden shocked the world with what the NSA has been doing in our own backyard. The leaked documents he collected while working for the NSA revealed controversial information gathering methods that seemed to have no limit to its capabilities. The Pro side argues that a democratic state has justifiable motives and reasons for mass surveillance to combat “complex and unconventional threats” (Munkdebates, 2014) at the cost of a small invasion of our privacy. The Con side argues that state surveillance is an invasion of our privacy and the power and capability it yields leaves us less secure and more vulnerable. Where do we draw the line between security and privacy, and as the Pro side suggests, how do you define a small invasion of privacy? The debate began with poll two determine if State Surveillance is a Legitimate Defense of our Freedoms, the graphic below shows the audience’s thoughts on the question presented.

PRE-DEBATE RESULTS

33% PRO 46% CON 21% Undecided



[1] The result of the pre-debate poll.

II. PRO: OPENING STATEMENTS

Former director of the CIA Michael Hayden began his argument by stating that in order to understand whether State Surveillance is a legitimate defense of our freedoms, we need to look at the facts and “the totality of the circumstances in which we find ourselves”. He argued that the information portrayed by the media is largely blown out of proportion and the actual methods that are used in State Surveillance are hard to comprehend and are overwhelming to the public with no background in how the system works and what its intended purpose. In order to protect our freedoms and liberty Hayden argues that Surveillance systems must be in place in order preserve our national security.

Expanding on General Michael Hayden’s remarks, Professor Alan Dershowitz argued that “A proper balance requires a proper process for deciding when surveillance is justified, when the need for preventative intelligence is greater than in any particular case than the need for privacy. And in striking that balance, it’s importance to distinguish among different types and degrees of surveillance.” He continued to state there is a considerable difference between street cameras

that observe the external movements of people in public places and hidden microphones that can eavesdrop in your own home; Such the difference between accessing the content of phone calls and emails and cataloguing the externalities of such messages. The enemies of our nation have an advantage over us because they don't abide by any morals or ethical philosophies. The advantage we yield is the rule of law.

III. CON: OPENING STATEMENTS

Glenn Greenwald began his argument by stating by agreeing with General Michael Hayden, "in order to assess the resolution that we are debating tonight, which is, is state surveillance a legitimate defense of our freedoms, the first – and I think most important – question to ask is, what is state surveillance." He continued claiming that if State Surveillance is targeting enemies of the state, there would be no debate. He argued against Professor Dershowitz claiming that no one in their right mind would completely oppose the idea of surveillance against threats to our nation, and that idea is just a "straw man fantasy" that simply doesn't equate. He continued to oppose Dershowitz's argument by claiming that his idea of a limited system that focus on protecting us from our enemies is the opposite what is happening with the State of government surveillance.

Greenwald's uses the NSA's own document to describe how the system of surveillance works. The phrase the NSA used in the document numerous times was "Collect it all, snip it all, process it all, know it all, exploit it all." Countering Professor Dershowitz's fantasy of limited, regulated, and niche collection system that he hopes that system one day can become.

Alexis Ohanian provided his viewpoint and concerns about State Surveillance as a technologist. He claims that "metadata poses a very serious threat to us because it is simply being gobbled up, sucked up, without any concern for due process, without any concern for the Fourth

Amendment of the United States" He argues to who watches and holds accountable the people watching us? Are we to trust those who hid the fact that we were spied on? Simply accepting it without any transparencies even after the facts is the opposite of how a democracy works. Everyone wants to be secure but the method being used at the moment through Mass Surveillance makes us less secure.

IV. PRO: SUMMARY OF ARGUMENTS

Professor Alan Dershowitz argues that in order to protect our liberties from being overstepped in the future, we need to give up a small amount of privacy in order not to overreact to another event such as 9/11. Since surveillance technologies are still growing, hindering that progress gives an edge to enemies of the state. Preventative measures must be in place to protect against future attacks at the cost of some civil liberties but there must a balance and accountability that can be adjusted along the way to create an acceptable system. Professor Alan Dershowitz fixated on the need for a surveillance state but his colleague former director of the CIA Michael Hayden took another approach, directly focusing the programs and methods used by the NSA.

Hayden began by stating that the need for state surveillance depends on the situation and circumstance and the majority of headlines are ignorant of how NSA programs actually work, and in fact, most of them are completely blown out of proportion. For instance, the Boundless Informant program, which was "a heat map of the world, and it showed the metadata events that NSA in one way or another acquired in different parts of the world. And it cooked off tens of million metadata events that NSA was getting, according to the map, from France and Spain and Norway. And so immediately the story was, "Hey! These guys are ripping off the phone bills of a whole bunch of Europeans!" The point of his argument is the headlines are providing false facts about the details of the program. What was actually happening is that France, Spain, and Norway were actually providing the NSA that metadata. It was actually a team effort and those

countries were working together as a collective to combat a common enemy but it was portrayed as an aggressive hungry data collecting NSA thugs.

The prism program was another example Hayden showcased and explained. He explained that “That’s the NSA having access through Google and Microsoft and Yahoo to materials on their servers in the United States, materials affiliated with a legitimate intelligence target” but of course the news agencies spun it as the NSA were free ranging uncontrollably ransacking every village and e-mail they can find which is completely false. Some agencies correct themselves after smearing NSA but they do not announce that they made corrections on their page or even make a new story explaining what they misinterpreted.

V. CON: SUMMARY OF ARGUMENTS

Alexis Ohanian a Co-founder of Reddit argument consisted of three important elements that State Surveillance were comprising, “It is a threat economically, it is a threat technologically to the very backbone of the internet, and finally, and somewhat paradoxically, it actually undermines security, it actually makes us more vulnerable.” Economically speaking, any global user will reconsider using a server or service provided by an NSA occupied domain because they know the risk of using it. According to Ohanian, the U.S. economy alone stands to lose over 180 billion dollars because of that very luxury that the global user stands to lose.

As an entrepreneur Ohanian explains that other aspiring entrepreneurs that have the potential to create another name brand like Google will less likely to do so because their user base is going to think twice because they know an intelligence agency is going to have their hands on their search query. He explains “There is national security in economic security, and that has been undermined by this mass surveillance.” Not to mention that ironically, these flaws that the NSA are taking advantage of are in fact making us less secure and more vulnerable.

Let’s put it this way, imagine that law enforcements have a copy of a key of your house and every single law enforcement officer has access to that key. Except in this case they have access to every single person in their known legal domain. Is every single law enforcement officer a law-abiding protector of our citizens? Of course not, and that goes for latter as well.

Glenn Greenwald a Journalist for First Look Media began by agreeing with what General Michael Hayden that we need to understand what is State Surveillance? He stated “because if state surveillance were about targeting in a discriminating and focused way people who are plotting terrorist attacks against our country or other countries or are otherwise planning harm, there would be no debate. There would be no controversy. We could all end right now and go home.”

Glenn Greenwald’s arguments mainly consists of information and facts from the NSA’s own former employees and leaked information. whether or not this surveillance is actually about terrorism, he shares what people inside the U.S. government have commented on that question. The federal court ruled that the NSA was violating the rights of Americans about the claim that it was for terrorism quoting them saying, “The government does not cite a single case in which analysis of the NSA’s bulk metadata collection actually stopped a terrorist attack.”

A crucial point Greenwald mentions is that President Obama’s own appointed review panel reported that “Our review suggests that the information contributed to terrorist investigations by the use of metadata was not essential to preventing attacks and could readily have been obtained in a timely manner using conventional court orders”. This is important because it counter’s Professor Dershowitz argument about how else is the information supposed to be obtained?

This leads to why the mass collection of data is a failure and counterproductive. “When you collect that much, it’s impossible to know and to detect when somebody is plotting to attack the

Boston Marathon or to blow up a plane, because they're collecting everything about all of us rather than the people that they should be keeping their eyes on."

VI. PRO: MY REBUTTAL

The opening statements had me convinced, as Hayden suggested, the need for State Surveillance depends on the facts, urgency and threat that our nation is facing. His opening remarks were reasonable. His co-pro debater professor Alan Dershowitz began a convincing argument until he stated "Our enemies, especially those who target civilians, have one major advantage over us: they are not constrained by morality or legality. We have an advantage over them, in addition to operating under the rule of law – we have developed, through arduous work and extensive research, technological tools that allow us to monitor and prevent their unlawful and illegal actions. "Yes, we certainly have a technological advantage over them but we have not been transparent nor ethical about our surveillance. He continued by stating "it is far better that a few people have some intrusion than that one innocent person, whose death could have been prevented by surveillance, is harmed or killed. We must over-predict. We have to over-use." No one would ever argue that saving a life is not important but given recent events, the technology in place now failed to stop recent a terrorist event which is the Boston marathon bombings. He contradicted himself when argued that "I sincerely believe that surveillance, properly conducted and properly limited, can really and truly protect our liberties." And then stating that we have to "over-predict. We have to over-use." But the over-use and the over-prediction he claims we need is in fact unnecessary. There is so much metadata being collected that overlooking the intended target will happen frequently and the Boston Marathon bombings is direct evidence of that. The two teenage brothers were using extremist related forums and posting on them frequently before the event happened. General Michael Hayden does have some good points and sound argument on the pro side in regard to news

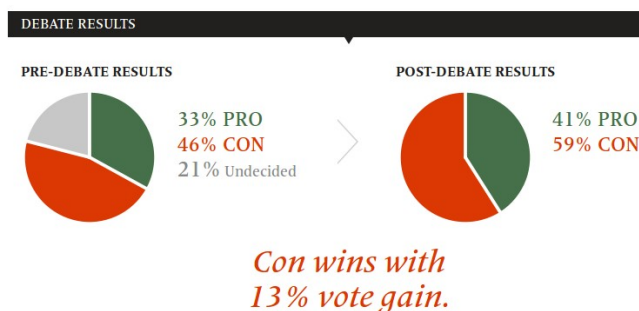
agencies overstating and dramatizing what the government was doing behind closed doors. After all this is OUR government, why would our own government have a malicious plan that is detrimental to its own people? Smear campaigning and reporting false information will divide us a nation. We are united in our believes and liberties and pointing fingers and falsifying information will get us nowhere. However, General Michael Hayden's complete denial of Glen Greenwald's facts and information without any backing of his own makes him less creditable. You can disagree with an opinion, that is our right, but disagreeing with facts without providing the facts is suspicious.

VII. CON: MY REBUTTAL

After listening to both sides opening statements I must admit, Glenn Greenwald had convincing argument against the pro side. He is correct, if there was a way or if the system was targeting specific threats and was as limited as Professor Dershowitz was aspiring it to be, there would be no debate and everyone can go home. But that is not the case and the evidence he used to support that claim was documented written by the NSA, "Collect it all, snip it all, process it all, know it all, exploit it all." Does that sound like a limited, regulated system that focuses on specific targets? No, it does not. It's a system designed to oversee every aspect of our private lives, it resembles a dictatorship not a democracy. Alexis Ohanian points out the fact that mass metadata collection is a violation of our own Amendments and Liberties that distinguish us from tyranny and oppression. Not to mention the substantial decline in economic assets.

Edward Snowden's own recollection and statement disproves General Hayden's and Professor Dershowitz of limited Surveillance they claimed existed. Snowden stated, "it's important to remember that it doesn't stop with phone calls. It covers your e-mails, it covers your text messages, your web history, every Google search you've ever made and every plane ticket you've ever bought, the books you buy at amazon.com

that are, the transactions are sent in plain text where it's unencrypted, and anyone, whether it's, you know, the NSA or some other foreign intelligence service, can collect it and store it for increasing periods of time. It includes who your friends are and how you communicate with them. It shows where you go and what you want to be. It also shows people in charge of state surveillance who you love, and it shows them where these people live." The Con side had the most convincing arguments and backing that the pro side and the results of the poll speak for themselves.



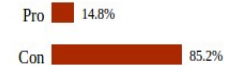
[1] Post-debate results.

The most surprising result for me is which of the debaters had the strongest rebuttal it is no surprise that Glenn Greenwald single handedly one that debate but that Alan Dershowitz finished in second place. My guess as to why is his argument that a future terrorist attack will result in more violations in our civil liberties and rights and he's trying to protect that which I am completely in favor of. The way he presented of how it should be implemented is what his argument was lacking. Rather than propose how the system should look like, he opposed stopping Surveillance and our advantage that we have, and instead fix the system along the way. From a technological standpoint, it's a poor way of handling the design of a system. Once you layout a foundation of a building, system, or anything else for that matter, trying to move a pillar once you finish construction will ultimately collapse the entire building. His lack of understanding and background of how these systems work ultimately lost the debate for the pro side.

MUNK DEBATE ON STATE SURVEILLANCE

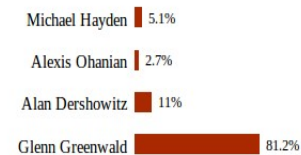
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Which team is winning the free for all discussion?



8

Which debater provided the strongest rebuttal?



[1] Post-debate results.

VIII. CONCLUSION

Ever since Edward Snowden enlightened, American citizens, and the entire world of what was happening behind closed doors, the entire population as a whole demanded transparency and accountability.

General Michael Hayden's comment about the citizens blindly trusting the NSA is doing a good deed and that everything they've been doing is legal under rule of law and is well regulated has been invalidated several times during the Munk Debates. It's too late, if the NSA was transparent from the very beginning about their intentions and implementation, not only will terrorist be hesitant about communication but about attacking the United States because they don't know who will be watching or listening.

We struck fear into our own people rather than the enemy we're facing. Glenn Greenwald said it best, "nobody opposes targeted surveillance." That is out of the question and is necessary to target malicious targets but the idea of massive State Surveillance sacrificing privacy in the name of security is just a false trade-off in a free society. The amount information we lack from the

other programs that Edward Snowden may still have possession or the government is hiding from its citizens is very troubling. Have we only scratched the surface?

The necessity for operative secrecy cannot overstep the boundary of our privacy. It should not be a co-dependent relationship. The proof is evident by not only a former employee, Edward Snowden, but the events in recent past that were not preventive as their intended purpose. Lawrence Wright, who wrote the definitive book on Al Qaeda in 2003 and won the Pulitzer Prize, similarly wrote in the New Yorker in 2014, after reviewing all of the evidence in their possession already, the reason 9/11 happened was because they had collected so much information that they had no idea what they were collecting and therefore didn't share with each other the information that could have stopped a plot.

The subject of State Surveillance is extremely difficult to comprehend and to maintain there is no denying that. And even though I'm wholeheartedly on the Con side of the argument, A lot of what General Michael Hayden says resonates with me. Facts do matter, situational circumstances do arise on how to go about keeping our country secure. And as Professor Dershowitz says, we can not give our enemies an advantage over us since they do not abide by rule of law. But we cannot fix it along the way and build on a broken system. The foundation must be built first and build on an agreeable system that is somewhat transparent and focused specific individuals that are suspicious. We are in a lawful country, we need to go through proceedings and a system that we built in order to prove guilt or innocence.

REFERENCES

- [1] “Munk Debates - State Surveillance.” [Online]. Available: <http://www.munkdebates.com/debates/state-surveillance>. [Accessed: 01-Aug-2017].