

EDWARD SNOWDEN, THE NSA, AND MASS SURVEILLANCE

Edward Snowden worked as a computer systems contractor for the National Security Agency (NSA), which collects intelligence information for U.S. spy agencies. In 2013, Snowden gave journalists thousands of secret NSA documents. They revealed mass surveillance of terrorist suspects and of innocent Americans as well.

Created in 1952, the NSA monitors, collects, and analyzes foreign spy information, or “intelligence” on suspected enemies of the United States. Those who work for the NSA must have a security clearance and promise never to reveal the NSA’s secrets.

To correct certain abuses by the Central Intelligence Agency (CIA) in the 1960s and 70s, Congress passed the Foreign Intelligence Surveillance Act of 1978 (FISA). FISA set up monitoring of the NSA, CIA, and other intelligence agencies so that they would target foreign threats, not American citizens.

The FISA law also established a secret Foreign Intelligence Surveillance Court to which intelligence agencies could seek permission to conduct surveillance and collect information from foreign suspects. The Chief Justice of the U.S. Supreme Court appoints the FISA Court’s 11 judges. A special court can review the FISA Court’s decisions.

In 1979, the U.S. Supreme Court decided that law-enforcement agencies did not need a search warrant to get the phone numbers called by criminal suspects. The Supreme Court ruled that phone callers had “no reasonable expectation of privacy” in numbers dialed into a telephone. Today, phone numbers, dates, and the duration of phone calls are called “metadata” and do not include the actual content of conversations.

Following the terrorist attacks on September 11, 2001, the NSA and other intelligence agencies shifted from investigation of criminal suspects to *prevention* of terrorist attacks and were desperate to improve their use of technology. Within days of 9/11, Congress passed the USA PATRIOT Act (Patriot Act), which greatly increased the NSA’s surveillance powers.

Who Is Edward Snowden?

Between 2006 and 2012, Edward Snowden, a young high school dropout and computer whiz, worked for the CIA as well as major tech contractors for the NSA. He maintained computer systems and received security clearance which gave him access to secret documents. He says that while working at a secret NSA facility in Hawaii, he first complained to supervisors about the NSA’s “illegal activities,” but that they ignored his complaint.



Edward Snowden in Moscow, Russia, October 2013.

The Wikileaks Channel/Wikimedia Commons (CC BY 3.0)

Later, at the same Hawaii facility, he persuaded co-workers to let him borrow their passwords and without their knowledge copied secret NSA documents onto laptop hard drives. Snowden believed the U.S. was violating the privacy rights of American citizens as well as international law.

In December 2012, Snowden anonymously contacted a few journalists and passed on to them samples of secret NSA documents. In May 2013, Snowden met his contacts in Hong Kong, where he identified himself for the first time and handed them the thousands of NSA documents he had copied.

On June 5, *The Guardian* newspaper in London published the first of numerous articles and documents that revealed many secret mass surveillance programs. Soon American newspapers, such as the *New York Times*, began to publish material from the “Snowden leaks.”

Snowden, now age 29, planned to seek political asylum in South America. But the U.S. had suspended his passport so he could not fly any further than Russia, which granted him temporary asylum and later extended it to three years.

At the Moscow airport, Snowden made his first statement to the world’s press about what motivated him:

I did what I believed right and began a campaign to correct this wrongdoing. I did not seek to enrich myself. I did not seek to sell U.S. secrets. I did not partner with any foreign government to guarantee my safety. Instead, I took what I knew to the public, so what affects all of us can be discussed. . . .

What Did Snowden Reveal?

The public learned from Snowden's leaks that between 2001 and 2006, President George W. Bush secretly authorized the NSA to collect the phone metadata of virtually all Americans, or "bulk collection" of metadata. The idea was to amass a government database that the NSA could search by linking the phone number of a suspected foreign terrorist to other numbers in a chain of phone calls to help NSA agents identify a potential terrorist network. They were unable to do this before 9/11. The NSA said it destroyed any metadata collected of innocent Americans.

The public also learned that in 2006 President Bush handed over the job of the bulk collection of metadata to the secret FISA Court. The FISA Court had to have legal authority to do this and found it in Section 215 of the Patriot Act, which authorized the FBI to apply for FISA Court orders on behalf of the NSA to produce "tangible things" relevant to an approved foreign intelligence investigation.

The FISA Court interpreted producing "tangible things" to mean a blanket court order for bulk collection of metadata rather than issuing individual search warrants typically required under the Fourth Amendment. The FISA Court also relied on the ruling of the 1979 Supreme Court that people had no reasonable expectation of privacy in phone numbers called.

After his election, President Obama continued the NSA's bulk collection program. The FISA Court has rarely turned down an intelligence agency application for a surveillance order or search warrant. One reason may be that only the government was permitted to make its case before a FISA Court judge. No opposing side was allowed to challenge an application for a surveillance order.

Snowden also gave to *The Guardian* a copy of the secret FISA Court order of May 24, 2013, that directed Verizon to give the NSA metadata of all its customers. The revelation set off a firestorm of protest.

In addition, Snowden unveiled NSA's PRISM program, which collected the *content* of emails, photos, and other media from the servers of nine Internet service companies (Microsoft, Google, Apple, Yahoo, AOL, Facebook, YouTube, Skype, and Paltalk). This surveillance program was limited to individuals "sharing content" with a terrorist suspect "reasonably believed to be located outside the United States." PRISM surveillance required approval of the FISA Court but not of the Internet service companies.

Snowden's documents showed that the NSA collected other data in its search for terrorists outside and inside the U.S., including Internet usage, transactions at

commercial websites, health and financial records, publicly posted social media, GPS location of individuals, and Google Map searches. FISA Court orders or Fourth Amendment search warrants were sometimes needed, sometimes not.

Snowden also revealed that the NSA spied on friendly nations. The NSA listened in on the phone calls of some of America's allies, which caused an angry reaction abroad, embarrassing the U.S. government.

Reaction to Snowden's Leaks

Snowden's stunning leaks caused many people to criticize the previously secret NSA surveillance programs, which only a few in the government knew existed. Many were outraged over what they saw as violations of the Fourth Amendment. Internet service companies protested how they were being used by the NSA to scoop up data on their customers.

Snowden's revelations forced the government to defend its surveillance programs. Defenders assured Americans everything was legal and approved by Congress, the president, and the FISA Court. No evidence has turned up that the NSA intentionally invaded the privacy of innocent U.S. citizens. But neither has evidence revealed that the bulk collection program stopped any terrorist attack against the United States.

Snowden, remaining in Russia, was celebrated as a hero by his many supporters and condemned by those who called him a criminal. President Obama expressed concern about leaks of secrets: "If any individual who objects to government policy can take it in their own hands to publicly disclose information, then we will not be able to keep our people safe. . . ."

The U.S. Justice Department quickly charged Snowden with stealing government property and two violations of the Espionage Act.

Damage From Snowden's Disclosures

While most of the immediate controversy over Snowden's massive leaks of secret NSA documents focused on privacy violation claims, another issue arose about how his leaks damaged national security. Michael Hayden, a former director of the NSA and CIA, warned that the Snowden leaks will let terrorists know about U.S. intelligence "tactics, techniques, and procedures."

Director of Intelligence James Clapper reported that showing our adversaries the NSA's programs damaged America's ability to prevent another 9/11. "This is the most destructive [bleeding] of American secrets in history," he declared, "and very few of them had anything to do with American privacy." ▶

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The Snowden leaks also revealed information about the spying methods of U.S. allies. Britain's Home Secretary, Theresa May, argued that Snowden's leaks caused intelligence damage around the world. For example, "safe houses" used by British spies had been identified, putting them at risk. She added that the Islamic State had even made a video with tips drawn from the Snowden leaks on how to avoid detection.

In December 2013, the Department of Defense (Pentagon) completed a top secret report on the impact of the leaks. The Pentagon declassified 12 pages for release to the public in May 2014, but most of the text was blocked out of caution that details might give sensitive information to terrorists.

The censored report stated that the Pentagon assessed that the Snowden leaks will have "a grave impact on U.S. national defense." The report concluded: "The scope of the compromised knowledge related to U.S. intelligence capabilities is staggering."

House of Representatives Intelligence Committee Chairman Mike Rogers read the complete uncensored Pentagon report. He said, "The report confirms my greatest fears — Snowden's real acts of betrayal place America's military men and women at greater risk."

Others point out that the public and the press have not been provided details about the damage from Snowden's disclosures. It is hard to assess, they say, whether the disclosures actually caused any damage at all. Britain's Business Secretary Vince Cable said that even though a "large amount of genuinely important intelligence material" was disclosed, the disclosures emphasize a need for "proper political oversight of intelligence services." NSA Director Admiral Michael S. Rogers also downplayed the damage caused by Snowden, saying in 2014 that he did not believe "the sky is falling." He wanted the NSA to get "out of the data-retention business" altogether.

The USA FREEDOM Act

In January 2014, after considering reforms made by his own study commission, President Obama proposed that Congress keep the bulk collection metadata program, but put possession of its huge database in the hands of a non-government party like the telephone companies. Congress debated these and other issues raised by Snowden's disclosures. Some members of Congress wanted to keep the metadata program as it was. Others called for it to be eliminated.



The National Security Operations Center (NSOC) floor in 2012. NSOC is part of the NSA and maintains constant monitoring of intelligence information.

National Security Agency

On June 2, 2015, Congress passed the USA FREEDOM Act (Freedom Act), a compromise that President Obama promptly signed into law that included key reforms. Under the new law, the NSA could no longer collect metadata but could gain access to the records stored by telephone companies through a FISA Court order if it could show it had a "reasonable articulable suspicion" that certain metadata was linked to terrorism. Phone companies would destroy metadata after 18 months. Advocates with security clearance could raise issues of privacy or civil liberties before the FISA Court, and significant rulings of the FISA Court must be made public.

Snowden: Criminal or Hero?

Snowden and his supporters call him a "whistle-blower." This is usually a government employee who makes public some sort of government wrongdoing. Laws protect whistle-blowers with access to secret information from criminal prosecution. These laws, however, require whistle-blowers to report their concerns to the intelligence agencies' inspector general or to members of the intelligence committees of Congress. Snowden did not do this.

Snowden said he believed he was not protected as a whistle-blower because he was a contractor for a private company, not a government employee. The law is not clear how much protection Snowden would have had if he had followed the correct procedure.

Snowden succeeded in provoking a major debate over America's mass surveillance programs. Did the NSA endanger the right to privacy, or was it just doing its job to keep Americans safe? The compromise Freedom Act seemed to answer yes to both questions. But what should we do about Snowden, who started the whole controversy? Is he a criminal or a hero?

DISCUSSION AND WRITING

1. Did the NSA endanger the right of privacy, or was it just doing its job to keep Americans safe? Use evidence from the article to support your answer.
2. David Frum, senior editor of *The Atlantic* magazine, wrote a year after the Snowden leaks: “We live in a world of predators. A democratic state too gentlemanly to learn all it can about potential threats is a state that has betrayed its most-fundamental responsibilities to the people it exists to safeguard.” Put Frum’s argument in your own words. Do you agree or disagree with him? Why?
3. Reflect on your answer to Question #2 above. Are there limits to how far a democratic state can go in collecting information about its citizens before the collection becomes too invasive into citizens’ reasonable expectations of privacy? If so, what are those limits?
4. Do you think the Freedom Act went too far, not far enough, or was about right in controlling the NSA and its mass surveillance programs? Use evidence from the article to support your answer.

ACTIVITY: Snowden: Criminal or Hero?

Edward Snowden says he wants to return to the U.S. If he ever returns, he will undoubtedly have to face the consequences of his actions. Below are a number of alternative consequences that some have suggested.

Which one of these do you think is the best?

1. Each student will choose one of the consequences for Snowden’s actions and write a brief essay, defending it by using information provided in the article.
2. Students will then meet in small groups to argue for their choices.
3. The groups will report the results of their discussions to the class.
4. Finally, the class will vote on which consequence is the best.

Consequences for Snowden’s Actions

A. Prosecution by the U.S. Justice Department

The Justice Department has charged Snowden with stealing government property and two counts of violating the Espionage Act: (1) “unauthorized communication of national defense information” and (2) “willful communication of classified communication intelligence information to an unauthorized person.” The combined penalties for these acts amount to 30 years in prison.

B. Prosecution for Treason

In 2014, Secretary of State John Kerry declared, “He is a traitor. And he has betrayed his country. And if he wants to come home to face the music, he can do so.” Art. III, Sec. 3, of the Constitution defines treason: “Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort.” Conviction for treason carries the possibility of the death penalty.

C. A Strong But Not Too Harsh Prison Sentence

Josh Barro, writing for *Business Insider*, took a middle position: “If Snowden’s disclosures had been tightly limited to information about how U.S. intelligence agencies collect private information about Americans, I’d be more sympathetic to calls to let him off. And I still don’t think he needs to be executed or imprisoned for life; a long sentence signifying the severity of his crimes, perhaps 15 years, would satisfy me. . . . The sentence. . . has to be long enough to deter future Snowdens from leaking.”

D. Clemency

Clemency calls for leniency such as a reduction of a prison term. In an editorial, the *New York Times* wrote, “It is time for the United States to offer Mr. Snowden a plea bargain or some form of clemency that would allow him to return home, face at least substantially reduced punishment in light of his role as a whistle-blower, and have the hope of a life advocating for greater privacy and a far stronger oversight of the runaway intelligence community.”

E. A Partial Pardon

Conor Friedersdorf, writing in *The Atlantic*, argued, “Snowden undeniably violated his promise to keep the NSA’s secrets. But doing so was the only way to fulfill his higher obligation to protect and defend the Constitution, which was being violated by an executive branch exceeding its rightful authority. . . . This analysis pertains only to the leaked documents that exposed the phone [bulk metadata] dragnet, not the whole trove [collection] of Snowden’s leaks, but with respect to that one set of documents there ought to be unanimous support for pardoning his disclosure.

F. A Full Pardon

The White House has a program for submitting petitions to the government. The following petition was submitted days after the Snowden leaks appeared in the press: “Edward Snowden is a national hero and should be immediately issued a full, free, and absolute pardon for any crimes he has committed or may have committed related to blowing the whistle on secret NSA surveillance programs.”

Standards Addressed

The Election of 1912

National High School U.S. History Standard 20: Understands how Progressives and others addressed problems of industrial capitalism, urbanization, and political corruption. (1) Understands the origins and impact of the Progressive movement (e.g., social origins of Progressives and how these contributed to the success and failure of the movement; Progressive reforms pertaining to big business, and worker’s and consumer’s rights; arguments of Progressive leaders).

California H-SS Standard 11.2: Students analyze the relationship among the rise of industrialization, large-scale rural-to-urban migration, and massive immigration from Southern and Eastern Europe. (9) Understand the effect of political programs and activities of the Progressives (e.g., federal regulation of railroad transport, Children’s Bureau, the Sixteenth Amendment, Theodore Roosevelt)

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National High School Civics Standard 18: Understands the role and importance of law in the American constitutional system and issues regarding the judicial protection of individual rights. (1) Understands how the rule of law makes possible a system of ordered liberty that protects the basic rights of citizens. (5) Understands how the individual’s rights to life, liberty, and property are protected by the trial and appellate levels of the judicial process and by the principal varieties of law (e.g., constitutional, criminal, and civil law).

National High School Civics Standard 25: Understands issues regarding personal, political, and economic rights. (1) Understands the importance to individuals and to society of personal rights such as freedom of thought and conscience, privacy and personal autonomy, and the right to due process of law and equal protection of the law. (2) Understands contemporary issues that involve political rights such as access to classified information (6) Understands how personal, political, and economic rights are secured by constitutional government and by such means as the rule of law, checks and balances, an independent judiciary, and a vigilant citizenry

National High School Civics Standard 26: Understands issues regarding the proper scope and limits of rights and the relationships among personal, political, and economic rights. (2) Understands different positions on a contemporary conflict between rights such as one person’s right to free speech versus another person’s right to be heard.

California H-SS Standard 12.2: Students evaluate and take and defend positions on the scope and limits of rights and obligations as democratic citizens, the relationships among them, and how they are secured. (1) Discuss the meaning and importance of each of the rights guaranteed under the Bill of Rights and how each is secured (e.g., freedom of religion, speech, press, assembly, petition, privacy). (3) Discuss the individual’s legal obligations to obey the law

The Great Rivalry: Disraeli vs. Gladstone

National High School World History Standard 35: Understands patterns of nationalism, state-building, and social reform in Europe and the Americas from 1830 to 1914. (3) Understands factors that led to social and political change in 19th-century Europe (e.g., the interconnections between labor movements, various forms of socialism, and political or social changes in Europe; the influence of industrialization, democratization, and nationalism on popular 19th-century reform movements; the extent to which Britain . . . [became] broadly liberal and democratic societies in the 19th century; the broad beneficial and detrimental effects of the industrial revolution on specific European countries).

California H-SS Standard 10.3: Students analyze the effects of the Industrial Revolution in England, France, Germany, Japan, and the United States. (1) Analyze why England was the first country to industrialize.

California H-SS Standard 12.9: Students analyze the origins, characteristics, and development of different political systems across time, with emphasis on the quest for political democracy, its advances, and its obstacles. (2) Compare the various ways in which power is distributed, shared, and limited in systems of shared powers and in parliamentary systems, including the influence and role of parliamentary leaders (e.g., William Gladstone)

Common Core State Standards

Standards marked “11-12” pertain to “The Election of 1912” and “Edward Snowden, the NSA, and Mass Surveillance.” Standards marked “9-10” pertain to “The Great Rivalry: Disraeli vs. Gladstone.”

ELA-Literacy.SL.11-12/9-10.1: Initiate and participate effectively in a range of collaborative discussions (one-on-one, in groups, and teacher-led) with diverse partners on grades 11-12/9-10 topics, texts, and issues, building on others’ ideas and expressing their own clearly and persuasively.

ELA-Literacy.SL.9-10.1.d: Respond thoughtfully to diverse perspectives, summarize points of agreement and disagreement, and, when warranted, qualify or justify their own views and understanding and make new connections in light of the evidence and reasoning presented.

ELA-Literacy.SL.11-12.1.d: Respond thoughtfully to diverse perspectives; synthesize comments, claims, and evidence made on all sides of an issue; resolve contradictions when possible; and determine what additional information or research is required to deepen the investigation or complete the task.

ELA-Literacy.SL.11-12.3: Evaluate a speaker’s point of view, reasoning, and use of evidence and rhetoric, assessing the stance, premises, links among ideas, word choice, points of emphasis, and tone used.

ELA-Literacy.SL.9-10.6: Adapt speech to a variety of contexts and tasks, demonstrating command of formal English when indicated or appropriate. (See grades 9-10 Language standards 1 and 3 . . . for specific expectations.)

ELA-Literacy.SL.11-12.6: Adapt speech to a variety of contexts and tasks, demonstrating a command of formal English when indicated or appropriate. (See grades 11-12 Language standards 1 and 3 . . . for specific expectations.)

ELA-Literacy.RH.9-10.1: Cite specific textual evidence to support analysis of . . . secondary sources, attending to such features as the date and origin of the information.

ELA-Literacy.RH.9-10.2: Determine the central ideas or information of a . . . secondary source; provide an accurate summary of how key events or ideas develop over the course of the text.

ELA-Literacy.RH.9-10.4: Determine the meaning of words and phrases as they are used in a text, including vocabulary describing political, social, or economic aspects of history/social science.

ELA-Literacy.RH.9-10.10: By the end of grade 10, read and comprehend history/social studies texts in the grades 9-10 text complexity band independently and proficiently.

ELA-Literacy.RH.11-12.1: Cite specific textual evidence to support analysis of . . . secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.

ELA-Literacy.RH.11-12.2: Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas.

ELA-Literacy.RH.11-12.4: Determine the meaning of words and phrases as they are used in a text, including analyzing how an author uses and refines the meaning of a key term over the course of a text (e.g., how Madison defines *faction* in *Federalist* No. 10).

ELA-Literacy.RH.11-12.10: By the end of grade 12, read and comprehend history/social studies texts in the grades 11-CCR text complexity band independently and proficiently.

ELA-Literacy.WHST.11-12/9-10.1: Write arguments focused on *discipline-specific content*.

ELA-Literacy.WHST.11-12/9-10.2: Write informative/explanatory texts, including the narration of historical events

ELA-Literacy.WHST.11-12/9-10.4: Produce clear and coherent writing in which the development, organization, and style are appropriate to task, purpose, and audience.

ELA-Literacy.WHST.11-12/9-10.7: Conduct short as well as more sustained research projects to answer a question (including a self-generated question) or solve a problem

ELA-Literacy.WHST.11-12/9-10.10: Write routinely over extended time frames (time for reflection and revision) and shorter time frames (a single sitting or a day or two) for a range of discipline-specific tasks, purposes, and audiences.

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