



President Obama: Pardon Edward Snowden

The whistleblower may not be asking for clemency, but he should get it.

By: Ronald Bailey - November 7, 2013

Last week the German magazine *Der Spiegel* published “A Manifesto for the Truth,” Edward Snowden’s explanation of why he revealed the National Security Agency’s surveillance programs. In his manifesto Snowden says such programs are “not only a threat to privacy” but “threaten freedom of speech and open societies.” He further argues, “Society can only understand and control these problems through an open, respectful and informed debate.”

In June, President Barack Obama claimed that he “welcome[s] this debate” over federal surveillance. But Snowden’s revelations are only reason that the president, Congress, and the public are having “this debate” in the first place. (Thanks largely to Snowden, Congress is considering new legislation that aims to rein in and dismantle some of the more constitutionally offensive aspects of the NSA’s activities.) Yet the men who oversee the NSA’s spy programs—Director of National Intelligence James Clapper, NSA Director Keith Alexander, and Deputy NSA Director John Inglis—have the gall to call Snowden a “traitor.” The Obama administration has filed criminal charges against the whistleblower for violating the notorious Espionage Act and for the theft of government property. Legally, espionage is the transfer of state secrets on behalf of a foreign country. But Snowden did not sell or profit from his revelations, and he apparently took none of the NSA documents with him to China or Russia.

“The irony is obvious,” journalist Glenn Greenwald wrote in June, “The same people who are building a ubiquitous surveillance system to spy on everyone in the world, including their own citizens, are now accusing the person who exposed it of ‘espionage.’” The heads of the agencies that ordered and oversaw a vast program of illegal domestic warrantless wiretapping during the Bush administration were given a blanket pardon for their activities in 2008. Then-Sen. Obama voted in favor of this retroactive immunity.

Snowden’s manifesto was not an appeal for clemency, but some commentators construed it as one. Forget about it, retorted the chief congressional enablers of NSA domestic surveillance. On the CBS program *Face the Nation*, Senate Intelligence Committee Chair Dianne Feinstein (D-Calif.) said, “I think the answer is no clemency.” Her counterpart in the House of Representatives, Rep. Mike Rogers, called clemency a “terrible idea” and declared that Snowden “needs to come back and own up.” On ABC’s *The Week*, White House advisor Dan Pfeiffer said that Snowden “should return to the U.S. and face justice.”

But what would happen if Snowden were to “face justice” in 21st century America? In a July *Washington Post* op-ed, Pentagon Papers whistleblower Daniel Ellsberg noted that when *he* was arrested for

unauthorized disclosures, he was released on his own recognizance the same day. In modern America, Ellsberg believes, Snowden would not be so fortunate. "There is zero chance that he would be allowed out on bail if he returned now," Ellsberg wrote. Instead Snowden would be held "incommunicado" and "almost certainly be confined in total isolation."

Could Snowden have taken his concerns to his bosses or to Congress? No, says Michael German, a senior policy counsel at the American Civil Liberties Union. "Congress passed the Intelligence Community Whistleblower Protection Act in 1998," German writes, "but it is no more than a trap. It establishes a procedure for internal reporting within the agencies and through the Inspector General to the congressional intelligence committees, but it provides no remedy for reprisals that occur as a result. Reporting internally through the ICWPA only identifies the whistleblowers, leaving them vulnerable to retaliation." German cites the case of former NSA staffer Thomas Drake, who sought to take his concerns about wasteful and deficient electronic spying programs up the chain of command. At the behest of his displeased bosses, the Obama administration charged Drake with 10 violations of the Espionage Act and threatened to throw him in prison for the rest of his natural life. The case ultimately fell apart, but only after a decade of official persecution.

President Obama claimed in June that the NSA spy programs are "under very strict supervision by all three branches of government." But as the repressive reaction to Drake shows, it's the whistleblowers, not the supposed supervisors, who are trying to put some limits on unconstitutional domestic spying. Can there really be "strict supervision" when the director of central intelligence feels free to tell a U.S. senator the baldfaced lie during congressional testimony, claiming that the NSA does not collect telephone data from nearly every American?

More recently, both the president and Senate Intelligence committee head Sen. Dianne Feinstein (D-Calif.) have admitted that they were unaware that the agency was tapping the phones the leaders of allied countries. At a recent Cato Institute conference on NSA surveillance, Rep. Justin Amash (R-Mich.) detailed how the minions of our surveillance state try to keep our elected officials in the dark about what they are doing. Even the Foreign Intelligence Surveillance Court, which is supposed oversee the activities of the NSA, has acknowledged in a now-declassified opinion that the agency lied to it about the scope of its domestic spying programs. Very strict supervision, indeed.

As Snowden correctly concludes, "Citizens have to fight suppression of information on matters of vital public importance. To tell the truth is not a crime." If we succeed in halting the march toward the "turnkey totalitarian state" that former NSA executive William Binney warned about last year, it will be in large measure because of Snowden's revelations. Mr. President, pardon Edward Snowden now. We'll give him medals later.