

Surveillance, Secrecy, and Democracy

Daniel Ellsberg

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Daniel Ellsberg is the former military analyst and government official who leaked the top secret Pentagon Papers to the press in 1971.

I was just reading the president's speech from the State of the Union yesterday. Jim Skelly gave it to me, as I wasn't able to hear it because I was in the air. Obama said to Congress, "As president, I'm committed to making Washington work better and rebuilding the trust of the people who sent us here. I believe most of you are too." Just yesterday, I was looking at a poll by Public Policy Polling that put Congress at 8% public approval, so there's a lot of trust to be re-earned there. I'll resist telling you one of the lines from the poll, which you can look up yourself. No, on second thought, I can't resist. This poll was taken in October, the last time the government shut down over the budget because they couldn't reach an agreement. The poll asked, "What do you have a higher opinion of, Congress or..."—and then there were a lot of alternatives, most of which were rather negative. Interestingly, Congress was not at the bottom of people's opinions. Actually, Vladimir Putin, Miley Cyrus, Anthony Weiner, and the war in Syria all ranked below Congress in approval ratings. On the other hand, the majority of those polled had a lower opinion of Congress than of the IRS, public radio fund drives, witches, cockroaches, zombies, hemorrhoids, and dog poop.¹

In the coming months, let's see if the president can make some progress; let's face it, public belief in Washington has suffered some serious blows. I don't know if the president was referring to the speech that he gave a little over a week ago, on January 17, when he was addressing the problems of public belief in our institutions raised by Edward Snowden and the National Security Agency (NSA) in general. Now, he did say, "I welcome this debate," and I noticed quite a few people found that hypocritical in some sense.

I supported President Obama in 2008 and 2012 and I actually got quite a bit of criticism from friends of mine who were third party advocates during that time, and that's no joke. I lost some friendships over it, in fact, and I'm not sorry that I did that. I probably wouldn't have watched the State of the Union Address yesterday because I can't stand to watch Obama. I don't believe anything he says. When he said in regard to Edward Snowden and the National Security Agency (NSA), "I welcome this debate," and "This debate will make us stronger," I hope that's true. But his notion of what stronger will be or where he hopes this debate will end up is certainly not shared by Edward Snowden or by me.

Obama has said—and I'll come back to this—that Snowden should have made his revelations by name. He said that Snowden had not done it the right way, that he created more heat than light. In reality, no aspect of his speech on January 17 would have been a matter of public debate or public discussion without Snowden having done what he did in exactly the manner he did it. It is absurd to say that there were other methods to bring this out.

As a matter of fact, four former high-ranking NSA officials who I met personally, whose average service was thirty years, were attacked for revealing information in an inappropriate manner when in fact they had revealed the information in exactly the way that Obama suggested Snowden should have. Each one of them had revealed information to the inspector general of the NSA. They didn't give testimony to Congress because no committee has ever to this day called in any of these senior people. No committee has answered their request to testify in front of them under oath. But they did speak to staff and for that each one of them was subject to Federal Bureau of Investigation (FBI) raids and the taking of all their computers—most of which have not been returned. In one case, William Binney, a thirty-year veteran of the NSA, heard some commotion in his house while he was in the shower. He opened the shower curtain to find an FBI agent pointing a gun at his head. He was allowed to come out and dry himself off, and then they interrogated him for eight hours.

In December 2005, an article was published in the *New York Times* in which they reported that there had been warrantless wiretaps happening under the NSA since 2001. The FBI suspected that Binney was the leak, since he had previously complained internally about the NSA's unconstitutional behavior. The *New York Times* got the Pulitzer Prize, which they deserved, even though they brought it out in December 2005, having had this story fully ready to go since October 2004—just before the election. If that story had been published in 2004, it would have revealed that then-president George W. Bush had said to the public face-to-face on television that there was no listening to Americans without a warrant from a court. This was a flat lie, which Bush knew. If the revelation that the president had been lying to that extent about such a crucial constitutional matter had been made when it was first known, it could have easily swayed enough votes to move that very close election. So I do think we have to thank the *New York Times* for their part in giving us another four years of George W. Bush. You all will have different opinions on that. The story was finally revealed because James Risen was about to reveal it in a book, and they didn't want to be scooped by their own reporter, so they finally broke the story in 2005. Bill Keller, the editor for the *New York Times* at that time, should have been fired or “impeached” for holding back that information from the public for a year.

However, there were no documents revealed at the time the article was published. The administration officials totally stonewalled Congress and refused to answer any significant questions, such as how many Americans were being listened to and whether or not they were opening citizens' mail.

They would not answer it. That question has been hanging in the air since it was raised in 2006. Attorney General Alberto Gonzales simply declined to answer the question. Actually, his refusal to answer is pretty much an answer. And we know that in the past, the FBI and other government organizations were indeed opening our mail—hundreds of thousands of letters. I would also say that Gonzales’s refusal to answer the question says a lot about what is going on now, although we don’t hear much about it in the papers, and we don’t have proof of it yet.

Now, why do we have the knowledge that J. Edgar Hoover’s FBI was conducting illegal, warrantless surveillance? In Pennsylvania, some ways away from here in the suburb of Philadelphia called Media, something happened in March of 1971. A burglary took place. A book has just come out which I recommend to all of you, by Betty Medsger, called *The Burglary*.² It’s about the burglary of the suburban FBI office in Media, Pennsylvania, in March of 1971—shortly before June when the Pentagon Papers came out. Eight antiwar, nonviolent peace activists, many of whom had been involved in draft board raids earlier, decided that it was time to go further and try to pin down documents to discover whether there were informants in the peace movement. There were a lot of rumors about this, but no proof of it. Eight of them, several of whom had young children at home, broke into the FBI office. This was not something that was done lightly, as each of them understood that burglarizing a FBI office in search of specific files had a good chance of putting them in prison for life. None of them actually was arrested or identified until this last month in *The Burglary*, when some of them did choose to be interviewed by Betty Medsger and were identified. One of them died just recently: Bill Davidon, a physics professor. Two others, Bonnie Raines and John Raines, who had the small children, have also been identified.

These very ordinary Americans put their lives on the line in order to see what the FBI was hiding. When they went through the files, they found that the FBI was conducting illegal warrantless surveillance of all antiwar movements and black movements of any kind. J. Edgar Hoover was obsessed with the idea that a “black messiah” might rise to organize blacks into some kind of movement of dissent. It later came out that Hoover had Martin Luther King Jr. wiretapped in every place that he went: hotel rooms, home, office, everything. And in fact, he had made recordings of sexual adventures that Martin Luther King Jr. had been involved in, which they sent to him and his wife with a note trying to blackmail him. There were strong implications that he should commit suicide before going to get a Nobel Peace Prize. In other cases, black units were set against each other with false rumors that they had been attacking each other or were informants for the FBI, leading to some deaths. Fred Hampton, who was perhaps the most idealistic and charismatic member of the Black Panther Party, was shot in his bed by the police while he was sleeping. His bed location was identified by his bodyguard, who was an FBI informant. All of this information was found in the files, which were sent in a brown paper envelope to Betty Medsger when she worked at the *Washington Post*. She published what was sent to her.

These illegal actions were all part of a program called COINTELPRO (COunter INTELLigence PROgram). It's worth knowing more about that because it shows how information of the sort the NSA is collecting now is used for political and agency purposes. The other day on January 17, 2014, President Obama assured us that no illegalities and abuses had been revealed by Edward Snowden. Again, that's an absurd statement since the entire collection program as documented so far is a massive abuse of the Fourth Amendment of the Constitution. Congress gave it some fig leaves of legality (though not constitutionality) by giving telephone companies immunity for handing over all the data on telephone calls to the government. But really, that had no shred of legality or constitutionality, even now.

In 2008, the Foreign Intelligence Surveillance Act (FISA) amendments, which Obama signed into law, gave companies immunity. This law definitely should be repealed and should be found unconstitutional if it comes up in the courts. So far, some cases have gone to the circuit courts, even to the Supreme Court, on the violation of constitutional rights by this surveillance. They have been dismissed by the courts on the grounds that the people complaining did not have standing because they could not prove that they themselves had been overheard. Well, that argument has just gone by the wayside, because it turns out that everyone is overheard. You're all overheard, and you all have standing, in effect, and there are class action suits going ahead on this. We'll see where they go. But as I said, these mass warrants were revealed by Snowden. The Foreign Intelligence Surveillance Court (FISC) was established in 1978 as a result of the Church Committee (the Senate Select Committee to Study Governmental Operations with Respect to Intelligence Activities) led by Senator Frank Church and as a result of the revelations that came from this burglary—an act of nonviolent civil disobedience. And, actually, also by what came out of my trial when I was found to have been overheard without warrant a number of times (despite the FBI having sworn several times in court that there was no such overhearing).

When it came out that there had in fact been overhearing, and the judge asked for the evidence of it to see if it had affected the trial, the FBI could not find the records. They had been kept out of the records by the order of J. Edgar Hoover, and particularly by President Nixon, because they were manifestly illegal. Now, what was he overhearing? It was on a home phone of a deputy to Henry Kissinger, the assistant to the president for national security, that I was overheard. I had worked for Kissinger at the beginning of the administration, writing options on Vietnam, which was the basis for Kissinger's first presentation to the National Security Council (NSC) in 1969. The reason his deputy Morton Halperin's phone was being tapped was that there had been a leak of the fact that we were bombing Cambodia (supposedly with which we were not at war) for some time. And that leak led Nixon and Kissinger to be very concerned that someone was telling the truth about this secret operation: that we were at war with a country that, as far as the public knew, we were not at war with. We were bombing them on a large scale. So to find that out, they listened to all the NSC aides including Halperin. I was

overheard on that while I was staying, as a friend of Halperin, at his home while I was a consultant from the RAND Corporation.

And also a bunch of newsmen were tapped, not people who had been involved in the leak, just newsmen they were interested in, including Hedrick Smith and others. There were seventeen wiretaps and those figured in the impeachment proceedings against Nixon. This led to his resignation and actually thus shortened the war, which ended nine months after he resigned. It could not have ended while he was still in office; he would not have ended it. So, the revelation of the commission of that crime was, it turned out, very helpful in shortening the war. And it's interesting to notice that it was focused on officials and journalists specifically—no one else.

In terms of the leak of the bombing of Cambodia (a country we were not at war with and that Congress was unaware we were even bombing) by order of the president, the pilots of the B-52s that were involved filed two sets of flight reports at the end, with different coordinates for their bombings. And it's not clear to this day if the pilots themselves knew that the original coordinates—the real ones—were not in Vietnam but were in Cambodia. Congress was being given the false reports and did not know that this bombing of Cambodia was occurring. So when it leaked out in one story in the *New York Times*, these warrantless, illegal wiretaps were ordered by the president to find who was leaking.

Interestingly, the reason they were particularly interested in me later on was that Nixon feared that I had information going beyond the Pentagon Papers, which was a history of U.S. decision-making that ended in 1968. Nixon had come into office in 1969. So he was not concerned about what was revealed that may have occurred before he took office. On the contrary, he liked it. It showed that Democrats had lied again and again. Indeed, it also showed that the Eisenhower/Nixon administration had lied, but that was history. And he really liked the fact that the Pentagon Papers were incriminating the Democrats. When the Nixon tapes came out, he was heard exulting over the fact that the Democrats' secrets were being told here, and he got very excited about finding out other things that were incriminating or illegal that they could expose on the Democrats going all the way back to Yalta, the Bay of Pigs, the Cuban Missile Crisis, the Diem assassination—an assassination of a Catholic head of state under the first Catholic president of the United States. He named all these. Nixon was very excited to get this out because it would undercut Ted Kennedy, who he still regarded as his most formidable rival. So someone pointed out that this would be quite a big historical project to reveal all of these crimes over decades and that it would really take somebody to organize all of this and to leak it out. It would take quite a bit of effort to do that, so Nixon said, "What you want is an intellectual, someone who knows the history of the times, knows what he's looking for. What you need is an Ellsberg—an Ellsberg who's on our side." And I know when I read that, I thought, "You could have had *me*." While on trial, or from prison, I would have been glad to do that—whether it was on the Democrats or not.

So we have then this history. These so-called Plumbers were a group of burglars, wire tappers, and various criminals on this side of the law, who under a former CIA agent and a former FBI agent, all working for the White House, had burglarized the office of my former psychoanalyst in Los Angeles. What they were looking for was information with which they could blackmail me into silence because they feared that I had information about what Nixon had yet to do and had already threatened to do. I had the information orally, but not in documents. They feared I had documents. People had left the administration over the invasion of Cambodia. They had left the NSC and could have given me documents on these threats—they should have, but didn't. Nixon's fear that they had done so was not paranoid at all.

One of them, Roger Morris, an aide at that time to Kissinger, said later, "We should have thrown open the safes and screamed bloody murder—because that's exactly what it was." And he said his failure to do that was the greatest regret and shame of his life. But to keep me from putting out that material which they feared I had, Nixon and Kissinger wanted information that would keep me silent. So they broke into my psychoanalyst's office to see if there were any notes or anything embarrassing in that sense, and they didn't find it. Later they committed a series of crimes in order to shut me up, including bringing people to "incapacitate Daniel Ellsberg totally" on the steps of the Capitol on May 3, 1972, just before the mining of Haiphong Harbor, which I was predicting at that point. That was another major factor in the impeachment proceedings, along with the illegal wiretaps, the use of the CIA against me, and other things. All of these were illegal at the time.

I used to say a couple of years ago that all of these acts against me had now been made legal except for the incapacitation attempt, but that last is not an exception anymore. The president and his people have both leaked or said publicly that they maintain kill lists that include American citizens which can be executed anywhere in worldwide battlefield in the global war on terror—and that includes the United States of America. Now, that doesn't sound constitutional in terms of due process or the Fifth Amendment, and it isn't. People have questioned the propriety of Obama presiding over these kill lists and actually naming people to be killed. One of them was Anwar al-Awlaki—a deliberate assassination of an American citizen. His sixteen-year-old son was also killed a little bit later by a drone strike; it's not clear to this day who they were aiming at—whether it was him or not. So incapacitation is no longer out of bounds either.

Of course, no higher-ups have been prosecuted for torture. Nothing positive can be said for torture in terms of having made Americans safer or finding out information that would prevent terrorist strikes. One thing is very clear: there's nothing more illegal than torture. Domestically, several laws make it criminal to torture; under international law, it is prohibited by agreements which the United States has ratified. Internationally and domestically, nothing is more illegal than torture. Murder is probably harder

to define in specific terms than torture, at least in regard to waterboarding and other matters. The failure to prosecute that when it came out, mostly by leaks, was itself a violation of law. The Geneva Convention requires us to investigate and prosecute a credible instance of torture. To refuse to do that is to decriminalize torture. And that's what Obama has done; he has decriminalized torture. I don't see how any other president—whether he accepts torture or doesn't accept torture—can really use the Department of Justice to prosecute it after two terms of Obama refusing to prosecute it. Some people want to decriminalize marijuana; he has decriminalized torture. Decriminalizing torture is not good in my opinion. I say that as a former Marine infantry officer who would not have ordered or condoned torture; I feel confident of that. And when I read of Marines who have done it, I feel bad about that.

We come back now to where we are in terms of this surveillance. The president actually began his speech on January 17, 2014, by situating government surveillance very thoroughly in our revered American tradition, surprisingly, by referring to Paul Revere as one of the Sons of Liberty who conducted surveillance on the British. It seems odd that he should reference that. Revere was watching the British to warn the people of Lexington and Concord that the British were on their way—"One if by land, two if by sea." The government of the time, 1775, was under the control of the British. This was before the Declaration of Independence. Paul Revere, then, was surveilling the government—the British Empire—of which we were a part. So there seems to be a little difference there from surveillance by the government. It's much easier to think of Edward Snowden himself as the Paul Revere of today.

Paul Revere was at that time involved in a number of revolutionary associations. There's been a recent article pointing out that if you use just the metadata collection—which shows who you're communicating with and who you're associating with—it shows that Paul Revere would have been at the very center of an analysis of associations. It shows a big spider web and there's Paul Revere at the very center. If the British Empire had been doing this kind of network analysis at the time—which in some sense they undoubtedly were—if they had had a tiny fraction of the surveillance capability that the NSA has right now, is there any chance that the American colonies could have separated from the Empire? That the American War of Independence could have gotten underway? Paul Revere would have been hanged along with everybody he dealt with. Fifty-six signers of the Declaration of Independence were, in the early 1770s, loyal subjects of George III, and traitors subject to be hanged due to their actions on July 4, 1776. Of the fifty-six, five were hanged. Nine died fighting for the Revolution. So, fourteen of the fifty-six gave their lives, their fortunes, and their sacred honor.

Now, Edward Snowden, like Chelsea Manning before him, got my attention. As Chelsea put it, "I'm ready to go to prison for life or even be executed." And she later faced execution, although the prosecution said they would not ask for it. The capital charge under which she was tried included a possible death sentence, and the judge could have given it to her whether the prosecution asked for it or

not. But she was ready for that. Likewise, Snowden said in his first interview, “Some things are worth dying for.” Now, what would that be? A real analogy that I see to Snowden or Chelsea Manning is not so much Paul Revere, but Nathan Hale. People of my generation all know his name because of his last statement on the gallows just before he was hanged by the British: “I regret that I have but one life to give for my country.” He was a spy for George Washington—the first American spy. He was also the first American, and the only one before me, to be tried for giving secrets to Americans. I was the second. No one else had been prosecuted in the intervening two hundred years for giving secrets to Americans.

No one else had been prosecuted before me in 1971 for giving secrets to Americans because it was regarded that criminalization of doing that was unconstitutional under the First Amendment. The British have an Official Secrets Act which very clearly I would have broken if I had been British; I would have been found guilty. It criminalizes any and all release of classified information for whatever purpose, for whatever motivation, and to whomever. If you do it, you’re guilty. That sort of law was rejected repeatedly by Congress (though proposed by a number of administrations) as being inconsistent with the First Amendment’s freedom of the press and freedom of speech. Congress needed that information and the public needed it, yet the First Amendment in this situation was not outmoded. And the Constitution held. When I first started talking about this, Congress had never passed an Official Secrets Act. In November of 2000, it did pass one, but President Clinton vetoed it on constitutional grounds. It violated the First Amendment, and it was bad for our democracy. In other words, the First Amendment shouldn’t be changed for such a law.

After me in 1971, there were two other cases under two different presidents. One of them, again, was dismissed. Mine had been dismissed for government criminality, so it didn’t reach an opinion. The other was withdrawn after rulings by the judge that, in effect, found the “plain language” of the Espionage Act as unconstitutional when applied to that leak case. In the other case, one person was convicted, Samuel Loring Morison, grandson of Samuel Eliot Morison, the great naval historian. He remains the only person to date convicted by a jury of violating the Espionage Act by leaking. He didn’t take the stand in his own defense. He had stolen the document, and he did it for gain; he had wanted to be hired by the publication *Jane’s Defence Weekly*.

By the time of my trial, more than half a century had gone by since the 1917 Espionage Act without any cases for leaking classified information. We’d gone through two world wars, Korea, and most of the Vietnam War. We had sort of gotten along without prosecuting anyone for leaking, although leaks occurred every other day. Not enough of them, but a lot of them. And then there were two more cases in the next thirty-eight years.

Under Obama, there have been seven prosecutions for leaking—more than twice as many as all previous presidents put together. Obama proclaimed on his first day in office (and during his campaign)

that he would conduct the most transparent administration ever. He said on the same day that Guantanamo would be closed within a year. I noticed that he said yesterday that Guantanamo was going to be closed this year if Congress cooperates. He has conducted the most secretive administration ever, and I don't know why—unless it's just easier with this universal surveillance to find out who the sources are. Two of the cases have depended on telephone records that show that so-and-so communicated with a reporter at the time just before the leak came out. They made a good case.

All of the NSA people that I described (Bill Binney, Kirk Wiebe, Ed Loomis, Tom Drake, along with Russell Tice) have testified that this mass surveillance is not only unnecessary, but that it contributes nothing to the finding of terrorists. Under repeated questioning, the president has not been able to come up with one case where this program, which has gone on now since 2001, has contributed to the finding of a terrorist or preventing an act. And these NSA people said it should be stopped, it should have been abandoned. They all said that, from their own experience, they had been mistaken in keeping their warnings and complaints strictly within channels. They said that Snowden did it right, that that's the only way this information would have come out. They haven't come right out and said, "I wish I were facing prison," but they have said that they wanted that information out and the way they used did not succeed. On the contrary, it confronted them with heavy pressure. Drake was ruined financially by a spurious prosecution, punishing him for having told Congress this information. His case was virtually thrown out after he was bankrupt. In fact, after having been a high NSA official with a salary of probably over \$200,000 a year, he ended up broke by the end of the case. He was defended by public defenders because he was indigent.

What do we do with this information that we've gotten from Snowden? In the long run, how much does this matter? I've told you what can be done, what has been done in the past, and what I'm sure is being done right now in terms of the blackmail of congresspersons in their voting and in judicial appointments. Russ Tice has said that he held in his hands at the NSA the private phone records for the office of future Senator Barack Obama in 2005, who was of national prominence because he had made a great speech at the 2004 Democratic National Convention and was being looked at as a presidential hopeful; the NSA was very interested. I don't want to name names here unnecessarily, but the point is that they have this information on everybody. Here's a question for you. Can you have three independent branches of government with separate but overlapping powers and oversight capabilities when the executive branch has every private communication of every member of Congress, every congressional staffer, every journalist, every source, every potential source, every justice on the Supreme Court—everybody? Can you really have independence and exercise oversight when you are aware that you and your staff are subject to that degree of surveillance? I would say no.

How important is that? Well, James Madison, one of the architects of our constitution, said in Federalist No. 47 that to have one person or group or branch of government with total control of legislative, judicial and executive functions is “the very definition of tyranny.” Now, I would guess that for most of you, like for myself, it’s not how we would define tyranny exactly; tyranny is more abusive, oppressive, and so forth. But the idea here, as Obama had acknowledged, is not simply that this kind of power could or might be abused. *Might* water run downhill? It always has been abused throughout history and truly always will be.

Our founders, who were human and definitely had their shortcomings and were looking out for their best interest, produced a document that was not perfect in a number of ways. It was meant to preserve slavery since many of the delegates to the Constitutional Convention were slave owners; that’s not a minor flaw. Thankfully, the Constitution could be amended. But they had some very good ideas, and one of those ideas was the invention that the power of going to war—of waging war—was put solely in the hands of Congress; see Article I, Section 8. The power to wage war was not to be shared with the president, not subject to the consent of Congress. The Constitution says that Congress shall “declare war.” It’s not just on a piece of paper; it’s also very clear from their discussions. They did not want one man, the president, to have the capability, as did the king of England, to take the country to war, except in the case of repelling sudden attacks before Congress could meet. When it came to being at war, Congress should decide that, not because they were inherently wiser, but because they were many and they were closer to the public. They didn’t want one man to have that power.

Actually, one man does have that power. We went to war in Libya, which Obama decided, and for which I believe that he should have been impeached—fat chance of that happening because there’s not the support for it. But he didn’t even bother to consult Congress. Previous presidents had at least gone through the motions of consulting Congress. There was nothing—no consultation. His legal adviser at the State Department was Harold Koh, who earlier had been a strong and effective critic of George W. Bush’s unconstitutional actions. Koh had the moxie to say that it’s not a war because it’s just drones and aircraft surveillance and attacks from the air in which no Americans are at risk because the Libyans don’t have any aircraft capabilities. So as long as we’re not getting killed, we’re not conducting war. That’s an absolutely shocking reversal of position. What they say in Washington is, “Where you stand depends on where you sit.” So when Harold Koh moves from being dean of the Yale Law School to working for Obama, that shocking reversal of positions is the kind of absurd thing that happens.

The allocation of war powers to Congress was a good idea, and the First Amendment was a good idea, and the Fourth Amendment (which I didn’t spend much time thinking about until Snowden) turns out to be a good idea. Actually, what Paul Revere was rebelling against was, in particular, general warrants, or writs of assistance, that allowed the British to invade your property and search your person,

your papers, and your communications at any time—whenever they wanted. That was what John Adams called the spark that started the revolution. That’s what they were rebelling against. And that’s what we’ve got now. The first paper that came out from Edward Snowden was an order from the Foreign Intelligence Surveillance Court for a general warrant for Verizon: Give us all your telephone communications from now on. It couldn’t be more open-ended.

A president who can decriminalize torture, who can kill people, who can take you to war—not only conduct it as commander in chief but start it and keep it going—is not a president in the sense of the Constitution or of what this country was meant to be. He’s a king; he’s an elected king; he’s an elected monarch. That’s the way you could think of it. What we have in our two-party system is a choice between two people who will administer an empire—a choice between two potential monarchs. That’s what the founders fought against, and I think they were right to do so.

Nathan Hale said on the gallows, “I regret that I have but one life to give for my country.” What country was that? Not the country that he was born into—that was the British Empire. It was for a country that didn’t yet exist in the society of nations, a country that was self-governing as a republic, without a king, and eventually with a constitution and separate branches of government. It would pit the ambitions of one group of men against the ambitions of another group of men—and eventually women. And it would be a place where individual rights would be protected, including our private communications, our freedom of speech, and our freedom to give information to the press.

I would say that without investigative journalism, you do not have genuine public sovereignty. If all that you know about the government is what it chooses to tell you, then you don’t have democracy. Without leaks, without anonymity and the protection it provides from the punishment that is to be expected from superiors, you don’t tell truths that your superiors don’t want to be told because they’re embarrassing, criminal, or deceptive. Without that anonymity, you don’t have a free press, and you don’t have democracy. I do not see, at this moment, how any journalist can promise anonymity to a source. And, I would say it’s not just that it can’t be guaranteed, it’s also very unlikely that anonymity will be maintained. That’s very serious. It’s a crisis of democracy. And I say “crisis” in the sense that Edward Snowden has given us a gift of a crisis as opposed to a silent coup, which is what we had after 9/11.

Now we know how much the Constitution has been injured, attacked, and weakened. Above all, the Fourth Amendment is near death. What the president is offering in way of reforms is not even Band-Aids or aspirin for this dying Fourth Amendment. It’s sugar pills; it’s placebos. The question is whether we will tell members of Congress that we want them to act under their constitutional powers to demand answers, to investigate, and to change what Congress is doing. Republican Representative Justin Amash and Democratic Representative John Conyers had a bill to strip the NSA of its right to engage in this mass unconstitutional surveillance. It almost passed; it came within seven votes of passing, to the fear and

consternation of the NSA and no doubt of the president. It can go again; it can pass. But it can only happen if Americans tell Congress the way they told Congress last September in recess, “We do not want war with Syria.” The president, who was all ready to go to war with Syria—and I’ll say this to his credit—deferred to that vision of a legislative defeat he was about to get, and he took up Putin’s offer to get rid of the gas in Syria in exchange for not attacking Syria. I’ve been very critical of Obama, but I will say—and this is not just rhetoric—that I am thankful every day that we are not at war with Syria and Iran now. I believe that if Obama had been defeated in the last election, we would be at war with Iran and Syria right now, and that would be a disaster.

So I feel that Edward Snowden has done more to uphold his oath to “defend and support the constitution”—which he took as a government employee when he was in the CIA, the same oath that every member of Congress took, every officer of the U.S. Army took, that every employee of the U.S. government took—he has done more to support and defend the Constitution of the United States than any member of Congress and any employee of the executive branch, up to and including the president. So I am very grateful to him for that. And what comes of it will depend on what we do. As he said, some things are worth dying for. These rights and these liberties *are* worth dying for; they *are* worth going to prison for. He will not have wasted his time having done what he could. Whatever happens to him, it’s up to us to follow that example.

NOTES

1. Public Policy Polling, “America Likes Witches, the IRS, and Even Hemorrhoids Better than Congress,” October 8, 2013, <http://www.publicpolicypolling.com/main/2013/10/americans-like-witches-the-irs-and-even-hemorrhoids-better-than-congress.html>.
2. Betty Medsger, *The Burglary: The Discovery of J. Edgar Hoover’s Secret FBI* (New York: Knopf, 2014).