The Snowden Revelations

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Question 1

Thank you very much. I had a long interview with Oleg Gordievsky who is former London Bureau Chief of KGB and he was case officer to John Scarlett, he said. And he said to me, he believed freedom must prevail over communism then he decided to come to the West and I wonder why Edward Snowden escaped from the United States to Russia and also Julian Assange?

Robin Niblett

Yes, I think we got the point, exactly, why to Russia, got that point, why did Edward Snowden go there, freedom’s meant to prevail here. Patricia, take the front there.

Question 2

Thank you very much and thanks to all the speakers, excellent points made. I’m very interested in David Omand’s last point about the business, the private sector, and how we give all of our information to them in exchange for their services. I remember a debate, must’ve been around 2009, on Facebook, about whether or not we should pay for Facebook and whether or not we should get it free. And I think the business was done with the business devil then, that we would be essentially not paying, but giving our information.

I don’t think people understood that that information, or at least some of that information, could be then put on and then sent on to governments and I think that has been the shock for people. So somewhere a deal was done. Psychologically it’s interesting they’re prepared to do that deal and not the other but why do you think that is?

Question 3

Thank you. I’m not the old generation but I never heard that democracy, freedom and privacy has anything to do with analogue or digital. These are fundamental issues that have nothing to do with the media which is used. So I think the conversation has been very discouraging on this point. We are hiding behind a different generation, it has nothing to do with that.

Robin Niblett

Okay, it’s not about generations. I think we’ll hear from the audience here the quantity of information maybe is different under digital and analogue and maybe that’s the issue, I’ll let them answer that point. We’ve got three points here but I don’t see other hands jumping up, I’m going to - Julian you may want to come back to the points you made before. By all means take on some of these other points and also I suppose why Snowden has ended up from China to Russia, which would be interesting, two sets of destinations to be taken in the context of what he’s trying to promote.
Julian Borger

Yeah, okay. Well on the economic spying, we do it. I've seen all the documents of what we did. In G20 we set up a bogus internet café so that we could listen to what the delegates were saying.

Robin Niblett

But what do you mean by ‘economic’ because when people say ‘economic’ -

Julian Borger

I'll tell you exactly.

Robin Niblett

Okay.

Julian Borger

For example, the Turkish delegation to G20, we tapped the Head of the Central Bank -

Robin Niblett

Yeah but is that to work out a way of producing a better trade product, or to undermine a Turkish company’s ability to break into the UK market? Because that’s what many people think about ‘economic.’

Julian Borger

Well it was in discussions about what the global infrastructure should look like.

Robin Niblett

Regulatory?

Julian Borger

Regulatory, yes. But also the -

David Omand

The law lays down that one of the statutory purposes of intelligence agent community is economic wellbeing, that is not the same as commercial espionage for the benefit of companies or commercial sectors, and the President has made very clear, in the US that is ruled out.
Jane Harman
It is not stealing of trade secrets.

Julian Borger
It's economic, not commercial and that's what I said

Robin Niblett
That's where I think we're getting confused.

Julian Borger
Economic is the economy. Commercial are you know, companies.

Robin Niblett
Do you want to pick up any of the other points about Snowden or?

Julian Borger
Yeah, on the question of, talking about when we mirrored our data, that isn’t what I was talking about. Before we pressed the button on that, shouldn't there have been a bigger debate on what that means about sovereignty? We mirrored our data that includes the names, addresses, all our GCHQ. It wasn’t like we married our data on intelligence collection in Afghanistan or Iran; we gave all our stuff away and that was actually a big moment but looking through the documents that were seen as being part of the 'let us get closer that ever' process. I’m not a big expert on Julian Assange, the person. My understanding is that he thought at Hong Kong he would at least have a few days.

Robin Niblett
You mean Snowden then? Sorry, you said Julian Assange.

Julian Borger
Oh yeah, no, though Julian Assange comes into this one step later.

Robin Niblett
Snowden.

Julian Borger
Snowden went to Hong Kong because he thought that would give him a few days. As far as I understand it, he didn’t have a concrete plan and then Julian Assange through Sarah Harrison comes to him and says, ‘Oh look, don’t worry we’ve got you in Ecuador.’ They got as far as Russia, the Americans cancelled his passport and his visa.
The Snowden Revelations

You’ll be aware there’s a counter; there’s another story now running, from Russian sources, that actually the SVR posing as Russian diplomats, actually offered Moscow as a safe haven, which WikiLeaks facilitated.

Posing as Russian agents or posing as something else?

As diplomats.

You said posing as Russian agents, posing as diplomats.

Edward Snowden could have gone to Norway, or pick a place, where I think some of us may still have disagreed with what he did. Again, I made clear I’m for the debate we’re having, and we did have a mini debate in the Congress in 2008 when we amended the Foreign Intelligence Surveillance Act, but I wish we’d had the debate on the front end of the whole thing. I’m clear about that.

As I said, the Bush administration did a lot of this in secret on the front end, that was a missed opportunity for the public to understand what we were doing and by the way, with the mindset of 2001, 2002, my guess is that the American public at least would’ve said, ‘Gee, we do want to be more secure, we want to be sure there are robust safeguards so that content - which is not the same thing as communication - my content cannot be listened to unless there is court approval; individual court approval, which is what our Constitution requires.’ But that’s one point.

On this private sector used as the back door for the public sector, that’s a very important question. I think many people are aware of how intrusive the private sector monitoring of your personal information is. But you would say we opt in for that; we choose to do that for convenience sake so we’re comfortable with it even though it is more intrusive.

I don’t think anyone can make a counter-argument that anything the government does: ‘but gee, we didn't know that that data was then being shared with government.’ Well, certainly in the United States that data is shared. The content is shared only with individualized court orders, and the acquiring of the metadata from the private sector also requires a court order, so this is not unsupervised activity.

Jane, the hacking as I understand it, went on between servers of Google or whatever, yes I read about this and now they’ve encrypted it all, was that done with court order?
The acquiring of data from the internet service providers was done with court orders.

But not the ones – yeah because obviously they also went in, inside the companies. The what? Between, exactly. As I understand it, correct me if I’m wrong David on this but there was, in the case of Google and some others, intelligence services went into the internal information within them, so it went beyond let’s say –

I assume - I don’t know anything about the details - I assume that would’ve been done under the President’s intelligence executive order. From that point of view it would've been, as it were, in United States terms, lawful. Whether it’s consistent with the Constitution is not for me to say.

Can I make a point about the background to all of this, which is the huge change that took place at the end of the Cold War, in that period as the Cold War ended, towards needing intelligence on people, rather than on armed forces, their order of battle, I mean that’s still around and Ukraine reminds us of all of that. But, the importance of getting information about people, their movements, their intentions and the people we’re talking about are the serious criminal gangs, the drug and narcotic gangs, the terrorist networks and so on.

Where do you get intelligence about people, assuming you've got a legal authority and a warrant and all the rest of it, the answer is you get it from the digital traces, which now we leave around whenever we use a credit card or check into a hotel room or use an aeroplane. That’s just the modern age.

There’s nothing whatever you can do about it and to pick up the point about analogue and digital, I mean I respect the thought behind it and I agree that the principles do not change. My ethical values don’t change just because we now live in a digital world, but people behave differently today in relation to their personal data. They are prepared to put enormous amounts of personal data in the hands of companies and indeed now in the hands of governments. Passport database, you’ve got all sorts of things are now digitized and that does in a sense change the calculation.

Let me just add two points, and part of this is what Sir David just said: the rise of the non-state actor as an enemy perhaps more lethal than a state, has changed everything. You can’t monitor activities in the same way anymore and secondly to your point, I very much respect what you said and I agree that moral values are moral values, whether we have complex technology or we have smoke signals, but getting at it is different and none of you has missed the fact that social media used capably in countries, can topple heads of countries. You don’t need foreign enemies, you don’t need anything. Social media drives
action in ways that can be helpful; crowd sourcing can be helpful, crowd sourcing also can be enormously dangerous. So, getting at this stuff requires a set of tools that we haven’t mastered. That’s the point I was trying to make. Not a different set of values, a different set of tools.

Robin Niblett

Let me get a few points in, I’ll let Julian come in first. I know that Sir David will eventually have to stand up and walk out of here probably at 4:31, not later than, but if you do David and we have to go over a minute... We can have a cab for you as well at the door, being serious, if that would be helpful. Would that be helpful?

David Omand

No.

Robin Niblett

No? Okay, probably not where you’re going. Exactly, I know, Strand, exactly. Three in the middle, yep. Microphone at the front please. I haven’t gone to the middle, I’ve gone to the side so far.

Question 4

Just one point about this different between the private sector and government agencies and so on. I guess to me there are two differences. One is that I opt in to social media. I give Google permission, or Facebook permission or whoever, to track me or Tesco Club card or whoever.

Speaker

You’ve read all their 90 pages of [indiscernible].

Question 4

Well, true, but the second condition I think this is more important, is they don’t have drones or police or prisons.

Jane Harman

Well, they’re about to have drones.

Question 4

Well, they might do but –

Robin Niblett

They use them for different reasons then.
Question 4

They don’t technically have the ability to kill me. So whereas you guys might all be lovely right now, in 2017 when Nigel Farage is Prime Minister, I don’t necessarily trust him to use that information in a good way and to me one of the fundamental rules of civilization is you don’t build infrastructure that can be used by people who are much worse than you are.

David Omand

Can I just jump in very quickly?

Robin Niblett

Okay, jump in quickly and pass the microphone back.

David Omand

To say that I almost entirely agree with you; I don’t trust governments, that’s why I want checks and balances and a constitutional system and I want oversight. It’s not about the tools, because in a digital age, as I’ve said, we have to give, for our own protection, our own security, the agencies these powerful tools. Therefore it puts the onus on the oversight and for us to be satisfied we trust the overseers and they’re actually competent enough. Now that’s a valid question for debate, but I really don’t think we can do without the tools.

Julian Borger

But that’s the whole issue isn’t it, the capacity is being driven by the technology. Suddenly we can do this, let’s do this and oversight is way behind.

Robin Niblett

Okay, first here.

Question 5

I’d just like to draw out Jane Harman and David Omand on two particular points which they hinted at and I’d just like to ask them to go a little further. Perhaps David first since he’s in a hurry.

To David is the question of, given the way in which intelligence and intercept intelligence has moved to addressing people rather than orders of battle, how desirable and in your view, how possible is it, to develop ways of making use of intelligence as evidence in prosecutions? Because I think that they would help to give the public a lot more confidence in intelligence if they saw it being used usefully in that way.
And to Jane Harman, you said briefly that you thought the law in the United States needed to change. It would be very interesting to hear your summary of what effects that needs to be, what effects are you looking for in new law?

Robin Niblett

David, do you want to answer the question quickly? Then you’ve got the choice of having to step up if you need to.

David Omand

To answer very quickly, communications data is useable and is indeed used in almost every criminal case. It’s a hugely powerful tool and I worry that as the ISPs go offshore they back away from government it will get harder to actually get that.

Content is, under United Kingdom law, currently ruled out as you know. We got the heads of the intelligence agencies all to agree that in principle and indeed the police service to agree in principle that it was fine if somebody would decide a legal regime which wouldn’t open the intelligence agencies up to kind of fishing expeditions into ‘but where exactly did this intercept come from’ and we’d like to see all the intercept relating to a client, which might well actually include information about other terrorists for example, who didn’t even know they were under surveillance.

Nobody’s yet managed to produce the equivalent of the United States system, where you have a lower court which actually in secret as it were, looks at this stuff and then certifies it’s okay for the higher court. That’s not acceptable to our legal system, I’m told, but maybe somebody will devise a better system or indeed the Scottish-type [indiscernible] who would have the French investigating magistrate, who would be allowed to use the intercept and then certify the bits that are relevant; only the bits that are relevant to the case.

Just a final point, we have equality of arms so in our justice system the defence has to have the right to see the evidence and to request disclosure and that’s great, it’s fairness, but it makes it a bit tricky when we are actually dealing with - and Snowden’s revealed some of the tricks of the trade - you don’t necessarily want specific terrorist group to know that that was the trick that enabled this intercept to be made.

Robin Niblett

David, thank you very much but before you answer Jane... Don’t go up the road with your microphone on because then we will be listening to you all the way to your lecture. Certain prime ministers have had that problem.

We have a few other points waiting. I’m going to gather together the last set of comments and then give an opportunity to Jane. Actually that question you had about ‘how would you design things differently in America?’ would be a perfect way for you to wrap up actually, but you can answer other questions as well.
Question 6
I was an analyst. I’m interested in the non-warrant taps which are possible. They may not be used, may be used. An example of this would be, for example the emergency the line on your phone which is government owned and is not your personal line so it’s about to be tapped without a warrant basically.

Robin Niblett
So, quite specific. We may the person who would’ve answered that question for you. First the gentleman waiting there with the white shirt, then I’m coming to...

Question 7
I was going to ask David, why does it take whistle blowers for us to find out about the extent of GCHQ surveillance but he isn’t here so I’ll ask Jane: does she think that America and Obama’s war on whistle blowers has been counter-productive, now that a whistle blower, Snowden is in Putin’s Russia, which is not a particularly safe place for a whistle blower to be?

Question 8
Really picking up David’s point about checks and balances. One, our country is too secretive. When asked in a Parliamentary question, ‘Under what laws do you operate these exercises?’ they say, ‘We do not comment on security matters.’

Two, the oversight arrangements are pathetic. They’re much better in America, they’re not good enough in America but they’re completely pathetic. Anthony May is the best of his train of commissioners and yet you should look at the Home Affairs Select Committee interview of him about how he came to the conclusion that GCHQ was fine. It was basically, ‘We’re all gentlemen, boys.’ You know.

Three, as a result of that, we have far too much surveillance, simple measure, 550,000 requests from police forces primarily, in one year alone. About ten times as many as the FBI go for so we have a completely broken oversight system. There is no check, there is no balance.

Robin Niblett
We’ll carry on with these conversations. Gentleman there? I’m going to run out of the time, just a few more comments, we’re going to finish in the next four or five minutes so quick points.

Question 9
The ISC said it was going to be holding an inquiry into oversight. It asked for responses by 7 or 8 February. To date it has not had a single public hearing and most of us who sent in things have yet to hear from them, except very, very indirectly. If you compare that level
of productivity with the standard Select Committees in the House - and they always want to be compared with the Select Committees - it looks, in David’s words, pathetic.

And the second thing is, we get this sort of constant figure of 25 per cent worth of damage, prefaced by the phrase ‘it is estimated’, which is the standard way of introducing something into public debate without saying who has estimated it or how the estimate has been done. In fact the stuff about how to avoid attention has been awash on the internet long before Snowden ever came through, some of it designed to help people in oppressive regimes but the same techniques that you use to support people who are in oppressed regimes, will be used by criminals and also be used by people we would regard as our adversaries.

Robin Niblett

Okay I think it’s the last two coming up here and here. I can’t take them all, I’ve got five hands. Front row, far right hand corner. If you take the microphone down there that would be great.

Question 10

Thank you. Jane said that she hopes that Snowden’s 15 minutes of publicity would soon be finished. I’m interested in whether you think history will see him as a villain or a hero and what you think will, and what you think should, happen to him.

Robin Niblett

Okay, there we go. This one I think both of you could step into. Yep, last point.

Question 11

Question really for Jane. You described accurately the presidential surveillance programme but it’s really a rather horrifying example, I would suggest, of a failure of governance and why we cannot have any confidence even in the arrangements you have in the United States. You know the snapshot of the programme was actually physically happening inside Fort Mead before the president had signed the order; that’s worrying. And there was that extraordinary incident where two cavalcades of cars raced to a very sick attorney general in a North Washington hospital with the deputy trying to get there before the White House team forced this ill man to sign off and allow the continuation of the programme.

Jane Harman

He did not.

Question 11

He did not sign off on the programme, but that kind of stuff you would think you only see in movies, that is the extent to which your system was nearly broken, I suggest.
Robin Niblett

Right, Jane why don’t you go first? I think it would be fair to let Julian make some final comments as well on where Edward goes from here.

Jane Harman

I can’t really comment on the British system; I don’t know it well, it’s not that I’m ducking, but I can’t do it. I can comment on the fact that we work closely together and I do think that many of the things we have been doing have kept both countries quite safe. But first of all I was involved in 2004, in the massive reform of our intelligence system, after 9/11 where we did not connect the dots, we set up a system run by the Director of National Intelligence who was a command centre across our sixteen agencies.

One of the big building blocks of that law was the creation of a Privacy and Civil Liberties Board. Unfortunately that Board was not fully functional until last year. The people weren’t nominated, they weren’t confirmed; the usual nonsense that happens in our government.

Finally it is functioning and that board voted, three to two, it’s functioning, to question the constitutional basis of the metadata programme. You could agree or disagree but that Board has the tools and the people to question a lot of what we do and the whole idea was to have it built in, baked into the front end of our policy making. If it had existed in 2004 I think we would’ve done a better job than we did, so that’s number one.

Number two, what reforms do I want to see? I want to see vastly more transparency. I do think it is a good idea for the decisions of our foreign intelligence court to be made public, maybe taking out anything that would reveal sources and methods; we don’t want to compromise our ability to find out plans of bad guys, but we do want to give the public comfort that the programmes are strictly reviewed and I think both the content of those decisions and the number of those decisions, certainly the major decisions, to the maximum extent should be public. It should also be public, how many people’s content is being reviewed.

It’s a very small number. It was 300 in 2012. 300 individual conversations, not mega millions. That’s second and I do think that the storage of metadata, because it would make people more comfortable, shouldn’t be in government hands. Those are reforms that we’re going to make. Those are some of them. I don’t know anything about the emergency line and the British things so I can’t comment on that.

On whistle blowers, isn’t this the worst outcome for whistle blowers, the whistle blower goes to Russia? I dispute that Snowden was a whistle blower. I don’t see it that way. His emails to NSA don’t exist. There was one thing where he asked whether an executive order has the same force as a law does, answer is ‘no’, and the person responding to him, a legal person, said, ‘call us with additional questions.’ I don’t think he did that.

I think he had a lot of opportunities, if he was so uncomfortable, including going to Congress and talking to members of Congress, many of whom raised questions about these programmes so I don’t see him that way and in terms of how will Edward Snowden
be viewed over time, I really don’t know. I think the debate is important. I wish the debate had happened earlier, but I don’t know how he’ll be viewed and what will happen to him? I don’t know what will happen to him.

It’s in the public press that he is negotiating some kind of plea or hoping to, to come back to the United States. I wish he had stayed there. I think if he did come back he would face a fair trial. There are many people in the United States who are sympathetic to what he did and proving espionage is extremely difficult so what would happen to him, I don’t know. And the final comment, let’s see, there was another one. Oh, do we have too much surveillance? I don’t know the answer to that either. How much is too much?

Remember that the identity of the Boston Marathon bombers only happened because not only were there public cameras taking pictures, but people voluntarily turned in their cell phone pictures and this was put together very astutely by law enforcement and these fellows were found and remember, most people believe that their plan was to drive on to New York and try something in Times Square.

Oh by the way they had figured out, using internet tools, how to make pressure cooker bombs that worked. Most people can’t figures that out but these guys had figured it out. So just think what was avoided by the fact that there was a lot of surveillance.

Robin Niblett

Thank you very much Jane. Julian you get the last comment on a few of these points, a couple of them I think were particularly targeted at you, or for you.

Julian Borger

The trouble with him going to face the Espionage Act is there isn’t a public interest defence in the Espionage Act so it would be hard for him to make that [indiscernible] because that’s what his intention was, he’s not a spy, I don’t think his intention was to give it to foreign government. In a bigger picture I think this is like an immune reaction to 9/11 and 7/7 here. We’ve had a kind of exaggerated immune reaction that led us into Iraq, it led us to torture people or to be complicit in their torture and it’s led us into this kind of bulk collection of data. Each time the security agencies are challenged on this they say it’s about saving lives: ‘we must do this in order to save lives.’

It’s given the lives that are at threat or have been taken as a result of terrorist action a value far beyond other lives that are lost for other reasons and we’ve done all these things, we’ve tortured them, we’ve invaded Iraq and we’ve brought in this huge infrastructure, which is a kind of - you pointed out - a kind of turnkey dictatorship; someone comes in, it’s all there waiting. We’ve done this because we’ve been held hostage by this idea that if we don’t, people are going to die.

But political leadership has choices about where to spend money to try and save lives. I mean there are far more lives lost in the US from lack of gun control. There are many lives lost by the inadequacies and under-funding of the NHS here. So ultimately it comes to a
question of political leadership and that, in my view, is what’s been lacking when it comes to talking to the security agencies.

Jane Harman

Can I just add one thing, Robin?

Robin Niblett

I may have to give a final word but go ahead, yes.

Jane Harman

I think we have overreacted, in many ways. I do think it’s time for a course correction a decade after. I think mistakes have been made with respect to some of these practices, certainly how we prosecuted the war in Iraq, look at what’s happening now, and a number of other decisions that don’t specifically have to do with these programmes. But what I didn’t add was that chase to the hospital and John Ashcroft and all that; that happened because the Bush administration adopted new practices in secret. Those of us in Congress who were on the right committees didn’t know a thing about that, didn’t know anything about that until it came out in the Press a few years later.

Robin Niblett

Let me draw this to a close because we are well over time but all I can say is, we’ve lost one person, who was on our panel as it happens he had to go and teach and apart from that it shows to the importance of the topic that’s been debated today and if I may say so I think a great set of comments and three panellists who have each given an angle which has been particularly interesting and insightful, in my opinion.

My concluding comment would be on this: I think people – voters - will demand security. Delivering security in this digital world, in a ‘non-state threat’ world - Jane, a phrase you used but I think we all recognize that – was not about checking throw weights but it’s about checking the intentions of individuals, is going to demand a different type of security.

The question’s going to be whether we’re going to apply the same standards of transparency and democratic governance to this new structure that we expect, and that the Guardian and others who’ve really taken this story forward are using, as I think, the beating stick to make that case.

And so there’s a lot to be done, a lot to be learnt, we’re clearly not there yet. We heard the sense that perhaps, certainly in this country in particular, that rising up to be able to challenge the executive branch has not yet put itself into place. It would leave a lot of room for work.

The US system is far from perfect and that was pointed out, Jane by you and by others here as well; we’ve both got a lot to learn. I think if we - Chatham House and Woodrow
Wilson – can do some things together on that front, I look forward to doing it, but I also thank everyone for being so involved and bringing so much of their own knowledge to this conversation. And to our great set of panellists, we look forward to seeing you next time, on this topic. Thank you.