



ISLAMiCommentary  
PUBLIC SCHOLARSHIP ON ISLAM & THE MUSLIM EXPERIENCE

## David Schanzer: Staying Off the Snowden Bandwagon

December 17, 2013

by DAVID SCHANZER for ISLAMiCommentary on DECEMBER 17, 2013:



David Schanzer

It has been a good week for Edward Snowden. First, *Time* magazine announced that he was the runner up for “Person of the Year” and then a U.S. district judge struck down the National Security Agency’s metadata program as unconstitutional. NSA officials even announced that they are considering amnesty if Snowden would stop leaking highly damaging secrets.

The Snowden bandwagon may be crowded these days, but there are many reasons to stay off of it.

Snowden acolytes claim that he is worthy of praise because he exposed the extent to which the NSA has been violating personal privacy around the globe and stimulated a much needed debate on the proper limits of government surveillance in the digital age. *Time* said Snowden was considered for its prestigious annual award based on the “impact on the news” not the merits of his actions. But of course, if that were the true criteria – Osama bin Laden would have had to have been *Time*’s person of the year in 2001, not Rudy Giuliani.

Snowden was Person of the Year runner-up because the media applauds what he did — cracking open a super-secret government spy agency whose sole purpose is to capture and review private communications — an activity the media views with deep suspicion and thinks the public should as well. Snowden is considered a hero by many because he has given a voice to the people by

exposing the government's secret operations and holding the government accountable to the democratic process.

While it is undoubtedly true that Snowden has stimulated an important public debate, it hardly means that his illegal and unethical conduct should be honored and glorified.

Surely we cannot begin to assess the costs and benefits of Snowden's disclosures without considering the extent of the damage he has done to our national security. Every indication is that the damage is already severe and could get much worse. It appears that Snowden may have stolen 31,000 documents, some of which could provide U.S. adversaries a roadmap on how to block U.S. surveillance activities.

So the Snowden fan club has to answer this: Is the public accountability benefit of the NSA leaks worth it if Iran is able to block all NSA surveillance of its nuclear program? Or we can no longer capture communications from North Korea, Russia, or China? Thanks to Snowden we are considering whether the NSA has overreached, but let's not pretend that public disclosure of these activities has not had a steep price.

Those who applaud the enhancement of democratic accountability resulting from the leaks also have to defend the undemocratic nature of Snowden's activities. The programs Snowden has revealed (and possibly destroyed) were endorsed by the democratically elected president of the United States, authorized and funded by the democratically elected United States Congress, and blessed by a court (albeit a secret one) that was given oversight responsibilities through the democratically enacted USA Patriot Act.

If you believe that America's national security requires that at least some government activities must remain secret, then our system gives these actors the responsibility to determine where to draw the line between what should remain secret and what can be disclosed. Certainly, no one elected Edward Snowden to make this judgment. Rather, he arrogated to himself — a lowly 30-year-old government contractor — the right to overrule the judgment of the President and Congress that these activities needed to be kept secret.

Snowden is being hailed as a moral hero, who has sacrificed his livelihood and liberty for the public good. His actions, however, had no moral legitimacy. The only reason Snowden had access to valuable NSA secrets was because he promised not to disclose them. He broke this promise. Then he stole government property. Then he broke the law by providing documents to journalists who were not authorized to receive them (and lacked the equipment, infrastructure, and training to protect these documents from foreign adversaries).

Some claim that the criminal charges against Snowden are somehow illegitimate because they are based on an almost century-old law prohibiting espionage. But that law is not invalid just because it is old and it is crystal clear in making it a crime to "willfully communicate" any "information relating to the national defense" to "any person not entitled to receive it."

Snowden is hardly walking in the footsteps of King and Mandela in how he chose to confront what he perceived to be unjust government action. True civil disobedience requires the

acceptance of punishment as a form of protest against injustice. Snowden had no interest in sacrificing his liberty for a cause. He only disclosed his illegal activities after fleeing to China – that beacon of freedom and accountability – and then to Putin’s Russia, where he claimed that facing prosecution with all the rights guaranteed by the U.S. Constitution to be a form of political persecution. Snowden is giving the worthy concept of asylum a bad name.

Snowden had many other ways to bring public attention to what he viewed to be overbearing and unconstitutional governmental surveillance activities. He could have quit his job and spoken out against the NSA (without revealing details of the programs). He could have petitioned to have the NSA programs declassified. He could have filed whistleblower claims with the intelligence community inspector general or with the congressional intelligence committees. He could have sought disclosure of the programs under the Freedom of Information Act. None of these avenues of accountability are as strong as they need to be, but Snowden wasn’t even willing to give them a try before lying, stealing, leaking, and fleeing.

By transforming Snowden into a global celebrity, the media, together with the anti-government surveillance crusaders around the world, are encouraging other government insiders to spill their secrets. A world with multiple Edward Snowdens is the national security journalist’s dream come true.

But for those who understand that security often requires secrecy, and are concerned about the consequences of a world where illegal leakers escape punishment and are revered as global heroes for democracy, Edward Snowden’s face still belongs on a wanted poster, not (almost) on the cover of *Time* magazine.

*David Schanzer is an Associate Professor of the Practice at the Duke Sanford School of Public Policy, Director of the Triangle Center on Terrorism and Homeland Security, and affiliated faculty with the Duke Islamic Studies Center. He teaches courses on counterterrorism strategy, counterterrorism law and homeland security at Duke. Prior to his academic appointments, he was the Democratic staff director for the House of Representatives Committee on Homeland Security from 2003 to 2005. His positions in the executive branch include special counsel, Office of General Counsel, Department of Defense (1998-2001) and trial attorney, U.S. Department of Justice (1992-1994).*