

# **Defining Journalism, Legally**

Exploring the role of journalism  
in wake of the NSA revelations

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# INTRODUCTION

How do you consume your news? What sources do you deem credible? What is it about those sources that makes them credible? How do you construct your worldview and shape your reality?

Big questions — I understand that. Nonetheless, these are important questions that should be addressed at the individual level. In case you've yet to realize it, a marketing holocaust has been encroaching the planet in recent years. Advertisers, marketers, trolls, propaganda producers and the like all want a piece of your mind.

We are living in unprecedented times. The rise of digital technology continues to escalate at an increasing rate hindering our legal system's ability to properly regulate the emerging world of cyberspace.

The Internet is still in its infancy stage when compared to the grand scale of human communications technology. Certainly there are countless examples of success pertaining to the Internet. Wikipedia, Facebook and email offer a few prime examples. We are learning how to better organize information, how to stay connected socially and how to work more efficiently.

However, the danger of getting caught up and blindsided by the glamorous benefits has become a reality. The rise of digital technology is analogous to the rise of threats enabled by such technologies. The more we integrate technology into our daily lives, the more at risk we become to exposing bits of our private, personal lives. Privacy is on the brink of extinction.

Digital technology has truly shaken up our world. It has played a major role in shaping the evolving media industry and political arena. Historically, the Fourth Estate has served as a watchdog keeping American officials in check. However, politics combined with "free market" rhetoric have caused many news consumers to undermine the authenticity of several traditional media outlets.

The role of a journalist needs to be reexamined and properly understood by both media producers and consumers. The role of a journalist hasn't strayed far from traditional standards. It has simply adapted to the evolving *digital first* media model. However, *digital first* media is largely responsible for the saturated media market we face today.

The increased noise volume enables "establishment journalists," trolls and content marketers to camouflage their messages as truth — factual, verified, accurate information in the public's interest. Moreover, special interest groups along with objective-enamored, nostalgic journalists fuel the problem by mislabeling adversarial journalists as activists, amateurs or even traitors.

Many of these rising issues and questions were brought to light on June 5, 2013, when one man listened to his conscience and blew the whistle on the National Security Agency (NSA) of the United States of America. This man has been heralded as a hero by some and denounced as a traitor by others. His name is Edward Snowden.

# Part 1:

## The Catalyst for Change

“Give me the liberty  
to know, to utter, and to  
**argue freely according to conscience,**  
above all liberties.”

-John Milton

Edward Snowden — hero or traitor? If you find yourself unsure at the moment, please keep reading. This paper is intended to educate and inform Millennials about the ongoing story of Snowden's leaked NSA disclosures.

I've spent the past year researching and following the epic saga so I could break down the complex issue in an organized, comprehensive manner. My goal is to present the facts clearly so that the average reader can easily understand this intricate series of historic events.

Most of Snowden's actions were backed by reason or moral conviction. He strategically sought out a journalist whom he felt comfortable collaborating with and understood the dark side of the convoluted media industry. While he openly expressed concern about becoming the focus of the NSA disclosures, he understood detachment from the story would be inevitable as well.

"Who I am really doesn't matter at all," Snowden said during a TED Talks interview. "If I'm the worst person in the world, you can hate me and move on. What really matters here are the issues. **What really matters here is the kind of government we want, the kind of Internet we want, the kind of relationship between people and societies.** And that's what I'm hoping the debate will move towards, and we've seen that increasing over time. If I had to describe myself, I wouldn't use words like 'hero.' I wouldn't use 'patriot,' and I wouldn't use 'traitor.' I'd say I'm an American and I'm a citizen, just like everyone else."<sup>1</sup>

Once the disclosures went public, his concerns became justified as he became the most wanted man in the world. Yes, Snowden is and should be part of this story. However, he should not be the focal point nor a reason to delegitimize the alarming disclosures.

Before we dive into the leaked files and dissect the overall significance of the revelations, it's important to understand Snowden — his intentions, political background, work history and thought processes. To do so, let's conduct a 5 W (who, what, where, when, why) analysis of Edward Snowden.

## WHO is Edward Snowden?

Edward Joseph Snowden is the whistleblower responsible for the largest leak in the NSA's six-decade history. He was born June 21, 1983, in Elizabeth City, North Carolina — the son of lower-middle-class, federal government employees. His father spent 30 years in the Coast Guard and his mother worked as a clerk at a United States District Court in Maryland.

He grew up in Maryland where he attended Arundel High School for a year and a half until he dropped out after missing several months of classes due to illness. At the age of

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<sup>1</sup> "Transcript of "Edward Snowden: Here's How We Take Back the Internet"" TED.com. March 19, 2014. Accessed September 17, 2014.

16 he enrolled at Anne Arundel Community College where he took computer courses and eventually earned his GED.

Establishment journalists quickly exploited his educational background featuring him as a “dropout.” Fox News Channel’s Megyn Kelly began her television show stating: “A global manhunt now underway for the high school dropout who orchestrated one of the biggest intel leaks in American history. Welcome to *America Live* everyone, I’m Megyn Kelly.” Before even introducing his name or relationship to the NSA, Kelly set the stage of her coverage with an unfavorable tone.

Columnist David Brooks concocted the following lead in a *New York Times* op-ed: “From what we know so far, Edward Snowden appears to be the ultimate unmediated man. Though obviously terrifically bright, he could not successfully work his way through the institution of high school. Then he failed to navigate his way through community college.”<sup>2</sup>

The lead of another article on CNN follows the same trend: “He’s a high school dropout who worked his way into the most secretive computers in U.S. intelligence as a defense contractor — only to blow those secrets wide open by spilling details of classified surveillance programs.”<sup>3</sup>

These so-called news stories are more focused on Snowden and his past than on his current affairs or the revelations themselves. Something worth noting.

Bottom-line, Snowden recognized the threat of establishment journalists, which is why he strategically sought out a journalist whom he felt comfortable confiding in. That journalist turned out to be former constitutional lawyer Glenn Greenwald.

Greenwald was working as a columnist for *The Guardian* at the time and has played a major role in advancing Snowden’s intended public debate. Within a year of meeting Snowden for the first time, Greenwald released a comprehensive, first-hand account of the on-going story in his book *No Place to Hide*.

Addressing Snowden’s educational background and qualifications for his federal positions, Greenwald writes:

[Snowden] explained that the entire intelligence community was desperate for tech-savvy employees. It had transformed itself into such a large and sprawling system that finding enough people capable of operating it was hard. Thus the national security agencies had to turn to nontraditional talent pools to recruit. **People with sufficiently advanced computer skills tended**

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<sup>2</sup> Brooks, David. "The Solitary Leaker." *The New York Times*. June 10, 2013. Accessed December 11, 2013.

<sup>3</sup> Starr, Barbara, and Holly Yan. "Man behind NSA Leaks Says He Did It to Safeguard Privacy, Liberty." *CNN*. June 23, 2013. Accessed December 11, 2013.

**to be young and sometimes alienated, and had often failed to shine in mainstream education. They often found Internet culture far more stimulating than formal educational institutions and personal interactions.** Snowden became a valued member of his IT team at the agency, clearly more knowledgeable and proficient than most of his older, college-educated colleagues. Snowden felt that he had found exactly the right environment in which his skills would be rewarded and his lack of academic credentials ignored.”<sup>4</sup>

The attempt to leverage Snowden’s dropout status reveals the insensitive, biased reporting of several media outlets. Demonizing a person who hasn’t formally acquired a degree indirectly devalues the lives of many American citizens. These accusations expose “establishment media” more than strengthen their intended argument.

Alternative media reports, including Greenwald’s *No Place to Hide*, showcase Snowden’s compensating work experience and involvement with the US government.

Anyone old enough to remember the 9/11 attacks understands they had a profound impact on our country. Snowden was no exception. He openly indicates the historic event significantly altered his political views causing him to be much more “patriotic.” As a result, he decided to enlist in the Army Reserves in 2004 with intentions to fight in the Iraq War. Snowden’s army experience was short-lived as he broke both of his legs in a training accident and was forced to leave. However, what began as an honorable effort to free the Iraqi people from oppression turned into an eye-opening experience exposing the real purpose of the war.<sup>5</sup>

Still determined to work for a noble cause, Snowden began working as a security guard in 2005 at the Center for Advanced Study of Language at the University of Maryland — a building secretly managed and used by the NSA. Within that same year, Snowden’s technical skills advanced him to a contractor position as a technical expert for the Central Intelligence Agency (CIA).

The following year he increased his opportunities by becoming a full-time staff member of the CIA. Then, in 2007, he applied for a new position to work on computer systems abroad in Switzerland. This position allowed him to work undercover in Geneva for three years until he returned to the NSA in 2010. Upon returning to the NSA, Snowden worked for the Dell Corporation where he spent time stationed in Japan. Dell eventually transferred Snowden from Maryland to Hawaii in 2012, which is the year he began collecting specific documents he believed the world should see.

Near the beginning of 2013, Snowden realized there was one set of documents he still needed to obtain in order to illustrate the big picture. However, his position at Dell lacked the proper credentials. To overcome this obstacle, Snowden tactically applied to

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<sup>4</sup> Greenwald, Glenn. *No Place to Hide: Edward Snowden, the NSA, and the U.S. Surveillance State*. New York: Metropolitan Books, 2014. 41.

<sup>5</sup> Greenwald, Glenn. *No Place to Hide: Edward Snowden, the NSA, and the U.S. Surveillance State*. New York: Metropolitan Books, 2014. 40.

be an infrastructure analyst at one of the nation's largest and most powerful private defense contractors — Booz Allen Hamilton. Here, he gained access to the remaining documents he hoped to download. Most notably, he was able to collect information on the NSA's secret monitoring of the entire telecommunications infrastructure inside the United States.<sup>6</sup>

Now that you've acquired a basic understanding of the man behind the leaks, we can take a look at the types of documents he chose to reveal and examine his thought-process.

## WHAT kind of information did Snowden disclose?

Snowden didn't simply download any file he got his hands on to release to the public. He made a series of conscious decisions to safe guard against unnecessary casualties and increased threats. His choice to reveal NSA material as opposed to documents from the CIA reaffirms that claim. Documents from the CIA would have been more harmful to individual people, whereas the NSA files reveal more about the system itself. This section provides a breakdown of the some of the groundbreaking documents spurring public debate.

### Verizon Court Order

Greenwald was the first journalist to break the story with the *Guardian* on June 5, 2013.<sup>7</sup> The first document to be made public was the top secret court order forcing Verizon to hand over all telephone data. The document orders Verizon "on an ongoing daily basis" to turn over "an electronic copy of the following tangible things: all call detail records or 'telephony metadata' created by Verizon for communications (i) between the United States and abroad; or (ii) wholly within the United States, including local telephone calls."<sup>8</sup>

Greenwald explains the significance of this document in his book: "That meant the NSA was secretly and indiscriminately collecting the telephone records of tens of millions of Americans, at least. **Virtually nobody had any idea that the Obama administration**

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<sup>6</sup> Greenwald, Glenn. *No Place to Hide: Edward Snowden, the NSA, and the U.S. Surveillance State*. New York: Metropolitan Books, 2014. 48.

<sup>7</sup> Greenwald, Glenn. "NSA Collecting Phone Records of Millions of Verizon Customers Daily." *The Guardian*. June 5, 2013. Accessed August 24, 2013.

<sup>8</sup> Vinson, Roger. "Verizon Court Order." April 25, 2013. Accessed August 24, 2013. <http://s3.documentcloud.org/documents/709012/verizon.pdf>.

**was doing any such thing.** Now, with this ruling, I not only knew about it but has the secret court order as proof.”<sup>9</sup>

Proof — that’s the key. Without proper evidence, such claims would simply be dismissed as nonsense or conspiracy. It’s important to keep the complexity of this story in mind as everything is connected. This single document reveals more than a court order forcing Verizon to comply with its demands. It reveals how the NSA interprets certain laws such as the Patriot Act, which is as equally frightening.

The court order indicates Section 215 of the Patriot Act authorizes such bulk collection of telephone data. However, as Greenwald points out, a controversial issue behind Section 215 was that it “lowered the standard the government needed to meet in order to obtain ‘business records,’ from ‘probable cause’ to ‘relevance.’ This meant that the Federal Bureau of Investigation, in order to obtain highly sensitive and invasive documents—such as medical histories, banking transactions, or phone records—needed to demonstrate only that those documents were ‘relevant’ to a pending investigation.”<sup>10</sup>

## **BOUNDLESS INFORMANT**

When NSA officials were asked to estimate the number of Americans having their phone calls and emails intercepted, officials repeatedly claimed that data was unknown. However, BOUNDLESS INFORMANT reveals how a program was designed to measure the NSA’s surveillance activities with mathematic precision.

On March 12, 2013, Senator Ron Wyden asked Director of National Intelligence James Clapper, “Does the NSA collect any type of data at all on millions or hundreds of Americans?” Clapper’s response, “No, sir.” Clapper is the senior national security official for the Obama administration. If high-ranking government officials are blatantly lying to Congress like this, we have a serious problem. A free and open society does not operate this way. How can we continue to trust those who have been caught in such drastic lies?

## **WHERE in the world is Edward Snowden?**

The fact that Snowden spent a year in Russia may appear disreputable to the critics out there. This is a valid concern given Russia’s current state of affairs. So let’s take a look at Snowden’s travel route and his intention behind each move.

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<sup>9</sup> Greenwald, Glenn. *No Place to Hide: Edward Snowden, the NSA, and the U.S. Surveillance State*. New York: Metropolitan Books, 2014. 27.

<sup>10</sup> Greenwald, Glenn. *No Place to Hide: Edward Snowden, the NSA, and the U.S. Surveillance State*. New York: Metropolitan Books, 2014. 28.

May 20, 2013 — Snowden arrives to Hong Kong after requesting a couple weeks off from Booz Allen Hamilton for epilepsy treatment. He checked into the Mira Hotel under his own name and remained in China until he flew to Moscow on June 23. While at the hotel, Snowden made a point to be open, using his own name and credit cards to prevent claims that he's a spy or working against the U.S. "I'm not planning to hide what or who I am," Snowden said, "so I have no reason to go into hiding and feed conspiracy theories or demonization campaigns."

So why head to China in the first place? Snowden had two prioritized motives when it came to choosing a location. First, he wanted to ensure physical safety from the U.S. government until he could get the documents out to the public. Secondly, he wanted to choose a place "where the people had a commitment to political values that were important to him," Greenwald writes, adding, "Snowden pointed out that Hong Kong had democratically elected leaders and was also the site of large street protests, including an annual march against Tiananmen Square."<sup>11</sup>

Snowden had his eye on other smaller nations such as Ecuador and Bolivia. However, he felt China would be the best starting point considering they are more capable of standing up against U.S. pressure to turn him over. Once federal prosecutors filed a criminal complaint against Snowden, U.S. officials contacted Hong Kong authorities for Snowden's extradition.

The criminal complaint charged Snowden with "theft of government property," "unauthorized communication of national defense information" and "willful communication of classified communications intelligence information to an unauthorized person."<sup>12</sup> The last two charges were brought under the 1917 Espionage Act.

These charges signaled it was time to leave Hong Kong. Snowden was seeking asylum with different nations in Latin America, but the U.S. revoked his passport during a layover in Moscow. Without a passport, Snowden became stranded. Russia eventually granted him temporary asylum for a year, which allowed him to leave the transit zone and roam free outside of the airport.

Snowden's temporary asylum expired Aug. 1, 2014, but Russia allowed him to extend his stay with a three-year residential permit. If granted political asylum, Snowden would

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<sup>11</sup> Greenwald, Glenn. *No Place to Hide: Edward Snowden, the NSA, and the U.S. Surveillance State*. New York: Metropolitan Books, 2014. 49.

<sup>12</sup> Kralik, John. "Criminal Complaint." June 14, 2013. Accessed August 24, 2013. <http://s3.documentcloud.org/documents/716888/u-s-vs-edward-j-snowden-criminal-complaint.pdf>.

have been allowed to stay in Russia permanently, but the residential permit still enables him to travel abroad for up to three months at a time.<sup>13</sup>

## **WHEN did Snowden decide to become a whistleblower?**

Alright, now that we have a better understanding who Edward Snowden actually is, let's examine his evolving thought process. What was the trigger that incited him to start collecting files? Was it a single malicious act or a series of insidious tactics carried out by the NSA?

Remember: Snowden came from a family of federally employed parents. His grandfather even spent time working for the FBI. And he claims the 9/11 attack made him more patriotic, ultimately motivating him to join the Iraq War. So what caused Snowden to "betray" his country all of the sudden (as some sources claim)? Could it be that he's still truly working in the public's interest?

During his time in the Army, Snowden became disillusioned to the real purpose of the war. In his book, *The Snowden Files: The Inside Story of the World's Most Wanted Man*, *Guardian* journalist Luke Harding notes that Snowden joined the war to help the oppressed, but soon discovered other motives from his superiors. "Most of the people training us seemed pumped about killing Arabs, not helping anyone," Snowden said.<sup>14</sup>

Once Snowden moved on to the CIA he began working with more computer systems and gained a better understanding of how U.S. surveillance programs work.

"Because of the access technical experts have to computer systems, I saw a lot of secret things," Snowden said. "And many of them were quite bad. I began to understand that what my government really does in the world is very different from what I'd always been taught. That recognition in turn leads you to start reevaluating how you look at things, to question things more."<sup>15</sup>

Near the end of 2009, when Snowden's experience in Geneva was coming to an end, he first entertained the idea of becoming a whistleblower. "Much of what I saw in Geneva really disillusioned me about how my government functions and what its impact

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<sup>13</sup> Luhn, Alec, and Mark Tran. "Edward Snowden given Permission to Stay in Russia for Three More Years." *The Guardian*. August 7, 2014. Accessed August 8, 2014.

<sup>14</sup> Harding, Luke. *The Snowden Files: The inside Story of the World's Most Wanted Man*. London: Guardian Books, 2014. E-book (Loc 264 of 3926).

<sup>15</sup> Greenwald, Glenn. *No Place to Hide: Edward Snowden, the NSA, and the U.S. Surveillance State*. New York: Metropolitan Books, 2014. 42.

is in the world. I realized that I was part of something that was doing far more harm than good,” Snowden said.<sup>16</sup>

If he contemplated becoming a whistleblower back in 2009, why did he wait until 2013 to do so? The simple answer — “Hope.” Snowden hoped President Barack Obama would bring about “Change We Can Believe In.” After all, those were two of Obama’s election slogans. Obama promised to end national security abuses falsely justified by the War on Terror. Snowden waited to see if Obama would stand behind his word, but soon realized “Obama was not just continuing, but in many cases expanding these abuses.”

“I realized then that I couldn’t wait for a leader to fix these things,” Snowden said. “Leadership is about acting first and serving as an example for others, not waiting for others to act.”<sup>17</sup>

## WHY did Snowden decide to become a whistleblower?

“I don’t want to live in a world where everything that I say, everything I do, everyone I talk to, every expression of creativity or love or friendship is recorded...”

-Edward Snowden

Perhaps the most important aspect influencing Snowden’s perceived status — the *why factor*. Why did he risk his adventurous career, generous salary and life of security to expose these secrets?

Well, because Snowden “realized that **they were building a system whose goal was the elimination of all privacy, globally**. To make it so that no one could communicate electronically without the NSA a being able to collect, store, and analyze the communication.”<sup>18</sup>

That’s a frightening thought. But what is the true extent of these surveillance activities? Snowden elaborates:

“The stuff I saw really began to disturb me. I could watch drones **in real time** as they surveilled the people they **might kill**. You could watch entire villages **and see what everyone was doing**. I watched NSA tracking people’s Internet activities **as they typed**. I became aware of just how

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<sup>16</sup> Harding, Luke. *The Snowden Files: The inside Story of the World's Most Wanted Man*. London: Guardian Books, 2014. E-book (Loc 35 of 333).

<sup>17</sup> Greenwald, Glenn. *No Place to Hide: Edward Snowden, the NSA, and the U.S. Surveillance State*. New York: Metropolitan Books, 2014. 43.

<sup>18</sup> Greenwald, Glenn. *No Place to Hide: Edward Snowden, the NSA, and the U.S. Surveillance State*. New York: Metropolitan Books, 2014. 47-48.

invasive US surveillance capabilities had become. I realized the true breadth of this system. **And almost nobody knew it was happening.**"<sup>19</sup>

No way! That can't be possible, right? Does that technology even exist? Yup. And the documents Snowden leaked reveal the proof and details. How did we even get to this point? **Secrecy in the name of national security – that's the game.**

Snowden's personal history reveals his determination to work for a noble cause. His decision to work for the federal government was fueled by a sense of patriotism and desire to help others. However, what it means to be a "patriot" is relative to the person. According to Snowden:

"Being a patriot means knowing when to protect your country. Knowing when to protect your constitution. Knowing when to protect your countrymen from the violations and encroachments of adversaries. **And those adversaries don't have to be foreign countries.** They can be bad policies. They can be officials who need a little more accountability. They can be mistakes of government and simple overreach and things that should never have been tried or went wrong."<sup>20</sup>

Snowden acted in good faith and followed his conscience. Regardless of your view of him, it's important to remember the following aphorism: "one man's terrorist is another man's freedom fighter."

If Snowden's objective was to harm the U.S., he could have done much more to accomplish that goal. Yet, he took strategic steps to eliminate unnecessary harm. He inquired about certain issues to his supervisors, but only got shut down. At one point, he even began asking his co-workers how they would react if they saw certain documents on the front-page of a newspaper.

Snowden was invested in exposing only the appropriate, yet necessary documents as Greenwald explains, "There was no question that he had carefully reviewed every document he had given us, that he had understood their meaning, then meticulously placed each one in an elegantly organized structure."<sup>21</sup>

Snowden was aware of the documents he released, which reinforced his belief that he did the right thing. He doesn't claim that everyone working for the NSA is evil and corrupt. His concerns derive from the actions of high-ranking officials.

"It was seeing a continuing litany of lies from senior officials to Congress — and therefore the American people — and the realization that Congress, specifically the Gang of Eight, wholly

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<sup>19</sup> Greenwald, Glenn. *No Place to Hide: Edward Snowden, the NSA, and the U.S. Surveillance State*. New York: Metropolitan Books, 2014. 43.

<sup>20</sup> Williams, Brian. "Inside the Mind of Edward Snowden." NBC News. May 29, 2014. Accessed June 1, 2014.

<sup>21</sup> Greenwald, Glenn. *No Place to Hide: Edward Snowden, the NSA, and the U.S. Surveillance State*. New York: Metropolitan Books, 2014. 30.

supported the lies that compelled me to act. Seeing someone in the position of James Clapper — the director of national intelligence — **baldly lying to the public without repercussion is the evidence of a subverted democracy. The consent of the governed is not consent if it is not informed.**<sup>22</sup>

The rule of law has eroded in recent years as political elites continue to gain power. And as history reveals, there's real danger in the hands of excessive, unilateral power. The U.S. has only been an independent nation for 238 years — a relatively small period in the grand scheme of time. We must remain vigilant and learn from our history to ensure a better tomorrow.

"I think the most important idea is to remember that there have been times throughout American history where what is right is not the same as what is legal," Snowden said. "**Sometimes to do the right thing, you have to break a law.** And the key there is in terms of civil disobedience. You have to make sure that what you're risking, what you're bringing on to yourself, doesn't serve as a detriment to anyone else — it doesn't hurt anyone else."<sup>23</sup>

Take a moment to think about your favorite American heroes (e.g. the Founding Fathers, Civil War heroes, leaders of the Civil Rights movement). Did they ever break the law? Were they once demonized? If so, by whom? Notice any trends?

Now back to our first question: Edward Snowden — hero or traitor? Of course this is a subjective question, and the answer is relative to the individual.

"For me," Snowden said, "in terms of personal satisfaction, the mission's already accomplished. I already won. As soon as the journalists were able to work, everything that I been trying to do was validated. Because, remember, I didn't want to change society. I wanted to give society a chance to determine if it should change itself."<sup>24</sup>

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<sup>22</sup> Harding, Luke. *The Snowden Files: The inside Story of the World's Most Wanted Man*. London: Guardian Books, 2014. E-book (Loc 52 of 333).

<sup>23</sup> Williams, Brian. "Inside the Mind of Edward Snowden." NBC News. May 29, 2014. Accessed June 1, 2014.

<sup>24</sup> Gellman, Barton. *NSA Secrets: Government Spying in the Internet Age*. New York: Diversion Books, 2013. E-book (Loc 70 of 2639).



## **Part 2: Change in Effect**

“That men do not learn very much from the lessons of history is the most important of all the lessons of history.”

-Aldous Huxley

## The Evolution of Human Communication

Humans are relational beings. We are social subjects that rely on one another to exist.

As we evolved through time, we've naturally evolved the way in which we communicate. While today's digital media landscape may be a bit overwhelming, we can look to our past for comfort. History reveals how humans have adapted to technological advancements that increase the flow of information.

The evolution of human communication can be summarized as follows:

- Oral Language (30,000 to 100,000 years ago)
- Cave Drawings (about 15,000 B.C.)
- The Written Word (5,000 B.C.)
- The Printing Press (around 1450)
- The Telegraph (1844)
- The Radio (1920s)
- Television (became more wide-spread in the 1950s)
- Digital Technology

Each new form of communication resulted in an easier exchange of information, which led to a democratizing influence on the world. More people with access to information equals more people with the ability to question the way our world operates.

According to *Blur: How to Know What's True in the Age of Information Overload* by Bill Kovach and Tom Rosenstiel "We moved from shamans to tribal leaders, from tribal leaders to kings and city-states, from city-states to nations. Each change, in turn, forced existing power elites to try to exploit communication in order to reorganize and direct the energy democratization released at the grassroots level."<sup>25</sup>

The formation of larger communities, democratization and the reorganization of social structures exhibit patterns associated with technological advancements in the way we communicate. There's another pattern worth noting as well—tension, which Kovach and Rosenstiel describe by the following:

"And as it reorganized social order, each change in popular communications was accompanied by a renewal of tension between two strands of knowledge or ways of trying to understand existence: the tension between knowledge based on observation

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<sup>25</sup> Kovach, Bill, and Tom Rosenstiel. *Blur: How to Know What's True in the Age of Information Overload*. New York: Bloomsbury, 2011. 13.

and experience and knowledge grounded on faith and belief—the tension between fact and faith.”<sup>26</sup>

So how does all of this apply to the digital age? Let’s take a closer look at how we adapted to each advancement prior to digital technology.

## The Written Word

Unlike oral language, **the written word is more permanent**. A story told orally could easily be forgotten or altered when retold by others. Yet, the written word provided an outlet for more reliable, precise communications. For the first time: “One could experience the precise thoughts and observations of an unknown and unseen person.”<sup>27</sup>

The three most important qualities of the written word include **permanence, complexity and mobility**.

## The Printing Press

Johannes Gutenberg developed the printing press around 1450, and the world has never been the same since.

The printing press spurred a printing revolution. **Mass production of books was now possible**, which allowed new universities independent of religious orders to surface. The reading public also began to grow, and the circulation of ideas continued to expand.

**The printing press made it possible for the field of journalism to take shape**. The first newspapers started to appear around 1604 in Germany, England and France. These new avenues of information made it possible for individuals to question and challenge the information given by established authorities.

“Gradually but inexorably the notion grew that even the lowliest person in a community had the right to a personal opinion and that opinion should be heard in the councils of government.”<sup>28</sup> Journalism transformed what was known as common or vulgar opinion into public opinion, which we still refer to today.

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<sup>26</sup> Kovach, Bill, and Tom Rosenstiel. *Blur: How to Know What's True in the Age of Information Overload*. New York: Bloomsbury, 2011. 13.

<sup>27</sup> Kovach, Bill, and Tom Rosenstiel. *Blur: How to Know What's True in the Age of Information Overload*. New York: Bloomsbury, 2011. 14.

<sup>28</sup> Kovach, Bill, and Tom Rosenstiel. *Blur: How to Know What's True in the Age of Information Overload*. New York: Bloomsbury, 2011. 16.

“And with the spread of information came an even more powerful concept: the idea that people could be self-governing.”<sup>29</sup> **Democracy itself is a product of the evolution of communication.**

## The Telegraph

In 1844, John Morse developed a new form of communication that allowed people to interact almost instantly across long distances. Morse’s telegraph used electric signals of dots and dashes to transmit language electronically through wires.

This new means of communication birthed the concept of news as factual information independent of the observer. Only two years after Morse’s telegraph was put to use the Associated Press formed in 1846.

Morse’s telegraph, combined with the AP, brought forth the inverted pyramid model of reporting, meaning the most important information is stated near the top of a story.

## The Radio

While the telegraph allowed people to discover new information in the matter of minutes or hours, the radio, which came about in the 1920s, offered a way for people to hear the news for themselves.

**With the radio, news consumers didn’t need to be literate**—newscasts were transmitted nationwide. Newspapers tended to be more community based, so **national newscasts helped unite fragmented populations** that formed during the industrial revolution.

The radio rivaled newspapers because people no longer needed to read the news to learn the facts. People could simply turn on the radio and hear the facts broadcasts before the newspapers were even printed. This caused some newspapers to become more sensationalized, and the “tabloid” era was born.

## Television

Twenty years after the radio, television made its debut. Now people had the choice to either read, listen or watch the news.

Yet, it wasn’t until the 1950s until the medium really took off. During the 1950s national political conventions started being televised. In 1963, network evening news doubled its airtime from 15 minutes to 30 minutes. Less than a year later, television became the primary new source for Americans.

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<sup>29</sup> Kovach, Bill, and Tom Rosenstiel. *Blur: How to Know What's True in the Age of Information Overload*. New York: Bloomsbury, 2011. 16.

“With newspapers, readers could pick and choose what articles they wanted to read, skipping stories that didn’t interest them. Radio made the news more intimate and national. But television unified it.”<sup>30</sup>

In the early years of television news, there were two newscasts in which the majority of Americans received their news — NBC and CBS. ABC was still in the future. A lack of alternatives meant more Americans would view the same newscasts on a daily basis.

Unlike reading a newspaper, viewers of televised news can’t pick and choose which stories to consume. A lack of choice leads to what social scientists call “**incidental news acquisition**,” when people learn about things they might not be interested in. While “incidental news acquisition” has its benefits, televised news also helped nationalize politics to a whole new level.

Newspapers reacted to television by making content more analytical with deeper coverage to target a more educated audience. However, newspapers couldn’t match the images offered by television.

“With the civil rights movement, the images pouring into American homes of brutal public and police reactions to peaceful protesters in the South made it impossible for the political system to continue to ignore the challenges raised by black Americans’ demand for equal rights.”<sup>31</sup>

Television endured another major shift in 1980 with the birth of CNN — cable news. **CNN shook up the news industry by offering continuous news and breaking up the control of national and international news by the three leading television networks.**

## Digital Technology

The digital technology shift is happening now and has been for some time. Here’s a breakdown of a few shifts that have taken place between 2000 and 2008:

- In 2000, 46 of adults in the United States used the Internet. By 2008, 74 percent did.
- In 2000, only 5 percent had high-speed Internet at home. By 2008, 58 percent did.
- In 2000, only 50 percent of Americans owned a cell phone. By 2008, 82 percent did.

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<sup>30</sup> Kovach, Bill, and Tom Rosenstiel. *Blur: How to Know What's True in the Age of Information Overload*. New York: Bloomsbury, 2011. 19.

<sup>31</sup> Kovach, Bill, and Tom Rosenstiel. *Blur: How to Know What's True in the Age of Information Overload*. New York: Bloomsbury, 2011. 20.

- In 2000, no one in America was wirelessly connected to the Internet. In 2008, 62 percent of Americans were.<sup>32</sup>

We are progressively moving to a digital era, and no one has yet to perfect a self-sustaining business model. Digital technology handicaps ad revenue for news agencies. Innovative techniques are needed to address this issue.

“Whatever the future news structure, the history of communications suggests that the old technologies will not disappear. But they will change, becoming smaller and playing a different role. Communication’s history also suggests that new technologies do not change human nature. They simply allow us to express and satisfy our curiosity about the world beyond our own direct experience in different ways.”<sup>33</sup>

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<sup>32</sup> Kovach, Bill, and Tom Rosenstiel. *Blur: How to Know What's True in the Age of Information Overload*. New York: Bloomsbury, 2011. 22.

<sup>33</sup> Kovach, Bill, and Tom Rosenstiel. *Blur: How to Know What's True in the Age of Information Overload*. New York: Bloomsbury, 2011. 24.

## The Evolution of America's Legal System

America — land of the free and the home of the brave, right? Not technically. It's more like the land of those fighting "to be free (or, in some cases, to remain free)" and the home of the brave.

Oppressive forces have been striving to gain power throughout history. Corruption offers the quickest road to power, and the Founding Fathers were well aware of that threat. The *separation of powers* infrastructure of the U.S. Government was strategically designed to prevent an accumulated concentration of power.

As history reveals, the judicial branch of government has played a significant role in advancing freedoms for U.S. citizens. Why is that? Law is dynamic—ever changing—never static. The law is continuously being challenged, and interpretations of the law may vary depending on the judge and time period. "We are under a Constitution," as Chief Justice Charles Evans Hughes put it, "but the Constitution is what the judges says it is."<sup>34</sup>

According to the Supreme Court of the United States website: "The unique position of the Supreme Court stems, in large part, from the deep commitment of the American people to the Rule of Law and to constitutional government." It's like an on-going game of trial-and-error in the pursuit of sustaining a more perfect government. The people of the United States have fought to protect such a system and the Constitution, "thereby providing the American 'experiment in democracy' with the oldest written Constitution still in force."<sup>35</sup>

**The interdependent relationship between the U.S. Constitution and Rule of Law provide the ultimate safeguards to liberty and freedom in the United States.** While the Rule of Law may be complicated to define, the American Bar Association notes "the key point is that every form of government has to have some system to ensure that no one in the government has so much power that they can act above the law."<sup>36</sup>

Makes sense, right? Apparently not to everyone considering the Rule of Law has been undermined throughout history. But the more frightening thing it is this: it continues to be compromised today even in the twenty-first century. *This is why it's important to remain vigilant, educated and informed — to continue the courageous America fight to be free.*

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<sup>34</sup> "Charles Evans Hughes." Columbia250. Accessed August 5, 2014. [http://c250.columbia.edu/c250\\_celebrates/remarkable\\_columbians/charles\\_hughes.html](http://c250.columbia.edu/c250_celebrates/remarkable_columbians/charles_hughes.html).

<sup>35</sup> "The Court and Constitutional Interpretation." Supreme Court of the United States. Accessed August 1, 2014. <http://www.supremecourt.gov/about/constitutional.aspx>.

<sup>36</sup> "What Is the Rule of Law." ABA Division for Public Education. Accessed August 2, 2014.

As U.S. Supreme Court Justice Felix Frankfurter opined in 1947, "There can be no free society without law administered through an independent judiciary. If one man can be allowed to determine for himself what is law, every man can. That means first chaos, then tyranny."<sup>37</sup>

The following background of America's legal system is to be attributed to Professor Sandy Davidson from the Missouri School of Journalism. The research for this section stems from my notes on communications law, a course taught by Professor Davidson.

## The Legacy of British Law

The legacy of British law influenced the birth of America's legal system. In the thirteenth century, King Henry II created the King's Court, a national court system, where an uneducated jury would hear and decide cases. Before this, law was dealt with at the local level in England. The new court system functioned with the king's judges riding around on horse to small villages to resolve conflicts between villagers. In the process of deciding cases, judges were making **common law** (AKA: judge-made law or court-made law).

By the fourteenth century, the Chancellor's Court was established, and the **dual court system** in England was born. The dual court system was broken down between the King's Courts and the Chancellor's Courts. While the King's Courts had circuit judges and an uneducated jury, the Chancellor's Court had no jury, and the chancellor acted as a single, educated judge. Both courts created common law.

## Sources of Law

Aside from common law, there are two other sources of law: legislative law and administrative law. As mentioned above, common-law is a product of the judicial branch. Legislative law, which includes statutes and constitutions, is developed through compromise by the House of Representatives and Senate. The role of the executive branch is to administer the laws, and to do so administrative agencies are created. Administrative agencies such as the Federal Communications Commission (FCC) and the Federal Trade Commission (FTC) attain power to devise administrative laws (or bureaucracy-made law) through statutes written by legislators.

## Structure of U.S. Court System

The U.S. court system is modeled after the dual court system of England. The system is divided between federal and state. The federal system is broken down by the following:

- U.S. Supreme Court
- Court of appeals

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<sup>37</sup> "United States v. Mine Workers, 330 US 258 - Supreme Court 1947." Google Scholar. January 1, 1947. Accessed August 2, 2014.

- District courts

**The Supreme Court** possesses ultimate authority over the courts. The Court only hears cases with sufficient, general significance that deal with U.S. statutes, the U.S. Constitution or treaties. Supreme Court decisions produce **binding precedents** for lower courts to follow.

**Precedents** relate to the **holding**, the decision, of former court cases and can be either binding or persuasive depending on the court. The fact that Supreme Court precedents are binding for all lower courts means that the precedent must be followed. Whereas **persuasive precedents** merely persuade or influence a court to rule a certain way.

Notice Supreme Court precedents aren't binding to the Supreme Court itself. How can we expect any stability if laws are constantly being overturned and changed? It would be rather difficult, and that's exactly why the court system honors the doctrine of **stare decisis** — the doctrine that precedents should be followed. This doctrine also helps prevent those in power from using the law and courts to favor their friends and punish enemies. So while the Supreme Court may overrule a previous decision, it doesn't do so casually. There's usually a significant reason as to why in such circumstances.

The doctrine of stare decisis and the Supreme Court itself help establish a nation-wide, common standard. Without this common standard it would be difficult for any national broadcast or publication to disseminate information freely without fear of legal consequences. Law is already complex enough, but imagine if laws were solely determined on a state-by-state basis. The United States of America wouldn't be all that united. It would be more like the "States of America" if anything.

**The Court of Appeals** is divided into 13 circuit courts at the appellate level, 11 of which are geographically based. Decisions of circuit courts are binding within that individual circuit, but only persuasive in other circuits. For example, the decisions of the 13th Circuit are binding on district courts that fall within the geographical boundaries of the 13th Circuit. When circuit courts don't agree on federal law, it's grounds for the Supreme Court to hear the case so it can set a binding precedent.

**District courts**, or trial courts, are the only court to hear testimony. Appellate courts work from cold record.

Now, let's take a look at the state court system. It's pretty similar to the federal structure:

- State Supreme Court
- Court of appeals
- District courts

**State Supreme Courts** hear cases dealing with state statutes, state constitutions or state common law. If a state has more than one appellate court disagreeing on an issue, that could also provoke grounds for a state Supreme Court hearing.

How does this dual court system operate together as one? Ultimately, it all comes down to jurisdiction. Courts must have two kinds of jurisdiction to hear a case: jurisdiction over the subject matter and jurisdiction over the person. **In order to determine how important a particular law court case is to you, you must look where it came from.**

Most laws affecting daily life are state laws such as marriage and divorce laws, contracts and wills. However, each state and the federal government has its own criminal code. Therefore, a person committing a crime could be tried at both the federal and state level.

Which judges are more powerful, state or federal? State judges. State judges can create common law and are able to bind lower federal judges on matter of state law. Whereas, federal judges cannot make common law or bind state judges. While federal courts don't bind state courts on matters of federal law, federal decisions are still very persuasive, especially in criminal cases.

## The Power of Judicial Review

The Supreme Court of the United States was established in 1789 in accordance with Article III of the Constitution, which states: "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. ... The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution."<sup>38</sup>

While Article III grants the Supreme Court power to rule over Constitutional matters, it's the Supremacy Clause of Article VI that determines the "Constitution, and the Laws of the United States which shall be made in Pursuance thereof" as the "supreme Law of the Land."<sup>39</sup> Therefore, the combination of the two are responsible for establishing a truly Supreme Court of the United States.

However, it wasn't until the landmark decision of *Marbury v. Madison* in 1803 that the Court explicitly declared, "It is emphatically the duty of the Judicial Department to say what the law is," and that "**A law repugnant to the Constitution is void.**"<sup>40</sup> In effect, the Supreme Court strengthened the judicial branch of government by declaring for itself the power of **judicial review**.

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<sup>38</sup> "The Constitution of the United States: A Transcription." National Archives and Records Administration. Accessed August 4, 2014.

<sup>39</sup> "The Constitution of the United States: A Transcription." National Archives and Records Administration. Accessed August 4, 2014.

<sup>40</sup> "Marbury v. Madison." Cornell University Law School Legal Information Institute. Accessed August 2, 2014.

## Is “Liberty and Security in a Changing World” Possible?

In response to public outrage and concern in wake of the NSA disclosures, Obama issued a presidential memorandum to address the current affair. The memorandum ordered an appointed Review Group to “assess whether, in light of advancements in communications technologies, the United States employs its technical collection capabilities in a manner that optimally protects our national security and advances our foreign policy while appropriately accounting for other policy considerations, such as the risk of unauthorized disclosure and our need to maintain the public trust.”<sup>41</sup>

The Review Group released a 300-page report on December 12, 2013, titled: *Liberty and Security in a Changing World: Report and Recommendations of the President’s Review Group on Intelligence and Communications Technologies*. The Report offered 46 recommendations for reform and sheds light on the history and legality of U.S. surveillance efforts.

As the Report indicates, **the U.S. government has a record of curtailing civil liberties in the name of national security — especially during “periods of great national anxiety.”** From the time of the Civil War, there were “repeated suspensions of the writ of habeas corpus,” and “suppression of dissent during World War I.” During World War II, there was “the internment of Japanese-Americans,” followed by the McCarthy era, which involved a “campaign to expose and harass persons suspected of ‘disloyalty.’” And perhaps most worrisome was “the widespread and unlawful spying on critics of the government’s policies during the Vietnam War.”<sup>42</sup>

The Vietnam War is not ancient history, and Americans shouldn’t be so quick to forgive and forget. After all, the lies and manipulation behind the War were later revealed by former U.S. military analyst Daniel Ellsberg in 1971. The whistleblower leaked what is commonly known as the Pentagon Papers to the *New York Times* and other newspapers.

The Pentagon Papers and Watergate scandal of the time provoked “several congressional committees [to] examine the failures that led to the abuses.” Of those committees, the most notable was the “Church Committee” formally known as the Senate’s Select Committee to Study Governmental Operations with Respect to Intelligence Activities. The committee, lead by Senator Frank Church, issued a

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<sup>41</sup> Obama, Barack. "Presidential Memorandum -- Reviewing Our Global Signals Intelligence Collection and Communications Technologies." The White House. August 12, 2013. Accessed November 11, 2013.

<sup>42</sup> Clarke, Richard, Michael Morell, Geoffrey Stone, Cass Sunstein, and Peter Swire. "Liberty and Security in a Changing World: Report and Recommendations of the President’s Review Group on Intelligence and Communications Technologies." The White House. December 12, 2013. Accessed December 19, 2013. 53-54.

comprehensive Final Report in 1976, which “shaped much of our nation’s thinking about foreign intelligence surveillance for the past 40 years.”<sup>43</sup> Ultimately, the report served as a reminder for the need to keep power in check through open, public debate.

## The Need for Public Debate

Public debate. That’s what Snowden hoped to trigger by blowing the whistle. “I believe the cost of frank public debate about the powers of our government is less than the danger posed by allowing these powers to continue growing in secret,” Snowden said.<sup>44</sup>

If we’re to learn anything from history, and recent history at that, it should be that, “abuse thrives on secrecy,” as Senator Church wrote in his Final Report. “Obviously, public discourse of matters such as the names of intelligence agents or the technological details of collection methods is inappropriate. But in the field of intelligence, secrecy has been extended to inhibit review of the basic programs and practices themselves.”<sup>45</sup>

Secrecy is but a tool for governments to evade accountability. Yes, it has its apparent advantages as Senator Church pointed out, but the increase and extent of secrecy in recent years surpasses the point of comfort for informed citizens.

Perhaps the Government would have a stronger argument for their surveillance programs and the need for such secrecy if they could demonstrate real-life examples of its intended value. Yet, it can’t as U.S. district court judge Richard Leon noted in his ruling on Dec. 16, 2013. “The Government does not cite a single instance in which analysis of the NSA’s bulk metadata collection actually stopped an imminent attack, or otherwise aided the Government in achieving any objective that was time-sensitive in nature,” the federal judge wrote.<sup>46</sup>

“Those within the Executive branch and the Congress who would exercise their responsibilities wisely must be fully informed,” Senator Church wrote. A direct

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<sup>43</sup> Greenwald, Glenn. *No Place to Hide: Edward Snowden, the NSA, and the U.S. Surveillance State*. New York: Metropolitan Books, 2014. 57.

<sup>44</sup> Gellman, Barton. *NSA Secrets: Government Spying in the Internet Age*. New York: Diversion Books, 2013. E-book (Loc 184 of 2638).

<sup>45</sup> "Intelligence Activities and the Rights of Americans." U.S. Senate Select Committee on Intelligence. April 26, 1976. Accessed August 6, 2014. [http://www.intelligence.senate.gov/pdfs94th/94755\\_II.pdf](http://www.intelligence.senate.gov/pdfs94th/94755_II.pdf).

<sup>46</sup> "Civil Action No. 13-0851." U.S. District Court for the District of Columbia. December 16, 2013. Accessed January 12, 2014. [https://ecf.dcd.uscourts.gov/cgi-bin/show\\_public\\_doc?2013cv0851-48](https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2013cv0851-48).

contradiction to the oversight of the Senate Intelligence Committee today as Snowden points out:

“But what’s especially interesting about ... the fact that the NSA has violated their own rules, their own laws thousands of times in a single year ... is the fact that not only were there ... abuses, the chairman of the Senate Intelligence Committee, Dianne Feinstein, had [no idea] until the Washington Post contacted her asking for comment on [a specific] report. ... **What does that say about the state of oversight in American intelligence when the chairman of the Senate Intelligence Committee has no idea that the rules are being broken thousands of times every year?**”<sup>47</sup>

Snowden asks a good question, one of which the American people should be discussing. And Senator Church agrees: “The American public, as well, should know enough about intelligence activities to be able to apply its good sense to the underlying issues of policy and morality.” Snowden’s actions reflect Senator Church’s logic, which is why it’s so important to be informed about the recent disclosures.

Many question the morality of such surveillance procedures, especially with the lack of proper oversight. “I have little doubt that the author of our Constitution, James Madison, who cautioned us to beware ‘the abridgment of freedom of the people by gradual and silent encroachments by those in power,’ would be aghast,” Judge Leon declared.<sup>48</sup>

In sum: “**Knowledge is the key to control,**” as Senator Frank warned. “Secrecy should no longer be allowed to shield the existence of constitutional, legal and moral problems from the scrutiny of all three branches of government or from the American people themselves.”<sup>49</sup>

People need to remember “this is not a left or right issue,” as Snowden said during a TED Talks interview. “Our basic freedoms, and when I say our, I don’t just mean Americans, I mean people around the world, it’s not a partisan issue. These are things that all people believe, and it’s up to all of us to protect them. ... It’s up to us to preserve that liberty [of a free and open Internet] for the next generation to enjoy.”

We can’t take our freedoms for granted. It’s important to remain vigilant because, “if we don’t change things, if we don’t stand up to make the changes we need to do to keep

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<sup>47</sup> "Transcript of "Edward Snowden: Here's How We Take Back the Internet"" TED.com. March 19, 2014. Accessed September 17, 2014.

<sup>48</sup> "Civil Action No. 13-0851." U.S. District Court for the District of Columbia. December 16, 2013. Accessed January 12, 2014. [https://ecf.dcd.uscourts.gov/cgi-bin/show\\_public\\_doc?2013cv0851-48](https://ecf.dcd.uscourts.gov/cgi-bin/show_public_doc?2013cv0851-48).

<sup>49</sup> "Intelligence Activities and the Rights of Americans." U.S. Senate Select Committee on Intelligence. April 26, 1976. Accessed August 6, 2014. [http://www.intelligence.senate.gov/pdfs94th/94755\\_II.pdf](http://www.intelligence.senate.gov/pdfs94th/94755_II.pdf).

the Internet safe ... we're going to lose that, and that would be a tremendous loss ... for the world."<sup>50</sup>

"In an era where the technological capability of Government relentlessly increases, we must be wary about the drift toward 'big brother government,'" Senator Church cautioned. **"The potential for abuse is awesome and requires special attention to fashioning restraints which not only cure past problems but anticipate and prevent the future misuse of technology."**<sup>51</sup>

Here, Senator Church foreshadowed the importance of the Church Committees' Final Report to modern day problems. The relevance of this Final Report can't be understated. It provides a cold record of our past — a history yearning to be remembered.

"I would say the last year has been a reminder that democracy may die behind closed doors," Snowden said, "but we as individuals are born behind those same closed doors, and we don't have to give up our privacy to have good government. We don't have to give up our liberty to have security."<sup>52</sup>

## Is Balance Possible?

Historically, yes, balance has been somewhat achievable. Programs and regulations set forth by the Church Committee via the Foreign Intelligence Surveillance Act (FISA) provide relevant examples of strategic balancing efforts.

"FISA brought foreign intelligence surveillance within a legal regime involving strict rules and structured oversight by all three branches of the government, but also granted the government greater freedom in the realm of foreign intelligence surveillance than it had in the context of others types of surveillance."<sup>53</sup>

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<sup>50</sup> "Transcript of 'Edward Snowden: Here's How We Take Back the Internet'" TED.com. March 19, 2014. Accessed September 17, 2014.

<sup>51</sup> "Intelligence Activities and the Rights of Americans." U.S. Senate Select Committee on Intelligence. April 26, 1976. Accessed August 6, 2014. [http://www.intelligence.senate.gov/pdfs94th/94755\\_II.pdf](http://www.intelligence.senate.gov/pdfs94th/94755_II.pdf).

<sup>52</sup> "Transcript of 'Edward Snowden: Here's How We Take Back the Internet'" TED.com. March 19, 2014. Accessed September 17, 2014.

<sup>53</sup> Clarke, Richard, Michael Morell, Geoffrey Stone, Cass Sunstein, and Peter Swire. "Liberty and Security in a Changing World: Report and Recommendations of the President's Review Group on Intelligence and Communications Technologies." The White House. December 12, 2013. Accessed December 19, 2013. 67.

A signal legacy of FISA was the adoption of the Foreign Intelligence Surveillance Court (FISC) — a secret court until the NSA disclosures revealed it. The role of FISC was to determine whether a government agency could obtain a warrant for electronic surveillance for foreign intelligence reasons inside the United States.

As noted in the *Liberty and Security in a Changing World* report, **“FISA denied the President of previously assumed authority to engage in foreign intelligence surveillance inside the United States without judicial supervision.** This was a major innovation.”

Also, it’s important to realize FISC was created out of necessity. “Ordinary federal courts lacked the facilities and clearances to deal with such matters.” “Such matters” meaning classified information and programs involved in foreign surveillance. “A special court was therefore necessary if such classified matters were to be brought under the rule of law.”<sup>54</sup>

Balancing liberty and security may seem impossible, yet a single idea combined with democratic collaboration can lead to extraordinary reform. Snowden hoped to spur this sort of democratic collaboration through public debate and vocalized personal ideas to improve the morality of surveillance practices.

“I believe that a Magna Carta for the Internet is exactly what we need,” Snowden suggested during his TED Talks interview. “We need to encode our values not just in writing but in the structure of the Internet.”

Even while he was still working for the NSA he said he “actually recommended they move to two-man control for administrative access back in 2009,” yet the NSA claims there are no records of those conversations.<sup>55</sup>

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<sup>54</sup> Clarke, Richard, Michael Morell, Geoffrey Stone, Cass Sunstein, and Peter Swire. "Liberty and Security in a Changing World: Report and Recommendations of the President's Review Group on Intelligence and Communications Technologies." The White House. December 12, 2013. Accessed December 19, 2013. 68.

<sup>55</sup> Gellman, Barton. *NSA Secrets: Government Spying in the Internet Age*. New York: Diversion Books, 2013. E-book (Loc 141 of 2638).

## How Mass Media Covered the NSA Revelations

“Whoever would overthrow the liberty of a nation must begin by subduing the freeness of speech.”

-Benjamin Franklin

### Mass Media & NSA Revelations

To learn more about the mainstream media’s coverage of the Snowden revelations, I interviewed press freedom expert Charles Davis. Davis is currently the dean of the University of Georgia Grady College of Journalism and Mass Communication. This multilayered story illustrates the obstacles the mass media faces when reporting on such a large issue, and Davis provided his insight.

“The revelations about the NSA’s eavesdropping program has been one of those stories that I think most bedevils the mass media because it is a slow-moving, multiplayer affair with many moving parts that unfold not in a spectacular explosion, but in a million drips and drops,” Davis said. “And that has always been one of the great challenges of mass media, to get its arms around a story of that breadth and scope.”

Davis said the mass media has a tendency to get deeply involved with trivia and nonsense, but this story is nothing but substantive, public affairs driven investigative journalism.

“The nature of the NSA is a secretive entity by its very origin,” Davis said. “Its mission is secrecy. So it’s not like covering Congress or covering even a regulatory agency that has a fair number of mechanisms that are generating documents and hearings and other things. It sort of exists in that netherworld of the security apparatus.”

Davis said he believes the decision to spread the documents out amongst a network of individuals as opposed to institutions better protects the source network and the document trail from attempts by the government to target individual institutions.

Typically, when a single media outlet acquires an exclusive story, they’ll publish every serialized piece while other outlets follow suit. However, Davis said he believes this story did a better job of attracting attention because it pursued a different approach.

“Even then, I would argue, that even given the care that those stories broke incrementally over a number of weeks and months in a variety of different outlets through different individuals, there still hasn’t been the traction under the story that it deserves by any means,” Davis said.

“I think there’s sort of a world weariness that’s set in among a lot of people when it comes to the government and their electronic surveillance. I think there a cynicism that

we're being watched, we know we're being watched, so what's the big deal? The outrage just isn't there in the way that I think it would be."

## **The Chilling Effect of 9/11**

"You can imagine a very different reaction in 1999 to the same stories," Davis said. "I think people would be outraged."

"At least since the aftermath of September 2001, western governments and intelligence agencies have been hard at work expanding the scope of their own power, while eroding privacy, civil liberties and public control of policy," former whistleblowers wrote in an open letter published by the Guardian.<sup>56</sup>

There's a collective cost-benefit analysis that has gone on in this country. "Since Sept. 12, 2001, people have reevaluated all of those issues," Davis said.

Currently there's this very tense relationship between the public and security apparatus — the public says you can have [surveillance access] to keep us safe as long as you're keeping us safe, and the people whose job it is to protect us argue very strongly that they need those tools to do so. "There's just an element of trust that comes with that. For good or bad, it's just there," Davis said.

## **Targeting Sources**

The Committee to Protect Journalists issued a special report in October to address the Obama administration's aggressive prosecution of whistleblowers and broad electronic surveillance programs, which intimidate sources from working with journalists.<sup>57</sup>

"It's been interesting the last few months because the administration has reacted to that report by saying 'We don't do that.' When in fact they do, and the record is a mile long. So it becomes this sort of Orwellian response where they say, 'We don't do that,' which [is] exactly [what] they are doing over and over again," Davis said.

"So I think ultimately the legislative response is necessary. It has been necessary for some time in order to show the bureaucracy tangibly that there's legal protection for accountability."

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<sup>56</sup> Drake, Thomas, Daniel Ellsberg, Katharine Gun, Peter Kofod, Ray McGovern, Jesselyn Radack, and Coleen Rowley. "Former Whistleblowers: Open Letter to Intelligence Employees after Snowden." *The Guardian*. December 11, 2013. Accessed December 19, 2013.

<sup>57</sup> Downie Jr., Leonard, and Sara Rafsky. "The Obama Administration and the Press." *Committee to Protect Journalists*. October 10, 2013. Accessed October 12, 2013.

Davis says he's been arguing in favor for a federal shield law for a decade now, but hasn't always held that position because one can't always predict the outcome of the legislative process.

"Currently, 49 states (Wyoming is the only unenlightened one) have shield laws or operate under court rulings that grant journalists and their sources a 'privilege' much like those afforded to lawyers and their clients, and therapists and their patients. This protection applies only to local and state cases, not federal ones," the Society of Professional Journalists reported.<sup>58</sup>

"The events of the past few years, particularly the Obama administration's ramping up of trying to clamp down on confidential sources, just shows that without some formal, federal protection, the D.C. bureaucracy is increasingly difficult for the people who are reporting on the national security apparatus to find out the first thing that's going on," Davis said. "It's created a culture of real fear."

## Journalists React

*The Guardian* has undergone scrutiny from government agencies for publishing several leaked documents. Alan Rusbridger, the newspaper's editor-in-chief, was called before a parliamentary committee for questioning, and he told officials the *Guardian* "would not be put off by intimidation, but nor are we going to behave recklessly."<sup>59</sup>

Greenwald first broke the story while working at the *Guardian*, but announced his resignation in October 2013 to go to a new media startup funded by eBay founder and philanthropist Pierre Omidyar.<sup>60</sup>

"I'm not leaving because of those threats – if anything, they make me want to stay and continue to publish here – but I do believe it's urgent that everyone who believes in basic press freedoms unite against this," Greenwald said.

Greenwald joined Poitras and National Security Correspondent Jeremy Scahill among others in a new venture called *The Intercept*, an offshoot publication of *First Look Media*.<sup>61</sup>

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<sup>58</sup> Tatum, Christine. "Federal Shield Would Protect Public's Right to Know." Society of Professional Journalists. Accessed December 10, 2013.

<sup>59</sup> Hopkins, Nick, and Matthew Taylor. "Guardian Will Not Be Intimidated over NSA Leaks, Alan Rusbridger Tells MPs." *The Guardian*. December 3, 2013. Accessed December 3, 2013.

<sup>60</sup> Greenwald, Glenn. "On Leaving the Guardian." *The Guardian*. October 31, 2013. Accessed October 31, 2013.

<sup>61</sup> "About the Intercept." *The Intercept*. Accessed August 7, 2014. <https://firstlook.org/theintercept/about/>.

Davis says subject-matter experts are beginning to emerge (especially in the security apparatus) who may or may not be tied to a single news gathering organization. This provides an opportunity similar to the publishing model of Wikileaks in the sense content will be dispersed to a variety of providers.

“It makes it a lot more difficult for governments around the world to repress because they don’t even know exactly who to go repress,” Davis said.

“The Internet and the move toward digital-first publishing, and in some cases digital-only publishing, just makes it that much easier because it disintermediates the mass media in a huge way,” Davis said. “Anybody can be a player.”

“Journalists have done everything in their power according to traditional journalistic mores to signal to the public, ‘Hey, this is a huge deal, it merits your attention.’ That’s what journalists can do,” Davis said. “They can’t make the public decide to be outraged about something. That ultimately is the job of the public — reading and deciding.”

## Defining Journalism in an Age of Information Overload

“To the press alone, chequered as it is with abuses, the world is indebted for all the triumphs which have been gained by reason and humanity, over error and oppression.”<sup>62</sup>

-James Madison

WARNING — legally defining the role of journalism and who constitutes as a “journalist” poses a serious threat to freedom of speech. Today, anyone can be a journalist, and that venerable status doesn’t require one to be staffed by the *New York Times* or some other mainstream news organization.

The Supreme Court acknowledged the risk of legally defining a journalist in the *Branzburg v. Hayes* ruling. “The issue in these cases is whether requiring newsmen to appear and testify before state or federal grand juries abridges the freedom of speech and press guaranteed by the First Amendment,” Justice White wrote. “We hold that it does not.”

If the Court ruled otherwise, “sooner or later, it would be necessary to define those categories of newsmen who qualified for the privilege, a questionable procedure in light of the traditional doctrine that liberty of the press is the right of the lonely pamphleteer who uses carbon paper or a mimeograph just as much as of the large metropolitan publisher who utilizes the latest photocomposition methods,” Justice White opined.<sup>63</sup>

Journalism today is nothing more than an echo of journalism in early America. The industry is continuously evolving, and the Court expresses no interest in legally defining such a position and rightly so. Therefore, it’s up to us, the people, to establish and protect such cultural norms.

As Judge Learned Hand once wrote: “I often wonder whether we do not rest our hopes too much upon constitutions, upon laws and upon courts. These are false hopes; believe me, these are false hopes. **Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can even do much to help it. While it lies there it needs no constitution, no law, no court to save it.**”<sup>64</sup>

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<sup>62</sup> "History of the Federal Judiciary." Federal Judicial Center. Accessed August 8, 2014. [http://www.fjc.gov/history/home.nsf/page/tu\\_sedition\\_hd\\_madison.html](http://www.fjc.gov/history/home.nsf/page/tu_sedition_hd_madison.html).

<sup>63</sup> "Branzburg v. Hayes." Cornell University Law School Legal Information Institute. June 29, 1972. Accessed August 4, 2014.

<sup>64</sup> Hand, Learned. "The Spirit of Liberty." Digital History. 1944. Accessed August 4, 2014.

## The Evolution of Journalism

What is journalism? The rapidly changing industry is too dynamic for a comprehensive definition. Journalism, in the broadest sense, is a form of communication. Like any word, the term journalism has transformed throughout time, and it's important to understand how the industry evolved to where we are today.

Jack Lule, Professor and Chair in the Department of Journalism and Communication at Lehigh University, argues in his book *Daily News, Eternal Stories: The Mythological Role of Journalism* that "our understanding of news is shaped by our times. We act as if news was invented for our modern era. We think of news as information for an information society."

Another factor influencing our understanding of news derives from "where we live. We act as if news was invented in the United States for U.S. democracy. We think of news as enshrined in the First Amendment, created by Jefferson, Madison, and the other framers of the Constitution for the proper instruction of an informed public."<sup>65</sup>

It's important not to get caught up in this limited view of journalism. To truly appreciate the role of journalism in modern society, we must examine its roots and history. In *The Elements of Journalism* by Bill Kovach and Tom Rosenstiel the authors argue, "**Every generation creates its own journalism.** But the purpose and the underlying elements of journalism, we have found, are the same."<sup>66</sup>

The medium and delivery of news has greatly fluctuated through the years. As the Middle Ages were coming to an end, news came in the form of song and story by minstrels. Note minstrels, not "journalists." What's the significance here? **The theory of journalism isn't analogous to the role of a journalist.** We need to realize that "journalists are [only] part of a long storytelling tradition," as Lule points out. "That includes fleet-footed messengers, minstrels, troubadours, carriers, couriers, criers, poets, chief priests, missionaries, rabbis, and medicine men."<sup>67</sup>

It's the storytelling role of journalism that's significant. Therefore, modern producers of journalism could easily include bloggers, content curators, film makers, documentary producers, activists, artists, etc. The important thing is to disperse factual, verified information in the public's interest.

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<sup>65</sup> Lule, Jack. *Daily News, Eternal Stories: The Mythological Role of Journalism*. New York: Guilford Press, 2001. 3.

<sup>66</sup> Kovach, Bill, and Tom Rosenstiel. *The Elements of Journalism: What Newspeople Should Know and the Public Should Expect*. New York: Three Rivers Press, 2007. 14.

<sup>67</sup> Lule, Jack. *Daily News, Eternal Stories: The Mythological Role of Journalism*. New York: Guilford Press, 2001. 3.

## The Atavistic Art of Storytelling

Journalism is rooted in the atavistic art of storytelling — an art predating the written word. “Tribes gathered to hear news of battles and births from well-traveled messengers. Later, towns scheduled times and places for news criers. The Roman Empire distributed copies of the *acta*—proceedings and transactions—and posted them in cities,” Lule wrote relating the function of news to myth. “News was understood as information of *public* interest. ... Myth and news are, after all, stories of public interest.”<sup>68</sup>

Lule defines “myth—and news—as telling great stories of humankind for humankind.” Myth is a “sacred, societal story that draws from [shared human experiences] to offer exemplary models for human life.”<sup>69</sup> **Therefore, news and myth “offer stories that inform, instruct, and enlighten a *public*.** They address people not just as individuals, not just as audiences, but as members of a social, civic group. ... News and myth speak to a public and offer stories that shape and maintain and exclude and deny important societal ideas and beliefs.”<sup>70</sup>

However, not all news stories equate myth. It’s when “fundamental stories become *public*, when these stories are told to a people, when these stories are narrated on a societal level to render exemplary models and represent shared social values and beliefs, news becomes myth.”<sup>71</sup>

“Consciously or unconsciously ... journalists take their place among the generations of storytellers who tell and retell the myths of humankind.”<sup>72</sup>

## News and the Search for Its Purpose

Journalists and scholars have long sought to define the primary function of news. Yet, no single, comprehensive definition has seemed to emerge. To better understand the primary role of news, Lule offers the following six broad perspectives:

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<sup>68</sup> Lule, Jack. *Daily News, Eternal Stories: The Mythological Role of Journalism*. New York: Guilford Press, 2001. 21.

<sup>69</sup> Lule, Jack. *Daily News, Eternal Stories: The Mythological Role of Journalism*. New York: Guilford Press, 2001. 15.

<sup>70</sup> Lule, Jack. *Daily News, Eternal Stories: The Mythological Role of Journalism*. New York: Guilford Press, 2001. 21.

<sup>71</sup> Lule, Jack. *Daily News, Eternal Stories: The Mythological Role of Journalism*. New York: Guilford Press, 2001. 33-34.

<sup>72</sup> Lule, Jack. *Daily News, Eternal Stories: The Mythological Role of Journalism*. New York: Guilford Press, 2001. 19.

1. **To watch over government**, which encompasses the classic watchdog and “fourth estate” role of the press.
2. **To manufacture consent**, which offers a skeptical view of news as a propaganda machine used by government to “manufacture” consent and maintain established ideologies.
3. **To set the public agenda**, which relates to the “gatekeeper” role of the press. The function of the gatekeeper is to filter out less important content and set the agenda for social issues needing attention. This view doesn’t necessarily instruct people *how* to think, but it guides audiences *what* to think.
4. **To inform public opinion**, which plays on the public influence of news. News provides an avenue to inform a public — ultimately, enabling them to make responsible decisions.
5. **To foster public conversation**. News is not simply correct or incorrect information, but part of a larger, public conversation. News provides updates and relevant information to stimulate and promote public discourse.
6. **To enact social dramas**, which “are the large and small acts and interactions that make up life.” This perspective recognizes the significant role of news as myth, and its primary role “is to enact social dramas that *sustain social order*.”<sup>73</sup>

In searching for the purpose of news, Lule’s primary concern was how news relates to society. It’s like one of those “if a tree falls in a forest” type questions. If no one reads the news, does it serve a purpose or have an impact? ... Journalists and storytellers, whether honest about it or not, hope to invoke some sort of response from an audience. And considering a journalists’ audience is generally the public, exploring the relationship between news and society makes sense.

However, as Lule notes, “‘society’ is an ambiguous, imprecise term.” Instead, Lule prefers the term “social order,” which he defines as “the specific structure of all the things that make up a society: rights, authority, power, hierarchy, status, ways of worship, labor, property relations, means of production, means of having fun.” Ultimately, “social order provides a way to talk about a particular society at a particular time.”<sup>74</sup>

As history reveals, social dramas hold the force to challenge and change social orders. News can either diffuse or extinguish such social dramas depending on the slant of the story. The six functions of news as indicated above are not always clear-cut. For example, if a news organization decides not to cover a particular social drama, they consequently opt to extinguish it (by exercising the gatekeeper role). Whereas covering it can fulfill other roles depending on the circumstance of the social drama itself and how it’s covered.

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<sup>73</sup> Lule, Jack. *Daily News, Eternal Stories: The Mythological Role of Journalism*. New York: Guilford Press, 2001. 35-36.

<sup>74</sup> Lule, Jack. *Daily News, Eternal Stories: The Mythological Role of Journalism*. New York: Guilford Press, 2001. 36.

The social drama surrounding the NSA revelations can invoke the watchdog function of the press or its contrasting role of manufacturing consent. Basically, the purpose of news depends on each individual news organization. Some organizations are more liberal, others more conservative. And this is exactly why media literacy is so important, especially in this day and age of information overload.

One of Lule's central arguments is that mainstream media organizations such as the *New York Times* "can be seen as a State Scribe, as our society's privileged and preeminent storyteller. The *Times* is the connected insider, serene with position and power, flattering the mighty but also sometimes threatening them because of its status."<sup>75</sup> It's important for media consumers to be vigilant as Mark Twain observed: "Unassailable certainty is the thing that gives a newspaper the firmest and most valuable reputation."

Despite irregularities and the nebulous state of the news industry, there are a few consistencies worth noting: "Whether one looks back over three hundred years, or even three thousand years, it is impossible to separate news from community and, over time, even more specifically from democratic community."<sup>76</sup>

## Have No Fear, You Have the Right to Speak Freely Here

"Those who won our independence by revolution were not cowards," Justice Brandeis wrote in a concurring opinion. "They did not fear political change. They did not exalt order at the cost of liberty." They fought for liberty — an epic fight that continues to prevail today. A fight Snowden recognized and understood when he decided to blow the whistle.

"No danger flowing from speech can be deemed clear and present unless the incidence of the evil apprehended is so imminent that it may befall *before* there is opportunity for full discussion. **If there be time to expose through discussion the falsehood and fallacies, to avert the evil by the processes of education, the remedy to be applied is more speech, not enforced silence.**"<sup>77</sup>

This logic and precedent set forth by the Supreme Court supports Snowden's decision to reveal classified information with the intent to spark public debate. It's been over a year since the first NSA surveillance story broke, and U.S. officials have yet to identify a clear and present danger related to the disclosures.

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<sup>75</sup> Lule, Jack. *Daily News, Eternal Stories: The Mythological Role of Journalism*. New York: Guilford Press, 2001. 7.

<sup>76</sup> Kovach, Bill, and Tom Rosenstiel. *The Elements of Journalism: What Newspeople Should Know and the Public Should Expect*. New York: Three Rivers Press, 2007. 18.

<sup>77</sup> "Whitney v. California." Cornell University Law School Legal Information Institute. May 16, 1927. Accessed August 5, 2014.

We live during a time of great change. We have bloggers breaking news stories and freelancers getting on the front pages of major publications. Defining who is and who is not a journalist has become more difficult than ever. Yea sure, any blogger could simply be a nutcase with a keyboard, but retired and unemployed journalists (in the traditional sense) also use the blogosphere as an invaluable reporting tool.

Today, any individual with access to a computer has the power to disperse and share his or her message with the world. And it's important to remember: the liberty of the press includes "the right of the lonely pamphleteer."

"I am living proof that an individual can go head to head against the most powerful adversaries and the most powerful intelligence agencies around the world and win, and I think that's something that we need to take hope from, and we need to build on to make it accessible not just to technical experts but to ordinary citizens around the world," Snowden said during his TED Talks interview. **"Journalism is not a crime, communication is not a crime, and we should not be monitored in our everyday activities."**<sup>78</sup>

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<sup>78</sup> "Transcript of "Edward Snowden: Here's How We Take Back the Internet"" TED.com. March 19, 2014. Accessed September 17, 2014.