Journalistic freedom and surveillance of journalists Post-Snowden

It often takes an unexpected turn of events to reveal that we have entered a new paradigm. And so it seems with Edward Snowden, who, as a National Security Agency (NSA) contractor, was so appalled at the exponential expansion of covert digital surveillance that he decided it was his duty it was to inform the public and this he did from a hotel room in Hong Kong in June 2013. He gave a small group of selected journalists access to as many as 1.7m classified documents tsaken from his employer from NSA and detailing inner working of the Agency and its 'Five Eyes' eavesdropping partners (ASIO in Australia, CSE in Canada, GCSB in New Zealand and the GCHQ in United Kingdom). Snowden's documents revealed that the eavesdropping agencies can vacuum up just about all digital communications everywhere, anytime, and much else besides if they are so minded. Many who take a deep interest in intelligence thought western eavesdropping agencies had probably increased their capabilities since 9/11 but even they were shocked when Snowden revealed the sheer scale - which was exponentially greater than expected. As Wahl-Jorgeson et al explained it, the programmes revealed by Snowden ranged from the interception of data shared on the internet to practices of hacking into computer systems and compromising security levels.

"They encompassed the bulk collection of everyone's data as well as targeted surveillance of governments, companies and civil society organisations. Among other things, the revelations showed that the intelligence agencies had intercepted the metadata of billions of phone calls recorded by Verizon and other major phone companies. Through its PRISM programme, the NSA also accessed information gathered by Facebook, Google, Apple and other technology companies".

They observe that while there has always been state surveillance of parts of the population:

"What is new is how, in our "datafied society" the gathering of extensive data about all of us is pervasive, opaque, yet central to the functioning of consumer capitalism."(197).

As Glenn Greenwald discovered from the documents the Five Eyes mantra is 'Collect it all'. He quoted his favourite NSA document because of its clarity in terms of just how comprehensive collection is:

"At the top of the document, it says 'new collection posture'. This is the NSA describing its new collection position, and right underneath is a really ugly, though helpful, circle with six points on it. Each of the six points has a different phrase that elaborates on the 'Collect It All' mandate. So you go clockwise around the circle, and the top it says 'Sniff It All' and then it says 'Knows It All,' 'Collect It All,' 'Process It All,' 'Exploit It All; and then the last one is 'Partner it all.'

This then is the institutional mandate for the NSA – it is collecting billions and billions of telephone calls and emails every single day from population and nations all over the world including our own" (Greenwald 2014).

As we approach the fifth anniversary of Snowden's revelations (June 2018) there has now been time to take a measured assessment of the impact of Snowden's controversial release. In the months immediately after Snowden's document release (Sept 2013 – February 2014) I interviewed a number of journalists and journalism academics from across the Five Eyes countries about their reaction to the Snowden revelations (Lashmar 2016). The criteria were that these were all investigative journalists with national security reporting experience and therefore were likely to have a deep knowledge about what Snowden had meant for the wider public and for journalism. They are also likely to be the journalists most 'at risk' by the surveillance capabilities of these agencies. As the general counsellor for Buzzzfeed, Nabiha Syed observed: "There has always been some information asymmetry between reporters acting in the public interest and powerful organizations – like government agencies – that possess critical information. Increasingly, that imbalance is tilting against the interest of two critical groups: national security reporters and independent journalists. Most surprising is the role of technology in exacerbating the asymmetry" (Bell et al 2017). My interview cohort included reporters from both groups identified by Syed so I went back to those I had originally interviewed them where possible, interviewed them again. There had been some changes; one interviewee Gavin McFadyen of the UK's Centre for Investigative Journalism had died, a sad loss. Back in 2013 MacFadyean ominously asserted that, "The intelligence agencies' capabilities are an incredible threat to us, our sources and democratic process. Knowledge is power and we give them all this knowledge without constraint with no fear of perjury." He concludes sceptically: "These people lie all the time." Others I had interviewed moved away from national security reporting and felt they had nothing new to add. I approached some 20 journalists and was able to interview twelve. There are at least two reporters from each of the Five Eyes countries. They were

Andrew Fowler (formerly Australia Broadcasting Corporation's Four Corners programme) and Dylan Welch (ABC's 7.30 show) from Australia, Jim Bronskill (Canada Press), Andrew Mitrovica (Freelance) David Seglins (CBC) for Canada, David Fisher (New Zealand Herald) and Nick Hager (freelance and NZ's leading investigative reporter) for New Zealand, Duncan Campbell (intelligence expert and freelance journalist), Meirion Jones (ex-BBC and Bureau of Investigative Journalism) and Peter Taylor (BBC Panorama) in the UK and Scott Shane (New York Times) and Jeff Richelson (National Security Archive) in the US. All have have reported on intelligence agency excesses. At least three (Campbell, Hager, Fowler) have been subject to security agency raids as a result of their stories. All have reported on or used the Snowden documents. One had met Snowden (Taylor) and others worked with the Greenwald team to some extent. I used semi structured interviews. Occasionally in this chapter I quote academics and other journalists who have commented on key issues arising from Snowden. In addition I conducted a literature review of books, reports, chapters and papers on the impact of Snowden for journalists and their source (see Bell et al 2017, Fowler 2016, Kuehn 2017, Bauman et al 2014; Moore 2014). There was also a timely UNESCO report published in May 2017 that surveys some 121 countries on the protection of sources in the digital age. In each company there had be reactions from media and civil society groups. Much of the concern has been about protecting sources. The author was part of group who advised on a study by the Institute of Advanced Legal Studies (IALS) supported by The *Guardian* that said journalists find it increasingly difficult to safeguard the anonymity of their sources due to the monitoring and interception of online and phone conversations.

"Working investigative journalists and media lawyers, many with several decades of experience, are profoundly concerned about the growing technological and legal vulnerability of confidential sources including whistle-blowers, the protection of whom is essential to the pursuit of responsible journalism in the public interest" (Townend and Danbury 2017).

It is worth noting none of those interviewed disputed that there is a role for intelligence agencies in tackling terrorism. Duncan Campbell took the view that 'from available evidence' British intelligence was doing a good job. Jim Bronskill said that in his own experience he had only ever heard a one reporter say that intelligence agencies should not exist. "There are very few people who say we should not have intelligence agencies or security apparatus. The consensus round that is: are they responsible, are

they policed by proper legislation, proper oversight and review? And is the media reporting on them effectively?

Perceptions of Snowden

In the immediate aftermath of Snowden going public the former NSA and CIA employee was applauded by some as a hero but he was also accused of being a traitor and worse. The director of the NSA 2005-2014 General Keith B. Alexander stated that the Snowden leaks had resulted in "the greatest damage to our combined nations' intelligence systems that we have ever suffered" (MacAskill 2014). British intelligence has spoken of areas of the world having "gone dark" and of disruption caused to intelligence-gathering. Back in 2013 some commentators and journalists posited that he was working for Russian or Chinese intelligence. But that criticism seems to have receded and whether critics are for or against him, his sincerity is rarely now questioned. He remains in Russia and would face serious charges if he returned to the US. In 2015, Peter Taylor, one of the BBC's most experienced current affairs journalists made a Panorama programme about surveillance. "I was fortunate enough to meet Edward Snowden in Moscow and spent about two hours with him. Before I met him, I was never quite sure about him. When I met him I was in no doubt about his sincerity, motivation and fierce determination to out there things he thought the public should know. He had a powerful feeling the public was being kept in the dark." Perhaps not surprisingly, as investigative journalists, all of the interviewees were in favour of Snowden and what he had done and felt that releasing information to the public was important. Some interviewees described Snowden as a hero (Mitrovica, Seglins). Andrew Mitrovica said, "We owe Snowdon a debt of gratitude for risking his safety and freedom". Mitrovica said he was frustrated before Snowden that the public and editors were not taking surveillance seriously. But Snowden's leaks changed that. "The public imagination caught up in what he was doing. I thank him for trying to help make these things know the public. Snowden liberated people to say the public have a right to see this." The name Snowden, it seems, has also become a form of adjective, a shorthand to refer to global mass surveillance.

Impact of Snowden

Indeed most of the interviewees felt the Snowden's revelations had reached a global audience and that in terms of considering privacy and surveillance there is a before and after Snowden. David Fisher said, "In the intelligence and the security space there is far greater awareness of

surveillance issues and privacy issues." He believes that the public, least in New Zealand now has no expectation of privacy. Referring to the Five Eyes eavesdropping agencies he stated: "Snowden has contextualised what we are dealing with now. The power they have, if they choose to use it, is awesome".

Asked what the impact of his revelations was the responses from those interviewed were varied. Peter Taylor felt that what Snowden done was "hugely important". Mitrovica felt the releases had had a huge impact on the public and "made what was going on clear." Scott Shane said Snowden had raised awareness. Shane said that he had published an explanatory series on the NSA in 1995 and at that point very few Americans had any idea what the agency was. Snowden, he said, had "certainly greatly raised the awareness of Americans that there is a big intelligence agency that intercepts a whole lot of information and intercepts a whole lot of communication and there are privacy issues that are implicated." The US interviewees reported a more mixed reaction from the US public. He noted that in response to the Snowden revelations: "About half of Americans and about half of Congress were unhappy with some of what was exposed primarily the phone call metadata and the Obama administration and Congress scaled things back and changed the procedure to increase privacy protection for Americans and made it less possible for the Government to collect and store data on millions of Americans". He says that NSA is so powerful that it needs to be closely monitored. "The capabilities of NSA obviously are so consequential that everybody needs to keep a close track."

Duncan Campbell who is the UK journalism's leading expert on Signals Intelligence (Sigint) was very measured when I interviewed him back in 2014 but said he was surprised at the scale of the surveillance capability revealed by the documents. As is always the case Campbell's interpretation remains nuanced and was more cautious about the overall impact overall when interviewed again in 2017. The scholarly Jeff Richelson, who is one of the leading experts on Sigint, in the US said he the vastness of the Five Eyes operation did surprise him. The documents, he said "dramatically shifted the understanding of the nature of Sigint effort both by the US and the British in terms both of the reach of it but also in terms of targeting digital networks and extracting intelligence from digital networks and the lengths they went to and had gone to and presumably going to get that information terms of not simply basic hacking or passive intercept but also implants or planting devices in computers they have diverted". What the impact on the public had been

he did not feel very qualified to comment. The UK's Meirion Jones, known for his fearless journalism, was the most sceptical of the interviewees about the impact and felt the revelations merely confirmed what the public and journalists had suspected.

Canada's Dave Seglins, who is an experienced CBC broadcaster on the national security beat said of what Snowden revealed "I was shocked at the initial stories" but he felt that Canadians were less sceptical than Americans over the authorities: "Canadians were far more complacent. In my view, and far less disturbed for their privacy." Fellow Canadian Andrew Mitrovica who has investigated a number of intelligence scandal and is a leading Canadian critic of the intelligence agencies, struck a slightly different note, observing that there had been public demonstrations in the streets after Snowden's leaks. He felt Snowden had become a major cultural figure in the world. Jim Bronskill agreed that Snowden had reset the public debate. "It was useful and still is in the sense people are more mindful of the fact there are agencies collecting intelligence and with modern tools it is infinitely easier to do and it is happening."

Nicky Hager, who has had a number of run ins with intelligence agencies in New Zealnd over his investigations, stated that the Snowden revelations were 'absolutely incredible' and felt 'there had been a high level of public support for Snowden'. He commented, "The New Zealand public at large had a much larger reaction to the overall world news than stories about New Zealand. David Fisher and Hager both said there was initially, a big reaction in New Zealand with town hall meetings and public demonstrations in the months after Snowden's leaks. Dylan Welch who took over national security reporting for ABC's 7.30 prtogramme when he returned from Afghanistan, said that for a decade after 9/11 there was a public willingness to take the National Security sector at its word. "There is now something of a pushback." Author of "The War on Journalism" (2015), Andrew Fowler said the Australian reaction was divided. The public, he observed "have been, I would say quite supportive, in the sense that they have always believed there communications were being interfered with and their data might not be safe but this provided absolute proof of it." Fowler and Dylan Welch felt that the Australian public did not react strongly as they are very conservative in their views when it comes to intelligence issues.  In the UK Meirion Jones said the public reaction was mixed, but believes that if anything, the revelations resulted in sizeable part of the UK public having increased pride in the intelligence services. "That British intelligence is still something important, that they

are ranked up there with the Americans, dirtier than the Americans, it appeals to a James Bond aura, for them it wasn't negative." Campbell picking up on Hager's point noted it is segmented reaction among the public with technological aware people expressing concern and "a large number of people not touched" not relevant to them small minority and informed group of people who are favour of the scale of these operations.

One of the most interesting aspects of the UK reaction is that at time *Guardian* was publishing Snowden documents, much of the UK Press turned on the *Guardian* for printing Snowden documents and sided with the government and intelligence communities' condemnation particularly The *Telegraph*, The *Sun* and *the Daily Mail*. Broadcast news was slow to pick up the story another point that will be picked up below. Campbell says that coverage of Snowden in the UK was: "Highly slanted and quite significant in that the voice of Snowden was muted so the message was only be really only conveyed by The *Guardian* and yes, the BBC, but muted through the onerous processes of purported balance." Also critical of Press coverage was a report by Cardiff University journalism department academics that had carried out a two year research project (2014-16) on the impact of Snowden - Digital Citizenship and the Surveillance Society, who accused the Press of a quasi-legitimation of the surveillance debate in the newspaper coverage and that it normalised surveillance. "Furthermore, the newspapers' heavy reliance on politicians as sources has meant that the surveillance debate was mainly centered around the impact surveillance had on the political arena rather than what it actually meant for the wider public. (Cable 2017)

In the other Five Eyes countries there was much less of a tendency for the other news media to turn on the news organisations that had published exclusive Snowden material. When the Snowden material was published politicians and intelligence chiefs attacked journalists for publishing the material and it was not uncommon for them to accuse editors of putting lives in danger and damaging the ability of national security agencies to monitor and deter terrorists.

Watergate?

I asked interviewees how they would measure Snowden as a paradigmatic event. I asked for instance, how they would compare it with Watergate perhaps the most recognised issue where the news media had clashed with the secret state. Canada's Dave Seglins and Andrew Mitrovica both felt the Snowden affair was of global significance. Seglins stated, "Snowden was more important than Watergate. Watergate perceived the

veneer of moral leadership in the US but had less of impact on the citizens of the world. I think the Snowden revelations instantly ripped the shroud of secrecy from activities of the Five Eyes countries but also made the entire world aware, realise of what was technologically capable, possible. So I think it has far reaching consequences for people around the world and just in the Five Eyes countries."

It was interesting that the news narrative over Snowden often concentrated on Snowden's personality and little was said about the fact that the 'Five Eyes' lax security had enabled a contractor to downloaded to download a massive tranche of classified intelligence documents. Virtually no report at the time discussed the possibility that if Snowden could do it who else could access the material who might be motivated by greed or ideology but was not interested in going public and may well have been a spy. It is worth noting that the Chinese security forces killed or imprisoned as many as twenty CIA agents in China from 2010-12 and that looks like a mole or data leak (Mazzetti et al 2017).

It was not just activists and journalist who are concerned about the scale of surveillance. The Council of Europe Committee on Legal Affairs and Human Rights unanimously adopted a Resolution, and a Recommendation, on January 26th 2015. The Resolution included the following statements:

"The Parliamentary Assembly is deeply concerned about mass surveillance practices disclosed since June 2013 by journalists to whom a former US national security insider, Mr. Edward Snowden, had entrusted a large amount of top secret data establishing the existence of mass surveillance and large-scale intrusion practices hitherto unknown to the general public and even to most political decision-makers." (UNESCO 2017)

The UNESCO researchers also raised concerns over the practice of 'outsourcing' the interception of citizens' communications to allied countries' national security agencies, in order to avoid domestic privacy and freedom of expression laws, may heighten the risks for journalistic source protection.

The collection obsession

Duncan Campbell felt that Snowden coverage has been too focussed on bulk collection and too little has been said about what GCHQ did with the data it collected. Campbell pointed out GCHQ has 'customers'. "It's a business, that's its *raison d'etre"* He notes it has customer relations teams, a sales force and delivery drivers" - and for all the reporting of

GCHQ's role "it only focusses on one aspect - collection - the systems that steal all our data."

"It doesn't look at the intelligence process in the round, because for the most part that is what these documents see, and generally when they did, with some salient exceptions, that is not what the journalists went for. It seemed sexy to describe massive scoops on internet cables and the factors of scale, which is truly astonishing and so on. That criticism can probably be made of me," he continued.

"The fact of the matter is to understand in its context and the harm or good that may be done by signal intelligence agencies you have to look at the tasking, the collection management, the analysis process and above all the consumer reporting channel because the core interactions are not collection directed against the citizen, or the business or the target. They are the customer - who the government pays - customer gets spy data – what spy data? Then the second interaction that matters is, - what is done with it? So if the Snowden documents, which they do on some occasions, speak to all of those processes, they clearly have more force and show more of the picture and when they don't, they certainly show collection capability and scale. But what is done with it?"

Campbell made the point it is important as to who gets the information from GCHQ information - whether it is the Defence Intelligence (DI), MI6, MI5 or the police and what they do with it and whether it infringes the target's rights under Article 8.

Indeed the intelligence lobby was frustrated by this post-Snowden emphasis on collection, which they describe as bulk collection and argue that is not the same as mass surveillance as they filter out most data to focus on targets set by their customers and do not eavesdrop on the public at large. However we have little idea how collected data impacts on the civil liberties of 'targets'. In each of the Five Eyes countries there have been historical and recent examples of intelligence and security forces excesses. In the United States in the wake of 9/11 there was mass telephone interception of US citizens which, while approved by President Bush was illegal and not revealed until 2006. This was followed by examples of rendition and torture. In the UK the British Special Branch ran an undercover operation the "Special Demonstration Squad" for twenty years in which police officers infiltrated activist groups and had relationships and children with activists before 'disappearing'. And there have been similar events in other Five Eyes countries.

Impact on Journalists

As UNESCO has observed: "While the rapidly emerging digital environment offers great opportunities for journalists to investigate and report information in the public interest, it also poses particular challenges regarding the privacy and safety of journalistic sources."

The Snowden showed that journalists were the targets of intelligence. In 2013, Der Spiegel reported that the NSA had intercepted, read and analysed internal communications at Al Jazeera which had been encrypted by the news organisation (Der Spiegel 2013). In early 2015 The Guardian published a Snowden document that revealed that a UK Government Communications Headquarters (GCHQ) information security assessment listed "investigative journalists" in a threat hierarchy (Ball 2015).

A clear case of undercutting of confidential source protection by mass surveillance came in July 2015, in a German parliamentary investigation into the surveillance of German citizens in 2011. During the course of questioning, a German intelligence chief revealed that Der Spiegel journalists had also been under surveillance and that an official from the service of an ally had revealed the identity of one of the journalists' confidential sources to the German government (Tapper 2015). Documents linked to Edward Snowden, published by The Guardian in 2015, posited that the UK's GCHQ (Government Communications Headquarters) had syphoned emails from some of the world's top news organisations – the BBC, The Guardian, Le Monde, Reuters, The New York Times and The Washington Post among them – for internal distribution (Ball 2015) Unesco

UNESCO researchers noted that the current digital environment poses particular challenges to traditional legal protections for journalists' sources. While protective laws and/or a reporter's commitment shielded the identity of sources in the analogue past, in the age of digital reporting, mass surveillance, mandatory data retention, and disclosure by third party intermediaries, this traditional shield can be penetrated (UNESCO 2017).

Nearly all interviewees felt that Snowden had a big impact on journalists generally and had raised very serious questions about whether journalist could protect their sources. Shane said "There was more awareness amongst journalists". Mitrovica was bullish, "It's not had a chilling effect on me". Nor was he worried about the impact on sources: "I think some sources have been emboldened by Snowden". Back in 2014 Duncan

Campbell counselled it was important to keep things in perspective and only a relatively small number of journalists are likely to run up against surveillance by the NSA network:

"The impact of Snowden's revelations should not really be overstated for journalism, because the most critical aspect relates to the conduct of the intelligence (Lashmar 2016).

Campbell maintained this position. New Zealand's David Fisher observed much the same for most investigations but stated it is a different story if you are investigating Five Eyes agencies. "If you are fucking with them there is no way they are not going to find out." Otherwise sensible trade craft will do, he said. "If it's the spies you are messing with - they are going to track single every bit of metadata you've got. They are going to intercept every bit of commination you got. When you are out of house they will be break in and download everything on your computers". Jones took a similar position but added – "If you do come to their attention they will be all over you. There is no possibility you can protect yourself."

The issue of source protection has come to intersect with the issues of mass surveillance, targeted surveillance, data retention, the spill-over effects of antiterrorism/national security legislation, and the role of third party Internet companies known as "intermediaries" (UNESCO 2017)

As the UNESCO pointed out there is a globally established ethical obligation upon journalists to avoid revealing the identity of their confidential sources. In some cases, it is also a legal right, or even a legal requirement. In Sweden, protection of confidential sources is so strong that journalists can be prosecuted for revealing their identities (Hendler 2010). However, in many cases, the legal situation does not grant recognition of such confidentiality and journalists can still be legally compelled to identify their sources or face penalties, prosecution and imprisonment. (UNESCO)

In February 2015, the Pew Research Center released the results of a survey on "Perceptions of vulnerability and changes in behaviour" among members of the USA-based organisation Investigative Reporters and Editors (Holcomb, Mitchell & Page 2015). Pew's research found that 64% of investigative journalists surveyed believed that the US Government collected data about their communications. The figure rose to 71% among national political reporters and those who report foreign affairs and national security issues. Ninety percent of the of US investigative journalists who responded to the Pew survey believed that their ISP would

routinely share their data with the NSA, while more than 70% reported that they had little confidence in ISPs' ability to protect their data.(UNESCO and Pew)

Impact on Sources

David Fisher stated that sources are more alert "There has been a chilling effect." Taylor said he thought Snowden had had a chilling effect on sources. Meirion Jones said it had impacted on sourcesShane reported it had an impact on sources but this had been somewhat negated by Trump where sources are queuing up to dish the dirt on the White House. Fowler was concerned how cavalier some sources had been and that he still gets emails that could incriminate the sender.

ICIJ's Ryle told UNESCO researchers said there is certainly increasing awareness among his sources that the stakes are much higher in the age of surveillance: "People are increasingly nervous because the truth is it's quite easy to trace people and to trace sources".

The Pew study found that 45% of respondents ranked surveillance as the number one or number two challenge facing journalists (Holcomb, Mitchell & Page 2015). Nearly half of the national security, political and foreign affairs reporters among them also reported that concerns about surveillance have caused them to change the ways in which they communicated with sources (with reverting to face-to-face meetings being the main means of protecting sources). Meanwhile, 18 percent of this group reported that it was becoming harder to get sources to speak "off record" (UNESCO 2017).

Methods

UNESCO researchers noted that across the 121 countries it surveyed many journalists are now significantly changing their methods in an effort to shield their sources from exposure, sometimes even seeking to avoid electronic devices and communications altogether.

"Regardless, such tactics may be insufficient if legal protections are weak, anonymity is forbidden, encryption is disallowed, and sources themselves are unaware of the risks. The impact of these combined factors on the production and scope of investigative journalism based on confidential sources is significant."

Unesco noted that where source protection is compromised, the impacts can include:

• Pre-publication exposure of journalistic investigations which may trigger cover-ups, intimidation, or destruction of information,

• Revelation of sources' identities with legal or extra-legal repercussions on them,

• Sources of information running dry,

• Self-censorship by journalists and citizens more broadly. (UNESCO 2017)

Again with the interviewees the reaction to changing procedures was mixed. Some interviewees (Fowler, Welch, Seglins, Fisher, Shane) said they had tightened up their security since Snowden to protect their sources. Shane said he had become more cautious but made the point that in the US it was not just the Snowden revelations that influenced journalists but the Obama administrations prosecution of journalist sources that had impacted on journalists. Indeed one of Shane's own sources John Kirakou had been prosecuted and jailed.

David Seglins said that working with the Snowden documents had "Fundamentally changed my understanding of operational security as a journalist. Everything from storage of documents to the use of encryption, encrypted communication, encrypted data storage. To how our mobile devices are potential listening devices and how that affects a journalist's ability travel to places, meet sources, have discussions with absolute certainty we are not being recorded or monitored or tracked."

Others (Hager and Jones) said that they had always employed rigorous source methods and have maintained sources so had no plans to change. "I would rather lose a story than a source," said Jones. Some interviewees have incorporated new counter surveillance digital methods routinely into their work. Encryption has become a regular tool in a way it was not before Snowden. Shane said he uses encrypted email. Some are using PGP (Fowler, Welch, Seglins, Fisher, Jones, Shane) as necessary and some use TOR (Seglins, Jones). Some also use encrypted phone apps like Signal. "One of the things that has changed since we last talked is the proliferation of encryption communication apps. Many of have run through the various one, Silent Circle, What's Apps, Signal, so there is an increasing availability of encrypted communications. I'm certainly more aware of what I am putting into a storable electronic record."

It is worth noting that some of the interviewees now include the PGP key into their email or social media addresses.  Welch said this told potential

sources that they were serious about source protection "I list it all I tell people where they can find my PGP, my public key. I tell I have every single one of the encrypted apps on my phone. I use them a lot. I don't try to hide it". Some reported their organisations had decided to set up Secure Drop (secure and encrypted dropbox type) facilities for potential sources to send material to (This includes SMH, CBC, NYT, BIJ) other organisations have decided against it (ABC in Australia, New Zealand Herald, Canada News). Fisher pointed out that using encryption can 'red flag' to interested intelligence agencies that you are communicating with someone they might be interested in. Most journalists who use encryption said it was only a partial solution to be used with care. There was clear concern that the Five Eyes may have found ways to break encryption. Taylor said that while examining the Snowden documents: "One thing that really surprised me, and really it should not have done, was that he had a GCHQ material from a training manual. The intelligence service GCHQ could tap into your phone by planting malware inside it and listen to your conversations and take photos of you and whoever you were with, even though your phone appeared to be off. That really shook me."

Scott Shane said that NYT had appointed a newsroom security adviser and journalists there were given training and advice from lawyers. Almost all interviewees emphasised the importance of non-digital means of communication with sources. This was to meet sources making sure there was digital footprint of the meeting – leaving mobile phones and laptops at home. Jones said it was important to tell sources that you cannot guarantee to protect them, though you would do your best.

Chilling Effect

Cardiff University's carried out a two year research project on the impact of Snowden - Digital Citizenship and the 'Surveillance Society. Among their conclusions they noted a chilling effect:

"Most importantly, however, the findings point to a chilling effect on journalism: with increased surveillance of digital communications, journalists' sources may over time become more reluctant to communicate wrongdoing when faced with the prospect of being exposed by surveillance mechanisms and techniques" (Cable 2016).

All interviewees were concerned about the chilling effect of surveillance on journalists, sources and the public. Dave Seglins said that there was a chilling. "Generally speaking people have changed their behaviour because we are more cognisant of what is possible in terms of being

monitored. For instance the discussions that comes from our sources using SecureDrop. They expressly state they would never dream of sending a normal email."

"So it's hard to measure the chilling effect on our sources but I think it has had a chilling effect on everybody in terms of this notion that electronic communications are completely private. We would like to think they are private. We try to operate as though they are, but we know better."

Nicky Hager stated: "I fear it has the chilling effect on people's lives which us people who care about privacy and civil rights and the impact intelligence, is our worst fear - that people restrict their lives and make different decisions and feel differently about themselves, about their secrets, and hopes and things and they grow differently as person because they have background sense of the lack of privacy."

Hager felt that journalists have to report on intelligence and its excesses. But he worried about being part of the chilling effect. "I know, on the one hand, that unless we publicise and debate and kind of have real information rather than just vague fears there can be no real progress. But Ion the other hand to publicise is to add to this chilling effect and I worry about. I think it is a really important issue."

In Australia Fowler thought Snowden's revelations had a "Definite chilling effect on the way people's behaviour.  If it has changed my behaviour, it will have certainly changed the behaviour of people I would normally talk to."

"The other effect is on the leakers and the idea of chilling them - it chills the low level stuff - but what it does not stop the people like Snowden and Manning because the idea of locking someone up for 35 years was supposed to chilling effect on everybody but then up pops Snowden."

Damage to national security

Interviewees were again varied in their response as to whether Snowden had damaged national security. Campbell thought there might have been an impact on operational effectiveness. Richelson thought some techniques may have been revealed. After British intelligence claimed to him that Snowden had put lives in danger, Taylor asked them to identify an example. They failed to do so saying "we can't comment on such information". He does feel that there was some general damage but Snowden also performed a public service. Always robust in his position,

Fisher in New Zealand took the view that claims of damage were "load of bollocks". If there had been any real consequences of that occurring that would have been rammed down all of our throats". Fowler in Australia did not believe there had been in damage. Neither did Mitrovica in Canada: "No it's a myth, it hasn't damaged their effectiveness. They always trot this out all the time."

Seglins noted that if Canadians were to have confidence in their national security: "Part of National security is confidence in democracy, confidence in judicial oversight, confidence in our law enforcement and intelligence agencies. And if they were operating in the dark, and/or illegally, and/or counter to public trust, then I would say the Snowden leaks have enhanced national security because we were growing for a long time in the dark not knowing what our law enforcement agencies were up to. And that secrecy and that vacuum of public knowledge and oversight are where corruptions and break downs occur, we know that."

One of the major complaints from politicians and intelligence chiefs is that Snowden's revelations is that are not only journalists, sources and the public much more likely to use encryption but so are criminals and terrorist. Agencies complain that some of their key targets' have gone dark' because of encryption. Taylor stated that "Remember Snowden was in early days of encryption. Encryption is now the big problem." Indeed Snowden has publicly supported people using encryption.

Responsibility of the media.

Andrew Fowler noted that: "Journalists do not want to create a less safe world. Our job is to make the world a safer and better place for our kids and us to live in. And we do not want to compromise national security." So far only less than ten thousand of Snowden's documents, carefully controlled by a team of journalists led by Glenn Greenwald and Laura Poitras, have been released into the public domain through a set of rigid procedures. All the interviewees thought the media that had dealt with the Snowden material had acted responsibly. Taylor thought the *Guardian* had been professional as the first news organisation to publish Snowden documents. Those who had used documents had checked with formal intelligence contacts to make sure that they were not going to do any inadvertent damage. In some extensive and repeated checks were made and in some case aspects of stories were dropped if the news organisation thought the national security people had made a case. Rusbridger has said the *Guardian* had over 100 contacts with the authorities before publication. Shane, Taylor and Seglins reported detailed conversations.

Redaction was also used. Journalists (Taylor, Shane, Seglins) who dealt in these negotiations were critical of the initial position of intelligence chiefs which was to say nothing should be published. Over a period of time the negotiations became more sensible and the intelligence agencies realised that the journalist were more likely to listen if the made a good case for an element not being published. Hager said there were aspects of New Zealand surveillance in Bangladesh that they had withheld. Taylor said that despite the hard line initially taken by the intelligence chiefs that the BBC should not broadcast Snowden documents, that after the Panorama programme went out they seemed to think it was fair.

Fowler stated he did not think that journalists should refer back to the agencies: "I do think they acted responsibility. In fact my argument is that I think the journalists acted, what I would call, without being too cute, too responsibly. I would trust the judgement of a journalist whether or not to publish the material rather than running it pass Government as seems to have been case with the Snowden documents…..I don't think a journalist should need to do that make a call on that and live with that"

Public service broadcasters were seen to be slow on the uptake to tackle the Snowden story and left it to be reported just as news and that it has to be said was very low key from the security correspondents. Meirion Jones was then at Panorama and spent many months negotiating to take the US Sigint expert James Bamford to meet with Snowden for a programme but senior management failed to approve it. It was not until many months later that Peter Taylor made his Panorama on Snowden (Oct 2015). There was accusation of CBC 'dragging its heels' before Seglins started producing stories working with the Greenwald team in 2015.

One of the consequences of the Snowden affair is that intelligence agencies in the Five Eyes countries have become more responsive to the public and the media. Hager said that as the smallest agency in the pact the GSCB lacked the self-confidence to talk to the media. David Fisher said that it published the intelligence services communication plan which was leaked to him and it made clear that the old all purpose 'neither confirm nor deny" reply would not was any more.

"It makes New Zealand the second of the Five Eyes nations to make the information available to its citizens, following the United States' declassification of its version of the document "US SID18". The release of the US document followed Barack Obama's instruction to the NSA to

release details of its electronic eavesdropping safeguards a year ago in response to Edward Snowden's NSA leaks. (Fisher 2014)

Hager was more sceptical about any opening up. “There wasn’t a discussion. The most frustrating thing about intelligence as a public policy issue, or as part of the life of the country which it was plainly is, is that there is a sense of entitlement of the side of the authorities not to engage win debate, and they know perfectly well that while that has an operational element it is also highly convenient.”

Shane said there may have been some damage to specific operations, but that was the price of democratic debate, “If you live inside those bureaucracies you begin to think that it’s the end of the world when someone learns something about what you up to. But these trade-offs exist in any democracy. We would be all safer from terrorism is there was not restrictions on these agencies and they recorded and stored every all American’s conversation and emails on a permanent basis. We would all be safe from terrorism. On the other hand that’s not the way we want to live and I think these agencies sometimes forget that. ”

The UK agencies are still retentive and the GCHQ does not really talk to the media about its work except to a handful of trusted reporters. Taylor said he understood why up to a point but it would benefit by a more approach: “I think that is there was degree of greater flexibility, journalists would benefit and by dint of that, so would the public. But is has to be circumscribed.”

Laws.

Interviewees in all countries said new laws have been passed to enhance the power and scope of the intelligence agencies. In some case the laws were on their way already at the time of Snowden releasing the documents and in other cases the Snowden affair was either part of all of the reason for new laws. Nearly all the interviewees felt that the laws gave excessive power to the national security community. In some cases they took the view the laws were draconian. In the UK as a result of the Snowden revelations, in February 2015, the intelligence watchdog, the Investigatory Powers Tribunal (IPT) found GCHQ had breached human rights conventions in relation to the UK’s access to the NSA’s bulk data collection program Investigatory Powers Act the tougher and revised successor to the ‘Snooper’s Charter’ passed into law in 2016. Taylor said of the “The difference that Snowden has made is that we now have legislation that is far more embracing than its predecessor”. As the Act

passed into law Snowden tweeted: "The UK has just legalised the most extreme surveillance in the history of western democracy." In July 2014, the UK government fast-tracked a new Data Retention and Investigatory Powers Act as 'emergency legislation' and rushed it through parliament in a single day. The Act was designed to revise UK data retention law in response to an April 2014 ruling by the European Court of Justice (ECJ) invalidating the 2009 Data Retention Directive. The law not only provides for ongoing blanket retention of communications data of UK residents, in direct contradiction with the ECJ ruling, it also extends the reach of UK interception powers by enabling the government to require companies based outside of the United Kingdom to comply with the UK's warrants. In addition the UK's Law Commission has carried out for the Government a consultation to update the Official Secrets Act into an Espionage Act which critics say the initial proposals suggest that journalists, sources and whistle-blowers will be vulnerable to imprisonment.

Some interviewees felt the Snowden leaks had given government the justification to toughen the laws. Fisher said that new legislation were in 2014 in New Zealand and there were protest is but when more 'enhanced' legislation was passed in 2017 there were no protests. Some interviewees noted that these laws made no or little provision for journalists undertaking their fourth estate role. For Australia, Fowler stated "The Government has introduced tough new laws as a result of Snowden citing Snowden as one of the reasons why they had introduced them."

As critics have noted the initial draft of Australia's metadata legislation arrived without a dataset or safeguards. A review by the Parliamentary Joint Committee on Intelligence and Security (PJCIS) added 39 recommendations, including a request for a separate review on the impacts on journalists, the inclusion of a dataset and additional oversight provisions. A mandatory two year metadata-retention scheme was among the many anti-terrorism measures. In Australia the justification for need for the new legislation was set at the door of the so-called Islamic States not the Snowden revelations. In both Australia and UK there have been examples of police and using existing legislation (RIPA in the UK and Telecommunications (Interception and Access) Act 1979 in Austrialia.in secret to identify sources by accessing journalists' metadata.

Mitrovica said the Canadian government had enacted as 'draconian pieces of "anti-terrorism" legalisation' including anti-terrorism law C51. "C51 broadens state powers to surveil individuals broadens what is considered dissent." He added: "It's not surprising government inevitably act this

way". Seglins said that the Trudeau government has conducted a review and it is likely that it will include enhanced judicial oversight of the Canadian intelligence agencies. Canadian Law professor and author Lisa Austin argued a serious rule-of-law problem exists post-Snowden. Austin notes that whilst legal pathways exist for state surveillance, the absence of oversight and accountability demanded by the rule-of-law has created a situation she describes as "lawful illegality." In Canada the courts have ordered a Vice reporter to hand over documents or he faces jail. Vice journalist Ben Makuch has been fighting a police order to hand over his correspondence with Farah Mohamed Shirdon — a man who left Calgary to allegedly fight with ISIS. Makuch refuses and it is still in the court process at the time of writing (Austin 2016).

The USA Freedom Act, which was passed by the House of Representatives in May 2015, reduces government bulk collection of US phone records. Americans' phone records will still be hoovered up – but now by the telephone companies, not the NSA – and access to them will require a warranting process. And elements of transparency around government surveillance and the operations of the secret FISA court will be introduced.

Privacy International's Tomaso Falchetta, has highlighted a major problem with regard to the impact of anti-terrorism and national security legislation on journalistic source protection: …Most laws regulating interception and surveillance do not specifically recognise additional rights for journalists. This is particularly so with regards to counter-terrorism legislation that provides for expansive powers of state surveillance without making provisions for protection of journalists' sources. Traditional national security laws and new counter-terrorism laws adopted in numerous countries give authorities extensive powers to demand assistance from journalists, intercept communications, and gather information. (Falchetta 2015)(UNESCO 2017)

Conclusions

Snowden revealed that we had sleepwalked into a world where total digital surveillance was not only possible but was happening. What the interviewees just about all agreed was that Snowden had reset the public discussion for better or worse. As Taylor, Hager and others pointed out this had closed down after 9/11. Taylor thought Snowden was 'hugely important. "It was of its time because secrecy had always been an issue but at that particular time it had reached a head and that again is one of the reasons why Snowden revealed it…..He was genuinely shocked". They

felt that the changes in agencies powers and capabilities were so great it needed to be referred back to the public even if was for affirmation. Hager's point resonates with Campbell and others concerns that the Sigint agencies were they focus on expanding the technology to 'collect it all' and whether this was the best means of deterring terrorism with what is a very large but finite budget. In the UK and Europe terrorism plots are stopped but there is a rise in the number of successful 'home grown' attacks.

The digital world has had many benefits for journalists in terms of effective research and also the bonus of massive leaks of information such WikiLeaks, Snowden, Panama Papers and many other dumps of offshore company information revealing how many politicians have secret bank accounts. While the United States is by far the dominant partner of the Five Eyes partnership it has been the most willing to listen to concern over the powers of intelligence. Some laws have been reduced. In Australia and New Zealand new laws to facilitate surveillance have been passed with little public debate. It is also clear that all five governments whatever they said in public had little respect for journalists' fourth estate role and were happy to propose laws that would make the job of journalists even harder.

The UK response to Snowden is that government, intelligence chiefs and even some editors took the approach to those who were concerned about Snowden's revelations: "Move along please, there is nothing to see". It was a monumental arrogance to decide the public and critical news media should not have the right to discuss such a major political change as the development of an infrastructure capable of total surveillance. Dressing it up as a necessary response to terrorism was and is just not good enough. Far from there being 'nothing to see' we have moved into a different type of society. The intelligence lobby are playing a 'dead bat' to the critical audience but behind the scenes they have moved to lobbying for further powers and capabilities. As UNESCO researchers noted: "The problem has grown in the intervening years, as a parallel to digital development, and occurs where it is un-checked by measures designed to preserve fundamental rights to freedom of expression and privacy, as well as accountability and transparency. In practice, this leads to what can be identified as a 'trumping effect', where national security and antiterrorism legislation effectively take precedence over legal and normative protections for confidential journalistic sources".

That the government and intelligence lobby do not even want to debate compelling evidence that we have moved into a digital surveillance state is not evidence of a strong democratic government at work but in the contrary, a victory for terrorists. To have so fundamentally changed the nature of a society, to have made it so fearful, is a win for terrorist and a defeat for a democratic state. That governments have become more authoritarian is also demonstrated by the failure to make provision for journalists doing their fourth estate job, supposedly a vital independent oversight mechanism in a democracy. There is a clear drive to close down journalistic public interest endeavour especially for investigating the secret state. This is not just an issue for the Five Eyes countries but sets the tone for other countries many of which are following suit as the UNESCO report clearly shows. We can blame Snowden but he did not set up the Five Eyes, he was the messenger not the architect.

Perhaps the most telling comment from the interviews that demonstrates the new paradigm was from Nicky Hager that the impact of global surveillance may have on the citizen's behaviour and because of this "they grow differently as person because they have background sense of the lack of privacy". Privacy is a fundamental human condition and we do not know yet the consequences of undermining the public's fundamental sense of privacy. This can be laid not only at the feet of Five Eyes but also of the internet giants like Google and Facebook but the national security involvement brings a totalitarian tone to the debate. If intelligence and surveillance are impacting negatively on ordinary people's lives then we need to stop and debate this, not as the UK government did and tried to ignore any dissent. What follows on from ignoring dissent is the suppression of dissenters and the tools are now in place to do exactly that.

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