

NSA SCANDAL

from The Privacy Times

Editorâ€™s Note: Privacy Times is in its 33rd year of publishing. Until now, we have never published an Editorial. But disclosures about the NSA Surveillance Program have persuaded us that a response is warranted. We welcome comments and criticisms.

NSA SCANDAL: OBAMA FOLLOWS BUSH, CONGRESS IN FAVORING UNWARRANTED DATA COLLECTION ON INNOCENT INDIVIDUALS
Earns Title As Privacyâ€™s â€˜Worst U.S. Presidentâ€™

Now that President Obama himself has publicly admitted to U.S. Intelligence agenciesâ€™ dragnet collection and storage of private phone-calling data of millions of Americans who were never suspected of any wrongdoing, itâ€™s time to declare him, in terms of privacy, the worst U.S. President ever.

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s.src = 'http://widgets.digg.com/buttons.js';
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It should be noted that he was preceded by President George W. Bush, whose warrantless surveillance on Americans made him, in terms of privacy, the worst U.S. President ever.

It also should not be forgotten that neither of these Presidents could have claimed this dubious distinction were it not for a succession of Congresses that authorized unprecedented invasions of privacy in the form of the U.S.A. Patriot and subsequent amendments thereto.

Naturally, this made them, in terms of privacy, respectively, the worst U.S. Congresses ever.

In sum, for the past 10 years, U.S. political leaders have been selling out Americansâ€™ privacy.

And â€œselling outâ€• is the most apt description of Presidents Obamaâ€™s and Bushâ€™s and Congressâ€™s betrayal of Americans to privacy. To understand why privacy loses to Big Government and Big Business at so many turns, follow the money.

So how did the first nation in the world to have a Fourth Amendment protecting privacy end up with a Government indiscriminately collecting and storing data on the phone and Internet activities of millions upon millions of innocent people?

Follow The Money: Booz, SAIC, et al.

In coming to grips with this enormous scandal, the first factor to understand is the privatization of the U.S. government's surveillance machine through such National Security Agency and Defense contractors as Booz Allen Hamilton and SAIC. This began in the aftermath of the 9/11 attacks of 2001

A turning point came even prior to 9/11, when in the late 1990s, William Binney, a legendary NSA mathematician, led development of a revolutionary computer system to collect, isolate and connect important information like phone calls and financial transactions. Its code name was "Thin Thread." Thin Thread was fundamentally dedicated to collecting processing and ultimately analyzing the vast reams of digital data. It was a breakthrough solution, Binney's colleague, Thomas Drake, told CBS's 60 Minutes.

But NSA Chief Michael Hayden, rejected Thin Thread, and instead launched a massive modernization program, code named: "Trailblazer," which would be the NSA's biggest project. Hayden's philosophy was to let private industry do the job. Enormous deals were signed with defense contractors, of which, Science Applications International Corporation (SAIC) was one of the lead contractors. Binney's Thin Thread program cost \$3 million.

But Trailblazer turned out to be \$1.2 billion boondoggle that took years to develop, and had to be abandoned, because it never worked. NSA veterans Thomas Drake, William Binney, and Kirt Wiebe filed a waste-and-fraud complaint with the Pentagon's Inspector General. The IG report was classified, and never saw the light of day. Worse, the U.S. Justice Dept. raided the homes of Drake, Binney and Wiebe. Drake was charged with espionage, but all of the serious charges were dropped after a judge's preliminary rulings against the government. A cosmetic plea deal closed the case. But it signaled the U.S. Government's willingness to go after national security whistleblowers.

Both the Bush and Obama Administrations were grossly, if not criminally negligent in not giving due regard to the fact that Drake-Binney-Wiebe presented them with a low-cost, effective means for targeting terrorists, while not snaring millions of innocent Americans in an unwarranted dragnet.
The NSA Beast

Worse, the Drake-Binney-Wiebe affair did not impede the U.S. National Security Complex's, dual drive to (1) secretly build mammoth data surveillance systems and (2) secretly rip off American taxpayers for billions of dollars for ineffective, unwarranted products and services. (From here on out, the U.S. National Security Complex will be referred as the NSA Beast.)

Booz Allen is a prime example of the dangers of feeding The NSA Beast. Gorging at the government trough, it has swollen to 24,500 employees, with half of them having top-secret clearances; \$5.8 billion in revenue for its 2013 fiscal year, \$219 million in profits and a stock market value of \$2.5 billion. During FY 2013, it derived 99% of its revenue from services under more than 5,700 contracts and task orders. The single largest entity was the U.S. Army, which represented approximately 16% of its revenue in a recent year. It derived 91% of its revenue in fiscal 2013 from engagements for which it acted as the prime contractor. Its bottom line earnings went from \$25 million in fiscal 2010 to almost nine times that in 2013.

Former NSA Chief Mike McConnell, who returned to Booz Allen in 2009 to become Vice Chairman, earned more than \$4.1 million his first year back, and \$2.3 million last year.

Chairman Ralph W. Shrader was paid \$1.2 million in base salary and a total of \$3.1 million in fiscal 2012. At least three other named executive vice presidents had total pay packages in the \$2 million to \$3 million range.

Hence the delicious irony that Booz Allen was responsible for the leaks that finally blew the cover off the U.S. Government's largest and most secretive personal-data grab of all time.

After all, the company sells itself as the gold standard in protecting classified computer systems and boasts that half its 25,000 employees have Top Secret clearances, assigned Edward Snowden, a 29-year-old with scant experience to a sensitive NSA site in Hawaii, where he was left loosely supervised as he downloaded highly classified documents about the government's monitoring of Internet and telephone communications, apparently loading them onto a portable memory stick barred by the agency.

Contractor access is not a fluke: Of the 1.4 million people with Top Secret clearances, more than a third are private contractors. (The background checks for those clearances are usually done by other contractors.) Thus, by secretly feeding the NSA Beast with billions of taxpayer dollars, NSA officials have not only fattened the profits of a select group of contractors, they've also enriched themselves via the revolving door that later lands them jobs at those contractors. That's good work if you can get it.

The Snowden Disclosures

Because of the information leaked by Snowden, including a FISA Court Order, we now know that a Verizon subsidiary was required to provide the NSA and FBI, on an ongoing, daily basis, with all call detail records or telephony metadata for communications between the United States and abroad, or wholly within the United States, including local calls.

The numbering on the FISA court order indicates this has been going on for at least five years, and involved several major telecommunications carriers.

That means the NSA and FBI obtained records showing who called who, for how long, and on what dates, for tens of millions of people who were not suspected of any wrongdoing at home and abroad. This is an unprecedented usurpation of personal data by the Government that sets a dangerous precedent. It means the government can demand and obtain information on everyone in the name of national security.

Further, Snowden's leaks established that under its previously unknown PRISM program, NSA obtained data on individuals' communication from nine major tech companies, including Google, Facebook, Yahoo!, Paltalk, Microsoft (which owns Skype), Apple and AOL. Several of the companies denied the Guardian's and Washington Post's initial report that NSA had direct access to their servers. And some companies published statistics showing constant requests for data from law enforcers, but the FISA-related numbers were not disclosed.

Still, the far-reaching nature of both the phone-data program and PRISM push us dangerously close to or into an omnipresent National Security Surveillance State. Snowden himself said that as a lowly systems administrator, he could tap into the private email of any American citizen—even President Obama—from his desk station in Hawaii. Hopefully, time will tell how much of his assertion was an exaggeration.

For the first time in memory, Snowden's disclosures have enabled President Obama's most obsequious adorners and Republican "Chicken-Hawks," like ex-Vice President Dick Cheney, to find common ground. Both camps seem intent on distracting attention to the grotesque, unjustified and possibly illegal surveillance machine launched under Bush, and continued under Obama by belittling Snowden as a high school dropout, or glory hound, or boyfriend of a pole dancer.

But those trying to smear Snowden should stop and remember that several leading civil libertarians, including the ACLU, the Electronic Frontier Foundation and the Center for Constitutional Rights, have for years earnestly tried to discover what the NSA Beast was up to only to be stymied by FOIA Exemptions or the incessant invocation of the State Secrets Act by successive Administrations.

With just a few days' work, Snowden was able to accomplish at least some of the sunshine for which those groups had struggled for years.

The fact that Snowden was able to obtain what he did proves that the system is not under control and ripe for abuse.

Checks & Balances? Neutering Congress, Courts

It also should be remembered that the traditional avenues for checks and balances – the courts and congressional oversight – have been blunted by the Obama Administration’s incessantly hardline stance on secrecy.

The ACLU led a group of journalists and activists challenging the Constitutionality of warrantless government eavesdropping provisions of the most recent USA Patriot Act Amendments. But the U.S. Supreme Court’s five-member Republican majority, which seldom passes up an opportunity to advance governmental or corporate power, ruled that the Plaintiffs’ theory of eavesdropping was “too speculative.” As ACLU Attorney Jameer Joffrey noted, Snowden’s le there was absolutely nothing speculative about their theory.

But the case underscored the impossibility of subjecting the NSA Beast’s secret surveillance to any meaningful judicial oversight – or even the rule of law.

With the courts stymied from performing their Constitutional role as check-and-balance on executive power, the only option left was Congressional oversight.

But that prospect was all but gagged and tied by Intelligence Oversight Committee members that too were sworn to secrecy, and which couldn’t even bring in staff or experts to evaluate the claims that U.S. intelligence officials were shoveling at them. Having Sen. Diane Feinstein as Committee Chairman is yet another curse against sunshine and accountability, as she has been in Washington long enough to know that her bread is better buttered serving the institutional interests of Big Government & Big Business. Predictably, Feinstein has defended The Beast and attacked Snowden.

The Courage To Question & Challenge

One shining moment of hope came when Sen. Ron Wyden (D-OR), who along with Sen. Mark Udall (D-CO) has been among the few Senators who have had the courage to even question the U.S. Government’s take on the USA Patriot Act, asked Director of National Intelligence James Clapper:

“Does the NSA collect any type of data at all on millions or hundreds of millions of Americans?”
 “No sir,” replied Clapper.

Sen. Ron Wyden: Does the NSA collect any type of data at all on millions or hundreds of millions of Americans?

James Clapper: No, sir.

Sen. Ron Wyden: It does not?

James Clapper: Not wittingly. There are cases where they could inadvertently, perhaps, collect, but not wittingly. In other words, Ron Wyden tried, Clapper lied.

“One of the most important responsibilities a Senator has is oversight of the intelligence community,” Wyden said “This cannot be done responsibly if Senators aren’t getting straight answers to direct questions.” You said it, brother.

With its cover blown, now the NSA Beast is claiming that it's gobbling up of Americans’ phone records – disrupted 50 terrorist plots.

Willingness to believe such assertions from a source like the NSA Beast, which for years has kept everything secret, and now lies about it, defies critical thinking.

Wyden and Udall said that while some FISA foreign intelligence data collection under Section 702 had proven productive, "it appears that the bulk phone records collection program under section 215 of the USA Patriot Act played little or no role in most of these disruptions."

In a joint statement, they again refuted the NSA Beast:

Saying that "these programs" have disrupted "dozens of potential terrorist plots" is misleading if the bulk phone records collection program is actually providing little or no unique value.

The Intelligence Community notes that the massive collection of phone records under Section 215 has provided some relevant information in a few terrorism cases, but it is still unclear to us why agencies investigating terrorism do not simply obtain this information directly from phone companies using a regular court order. If the NSA is only reviewing those records that meet a "reasonable suspicion" standard, then there is no reason it shouldn't be able to get court orders for the records it actually needs. Making a few hundred of these requests per year would clearly not overwhelm the FISA Court. And the law already allows the government to issue emergency authorizations to get these records quickly in urgent circumstances. The NSA's five-year retention period for phone records is longer than the retention period used by some phone companies, but the NSA still has not provided us with any examples of instances where it relied on its bulk collection authority to review records that the relevant phone company no longer possessed.

In fact, we have yet to see any evidence that the bulk phone records collection program has provided any otherwise unobtainable intelligence. It may be more convenient for the NSA to collect this data in bulk, rather than directing specific queries to the various phone companies, but in our judgment convenience alone does not justify the collection of the personal information of huge numbers of ordinary Americans if the same or more information can be obtained using less intrusive methods.

Obama "Big" On "Data," Not Privacy

When first asked about Snowden's leaks, President Obama downplayed them, referring to the talk of NSA surveillance as "hype." Through all of his responses, he showed no understanding or appreciation that the unprecedented collection of the phone records of millions upon millions of Americans was a grotesque abuse of power that invited future abuse of privacy and First Amendment rights.

He trotted out a parade of fractional truths of "straw men," meaning he said the Government was not doing something that it was NOT accused of doing in order to create an aura of general denial. He said that nobody was listening to the content of people's phone calls. He stressed this phone data collection program, was "fully" overseen not just by Congress, but by the FISA Court.

The President told Charlie Rose he had "no problem" with the program because it only permitted intelligence officials to query the system to trace phone calling patterns and relationships.

"The two programs that were originally authorized by Congress, have been repeatedly authorized by Congress, bipartisan majorities have approved on them, Congress is continually briefed on how these are conducted. There are a whole range of safeguards involved, and federal judges are overseeing the entire program throughout. We're also setting up -- we've also set up an audit process, when I came into office, to make sure that we're, after the fact, making absolutely certain that all the safeguards are being properly observed.

"I think it's important to recognize that you can't have 100 per cent security and also then have 100 per cent privacy with zero inconvenience," the President said.

What's important for the President to recognize is that the NSA's secret collection of phone-calling data on millions of Americans never suspected of wrongdoing clearly violates the intent and purpose of the Fourth Amendment's goal that

“people be secure in their papers, and effects, against unreasonable searches and seizures.”

Despite his background as a Constitutional law professor, President Obama’s disregard for the dire precedent for privacy set by the NSA’s actions shouldn’t be all that surprising. Unlike President Clinton, Obama never appointed someone like Peter Swire to be the Administration’s point-person on Privacy. When asked by Privacy Times why he didn’t, the White House had no response. It also had no response to our question as to who, if anybody, was advising the President on privacy issues relating to the phone-data grab. We’ll take that as a “no one.” That’s a major blind spot for a President who initially wanted his Cabinet to be a Lincoln-esque “Team of Rivals.” Clearly, there’s no one in the President’s circle who can curb the NSA Beast’s desire to invade privacy.

Another factor assuredly influencing the President is his faith in “Big Data,” reflecting his belief that good policies are data-driven. Examples range from the Obama campaign team’s data-mining and micro-targeting of voters, to the push for electronic patient records and other aspects of health care reform, to the \$200 million “Big Data Research and Development Initiative,” which lists more than 85 examples of such efforts across a number of agencies.

But the President’s blind spot on privacy is exposed by his failure to realize that it’s qualitatively different when in the NSA’s case, “the Big Data” consist not of, say, “Earth observation data,” but rather the personal phone-calling records of millions of innocent Americans.

Build It, And Invite Abuse

“Build it and they will come.” It’s now part of the American lexicon, thanks to the movie, “Field of Dreams.”

But for privacy experts, there’s a parallel adage regarding personal information “one that’s usually not well understood by those uninitiated or disinterested in privacy: “Collect it, and it will soon be used by others for a host of other purposes.” The spooky corollary is that the more secretive and less accountable the collection of data, the greater chance for abuse.

That is why for privacy experts, the NSA Beast’s latest data coup is so alarming: Abuse is all but guaranteed.

When private eyes or information brokers investigate someone, often the first thing they want is their phone-calling records. That shows who’s talking to whom, when, and for how long. If a whistleblower talks to news reporter, the reporter’s phone records likely will give away his source. Hence the Justice Dept.’s collection of the phone records of Associated Press reporters.

Given this Administration’s willingness to accommodate the NSA Beast’s appetite for extreme secrecy, and its track record of going after whistleblowers and journalists, the phone-data collection program can be seen as an assault on the First Amendment. It assuredly will have the foreseeable impact of discouraging whistleblowers, and investigative journalism, and of promoting greater secrecy.

Throughout his political career, Obama has been given credit for one shrewd calculation after another. He sometimes is described as the man playing three-dimensional chess, while his opponents are playing checkers. His early opposition to the war in Iraq earned him support from the Democratic Party base and helped him defeat Hillary Clinton. His compromises on health care reform helped ensure passage of the Affordable Care Act. At the end of last year, he was even able to maneuver some Republicans into voting for a tax hike.

The “Conventional Wisdom” is that being bad on privacy doesn’t doom a political career “or a Presidency. It’s “Conventional Wisdom” because it always seems to be right “until it isn’t.”

And that takes us back to the NSA Beast “clearly an immediate relative of the military industrial complex.

The Beast: Haunting Presidents

More than one President has damaged politically by the military industrial complex, or the NSA/CIA Beast, or the two working together. This is true despite the fact that President Eisenhower warned of such dangers in his farewell address, and even forecast the current problems caused by the NSA Beast (particularly relevant portions are highlighted):

In the councils of government, we must guard against the acquisition of unwarranted influence, whether sought or unsought, by the military-industrial complex. The potential for the disastrous rise of misplaced power exists and will persist. We must never let the weight of this combination endanger our liberties or democratic processes. We should take nothing for granted. Only an alert and knowledgeable citizenry can compel the proper meshing of the huge industrial and military machinery of defense with our peaceful methods and goals, so that security and liberty may prosper together.

Akin to, and largely responsible for the sweeping changes in our industrial-military posture, has been the technological revolution during recent decades. In this revolution, research has become central, it also becomes more formalized, complex, and costly. A steadily increasing share is conducted for, by, or at the direction of, the Federal government.

Today, the solitary inventor, tinkering in his shop, has been overshadowed by task forces of scientists in laboratories and testing fields. In the same fashion, the free university, historically the fountainhead of free ideas and scientific discovery, has experienced a revolution in the conduct of research. Partly because of the huge costs involved, a government contract becomes virtually a substitute for intellectual curiosity. For every old blackboard there are now hundreds of new electronic computers.

The prospect of domination of the nation's scholars by Federal employment, project allocations, and the power of money is ever present and is gravely to be regarded. Yet, in holding scientific research and discovery in respect, as we should, we must also be alert to the equal and opposite danger that public policy could itself become the captive of a scientific-technological elite.

It is the task of statesmanship to mold, to balance, and to integrate these and other forces, new and old, within the principles of our democratic system – ever aiming toward the supreme goals of our free society.

Those Who Cannot Remember The Past are

It seems that not enough Presidents adequately heeded these warnings. Several Presidents have paid the price for failing to tame The Beast.

After the CIA's poorly conceived 1961 Bay of Pigs disaster, President Kennedy was quoted as saying, "How could I have been so stupid?" to trust the groups who were advising him, such as the CIA and the Joint Chiefs of Staff (JCS). The New York Times quoted him as saying that he wanted to "splinter the CIA into a thousand pieces and scatter it into the winds."

In 1962, Joint Chiefs of Staff Chairman Lyman Lemnitzer adopted a secret plan to engage in domestic violence within the United States in order to create hysteria and justify yet another invasion of Castro's Cuba.

Codenamed Operation Northwoods, the plan, which had the written approval of the Chairman and every member of the Joint Chiefs of Staff, called for innocent people to be shot on American streets; for boats carrying refugees fleeing Cuba to be sunk on the high seas; for a wave of violent terrorist to be launched in Washington, D.C., Miami and elsewhere – all of it would be blamed on Castro, thus giving Lemnitzer and his cabal the excuse, as well as the public and international backing, they needed to launch their war, according to James Bamford's, *Body of Secrets* (2001) (see *Privacy Times*, June 21, 2001.) Bamford's three books, including *The Puzzle Palace* (1982), and *The Shadow Factory: The Ultra-Secret NSA from 9/11 to the Eavesdropping on America* (2008), have exposed and chronicled the ways of the NSA Beast.

Then there was President Johnson. At a White House reception on Christmas Eve 1963, for example, President Johnson told the Pentagon's Joint Chiefs of Staff: "Just let me get elected, and then you can have your war." The Viet Nam War ruined Johnson's presidency.

It was also under President Johnson that the FBI expanded its Counterintelligence Program (â€œCOINTELPROâ€•) to spy on domestic groups, political and civil rights activists, like Martin Luther King, Jr., and Malcolm X, and journalists, in an unabashed assault on First Amendment rights.

President Nixon secretly expanded the Viet Nam War into Cambodia and Laos. At home, he expanded illegal domestic surveillance of activists and whistleblowers, like Daniel Ellsberg, the leaker of the Pentagon Papers. It all caught up with President Nixon when, in trying to cover up the privacy invasions from the Watergate scandal, his own secret tapes revealed that he had ordered the CIA to obstruct the FBIâ€™s Watergate investigation. That revelation forced him to resign ahead of his likely impeachment.

President George W. Bush also managed to combine a bad/dumb war (Iraq) with unprecedented domestic surveillance in the form of secret, warrantless eavesdropping. Most Presidential historians, and a majority of Americans, consider his presidency to be an abject failure. Congress enabled all of it, either by enacting the USA Patriot Act, or keeping its collective head in the sand. The main beneficiaries were Defense contractors.

Of course, it was under President George W. Bush, that NSA Chief Michael Hayden privatized the NSA Beastâ€™s surveillance operations with the failed â€œTrailblazerâ€• project, pouring billions into the coffers of Booz Allen, SAIC, Boeing and others.

The vastly expanded interception program, now more fully understood because of the Snowden leaks, in turn, required the NSA to build historyâ€™s largest facility in Bluffdale, Utah, to house, process and mine the unprecedented quantities of digital data. (See Privacy Times, May 7, 2012.)

President Obamaâ€™s continuation and defense of the programs revealed by Snowden confirms that this President, like so many others before him, has failed to tame The Beast.

If he wanted to start doing so, the Justice Dept. should have quickly negotiated a plea deal so Snowden could fully inform his Administration about The Beast and all of its dark corners.

Instead, they charged Snowden with espionage, and drove him into the arms of WikiLeaks. Not exactly what one would consider a three-dimensional chess move.

But it is consistent with this Administrationâ€™s policy of bullying whistleblowers: more of whom have been charged under the Espionage Act by this Administration than all of the previous Administrations combined. But this time it appears it will backfire. Short of pulling off a kidnapping or intercepting his flight to his next destination, Snowden will be much freer to shed light on the putrid world of the NSA Beast. One can only hope that sunshine will be the best disinfectant.

While opinion polls show disappointing percentages of Democrats still tepidly supporting the NSA program, President Obama should be aware that there is growing disgust for it among the progressive and youthful blocs of voters that helped put him in office â€” and on whom heâ€™s depending if he wants to have a better Congress his final two years in office.

The NSA Beast scandal has proved a sort of Rorschach test for Congress, separating those who believe protecting individual liberties ahead of those who default towards expanding institutional power.

On the one hand, establishment Republicans like House Speaker John Boehner, Sens. Mitch McConnell (KY), Lindsey Graham (SC), and Tom Coburn (OK) have defended the NSA Beast. Democratic politicians supporting the NSA Beast include the aforementioned Sen. Diane Feinstein, and former House Speaker Nancy Pelosi.

On the other hand, a right-left coalition of House members led by Justin Amash (R-MI) and John Conyers (D-MI) have already garnered 32 co-sponsors for H.R. 2399, the Limiting Internet and Blanket Electronic Review of Telecommunications and Email Act (LIBERT-E Act), to restrict the federal governmentâ€™s ability under the Patriot Act to collect information on Americans who are not connected to an ongoing investigation. The bill also requires that secret Foreign Intelligence Surveillance Act (FISA) court opinions be made available to Congress and summaries of the

opinions be made available to the public.

In the Senate, Sen. Patrick Leahy, Chairman of the Judiciary Committee, introduce a pro-privacy bill, which was supported by Sens. Mike Lee (R-UT) and Richard Blumenthal (D-CT).

On the Right, Sen. Rand Paul (R-KY) appeared with Laura Murphy of the American Civil Liberties Union to announce a lawsuit against the NSA over its terrorist surveillance programs. Paul has invited 10 million Americans to join the suit.

On the left, U.S. Rep. Alan Grayson (D-FL), has proposed a bill to prohibit The Beast from collecting citizens' phone records and emails "without probable cause" of a terrorism or a criminal threat by an individual, according to the text.

Responding to a reporter's first question after the Snowden leaks, President Obama said, "When I came into this office, made two commitments that are more important than any commitment I made: Number one, to keep the American people safe; and number two, to uphold the Constitution. And that includes what I consider to be a constitutional right to privacy and an observance of civil liberties."

Privacy Times is publishing its first Editorial in 33 years to make it clear that, in our opinion, the President's continuation and defense of the collection of phone-call data on millions of innocent Americans means that he has violated his professed commitment to uphold Constitutional protections for privacy.

That is why, despite its Editor/Publisher having voted twice for Mr. Obama, Privacy Times has concluded that in terms of privacy, he is the worst U.S. President ever.

Evan Hendricks
Editor/Publisher

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