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Opinion

Let's not rush to judgment on surveillance leaker

By Ofer Raban

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The stakes are high in Edward Snowden's disclosure of a secret National Security Agency program that collects and stores the "metadata" of the phone conversations of millions of Americans -- data that include telephone numbers, locations and the time and duration of the calls.

On one side we have a 29-year-old with no expertise in terrorism who broke the law and revealed the details of an allegedly successful classified program protecting Americans from terrorist attacks.

On the other side we have a secret program whose legality is based on hitherto secretive and highly controversial interpretation of the law (many experts were stunned to learn that the Patriot Act's business records provision is read so expansively); a program that government officials brazenly lied to Congress about (when asked by Sen. Ron Wyden, D-Ore., in a Senate Intelligence Committee hearing whether the NSA was collecting information on millions of Americans, the Director of National Intelligence James Clapper responded "no"); and a program that some now claim is in violation of the Fourth Amendment (the Supreme Court has been lax in its protection of metadata, but these decisions pre-date today's all-pervasive smartphone culture, where metadata can reveal far more information than ever conceived).

The stakes involved go beyond abstract notions of personal privacy.

Only Mother Theresa has no dubious-looking skeletons in her closet: the rest of us can always be sullied, whether rightly or not. The only difficulty is getting the information from which to construct (or to spin) the skeleton.

Well, the government now has a whole warehouse of such information. This is a dangerous situation: Experience has shown that governments tend to abuse such troves -- by directly pressuring people to do things or abstain from doing them,

or by alleging legal infractions in order to intimidate, harass or destroy reputations.

And although no abuse has been shown yet, we already know that the information was used outside the context of terrorism investigations. Thus, whether we should risk entrusting the government with such a trove of information because of the benefit to national security is a very complicated question. The answer may very well be “yes”; but an easy question it is not.

Sen. Dianne Feinstein, D-Calif., stated that she considers Snowden’s leak “an act of treason.” She is not alone in making such injudicious statements. But Snowden revealed the information because he believed that the secret surveillance program is illegal, unconstitutional and undemocratic. And his beliefs, correct or not, are not unreasonable.

Whether Snowden should go to jail and for how long are questions implicating some of the deepest issues regarding the rule of law in a constitutional democracy. Perhaps he should. But to call him a plain and simple traitor is dangerous talk. Idealistic whistleblowers, whether correct or misguided, are not the deadly enemies of the state, and treating them as such threatens to shut down the public’s ability to learn of secretive and potentially abusive government practices.

Indeed, for all the talk of the damage Snowden has done, terrorists most likely operate under the presumption that they are the targets of electronic surveillance; the surprise here belonged to the American public.

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