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## UT Documents

About Me

**NAME:** GLENN GREENWALD

I was previously a constitutional law and civil rights litigator and am now a journalist. I am the author of four books -- "How Would a Patriot Act" (a critique of Bush executive power theories), "Tragic Legacy" (documenting the Bush legacy), and "Great American Hypocrites" (examining the GOP's electoral tactics and the role the media plays in aiding them), and "With Liberty and Justice for Some" (critiquing America's two-tiered justice system and the collapse of the rule of law for its political and financial elites)

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### Sunday, December 01, 2013

Questions/responses for journalists linking to the Pando post - and other matters

The other day I [referred](#) to those who "evince zero interest in the substance of the revelations about NSA and GCHQ spying which we're reporting on around the world", but "are instead obsessed with spending their time personally attacking the journalists, whistleblowers and other messengers who enable the world to know about what is being done." There are dozens of examples, one of whom is the author of [a post this week at Pando.com](#) which accuses me and Laura Poitras of having "promptly sold [the Snowden] secrets to a billionaire", Pierre Omidyar, and claims we made "a decision to privatize the NSA cache" by joining Omidyar's new media organization and vesting it with a "monopoly" over those documents.

I've steadfastly ignored the multiple attacks from this particular writer over the years because his recklessness with the facts is so well-known (ask others about whom he's written), and because his fixation is quite personal: it began with and still is fueled by an incident where *The Nation* retracted and apologized for an error-strewn hit piece he wrote which I had criticized (see [here](#) and [here](#)).

But now, this week's attack has been seized on by various national security establishment functionaries and DC journalists to impugn our NSA reporting and, [in some cases](#), to argue that this "privatizing" theory should be used [as a basis to prosecute](#) me for the journalism I'm doing. Amazingly, it's being cited by all sorts of DC journalists and think tank advocates whose own work is paid for by billionaires and other assorted plutocrats: [such as Josh Marshall](#), whose TPM journalism [has been "privatized" and funded by the Romney-supporting Silicon Valley oligarch Marc Andreesen](#), and former Bush Homeland Security Adviser and [current CNN analyst Fran Townsend](#) ("profiteering!", exclaims the Time Warner Corp. employee and advocate of the [American plundering of Iraq](#)).

Indeed, Pando.com itself is [partially funded](#) by libertarian billionaire Peter Thiel, the co-founder of Paypal and CIA-serving Palantir Technologies. The very same author of this week's Pando post had [previously described Thiel](#) (before he was funded by him) as "an enemy of democracy" and the head of a firm "which last

year was caught organizing an illegal spy ring targeting American political opponents of the US Chamber of Commerce, including journalists, progressive activists and union leaders" (one of whom happened to be me, targeted with threatened career destruction for the crime of advocating for WikiLeaks)).

Moreover, the rhetorical innuendo in the Pando post tracks perfectly with that used by NSA chief Keith Alexander a few weeks ago when he called on the US government to somehow put a stop to the NSA reporting: "**I think it's wrong that newspaper reporters have all these documents, the 50,000-- whatever they are, and are selling them and giving them out** as if these-- you know, it just doesn't make sense," decreed the NSA chief. This attack is also the same one that was quickly embraced by the Canadian right to try to malign the reporting we're now doing with the CBC on joint US/Canada surveillance programs.

I would think journalists would want to be very careful about embracing this pernicious theory of "privatizing" journalism given how virtually all of you are not only are paid for the journalism you do, but also have your own journalism funded by all sorts of extremely rich people and other corporate interests.

Obviously, the rancid accusation that paid investigative journalism is tantamount to the buying and selling of government secrets is being made quite deliberately by the US government and its apologists with the knowledge that this is what sends people to prison. That language didn't fall out of Keith Alexander's mouth by accident. This Pando post is not only reckless with the facts but espouses a theory very few of the journalists cheering for it could or would apply to themselves. Standing alone, I'd simply ignore it.

But any theory that is being simultaneously embraced by Gen. Keith Alexander, foreign governments on whom we're reporting, and DC functionaries to insinuate that there is something untoward or even criminal about our journalism is one I'm going to answer.

So let's get to that. Here are a few questions about this theory, along with some facts. Moreover, in the spirit of what the Washington Post's Erik Wemple has noted is the extreme and very unusual transparency I've offered from the beginning on how this reporting is being done, I'll also address here once and for all a few other claims made and questions asked periodically about our methods of reporting:

**1) How is our reporting arrangement any different than the standard means used to report classified information?**

Bart Gellman has thousands of top secret documents from Snowden. He's repeatedly reported on them and published them in *the Washington Post*. He's not on the paper's staff, but is paid for the articles he writes for the *Post*. Shortly after he published his first article on the NSA documents at *the Post* (for pay!), it was announced that Gellman is writing a book about US surveillance.

Does this mean that Gellman has "privatized" the NSA documents, is "profiteering" off of them, and that he sold US secrets to *the Washington Post*?

Last month, it was announced that Jeff Bezos purchased *the Washington*

*Post* for \$250 million. Are any of you intrepid DC journalists citing this Pando post going to accuse Gellman of selling US secrets to his publisher and profiteering off of them, or Bezos of having bought secrets? Speak up, bold and principled Josh Marshall and Fran Townsend.

Or let's take the revered-in-DC Bob Woodward, who has become America's richest journalist by writing book after book over the last decade that has spilled many of America's most sensitive secrets fed to him by top US government officials. In fact, his books are so filled with vital and sensitive secrets that Osama bin Laden personally recommended that they be read. Shall we accuse Woodward of selling US secrets to his publisher and profiteering off of them, and suggest he be prosecuted?

Or let's take *the New York Times*. They reported that they received 50,000 classified Snowden documents from *the Guardian*. Rather than simultaneously publish them all on the internet, they've been reporting on selective documents while keeping the rest for themselves. They have published very well-linked articles by reporters such as Scott Shane, who are paid money to read through these documents and then write about them. Are *the New York Times* and Scott Shane also now guilty of "privatizing" the nation's secrets?

Or how about Jim Risen, who in 2004 learned about one of the nation's most sensitive secrets: the NSA's top secret warrantless eavesdropping program. He wrote a best-selling book (for which he was paid!) in which he reported on that top secret program and others, and was also paid to write an article about it for *the New York Times*. Are Risen, his publisher, and the *NYT* now also guilty of "privatizing" secrets and "profiteering" off them? Should they be prosecuted for it?

Since the NSA story began, Laura Poitras has reported on these documents in a freelance capacity with *the New York Times* (multiple times with Jim Risen), *the Washington Post* (bylined with Gellman), *the Guardian* (bylined with me and others), and *der Spiegel* (with that paper's staff reporters). Are these four newspapers, all of whom paid Poitras and her fellow reporters for this reporting, guilty of buying US secrets?

Over the last three decades, Seymour Hersh has received all sorts of classified information from his sources. So has Jane Mayer. They do not dump it publicly on the internet. They keep it inside *the New Yorker* or their publishing company - where they vet it, understand it, verify it, and then report on it: all for pay! Let's hear all of you step up and accuse Mayer and Hersh of criminally "privatizing" and selling the nation's secrets and the *New Yorker* and their publishing companies of purchasing them.

Daniel Ellsberg gave the Pentagon Papers to *the New York Times*. The reporter with whom he worked was paid to write about those documents, and the *NYT* itself sold lots of papers by virtue of having that story. Was the *NYT* guilty of "privatizing" the Pentagon Papers, and Neil Sheehan guilty of selling them by being paid to write about them?

Every worthwhile investigative journalist - by definition - at some point receives, and then publishes, classified information. They are virtually always paid for their work in exposing that information, because that's how professional journalists earn a living. It's also a necessary arrangement for journalists to report on these matters with legal protections (see below). And rather than mail the material they

get from their sources around to other media organizations, they keep it themselves, work on reporting it, and then write about it in their own media outlets.

If you are so infuriated by this NSA reporting that you short-sightedly embrace theories that suggest there's something untoward or criminal about this process, then you're essentially criminalizing all professional investigative journalism. Do you not see where this idiocy takes you?

## 2) What better alternatives exist for our reporting on these documents?

The strategy Laura Poitras and I used to report these documents is clear: I reported on most of them under a freelance contract with *the Guardian*, and she has reported on most under similar contracts with the *NYT*, *the Washington Post*, *the Guardian* and especially *der Spiegel*. But we also have partnered with multiple media outlets around the world - in Germany, Brazil, Canada, France, India, Spain, Holland, Mexico, and Norway, with more shortly to come - to ensure that the documents are reported on in those places where the interest level is highest and are closest to those individuals whose privacy has been invaded.

Feel free to criticize that method all you want. I'm extremely proud of the model we've created, one that borrows heavily from the WikiLeaks model of worldwide media partnerships, as it's ensured that **no one media outlet has monopolized these documents**. Instead, all the stories are reported with the benefit of journalists most familiar with the climate and landscape in the affected countries. That has made the story international in scope, and has made the reporting far better than if it had all been centralized in one place.

The result has been - in just six months - **the publication of more classified documents and revelations about the NSA than have appeared in the entire history of the organization before that**. Six months is hardly a long time: WikiLeaks did not publish their first war log until five months after they received them from Manning, and did not publish their first diplomatic cable until nine months after they first received them. That's because these documents are complex, take time to understand, vet, and process. We have published a huge number in countries around the world in a short period of time, and there are still many, many more stories and documents to be reported in countries all over the world.

But those that want to criticize that method are compelled to identify one that is superior. Let's examine those alternatives:

**Dump all the documents at once on the internet.** As one of the most vocal and long-time supporters of WikiLeaks, this is a model that I endorse in some cases (though WikiLeaks also redacted documents it published and still withholds others it possesses for very justifiable reasons; they also only publish documents once they've vetted, authenticated and understood them). I completely empathize with those arguing this: as I've said many times, **the complaint that we've published too little is infinitely more valid than the complaint that we've published too much**. But there are so many reasons why this dump-it-all approach makes no sense in this particular case.

To begin with, doing this would violently breach the agreement we made with our source. Edward Snowden knows how the internet works. If he had wanted all the

documents uploaded onto the internet, he could have - and would have - done that himself. Or he could have told us to do it, or given it to a group with instructions to do that. Quite obviously, he did none none of that.

He did the opposite: he came to journalists he personally selected, and asked that we only publish with media organizations. He also asked that we very carefully vet the material he gave us and only publish that which would be recognized as in the public interest but not anything which could be said to endanger the lives of innocent people. His primary concern has always been that the focus be on the substance of what the NSA is doing, and knew that mass, indiscriminate publication would drown meaningful discussions with accusations of how we recklessly helped The Terrorists™, the Chinese, and every other World Villain.

I'm absolutely convinced that the agreement we made with our source for how these documents were to be reported was the right one. Had we just published them all without any context, discrimination or reporting, the impact - for so many reasons - would have been far, far less than the slow, incremental and careful reporting we've done.

But at this point, that debate doesn't matter: those demanding that we just publish all of the documents without regard to their consequences or content are demanding that we ignore and violate our agreement with our source, and we're never going to do that no matter who doesn't like it. And as our source has repeatedly proven: if he's unhappy about how matters are proceeding or has something to say, he's more than willing and able to speak out. He hasn't done so about this because the way we've reported these documents is completely consistent with the agreement and methodology he insisted upon.

Moreover, those demanding that all of these documents be published indiscriminately are completely ignoring the very real legal risks for everyone involved in this process, beginning with Snowden, who already **faces 30 years in prison** and is currently protected only by 9 more months of temporary asylum in Russia. Everyone involved in the publication of these materials has already undertaken substantial legal risk.

Just like it's cheap and easy for war advocates to demand that **others** go and risk their lives to fight the wars they cheer, it's very cheap and easy to demand that **others** (including Snowden) undertake even more legal risk by publishing all of these documents. Everyone has the right to decide for themselves what risks they're willing to endure, and if you aren't taking any yourselves for the cause you claim to support, then perhaps it's worth considering whether others are entitled to the same consideration you give yourself.

I'd also like to test whether those who argue this are being genuine. Should we really publish everything we have without redactions or regard to their consequences? Speaking purely hypothetically:

*if we know the names of people the NSA is accusing of engaging in "online promiscuity" on the internet, or the names of those the NSA believes are terrorists, should we publish that, thereby invading their privacy and destroying their reputations?*

*if we have the raw chats, internet activity, and telephone calls of people on whom the NSA has spied, should we just publish those?*

*if we have documents that would help other states spy more effectively on their own citizens' internet activities, should we publish those, thereby subjecting hundreds of millions of people to heightened state surveillance?*

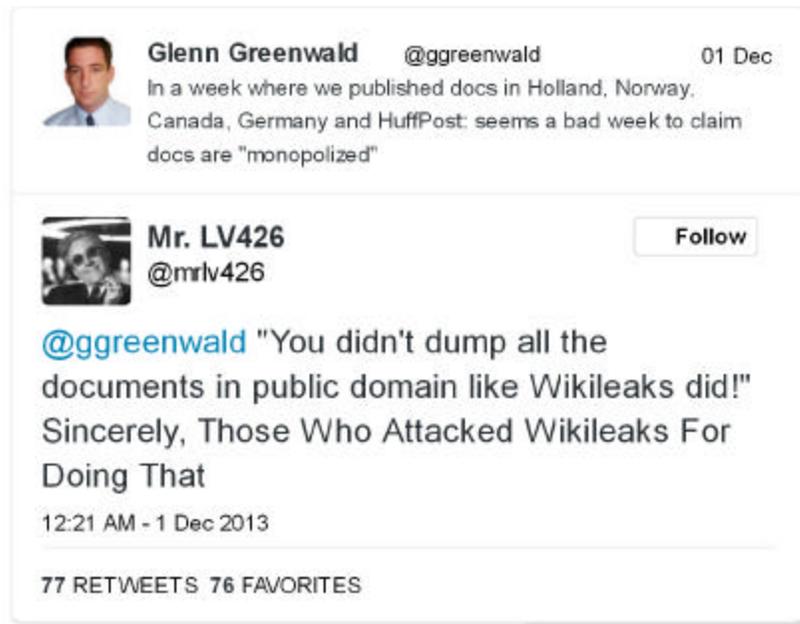
*if we have documents containing the names of innocent people whose reputations or lives would be endangered if they were exposed, should we just ignore their plight and publish those?*

*if we have documents that are so complex that we don't yet understand the potential consequences for other people from publishing them, should we just throw caution to the wind and publish them anyway, and learn later what happens?*

The minute any of you say "no" to any of those questions, then you are asking us to do exactly that which we've been doing: take the time to go through the documents carefully, consult with experts, understand them, and then only publish those documents or parts of documents which do not cause any of these harms.

All of the foregoing is addressed to the people who are asking in good faith why we aren't publishing more documents more quickly. I respect that critique. If I were watching someone else reporting on these documents, I'd likely be asking those same questions. That's why I've spent so much time and energy engaging those who raise these questions.

By contrast, I have nothing but contempt for the DC functionaries who are cynically embracing that Pando post that holds out the WikiLeaks dump-it-all model as the ideal - the Josh Marshalls and Fran Townsends of the world - as though they would prefer we did that instead. Those are the very same people who hate WikiLeaks, and would be first in line to accuse us of recklessness and likely demand our prosecution if we followed that model (here, for instance, is [a CNN debate I did in 2010](#) with the very same Fran Townsend when I defended Julian Assange after he signed a \$1.2 million book deal). As one Twitter commentator put it regarding the [DC WikiLeaks-haters](#) heralding this Pando post:



The DC functionaries citing that Pando post don't want a different model of reporting. They are just National Security State loyalists and/or Democratic partisans who don't want any NSA reporting being done at all. And that Pando post is just a convenient weapon to impugn the reporting we're doing even though its cited rationale is one that, in every other case, they vehemently reject.

**Hand out large amounts of documents to other news organizations.**

Another possible alternative to the reporting approach we've chosen is to distribute thousands of documents to multiple news outlets around the world, so that the reporting can be done more quickly. But this ignores the legal constraints we face.

Even using the more limited approach we've undertaken, we've already been accused of possible criminality and/or had our prosecution advocated by the likes of Alan Dershowitz, Peter King, David Gregory, Dianne Feinstein, Marc Thiessen, Andrew Ross Sorkin (who later apologized), and many others. The UK government is formally equating our journalism with "terrorism" and "espionage" and has said there are criminal investigations pending. Eric Holder's recent statements about whether I'd be prosecuted if I tried to enter the US was so riddled with caveats and uncertainties that it raised more questions than it answered.

One of the few protections you have when you're reporting on classified materials is that you're doing it as a journalist. It's therefore vital that we never act as a source or distributor of the materials, which is what the DOJ would eagerly claim if - as individuals - we just started handing out massive amounts of documents to media organizations around the world, rather than doing what we've been doing: reporting on them on a story-by-story basis with those outlets.

I realize that it's very easy to be dismissive and blithe about those risks if they're not yours to take. But especially since I think the approach we've been using is the most effective, and since I know that even the more limited approach is risky, I'm not going to hand prosecution advocates inside the US government a gift by becoming a source or distributor of the documents. That's why I've been

reporting on these documents in partnership with media outlets on a story-by-story basis and will continue to do so.

It is true, as the Pando post points out, that WikiLeaks did do exactly this: they shared thousands of classified documents with media outlets around the world. But it's also true - as outrageous as it is - that WikiLeaks for years has been and still is the target of a US criminal grand jury investigation, and Julian Assange fears - justifiably so - that the US intends to prosecute him for Espionage Act violations. The fear that the US intends do so was the basis cited by the Ecuadorian government for granting him asylum.

So again, it's very easy to demand that **others** follow the WikiLeaks model: if it's not your indictment and Espionage Act prosecution, then there's no need to be concerned. But I'm very content with the number of revelations we've enabled (and will continue to enable) and the massive impact our reporting has had around the world. And I make no apology whatsoever about incorporating legal constraints and considerations of legal risks - for both our source and ourselves - into our approach.

Finally, the very same DC functionaries now heralding this Pando post would be the very first people in line accusing us of being "sources" and "distributors of documents" - rather than journalists - if we followed this model. Their interest is in stifling the reporting in order to protect the President, his Party, and the NSA - not critiquing how it's being done.

### **3) How can anyone reconcile the "monopoly" accusation with the most basic facts?**

The accusation that we sold, and Omidyar purchased, NSA secrets, and the related claim that he now has a "monopoly" on the NSA documents, is without question the single dumbest accusation I've heard since we began reporting on these documents. And that's saying something. So many obvious, glaring facts makes clear how absurd that is:

**First**, how is this different from virtually every other big journalistic story involving top secret matters? Did *the Washington Post* privatize and have a monopoly when Dana Priest learned and then informed the world in that paper about the CIA black sites? Did *the New York Times* have a "monopoly" on the Pentagon Papers once Daniel Ellsberg gave it to them? Did *the Guardian* have a "monopoly" on the NSA story before I left?

It's almost always the case that the journalists and media outlets that get information from a source are the ones who keep it, work on it, and report it. That's how the source wants it, which is why the source came to those journalists. Since when is this called "privatizing" material or having a "monopoly"?

**Second**, everyone already knows that **tens of thousands** of these documents are in the possession of *the New York Times*, *the Guardian*, ProPublica, and Bart Gellman/*the Washington Post* - entities that obviously are not controlled by me, Poitras, or the new venture with which we're working. Does that sound remotely like a "monopoly"? It's true that only Laura and I have possession of the full set, but such vast numbers of these documents are spread around to so many different media organizations, which continue to report on them, that the

claim that Laura and I possess sole control over them is ludicrous.

**Third**, the suggestion that the creation of NewCo has anything to do with acquiring a "monopoly" over NSA documents is nothing short of laughable. We are building a large, general-interest, sustained news organization that has almost nothing to do with the NSA story. Indeed, even among the first set of hires that have been announced, none of the journalists and editors other than me and Laura have had anything to do with the NSA story. Moreover, given that we have not even announced a launch date yet, it's far from clear how much NSA reporting will be left to do at this new organization.

**Fourth**, just use basic common sense - and obvious public facts - when assessing this accusation. **Since our new media venture was announced**, Laura and I have both reported on and published these documents around the world. Laura has published multiple big NSA stories at *der Spiegel* and the *New York Times*, while I've done the same in Norway, Holland, and Canada. Moreover, **we just published one of the biggest NSA stories yet** - about the agency's exploitation of internet porn activities to destroy the reputation of "radicals" - at *the Huffington Post*. I'm also currently working with a separate large US media outlet on very big NSA/GCHQ stories to be reported shortly.

**Does that sound like a "monopoly" to anyone who understands the word?**

If we wanted a monopoly at our new media venture, why are we not sitting on these big NSA stories until we launch so we can publish them there? A "monopoly" is the exact opposite of what we want and what we've been doing, as conclusively demonstrated by the continuous, ongoing reporting we're doing around the world even after our new media venture was announced.

**Fifth, and finally**, those making this accusation are revealing more about themselves than about us. As I said when I moved from my own blog to *Salon*, and then again when I moved to *the Guardian*, editorial independence is central to everything I do. The same is true of Laura Poitras, Jeremy Scahill and others we've already announced, let alone those who are coming. The idea that any of us would allow meaningful reporting or our commentary to be restricted for commercial or ideological reasons by anyone (to say nothing of the claim that this is the intention of Omidyar given who he has pursued) would trigger a laughing fit on the part of anyone with whom we've worked or is familiar with our work. The only people who would say this or believe this are those who themselves succumb to those sorts of pressures.

**4) On the allegation of "profiteering"**

The one thing I never thought I'd be accused of is lacking sincere passion and conviction about the dangers of surveillance. Laura and I have been working on surveillance issues for many, many years - when few people were paying attention and there were zero rewards from doing so. I spent almost every day for two straight years - in 2006 and 2007 - writing about little other than the Bush-era NSA scandal. Indeed, the very first *New York Times* article about my work on the Snowden story tried to suggest that my interest in this topic was virtually freakish, saying that I have been **"writing intensely, even obsessively, for years about government surveillance."** Laura was working on a documentary about NSA surveillance long before either of us ever heard the name "Edward Snowden."

It is simply an unavoidable reality that if you want to do effective investigative journalism aimed at the US government, the National Security State, and the world's most powerful corporate factions, then you need resources to do that. You need editors, fellow experienced reporters, lawyers, researchers, technologies, the ability to travel, the knowledge that you can defend yourself from legal attacks, and a whole variety of other means of support. That's why the oh-so-pure Pando writers ran into the arms of Silicon Valley libertarian oligarchs after their prior NSFW model failed and after they spent years maligning others for taking exactly that sort of funding, and then justified it by saying: "**We now have millions of dollars to do investigative reporting.**"

It is absolutely the case that I consider the opportunity to help build this new media venture to be a once-in-a-career dream opportunity. That's because the organization is being built from the start to support, sustain and encourage truly **independent, adversarial journalism**. It has the backing and is being built by someone whom I am absolutely convinced is dedicated to this model of independent, adversarial journalism. It has the real potential to enable innovative and fearless journalism.

The same is true of the book I'm writing. Somewhere along the way, certain factions on the left began embracing a supremely anti-intellectual view of books as something to be suspicious of rather than a vital instrument for spreading ideas. Books can be uniquely valuable in making the case for a set of political ideas - which is presumably why people like Noam Chomsky have spent their lives writing dozens of them. And the same is true of films: they can reach audiences who otherwise are unreachable when it comes to political questions, and shape how they think about such matters like nothing else can.

After all these years of toiling on these issues, I'm thrilled to have a loud platform to warn of the dangers of state surveillance, US militarism, and government secrecy, and to herald the importance of individual privacy, internet freedom, and transparency for the world's most powerful factions. Refusing to do what one can to have the greatest impact in defense of one's political values is just self-indulgent.

Being skeptical and asking questions about any new media organization is completely appropriate. I'm sure I'd be doing the same thing of other new organizations. But we haven't even begun yet. When I moved to *Salon* and then to *the Guardian*, I heard all sorts of claims about how I'd have to moderate or dilute my work to accommodate those environments and the interests and views of those who own and run them. I don't think anyone can reasonably claim that happened. And I am quite certain that the same will be true here. The people we have hired and will continue to hire - and, ultimately, the journalism we produce - will speak volumes about exactly the reasons we're doing this and why I'm so excited about it.

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