

NATIONAL PRESS CLUB LUNCHEON WITH THOMAS DRAKE

SUBJECT: IN THE SHADOWLANDS OF THE SECRECY STATE: PREYING ON THE FIRST AMENDMENT

MODERATOR: ANGELA GREILING KEANE, PRESIDENT OF THE NATIONAL PRESS CLUB

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**ANGELA GREILING KEANE:** (Sounds gavel.) Good afternoon, and welcome to the National Press Club. My name is Angela Greiling Keane. I'm a reporter for Bloomberg News and I'm the 106<sup>th</sup> President of the National Press Club. We are the world's leading professional organization for journalists committed to our profession's future through our programming with events such as this, while fostering a free press worldwide. For more information about the National Press Club, please visit our website at [www.press.org](http://www.press.org). To donate to programs offered through the National Press Club Journalism Institute, please visit [www.press.org/institute](http://www.press.org/institute).

On behalf of our members worldwide, I'd like to welcome our speaker and those of you attending today's event. Our head table includes guests of our speaker as well as working journalists who are Club members. If you hear applause in our audience, we'd note that members of the general public are attending so it is not necessarily a lack of journalistic objectivity.

I'd also like to welcome our C-SPAN and Public Radio audiences. Our luncheons are also featured on our member-produced weekly Podcast from the National Press Club available on iTunes. You can follow the action on Twitter using the hashtag NPCLunch. After our guest's speech concludes, we'll have Q&A, and I'll ask as many questions as time permits. Now it's time to introduce our head table guests. I'd ask each of you here to stand up briefly as your name is announced.

From your right, Tim Schoreck [?], a freelance writer for publications including *The Nation*; Rachel Oswald, staff writer at *National Journal of Global Security Newswire*, and a Vice Chair of the Press Club's Press Freedom Committee; Rem Rieder, the editor and senior vice president of the *American Journalism Review* and a columnist for *USA Today*; Marilyn Thomson, Washington bureau chief for Thomson Reuters; Louis Clark, president of the Government Accountability Project.

Skipping over the podium, Alison Fitzgerald, a freelance journalist and the Speakers Committee Chair and the organizer of today's event. Thank you, Alison. Skipping over our speaker for a moment, John Donnelly, senior writer at *Congressional Quarterly*, *CQ Roll Call*, and Chairman of the Press Club's Press Freedom Committee; Josh Rogin, a senior staff writer at *Foreign Policy Magazine*; Al Eisele, the founding editor and editor-at-large at *The Hill* newspaper and a Press Club member since 1965; Charles Lewis, executive editor of the Investigative Reporting Workshop and a professor at American University. (Applause)

Two years ago, our guest today was accused by the U.S. Justice Department of espionage. The Air Force veteran and longtime senior executive at the National Security Agency was accused of giving classified documents to a news reporter. Thomas Drake faced 35 years in prison. A year later, on the eve of his trial, the government dropped all felony charges against Mr. Drake. He has since been honored as a whistler blower who helped to expose waste and fraud at the spy agency and to bring to light its massive effort to spy on America's own citizens.

Mr. Drake's ordeal began, coincidentally, on September 11<sup>th</sup>, 2001, which happened to be his first day as a full time employee of the NSA. Like all other U.S. intelligence agencies, the NSA had missed key pieces of information that might have tipped off the government that the terrorist attacks were imminent. Shortly after 9/11, Mr. Drake came to believe that the agency could have predicted the attacks if it had made use of a surveillance system known as ThinThread that could sift through massive amounts of data and detect patterns and key information. Instead, NSA leaders turn to outside contractor, SAIC, to build a new data collection system called Trailblazer that cost more than \$1 billion, ten times the cost of ThinThread.

At the same time, Mr. Drake learned that the agency was trained at surveillance capabilities on American citizens which he believed was a violation of the U.S. Constitution. He decided to speak up. Mr. Drake reported his concerns about money wasted on Trailblazer and about domestic surveillance to Congress and to the Defense Department's Inspector General. He became a material witness in two 9/11 Congressional investigations. Even after the Inspector General found that the Trailblazer project was a massive waste and the program was killed, little changed at the NSA.

Mr. Drake then decided to go public. He brought his information about the problems with Trailblazer to a *Baltimore Sun* reporter who wrote a series of articles exposing the waste. Mr. Drake insists he did not reveal any classified information. Yet, when the *New York Times* in 2005 reported the stunning news that the U.S. government

was tapping into its citizens' telephone calls with no warrants, Mr. Drake became a target in one of the most aggressive leak investigations in history. Agents raided his home in 2007, took his computers and files and threatened that he could spend the rest of his life in prison.

In 2010, the Justice Department indicted Mr. Drake for "willful retention of classified documents." It was only the fourth time in history that a citizen was charged with espionage for mishandling documents. A conviction could have had a chilling effect on whistle blowers and on journalists who often receive and keep defense documents. Morton Halperin of the Open Society Institute said Mr. Drake's prosecution "poses a grave threat to the mechanism by which we learn what the government does." Instead, the government's case fell apart when the government found no evidence that Mr. Drake willfully leaked classified information. Mr. Drake's sentencing judge said the prosecution was "Not proper. It does not pass the smell test."

Thomas Drake now writes, speaks and teaches about whistle blowing, constitutional rights and abuse of government power. He's the recipient of the 2011 Ridenhour Truth Telling Prize and the 2011 Sam Adams Integrity in Excellence Award. As we wrap up Sunshine Week here at the National Press Club, please help me give a warm welcome to Thomas Drake. (Applause)

**MR. DRAKE:** I'd like to thank the National Press Club for inviting me here. I'm looking forward to the Q&A so I do have a few remarks to kind of set the tone and the tenor and to reflect in a quite sobering manner on what happened to me and what's at stake for this country.

I've entitled my remarks "In the Shadowlands of the Secrecy State: Preying on the First Amendment." I first want to announce, however, that I can neither confirm nor deny that a solar eclipse cast by the shadow government is at least partially blocking the view of Sunshine Week. To do either might just reveal state secrets to reporters and journalists including those of you in the room unauthorized to receive them. And I would not want you all to end up with allegedly classified information regarding the weather in Washington, D. C.

The White House blog on Wednesday said, "We celebrate Sunshine Week, an appropriate time to discuss the importance of open government and freedom of information," including a quote from President Obama saying, "Openness will strengthen our democracy and promote efficiency and effectiveness in government." Really? Just when Radack, the National Security and Human Rights Director at the Government Accountability Project, remarked on Twitter just yesterday that "after three years of shouting into the wilderness" she is relieved to see that the Kool-Aid crowd is finally realizing that the Obama Administration's draconian orgy of secrecy is finally reaching a boiling point.

Glenn Greenwald with *The Guardian* newspaper published a very powerful article yesterday titled, "Obama's Secrecy Fixation Causing Sunshine Week Implosion." I'd like

to remind everybody that President John F. Kennedy said that the very word secrecy is repugnant in a free and open society. I like to think we have reached a critical event horizon, and whether national security as a new state religion will further suck the dwindling light of the first amendment into the black hole of classification and secrecy hidden from public view. It seems that secrecy is actually strengthening the national security state in order to hide from accountability and oversight at the expense of informed public interest where it matters the most.

What is the price of keeping the public in the dark and having a government increasingly operate in the dark through secret law, or interpretations in secret of existing law? After all, this very event is part of Sunshine Week and I would like to highlight just one event that brings the message of Sunshine Week home regarding what's so at stake and our increasingly two-faced government.

The House Oversight and Government Reform Committee held hearings this week on addressing transparency in the federal bureaucracy, moving toward a more open government. The largest theme of the testimony before that committee centered on the inherent tension between the President's pledge for a new era of unprecedented openness and a record of invoking threats to national security to keep the public in the dark time and time again. The written testimony, and here I give a shout out to the Project on Government Oversight and their Pogo blog states, "There seems to be two Obama Administrations, two American governments, really. One looks like a democracy in which an open government accountable to the people is an ideal and a priority. And the other is a national security state where claims of national security often trump democratic principles such as a people's right to know, civil liberties, freedom of speech and whistleblower protections. Of course, this is not an approach exclusive to this President. But the unchecked secrecy of Obama's national security state is at cross purposes with many of his administration's openness objectives and it raises doubts about the President's commitments and declarations about transparency."

So given where we are today at the National Press Club, it seems to me that it's more than appropriate for us to discuss the long shadow of government secrecy obscuring the view of democracy in our constitutional republic, or what's left of it. Threats to the first amendment by the government is bull's eye centered on a free and unfettered press designed to suppress and repress speech and political expression in America, create fear through unilateral authority and privilege over what is fit or unfit for the first amendment. If speech becomes the instrument of crime when revealing government crime and wrongdoing, we are under arbitrary authoritarian rule and not the rule of law.

In our post-9/11 world, the government is increasingly in the first un-amendment business engaged in a direct assault on free speech and the very foundation of our democracy because our very individual freedoms have now become fair game for the secrecy regime all in the name and under the mantel and cloak called national security. In fact, I can make an argument that government increasingly prefers to operate in the shadows and finds the first amendment a constraint on its activities. And yet taking off the veil of government secrecy has more often than not turned truth tellers and whistle

blowers into turncoats and traitors who are then often criminally burned, blacklisted and broken by the government on the stake of national security.

Egregious violations of the fourth amendment, many still occurring in secret far beyond the awareness and knowledge of most Americans are eroding and chipping away the first amendment. For example, the Patriot Act, along with a number of other enabling acts including the recently reauthorized FISA Amendments Act plus many more including massive abuse of CALEA, ECPA and CFAA, are now blunt end instruments of a Homeland Security and surveillance apparatus that legalizes government deception, citizen monitoring and wrongdoing while those who reveal government wrongdoing, illegality embarrassment are often prosecuted and increasingly indicted for speaking truth to power.

I know. I knew too much truth and exposed government illegalities, fraud and abuse and was turned into a criminal for doing so. I was charged under the Espionage Act, faced many years in prison and became an enemy of the state. It was five years of living under the boot of the surveillance state. And yet, and yet, I was saved by the first amendment and the court of public opinion and the free press including the strength and growing resiliency of the alternative media, the very cornerstone of all of our liberties and freedoms, the one on which all the rest rely, the active voice and conscience of the Constitution of the United States of America. Freedom means everything to me and especially when I faced a prospect of having all my freedoms taken away from me and placed under all kinds of restrictions in movement and monitored activity for several years.

So for the sake of our common future and the country we want to keep, we must ask of ourselves some very hard questions. Is the first amendment becoming a casualty in an indefinite, undeclared war where notions of a free press public interest and informed citizenry get in the way of national security interests defined in secret? In our wired and wireless world, what happens to anonymous speech and the press on the internet when the government has a persistent dragnet surveillance system in place, the emergence of a virtual Orwellian state? Do we really want the government listening in on and tracking the lives of so many others? Have our constitutional freedoms become the latest victims of 9/11? Is the intolerance shown by the secret federal government for the magnificent of our precious first amendment freedoms a foreboding of things to come? Will national security replace our individual rights? Will fear take priority over freedom? Will government censorship and propaganda triumph over personal choice and disclosure? Is suppression repression, the instrument for stamping out dissent? Will government embarrassment extinguish exposure? Is the tree of liberty becoming an endangered species? And if we starve liberty for the increasingly myopic sake of security, what will we have left to defend?

What happens when the acid of secrecy and suppression erode the very bedrock of the first amendment? What happens when the sources of what is really happening in government increasingly choose not to speak to the press? What happens when we increasingly self censor ourselves and the news is not fit to print because it invites undue

government attention? How else will the press report the real news when their sources dry up and the government becomes a primary purveyor of its own news? It is our freedom of choice that is at stake as citizens and not the government's to just take away from us in secret under the guise of keeping us safe from ourselves.

We must now rescue the Constitution from our very own government before it becomes as hollow shell of its former self. The rights we have, the rights, not privileges, the rights we have under the first amendment are the living blueprint and beacon for personal freedoms and power of choice. George Orwell said, "If liberty means anything at all, it means the right to tell people what they do not want to hear." When there is no transparency, openness or public accountability for the deeds of government including secret surveillance, torture, kill list, the cover the AMUF use to justify our foreign policy, abandonment of due process, foyer redactions and delays, prosecutorial overreach and misconduct only invites further abuse, secret rule and unchecked power by the government.

What happens to our country, what happens to our country when laws are secretly interpreted behind closed doors by government officials who prefer to operate in the shadows without public debate but promote and support laws that violate the privacy and protections afforded by the Constitution for the sake of national security? So are we willing to forsake our liberties for the sake of security when, in fact, it is our very liberties which define the heart and core of our national security?

What is more pernicious in terms of a freedom of the press and informed citizenry when the very sources are threatened with life in prison for simply telling the truth about the government? You see, the first amendment, the first amendment of all the amendments, is an invaluable protection for public freedom against government overreach and intrusion into our lives, our fortunes and our very futures. Do we want to let the first amendment join the list of endangered species where the remaining descendents end up in a zoo somewhere behind a cage for people to come and gawk?

As Kevin Gosztola, a remarkable investigative reporter with Firedoglake said just yesterday in his article, "What is worse, a powerful person telling citizens they have no right to know because they fervently believe that all hell will break loose if they allow any transparency, or a powerful person who purports to favor transparency and openness telling citizens they do not have a right to know because he or she is not that powerful person who has contempt for open government?"

In an open and transparent society, the citizenry are supposed to know the truth of its own government. So if the first amendment is a sunshine of our liberty, how else are we to remain free if the government casts its shadows over you and me? (Applause)

**MS. GREILING KEANE:** After your experience, would you advise someone else in your position to blow the whistle on government wrongdoing?

**MR. DRAKE:** Yes. But make sure you understand what you're getting yourself into. Do not speak to the FBI and make sure you have a lawyer right from the start. If my case is any example, they'll do everything they can to take anything you say and anything they find and use it to justify charges that in my case were actually framed. See, I told the truth to the FBI agents. They didn't believe me. In fact, four of the ten felony counts were for making false statements. One of them was for obstructing justice. You know why? Because the chief prosecutor said that unless I cooperated with the investigation, they were going to pursue prosecution. So, the answer is yes. We actually need more.

Having spoken to Daniel Ellsberg, he actually thought in the early '70s with all the publicity that surrounded the Pentagon Papers that more people would actually step forward. And other than some close colleagues and associates, guess what? Hardly anybody else stepped forward regarding the travesty of Vietnam.

**MS. GREILING KEANE:** Under what circumstances do you think that classified information should be leaked?

**MR. DRAKE:** That's a loaded question. Classified is-- see, what's happening now is the government increasingly wants to classify as much as possible. Because what that allows them to do is create a larger ambit in which they can charge you for having either retained, disclosed or leaked classified information. But to answer it directly, if it involves war crimes, if it involves wrongdoing, if it involves violation to statute, then yes. There's very little in government that actually truly ever needs to be classified. It always needs to be placed under constant review. The problem is that the oversight mechanisms and the very executive orders and laws and statutes that govern the classification system are just abjectly broken.

And so when everything is increasingly classified, nothing is classified. And if everything is increasingly classified, what remains a secret?

**MS. GREILING KEANE:** You mentioned that former colleagues said to you that they believe talking to reporters is a crime. Do you believe that that attitude is pervasive among government employees? And maybe you could address it inside and outside of the intelligence community?

**MR. DRAKE:** It is true that in the intelligence community which I was a part for many, many years both as a government employee and as a contractor, and even in the military, that you do sign secrecy agreements. And these vary based on the agency. The secrecy agreement that I signed was to protect the agreement, what they call protected information which by definition was classified, truly classified, or under classification review. It was actually carefully articulated in terms of executive statutes and rules.

In this particular case, when you're referencing-- I just want to be very careful here in my wording, okay, because you're referencing former colleagues. There was this misunderstanding that if you happen to speak to a reporter that by definition anything you might say to them could be characterized as classified because you, unless it was

authorized, then you were in an unauthorized status and therefore you were liable under administrative rules. Like I said, there are distinctions between agencies, although increasingly they're centralizing this to the DNI. You may have heard very recently that James Clapper, the Director of National Intelligence, is now directing, adding a question, questions, to the polygraph mechanism in which individuals are either-- they're going to be obtaining a clearance or retaining an existing clearance, will be asked about unauthorized contact with the press.

And so yes, I had individuals that I used to work with who assumed that it was criminal under the U.S. law to have any contact whatsoever with a reporter. In fact, I was even asked that question by Scott Pelley on *60 Minutes* a couple of years ago. It's not a crime to speak with a reporter. There are certain administrative rules governing what that looks like. I was under an administrative rule that said if I were to have unauthorized contact with a reporter, that I was liable to certain administrative sanctions. At that time, the worst that could occur is they no longer trusted me and they would remove my security clearance which would be a condition of continuing employment. After 2005, when I knew that there was a strong likelihood that I would get caught up by mere association in the criminal national security leak investigation regarding the Risen and Lichtblau article which revealed publicly the first time the existence of a so-called warrantless wiretapping program, I knew that they were now criminalizing contact with the press. And not only was it going back to the Watergate era and the Pentagon Papers, but it was now the full force of the Department of Justice who was going to come after anybody, especially if you were allegedly retaining or disclosing information related to national security that they didn't take too kindly to.

**MS. GREILING KEANE:** This questioner says you don't acknowledge that there are sometimes legitimate government secrets. Isn't this more about balance? Don't we need to keep some secrets?

**MR. DRAKE:** I think I partially addressed that earlier. However, are there legitimate government secrets? Remember, I lived in a secrecy regime for many, many years. When it comes to troop movements, nuclear secrets, and those kinds of things, certain sources and methods, then there are legitimate reasons to keep those secret for that time. So it's not like I'm standing up here saying there are no secrets at all. But this is where it gets conflated. Meaning if you say anything, then you automatically come under the boot of the secret rules governing the classification system. That's not true at all.

The secrecy system, and I'm going to be very, very clear here, is not to be used to cover government illegality, wrongdoing, hiding, administrative ineffectiveness or, in fact, where the government's actually threatening public health and safety, fraud, waste and abuse. In my experience, the secrecy system has become so corrupted that it's now being used routinely to do precisely that. Under the color and cover of law, and when the color and cover of law is no longer sufficient, then we'll just make up the rules. It's one reason the defense experts in my own criminal case were so outraged by the government prosecution. Both Mort Halperin as well as Bill Leonard, the very individual who used to



head up the Information and Security Oversight Office, the office responsible for the classification system and the integrity of that system within the U.S. government.

But obviously, what I had allegedly retained or had allegedly retained for the purpose of disclose to others not authorized to receive it under the Espionage Act, of all things, was in fact revealing the very kinds of activities that are actually not permitted by the secrecy system. So you have a real conundrum. Under the blanket of national security, you reveal anything, guess what? You're liable. And if it's about the things we don't want you to know because, in fact, it is in violation of law and statute, then guess what? We're going to come after you even stronger.

I mean, it's unprecedented, it really is unprecedented. This administration has used the Espionage Act as a means and mechanism to prosecute seven Americans for non-spy activities, non-spy. When you're painting with the Espionage Act, it's the worst thing because you're immediately put into the same category historically as the Aldrich Ames of the world, or the Hansons of the world. The real spies, to say it that way, because that's how that World War I statute was originally designed. As troubled as it is in terms of the Constitution, it was designed to go after spies, not truth tellers, not whistle blowers and not people having contact with the press. It was not designed for that. But that's what it's turned into.

**MS. GREILING KEANE:** If we can't count on the government to design a classification of information system that is tenable for whistle blowers and for journalists, who should devise that system and how can it be rolled back now?

**MR. DRAKE:** Personally, I mean, I'd probably-- just throw the whole thing out and start over. It's really become a Rube Goldberg. I mean, it's now used as a hammer, it's used to cover, it's got various layers, it's gone far beyond its intended purpose. There's any number of people that I could cite right here, and I won't in the interest of time, who have flat out said the classification system is broken, period, and yet it's a system we continue to use. I got caught up in that. You have to remember, what happened in my case has happened in too many other cases, is the government ends up using other means to gain access to either what you know or what you have or what you hold or what you've allegedly exposed or disclosed, and then they decide what level of classification it violated. And then they charge you. So it needs to be redone.

I mean, I spent too many-- one of the interesting dynamics in terms of bureaucracy, it's just one of the dynamics of bureaucracy. When there was any doubt about what the classification was, you just said, "Hey, stamped at the highest level." That way there's no doubt as to what it is, stamped at the highest level. That was pretty routine. Part of the reason, interestingly enough, is there's actually very few people in government, it's actually quite a small number, who actually have formal authority to say what is classified or isn't. This is one of the things that people don't fully appreciate. The number of people that actually have what's called originating classification authority is very, very small. And it normally in the system, it was designed for when you were doing public releases or you were actually formalizing a report to send out within the

government or for other types of releases. That's when it would come under review. There were the rules, but a lot of the systems allowed you, where you were, just to say, "Hey, if I'm not sure about what this is, I'll just stamp it at the highest level."

**MS. GREILING KEANE:** The NSA still has a program to conduct surveillance on people within our borders. Do you see that as a defeat after all that you and other whistle blowers have gone through?

**MR. DRAKE:** A defeat, interesting. Is it defeat? That means that they've won, just say it that way. You know, this is an area, the subject of secret surveillance is something that I live with every day. Because that's, to my horror, I discovered that that's precisely what the government was doing shortly after 9/11, and that program has only grown and it's gone through various iterations.

To say it is a defeat I think would defeat the purpose for which those of us who stood up because we took an oath to support and defend the Constitution. It would do a disservice to who we are as Americans. See, myself and others who did have the courage to stand up in spite of the risks, and in my case facing many, many decades in prison for having done so, we knew that none of this was necessary. We knew there was no need to ever go to the dark side. We knew that the American exceptionalism was not getting away with and breaking the law because we're Americans, the exceptionalism is that the fundamental basis for national security were our liberties and freedoms.

I'm just telling you, and I've said this in many other audiences, there was never any need, despite what happened on 9/11, to have ever gone to the dark side. There was never any need at that time to violate in such a vast and egregious manner the Foreign Intelligence Surveillance Act and turn the United States of America into the equivalent of a foreign nation for the purposes of secret surveillance. Why? Because they would tell me the following. "Tom, you don't understand. We live in extraordinary times. We live in exigent-- this is a word-- exigent conditions. That requires extraordinary means and exigent means by which we'll deal with the threat. And if it means we're going to violate the rights for some Americans, hey, they have nothing to worry about if they've done nothing wrong."

The problem is, we don't get to decide what it is that we've done wrong. I'm a perfect case example of that. Even in my own criminal case, both sides had to acknowledge in the end, and it's for the public record, not just what's still sealed in my case, that nothing that I ever retained, but in particular what was allegedly, allegedly, disclosed was classified. None of it. The irony in my case is what they'd said I'd retained was unclassified information that in whole or in part was given to official government investigations, both two 9/11 congressional investigations and a Department of Defense General Audit investigation. How ironic.

But I knew in the first week in October when I had, and it still gives me shivers to this day, when the senior attorney in the Office of General Counsel for the National Security Agency said, "Tom, the White House has approved the program. It's all legal.

You don't want to ask any more questions, Mr. Drake." I knew that we had crossed the Rubicon. And it was not clear then, because I remember the ringing words of Frank Church from the 1970s when I was a very young teenager, when he actually talked about what would happen in the future if the technology means existed of which you would have blanket surveillance in this country, what would the government do and could we pull it back? I'm telling you, when you have secret power and secret access to that amount of data on individuals, it goes to people's heads. You get to know an awful lot.

You also have to remember, for me this is really personal. I became an expert during the latter years of the Cold War in East Germany listening in on a fascist surveillance state. The Stasi were the secret police. They became monstrously efficient by getting to know everything there was to know about their own citizens. Because all the citizens were potential threats, so they didn't trust any of them. Any and all activity was suspicious even if you're not engaged in suspicious activity. And they became monstrously efficient in terms of their recordkeeping and files. In fact, their motto was to know everything.

I can only imagine those who used to be in that state and still live drooling at the prospect of what they could do with the technology that now exists in the hands of the National Security Agency and other government agencies, only can imagine. To know everything? My life was turned upside down. I know for a fact that everything you could find out, or anything you could possibly imagine in your life, any transaction, all your emails, any and all subscriber information with any concern including telecommunication concerns, was all exposed to the government because they were looking for what was necessary to indict me. And they finally found something, the Espionage Act.

**MS. GREILING KEANE:** This questioner asks what motivates the Obama Administration for going to what you say is the dark side?

**MR. DRAKE:** You know, Lord Acton said that power tends to corrupt. It doesn't mean it will, I was saying this in terms-- at the reception. But absolute power clearly corrupts absolutely. If history is any guide, and even though history would say it's a temporary condition, that freedom ultimately prevails, we've had some very dark chapters in human history, particularly in the 20<sup>th</sup> century. When you're in those positions of power up to and including the President, and you're being given secret information, ooh. There's a seductiveness that comes with that knowledge because it's secret. What can I do with it? How can I use it? And I'm holding this and then I get to say who I can share it with or not. I get to say who's authorized or has access, the privilege of access. But I'm holding this in secret and if history is any guide, particularly since World War II and the establishment of the national security apparatus in 1947, the National Security Act, subsequent administrations have been not just reluctant to give up any powers given by a previous administration, they've extended it. They want more. You can never get enough.

This whole latest, for those of you with the 12 hour filibuster of Rand Paul, for all the theater that a filibuster especially one where you're standing there in the well of the

Senate and harking back to *Mr. Smith Goes to Washington*, right? You just get beyond that, what's really at stake? Yeah, there's some serious questions that need to be asked. What does it mean in this country to have the executive branch with what has been a largely compliant and even complicit Congress-- you know, that my material evidence, my material witness evidence as a whistle blower with two 9/11 Congressional investigations never made the light of day. You know why? There's this thing called redaction within the system where the agency of record that was under investigation gets to review the findings and recommendations. And guess what? Let's just say it was expunged, as if that history never existed. It's unfortunate.

What does it mean when you have that much power? If we don't check it, if there aren't proper oversights and controls, the executive branch and under the environment of a post-9/11 threat landscape, there's always going to be more threats. You're always going to manufacture more enemies. And it goes far beyond the original purpose for which it was created, far beyond. And so, I was told, "Tom, hey--" so I said, "You know, there is a legal means in this country by which you change law. You go to Congress." You know what they told me? Now, this is in October, first week, because I'm asking those hard questions. I realize that Pandora's Box is being opened up. They said, "You don't understand, Tom. If we go to Congress and ask them for what we really want to do, they're going to say no." "They're going to say no?"

In those weeks after 9/11, Congress would have signed off on just about anything, and did. So why would NSA tell me that we actually can't change the law and instead we're just going to violate it? And we'll just make it legal later, which is precisely what happened. When it's true, eventually this came out. And they used-- it's a violation of our system of justice to use ex post facto law to make legal what was illegal as cover, give the telecommunication companies who are cooperating at extraordinarily deep level with NSA, provide them immunity and then expand that in 2008 with the FISA Amendments Act, which just becomes a rubber stamp. Read Section 702, it's the barn door.

**MS. GREILING KEANE:** We have several questions in Wiki leaks. We'll take this one. What are your thoughts on the Bradley Manning case? What do you think of the information he released, and what do you think of the methods he used to release them?

**MR. DRAKE:** I'll say it again here, I've said it before. Bradley Manning is a whistle blower. It took extraordinary courage to do what he did. There's all kinds of other mischaracterizations, what I call the characterization of the messenger because the government has to avoid the message. People have discussed differences of opinion based on amount and how classified or unclassified it was. The fact remains that he's a whistle blower. He was witness to evidence of war crimes, that's a fact. He was a witness to evidence of abject corruption in Iraq. He was a witness to what I call the dark side of our foreign policy. He was witness to where he was even asked to look the other way. When he brought it to the attention of superiors, and this is all based on what's already been published, he's being charged not just with the Espionage Act, but with aiding the enemy, which is a capital offense.

You have to remember what's my connection here? During the course of my own criminal proceedings, the chief prosecutor, William Welsh, actually said in the final motions hearing before the judge and with the public, he said that what I did, and I'm paraphrasing, endangered the lives of American soldiers. What I did. So, separate from all the mischaracterizations and what I call misdirection, you have to focus on what was actually released. He had access to far higher levels of classification, including top secret SCI. All that was released, I'll say it that way, was in the very low level systems. But the aggregate of that provides a very disturbing picture of who we are in terms of our American exceptionalism. And I say that unapologetically because you think about the extraordinary loss of blood, of American taxpayer treasure, the extraordinary loss of lives and overseas for what? For what? And he's having to bear an incredibly high price because of a choice he made in his own conscience about what was right and he wasn't going to remain silent.

So here's your choice, because it turns out in his own words, which were recently leaked from inside the courtroom, which is actually more controlled in terms of its draconian restrictions than even what's going on at Guantanamo. It's very clear in his own words why he did what he did, and it turns out he had gone, he actually had made the attempt to connect with U.S. press, U.S. media, mainstream media. And guess what?

And so, even the prosecution was asked by the judge, Judge Lind, what if he had gone to *New York Times*? Prosecutor said, "We'd treat it the same way." Meaning it didn't matter. It didn't matter whether he had actually ended up being disclosed. It didn't matter, Wiki leaks disclosure, the same thing if it had been disclosed to the *New York Times*. What does that say in terms of the first amendment? That's a direct threat. If you burn the sources, you fry the sources, what message are you sending? And so what are you left with? You're going to be left with government malfeasance and spokesperson saying what's authorized and isn't? And yet you're using this as cover?

I mean, the reports that are coming out about Iraq, just one small example, okay? The umpteen tens and tens of billions of dollars utterly wasted on reconstruction efforts, what was that? Just a sham and a fraud? Apparently it was. Read Peter Van Buren's book, *We Meant Well*. You'll get the inside story on what he discovered as an eye witness. This is what's happening in this country. That's not American exceptionalism, it's a total inversion of what we're supposed to be as people. That's not the oath-- those activities, I didn't take an oath to support and defend those, I didn't. Neither did he. And under Article 92 of the Uniform Court of Military Justice, he has a right to question any orders to insure that it's lawful. And if he's asked to engage in unlawful or if he's eyewitness to unlawful illegal orders, guess what? He doesn't have to follow them. But he made a conscious choice and he's willing to accept whatever consequences came his way.

And it turns out the only mechanism that was available at the time for him, the choice he made, was to go to Wiki leaks. I find it ironic, incredibly ironic, that the disclosures he made were so extraordinary for the time period of those disclosures that other mainstream media had it on their front pages over many, many weeks and months.

What does that tell you? I guess it must have been fit for news. There's a lot more I could say about that. I stand with Bradley Manning.

**MS. GREILING KEANE:** We're here at the National Press Club so we have several variations to this question as well. Is the government spying on reporters right now?

**MR. DRAKE:** Wow. I hear you laughing. See, here's the dark side because there's a whole lot I still have not shared fully publicly, okay? Although I've shared this with 9/11 Congressional investigators and I've shared it with others, and Congress, when I was still in the government as a senior executive. I've made allusions to it in other public fora. I've written about it. I remember what happened in the '50s, '60s and '70s, right, where instruments of national power were used against reporters, instruments of national power used against activists, war protesters, those that became "designated as enemies of the state." Remember, at one point Daniel Ellsberg himself was declared to be the most dangerous man in America, okay?

I became an enemy of the state. I will tell you without equivocation, that the surveillance system that-- the illegal surveillance system that was put into place after 9/11 and grew from there and came to a huge head in 2004 when James Comey, remember that incident, and if you follow what's going on with this documentary on Dick Cheney, very interesting what Cheney is now saying unapologetically and also what really was going on because he kept the truth, apparently, from his own President regarding very senior officials and very senior lawyers who were about to resign over this secret domestic surveillance program. Why? Because it was illegal. I will simply tell you that an aspect of that secret surveillance program, called Stellar Wind at the time, I believe it's gone through some name changes since, included surveiling reporters and journalists.

Remember, if you're wired, if you wired the electronic system, it makes it very, very difficult unless you engage in other means, to get information to a reporter or journalist. And obviously, if you're concerned about disclosures, what they call leaks that are unauthorized, wow, you just keep tap on any and all connections that are made to certain reporters and journalists, and that net just widens. And so I know for a fact that that actually took place in secret. This is no different, but on a much larger scale, than what happened during the '60s and '70s where they were wiretapping reporters and journalists to insure-- to find out who their sources were. If you know who the sources are, guess what? I don't really have to go after the journalist directly, I'll just go after the source.

So here's really where it gets extremely troubling for me, and most disturbing. As a result of my own case, many-- I had contact, and this is another paradox of what happened to me. I went from having gone to one reporter to having interactions with any number of reports on and off the record. Any number of them have told me privately, and it's chilling, that even long time deep sources in government are increasingly reluctant to speak even off the record, even on deep background. Guess why? They're afraid. You know what it means to become afraid of your own government because of just the

possibility that they may get ticked off if you happen to have contact with a reporter? Wow. I never imagined that that would truly happen on such a large scale in this country. And yet some of the very best reporters in this country, investigative reporters, are experiencing precisely that. They're being frozen out from their own sources because of fears the sources have of their own government. Risen himself is part of a criminal case with Jeffrey Sterling because of things that were shared in his book called *State of War*. He's caught up, subpoenaed three times, and the allegations are he's the only eyewitness to the crime. Crime? Oh, wow. Well.

**MS. GREILING KEANE:** Are you concerned that young Americans are growing up with little sense of privacy, especially electronic privacy and the implications for privacy rights in the future from that?

**MR. DRAKE:** I have a son who's 17, extraordinary son. And we've had long conversations about what happened to me and what's happening to this country. He's only known this world we now inhabit post-9/11. He knows no other world. Most of us in this room actually remember a pre-9/11 world. At a minimum, I'd like to return to 9/10. The price is way too high. Way too high. Our younger generation will inherit what we leave behind. They're the future leaders of tomorrow today. What legacy will we have them take? What legacy will we leave behind?

So one of the fundamental principles of who you are as a human being which is enshrined in the Constitution, is in the fourth amendment. That you are secure. And I've talked to not just my son but other young people and people that I work with that are in their 20s and early 30s-somethings, I've asked them point blank, "Where do you draw the line?" One of them told me recently, "I draw the line at the shades of my window. Anything that I do behind those shades is private." That includes the use of his cell phone, that includes any other electronic media. He chooses what he will share that's public. And just because he's private does not give the government license to violate that privacy without due process which includes probable cause through an affidavit that you have to bring forward in front of someone in Article 3 court. That the Article 2 powers do not extend to simply subverting what is properly given to Article 3 in the Constitution.

Privacy does matter. It's the essence of who we are as human beings. We don't have that, guess what? And so there's something at stake for all of us in terms of the commons. There's something at stake for all of us in terms of fundamentally what it means. It's not their choice and it's not their right to then turn what is a right of ours into a privilege that they sanction, they control, that they monitor and they dispense. That's precisely what's happening and that's precisely a world that I do not want to leave behind for my 17 year old or any other body in the younger generation of any of us. That's not what I took an oath to support and defend.

And I say that with about as strong a conviction as I can possibly use in terms of the language. It's that important. It really is that important to who we are. There's this idea that-- and I've heard this internally. I heard this when I was at NSA. If you're doing something in private, then you might be up to no good and we need to have access to that.

Did you know there's a plan right now in the Obama Administration to provide the intelligence community, which is a misnomer by the way, the intelligence establishment access to any and all financial records, any and all. What the heck is there left to defend? I mean, if you end up taking away the essence of everything there is about you because there might just be a one percent or a .01 percent chance that you're doing something wrong? What's happening? We're in this pre-crime space where anything is suspicious, that any and all data.

I'm telling you, in my case I was utterly framed. Not only was information mischaracterized, it was misrepresented and at times even doctored. What does that tell you? Because it's all done in secret. They're the ones holding it. You become a target of the government, right? Remember, I've been living this. I've lived this for five years. You become a target of the government, it's not a life I want any of you in this room to live except for those of you who have in part lived it.

Another thing to share with you, everybody-- I've not said this directly in this type of forum, but I'm going to say it here-- everybody that was associated with me either because they used to work for me or had links to me or had ties to me, by mere association assembly, that freedom to do so under the first amendment, were investigated, were interrogated and some of those same people lost their jobs and their livelihood because of their association with me. Mere association meant they were guilty and they were going to be punished, punished because of that association.

There's other things I can't even talk about because they're so personal in how far the government went to destroy my life and others. Yet I stand here as a free person. Free. You know what freedom really means? When you're about to lose everything there is of who you are, that's when you realize what's most important. That's the oath I took. And the President's to preserve, protect and defend. There's a special oath he takes written in the Constitution. You don't use the color and cover of that to engage in secret law and interpretational law and withhold what you say is legal from Congress. Congress is the only body that actually gets to legislate, right? Yeah, the President gets to sign into law and you have the Supreme Court. We forget the foundations of our own country.

I have some who go, "Tom, the Constitution is outmoded. You don't understand. We live in a very different era." You know, founding fathers, they had their own contradictions. Yes, they did. Civil War was built into that. I know, I understand all of that. I've heard all those arguments. I usually hear them when I went through SEER training, the very program that was reverse engineered, became the torture program, state sponsored torture by this country. Fifty-four countries, minimum, have cooperated. What does that tell you about who we are? I was flat out told, "Tom, we're different. We're never going to do this because we're Americans. We're Americans." Oh. Okay, we're Americans.

**MS. GREILING KEANE:** We are almost out of time, but before asking the last question, I'd like to remind you about our upcoming speakers. On March 18<sup>th</sup>, we'll have a Speakers Breakfast with Reince Priebus, the Chairman of the Republican National



Committee who will discuss the forward strategy of the Republican Party. On March 20<sup>th</sup>, Kathy Calvin, the President and CEO of the United Nations Foundation will discuss the public charities work in supporting the mission and programs of the United Nations. And on March 26<sup>th</sup>, Robert L. Johnson, Chairman of the RLJ Companies will be our speaker.

Second, I'd like to present our guest with the traditional National Press Club coffee mug. (Applause)

**MR. DRAKE:** I'll pour a little truth in it and share it with you all.

**MS. GREILING KEANE:** And for the final question, you were profiled on *60 Minutes* and on *The Daily Show*, two very different formats. Who would you say did a better job on your story, Scott Pelley or Jon Stewart?

**MR. DRAKE:** Both.

**MS. GREILING KEANE:** How about a round of applause for our speaker? (Applause) Thank you for coming today. We are adjourned. (Sounds gavel.)

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