

**UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

HORACE B. EDWARDS,)
UNITED STATES OF AMERICA,)
Either as the Real Party in Interest or)
in the alternative as a Required Party/)
Putative Involuntary Plaintiff, and)
JOHN and JANE DOES 1-10,)
Plaintiffs,)

v.)

Case No. 2:14-CV-02631-JAR-TJJ

EDWARD JOSEPH SNOWDEN,)
PRAXIS FILMS, INC., LAURA POITRAS,)
PARTICIPANT MEDIA, LLC, DIANE)
WEYERMANN, JEFFREY SKOLL,)
THE WEINSTEIN COMPANY LLC a/k/a)
RADIUS-TWC, JOHN and JANE DOES 1-10,)
Defendants.)

FIRST AMENDED
COMPLAINT

PRELIMINARY STATEMENT

1. This is an action on behalf of the American people to seek prompt imposition of the Supreme Court’s essential financial remedy—a constructive trust—to redress unjust enrichment by ensuring that ill-gotten gains are disgorged.¹ This deters breaches of fiduciary duty, addresses irreparable damage to the safety of the American people and prevents dangerous disruption of foreign affairs due to irresponsible conduct of disloyal government operatives and entertainment industry collaborators, i.e. named Defendants. This relief does not infringe upon First Amendment rights but maintains a reasonable balance between national security and the fundamental Constitutional protections of Freedom of the Press. No censorship occurs and no

¹ A constructive trust is an equitable remedy to be tried solely before a judge by a bench trial, not a jury trial, thus obviating any potential unauthorized disclosure of classified information.

public access is restrained.² Rather, upon information and belief, this lawsuit seeks relief against those who profiteer by pretending to be journalists and whistleblowers, but in effect are evading the law and betraying their country. Upon information and belief, through this charade in the film, “Citizenfour,” a fugitive senior intelligence official, e.g. CIA/NSA/DIA, together with the “Hollywood Defendants,” intentionally violate obligations owed to the American people, misuse purloined information disclosed to foreign enemies, and covet financial gain for their misconduct.

2. Plaintiff, Horace B. Edwards, is a former Secretary of the Kansas Department of Transportation, a retired naval officer, LT (j.g.), who held a “Q” security clearance, a former President and Chief Executive Officer of ARCO Pipeline Company and former President of Edwards and Associates, Inc., a professional engineering company. As a member of the movie-going public who purchased a ticket to Citizenfour and watched the documentary, he was outraged by the admissions of Defendant Edward J. Snowden detailing his government status as a former CIA/NSA/DIA officer with special high level security clearances, proclaiming himself to be above the law, choosing to breach his government secrecy agreement[s] and his loyalty oath to the United States, intentionally cherry-picking extraordinary quantities and categories of highly classified government information and passing the information to Citizenfour film director Defendant Laura Poitras, as well as others. Plaintiff Edwards views Defendant Snowden’s acts as dishonorable and indefensible and not the acts of a legitimate whistleblower. To the contrary, Defendant Snowden engaged in acts of foreign espionage, which the Hollywood Defendants omit from the storyline.

² Citizenfour is a potential nominee and issues of eligibility have been presented pursuant to the Academy Rules, <http://www.oscars.org/> <last visited on December 17, 2014> by Plaintiff’s attorney on behalf of the Plaintiff in this case. See, Exhibit A (with Attachments), and Exhibit B to Academy. No response thereto has been received to date.

3. Plaintiff Edwards files this amended complaint to add the United States of America, as the Real Party in Interest, under the alternative claim added as Count II, pursuant to Fed.R.Civ.P. 17(a)(2). Plaintiff does not seek to add the United States of America under Count I.

4. Especially alarming are the on-film admissions against interest of Defendant Poitras, who, upon information and belief, misrepresents herself to be a documentarian but instead, is a central character and actual participant in a scheme to profit from stolen U.S. government property. For example, Defendant Poitras speaks in first person narrative about her role in aiding and abetting Defendant Snowden, hiding him in her hotel room while he changes into light disguise, accepting all of the purloined information to use for her personal benefit financially and professionally, filming Defendant Snowden's meeting with a lawyer in Hong Kong as he tries to seek asylum, and acknowledging that she has the right to possess and control stolen classified digital information belonging to the U.S. government and to parlay that information into profit for herself and the Hollywood Defendants.

5. Upon information and belief, Defendant Poitras and her film company, Defendant Praxis Films, Inc., eventually teamed up with executive producers, Defendant Diane Weyermann, Defendant Jeffrey Skoll, and Defendant Participant Media, LLC, as well as the distributor, Defendant The Weinstein Company LLC a/k/a/ Radius-TWC (hereinafter collectively the "Hollywood Defendants") to take the original film footage of Defendant Snowden's Hong Kong admissions and cloak Defendant Snowden's illegal acts in the guise of righteousness and virtue. Citizenfour portrays Defendant Snowden as a well-meaning whistleblower having nowhere else to turn, while the Hollywood Defendants justify their own acts as ones deserving of applause, when in fact the film glorifies international espionage for profit.

6. Upon information and belief together, these Hollywood Defendants have concertedly acted without regard for the health, safety and welfare of all U.S. Citizens, have aided and abetted the illegal and morally wrongful acts of Defendant Snowden, and have callously chosen to commercialize, capitalize and commoditize for their conscienceless benefit, the stolen classified CIA/NSA and other secret documents referred to and revealed in the film.

7. Upon information and belief U.S. national security has been seriously damaged, human lives placed at risk or worse, and military and non-military assets compromised not just by Defendant Snowden's actions but also by the Hollywood Defendants' direct and indirect participation collaborating with Defendant Snowden to facilitate the dissemination of top-secret documents to foreign enemies.

8. This case is about supporting the federal government's role under *Snepp v. United States*, 444 U.S. 507 (1980) in order to stop the profiteering of the Hollywood Defendants and deter future government employees from breaching their fiduciary duties to the American people when they are entrusted with secret, confidential, or classified information as a condition of their hiring.³ Specifically, Mr. Edwards brings this action for his own injury, on behalf of others similarly situated, and on behalf of the U.S. Government, akin to a derivative action. As a former Navy officer and holder of classified status for work on nuclear submarines, Mr. Edwards believes the American public should be protected from misuse of government property and diversion of funds needed to remedy the financial and other damage done when the Defendants in this case exploit such information for their own benefit. Upon information and belief, the sums subject to a constructive trust may well exceed hundreds of millions, if not billions of dollars, to

³ See, e.g. Slip Op., *United States of America v. Ishmael Jones*, Civil No. 10-765 (Hon. Gerald Bruce Lee, J.) (E.D. Va. June 15, 2011) (Motions Hearing; granting summary judgment to United States Government and imposing constructive trust against intelligence official for breaching secrecy agreement based upon *Snepp* precedent). A copy of this Motions Hearing is attached as Exhibit C.

achieve restitution for all expenditures of the U.S. government to protect human assets placed at risk, restore/revamp computer infrastructure, rebuild relationships with foreign governments, and respond to various enemies' resurgence efforts, due to the blowback associated with the film and the release of classified information to foreign enemies of this Nation.

9. Plaintiff has expended funds to watch the film, in addition to other bases, he has standing to initiate and seek relief of the Court, under Article III of the Constitution, federal common law breach of fiduciary duty, the equitable nature of the relief at issue for ensuring proper functioning of government, and pray for equity to right the wrong being perpetrated on the American people by the Defendants' misuse of government property.

10. Upon information and belief the Hollywood Defendants have improperly benefited to Plaintiff's detriment, as well as to others similarly situated, through, *inter alia*, the box office receipts for Citizenfour.⁴

FACTUAL BASIS FOR CLAIMS

11. On or about June 2013, the United States of America filed a criminal complaint against Defendant Snowden ("Criminal Complaint"), which subsequently was unsealed. A copy of the unsealed Criminal Complaint is attached as Exhibit D.

12. The Criminal Complaint alleged, among other things, that Defendant Snowden had violated the law by "Theft of Government Property," "Unauthorized Communication of National Defense Information," and "Willful Communication of Classified Communications Intelligence Information to an Unauthorized Person." Exhibit D.

13. Upon information and belief the factual basis for the claims against Defendant Snowden and the Hollywood Defendants are set forth in the following: the film Citizenfour

⁴ www.boxofficemojo.com/movies/?id=citizenfour.htm <last visited on December 18, 2014> (Current worldwide box office grosses \$2,110,484.00.)

(which Plaintiff will seek in discovery), a short documentary precursor of Citizenfour, of approximately 12 minutes and 34 seconds broadcast on PBS and published online by The Guardian Newspaper, Exhibit E, and in the attached articles by professional journalists, who interviewed Defendant Snowden, Defendant Poitras, and others and reported on the admissions, statements and other disclosures and conduct by Defendant Snowden and certain other Hollywood Defendants. See Annexed Exhibit F, Eric Kohn, “Laura Poitras Explains How She Made Edward Snowden Doc ‘Citizenfour’ in Secret (Part 1),” Indiewire (October 20, 2014); Exhibit G, Michael B. Kelley, “We Now Know A Lot More About Edward Snowden’s Epic Heist – And It’s Troubling,” Business Insider (August 17, 2014), Exhibit H, Fred Kaplan, “Sins of Omission: Citizenfour is a fine documentary. Too bad the director glossed over some important details – and Edward Snowden didn’t gloss over more,” Slate (Oct. 16, 2014)

<available at

http://www.slate.com/articles/news_and_politics/war_stories/2014/10/citizenfour_review_laura_poitras_edward_snowden_documentary.html <last visited on December 17, 2014>.

14. It is a matter of public record, and upon information and belief based upon filmed statements and interviews by Defendant Snowden and Defendant Poitras, as more fully described below, that Defendant Snowden admitted that he was an “advisor” and/or official employee at a high level and therefore worked for certain United States intelligence agencies, including Central Intelligence Agency, National Security Agency, and Defense Intelligence Agency.

15. Upon information and belief, based upon his own filmed and written admissions, Defendant Snowden also acknowledged that he had purloined secret and/or classified government information, “worked as a contractor for the NSA in Honolulu,” Exhibit G at 1, and

then subsequently traveled to Hong Kong, where he met Defendant Poitras and provided her with the purloined materials.” Exhibit G at 1, 4; Exhibit H at 1, 2.

16. Upon information and belief, Defendant Poitras exchanged emails with Defendant Snowden before traveling to Hong Kong, to meet with him and film him. Exhibit F at 3; Exhibit E.

17. Citizenfour depicts, among other things, Defendant Snowden describing his theft of large quantities of confidential, classified or secret information, some of it involving domestic operations of his employers, some of it involving foreign operations. See e.g. Exhibit G; Exhibit E.

18. Upon information and belief, and based upon the exhibits annexed hereto and in the film Citizenfour, subsequently Defendant Snowden traveled to Russia as a fugitive from the United States, and Defendant Poitras traveled to Berlin, where she continued working on a documentary film in 2013 and 2014 about the information she received from Defendant Snowden. See, e.g., Exhibits H, F at 4.

19. Upon information and belief, Defendant Poitras stated that she “set up a bunch of meetings during the Berlin International Film Festival in February [in 2014], including one with Tom Quinn at [Defendant] Radius-TWC.” Exhibit F at 4. Further upon information and belief, Defendant Poitras stated that Quinn said “We really want to do this film.” Subsequently, as set forth in the full credits for Citizenfour published in the New York Times, <http://www.nytimes.com/movies/movie/477707/Citizenfour/credits> <last visited on December 17, 2014>, Defendant Radius-TWC was credited as the Domestic Theatrical distributor of the film. Further upon information and belief, Defendant Radius-TWC provided funding to Defendants Poitras and Praxis and, in return, made a financial arrangement to receive revenues

from Citizenfour with knowledge of the crimes committed against the United States by Defendant Snowden and with knowledge that Defendant Poitras has possession, custody and control of purloined information illegally obtained by Defendant Snowden and Defendant Radius-TWC hoped to obtain financial benefit therefrom as entertainment, among other things.

20. Upon information and belief, Defendant Weyermann was a friend of Defendant Poitras and had helped obtain funding for at least one previous documentary film by Defendant Poitras. Further upon information and belief, Defendant Poitras admitted that “Participant Media’s Diane Weyermann got involved” with the financing and other tasks for Citizenfour. See Exhibit F at 4.

21. Upon information and belief, Defendant Poitras admitted that Defendant Weyermann actively sought to accelerate the production and release of Citizenfour and Defendant Weyermann stated: “Ok, let’s do this one,” but then had to tell her bosses, “We’re doing this film, but there’s not going to be a treatment or a rough cut. You’re just going to have to trust us – me [i.e. Defendant Weyermann], Laura and the filmmaking team that we’ll deliver.” Exhibit F at 4. Further, upon information and belief, Defendant Poitras also admitted that Defendant Weyermann “made a couple visits over to Berlin to see the cut,” *id.* and that Defendant Radius-TWC also came over for the same purpose. *Id.*

22. Upon information and belief, Defendant Weyermann was personally friendly with former CIA Officer Valerie Plame Wilson, and also worked with Ms. Wilson on a documentary film entitled “Countdown to Zero,” which Defendant Participant Media helped finance and Defendant Weyermann served as an Executive Producer. Further upon information and belief, Defendant Participant Media and Defendant Weyermann were also involved in the production, distribution and financing of Ms. Wilson’s feature film based upon her memoir, “Fair Game.”

Upon information and belief through this professional and personal relationship with Ms. Wilson, Defendant Weyermann was aware that Ms. Wilson, as a former CIA officer, was required to sign a secrecy agreement that would require her and anyone to whom she disclosed classified information without authorization to disgorge and otherwise return to the U.S. Government all financial benefits obtained from any such unauthorized disclosure. Further upon information and belief, Defendant Weyermann, knew that Ms. Wilson had litigated a First Amendment claim against CIA. By Wilson having presented her manuscript to the mandatory publication review board and following the rules of her secrecy agreement Wilson was never required to disgorge or otherwise return any money to the United States. Because Wilson and Defendant Weyermann worked together on that earlier production, upon information and belief, Defendant Weyermann knew the consequences of not following the prepublication rules required by government intelligence officials. So when Defendant Weyermann made the request to Defendant Participant Media's management to "trust her" she knew or had reason to know both that the Defendant Snowden materials, having been stolen, were never reviewed by the proper intelligence entity review board and she knew or had reason to know the material fact that Defendant Participant Media's investment in the film Citizenfour could be jeopardized if the issue of the secrecy agreement approval requirement was ever raised.

23. Upon information and belief, the Hollywood Defendants knew or should have known through Defendant Weyermann that Citizenfour would be subject to Defendant Snowden's secrecy agreement with CIA similar to Ms. Wilson's agreement with CIA, and Defendant Weyermann knew that by personally ensuring the funding of Citizenfour by aiding and abetting Defendant Poitras and Defendant Praxis, all of the Hollywood Defendants would be subject to the confiscation of funds provided to Defendants Poitras and Praxis, as well as to other

potential civil claims and criminal damages arising from Defendant Weyermann's deliberate acts and omissions.

24. Upon information and belief, Defendant Participant Media and Defendant Skoll had constructive or actual knowledge of the consequences of Defendant Weyermann's misconduct, or, in the alternative, upon information and belief, were misled by Defendant Weyermann's *ultra vires* conduct and therefore subject to potentially millions or billions of dollars in damages based upon their involvement in Citizenfour and the harm to the United States that has resulted from that film, along with all of the other Hollywood Defendants.

25. Subsequently, as set forth in the full credits for Citizenfour published in the New York Times, <http://www.nytimes.com/movies/movie/477707/Citizenfour/credits> <last visited on December 17, 2014>, Defendant Diane Weyermann was listed as one of the Executive Producers of Citizenfour and Defendant Jeff Skoll was also listed as one of the Executive Producers of Citizenfour.

26. Upon information and belief, Defendant Participant Media, based primarily upon Defendant Weyermann's representations to her bosses to trust her, induced Defendant Participant Media, through the final approval of Defendant Skoll, to provide funding.⁵

27. Upon information and belief, like Ms. Wilson's secrecy agreement requirement, in order to qualify to obtain access to the information as an advisor and/or employee to CIA, NSA, and DIA, as well as a contractor for the NSA, Defendant Snowden, as a condition of receiving the information he subsequently purloined and provided to Defendant Poitras, Defendant Praxis and disclosed to the Hollywood Defendants, was required to sign written agreements with CIA, NSA, and DIA in which he agreed not to provide any information to

⁵ According to Forbes Magazine Jeff Skoll's "Real Time Net Worth" is \$4.1 Billion. www.forbes.com/profile/jeffrey-skoll/ <last visited on December 18, 2014>

others, and to “assign to the United States Government all rights, title and interest in any and all royalties, remunerations and emoluments that have resulted or will result or may result from any divulgence, publication or revelation of information [by him] which is carried out” in breach of those agreements. See e.g. Exhibit I at ¶ 5, ¶12.

28. Attached as Exhibit I is a sample CIA secrecy agreement, signed by Ms. Wilson along with her Security Regulations Certification (which was declassified in redacted form by CIA). Upon information and belief, other secrecy requirements, including a Standard Form 312 were signed by Defendant Snowden and consequences of signing those forms were disclosed to him.⁶ www.archives.gov/isoo/security-forms/sf312.pdf www.wrc.noaa.gov/wrso/forms/standard-form-312_booklet.pdf <last visited on December 18, 2014>

JURISDICTION AND VENUE

29. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §1331, 28 U.S.C. § 1361, and 28 U.S. C. § 1332(a)(1). Defendants purposely availed themselves of the privilege of conducting business within this State and this district as well as committing wrongful, tortious acts causing harm to Plaintiff[s] herein.

30. Venue is proper in the District Court of Kansas pursuant to 28 U.S.C. § 1391 (b)(2) and 28 U.S.C. § 1391 (e)(1)(B) and (C).

⁶ Defendant Snowden apparently believes that he is entitled to function as his own federal judge by interpreting the legal meaning of Form 312 to absolve himself. An interview in the Washington Post reveals the depth of Defendant Snowden’s disregard for his fiduciary duties and the law. The article states as follows: “It is commonly said of Snowden that he broke an oath of secrecy, a turn of phrase that captures a sense of betrayal. NSA Director Keith B. Alexander and Director of National Intelligence James R. Clapper Jr., among many others, have used that formula. In his interview with The Post, **Snowden noted matter-of-factly that Standard Form 312, the classified-information nondisclosure agreement, is a civil contract. He signed it, but he pledged his fealty elsewhere.** (*emphasis added*) “The oath of allegiance is not an oath of secrecy,” he said. “That is an oath to the Constitution. That is the oath that I kept that Keith Alexander and James Clapper did not.” Barton Gellman, “Edward Snowden, after months of NSA revelations, says his mission’s accomplished.” The Washington Post, December 23, 2013 http://www.washingtonpost.com/world/national-security/edward-snowden-after-months-of-nsa-revelations-says-his-missions-accomplished/2013/12/23/49fc36de-6c1c-11e3-a523-fe73f0ff6b8d_story.html <last visited on December 18, 2014>

PARTIES

31. Plaintiff is a United States citizen who resides in Kansas.

32. The United States of America, upon information and belief, has an interest in Count II as a Real Party In Interest under the federal common law theory of constructive trust.

33. Upon information and belief Defendant Edward Joseph Snowden is a United States citizen who is a fugitive from justice and is presently residing in Russia.

34. Upon information and belief Defendant Laura Poitras is a United States citizen who resides in New York, NY, and is temporarily living in Berlin, Germany. Defendant Poitras is sued in both her individual capacity and in her corporate capacity as a stakeholder in Defendant Praxis Films, Inc.

35. Upon information and belief Defendant Praxis Films, Inc. (“Praxis”) is a New York domestic business corporation, which at all times relevant to the issues in this case was engaged in business relationships with Defendant Poitras, as well as other Hollywood Defendants herein. Defendant Praxis is sued in both its individual, corporate capacity for the alleged wrongful acts of its employee/agents and as employer of Defendant Poitras for her alleged wrongdoings under, *inter alia*, the theory of respondeat superior.

36. Upon information and belief Defendant Participant Media, LLC (“Participant”) is a Delaware domestic LLC, with its principal place of business in California as well as an office in New York, NY. Upon information and belief at all times relevant to the issues in this case Defendant Participant Media was also engaged in business relationships with other Hollywood Defendants herein. Defendant Participant Media is sued in both its individual, limited liability company capacity for the wrongful acts of its members, employees and agents and is sued as

employer of Defendants Weyermann and Skoll for their alleged wrongdoings under the theory of, *inter alia*, respondeat superior.

37. Upon information and belief Defendant Diane Weyermann is a United States citizen who resides in California and/or Florida. Upon information and belief at all times relevant to the issues in this case she was the executive producer in control of Citizenfour and exerted extensive personal control over the making of the film. Defendant Weyermann is sued in both her individual capacity and in her limited liability company capacity as an executive team member, employee and/or stakeholder in Defendant Participant Media, LLC.

38. Upon information and belief Defendant Jeffrey Skoll is either a Canadian or United States citizen who resides in California. Upon information and belief at all times relevant to the issues in this case he was an executive producer of Citizenfour, as well as the majority owner of the limited liability company, Defendant Participant Media, LLC. Defendant Skoll is sued in both his individual capacity and in his limited liability company capacity as founder, chairman, employee and/or stakeholder of Defendant Participant Media, LLC.

39. Upon information and belief Defendant The Weinstein Company LLC is a Delaware domestic LLC, with its principal place of business in California as well as an office in New York, NY, which at all times relevant to the issues in this case, was a distributor of the film, as well as engaged in business relationships with other Hollywood Defendants herein. Defendant The Weinstein Company LLC is sued in its limited liability capacity, although believed to be acting through a division known as Radius-TWC. Upon information and belief Radius-TWC is a “boutique label from the Weinstein Company (TWC)...the first studio division dedicated to both multi-platform VOD and theatrical distribution.”⁷

⁷ <http://www.radiustwc.com/about/>

40. Upon information and belief other foreign and domestic entities and individuals may be involved and may be added as additional information is obtained through discovery. (The John and Jane Does.)

41. Upon information and belief under 28 U.S.C. § 1331, Plaintiff, on behalf of himself and on behalf of all other moviegoers, who themselves paid to see Citizenfour, expended funds that instead of going to the United States Treasury have instead wrongly been conveyed to certain named Defendants and as yet unknown others, thus based upon the fiduciary breaches of the Defendants and other equitable issues, Plaintiff raises a federal question claim for relief.

42. In addition to the direct financial stake of Plaintiff and those upon whose behalf he brings suit, the injury in fact under Article III of the Constitution for which Plaintiff seeks redress is not limited to economic injuries and interests but also because he falls within the zone of interest in a derivative action on behalf of the American Public to support and enforce a constructive trust by the United States Government.

43. Under 28 U.S.C. § 1332 (a)(1), the Plaintiff resides in Kansas, the amount in controversy exceeds \$75,000.00 and all other parties reside or have their principal place of business in other states or a foreign country. He sues in both his individual capacity and as a representative of other similarly situated Plaintiffs. He also sues on behalf of the United States of America in the nature of a private attorney general, under theories of a derivative action, as well as a third party beneficiary of any relevant agreement[s] Defendant Snowden executed and other obligations he breached.

44. Defendant Snowden is sued in his individual capacity and in his capacity as a former government official/employee and/or contractor, who breached his fiduciary duties to the United States and the American people.

45. Upon information and belief there are others who may seek to benefit from the commercialization of the film, i.e. the John and Jane Does.

**COUNT I
(CONSTRUCTIVE TRUST FOR BREACH OF FIDUCIARY DUTY)**

The Plaintiff incorporates all preceding paragraphs by reference, as if fully set forth herein.

46. Upon information and belief, Defendant Snowden voluntarily, willingly, and knowingly entered into contractual agreements with the United States of America when he signed a Security Regulations Certification[s], Secrecy Agreement[s] and/or Non-Disclosure Agreement[s] [hereinafter referred to individually and/or collectively as “Secrecy Agreement[s]”] and agreed to be bound by their terms and conditions. Upon information and belief, among the Secrecy Agreement[s]’ terms and conditions was an express requirement that Defendant Snowden submit any intelligence-related materials to the government for prepublication review and more importantly to refrain from releasing or publishing in any manner any confidential government information without written permission to do so from the appropriate government superiors.

47. Upon information and belief, Defendant Snowden knowingly, willfully, and deliberately breached his Secrecy Agreement[s], both by disclosing confidential materials to unauthorized recipients, including but not limited to Defendant Poitras, and by releasing for further use and publication confidential information without utilizing the government’s prepublication review process. Upon information and belief he defied the government’s express means of properly releasing any information about his intelligence connections and government information by way of the prepublication review board.

48. Upon information and belief under both common law and the Secrecy Agreement[s], Defendant Snowden had a fiduciary relationship with the United States of America and the CIA/NSA/DIA based on trust and special confidence that derived from the facts that Defendant Snowden was employed by the CIA/NSA/DIA, transacted business on behalf of these government agencies, was given regular and special access to classified national security information, and entered into the Secrecy Agreement[s].

49. Upon information and belief, Defendant Snowden owed to the United States and its agencies a fiduciary duty of loyalty to protect information pertaining to intelligence sources and methods from unauthorized disclosure, to submit to the prepublication review board for its review any intelligence-related materials intended for publication, and to not release or cause to be published or disseminate intelligence-related information unless and until the agencies had completed their prepublication review process and Defendant Snowden had received written approval from the agencies for such release.

50. Upon information and belief Defendant Snowden breached his fiduciary duties by releasing and participating in the production of the film Citizenfour without first allowing the agencies to complete their prepublication review process and without first obtaining written permission to do so from the agencies.

51. Upon information and belief as a direct and proximate result of Defendant Snowden's breach of his contractual and common law fiduciary duties, the United States has been damaged, *inter alia*, by the undermining of confidence and trust in the intelligence agencies for whom he worked and their prepublication review process, thereby hampering the ability of the agencies and their Directors to perform their respective statutory duties, and Defendant Snowden, as well as the Hollywood Defendants, have been unjustly enriched in the advantages

he receives as a fugitive residing in Russia with the emoluments bestowed upon him based upon his unique status as a purveyor of purloined secrets from the United States resulting from the unauthorized release of documents and through the public popularity he has garnered through the production and distribution of Citizenfour.

52. Upon information and belief Defendant Snowden has engaged in a course of conduct evidencing a propensity to commit further breaches of his contractual and/or fiduciary duties, in concert with the Hollywood Defendants, and to cause further damage to the United States, including irreparable injury for which the United States has no other adequate remedy at law or in equity.

53. Upon information and belief the Hollywood Defendants have benefitted both economically and in their standing in the community based upon the breach of Defendant Snowden's duties, which the Hollywood Defendants and Defendant Snowden jointly and severally committed through the efforts of assisting, aiding and abetting the theft and misuse of stolen government documents, as evidenced by the facts set forth herein.

54. Upon information and belief the Plaintiff as well as others similarly situated individuals and the American people as a whole are the intended beneficiaries of the secrecy agreements, loyalty agreements, and fiduciary duties arising therefrom of intelligence officials, including Defendant Snowden, and they have been exposed to harm by the breach of all Defendants in that the instability caused within the United States and abroad has jeopardized their safety and security. Plaintiff, along with the American people he represents, are entitled to seek derivative and direct and indirect relief from federal officials, including the Attorney General of the United States, and have every reason to believe that bringing attention to the remedy of a constructive trust that the United States Department of Justice will seek this

necessary routinely sought remedy, on its own behalf, the imposition of a constructive trust upon the Defendants.

55. Upon information and belief, Plaintiff, and the American people he represents have a recognized right to seek derivative and direct and indirect relief against officials who have a duty to act under the extraordinary facts of this case and recoup for the United States Government, the Plaintiff and all others similarly situated. Where a contractual relationship exists, where the Plaintiff places confidence in another that the obligations will be enforced and there is an inequality raised by the Plaintiff's reliance upon the Government and its employees to exercise their authority, fulfill their fiduciary duties to Plaintiff and all others similarly situated and where the Hollywood Defendants exerted power and control over stolen documents, produced a movie lauding their own wrongful acts and used that information to cause Plaintiff to expend funds that should not belong to the Hollywood Defendants, but to the United States Government, the breach of the fiduciary duty by Defendants gives rise to an undue advantage over Plaintiff and for which the equitable remedy of a constructive trust should be imposed to protect Plaintiff and deter future breaches by others.

COUNT II
(CONSTRUCTIVE TRUST FOR BREACH OF FIDUCIARY DUTY AS TO UNITED STATES OF AMERICA)

The Plaintiff United States of America incorporates all preceding paragraphs by reference, as if fully set forth herein.

56. Upon information and belief, Defendant Snowden voluntarily, willingly, and knowingly entered into contractual agreements with the United States of America when he signed a Security Regulations Certification[s], Secrecy Agreement[s] and/or Non-Disclosure Agreement[s] [hereinafter referred to individually and/or collectively as "Secrecy

Agreement[s]”] and agreed to be bound by their terms and conditions. Upon information and belief, among the Secrecy Agreement[s]’ terms and conditions was an express requirement that Defendant Snowden submit any intelligence-related materials to the government for prepublication review and more importantly to refrain from releasing or publishing in any manner any confidential government information without written permission to do so from the appropriate government superiors.

57. Upon information and belief, Defendant Snowden knowingly, willfully, and deliberately breached his Secrecy Agreement[s], both by disclosing confidential materials to unauthorized recipients, including but not limited to Defendant Poitras, and by releasing for further use and publication confidential information without utilizing the government’s prepublication review process. Upon information and belief he defied the government’s express means of properly releasing any information about his intelligence connections and government information by way of the prepublication review board.

58. Upon information and belief under both common law and the Secrecy Agreement[s], Defendant Snowden had a fiduciary relationship with the United States of America and the CIA/NSA/DIA based on trust and special confidence that derived from the facts that Defendant Snowden was employed by the CIA/NSA/DIA, transacted business on behalf of these government agencies, was given regular and special access to classified national security information, and entered into the Secrecy Agreement[s].

59. Upon information and belief, Defendant Snowden owed to the United States and its agencies a fiduciary duty of loyalty to protect information pertaining to intelligence sources and methods from unauthorized disclosure, to submit to the prepublication review board for its review any intelligence-related materials intended for publication, and to not release or cause to

be published or disseminate intelligence-related information unless and until the agencies had completed their prepublication review process and Defendant Snowden had received written approval from the agencies for such release.

60. Upon information and belief Defendant Snowden breached his fiduciary duties by releasing and participating in the production of the film *Citizenfour* without first allowing the agencies to complete their prepublication review process and without first obtaining written permission to do so from the agencies.

61. Upon information and belief as a direct and proximate result of Defendant Snowden's breach of his contractual and common law fiduciary duties, the United States has been damaged, *inter alia*, by the undermining of confidence and trust in the intelligence agencies for whom he worked and their prepublication review process, thereby hampering the ability of the agencies and their Directors to perform their respective statutory duties, and Defendant Snowden, as well as the Hollywood Defendants, have been unjustly enriched in the advantages he receives as a fugitive residing in Russia with the emoluments bestowed upon him based upon his unique status as a purveyor of purloined secrets from the United States resulting from the unauthorized release of documents and through the public popularity he has garnered through the production and distribution of *Citizenfour*.

62. Upon information and belief Defendant Snowden has engaged in a course of conduct evidencing a propensity to commit further breaches of his contractual and/or fiduciary duties, in concert with the Hollywood Defendants, and to cause further damage to the United States, including irreparable injury for which the United States has no other adequate remedy at law or in equity.

63. Upon information and belief the Hollywood Defendants have benefitted both economically and in their standing in the community based upon the breach of Defendant Snowden's duties, which the Hollywood Defendants and Defendant Snowden jointly and severally committed through the efforts of assisting, aiding and abetting the theft and misuse of stolen government documents, as evidenced by the facts set forth herein.

64. Upon information and belief the Plaintiff, United States of America, and the American people as a whole are the intended beneficiaries of the secrecy agreements, loyalty agreements, and fiduciary duties arising there from of intelligence officials, including Defendant Snowden, and Plaintiff, United States of America, has been exposed to harm by the breach of all Defendants in that the instability caused within the United States and abroad has jeopardized their safety and security. Plaintiff, United States of America, is entitled to seek direct and indirect relief under the remedy of a constructive trust upon the Defendants.

WHEREFORE, the Plaintiff Edwards on Count I on behalf of himself, others similarly situated and on behalf of the United States and the Plaintiff, United States of America, on Count II, respectfully request that the Court award the following relief:

- A. Declare that Defendant Snowden has breached his contracts, the Secrecy Agreement[s] and his fiduciary obligations to the Plaintiff, the American people and to the Government of the United States;
- B. Declare the Hollywood Defendants to be unlawful benefactors of the wrongfully disclosed documents by their misuse and possession of such stolen property;
- C. Impose a constructive trust over, and permit the United States Government to obtain an accounting of, all monies, gains, profits, royalties, and other advantages that all Defendants have derived, or will derive in the future, from the publication,

distribution, sale, serialization, or republication in any form, including any other rights, of the work entitled “Citizenfour,” whether or not such gains remain in Defendant Snowden’s possession or in the possession, custody or control, whether direct or indirect, of any other Defendant herein.

- D. Require the Defendants to relinquish the proceeds accounted for to the United States;
- E. To the extent that any such revenues, gains, royalties or other advantages are no longer in Defendant Snowden’s possession, but are in other Defendants’ possession, custody or control, whether direct or indirect, to seek and obtain an award for monetary damages for proceeds and other benefits wrongfully obtained thereby as a result of the breach; and
- F. Grant to the Plaintiff, United States of America, the Plaintiff Edwards, and others similarly situated, such other relief as the Court may deem just and proper, including but not limited to, all Plaintiffs’ costs and attorney’s fees herein.

Dated: January 12, 2015.

DESIGNATION OF TRIAL

Plaintiff hereby requests the trial in this case be conducted in Kansas City, Kansas. No Jury Trial is requested.

/s/ Jean Lamfers
Lamfers & Associates, L.C.
Jean Lamfers # 12707
7003 Martindale
Shawnee, KS 66218
(913) 962-8200
jl@lamferslaw.com
Attorney for Plaintiff Horace B. Edwards

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

HORACE B. EDWARDS,)	
JOHN and JANE DOES 1-10,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 14-cv-02631-JAR-TJJ
)	
EDWARD JOSEPH SNOWDEN,)	
PRAXIS FILMS, INC., LAURA POITRAS,)	
PARTICIPANT MEDIA, LLC, DIANE)	
WEYERMANN, JEFFREY SKOLL,)	
THE WEINSTEIN COMPANY LLC)	
a/k/a RADIUS-TWC, JOHN and JANE)	
DOES 1-10,)	
)	
Defendants.)	

CLERK’S EXTENSION

Defendants Participant Media, LLC, and Diane Weyermann, pursuant to Rule 77.2(a)(2) of the Rules of Practice of the United States District Court for the District of Kansas, respectfully request an extension of 14 days within which to answer or otherwise respond to Plaintiff’s Complaint. Defendants Participant Media, LLC, and Diane Weyermann were served on December 23, 2014, making their response to Plaintiff’s Complaint due on January 13, 2015. The time originally prescribed for Defendants to respond to Plaintiff’s Complaint has not yet expired, and an additional 14 days would allow Defendants to answer or otherwise respond to Plaintiff’s Complaint on or before January 27, 2015.

IT IS THEREFORE ORDERED that the date for Defendants Participant Media, LLC, and Diane Weyermann to answer or otherwise respond to Plaintiffs Complaint is extended by fourteen (14) days, to and including January 27, 2015.

DATED: 1/12/2015

BY: s/Tami Anthony
Deputy District Court Clerk

Submitted by:

Bernard J. Rhodes KS #15716
LATHROP & GAGE LLP
2345 Grand Blvd., Suite 2400
Kansas City, MO 64108
Tel: (816) 292-2000
Fax: (816) 292-2001
Email: brhodes@lathropgage.com

EXHIBIT LIST
COMPLAINT

Case No: 2:14-cv-02631-JAR-TJJ

Plaintiff Exhibits

No.	Description	I.D.
1	Academy Letter	Exhibit A [9 pages]
2	2 Academy Letter	Exhibit B [1 page]
3	Court Transcript of Constructive Trust Motion Hearing in <i>US v. Ishmael Jones</i>	Exhibit C [22 pages]
4	Snowden Criminal Complaint	Exhibit D [1 page]
5	Prism Whistleblower Film URL	Exhibit E [1 page]
6	Indiewire Article 10-20-14	Exhibit F [5 pages]
7	Business Insider Article 8-17-14	Exhibit G [10 pages]
8	Kaplan Sins of Omission Article 10-16-14	Exhibit H [3 pages]
9	Secrecy Agreement Plame Wilson Example	Exhibit I [3 pages]

LAMFERS & ASSOCIATES, L.C.

Attorneys at Law

Jean Lamfers*

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December 9, 2014

(913) 962-8200

Ms. Cheryl Boone Isaacs, President
Ms. Kate Amend
Mr. Rob Epstein
Mr. Alex Gibney
Documentary Branch Executive Committee¹
The Academy of Motion Picture Arts and Sciences
8949 Wilshire Boulevard
Beverly Hills, CA 90211

Sent via Fed Ex and Email
smiller@oscars.org

Re: Eligibility Determination Request, "Citizenfour" Documentary, 87th Academy Awards

Dear Ms. Isaacs, Ms. Amend, and Messrs. Epstein and Gibney:

I write on behalf of a client who, after seeing the film "Citizenfour," has requested I contact the Academy and formally inquire whether the film, produced and directed by Laura Poitras/Praxis Films, Inc., should be eligible for any Nomination by the Academy given the specific limitations set forth in the Special Rules for the Documentary Awards, as well as under applicable law.

In reviewing the Rules at my client's behest, I note several requirements that affect the film's eligibility for any Nomination for an Academy Award at any time.

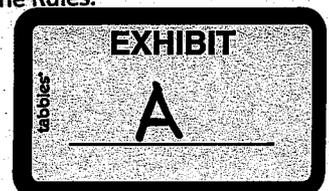
I refer to the documentary requirement mandating "[f]ilms that, in any version, receive a nontheatrical public exhibition or distribution before their first qualifying theatrical release, will not be eligible for Academy Awards consideration." Rule Eleven, Ill., A., 9. (*Emphasis in the original.*)

One key fact is Ms. Poitras and Praxis Films, Inc. on June 6, 2013 released a "nontheatrical public exhibition" of a documentary film about Mr. Snowden, which is a "version" (see below) of "Citizenfour." The June 6, 2013 film aired and received extensive public attention via The Guardian newspaper website in conjunction with a news article. *See story attached.* Subsequently, the film was distributed and aired on "PBS News Hour," as well as broadcast, cable television, web and various internet media. The worldwide distribution of the film, in any version, through these media would appear to trigger mandatory Academy ineligibility as "nontheatrical public exhibitions or distribution" under the definition contained in Rule Eleven, Ill., A., 9.

Additionally, the fact the June 6, 2013 film was at least 12 minutes and 33 seconds in length, exceeds the Academy's restriction limiting to ten (10) minutes or ten percent of the running time of a film, whichever is shorter, in any nontheatrical medium prior to the film's theatrical release.² Five DVDs of the June 6, 2013 film are enclosed for your ease of review and consideration of this 10-minute restriction.

¹ Based on the Academy's website and its list of Board of Governor members, we believe these individuals compose the Documentary Branch Executive Committee; however, if this assumption is incorrect, we request this letter and attachments be forwarded to the proper individuals for their determination per the Rules.

² The feature length is 114 minutes; therefore, the 10-minute restriction applies.



Ms. Cheryl Boone Isaacs
Ms. Kate Amend
Mr. Rob Epstein
Mr. Alex Gibney
December 9, 2014
Page 2

Furthermore, Rule Eleven, III., A., 7. provides “[o]nly individual documentary works are eligible. This excludes from consideration: episodes extracted from a larger series, segments taken from a single “composite” program, and alternate versions of ineligible works.” When examined under this Rule and the applicable facts, the Executive Committee has a reasonable basis under the Rules to conclude “Citizenfour” constitutes an alternate version of an ineligible work released non-theatrically on June 6, 2013. The Rules do not provide for a cure by simply cutting or remixing the June 2013 footage within a longer version of a feature length film. Therefore, under the plain meaning of the Rules, eligibility for an Academy Nomination for the film “Citizenfour” must be reviewed and determined by the Executive Committee and if ineligible, the Nomination would not be valid.

In addition, the Documentary Branch Executive Committee should note that under Rule Eleven, III., A., 3., the June 6, 2013 film, at a run time of 12 minutes and 34 seconds, might have qualified in 2013 for the 86th Academy Awards Documentary Short Subject, had it been otherwise eligible under the theatrical release restrictions. However, the effect of Rule Eleven, III., A., 3., which says “[t]he picture must be submitted in the same Awards year in which it first qualifies,” may also have an additional effect on 2014 eligibility. For the 87th Academy Awards, the eligibility period for documentary features begins on January 1, 2014, and ends on December 31, 2014. The nontheatrical exhibition of a film in excess of ten minutes in length in June 2013, used as the basis for a Feature length version, i.e., an “alternate version of an ineligible work,” therefore may raise an additional bar to 2014 eligibility in the Documentary Feature category, given the evident purpose of the Rules, which construed collectively, should exclude this exact situation.

For all the reasons set forth above, as well as any additional reasons under applicable statutory and/or common law given the specific factual circumstances of both the 2013 and 2014 versions of the film, I request, on behalf of my client and the American viewing public, a formal review of the film’s eligibility by the Documentary Branch Executive Committee and the Board of Governors. I ask the Academy to expedite this request for a review of eligibility under any Academy category and provide a response to me, in writing via email, by noon CST, Monday, December 15.

Sincerely,

s/ Jean Lamfers
Jean Lamfers
Lamfers & Associates, L.C.

JL/ms
Attachments: 5 DVDs Poitras/Snowden June 6, 2013
Guardian Newspaper Article June 6, 2013

cc: Scott Miller, Rules Department

<http://youtu.be/0hLjuVyIIrs>

"Prism Whistleblower"

12:34 (12 minutes and thirty-four seconds)

June 6, 2013

A Film by Laura Poitras

Interview by Glenn Greenwald

Co-Produced by EwenMacaskill

Edward Snowden: the whistleblower behind the NSA surveillance revelations

The 29-year-old source behind the biggest intelligence leak in the NSA's history explains his motives, his uncertain future and why he never intended on hiding in the shadows

. Q&A with NSA whistleblower Edward Snowden: 'I do not expect to see home again'

Glenn Greenwald, Ewen MacAskill and Laura Poitras in Hong Kong

Tuesday 11 June 2013 09.00 EDT



The individual responsible for one of the most significant leaks in US political history is Edward Snowden, a 29-year-old former technical assistant for the CIA and current employee of the defence contractor Booz Allen Hamilton. Snowden has been working at the National Security Agency for the last four years as an employee of various outside contractors, including Booz Allen and Dell.

The Guardian, after several days of interviews, is revealing his identity at his request. From the moment he decided to disclose numerous top-secret documents to the public, he was determined not to opt for the protection of anonymity. "I have no intention of hiding who I am because I know I have done nothing wrong," he said.

Snowden will go down in history as one of America's most consequential whistleblowers, alongside Daniel Ellsberg and Bradley Manning. He is responsible for handing over material from one of the world's most secretive organisations - the NSA.

In a note accompanying the first set of documents he provided, he wrote: "I understand that I will be made to suffer for my actions," but "I will be satisfied if the federation of secret law, unequal pardon and irresistible executive powers that rule the world that I love are revealed even for an instant."

Despite his determination to be publicly unveiled, he repeatedly insisted that he wants to avoid the media spotlight. "I don't want public attention because I don't want the story to be about me. I want it to be about what the US government is doing."

He does not fear the consequences of going public, he said, only that doing so will distract attention from the issues raised by his disclosures. "I know the media likes to personalise political debates, and I know the government will demonise me."

Despite these fears, he remained hopeful his outing will not divert attention from the substance of his disclosures. "I really want the focus to be on these documents and the debate which I hope this will trigger among citizens around the globe about what kind of world we want to live in." He added: "My sole motive is to inform the public as to that which is done in their name and that which is done against them."

He has had "a very comfortable life" that included a salary of roughly \$200,000, a girlfriend with whom he shared a home in Hawaii, a stable career, and a family he loves. "I'm willing to sacrifice all of that because I can't in good conscience allow the US government to destroy privacy, internet freedom and basic liberties for people around the world with this massive surveillance machine they're secretly building."

'I am not afraid, because this is the choice I've made'

Three weeks ago, Snowden made final preparations that resulted in last week's series of blockbuster news stories. At the NSA office in Hawaii where he was working, he copied the last set of documents he intended to disclose.

He then advised his NSA supervisor that he needed to be away from work for "a couple of weeks" in order to receive treatment for epilepsy, a condition he learned he suffers from after a series of seizures last year.

As he packed his bags, he told his girlfriend that he had to be away for a few weeks, though he said he was vague about the reason. "That is not an uncommon occurrence for someone who has spent the last decade working in the intelligence world."

On May 20, he boarded a flight to Hong Kong, where he has remained ever since. He chose the city because "they have a spirited commitment to free speech and the right of political dissent", and because he believed that it was one of the few places in the world that both could and would resist the dictates of the US government.

In the three weeks since he arrived, he has been ensconced in a hotel room. "I've left the room maybe a total of three times during my entire stay," he said. It is a plush hotel and, what with eating meals in his room too, he has run up big bills.

He is deeply worried about being spied on. He lines the door of his hotel room with pillows to prevent eavesdropping. He puts a large red hood over his head and laptop when entering his passwords to prevent any hidden cameras from detecting them.

Though that may sound like paranoia to some, Snowden has good reason for such fears. He worked in the US intelligence world for almost a decade. He knows that the biggest and most secretive surveillance organisation in America, the NSA, along with the most powerful government on the planet, is looking for him.

Since the disclosures began to emerge, he has watched television and monitored the internet, hearing all the threats and vows of prosecution emanating from Washington.

And he knows only too well the sophisticated technology available to them and how easy it will be for them to find him. The NSA police and other law enforcement officers have twice visited his home in Hawaii and already contacted his girlfriend, though he believes that may have been prompted by his absence from work, and not because of suspicions of any connection to the leaks.

"All my options are bad," he said. The US could begin extradition proceedings against him, a potentially problematic, lengthy and unpredictable course for Washington. Or the Chinese government might whisk him away for questioning, viewing him as a useful source of information. Or he might end up being grabbed and bundled into a plane bound for US territory.

"Yes, I could be rendered by the CIA. I could have people come after me. Or any of the third-party partners. They work closely with a number of other nations. Or they could pay off the Triads. Any of their agents or assets," he said.

"We have got a CIA station just up the road - the consulate here in Hong Kong - and I am sure they are going to be busy for the next week. And that is a concern I will live with for the rest of my life, however long that happens to be."

Having watched the Obama administration prosecute whistleblowers at a historically unprecedented rate, he fully expects the US government to attempt to use all its weight to punish him. "I am not afraid," he said calmly, "because this is the choice I've made."

He predicts the government will launch an investigation and "say I have broken the Espionage Act and helped our enemies, but that can be used against anyone who points out how massive and invasive the system has become".

The only time he became emotional during the many hours of interviews was when he pondered the impact his choices would have on his family, many of whom work for the US government. "The only thing I fear is the harmful effects on my family, who I won't be able

to help any more. That's what keeps me up at night," he said, his eyes welling up with tears.

'You can't wait around for someone else to act'

Snowden did not always believe the US government posed a threat to his political values. He was brought up originally in Elizabeth City, North Carolina. His family moved later to Maryland, near the NSA headquarters in Fort Meade.

By his own admission, he was not a stellar student. In order to get the credits necessary to obtain a high school diploma, he attended a community college in Maryland, studying computing, but never completed the coursework. (He later obtained his GED.)

In 2003, he enlisted in the US army and began a training program to join the Special Forces. Invoking the same principles that he now cites to justify his leaks, he said: "I wanted to fight in the Iraq war because I felt like I had an obligation as a human being to help free people from oppression".

He recounted how his beliefs about the war's purpose were quickly dispelled. "Most of the people training us seemed pumped up about killing Arabs, not helping anyone," he said. After he broke both his legs in a training accident, he was discharged.

After that, he got his first job in an NSA facility, working as a security guard for one of the agency's covert facilities at the University of Maryland. From there, he went to the CIA, where he worked on IT security. His understanding of the internet and his talent for computer programming enabled him to rise fairly quickly for someone who lacked even a high school diploma.

By 2007, the CIA stationed him with diplomatic cover in Geneva, Switzerland. His responsibility for maintaining computer network security meant he had clearance to access a wide array of classified documents.

That access, along with the almost three years he spent around CIA officers, led him to begin seriously questioning the rightness of what he saw.

He described as formative an incident in which he claimed CIA operatives were attempting to recruit a Swiss banker to obtain secret banking information. Snowden said they achieved this by purposely getting the banker drunk and encouraging him to drive home in his car. When the banker was arrested for drunk driving, the undercover agent seeking to befriend him offered to help, and a bond was formed that led to successful recruitment.

"Much of what I saw in Geneva really disillusioned me about how my government functions and what its impact is in the world," he says. "I realised that I was part of something that was doing far more harm than good."

He said it was during his CIA stint in Geneva that he thought for the first time about exposing government secrets. But, at the time, he chose not to for two reasons.

First, he said: "Most of the secrets the CIA has are about people, not machines and systems, so I didn't feel comfortable with disclosures that I thought could endanger anyone". Secondly, the election of Barack Obama in 2008 gave him hope that there would be real reforms, rendering disclosures unnecessary.

He left the CIA in 2009 in order to take his first job working for a private contractor that assigned him to a functioning NSA facility, stationed on a military base in Japan. It was then, he said, that he "watched as Obama advanced the very policies that I thought would be reined in", and as a result, "I got hardened."

The primary lesson from this experience was that "you can't wait around for someone else to act. I had been looking for leaders, but I realised that leadership is about being the first to act."

Over the next three years, he learned just how all-consuming the NSA's surveillance activities were, claiming "they are intent on making every conversation and every form of behaviour in the world known to them".

He described how he once viewed the internet as "the most important invention in all of human history". As an adolescent, he spent days at a time "speaking to people with all sorts of views that I would never have encountered on my own".

But he believed that the value of the internet, along with basic privacy, is being rapidly destroyed by ubiquitous surveillance. "I don't see myself as a hero," he said, "because what I'm doing is self-interested: I don't want to live in a world where there's no privacy and therefore no room for intellectual exploration and creativity."

Once he reached the conclusion that the NSA's surveillance net would soon be irrevocable, he said it was just a matter of time before he chose to act. "What they're doing" poses "an existential threat to democracy", he said.

A matter of principle

As strong as those beliefs are, there still remains the question: why did he do it? Giving up his freedom and a privileged lifestyle? "There are more important things than money. If I were motivated by money, I could have sold these documents to any number of countries and gotten very rich."

For him, it is a matter of principle. "The government has granted itself power it is not entitled to. There is no public oversight. The result is people like myself have the latitude to go further than they are allowed to," he said.

His allegiance to internet freedom is reflected in the stickers on his laptop: "I support Online Rights: Electronic Frontier Foundation," reads one. Another hails the online organisation offering anonymity, the Tor Project.

Asked by reporters to establish his authenticity to ensure he is not some fantasist, he laid bare, without hesitation, his personal details, from his social security number to his CIA ID

and his expired diplomatic passport. There is no shiftiness. Ask him about anything in his personal life and he will answer.

He is quiet, smart, easy-going and self-effacing. A master on computers, he seemed happiest when talking about the technical side of surveillance, at a level of detail comprehensible probably only to fellow communication specialists. But he showed intense passion when talking about the value of privacy and how he felt it was being steadily eroded by the behaviour of the intelligence services.

His manner was calm and relaxed but he has been understandably twitchy since he went into hiding, waiting for the knock on the hotel door. A fire alarm goes off. "That has not happened before," he said, betraying anxiety wondering if was real, a test or a CIA ploy to get him out onto the street.

Scattered about the side of his bed are his suitcase, a plate with the remains of room-service breakfast, and a copy of Angler, the biography of former vice-president Dick Cheney.

Ever since last week's news stories began to appear in the Guardian, Snowden has vigilantly watched TV and read the internet to see the effects of his choices. He seemed satisfied that the debate he longed to provoke was finally taking place.

He lay, propped up against pillows, watching CNN's Wolf Blitzer ask a discussion panel about government intrusion if they had any idea who the leaker was. From 8,000 miles away, the leaker looked on impassively, not even indulging in a wry smile.

Snowden said that he admires both Ellsberg and Manning, but argues that there is one important distinction between himself and the army private, whose trial coincidentally began the week Snowden's leaks began to make news.

"I carefully evaluated every single document I disclosed to ensure that each was legitimately in the public interest," he said. "There are all sorts of documents that would have made a big impact that I didn't turn over, because harming people isn't my goal. Transparency is."

He purposely chose, he said, to give the documents to journalists whose judgment he trusted about what should be public and what should remain concealed.

As for his future, he is vague. He hoped the publicity the leaks have generated will offer him some protection, making it "harder for them to get dirty".

He views his best hope as the possibility of asylum, with Iceland - with its reputation of a champion of internet freedom - at the top of his list. He knows that may prove a wish unfulfilled.

But after the intense political controversy he has already created with just the first week's haul of stories, "I feel satisfied that this was all worth it. I have no regrets."

LAMFERS & ASSOCIATES, L.C.

Attorneys at Law

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December 12, 2014

(913) 962-8200

Ms. Cheryl Boone Isaacs, President
Ms. Kate Amend
Mr. Rob Epstein
Mr. Alex Gibney
Documentary Branch Executive Committee
The Academy of Motion Picture Arts and Sciences
8949 Wilshire Boulevard
Beverly Hills, CA 90211

Sent via Email ONLY c/o
smiller@oscars.org
Please Forward to Recipients

Re: Additional Information for Consideration
Eligibility Determination Request, "Citizenfour" Documentary, 87th Academy Awards

Dear Ms. Isaacs, Ms. Amend, and Messrs. Epstein and Gibney:

In furtherance to my letter of December 9, 2014, I would like to provide additional information for your consideration. The Academy might find it helpful to view some historical context, in the public domain, relevant to the nontheatrical evolution of the film at the following URLs:

2012 https://web.archive.org/web/20120501000000*/http://www.praxisfilms.org/about/laura-poitras

2013 https://web.archive.org/web/20130415000000*/http://www.praxisfilms.org/about/laura-poitras

2014 https://web.archive.org/web/20140401000000*/http://www.praxisfilms.org/about/laura-poitras

Each URL takes you to a year and should show a snapshot of the web page and contents of the Website.

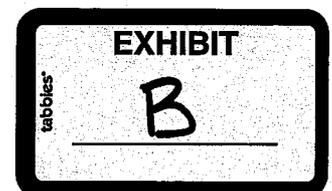
Thank you for your time and consideration of the eligibility determination request. I look forward to the Academy's response to me, in writing via email, by noon CST, Monday, December 15.

Sincerely,

s/ Jean Lamfers
Jean Lamfers
Lamfers & Associates, L.C.

JL/ms

Mail: P.O. Box 860548, Shawnee, KS 66286-0548



IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES OF AMERICA,

Plaintiff,

VS.

ISHMAEL JONES,
A pen name

Defendant.

Civil No. 10-765

June 15, 2011

REPORTER'S TRANSCRIPT

MOTIONS HEARING

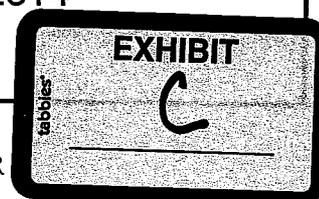
BEFORE: THE HONORABLE GERALD BRUCE LEE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF: OFFICE OF THE U.S. ATTORNEY
BY: KEVIN MIKOLASHEK, ESQ.
DEPARTMENT OF JUSTICE
BY: MARCIA BERMAN, ESQ.
CENTRAL INTELLIGENCE AGENCY
BY: ANNA PECKAM

FOR THE DEFENDANT: LECLAIR RYAN
BY: LAURIN MILLS, ESQ.
C. MATTHEW HAYNES, ESQ.

OFFICIAL COURT REPORTER: RENECIA A. SMITH-WILSON, RMR
U.S. District Court
401 Courthouse Square, 5th Floor
Alexandria, VA 22314
(703)501-1580



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1 (Thereupon, the following was heard in open
2 court at 10:04 a.m.)

3 THE CLERK: 1:10 civil 765, United States of
4 the America versus Ishmael Jones, et al.

5 Would counsel please note your appearances
6 for the record.

7 THE COURT: Good morning.

8 MR. MILLS: Good morning, Your Honor. Laurin
9 Mills and Matt Haynes on behalf of Mr. Jones.

10 THE COURT: Good morning.

11 MR. MIKOLASHEK: Good morning, Your Honor.
12 Kevin Mikolashek from the U.S. Attorney on behalf of the
13 United States. Joining me, Your Honor, is Anna Peckam
14 from the Agency. Also joining me is a Marcie Berman from
15 the DOJ civil division.

16 Ms. Berman has been admitted pro hac vice and
17 with the Court's permission will be delivering the
18 arguments in this case.

19 THE COURT: All right. Ms. Berman, you may
20 proceed.

21 It's always helpful at the outset to tell me
22 what the issue is.

23 MS. BERMAN: Absolutely, Your Honor. Good
24 morning.

25 THE COURT: Good morning.

1 MS. BERMAN: The issue on the Government's
2 motion today is whether there are any material facts in
3 dispute precluding summary judgment as to Mr. Jones'
4 liability for breaching his secrecy agreement, and the
5 answer to that question is no.

6 It is uncontroverted in this case that
7 Mr. Jones signed a secrecy agreement that required him to
8 submit his manuscript for prepublication review and that
9 required him not to publish it unless and until he
10 received the Agency's written approval.

11 It is also uncontroverted that Mr. Jones
12 submitted a manuscript to the prepublication review
13 process and that the Agency denied him permission to
14 publish the manuscript.

15 THE COURT: What remedy, if any, did he have
16 following the denial by the Agency of his request for
17 publication?

18 MS. BERMAN: I'm sorry. What was the
19 beginning of your question?

20 THE COURT: What remedy, if any, did
21 Mr. Jones have when the Agency denied his request for
22 permission to publish his book?

23 MS. BERMAN: Your Honor, Mr. Jones had the
24 remedy of coming into federal court and seeking judicial
25 review of that PRB decision. That is a remedy that has

1 been in existence since the *Marchetti* case, and he
2 clearly had it available to him, and he did not pursue
3 it.

4 THE COURT: So, is there any question that he
5 went on and published the manuscript?

6 MS. BERMAN: There is no question that he
7 went ahead and published the manuscript.

8 THE COURT: All right.

9 MS. BERMAN: That's correct. That is
10 completed admitted.

11 In fact, in the book itself, Mr. Jones boasts
12 about the fact that he published it against the expressed
13 denial of approval from the Agency. So, it's definitely
14 not in dispute.

15 Mr. Jones' defenses in this case that he has
16 raised are meritless. Whether the book contains
17 classified information is irrelevant to Mr. Jones'
18 liability for breaching his contract.

19 THE COURT: Does the agreement require
20 nondisclosure of only classified information? Doesn't
21 the law require you not disclose classified information?

22 MS. BERMAN: Your Honor, the cases that have
23 held that have based it on the author's First Amendment
24 rights. It's not a contractual obligation.

25 It's -- there's nothing in the agreement that

1 requires the Government to only deny approval of
2 classified information. That's a First Amendment right
3 that the courts have found to exist for the authors.

4 And so, Mr. Jones' argument that he's raised,
5 his defense that the Government breached the contract
6 first by denying permission of what he claims to be
7 unclassified information is absolutely meritless.

8 There's nothing in the contract that requires
9 that. All the cases have held it's a First Amendment
10 right. All of those courts would have been required by
11 the Doctrine of Constitutional Avoidance to find it in
12 the contract if it existed rather than to reach out and
13 base their decisions on the First Amendment.

14 And, a further reason for rejecting this
15 defense, Your Honor, is that it really would nullify the
16 force and effect of the secrecy agreement and be entirely
17 contrary to the *Snepp* case. Because if this defense
18 exists, then an author can simply submit a manuscript for
19 a prepublication review, get in -- once it's denied, the
20 author would -- could contend, like Mr. Jones is doing
21 here, that that's a complete defense and excuses
22 compliance with the secrecy agreement.

23 The author would go ahead, publish the book.
24 You'd have the unauthorized disclosure of potentially
25 classified information that the courts have held, you

1 know, can't happen. And there would be -- and the United
2 States would not be able to even sue for breach of
3 contract because, as Mr. Jones is claiming, it would be a
4 complete defense. And so that defense should definitely
5 be rejected.

6 Your Honor, so the essential facts here are
7 uncontroverted, and the harm to the Government is also
8 uncontroverted.

9 You know, in the *Snepp* case, the Court found
10 that the Government had been irreparably harmed by the
11 unauthorized publication of Mr. Snepp's book.

12 And here, you know, we rely on that holding.
13 We also submitted a declaration establishing the harm in
14 this case. And in fact, the harm is clearer here than it
15 was in *Snepp* because here we have a covert officers whose
16 affiliation with the Government, with the CIA remains
17 classified to this day, who published a book about his
18 experiences, you know, as an officer operating under what
19 he called deep cover when the CIA expressly denied him
20 permission to do so.

21 THE COURT: All right, I think I understand
22 your position.

23 MS. BERMAN: Thank you.

24 THE COURT: Let me hear from the other side
25 and I'll give you a chance to respond.

1 MR. MILLS: Good morning, again, Your Honor.

2 THE COURT: Good morning.

3 MR. MILLS: Your Honor, the issue in this
4 case is whether the Government can enforce a contract
5 that it breached first. And the rule under Virginia law
6 and under federal law is that it cannot.

7 That is a legitimate defense to the contract,
8 and he has a First Amendment right to be able to publish
9 nonclassified information.

10 He did not waive his First Amendment rights
11 by entering into this agreement. And the secrecy
12 agreement itself, which is Exhibit A to the complaint, I
13 refer the Court to the final paragraph -- the final
14 sentence of paragraph eleven which says, "Nothing in this
15 agreement prevents -- constitutes a waiver on any part of
16 any possible defense I may have in connection with either
17 civil or criminal proceedings which may be brought
18 against me".

19 So, there is a no waiver provision of any
20 defense. Prior breach is an unquestionable defense under
21 Virginia law --

22 THE COURT: What do you say is the prior
23 breach, Mr. Mills?

24 MR. MILLS: What happened here, Your Honor,
25 is that Mr. Jones is a man who spent his entire career in

1 the government, in the Marines and then 15 years as a
2 covert officers. This is a guy who follows the rules.

3 THE COURT: My question was what was the
4 breach?

5 MR. MILLS: The breach was, he went
6 through -- unlike *Snepp* and *Marchetti*, he went through
7 the prepublication review process for 18 months. He
8 submitted his manuscript multiple times. And if I may --

9 THE COURT: And my understanding is that they
10 gave it back to him with some feedback and he made
11 another submission. Is that right?

12 MR. MILLS: He made multiple submissions and
13 this is the final feedback. And if I can ask the court
14 security officer to hand this up. This is the -- this is
15 the final feedback he got from the Government.

16 THE COURT: So, is it your view that when he
17 was unhappy with the response he had a right to publish
18 it? That was the end of the process?

19 MR. MILLS: No, that's not what happened
20 here.

21 THE COURT: No, my question was very precise.
22 He had a right to come into federal court to challenge
23 the Agency's denial of prepublication; is that right?

24 MR. MILLS: That's certainly one of his
25 option.

1 THE COURT: That was a legal right he had, is
2 that right?

3 MR. MILLS: That's correct.

4 THE COURT: He did not exercise it?

5 MR. MILLS: No, he exercised his option.
6 This is a contract. This is a contractual agreement.
7 It's the same -- he has the same right if you hired
8 someone to paint your house.

9 THE COURT: This is not like painting your
10 house.

11 So you're saying that he submitted for
12 prepublication review multiple times. He was unhappy
13 with the result.

14 Rather than complete the process by bringing
15 a lawsuit in federal court, he unilaterally made the
16 decision to release the book on his own; is that right?

17 MR. MILLS: I think after 18 months of going
18 through the process, with them denying him the right to
19 publish anything but footnotes, as you'll see in the
20 exhibit I handed up and going six months through an
21 appeal process where the Government's own regulations say
22 they're supposed to complete it in a month, he exercised
23 his rights under the First Amendment to publish this.

24 THE COURT: So, then your view is that the
25 First Amendment is self executing, that covert agents can

1 make their own judgment to publish despite the Agency's
2 denial of that request while they're in the process of
3 reviewing the publication; is that right?

4 MR. MILLS: Your Honor, he takes a risk by
5 doing that. And --

6 THE COURT: Well, all agents take a risk by
7 doing that, don't they?

8 MR. MILLS: That's correct and --

9 THE COURT: So then the agreement would have
10 no effect if the effect of it could be that the agent on
11 their own could just decide to release the book; is that
12 right?

13 MR. MILLS: That's not true, Your Honor.

14 THE COURT: Well, help me with what was the
15 Agency supposed to do under this circumstance where he
16 unilaterally released the book. There was no chance now
17 to further review it, to give him any additional
18 feedback? So, what was the Agency to do now?

19 MR. MILLS: The Agency should do exactly what
20 it's doing here. Is that if it thinks that he -- that
21 he -- that they denied him the right to publish
22 legitimately classified information, they have one --
23 they have two choices. They can prosecute him criminally
24 because it's a crime to do that. Or second they can do
25 what they're doing here in an attempt to impose a

1 constructive trust. And so, they can do that.

2 If he had gone to federal court, we would be
3 having the same issue we're having now, justify whether
4 it's classified or not. When --

5 THE COURT: Well, it is your view that the
6 secrecy agreement only affects classified information?

7 MR. MILLS: Absolutely.

8 THE COURT: Only classified information?

9 MR. MILLS: The way the secrecy agreement is
10 written is a little bit convoluted. It say you can't
11 publish in derogation of an executive order that is
12 listed in there.

13 Now, I can't find the executive order
14 anywhere. I think the executive order is classified.
15 But every case that's ever talked about it has said that
16 you can only published classified information.

17 But, you can only --

18 THE COURT: Say it again.

19 MR. MILLS: The executive order referenced in
20 the secrecy agreement says you can't publish anything
21 that's in violation of this executive order.

22 I have not been able to find online anywhere
23 this executive order, and the Government has never
24 submitted it as part of the papers in this. So, I
25 believe the executive order itself is classified, but I

1 can't swear to that.

2 But, the way the courts have interpreted this
3 agreement it's been multiple times, is that the
4 Government can only deny him the right to publish what's
5 classified. And, in fact, that's what the Agency's own
6 regulations say.

7 THE COURT: All right. Well, in this case,
8 there's no dispute about the fact that he submitted the
9 item for prepublication review; is that right?

10 MR. MILLS: That's correct.

11 THE COURT: And there's no dispute of fact
12 that he decided to publish it without Agency permission.

13 MR. MILLS: That's correct. After 18 --

14 THE COURT: All right. So, this is a pure
15 legal question then on the issue of your defense, that is
16 whether the Government breached the agreement by failing
17 to approve of his request to publish his manuscript.

18 MR. MILLS: No, I think it's a factual issue
19 about whether the -- whether the -- whether anything in
20 this very long book was legitimately classified. And, we
21 have more than enough facts to get to a jury on that
22 issue of a bad faith denial here because we have multiple
23 denials. He comes back and says tell me what's
24 classified. I will take it out. They say you can't
25 publish any of it other than a couple of footnotes and

1 harmless anecdotes.

2 You can open this book to any page in the
3 book and you can't find anything that's remotely
4 classified. This is a book that is --

5 THE COURT: How would I know that? How would
6 I know what's classified and what's not? How would the
7 jury know that?

8 MR. MILLS: The -- the jury -- you know --
9 I'll give you an -- I'll give you an example.

10 THE COURT: If you would answer my question
11 it would be very helpful. How would the jury know what's
12 classified or what's not?

13 MR. MILLS: Because it's obvious from the
14 context of the book. He's talking about an excursion he
15 has to a bar in Bangkok with a friend of his. There's
16 nothing remotely classified about it. He talks about
17 a --

18 THE COURT: I understand what you just said,
19 but as a judge who has had cases involving classified
20 information, I'm sure you realize that there is the issue
21 of classified documents. And then there's also the issue
22 of revealing means and methods of intelligence gathering.
23 Are you familiar with that doctrine as well?

24 MR. MILLS: I am, Your Honor.

25 THE COURT: So, would you agree that a covert

1 agent who has contacts with an operative in a foreign
2 country revealing his or her identity and the identity of
3 others that they're interacting with in a covert
4 intelligence gathering operation might expose that
5 individual's family, not the agent, but the person that
6 they're dealing with to some personal risk? Would you
7 agree with that?

8 MR. MILLS: I think in the right context, I
9 do, Your Honor.

10 THE COURT: Well, let me do this. I think I
11 understand your position.

12 If -- your argument is that, one, that the
13 Agency breached the agreement by not approving the book,
14 correct?

15 MR. MILLS: Correct.

16 THE COURT: All right. I think I understand
17 your position.

18 MR. MILLS: I'd like to make just a couple
19 more quick points.

20 THE COURT: If you would just sum up, it
21 would be very helpful to me.

22 MR. MILLS: Yes. This isn't the first in
23 this line of cases. In the *Snepp* and *Marchetti* cases,
24 both of which were brought in this court and both of
25 which involved factual scenarios where the agents didn't

1 even bring it to the prepublication review board, they
2 were allowed discovery to present their defenses.

3 And in fact, in *Snepp*, not only were they
4 allowed what the Court characterized as extensive
5 discovery, we had live testimony from Stansfield Turner
6 and Richard Colby, the current and former CIA director in
7 that case on facts not nearly as egregious as you have
8 here.

9 So the Government is asking you to do
10 something that has never been done before. We are
11 entitled to discovery to assert a defense recognized
12 under Virginia law.

13 Second, the Government hasn't met their
14 burden. All they have done -- they have submitted an
15 affidavit from a woman named Mary Ellen Cole. She's not
16 tendered as an expert. She's not been qualified as an
17 expert for anything. All she has done is assert
18 nonexpert opinion testimony and speculation and basically
19 crib quotes from the *Snepp* case as a basis for showing
20 irreparable harm.

21 If the Government is going to establish
22 liability and it has to do by clear and convincing
23 evidence here, it has to put on at least some admissible
24 evidence.

25 And the Mary Ellen Cole affidavit is not even

1 admissible, Your Honor. It is nothing but nonexpert
2 speculation, and it's not admissible. We're entitled to
3 discovery, to assert our defense.

4 The Government breached first. This is an
5 egregious case where they repeatedly denied him. They
6 sat on this appeal for six months during an election
7 year. And he made a gutsy call and took a risk to
8 publish this on the basis that he knew there was nothing
9 classified in it, Your Honor.

10 THE COURT: Thank you.

11 Anything further?

12 MS. BERMAN: Yes, Your Honor. Excuse me,
13 just a few points in summary.

14 There are no material facts in dispute here
15 on which to conduct discovery. The -- Mr. Jones is not
16 entitled to discovery unless there are any material facts
17 on which he would be conducting them.

18 The harm in this case is self evident. And
19 the Cole declaration is perfectly admissible, and she is
20 perfectly competent to testify in the matters that she
21 testified.

22 Your Honor, Mr. Jones' counsel referred to
23 Mr. Jones taking a risk -- assuming the risk by
24 publishing his book. Well, respectfully, the risk is to
25 the Government, and the Government's -- and to the

1 release of classified sensitive information. That's what
2 he took. And he should not be able to execute -- to put
3 that risk to the Government without any consequences.

4 THE COURT: Thank you.

5 MS. BERMAN: Thank you, Your Honor.

6 THE COURT: Let the record reflect this
7 matter is before the Court on the defendant's motion for
8 partial summary judgment as to liability. And this is a
9 case as we've heard involving the publication of a
10 manuscript that was not approved by the Agency in
11 prepublication review as required by the secrecy
12 agreement.

13 So the issue is whether the Court should
14 grant the Government's motion for summary judgment as to
15 liability where the plaintiff signed a secrecy agreement
16 which is attached to the complaint as Government Exhibit
17 A.

18 And, the Agency required under the secrecy
19 agreement that the plaintiff obtain written permission
20 from the Central Intelligence Agency's publication review
21 board prior to publishing any work. And the plaintiff
22 did not secure Agency approval prior to having his book
23 published.

24 The facts are not in dispute, it seems to me.
25 Plaintiff admits that he was signatory to the secrecy

1 agreement. He did prepare a manuscript which he
2 submitted to the publication review board multiple times,
3 and he was given feedback from the Agency about what was
4 publishable and what was not.

5 His opinion is that the Agency's refusal to
6 approve publication of his book was unreasonable and
7 deprived him of his rights under the First Amendment, and
8 he decided to publish the book without securing Agency
9 approval.

10 I don't think that this is really a very
11 difficult question. I think the *Snepp* case would control
12 here. It seems to me that where he signed a binding
13 secrecy agreement that prevented from publishing any
14 materials prior to receiving written consent, that under
15 *Snepp* this liability for the Government has been
16 established.

17 His signing a secrecy agreement does not
18 violate his First Amendment rights. And his claim that
19 the Court should deny summary judgment because of genuine
20 issue of fact about whether the plaintiff's counterclaim
21 alleging First Amendment violations creates a genuine
22 issue of fact for trial.

23 It seems to me that the judgment that he
24 exercised at some risk, according to his own counsel, to
25 publish a matter without securing Agency approval does

1 not demonstrate that the Government breached the contract
2 first because plaintiff acknowledges that under the
3 process in effect that once the prepublication board
4 denied his request for publication, that he had a remedy
5 and that remedy was to come to U.S. District Court and to
6 pursue a claim to have the Court determine if the
7 Agency's withholding of permission was unreasonable.

8 Not having exercised that right, I do not see
9 how the Government could be held liable for breach when
10 they were pursuing the process as set forth in the
11 agreement.

12 So, I am first of all holding that the *Snepp*
13 case controls here. They're both -- *Snepp* was an agent
14 and so is this plaintiff. They both signed secrecy
15 agreements. They both failed to adhere to them knowing
16 what they were -- the agreement said.

17 I don't think any discovery is necessary
18 because the plaintiff admits that he published without
19 the permission.

20 And the issue of whether the Government
21 breached first because of some sham appellate review, the
22 process was never over. And, his judgment to go forward
23 without the completing -- pursuing his remedies before
24 the court was the breach. It was not the Government's
25 breach. The Government was carrying out it's agreement.

1 So, for those reasons, it is the -- the case
2 is also very similar to *Marchetti*, but I don't think we
3 needs to go as far as *Marchetti*. I think that *Snepp* is
4 sufficient.

5 Motion for summary judgment for the
6 Government is granted, and the case will be dismissed as
7 it relates to his claim, counterclaim. So, partial
8 summary judgment liability is granted.

9 What remains to be done is the issue of what
10 remedy the Government is entitled to because of the
11 breach of secrecy agreement.

12 Thank you. You all are excused.

13 (Proceeding concluded at 10:24 a.m.)

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CERTIFICATE OF REPORTER

I, Renecia Wilson, an official court reporter for the United State District Court of Virginia, Alexandria Division, do hereby certify that I reported by machine shorthand, in my official capacity, the proceedings had upon the motions in the case of United States of America vs. Ishmael Jones, a pen name.

I further certify that I was authorized and did report by stenotype the proceedings and evidence in said motions, and that the foregoing pages, numbered 1 to 21, inclusive, constitute the official transcript of said proceedings as taken from my shorthand notes.

IN WITNESS WHEREOF, I have hereto subscribed my name this 29th day of June, 2011.

/s/
Renecia Wilson, RMR, CRR
Official Court Reporter

AO 91 (Rev. 08/09) Criminal Complaint

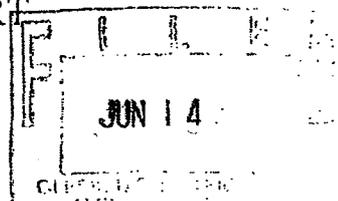
UNITED STATES DISTRICT COURT

for the Eastern District of Virginia

United States of America)
v.)
Edward J. Snowden)

Defendant(s)

Case No. 1:13 CR 265 (GMH)



UNDER SEAL

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of May 2013 in the county of Not Applicable in the District of Not Applicable, the defendant(s) violated:

Code Section

Offense Description

- 18 U.S.C. 641 Theft of Government Property
18 U.S.C. 793(d) Unauthorized Communication of National Defense Information
18 U.S.C. 798(a)(3) Willful Communication of Classified Communications Intelligence Information to an Unauthorized Person

This criminal complaint is based on these facts:

See Attached Affidavit.

Venue is proper pursuant to 18 U.S.C. 3238.

[X] Continued on the attached sheet.

Reviewed by AUSA/SAUSA:



[Handwritten signature]

Complainant's signature

John A. Kralik, Jr.

Special Agent, Federal Bureau of Investigation

Printed name and title

Sworn to before me and signed in my presence.

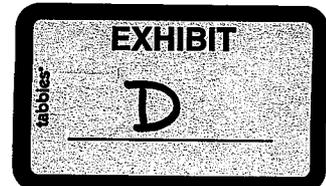
Date: 06/14/2013

[Signature] John F. Anderson United States Magistrate Judge Judge's signature

City and state: Alexandria, VA

Hon. John F. Anderson, U.S. Magistrate Judge

Printed name and title



<http://youtu.be/0hLjuVyIIrs>

“Prism Whistleblower”

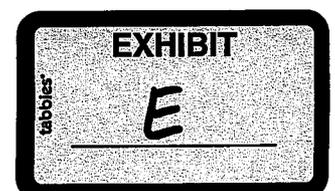
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June 6, 2013

A Film by Laura Poitras

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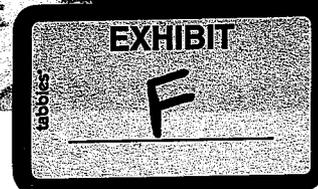
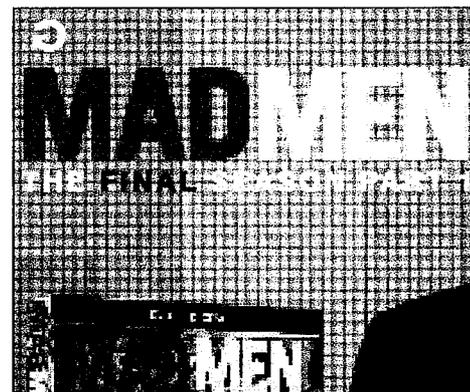
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Laura Poitras Explains How She Made Edward Snowden Doc 'Citizenfour' in Secret (Part 1)



By Eric Kohn | Indiewire
October 20, 2014 at 11:59AM

In the first of a two-part interview, the director of this year's most daring non-fiction achievement explains how she pulled it off.





Daniel Bergeron

"Citizenfour" director Laura Poitras

In "Citizenfour," documentarian Laura Poitras chronicles the Edward Snowden story from the inside out: Poitras was secretly contacted by the former NSA contractor in 2012 and met him in Hong Kong. Along with journalist Glenn Greenwald, she played a key role in announcing his revelations about the U.S. government's surveillance techniques to the world. Poitras' movie unfolds like a real-time thriller, tracking Snowden's anxieties on the brink of his global celebrity, as well as the aftermath. Now living with his girlfriend with a one-year work permit in Russia, Snowden remains an object of media scrutiny, but the story surrounding the materials he leaked to the public has grown much bigger than him. Poitras' movie tracks every beat of these historical events with a mixture of shock and excitement that has garnered rave reviews.

A few days after the movie's premiere at the New York Film Festival, the director sat down with Indiewire to discuss the challenges of developing her project in secret and developing a narrative that reflected her experiences. Stay tuned for the second half of our interview tomorrow, in which Poitras addresses the ramifications of Snowden's decision.

READ MORE: 'Citizenfour' is a Bracing Look at Former NSA Whistleblower's Impact

This movie makes you scared to record a conversation. But here we are.

It's actually funny, because literally every journalist has been like, "Do you mind if I turn this on?" Like it's not a given. That's why we're here! It's cool. Don't worry about it.

But did this project make you more paranoid about surveillance methods?

I don't call it that. I don't think being careful is being paranoid. I have good reason to believe my phone prints might be targeted. So I don't carry it with me in the editing room. That just seems like common sense, not paranoia.

Certainly it makes sense when we see Snowden worrying about surveillance while hiding away in this Hong Kong hotel room. But it's harder to imagine what that actually feels like.



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The truth is that — in his particular case, or in my case, or in Glenn Greenwald's case — we are talking about the NSA. They do, as we know from the reporting, have the capacity to look at our stuff right now. The fact that I'm living outside of the country right now gives me protection. So I'm aware of that. It's just common sense.

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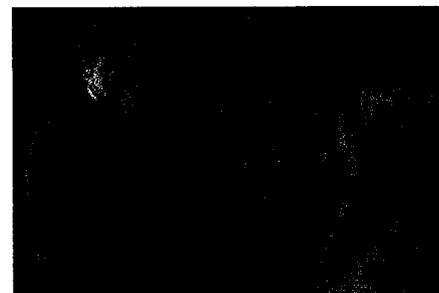
"Citizenfour"

Radius-TWC

As the movie begins, you receive encrypted communication from Snowden. When did you know that this was a movie — and more specifically, that you would be a character in it, unlike your previous films?

Once I started getting these anonymous e-mails that are at the beginning of the film, I knew it would find its way into being a film. It was just because I was so pulled in that it was obvious. And yet it's weird that I've been looped into the story in some way. But it's also sort of fallout: I made the film in Iraq ["My Country, My Country"] and then I got put on a watch list, and being put on the watch list meant that I had to be careful of source protection. Therefore I learned encryption so I could talk to Snowden and therefore I had to participate in the movie. So there are these kind of feedback loops. I went from being somebody who was documenting a situation and a political context to being pulled into it.

What were some of the practical challenges of developing the production in secret? Documentar...



2015 Oscar Predictions: Best Picture



2015 Oscar Predictions: Best Actor



2015 Oscar Predictions: Best Actress



Review: The Biggest Mystery of 'The Affair' Solved - It Just Keeps Getting Better

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about writing grant proposals, but this is a whole new level...

Yeah. Once I came out of Hong Kong, we were looking for who we wanted to partner with — myself, my editor and producer Mathilda Bonnefoy and Dirk Wilutzky — and we were really feeling like we wanted the film to have a theatrical life, but we didn't want a lag time between premiere and release. I was already working on a film about surveillance — I had been filming with [former NSA staffer] William Binney for a while, so I was already on this path and wanted to be really under the radar. That means putting very little on paper and making people come to Berlin for meetings, stuff like that. We set up a bunch of meetings during the Berlin International Film Festival in February, including one with Tom Quinn at Radius-TWC. They just said, "We really want to do this film." So they got involved and said, "Shouldn't we announce this?" and I was like, "No. I want to keep it under the radar as long as we can and announce it when everything is in place."

So that's what we were able to do, but it wasn't easy. Participant Media's Diane Weyermann got involved. I'd known her for years. We've always wanted to work together. She said, "OK, let's do this one," but then had to tell her bosses, "We're doing this film, but there's not going to be a treatment or a rough cut. You're just going to have to trust us — me, Laura and the filmmaking team that we'll deliver." So she made a couple visits over to Berlin to see the cut.

Radius came over. We did a screening with the New York Film Festival over the summer with some redacted portions. Anyway, it was definitely an unusual way to work but for source protection reasons we felt it was important.

READ MORE: Edward Snowden Speaks Out in 'Citizenfour' Trailer

The film brings a whole new context to the extensive video interview with Snowden that was published when he revealed his identity. You started recording him minutes after you'd met. But what are some details from these encounters that we don't see in the film?

I mean, we filmed a lot. There are many, many hours from Hong Kong and we

"I went from being somebody who was documenting a situation and a political context to being pulled into it." --

Laura Poitras



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A

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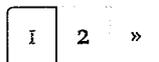
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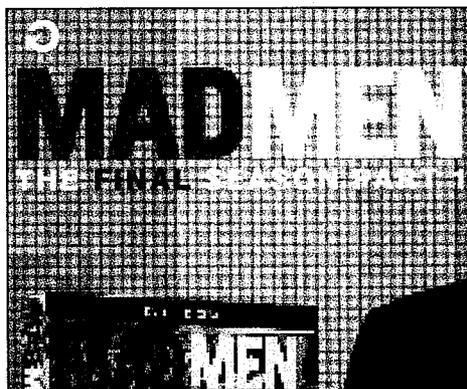
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had to make choices. We couldn't show them all. That's just the nature of filmmaking. Glenn does this initial lengthy first-day interview where he goes into [Snowden's] whole backstory — working at the CIA, etc. It's extraordinary, jaw-dropping, but with the structure of the film — we're in Hong Kong for 50 or 60 minutes of the film, and we needed to move through the days. We knew that we weren't going to cross-cut. We'd made this decision that each day we'd only show what was happening, because we wanted to show the progression from this initial meeting, to publishing, to the impact on Ed's family and his girlfriend when [the government] knocks on her door. So we wanted to remain true to that sequence of events, in terms of how we built the Hong Kong section. That interview with Glenn from the first day was awesome, but we weren't going to cut it in later.



THIS ARTICLE IS RELATED TO: Features, Interviews, CITIZENFOUR, Laura Poitras, Documentary, Edward Snowden



COMMENTS

DEBBIE PETRONIS
OCT 21, 2014 12:13AM

I believe we grew up together?



Your Name

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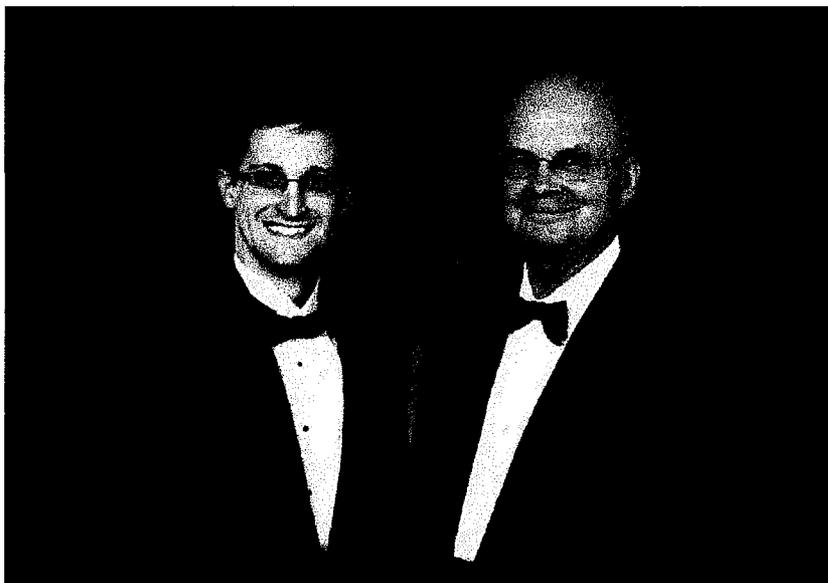
COMMENT

BUSINESS INSIDER

We Now Know A Lot More About Edward Snowden's Epic Heist — And It's Troubling



MICHAEL B KELLEY
AUG. 17, 2014, 9:32 AM



Courtesy of Edward Snowden via Wired

Snowden with Former CIA and NSA chief General Michael Hayden at a gala in 2011.

Edward Snowden's in-depth interview with James Bamford of Wired offers details about his last job as a contractor for the NSA in Honolulu, which raise disconcerting questions about the motives of the former systems administrator.

While working at two consecutive jobs in Hawaii from March 2012 to May 2013, the 31-year-old allegedly stole about 200,000 "tier 1 and 2" documents, which mostly detailed the NSA's global surveillance apparatus and were given to American journalists Glenn Greenwald and Laura Poitras in June 2013. The government believes Snowden also took up to 1.5 million "tier 3" documents potentially detailing U.S. capabilities and NSA offensive cyber operations, the whereabouts of which are unknown.



We now know more about the larger and more sensitive cache of classified documents. Furthermore, a close reading of relevant reporting and of statements made by Snowden suggests that much of what the rogue NSA employee intentionally took involved operational information unrelated to civil liberties.

While the tier 3 material appears to have not been shared with American journalists, some of it was shown to a Chinese newspaper. And 14 months later, given the uncertain fate of the documents, it is not unreasonable to ask whether they could have fallen into the hands of an adversarial foreign intelligence service.

'The Time Had Come To Act'

Snowden had worked as an NSA contractor for Dell since 2009, and in March 2012 he began working as a systems administrator for the NSA's information-sharing office at the Kunia Regional Security Operations Center (known as "the Tunnel") on the main island of Oahu. Over time, he became increasingly alarmed by what he viewed as serious U.S. governmental violations of Americans' constitutional liberties, as well as general disregard for privacy rights of foreign citizens.

American officials told Reuters that Snowden began making illegal downloads about U.S. and U.K. eavesdropping programs in April 2012. (The NSA later told Vanity Fair that the downloading began in the summer of 2012.)

By early 2013, "Snowden believed he had no choice but to take his thumb drives and tell the world what he knew," Bamford writes in Wired. "The only question was when."

Snowden says that moment came on March 13, 2013, when he read about Director of National Intelligence James Clapper's appearance before a Senate committee, during which he testified that intelligence officials did not "wittingly" collect data on Americans.

Clapper's statement and the subsequent lack of concern among his NSA colleagues at the Tunnel "convinced him that the time had come to act," Bamford writes.

Snowden quit Dell on March 15, according to reporting by Edward Jay Epstein of The Wall Street Journal, and landed a job with Booz Allen as an infrastructure analyst at the National Threat Operations Center in Honolulu.

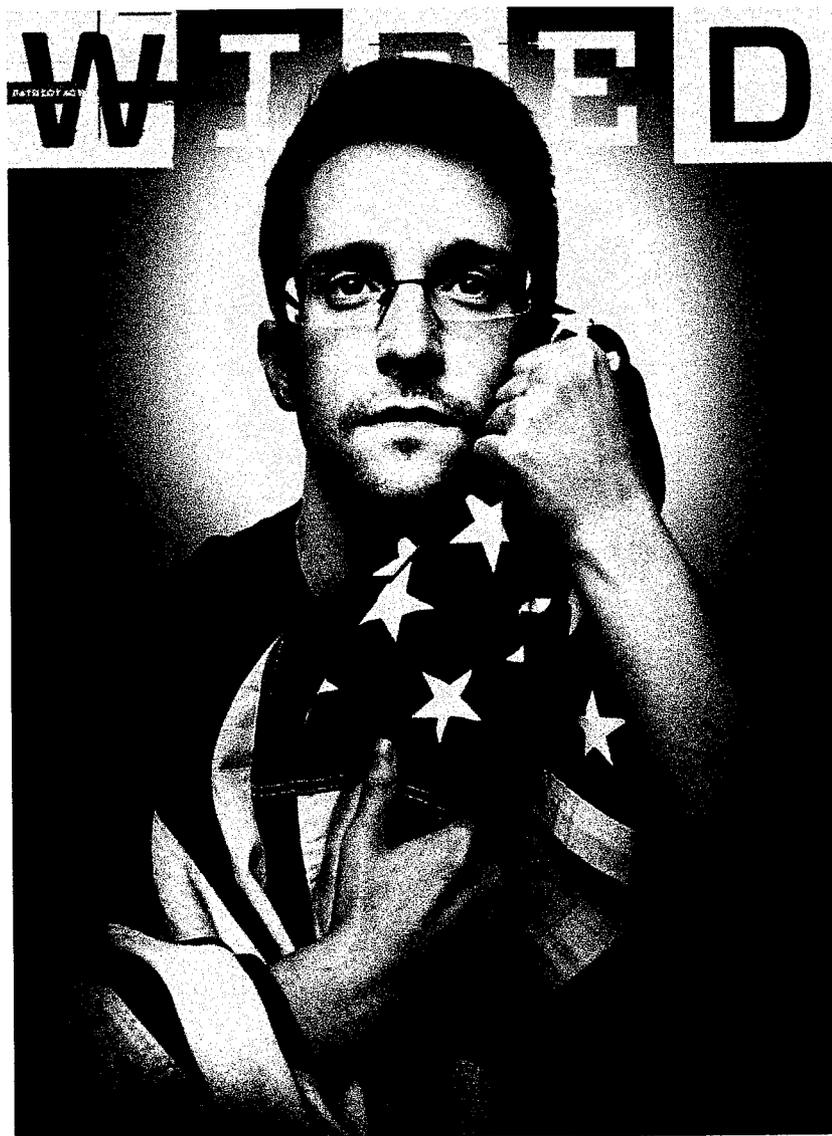
So two days after Clapper's testimony, and three months after he began working with Poitras, Snowden set his sights on what Bamford describes as "that last cache of secrets."

New Job, More Secrets

Snowden transferred to Booz Allen to gather information on "the NSA's aggressive cyberwarfare activity around the world," Bamford writes, adding that the talented technician "became immersed in the highly secret world of planting malware into systems around the world and stealing gigabytes of foreign secrets."

That kind of hacking — employing the most sensitive of clandestine NSA cyberspying techniques — is carried out by the NSA's Office of Tailored Access Operations (TAO). Current and former intelligence officials told investigative reporter Matthew Aid that "TAO has been enormously successful over the past 12 years in covertly inserting highly sophisticated spyware into the hard drives of over 80,000 computer systems around the world, although this number could be much higher."

Snowden's new position gave him deep access into the NSA's emerging cyber-espionage capabilities.



Wired

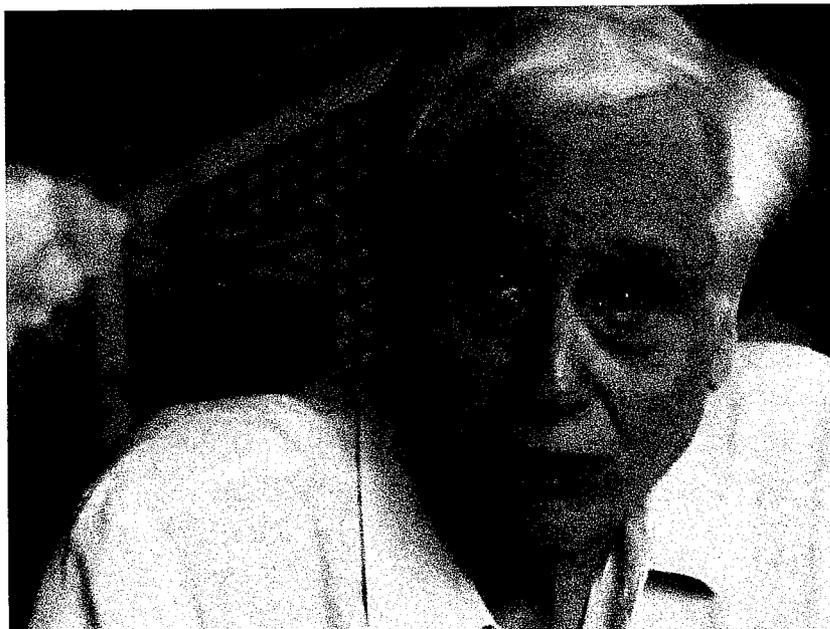
"Infrastructure analysts like Mr. Snowden, in other words, are not just looking for electronic back doors into Chinese computers or Iranian mobile networks to steal secrets," Scott Shane and David Sanger of The New York Times reported in June 2013. "They have a new double purpose: building a target list in case American leaders in a future conflict want to wipe out the computers' hard drives or shut down the phone system."

Basically, Snowden gained the opportunity he sought.

"My position with Booz Allen Hamilton granted me access to lists of machines all over the world the NSA hacked," he told the South China Morning Post (SCMP) on June 12, 2013. "That is why I accepted that position about three months ago."

For example, Snowden told NYT in October he had "access to every target, every active operation" mounted by the NSA against the Chinese. "Full lists of them."

Tier 1 and 2 vs. Tier 3



screenshot/Powerline

Edward Jay Epstein of the Wall Street Journal traveled to Hong Kong and stayed in the Mira Hotel, where Snowden stayed from June 1 to June 10 of 2013.

"He is a whistleblower in the case of some documents, and not a whistleblower in the case of other documents," Epstein of WSJ said in a recent interview with Scott Johnson of Powerline.

Epstein reported that Snowden's job with Dell in Hawaii "gave him access to the NSA Net, from which he pilfered most of the documents he later gave to journalists, including the ones about NSA domestic operations that have preoccupied the world's media."

These documents, which comprise tier 1 and tier 2 of the intelligence community's damage assessment, "can be called whistleblowing, whistleblowing [documents] that say he's a man of conscience and he revealed what he thought ... the public should know," Epstein explained to Powerline. "But these constituted only a small portion because then he transferred to Booz Allen on March 15, 2013."

Epstein wrote that Snowden went to Booz Allen to "get access to the crown jewels, the lists of computers in four adversary nations — Russia, China, North Korea and Iran — that the agency had penetrated."

These proverbial keys to the kingdom are considered the most sensitive of the potentially massive cache of tier 3 documents that Snowden may have obtained but did not give to American journalists.

Epstein also reported that some documents "were taken from at least 24 supersecret compartments that stored them on computers, each of which required a password that a perpetrator had to steal or borrow, or forge an encryption key to bypass."

Snowden denies scamming passwords, but former colleagues have admitted to inadvertently

providing Snowden a password to access information he was not authorized to see.

Epstein told Powerline that the theft at Booz was "basically a work of espionage: Taking documents that reveal sources and methods. He's never given these documents, with one exception, to any journalist, and no one knows where these documents are.

"So in the case of his work [for Booz Allen] at the National Threat Operations Center, he is not in my book under any theory a whistleblower," Epstein concluded. "At Dell, he could be a whistleblower. These are two different jobs and two different phases."

What Happened To The Tier 3 Documents?

After he flew to Hong Kong on May 20, Snowden gave an estimated 200,000 documents to Greenwald and Poitras. Significantly, from what has been reported, that portion of the information Snowden took does not seem to include "lists of machines all over the world the NSA hacked."

Two days after leaving the Mira Hotel on June 10, however, Snowden provided documents revealing "operational details of specific attacks on computers, including internet protocol (IP) addresses, dates of attacks and whether a computer was still being monitored remotely" to Lana Lam of SCMP.

"I did not release them earlier because I don't want to simply dump huge amounts of documents without regard to their content," Snowden told the Hong Kong paper in a June 12 interview. "I have to screen everything before releasing it to journalists."

Greenwald subsequently told the Daily Beast that he would not have "disclosed the specific IP addresses in China and Hong Kong the NSA is hacking."



A monitor broadcasts news on the charges against Snowden at a shopping mall in Hong Kong June 22, 2013.

Though based in the "special administrative region" of Hong Kong, the South China Morning Post operates under the jurisdiction of the Chinese government, particularly when it comes to matters of national security.

Dr. Wolff Heintschel von Heinegg, one of the coauthors of NATO's Tallinn Manual on the International Law Applicable to Cyber Warfare, told Business Insider in June 2013 that the NSA cyberspying Snowden reportedly divulged to SCMP detailed "either espionage or some other interference with the cyber infrastructure in another state.

"Let's be quite clear," Dr. von Heinegg added. "Intruding into another state's systems in order to figure out what's in there — that's simply espionage, everybody's doing it."

Consequently, Snowden's decision to steal and share such details of the NSA's snooping on a foreign government is not a simple matter of exposing illegality or relative wrongdoing, but suggests something far more serious.



NSA whistle-blower William Binney. (Photo: H. Darr Beiser. USA TODAY)

Q: There's a question being debated whether Snowden is a hero or a traitor.

Binney: Certainly he performed a really great public service to begin with by exposing these programs and making the government in a sense publicly accountable for what they're doing. At least now they are going to have some kind of open discussion like that.

But now he is starting to talk about things like the government hacking into China and all this kind of thing. He is going a little bit too far. I don't think he had access to that program. But somebody talked to him about it, and so he said, from what I have read, anyway, he said that somebody, a reliable source, told him that the U.S. government is hacking into all these countries. But that's not a public service, and now he is going a little beyond public service.

So he is transitioning from whistle-blower to a traitor.

USA Today

William Binney answers a question in an USA Today interview published June 16, 2013.

NSA whistleblower William Binney — a hero of Snowden's — told USA Today that the SCMP leaks marked a "[transition] from whistleblower to a traitor."

And it's unclear how much of the tier 3 material, if any, may have been shown to anyone else.

In October James Risen of the Times reported that the former CIA technician said "he gave all of the classified documents he had obtained to journalists he met in Hong Kong." (ACLU lawyer and Snowden legal adviser Ben Wizner subsequently told Business Insider that the report was inaccurate.)

In May 2014, Snowden then told NBC's Brian Williams in Moscow that he "destroyed" all documents in his possession while in Hong Kong.



screenshot/NBC

So, as Epstein noted, no one knows what happened to the tier 3 information that Snowden, "a genius among geniuses," managed to steal while immersed in NSA offensive cyber operations at Booz Allen.

Interestingly, in the German newspaper Der Spiegel, Poitras and "American WikiLeaks Hacker" Jacob Appelbaum reported detailed information about the NSA's elite TAO hackers and published a catalog of tools, created by TAO's technical expert division (known as ANT), used to hack into computers.

But the reports do not specify where the classified NSA documents came from.

Appelbaum, a close friend of Poitras, whom she brought in to vet Snowden, also presented the ANT catalog in December 2013 at a computer conference in Germany. (In December 2012, Snowden threw a Crypto Party with Appelbaum's former colleague at the Tor project,

Runa Sandvik.)

Stuck In Moscow

After outing himself on June 9, Snowden reached out to WikiLeaks for help finding asylum. On June 15, the U.S. asked Hong Kong to provisionally arrest Snowden for the purposes of extradition and subsequently revoked his passport on June 22.

On June 23, Beijing allowed Snowden to board a flight to Moscow using a "refugee document of passage" obtained by WikiLeaks founder Julian Assange from the Ecuadorian consul in London. But the document wasn't even signed — meaning that Snowden had no valid travel documents when he landed on Russian soil.

The fact that Snowden ended up in Moscow was "no accident from the Russian point of view," Epstein told Powerline, noting that Putin offered to consider Snowden's asylum request on June 11. For Russia, an American systems administrator with granular knowledge of offensive U.S. cyber operations would be an extraordinary prize.



Snowden on a boat trip with someone who likes like Wikileaks advisor Sarah Harrison (L) in Moscow in September 2013.

For his part, Assange has stated multiple times that he advised Snowden to stay in Russia, as opposed to attempting to obtain asylum in Venezuela and Ecuador.

"In Russia, he's safe, he's well-regarded, and that is not likely to change," the Australian publisher told Janet Reitman of Rolling Stone. "That was my advice to Snowden, that he would be physically safest in Russia."

Epstein, citing a U.S. official he spoke with in Hong Kong, reported that "Snowden had been

observed on CCTV cameras entering the skyscraper that housed the Russian consulate on three occasions" in June.

It is not known when in June Snowden visited the Russian officials in Hong Kong, but the circumstances may inform the fate of the tier 3 documents.

On June 12, Snowden told SCMP that he wanted to make more documents available to journalists if he had "time to go through this information." If Snowden had access to the tier 3 cache when he first met with the Russians in Hong Kong, it would explain their willingness to give him a safe refuge and protect him.

A Whistleblower — And a Spy

While Snowden can legitimately claim to be a whistleblower based on the tier 1 and 2 material he gave to Poitras, Greenwald, and Barton Gellman of The Washington Post, the larger cache of information about America's cyberintelligence capabilities and activities around the world is another story.

Snowden's audacious theft of tier 3 documents, which included acquiring colleagues' passwords that gave him access to secret files, could potentially put him in another category altogether. Taking that information would in theory make him a renegade spy — and possessing it would make him an especially welcome guest of the Kremlin.

"These secrets he took from [from Booz Allen] are of value to no one but Russia, China, and maybe North Korea, because these secrets are basically the lists of computers in Russia, China, and North Korea which [the U.S.] managed to compromise and tap into," Epstein asserted to Powerline. "And not only that, ... it would take a very sophisticated counterintelligence service to reverse engineer and to figure out where all of the pieces of the puzzle fit together.

"So the strange thing about what he did at the National Threat [Operations] Center is what he took is ... only of use to two countries. Have they made use of them? I don't know. But they are of no use to journalists. If he supplied these to journalists, they would have nothing to publish [besides lists of compromised computers]."

Fifteen months after his epic heist, we still don't know if Snowden was telling the truth when he said he destroyed the tier 3 documents between June 12 (the SCMP leak) and June 23 (the flight to Moscow).

"The only thing that Russia and China certainly have in common is that they both want to deny American primacy," Epstein noted to Powerline. "Certainly if you can find a list of everything in your country that has been tapped, whoever you are, even if you were the



Life News

Snowden visited Moscow's Bolshoi Theatre in early August, his first public appearance since arriving in Russia last year.

Mafia, that list would be valuable to you."

As important as Snowden's exposure of illegal domestic spying undoubtedly has been, questions about the tier 3 documents — why he sought them; whom he shared them with; and where they are now — cast a dark shadow on his prominence as a hero.

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Sins of Omission

Citizenfour is a fine documentary. Too bad the director glossed over some important details—and Edward Snowden didn't gloss over more.

By Fred Kaplan

Flash out-of-date

LAURA POITRAS' EDWARD SNOWDEN DOCUMENTARY IS A FINE FILM—EXCEPT FOR THE DETAILS IT OMITTS

If all I knew about Edward Snowden were his portrait in Laura Poitras' documentary, *Citizenfour*, I'd probably regard him as a conscientious, brave young man, maybe an American hero. But Poitras, a very talented filmmaker who flipped from journalist to collaborator in this story long ago, has chosen to leave a lot out.



FRED KAPLAN

Fred Kaplan is the author of *The Insurgents: David Petraeus and the Plot to Change the American Way of War* and *1959: The Year Everything Changed*.

Snowden's claim as a whistleblower, exposing the National Security Agency's violations of civil liberties, rests on *some* of the documents that he leaked, which reveal that the NSA's domestic surveillance was far more extensive than anyone had imagined—and, in a few instances, conducted in defiance of orders from the Foreign Intelligence Surveillance Court.

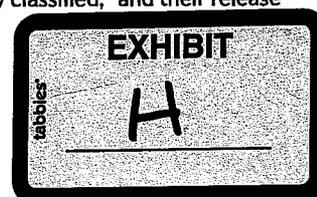
However, many other documents—which he downloaded at the NSA facility in Hawaii and turned over to Poitras and the *Guardian*'s Glenn Greenwald in Hong Kong—go far beyond exposures of spying on Americans.

Judging from Snowden-derived stories in the *Guardian* and the *Washington Post*, some of these documents also detail NSA intercepts of email and cellphone conversations by Taliban fighters in Pakistan; assessments of CIA assets in several foreign countries; and surveillance of cellphone calls “worldwide” that (in the *Post*'s words) allows the NSA “to look for unknown associates of known intelligence targets by tracking people whose movements intersect.” In Snowden's first interview abroad, with the *South China*

Morning Post, he disclosed that the NSA routinely hacks into hundreds of computers in Hong Kong and China. Just last week a story co-authored by Poitras in Greenwald's new publication, the *Intercept*, revealed—again, based on Snowden-supplied documents—that the NSA has undercover operatives in Germany and China.

Whatever you think about foreign intelligence operations, the NSA's core mission is to intercept communications of foreign governments and agents. If Snowden and company wanted to take down an intelligence agency, they should say so. But that has nothing to do with whistleblowing or constitutional rights.

At one very interesting point in the film, Snowden tells Poitras and Greenwald, “Some of these documents are legitimately classified,” and their release “could do great harm” to intelligence sources and methods. He adds, “I trust you'll be responsible” in handling them.



This is what most baffles me about the whole Snowden case. What kind of whistleblower hands over a digital library of extremely classified documents on a vast range of topics, shrugs his shoulders, and says, *I'll let you decide what to publish?* He tells the two journalists that he's "too biased" to pick and choose himself. What does that mean? These are esoteric, in some cases highly technical documents; he's in a better position to know their implications than Poitras and Greenwald; certainly he could warn them, "Oops, I shouldn't have included this one. It's really sensitive."

In an Oct. 11 livestreamed interview, part of the *New Yorker's* annual festival, Jane Mayer asked Snowden if any of the stories inspired by his documents went too far in divulging secrets. He replied, "It's not my place" to render judgment. That's not true: It's *precisely* his place to do that. It's a gigantic evasion to leak however many beyond-top-secret documents he leaked—some say tens of thousands, some say millions—and then abrogate all responsibility for their circulation to the world.

Daniel Ellsberg, whom Snowden cites as a model, didn't riffle through every classified vault at the RAND Corp. and turn the stash over to the *New York Times* for its editors to pick and choose. Ellsberg had a goal: He wanted to end the Vietnam War. The Pentagon Papers—an official secret history of the war, commissioned by Secretary of Defense Robert McNamara, replete with internal memos and documents—revealed the delusions that got us into the war and the lies that perpetuated our involvement. Even so, Ellsberg did not Xerox or leak four volumes of the papers; he regarded them—they dealt with ongoing peace negotiations—as legitimately secret.

Then again, maybe there's no mystery here. Maybe Snowden's intent, all along, was to take down the top-secret edifice, and his dissociation from decisions on what to publish is a legal maneuver to quash his indictment under the Espionage Act, should he ever come home to face trial.

In the interview with Jane Mayer, Snowden said a few times that the secrets he spilled aren't really very serious anyway. Regarding the NSA's bulk collection of metadata—the topic of the first several newspaper articles about the leaks—he claimed, "They've never stopped a single American attack."

His source for that claim was the December 2013 report by President Obama's commission on NSA reform, whose members were given full access to the agency's personnel and documents. True, the report concluded that information gathered from metadata collection (under Section 215 of the Patriot Act) "was not essential to preventing attacks and could readily have been obtained in a timely manner" using other methods. However, the report also noted that information gathered from foreign intercepts (under Section 702) "contributed in some degree" to halting 53 terrorist attacks. "We are persuaded," the report went on, "that section 702 does in fact play an important role in the nation's effort to prevent terrorist attacks across the globe."

The claim about Section 702 would be moot if Snowden had leaked documents only about domestic surveillance, but he leaked documents about foreign surveillance, too.

Then there's the unavoidable issue of Snowden's escape route: first to Hong Kong, then to Latin America via Moscow. (WikiLeaks arranged for the Russian leg of his travels.)* There are many more efficient routes from Hong Kong to Latin America than one that goes through Moscow. Snowden says in the film that he hadn't planned on stopping in Moscow, but the State Department canceled his passport, so, for 40 days, he was trapped inside Sheremetyevo airport, before the Russian government granted him asylum.

What kind of whistleblower hands over classified documents on a vast range of topics and simply shrugs his shoulders?

There are some problems with this scenario. First, if the Kremlin had wanted Snowden to leave, he could have been issued a temporary visa, allowing him to leave the international transit lounge and board a plane. Second, the Russian newspaper *Kommersant* reported that, in the three days after the hotel interviews when Snowden went missing in Hong Kong, he was, for at least some of this time, inside the Russian Consulate. (The film says he went "underground" with the help of local lawyers.)

Finally, Poitras does not show, for obvious reasons, the press conference that Snowden held in Moscow soon after the asylum was granted, thanking those who had supported him. "These nations—including Russia, Venezuela, Bolivia, Nicaragua, and Ecuador—have my gratitude and respect," he proclaimed, "for being the first to stand against human rights violations carried out by the powerful."

It must be hard to read those words, and still defend Snowden as a bold defender of liberty, without hiding one's head in shame.

how's the movie? For the first hour, it's very entertaining. It begins with Poitras receiving an email from a "senior government official" who wants to supply her with shocking secrets about U.S. intelligence. (Snowden, a 29-year-old contractor, was neither senior nor a government official, but who's counting?) Then she and Greenwald meet him at his hotel room in Hong Kong, where they stay holed up for eight days, interviewing him and sometimes just watching him shuffling across the room, looking out the window.

This is the heart of the film. Snowden comes off as an appealing character: smart, eloquent, eccentric, and self-centered (nothing wrong with that—most whistleblowers are), and more than a little paranoid. (He covers himself with a blanket while typing a password on his laptop, to elude ... what? An NSA camera hidden in the wall behind his bed?) Even though we all know how the story turns out, Poitras makes it suspenseful and gripping.

But after Snowden leaves the picture, the film drags. We see Greenwald driving around, giving speeches, some of them in seemingly fluent Portuguese, which is impressive but also redundant and boring. Ditto for scenes with the *Guardian's* editors and Snowden's pro bono lawyers; they might be interesting if they conveyed anything of substance, but they don't.

In the final scene, we see Snowden reunited with Poitras and Greenwald in the Moscow hotel room where, if I'm not mistaken, NBC's Brian Williams conducted his own shamefully softball interview with the spy who went into the cold.* Greenwald whispers news of a "second source" at the NSA, no doubt inspired by Snowden's example. But this source's revelations, which spark oohs and ahs from Snowden, as if on cue, are nothing new at all. One of them discloses that the decision chain for launching drone strikes goes all the way up to "POTUS" (the president of the United States). This has been known for a long time.

Another of the disclosures is that 1.2 million Americans are under some stage of "watch." The *Intercept* wrote about this in August. Reuters' Mark Hosenball wrote about it, albeit in less detail, in May 2013. And the existence, if not the precise scope, of the program—known as the Terrorist Identities Datamart Environment, or TIDE, run by the National Counterterrorism Center—is cited in public government documents.

If Greenwald's numbers are true (and let's say they are), this is clearly an out-of-control program, all too typical of the tendency, among law enforcement agencies everywhere, to mistake vast lists as a substitute for focused analysis. But it's not the case—as the scene at the end of the film suggests—that these 1.2 million people are actually under active NSA (or FBI or CIA) surveillance.

Nonetheless, Snowden makes a valid point—that the existence of these programs, and the amazing technology that allows them, creates a potential for abuse. Snowden makes the same point in the film. "If policy switches," he says in the film, these programs—twisted in a certain direction—would make it impossible for anyone to speak out against "state power."

Top Comment

Snowden's first leak or two were whistleblowing. The rest -- like exposing the NSA wiretap on one of Assad's servers -- have no human rights dimension, and are pure treason. [More...](#)

-Leif Leifnephewson [Mostly Harmless]

427 Comments

Join In

It's significant that Snowden prefaced his concern by saying, "If policy switches ..." The policy is not so twisted today. The Obama commissioners, cited by Snowden in a different context, wrote in their report that they "found no evidence of illegality or other abuse of authority for the purpose of targeting domestic political activity."

But potential abuse is a legitimate concern. Imagine if these programs had been around when Richard Nixon was president or J. Edgar Hoover was FBI director. The violations of civil liberties, which were eye-opening enough (when they were later revealed), might have been very oppressive.

That's one warning worth taking from Snowden's disclosures. I wish that he'd left them at that.

**Correction, Oct. 17, 2014: This article originally misstated that WikiLeaks planned Snowden's entire escape route. It is believed the organization only assisted with his trip to Moscow. It also misstated Tom Brokaw conducted the*

interview with Edward Snowden in a Moscow hotel room. It was Brian Williams.

NEWS & POLITICS

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SECURITY REGULATIONS CERTIFICATION

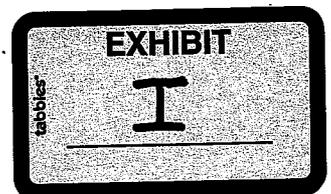
Date



I CERTIFY THAT I HAVE READ THE SECURITY REGULATIONS MANUAL OF THE CENTRAL INTELLIGENCE AGENCY. I UNDERSTAND THESE REGULATIONS AND WILL ABIDE BY THEIR PROVISIONS.

Valerie E. Plame
Signature

Valerie E. Plame
NAME (typed or printed)



SECURITY AGREEMENT

1. I, Valerie Elise Plame (print full name), hereby agree to accept as a prior condition of my being employed by, or otherwise retained to perform services for, the Central Intelligence Agency, or for staff elements of the Director of Central Intelligence (hereinafter collectively referred to as the "Central Intelligence Agency"), the obligations contained in this agreement.

2. I understand that in the course of my employment or other service with the Central Intelligence Agency I may be given access to information which is classified in accordance with the standards set forth in Executive Order 12356 as amended or superseded, or other applicable Executive Order, and other information which, if disclosed in an unauthorized manner, would jeopardize intelligence activities of the United States Government. I accept that by being granted access to such information I will be placed in a position of special confidence and trust and become obligated to protect the information from unauthorized disclosure.

3. In consideration for being employed or otherwise retained to provide services to the Central Intelligence Agency, I hereby agree that I will never disclose in any form or any manner any of the following categories of information or materials, to any person not authorized by the Central Intelligence Agency to receive them:

a. information which is classified pursuant to Executive Order and which I have obtained during the course of my employment or other service with the Central Intelligence Agency;

b. information, or materials which reveal information, classifiable pursuant to Executive Order and obtained by me in the course of my employment or other service with the Central Intelligence Agency.

4. I understand that the burden will be upon me to learn whether information or materials within my control are considered by the Central Intelligence Agency to fit the descriptions set forth in paragraph 3, and whom the Agency has authorized to receive it.

5. As a further condition of the special confidence and trust reposed in me by the Central Intelligence Agency, I hereby agree to submit for review by the Central Intelligence Agency all information or materials including works of fiction which contain any mention of intelligence data or activities, or contain data which may be based upon information classified pursuant to Executive Order, which I contemplate disclosing publicly or which I have actually prepared for public disclosure, either during my employment or other service with the Central Intelligence Agency or at any time thereafter, prior to discussing it with or showing it to anyone who is not authorized to have access to it. I further agree that I will not take any steps toward public disclosure until I have received written permission to do so from the Central Intelligence Agency.

6. I understand that the purpose of the review described in paragraph 5 is to give the Central Intelligence Agency an opportunity to determine whether the information or materials which I contemplate disclosing publicly contain any information which I have agreed not to disclose. I further understand that the Agency will advise on the materials I submit and make a response to me within a reasonable time. I further understand that if I dispute the Agency's initial classification determinations on the basis that the information in question derives from public sources, I may be called upon to specifically identify such sources. My failure or refusal to do so may by itself result in denial of permission to publish or otherwise disclose the information in dispute.

7. I understand that all information or materials which I may acquire in the course of my employment or other service with the Central Intelligence Agency which fit the descriptions set forth in paragraph 3 of this agreement are and will remain the property of the United States Government. I agree to surrender all materials reflecting such information which may have come into my possession or for which I am responsible because of my employment or other service with the Central Intelligence Agency, upon demand by an appropriate official of the Central Intelligence Agency, or upon the conclusion of my employment or other service with the Central Intelligence Agency.

8. I agree to notify the Central Intelligence Agency immediately in the event that I am called upon by judicial or congressional authorities to testify about, or provide, information which I have agreed herein not to disclose.

9. I understand that nothing contained in this agreement prohibits me from reporting intelligence activities which I consider to be unlawful or improper directly to the Intelligence Oversight Board established by the President or to any successor body which the President may establish. I recognize that there are also established procedures for bringing such matters to the attention of the Agency's Inspector General or to the Director of Central Intelligence. I further understand that any information which I may report to the Intelligence Oversight Board continues to be subject to this agreement for all other purposes and that such reporting does not constitute public disclosure or declassification of that information.

10. I understand that any breach of this agreement by me may result in the Central Intelligence Agency taking administrative action against me, which can include temporary loss of pay or termination of my employment or other service with the Central Intelligence Agency. I also understand that if I violate the terms of this agreement, the United States Government may institute a civil proceeding to seek compensatory damages or other appropriate relief. Further, I understand that the disclosure of information which I have agreed herein not to disclose can, in some circumstances, constitute a criminal offense.

11. I understand that the United States Government may, prior to any unauthorized disclosure which is threatened by me, choose to apply to any appropriate court for an order enforcing this agreement. Nothing in this agreement constitutes a waiver on the part of the United States to institute a civil or criminal proceeding for any breach of this agreement by me. Nothing in this agreement constitutes a waiver on my part of any possible defenses I may have in connection with either civil or criminal proceedings which may be brought against me.

12. In addition to any other remedy to which the United States Government may become entitled, I hereby assign to the United States Government all rights, title, and interest in any and all royalties, remunerations, and emoluments that have resulted or will result or may result from any divulgence, publication or revelation of information by me which is carried out in breach of paragraph 5 of this agreement or which involves information prohibited from disclosure by the terms of this agreement.

13. I understand and accept that, unless I am provided a written release from this agreement or any portion of it by the Director of Central Intelligence or the Director's representative, all the conditions and obligations accepted by me in this agreement apply both during my employment or other service with the Central Intelligence Agency, and at all times thereafter.

14. I understand that the purpose of this agreement is to implement the responsibilities of the Director of Central Intelligence, particularly the responsibility to protect intelligence sources and methods, as specified in the National Security Act of 1947, as amended.

15. I understand that nothing in this agreement limits or otherwise affects provisions of criminal or other laws protecting classified or intelligence information, including provisions of the espionage laws (sections 793, 794 and 798 of Title 18, United States Code) and provisions of the Intelligence Identities Protection Act of 1982 (P. L. 97-200; 50 U. S. C., 421 *et seq.*).

16. Each of the numbered paragraphs and lettered subparagraphs of this agreement is severable. If a court should find any of the paragraphs or subparagraphs of this agreement to be unenforceable, I understand that all remaining provisions continue in full force.

17. I make this agreement in good faith, and with no purpose of evasion.

Valerie E. Plame
Signature

[Redacted]
Date

The execution of this agreement was witnessed by the undersigned, who accepted it on behalf of the Central Intelligence Agency as a prior condition of the employment or other service of the person whose signature appears above.

WITNESS AND ACCEPTANCE:

[Redacted]

Signature

[Redacted]

Printed Name

[Redacted]