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Edward Snowden, Whistle-Blower

By THE EDITORIAL BOARD

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Seven months ago, the world began to learn the vast scope of the National Security Agency's reach into the lives of hundreds of millions of people in the United States and around the globe, as it collects information about their phone calls, their email messages, their friends and contacts, how they spend their days and where they spend their nights. The public learned in great detail how the agency has exceeded its mandate and abused its authority, prompting outrage at kitchen tables and at the desks of Congress, which may finally begin to limit these practices.

The revelations have already prompted two federal judges to accuse the N.S.A. of violating the Constitution (although a third, unfortunately, found the dragnet surveillance to be legal). A panel appointed by President Obama issued a powerful indictment of the agency's invasions of privacy and called for a major overhaul of its operations.

All of this is entirely because of information provided to journalists by Edward Snowden, the former N.S.A. contractor who stole a trove of highly classified documents after he became disillusioned with the agency's voraciousness. Mr. Snowden is now living in Russia, on the run from American charges of espionage and theft, and he faces the prospect of spending the rest of his life looking over his shoulder.

Considering the enormous value of the information he has revealed, and the abuses he has exposed, Mr. Snowden deserves better than a life of permanent exile, fear and flight. He may have committed a crime to do so, but he has done his country a great service. It is time for the United States to offer Mr. Snowden a plea bargain or some form of clemency that would allow him to return home, face at least substantially reduced punishment in light of his role as a whistle-blower, and have the hope of a life advocating for greater privacy and far stronger oversight of the runaway intelligence community.

Mr. Snowden is currently charged in a criminal complaint with two violations of the Espionage Act involving unauthorized communication of classified information, and a charge of theft of government property. Those three charges carry prison sentences of 10 years each, and when the case is presented to a grand jury for indictment, the government is virtually certain to add more charges, probably adding up to a life sentence that Mr. Snowden is understandably trying to avoid.

The president said in August that Mr. Snowden should come home to face those charges in court and suggested that if Mr. Snowden had wanted to avoid criminal charges he could have simply told his superiors about the abuses, acting, in other words, as a whistle-blower.

"If the concern was that somehow this was the only way to get this information out to the public, I signed an executive order well before Mr. Snowden leaked this information that provided whistle-blower protection to the intelligence community for the first time," Mr. Obama said at a news conference. "So there were other avenues available for somebody whose conscience was stirred and thought that they needed to question government actions."

In fact, that executive order did not apply to contractors, only to intelligence employees, rendering its protections useless to Mr. Snowden. More important, Mr. Snowden told The Washington Post earlier this month that he did report his misgivings to two superiors at the agency, showing them the volume of data collected by the N.S.A., and that they took no action. (The N.S.A. says there is no evidence of

this.) That's almost certainly because the agency and its leaders don't consider these collection programs to be an abuse and would never have acted on Mr. Snowden's concerns.

In retrospect, Mr. Snowden was clearly justified in believing that the only way to blow the whistle on this kind of intelligence-gathering was to expose it to the public and let the resulting furor do the work his superiors would not. Beyond the mass collection of phone and Internet data, consider just a few of the violations he revealed or the legal actions he provoked:

- The N.S.A. broke federal privacy laws, or exceeded its authority, thousands of times per year, according to the agency's own internal auditor.
- The agency broke into the communications links of major data centers around the world, allowing it to spy on hundreds of millions of user accounts and infuriating the Internet companies that own the centers. Many of those companies are now scrambling to install systems that the N.S.A. cannot yet penetrate.
- The N.S.A. systematically undermined the basic encryption systems of the Internet, making it impossible to know if sensitive banking or medical data is truly private, damaging businesses that depended on this trust.
- His leaks revealed that James Clapper Jr., the director of national intelligence, lied to Congress when testifying in March that the N.S.A. was not collecting data on millions of Americans. (There has been no discussion of punishment for that lie.)
- The Foreign Intelligence Surveillance Court rebuked the N.S.A. for repeatedly providing misleading information about its surveillance practices, according to a ruling made public because of the Snowden documents. One of the practices violated the Constitution, according to the chief judge of the court.
- A federal district judge ruled earlier this month that the phone-records-collection program probably violates the Fourth Amendment of the Constitution. He called the program "almost Orwellian" and said there was no evidence that it stopped any imminent act of terror.

The shrill brigade of his critics say Mr. Snowden has done profound damage to intelligence operations of the United States, but none has presented the slightest proof that his disclosures really hurt the nation's security. Many of the mass-collection programs Mr. Snowden exposed would work just as well if they were reduced in scope and brought under strict outside oversight, as the presidential panel recommended.

When someone reveals that government officials have routinely and deliberately broken the law, that person should not face life in prison at the hands of the same government. That's why Rick Ledgett, who leads the N.S.A.'s task force on the Snowden leaks, recently told CBS News that he would consider amnesty if Mr. Snowden would stop any additional leaks. And it's why President Obama should tell his aides to begin finding a way to end Mr. Snowden's vilification and give him an incentive to return home.