

# IN NAMING ITS MAN OF THE YEAR, TIME PROVES IT DOESN'T EVEN READ THE NEWS

I'm probably fairly lonely among my crowd to be satisfied that Time picked Pope Francis over Edward Snowden to be Person of the Year. Not only do I prefer that the focus remain on the reporting on NSA than revert back to caricatures like Time creates of Snowden as a "Dark Prophet" reading Dostoevsky. The Pope's criticism of – above all – inequality may have as much or more impact on people around the globe as Snowden's criticism of the surveillance state.

Would that **both** the Catholic Church and the United States live up to the idealist claims they purport to espouse.

But reading the profile Time did of Snowden, I can't help but suspect they picked the Pope out of either fear or ignorance about what Snowden actually revealed. Consider this paragraph, which introduces a section on the lies NSA has told.

The NSA, for its part, has always prided itself on being different from the intelligence services of authoritarian regimes, and it has long collected far less information on Americans than it could. The programs Snowden revealed in U.S. surveillance agencies, at least since the 1970s, are subject to a strict, regularly audited system of checks and balances and a complex set of rules that restrict the circumstances under which the data gathered on Americans can be reviewed. As a general rule, a court order is still expected to review the content of American phone calls and e-mail messages. Unclassified talking points sent home with NSA

employees for Thanksgiving put it this way: "The NSA performs its mission the right way—lawful, compliant and in a way that protects civil liberties and privacy." Indeed, none of the Snowden disclosures published to date have revealed any ongoing programs that clearly violate current law, at least in a way that any court has so far identified. Parts of all three branches of government had been briefed and had given their approval.

It's full of bullshit. There's the claim that NSA collects far less on Americans than it could. Does that account for the fact that, in the Internet dragnet and upstream collection programs, it collected far more than it was authorized to? Those same programs prove that surveillance can go on for (in the case of the Internet dragnet) 5 years before anyone realizes it has been violating the law – not exactly the definition of a regularly audited system. And, with its claim that "all three branches of government have been briefed," Time must have missed Dianne Feinstein's admission that the stunning sweep of the programs conducted under EO 12333 (which also collect US person data) don't get close scrutiny from her committee (and none from the FISA Court).

But this claim most pisses me off:

As a general rule, a court order is still expected to review the content of American phone calls and e-mail - messages.

Journalistic outlet Time must have missed where NSA's General Counsel Raj De, in a public hearing, testified that NSA doesn't even need Reasonable Articulate Suspicion – much less a court order – to read the content of Americans' data collected incidentally under the FISA Amendment Act's broad sweep, to say nothing of the even greater collection of data swept up

under 12333. To support this demonstrably false claim, Time then points to the similarly false talking points the NSA sent home at Thanksgiving. It points to the NSA's talking points just two paragraphs before Time lays out how often NSA has lied, both describing the government as actively misleading..

At the time Snowden went public, the American people had not just been kept in the dark; they had actively been misled about the actions of their government.

And then describing the specific lies of Keith Alexander and James Clapper.

The NSA lies, and lies often. But Time points to the NSA's own lies to support its bad reporting.

At the same time, Time dances around the many things the US does that make us less secure. For example, it gives credence to the nonsense claim that Snowden singlehandedly prevented us from pressuring China into stopping hacking of us.

While in Hong Kong, Snowden gave an interview and documents to the South China Morning Post describing NSA spying on Chinese universities, a disclosure that frustrated American attempts to embarrass China into reducing its industrial-espionage efforts against U.S. firms.

This repeats the anachronistic claims and silence about US cyberwar that Kurt Eichenwald made in Newsweek.

And Time says Bullrun – a program that involves inserting vulnerabilities into code – “decodes encrypted messages to defeat network security,” which also minimizes the dangerous implications of NSA's hacking.

If Time had actually read the news, rather than wax romantic about Russian literature, it might report that NSA in fact does collect vast

amounts of and can be read incidentally collected content of most Americans. It might describe the several times NSA has been found to be violating the law, for years at a time. It might explain that many of these programs, because they operate solely under the President's authority, might never get court review without Snowden's leaks. And Time might bother to tell readers that, in some ways at least, the NSA makes us less safe because it prioritizes offensive cyberattacks (and not just on China) over keeping American networks safe.

As I said, I could have been happy about either a Pope Francis or an Edward Snowden selection. But as it is, Time might better call their scheme "Caricature of the Year," because at least in their Snowden profile, they're not actually presenting the news.