

What Country Do We Want to Keep?

On Nov. 21, former National Security Agency official Thomas Drake was honored for his courage in blowing the whistle on the U.S. government's abuse of its secrecy powers. In his acceptance speech, Drake explained the larger and more frightening context the loss of American liberty.

Presented this 21st day of November 2011 in Washington, DC, by admirers of the example set by former CIA analyst, Sam Adams (who exposed the intentional undercounting of Viet Cong and other forces fighting U.S. troops during the Vietnam War), the Sam Adams Associates for Integrity in Intelligence Award for 2011 to Thomas Drake:

As a senior official at the National Security Agency Thomas Drake witnessed not only widespread waste, fraud and abuse, but also gross violations of our Fourth Amendment rights.

He was a material witness and whistleblower on a multi-year Department of Defense Inspector General audit of a failed multi-**billion** dollar flagship program called TRAILBLAZER and a breakthrough multi-**million** dollar intelligence data collection, processing, and analysis system called THINTHREAD that was ready to deploy.

THINTHREAD had been carefully designed to handle data in massive amounts and variety, but to do so with built-in Fourth Amendment and privacy safeguards, while providing superior intelligence. NSA rejected it.

Tom Drake stepped forward with the integrity, the courage, and, let's say it, the true patriotism, to blow the whistle. The Department of Justice retaliated by indicting and prosecuting Drake under the Espionage Act and, once again, became the laughing stock of the legal profession.

In Drake's case, government attempts to abuse the law to intimidate those who would speak truth to power expose in a telling way what has become the military-industrial-intelligence-surveillance-cybersecurity-congressional-media complex and its abuses, which drain our treasury, endanger our liberty, and make our country less, not more, secure.

Sam Adams Associates is not the first group to give high recognition to Tom Drake's fearless integrity and endurance in the ordeal he was put through. Earlier this year he was awarded the Ridenhour Truth-Telling Prize (named after Ron Ridenhour, the Vietnam War veteran who exposed the My Lai massacre).

In partnership with Jesselyn Radack, Drake writes and speaks on whistle blowing, privacy, civil liberties, secrecy, surveillance and abusive government power.

Acceptance Speech by Thomas Drake:

I first want to thank Sam Adams Associates for Integrity in Intelligence for bestowing upon us this truly special honor and special kudos to Ray McGovern for making it all happen. And thank you Jesselyn, for your introduction of me as a fellow whistleblower.

I simply cannot say enough about your incredible energy, diligence, persistence, dedication and tireless efforts that you so well demonstrated and displayed on my behalf during the government's criminal case against me. It was Jesselyn who wrote and spoke about my case with such outstanding focus and compelling clarity in terms of both content and context.

It was Jesselyn who so masterfully crafted the message about the government's egregious abuse of protected communications in their criminal indictment against me as a whistleblower for the purposes of reprisal, retaliation, retribution, suppression, and stamping out dissent.

It was Jesselyn that got my case in spades and completely understood the gross injustices I experienced at the hands of our own government, BECAUSE I was a whistleblower. It was Jesselyn's many, many radio interviews, blogs, news articles, op-eds, TV appearances in both the alternative and mainstream media as well as her countless and untold hours working behind the scenes on my behalf that made a huge and telling difference.

Suffice it to say, Jesselyn truly became my public voice and conscience – speaking out and writing fearlessly and courageously – bringing truth to power with all her simply superb outreach and advocacy. And so I am incredibly grateful for all that you have been and have done for me as a whistleblower, Jesselyn, and the totality of your superb efforts and actions that so immensely helped in achieving a huge and decisive victory against an implacable government prosecution and thereby keeping me free.

We live in truly sobering times a time in which liberty is under significant and persistent duress. Jesselyn and I are two whistleblowers yoked together by the tragedy of 9/11. As government employees, we became embroiled in two of this era's most controversial programs in their infancy: torture and warrantless wiretapping as prime evidence of the government's abject abuse of power and bypassing of the law.

As a Justice Department ethics attorney, Jesselyn advised that the FBI not interrogate John Walker Lindh, an American, without counsel. The FBI ignored

this advice, and the interrogation formed the basis of a criminal prosecution in which Radack's conclusion that the FBI committed an ethics violation "disappeared" from Justice files and was withheld from the court.

While a senior official at the National Security Agency, I found out about the use of electronic eavesdropping on Americans and turning this country into the equivalent of a foreign nation for the purposes of blanket surveillance and data mining blatantly disregarding a 23-year legal regime that was the exclusive means for the conduct of such electronic collection and surveillance, which carried criminal sanctions when violated.

I also discovered that NSA had withheld critical and crucial intelligence prior to 9/11 and after 9/11, as well as data and information that was available but was undiscovered and if shared could have made a decisive difference alone in preventing the 9/11 attacks from ever happening.

I also learned about a massively expensive and failing surveillance program under development called TRAILBLAZER that largely served as nothing more than a funding vehicle to enrich government contractors and keep government program managers in charge – when a cheap, highly effective, and operational alternative called THINTHREAD was available in-house, that fully protected Americans' privacy rights under the law, while also providing superior intelligence to the Nation.

These secret programs, which deliberately bypassed the Constitution and existing laws, were born during the first few critical weeks and months following 9/11, as the result of willful decisions made by the highest levels of our government.

Such shortcuts and end-runs were not necessary, as lawful alternatives existed that would have vastly improved our intelligence capability with the best of American ingenuity and innovation, as well as time-honored, non-coercive interrogation techniques.

Jesselyn and I both raised our concerns through internal channels including our bosses and Inspector Generals. In my case, I also spoke directly with the NSA Office of the General Counsel, and became a material witness for two 9/11 congressional investigations.

I also became a material witness for a multi-year Department of Defense Inspector General audit of TRAILBLAZER and THINTHREAD at NSA based on a September 2002 Hotline Complaint that attempted to expose massive fraud, waste, abuse and mismanagement at NSA and the NSA's use of a data-collection program that was far more costly, far more threatening to American citizens' privacy rights and far less effective in supporting critical intelligence requirements

than the readily available alternative – namely THINTHREAD.

This complaint was signed by my former NSA colleagues – Kirk Wiebe, Ed Loomis, and Bill Binney as well as Diane Roark, the former professional staffer from the House Permanent Select Committee on Intelligence, who had oversight accountability for NSA, and had all retired by this time from government service. I was the unnamed senior official in this complaint – working directly at NSA.

The throwing out of THINTHREAD was due to multi-billion dollar “buy versus make” money interests and political connections, all surrounding personal gain and institutional self-interest. The throwing out of THINTHREAD was also due to blatant ignorance and disregard for policy under the Federal Acquisition Regulations and the Fourth Amendment of the Constitution.

Either way, same result critical breakthrough information technology, security, and defense innovation and ingenuity, the very best of who we are as Americans was denied to the American people and precluded from use in providing for the common defense under the Constitution (as were a number of other programs) – with an incalculable loss of intelligence.

It is part of the great historical tragedy of what could have been including the disruption, even the prevention, of 9-11. THINTHREAD had a laudatory purpose – find terrorists, modernize a very outdated signals intelligence system from end to end and thus protecting the US, its soldiers and allies while doing it all legally.

It got caught up in the bureaucratic jealousy, turf, and debilitating internal corporate political jockeying and bickering that afflicts all too many larger organizations once they necessarily become more “organized” and bureaucratic after departing the initial creative stage.

THINTHREAD also illustrates in spades the widespread difficulty of protecting the iconoclastic, creative and out of the box, ‘contrary to the status quo’ thinking people and their new, even revolutionary ideas – a problem especially difficult when an organization has an effective monopoly, like NSA.

NSA wanted to go evolutionary, based on old technology that had not worked well even for the older and far less complex problem, and not revolutionary. The “ins” did everything they could to protect the old technology and successfully drove the creative people out, thus retaining their own turf and power. They may even have been blinded to the merits of the new system and believed their own lies, though from the beginning they demonstrably viewed and treated it as a threat.

In part, it was a threat because it was developed rapidly on a shoestring budget by a small staff – the NSA equivalent of a Silicon Valley garage startup, with a far superior, vastly less complex design and only cost about \$3 million to get it to a fully operationally ready demonstration stage that worked, instead of the multiple BILLIONS and BILLIONS spent over several years on the old technology with almost nothing to show for it except for some very fancy PowerPoint slides.

With all the unitary executive privilege, secrecy and exigent conditions used as the excuse to torture, deny due process and engage in ‘off the books’ electronic surveillance, Jesselyn and I followed all the rules as whistleblowers until it fundamentally conflicted with our oath to uphold the Constitution.

Then we both made a fateful choice to exercise our First Amendment rights. We went to the press with patently unclassified information about which the public had a right to know. However, rather than address its own corruption, ineptitude, and illegality, the government made us targets of federal criminal “leak investigations” – part of a vicious campaign against whistleblowers that started under Bush and has come to full fruition under Obama.

Inverting the logical paradigm, we were transmogrified from public servants trying to improve our government into traitors and enemies of the state. The government subjected us to severe retaliation that started with forcing us from our jobs as career public servants, rendering us unemployed and unemployable by wielding a wrecking ball into conditions of our jobs (in my case, a security clearance, and in Jesselyn’s case, state bar licensure).

We were blacklisted and no longer had a stream of income, while simultaneously incurring attorneys’ fees, and necessitating second mortgages on our homes. But that was nothing compared to the overkill reprisal to come, placement on the “No-Fly” list for Jesselyn and prosecution under the Espionage Act for me.

What we experienced sends an unequivocally chilling message about what the government can and will do when one speaks truth to power, a direct form of political repression and censorship.

If sharing issues of significant and grave public concern, which do not in any way compromise our national security, is now considered a criminal act, we have strayed far from what our Founding Fathers envisioned. When exercising First Amendment rights is now considered espionage, this is anathema to a free, open and democratic government.

As Americans, we did everything we could to defend the constitutional rights of all U.S. citizens, which were violated and abused by our own government, when

there was no reason to do so at all, except as an excuse to go to the proverbial dark side by abrogating unaccountable, irresponsible and “off the books” unilateral executive power in secret.

Once exposed, these unconstitutional detours were predictably justified by vague and undefined claims of national security, while aided and abetted by shameless fear mongering on the part of the government.

It is pure sophistry to argue that the government can operate secretly with unbridled immunity and impunity, especially for such blatant illegalities as torture and wiretapping without warrants, from those it is constitutionally bound to serve and protect when providing for the common defense of the Nation, and then persecute and prosecute the very people who revealed such wrongdoing and malfeasance.

Before the war on terrorism, our country well recognized the importance of free speech, privacy, legal counsel, and the right to be free from cruel and unusual punishment. If we sacrifice these basic liberties, according to the false dichotomy that such is required for security, then we transform ourselves from an oasis of freedom into a police state that terrorizes its own citizens when they step out of line.

These are the hallmarks of tyranny and despotism, not democracy, and are increasingly alien to the Constitution and our American way of life.

Jesselyn and I now stand before you alongside the other whistleblowers before us like Dan Ellsberg, Coleen Rowley (who also nominated me for the Ridenhour Truth-Telling Prize), as well as Larry Wilkerson, an Integrity in Intelligence award recipient.

We did not take an oath to see secrecy and subterfuge used as cover for subverting the Constitution and violating the law. Our oath to support and defend the Constitution took primacy. I fear for the Republic.

“Democracy is two wolves and a lamb voting on what to have for lunch. Liberty is a well-armed lamb contesting the vote.” Benjamin Franklin

So what expired on 9/11 – the Constitution?

“Those who give up Essential Liberty to purchase a little Temporary Safety, deserve neither Liberty nor Safety.” Benjamin Franklin

Jesselyn and I became whistleblowers and our whistleblowing was both a warning and an alert to those in government and eventually the public about serious

wrongdoings, and danger and malfeasance created and concealed within the government. Our whistleblowing also occurred because there was profound institutional failure a multi-layered breakdown in accountability.

Today we have a frightening lack of responsibility and accountability within the national security complex and it poses a direct threat to all our personal freedoms, as well as a clear and present danger to our Constitutional Republic. Both cannot co-exist as the social and legal contract is being broken. Our government has profoundly lost its constitutional compass and has been tainted to its core. And our enshrined liberties ARE our national security.

What country do we want to keep?

Jesselyn and I took an oath to support and defend the Constitution versus an oath of loyalty to the organization and false secrecy used to bypass and break the law.

But what is meant by personal integrity and by loyalty? Our personal integrity meant that we held consistently firm and true to the ideals and values centered on upholding and defending the Constitution! By loyalty we were steadfast in our allegiance to the Law of the Land. However, loyalty when blind or misplaced ceases to be a virtue and turns into a corrupting mechanism to hide and obfuscate wrongdoing, embarrassment and cover-up.

We blew the whistle because we saw grave injustice and wrongdoing occurring within our respective organizations. At the core of our whistleblowing lies accountability by exposing and disclosing government wrongdoing.

In my recently and successfully concluded case that ended decisively in my favor, the government wanted to put me away in prison for many, many years (I was actually threatened with 35 years) for simply telling the truth as a whistleblower and exposing government wrongdoing and illegalities.

The government found out everything they could about me and turned me into an Enemy of the State. Having the secret ability to collect and analyze data with few if any substantial constraints especially on people, is seductively powerful and when particularly done without the person's permission and in secret is the ultimate form of control.

In fact, the government, with its monopoly on certain powers, sometimes has a darker side than even the most cutthroat corporate environments. So it chose to sell out national security to big business and also violate the Constitution. All was SO unnecessary.

American ingenuity and the Constitution were quite sufficient to protect and

defend the country with the best and under the Law. There was NO, I repeat, NO need to go to the dark side.

Those who have served in the military know what it means when the flag is flown upside down. It is a sign of distress. When a government hides behind its veil of secrecy, when it professes openness and transparency while practicing opaqueness and deceit, that's when its citizens need to become very wary of what the future might hold regarding what liberties they believe they possess that are then eroded and even taken away in the name of national security.

Modern governments today increasingly perform mass surveillance of their citizens, explaining that they believe that it is necessary to protect them from dangerous groups such as terrorists, criminals, or political subversives, dissenters in order to track the citizenry and maintain social control.

We are fast approaching a genuine surveillance society in the United States a dark Orwellian future where our every move, our every transaction, our every communication, and our every contact is recorded, compiled, and stored away ready to be examined and used against us by the authorities whenever they want at any time.

What country do we want to keep?

Mass surveillance will erode our privacy. Yet privacy is an absolutely essential prerequisite to the exercise of our precious individual freedoms the inalienable rights we have as human beings to life, liberty and the pursuit of happiness. And yet the erosion of privacy also weakens the very constitutional foundations and boundaries of our democracy.

Five centuries ago, Machiavelli explained how to undertake a revolution from above without most people even noticing. In his *Discourses on Livy*, he wrote that one "must at least retain the semblance of the old forms; so that it may seem to the people that there has been no change in the institutions, even though in fact they are entirely different from the old ones."

In other words, keep the old government structures, even while you make profound changes to the actual system, because the appearances are all that most people will notice. So today, instead of seeing the mere corpse of the Republic in which we supposedly live, we only see the clothing and those clothes would appear to look the same as before, even if increasingly worn and threadbare.

We have had a revolution from within that has not eliminated our elected representatives it has simply made them largely irrelevant, especially since Congress is largely occupied by Wall Street err, preoccupied by Wall Street!

It's been a long journey to our current state of affairs, and wars and conflicts have been a major catalyst in that journey, especially since WWII. Most wars fought by the United States have added power to the Executive Branch, while taking away power from the Legislature.

I consider the immediate aftermath of WWII as the real turning point when the American Dream began to go south at the very moment when the U.S. sat astride the world at the pinnacle of power. Consider all the centralizing legislation for a national security state that was passed either by Congress or put into play by the Executive Branch. And therein lies the problem.

For this is when the American Republic began its transformation into a national security state and then this transformation was exponentially accelerated as a result of 9/11 into a Top Secret America an increasingly 'off the books' secret government operating within our Constitutional form of government that hides behind unitary executive privilege and the invocation of state secrets when questioned or held to account.

President Dwight Eisenhower warned us about the rise in this kind of a complex in his Farewell Address. Sen. Frank Church feared the future, and that given the right circumstances turning back might not be possible, if the national surveillance complex turned its enormous capabilities on the U.S. from within, with even more advanced technology.

We now live in post-9/11 America, only to suddenly discover that we are not doing the driving and the brakes are failing and others are in the front and backseat and also following us.

What country do we want to keep? We increasingly no longer govern ourselves as in of, for and by the people.

Consider the "nonstop" number of U.S. military actions around the world these days. And when did Congress last issue a formal declaration of war? Think about it! Consider the ramming through of the Patriot Act a bare month after 9/11 (an Act I would add that NSA was already violating with even more secret programs), when it was obvious that not a single member of Congress read it thoroughly?

And have you wondered what is really in the secret interpretation by the Executive Branch of Section 215 in the Patriot Act? And what about Section 1031 of the National Defense Authorization Act bill that would authorize the indefinite detention of American citizens?

Or how habeas corpus was gutted on Oct. 14, 2011, when Janice Rogers Brown of the Appeals Court for the District of Columbia held that in habeas suits, judges must grant official government records the *presumption of regularity* defined as

simply accepting that an “official act” has been done, and that it will be presumed, until the contrary is proved, that the said act “complied with any necessary formalities” and that the person who did it was “duly appointed”?

With such a massively expanded ability by the government to spy into your personal life, we might as well bid adieu to the Fourth Amendment the foundation of a citizen’s integrity as an individual person and in their personal effects in this country as well as their ability to speak and associate freely with others under the First Amendment.

Have we become the proverbial boiling frogs? What country do we want to keep?

Consider the conviction held by this country’s Founding Fathers that a functioning Constitutional Republic and democracy requires an informed citizenry.

And in the case of an uninformed citizenry? The experiment in “government by the people” is doomed to failure, and would inevitably transform into what we increasingly see today. Is this the day of bread and circuses like in the twilight years of the Roman Empire?

Is our exceptionalism an excuse to end run the very foundational precepts and principles of this Republic and used to violate certain human values that must never be transgressed like torture is never an acceptable human value and eroding away the First and Fourth Amendments removes the very heart of our experiment’s exceptionalism?

Machiavelli had it right, and as the old song goes, “something’s gotta give.” What else are we willing to give up? Are we becoming the National Security State Under Surveillance Always the NSS/USA? Is secret government the new fig leaf for a quaint and outmoded Constitution?

Orwell’s *1984* is real and now already screamingly relevant. Only the government can create a police state, and our technology can now make that happen. There is a long list of both private industry and government actions that are ripping away our privacy and our Fourth Amendment rights and our ability to speak freely about it!

I challenge you all to demand accountability, to update our protections in the Internet Age, and to insist upon adherence to the Constitution – conservative and liberal and independent alike. Even in the open press, we know enough about what both the industry and government are doing. Do you care? What will you do about it?

What country do we really want to keep? Do we want to continue to have a

burgeoning military-industrial-congressional-intelligence-surveillance-cybersecurity-and-media complex? Whom does it benefit? Do we want to concede the eroding of basic human rights? Why?

Because we fear enemies, that creates the need for security, and we are then persuaded that human rights are ignored because of the primacy of the national security state beyond legitimate protections and the identifying of those who would actually do us harm, both abroad and domestically as a unifying cause for obsessing over national security and the use of fear by the government to control the public and private agenda?

What country do we want to keep?

On Aug. 3, 1857, Frederick Douglass delivered a "West India Emancipation" speech at Canandaigua, New York, on the 23rd anniversary of the event. He said:

"The whole history of the progress of human liberty shows that all concessions yet made to her august claims have been born of earnest struggle. The conflict has been exciting, agitating, all-absorbing, and for the time being, putting all other tumults to silence. It must do this or it does nothing.

"If there is no struggle there is no progress. Those who profess to favor freedom and yet deprecate agitation are men who want crops without plowing up the ground; they want rain without thunder and lightning. They want the ocean without the awful roar of its many waters."

Power and those in control concede nothing without a demand they never have and they never will. Every one of us each and every one of us must keep demanding, must keep fighting, must keep thundering, must keep plowing, must keep on keeping things struggling, must speak out and must speak up until "justice" is served because where there is no justice there can be no peace!

What country do we want to truly keep?

Consider what actions you will take when you leave this evening. After all, it is OUR country! So take the necessary action to conserve the very best of who we are and can be for this generation as well as future generations yet to come and keep us free. Our future depends on it.
