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## **HAYDEN: Freedom vs. security debate with Greenwald like Hockey Night in Canada**



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### **MIKE HAYDEN**

It was billed as a debate, but even with the Maple Leafs out of the NHL playoffs, my recent evening in Toronto felt a lot more like Hockey Night in Canada.

Renowned American lawyer Alan Dershowitz and I were debating self-described advocacy journalist Glenn Greenwald and young Internet entrepreneur Alexis Ohanian: Be it resolved that state surveillance is a legitimate defense of our freedoms

And there was slashing, high sticking and the gloves came off before the first puck was dropped!

Mr. Greenwald was quoted the morning of the debate in Canada's newspaper of record, the Toronto Globe and Mail, with this characterization of his opponents: "I consider [Hayden] and Dershowitz two of the most pernicious human beings on the planet. I find them morally offensive. There's an element of hypocrisy to being in the same room with them, treating them as if I have outward respect, because I don't."

Even allowing for a little pre-game taunting to get into the head of the opposition, it occurred to me that the coming evening's Munk Debate might not be a respectful give-and-take between people of broadly shared values on the difficult balance a free people have to make between their liberty and their security.

And I was right.

I lost count of the number of times that Mr. Greenwald and Mr. Ohanian just declared as a given the existence of an all-knowing, all-pervasive, oppressive "surveillance state." Certainly far more often than Mr. Dershowitz and I referred to what Mr. Greenwald described as our "pretext" of fighting terrorism.

Mr. Dershowitz hammered the pretext argument and was relentless in not allowing the presumption of ill intent to stand unchallenged. Motives matter, he declared, even when people might be wrong — a rebuttal to Mr. Greenwald's dismissal of our moral worth and the worth of any of our arguments.

Mr. Ohanian argued passionately for the survival of the global, ubiquitous, unitary Internet that we know today. I agreed that perhaps the worst result of the truths, half-truths and untruths in circulation would be to put wind in the sails of those who would destroy the Net, not because of espionage concerns but because they feared the free movement of ideas and commerce.

The debate organizers "helpfully" (and with little advance notice) parachuted in Edward Snowden in a specially taped commentary that reinforced the surveillance state meme. "It covers your email, it covers your text messages, your Web history, every Google search you've ever made and every plane ticket you've ever bought, the books you buy "

The list went on.

Despite all the rhetoric, though, the right answer to the question we were debating (is state surveillance a legitimate defense of our freedoms) is pretty obvious.

It depends.

In my opening comments I said, “It depends on the totality of circumstances in which we find ourselves. What kind of surveillance? For what kind of purposes? In what kind of state of danger? And that’s why facts matter.”

I admitted that mastering these facts is difficult. This is complicated and it demands effort on the part of the citizenry to understand it. At one point I reminded the audience that accusations fit nicely on a bumper sticker. The truth is nuanced, complicated, and more difficult to explain.

Broad accusations that the government is mining the most private aspects of your life via metadata require a lengthy, technical and likely boring counterpoint on the history, purposes, limits, protocols and oversight of the “215” program.

Similarly, how does one refute the easily made blanket charge that the National Security Agency collects 1.7 billion U.S. emails daily? Well, one way is to just deny it (which I did). But you can only get beyond the he said/he said tussle through a detailed discussion of what constitutes legitimate targeting, the rules governing inadvertent and incidental collection, and the protocols for “minimizing” or masking U.S. identities all of which require near chapter-length exposition.

And so it went for the night. Going in, the audience split 40-60 against the proposition, with a little less than a quarter undecided. At the end of the evening, when everyone was forced to vote, the split remained 40-60.

Great night. Great hospitality. I exchanged cards with Mr. Ohanian. I didn’t even exchange glances with Mr. Greenwald.

But I have a lingering concern. In my last article I argued that the American intelligence community needs to accept some operational penalties and be

more transparent in order to build trust and understanding within the public it serves.

That, of course, assumes a public that is willing to listen. With the whooping and hollering that followed every Greenwald assertion in Toronto, some may question that assumption.

I'm not willing to. At least, not yet.

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