

# ONE-FIFTH OF DOCUMENTS EDWARD SNOWDEN STOLE WERE BLANK

Charlie Savage has a great review in the New Yorker, pitting Oliver Stone's Snowden movie against Edward Jay Epstein's book (and astutely noting that these two have battled before over JFK history, which presumably explains the use of "Soviet" in the title).

In it, he addresses something fact-based commentators have had to deal with over and over: the claim Snowden stole 1.5 million documents.

Another complication for judging Snowden's actions is that we do not know how many and which documents he took. Investigators determined only that he "touched" about 1.5 million files—essentially those that were indexed by a search program he used to trawl NSA servers. Many of those files are said to pertain to military and intelligence tools and activities that did not bear on the protection of individual privacy. Snowden's skeptics assume that he stole every such file. His supporters assume that he did not. In any case they believe his statements that after giving certain NSA archives to the journalists in Hong Kong, he destroyed his hard drives and brought no files to Russia.

But it's time, once and for all, to reject this frame entirely.

That's true for several reasons. First, as the House Intelligence Report on Snowden discloses, the Intelligence Community actually has two different counts of what documents Snowden

"took." The 1.5 million number comes from Defense Intelligence Agency.

The IC more generally, though, has a different (undisclosed) number, based off three tiers of damage assessment: those documents that had been released to the public by August 31, 2015, those documents that, "based on forensic analysis, Snowden would have collected in the course of collecting [the documents already released], but have not yet been disclosed to the public." (PDF 29) The IC believes these documents are in the hands of Glenn Greenwald and Laura Poitras and Bart Gellman. The last tier consists of documents that Snowden accessed in some way. The rest of the description of this category is redacted, but the logic involved in the section suggests the IC has good reason to question whether the third tier ever got delivered to journalists.

By May 2016 (much to HPSCI's apparent chagrin), the IC had stopped doing damage assessment on documents not released the public, which strongly suggests they believed Russia and other adversaries hadn't and probably wouldn't obtain them, which in turn suggests the IC either believes the journalists' operational security is adequate against Russia and China and/or the documents have already been destroyed and certainly didn't go with Snowden to Russia and get delivered to Vladimir Putin.

Particularly given the later date for the IC assessment, I'd suggest the IC likely has listened for years for signs the wider universe of documents has been released, and have found no sign the documents have. Otherwise they'd be doing a damage assessment on them.

But the 1.5 million number is problematic for two more reasons. First, as Jason Leopold reported in 2015, the 1.5 million number comes from a period when HPSCI was actively soliciting dirt on Snowden that they could (and did) leak to the press. It was designed to be as damning as possible And, as I added at the time, the number also came at a time when Congress was

scrambling to give DOD more money to deal with mitigation of Snowden's leak. In other words, for several reasons Congress was asking the IC to give it the biggest possible number.

But there's another problem with the 1.5 million number, revealed in the HPSCI report released last month. The 1.5 million isn't actually all the documents Snowden is known to have touched, or even downloaded. Rather, it is all the documents he touched and downloaded, less some 374,000 "blank documents Snowden downloaded from the Department of the Army Intelligence Information Service (DAIIS) Message Processing System."

(U) The 1.5 million documents came from two classified networks, an internal NSA network called NSANet and an IC-wide Top Secret/Sensitive Compartmented Information network called the Joint Warfighter Information Computer System (JWICS). If printed out and stacked, these documents would create a pile more than three miles high.<sup>166</sup>

<sup>166</sup> Testimony of Mr. Scott Liard, Deputy Director for Counterintelligence, Defense Intelligence Agency, HPSCI Hearing (Jan. 27, 2014), at 7-8. The 1.5 million document count does not include 374,000 blank documents Snowden downloaded from the Department of the Army Intelligence Information Service (DAIIS) Message Processing System. See DIA, Information Review Task Force-2, "Fourth Quarter Report, 2014" (Dec. 31, 2014), at xvii.

So the *real* number of documents that Snowden "touched" is almost 1.9 million. But in coming up with its most inflammatory number, DIA eliminated the almost 20% of the documents that it had determined were blank.

But consider what that tacitly admits. It admits that one-fifth of the documents that Snowden not just touched, but actually downloaded, were absolutely useless for the purposes of leaking, *because they were blank*. But if Snowden downloaded 374,000 blank documents, it is proof he downloaded a bunch of things he didn't intend to leak.

Of course, fear-mongering about Snowden wandering the world with 374,000 blank documents risks making someone look crazy. So maybe that's the reason the Snowden skeptics have chosen to edit their number down, even while doing so is tacit admission they know he "touched" a lot of things he had no intention of leaking.

If Edward Jay Epstein wants to write the definitive screed against Snowden, he should

adopt, instead, that 1.9 million number. But in so doing, he should also admit he's raising concerns about Snowden leaking blank documents.