

The Need for National Security Leaks

The attack line against whistleblowers Bradley Manning and Edward Snowden that they should have gone through “proper channels” ignores that those oversight channels have been badly corrupted over the past several decades. That has left Americans dependent on out-of-channel leaks, says ex-CIA analyst Melvin A. Goodman.

By Melvin A. Goodman

A major problem in the United States is not there are too many whistleblowers there are too few. Where were the whistleblowers when the Central Intelligence Agency was operating secret prisons; conducting torture and abuse; and kidnapping individuals off the streets in Europe and the Middle East and turning them over to foreign intelligence agencies that conducted torture and abuse?

Where were the whistleblowers when the National Security Agency violated the Fourth Amendment of the Constitution against “unreasonable searches and seizures” and conducted widespread warrantless eavesdropping? Where were the whistleblowers when the State Department permitted the use of a consulate to serve as a cover for an inadequately protected intelligence platform in Benghazi?

Where were the whistleblowers when the Pentagon was building secret facilities in North Africa and the Arabian Peninsula in order to conduct military strikes in countries where the United States was not at war?

President Barack Obama, a Harvard-trained lawyer and former professor of constitutional law, has made it particularly difficult for whistleblowers and has displayed a stunning disregard for the balance of power and the need for oversight of foreign policy decision-making. He has pursued more leak investigations than all previous presidents combined since the passage of the Espionage Act in 1919.

Several press disclosures have been referred to the Justice Department for investigation, and in May 2013 the department subpoenaed two months of records for 20 telephone lines used by Associated Post reporters and editors. This was the most aggressive federal seizure of media records since the Nixon administration.

Attorney General Eric Holder even departed from First Amendment norms by approving an affidavit for a search warrant that named a Fox News reporter as a possible co-conspirator in violations of the Espionage Act, because the reporter

might have received classified information while doing his job.

President Obama has also inexplicably contributed to the need for whistleblowers by weakening the traditional institutions for oversight in the national security process, the Office of the Inspector General. Inspectors General are not popular institutions within the federal government, but they are essential for keeping the government honest by unearthing fraud, abuse and other illegal activities.

The Obama administration from the outset focused on weakening the OIG at the CIA by taking more than a year and a half to replace an outstanding IG, John Helgeson, whose staff had exposed the improprieties linked to extraordinary renditions as well as torture and abuse.

The most outrageous pursuit of a whistleblower was conducted against Thomas Drake, who determined that NSA eavesdroppers were squandering hundreds of millions of dollars on failed programs while ignoring privacy issues. Drake took his issues to the IG at NSA, the IG at the Pentagon, and to the congressional intelligence committees. (I am aware of individuals who have contacted congressional staffers with issues that required congressional scrutiny, but were warned that they would not receive a friendly reception from key members of the committee.)

After failing in these efforts, Drake turned to a reporter from the *Baltimore Sun*. As a result, Drake faced ten felony charges involving mishandling of classified information and obstruction of justice, which a judge wisely dismissed.

The case of Bradley Manning also demonstrates the mindset of the Obama administration and the mainstream media. Although Manning has entered a plea of guilty to charges that would give him a 20-year prison sentence, the government is pursuing a charge of aiding the enemy, which would mean a life sentence. The government has also ignored the Sixth Amendment's guarantee of a "speedy and public trial," with Manning's trial beginning on June 3, nearly three years after his arrest.

The military handling of Manning, particularly its imposition of unconscionable solitary confinement, has amounted to abuse and is in violation of the Eighth Amendment's prohibition of "cruel and unusual punishment." The scant coverage of the trial in the press is another example of the marginalization of a whistleblower.

The absence of checks and balances in the national security system over the past ten years has virtually assured the abuse of power that has taken place. In general, Congress has acquiesced in the questionable actions of both the Bush

and Obama administrations since 2001, permitting foreign policy to be the sole preserve of the Executive Branch and not the shared responsibility of the President and the Congress.

Congressional intelligence committees have become advocates for the intelligence community, particularly the CIA, instead of rigorous watchdogs. Similarly, the Armed Services committees have been advocates for the Pentagon and have not monitored the abuses of weapon's acquisitions programs.

Since the Vietnam War, we have observed a system of judicial tolerance, with the Supreme Court only intervening on foreign policy matters to endorse the policies and powers of the President. This deferential attitude toward the White House has resulted in an absence of judicial scrutiny of illegalities, including warrantless eavesdropping and the destruction of the torture tapes at the CIA that documented torture going beyond methods authorized by the Justice Department.

Ironically, the destroyer of the 92 videotapes of interrogations, Jose Rodriquez, who ignored a White House order not to destroy the tapes and should have faced at least obstruction of justice charges, has published a book sanctioned by the CIA that maligns the OIG for a "holier-than-thou attitude and the prosecutorial ways they routinely treated fellow CIA employees."

In addition to the failure of Congress and the courts to provide necessary regulation and oversight of the national security process, the mainstream media has been complacent about its watchdog role regarding secret agencies in a democratic arena. The media require the efforts of contrarians and whistleblowers in order to penetrate the secrecy of the policy and intelligence communities, but typically ignore the reprisals taken against whistleblowers.

Often, they disdain the information provided by whistleblowers that is critical of senior officials and government agencies preferring to protect their access to these officials. David Ignatius of the *Washington Post* falsely claimed that journalists "instinctively side with leakers," but he was quick to ridicule Edward Snowden who has exposed NSA's spying on millions of Americans' phone records and the Internet activity of hundreds of millions of foreigners.

Ignatius, moreover, has been an apologist for the CIA and has relied on clandestine operatives to present a one-sided picture of the CIA's National Clandestine Service. His novel (*Agents of Innocence*) provided a laudatory account of CIA tradecraft, relying on sensitive leaks from a senior operations officer.

My own experience with the mainstream media as a whistleblower is revelatory.

During my congressional testimony in 1991 against the nomination of Robert M. Gates as director of CIA, I provided background information to Elaine Sciolino of the *New York Times* in order to counter malicious rumors emanating from the White House that was designed to compromise my credibility.

Sciolino initially reported this information accurately, but then tilted to support Gates's confirmation. In a conversation several weeks after the confirmation hearings, Sciolino explained that it was becoming obvious that Gates would be confirmed and would be an important source to her as a CIA director. She added that, as I would return to the National War College as a professor of international relations, I would be of little further use.

Sciolino noted that whistleblowers make good sources only in the short run, while journalists must rely on policymakers for long-term access and should not gratuitously offend them. This explains the conventional analysis offered by the press corps and its reluctance to challenge official sources.

As a result of the imbalance in the process of foreign policy decision-making, we have come full circle from President Woodrow Wilson, who wanted to make the "world safe for democracy," to Presidents George W. Bush and Obama, who find the world too dangerous to honoring constitutional democracy.

The excesses of the Vietnam War; Watergate; Iran-Contra; and the Global War on Terror have contributed to the creation of a dangerous national security state and a culture of secrecy. Whistleblowers can help all of us decide whether the ends justify the means regarding these excesses.

Meanwhile, secrecy itself has fostered dangerous ignorance in the United States. The overuse of secrecy limits necessary debate and dialogue on foreign policy and deprives citizens of information on which to make policy and political judgments. Only a counter-culture of openness and a respect for the balance of power in the conduct of foreign policy can reverse the damage of the past decade.

As long as Congress defers to the President in the conduct of foreign policy; the courts intervene to prevent any challenge to the power of the President in the making of foreign policy; and the media defer to authorized sources, we will need courageous whistleblowers.

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[This article was first published at Counterpunch and re-posted with the approval of the author.]
