

A Call to End War on Whistleblowers

The post-9/11 expansion of U.S. government spying on citizens has coincided with an equally draconian crackdown on government whistleblowers who try to alert the American people to what is happening, an assault on the Constitution that seven whistleblowers say must end, writes John Hanrahan.

By John Hanrahan

Seven prominent national security whistleblowers on Monday called for a number of wide-ranging reforms, including passage of the "Surveillance State Repeal Act," which would repeal the USA Patriot Act, in an effort to restore the Constitutionally guaranteed Fourth Amendment right to be free from government spying.

Several of the whistleblowers also said that the recent lenient sentence of probation and a fine for General David Petraeus, for his providing of classified information to his mistress Paula Broadwell, underscores the double standard of justice at work in the area of classified information handling.

Speakers said Petraeus's favorable treatment should become the standard applied to defendants who are actual national security whistleblowers, such as Chelsea Manning, Edward Snowden and Jeffrey Sterling (who has denied guilt but who nevertheless faces sentencing May 11 for an Espionage Act conviction for allegedly providing classified information to New York Times reporter James Risen).

In a news conference sponsored by the ExposeFacts project of the Institute for Public Accuracy at the National Press Club in Washington, D.C., speakers included William Binney, former high-level National Security Agency (NSA) official; Thomas Drake, former NSA senior executive; Daniel Ellsberg, former U.S. military analyst and the Pentagon Papers whistleblower; Ray McGovern, formerly CIA analyst who chaired the National Intelligence Estimates in the 1980s; Jesselyn Radack, former Justice Department trial attorney and ethics adviser, and now director of National Security and Human Rights at the Government Accountability Project; Coleen Rowley, attorney and former FBI special agent; J. Kirk Wiebe, 32-year former employee at the NSA.

Several speakers warned that the Constitution, since the attacks of Sept. 11, 2001, has been shredded under Presidents George W. Bush and Barack Obama, and that Obama's unprecedented "war on whistleblowers" is part of the effort for the government to, as NSA whistleblower Thomas Drake put it, "unchain itself from the Constitution." Drake said he and other national security whistleblowers were "the canaries in the Constitutional coal mine" to warn of the NSA mantra "to

collect it all.”

Drake said he personally was “throwing my weight behind” passage of H.R. 1466, the Surveillance State Repeal Act, which was introduced by the bipartisan duo of Reps. Mark Pocan, D-Wisconsin, and Thomas Massie, R-Kentucky.

According to its sponsors, the measure would remove NSA’s claimed justification for its bulk phone metadata accumulation, but would also repeal the FISA Amendments Act through which the government claims the right to spy on Internet users. The issue is coming up now because three key provisions of the Patriot Act expire later this month. Responding to a question from a reporter, the other six whistleblowers said they also supported passage of H.R. 1466.

Petraeus’s recent favorable treatment from the Justice Department and a federal court judge came in for pointed comments from several speakers. In his deal with the government, Petraeus was allowed to plead to a misdemeanor for turning over classified materials to Paula Broadwell, who was writing an admiring biography of the general. Also, as part of the plea deal Petraeus was not even charged with the felony of lying to the FBI.

This stands in marked contrast to as many as nine individuals, including whistleblowers such as Chelsea (formerly Bradley) Manning, Edward Snowden, John Kiriakou (CIA) and the soon-to-be-sentenced Jeffrey Sterling, who have all been charged under the Espionage Act since Barack Obama became president.

Until the Obama administration came into office, the Act had only been used three times since its passage in 1917, which means Obama has used it three times as much as all of his predecessors put together since the law’s passage. But General Petraeus somehow gets to skate free.

“We all owe a debt of gratitude to General David Petraeus for showing us what a farce (the Obama administration’s) war on whistleblowers and leaks more generally really is,” said Jesselyn Radack.

She said she personally had represented seven whistleblowers “charged under the draconian Espionage Act the weapon of choice for the Obama administration except in the case of General Petraeus who was allowed to enter a plea on a minor misdemeanor charge,” which subjected him to two years probation and a \$100,000 fine.

Drawing on Petraeus’ favored treatment despite the seriousness of his offense and his lying to the FBI about it, Radack said probation and a fine, such as Petraeus received, was “a more appropriate response” to unauthorized disclosure or leaks of classified information, rather than prison sentences.

Daniel Ellsberg commented in the same vein that, "I don't think General Petraeus should go to prison" for providing classified material to Broadwell, but neither did he think true whistleblowers in the public interest should go to jail. He added, though, that "it would be wonderful for once to see a public official" go to jail for lying to Congress, or the courts, or the FBI, and for that I'd be willing to see him go to jail."

As for the Obama administration's overuse of the Espionage Act, Ellsberg said, "nobody but spies" who provide classified information to foreign governments should be tried under the Espionage Act.

Ellsberg prodded the mainstream press not only to protect whistleblower sources, but also to recognize that such sources are "the grist of investigative journalism." Too many in the mainstream press, Ellsberg said, seem to regard whistleblowers the way police officers regard their informants, as "snitches" and "law-breakers." He warned that Obama has "set the precedent" for dealing with whistleblowers, and the press needs to be more supportive of whistleblowers.

Ellsberg, Radack and Ray McGovern also said the Espionage Act, which prohibits whistleblowers from presenting their motives for disclosing classified information as part of their defense, needs to be amended to allow for "a public interest defense." Illustrating the need for reform, McGovern said that in the Manning court-martial and the Sterling trial, as soon as defense attorneys started to raise the issue of motive, there was an immediate government objection and an immediate ruling of sustained from the judge.

McGovern said Sterling was convicted on "the vaguest of circumstantial evidence" in a "case that was not proven" against him. The government showed that Sterling had had telephone conversations with New York Times reporter James Risen, who had previously written about Sterling's workplace discrimination lawsuit against the CIA, and prosecutors apparently convinced the jury that they were not discussing Sterling's discrimination suit, but rather his knowledge of a CIA plan to provide flawed nuclear weapons blueprints to Iran .

What was the lesson any intelligence agency employee might draw from the flimsy evidence used in the Sterling case? Said McGovern: "Do not speak to journalists." And, especially, "don't speak to James Risen."

Contrasting Sterling's situation (facing a possible long prison sentence) with Petraeus (walking free, with a \$100,000 fine, which McGovern noted was three-fourths of a one-hour speaking engagement fee for the general), McGovern said: "Equal justice? Forget about it."

Coleen Rowley centered her remarks around a statement Obama made last week in apologizing for the deaths of two hostages, an American and an Italian, in a drone strike in Pakistan. Obama, she said, opined that “one of the things that sets America apart from many other nations, one of the things that makes us exceptional is our willingness to confront squarely our imperfections and to learn from our mistakes.”

“I wish that were true,” Rowley said. “That would be nice if we learned from our mistakes,” but instead the government is going in the opposite direction in areas such as the drone program, as witness the accidental killing of the hostages.

Gathering an accurate assessment of intelligence is inherently going to happen at the bottom levels of intelligence agencies, Rowley said, so employees in the lower positions have to resist someone at the top stating a desired outcome and asking people at the bottom to tailor the intelligence accordingly.

She said that government officials and employees’ “highest loyalty is to the rule of law itself.” That is where whistleblowers come in.

Kirk Wiebe said that the public and political response to the NSA surveillance disclosures has not been encouraging, and painted a dire picture of civil liberties abuses, the militarization of local police forces and the “de facto destruction of the Constitution.”

“I am now entering the phase where I am becoming frightened,” Wiebe said. “People have asked me, are we going to be able to get out of this mess to turn the Titanic around? I don’t see the way to miss hitting the iceberg.”

“We as a nation are more aware of these issues than ever before,” Wiebe said, but “we’ve become a society willing to look the other way in the face of wrongdoing,” adding: “We are no longer afraid of the police state happening. It’s here in small measures, in increasing measures, week by week, day by day”

In introducing William Binney, IPA’s executive director Norman Solomon noted that 10 months before Edward Snowden’s NSA surveillance documents began to appear in The Guardian in June 2013, Binney had already gone public in a mini-documentary by filmmaker Laura Poitras.

In that interview Binney, without documents, raised many of the spying allegations that Snowden subsequently disclosed. It was this video that apparently encouraged Snowden to contact Poitras, who in turn contacted journalist Glenn Greenwald, to give them the NSA documents.

Binney said the NSA since 2002 had managed to use “terrorizing and fear-

mongering” as a way to manipulate and “co-opt Congress and a senior judge at the FISA court,” while keeping the public in the dark about “violating the Constitutional rights of everybody in the country.”

Since it had the White House blessing, Binney said the NSA controlled all three branches of government before its activities came to light. Former NSA director Michael Hayden “to this day” continues to lie that the agency doesn’t collect content, only metadata, Binney said.

In raising the alarm about the sweep of NSA programs since leaving the agency, Binney said he had been painted by NSA as someone who had no credibility “because I was a disgruntled former employee.”

John Hanrahan, currently on the editorial board of ExposeFacts, is a former executive director of The Fund for Investigative Journalism and reporter for The Washington Post, The Washington Star, UPI and other news organizations. He also has extensive experience as a legal investigator. Hanrahan is the author of *Government by Contract* and co-author of *Lost Frontier: The Marketing of Alaska*. He has written extensively for NiemanWatchdog.org, a project of the Nieman Foundation for Journalism at Harvard University. [This story originally appeared at ExposeFacts.org]
