Obama’s Double-Standard on Leaks

Though President Obama touts America as a nation of laws and evenhanded justice, there is a blatant double-standard regarding how people are punished for national security breaches whistleblowers are harshly punished but the well-connected get a pass, writes John Hanrahan.

By John Hanrahan

There he goes again. In recently proclaiming Hillary Clinton free of any national security breach, even as the FBI was continuing its investigation of her use of a potentially risky private email server for official business while she was Secretary of State, President Barack Obama continued his disturbing pattern of rendering his personal verdict ahead of legal proceedings in high-profile cases involving classified government information.

From Private Chelsea Manning to General David Petraeus to Edward Snowden and now to Hillary Clinton, the President has sounded off with his opinions on guilt or innocence, and on any alleged damage to national security, in advance of either a trial, or an indictment, or completion of an investigation.

Short version: whistleblowers Manning and Snowden clearly guilty; former high government officials Petraeus and Clinton, no problem.

In April 2011, two years before court martial proceedings began and almost two years before Manning acknowledged being a source for hundreds of thousands of classified documents released by Wikileaks, Obama proclaimed Manning guilty. The materials Manning provided to Wikileaks exposed diplomatic secrets and U.S. military abuses in Iraq and Afghanistan, including showing greater numbers of civilian casualties than admitted publicly by U.S. officials.

Among the most shocking was the classified “collateral murder video” that showed U.S. military personnel in an Apache helicopter in a Baghdad suburb indiscriminately firing on and killing more than a dozen people, including rescuers and two Reuters employees, and wounding others, including two children.

Likewise, exiled whistleblower Edward Snowden was excoriated in absentia by Obama in January 2014 for providing to journalist Glenn Greenwald, filmmaker Laura Poitras and others a trove of frightening National Security Agency documents. The documents showed that the Big Brother State had indeed arrived via the NSA’s worldwide, dragnet surveillance and data collection programs.

Petraeus received Obama’s no-harm-no-foul verdict in November 2012, while Clinton won the president’s thumbs-up during a 60 Minutes appearance by the
President that was broadcast this past Oct. 11.

In his public pronouncements, a double standard has been applied by the President to powerful former governmental figures caught up in investigations regarding classified information. In Obama’s eyes, neither Petraeus nor Clinton did anything wrong: Not Petraeus in providing extremely highly secretive documents to his mistress Paula Broadwell; nor Clinton, in using her personal email server to conduct official business while she was Secretary of State, a server that might have contained classified information and that critics contend could have been easily penetrated by hackers, including unfriendly foreign governments.

And in both the Petraeus and Clinton cases, Obama stated his views publicly in an early stage of an investigation, sending a message that would certainly give pause to FBI investigators and federal prosecutors trying to build a case involving either of those two powerful former government officials.

It’s worth revisiting some of what Obama said about these various national security investigations, and the possible impact his statements had or might have on subsequent events in these cases:

**Chelsea Manning**

On April 21, 2011, Obama was confronted, and recorded, at a political fundraiser by a Manning supporter who wanted to know why Manning was being prosecuted on such serious charges. Manning, said Obama, was “irresponsible, risked the lives of service members and did a lot of damage. He broke the law.”

Remember, this was two years before Manning went to trial and almost two years before Manning acknowledged being the source for documents released by Wikileaks. Nothing had been proved against Manning in any legal forum.

Obama also made further comments that have a delightful irony about them, given the subsequent investigation of Petraeus, as well as the disclosure that former CIA Director Leon Panetta had provided classified information to the makers of the torture-justifying movie, “Zero Dark Thirty.”

Said Obama: “If I was to release stuff, information that I’m not authorized to release, I’m breaking the law. We’re a nation of laws. We don’t individually make our own decisions about how the laws operate.”

To those of us who attended sessions of Manning’s 2013 court-martial, with the defense hamstrung by adverse national security rulings and barred by espionage law from mounting a public-interest defense, the verdict was not surprising. But the draconian 35-year sentence meted out by military judge Colonel Denise Lind
was a shocker even in the context of the sham that is “military justice.”

Human nature, being what it is, would suggest that when the top military boss, the commander-in-chief, publicly pronounces the defendant guilty in advance of trial, some attention is certainly paid further down the chain of command to not only winning a conviction, but imposing a stiff sentence as well.

In that context, the President’s pre-trial comments amounted to exerting undue command influence, as Manning supporters and even some in the mainstream press pointed out at the time. NBC News chief Pentagon correspondent Jim Miklaszewski wrote this:

“The Uniform Code of Military Justice prohibits ‘Command Influence,’ in which a superior officer up the chain of command says or does something that could influence any decisions by a military judge or jury in a criminal case. As commander in chief, there’s no one higher up the chain than the president.”

In receiving that unconscionable 35-year prison term from Judge Lind, Manning may indeed be paying the price for Obama’s pre-trial comments.

**General Petraeus**

On Nov. 9, 2012, just three days after Obama was reelected, Petraeus resigned as CIA director as the news broke of his affair with Paula Broadwell. A mere five days after that, with the FBI’s investigation still in an early phase, Obama, in his first post-election news conference, all but exonerated Petraeus, saying:

“I have no evidence, from what I have seen at this point, that classified information was exposed.” He also said that he had seen nothing “that in any way would have had a negative impact on our national security.”

Obama then poured it on, reminding the American public that this four-star general is a unique man who deserves being left alone because of all of his service on our behalf.

“We are safer because of the work that Dave Petraeus has done,” Obama said. “And my main hope right now is, is that he and his family are able to move on and this ends up being a single side note on what has otherwise been an extraordinary career.”

Obama may or may not have known that just the previous month (October 2012) Petraeus had lied to the FBI that he had not provided any classified information to Broadwell (who co-authored a biography of Petraeus). He had also signed a statement upon leaving the CIA that he had no classified material in his possession, another lie.
When the FBI raided Petraeus’s home in April 2013, agents confiscated from an unlocked desk drawer eight notebooks that contained what the New York Times described as “handwritten classified notes about official meetings, war strategy, intelligence capabilities and the names of covert officers.” Petraeus himself described material in some of the so-called “black books” as being “highly classified.”

Petraeus subsequently admitted providing the classified notebooks to Broadwell and worked out a sweetheart plea deal under which he was not charged with a felony or covering up by lying to the FBI, but instead was allowed to plead guilty to a minor misdemeanor count of unauthorized removal and retention of classified material.

For that, in marked contrast to two convicted CIA whistleblowers, John Kiriakou and Jeffrey Sterling, who received prison sentences of 30 months and 42 months, respectively, Petraeus was given no prison time. His slap-on-the-wrist “punishment”: two years probation and a $100,000 fine.

In addition to having a compliant Justice Department to thank, Petraeus can certainly give a tip of his general’s hat to a president, who made his views clear early on: Namely, you do not send a world-famous general to jail for an offense that would likely land any less heralded soldier in federal prison for many years.

In any event, present and future high-ranking government officials should take note: There is now an apparent “mistress exception” loophole in all those laws and regulations relating to the leaking of classified materials.

Edward Snowden

In a Jan. 17, 2014 speech touting what he described as his plans to reform U.S. surveillance practices, President Obama said that the “Snowden disclosures” had the effect of “revealing methods to our adversaries that could impact our operations in ways that we may not fully understand for years to come.”

“Given the fact of an open investigation, I’m not going to dwell on Mr. Snowden’s actions or his motivations,” Obama said. “Our nation’s defense depends in part on the fidelity of those entrusted with our nation’s secrets. If any individual who objects to government policy can take it in their own hands to publicly disclose classified information, then we will not be able to keep our people safe, or conduct foreign policy.”

Five days after Snowden revealed himself as the whistleblower source for the NSA documents, the Justice Department filed a criminal complaint against him, charging him with theft and, more seriously, with two espionage charges:
“unauthorized communication of national defense information” and “willful communication of classified communications intelligence information to an unauthorized person.”

In the event Snowden someday faces a trial, you can bet that some variation of Obama’s words, that Snowden’s disclosures had revealed “methods to our adversaries that could impact our operations in ways that we may not fully understand for years to come”, will be part of the prosecutor’s arsenal of charges. Just as was the case in the Chelsea Manning, Jeffrey Sterling and John Kiriakou prosecutions, whistleblowing equates to endangerment to us all.

Hillary Clinton

In an appearance on CBS’s 60 Minutes that was broadcast on Oct. 11, 2015, Obama said that Hillary Clinton’s use of a private email server is “not a situation in which America’s national security was endangered.” While he opined that Clinton’s use of the non-governmental server was a “mistake,” Obama added: “I don’t think it posed a national security problem.”

How can the President be so sure in the initial stages of an investigation that Manning is guilty and Petraeus and Clinton have done nothing to endanger national security? That Snowden and Manning, though, did endanger national security, but Clinton’s problematic private server, there for the possible picking by friendly or unfriendly nations or terrorist factions, did not?

This gratuitous support for Clinton, coming smack in the middle of the FBI investigation, sends a message down the civilian chain of command: Move on. Nothing to see here. An FBI agent or Justice Department prosecutor might just want to think twice about whether it’s a great career-enhancing move to keep pursuing the Clinton email matter when the President sends such a message out to the world.

(As if the pressure weren’t already enough, knowing that the woman you’re investigating could very likely be elected president next year.)

Even people who believe that Clinton did nothing wrong, who feel that this is just another Republican-influenced vendetta to sabotage her presidential campaign, should be concerned that a president would interject himself thusly into an ongoing investigation.

Two days after the 60 Minutes broadcast, White House press secretary Josh Earnest issued one of those statements intended for that segment of the American public that just fell off the turnip truck: The President’s comment on 60 Minutes was “based on what we publicly know” and “certainly was not an attempt, in any way, to undermine the importance or independence of the ongoing FBI
investigation.”

A president who taught constitutional law at the University of Chicago Law School has to know that casting such public judgments with the weight of the presidency behind them, guilty for whistleblowers who perform a true public service, exceptions for high-ranking government officials because a double standard applies, further erodes the already crumbling rule of law in this fearful post-9/11 era.

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