

Why Trump's 'Muslim Ban' Lost in Court

By overtly targeting Muslims with a travel ban, President Trump put himself at odds with U.S. treaties and other legal agreements, ensuring his latest legal setback in federal court, writes legal scholar Marjorie Cohn for JURIST.

By Marjorie Cohn

After a federal district court judge and a unanimous three-judge panel of the Ninth Circuit Court of Appeals ruled that Donald Trump's Executive Order (EO) instituting a travel ban was likely illegal, the president suspended it and issued a new EO on March 6.

On March 15, a federal judge granted a temporary restraining order in Hawaii v. Trump et al., halting the operation of the new EO nationwide. U.S. District Judge Derrick K. Watson found that plaintiffs met their burden of establishing a strong likelihood of success on the merits of their Establishment Clause claim, that irreparable injury is likely if the requested relief is not issued, and that the balance of the equities and public interest counsel in favor of granting the requested relief.

When the case is heard on the merits, the legality of the new EO, which categorically suspends immigration from six Muslim majority countries to the United States, should be assessed in light of U.S. treaty and customary international law, according to an amicus brief filed in the case.

Eighty-one international law scholars, including this writer, and a dozen non-governmental organizations with expertise in civil rights law, immigration law or international human rights law (amici) argue in their amicus brief that the new EO threatens discrimination that would run afoul of two treaties. They are the International Covenant on Civil and Political Rights (CCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

When the United States ratifies a treaty, it not only makes the U.S. a party to that treaty; it also becomes U.S. domestic law under the Supremacy Clause of the Constitution, which says treaties "shall be the supreme law of the land." Courts have a duty to restrain federal executive action that conflicts with a ratified treaty.

Customary international law develops from the general and consistent practice of states. It is part of federal common law and must be enforced in U.S. courts, whether or not its provisions are contained in a ratified treaty.

Under the Constitution's Take Care Clause, the President must "take care that the laws be faithfully executed." This means Trump has a constitutional duty to comply with our legal obligations under both treaty and customary international law.

"[T]he Immigration and Nationality Act and other statutes must be read in harmony with these international legal obligations pursuant to the Supremacy Clause of the Constitution and long established principles of statutory construction requiring acts of Congress to be interpreted in a manner consistent with international law, whenever such a construction is reasonably possible," amici argue. "In this case, the international law obligations . . . reinforce interpretations of those statutes forbidding discrimination of the type threatened by Sections 2 and 11 of the EO."

International Covenant on Civil and Political Rights

The United States ratified the CCPR in 1992. Article 2 prohibits "any distinction, exclusion, restriction or preference" based on religion or national origin, which has "the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing," according to the United Nation Human Rights Committee (HRC), the body charged with monitoring implementation of the CCPR.

Article 2 prohibits discrimination against the family as well as individuals. "The family is the natural and fundamental group of society and is entitled to protection by society and the State," Article 23 says. The HRC has opined that states have an obligation to adopt appropriate measures "to ensure the unity or reunification of families, particularly when their members are separated for political, economic and similar reasons."

Many immigrants and refugees flee their countries of origin and come to the United States to reunify with their families. The CCPR protects them against discrimination based on religion or national origin.

Amici state in their brief, "Restrictions on travel and entry caused by the EO that impose disparate and unreasonable burdens on the exercise of this right violate CCPR article 2." According to the HRC, although the CCPR does not generally "recognize a right of aliens to enter or reside in the territory of a State party . . . , in certain circumstances an alien may enjoy the protection of the Covenant even in relation to entry or residence, for example, when considerations of non-discrimination, prohibition of inhuman treatment and

respect for family life arise.”



Thus the non-discrimination mandates and protection of family life in the CCPR “should be considered by courts in interpreting government measures affecting family unification,” the brief says.

Article 26 prohibits religious and national origin discrimination and guarantees equal protection in any government measure. These provisions are not limited to individuals within the territory of the state party and subject to its jurisdiction. So immigrants need not be physically present in the United States to enjoy the protection of Article 26.

Moreover, the non-discrimination requirements enshrined in the CCPR also constitute customary international law. In 1948, the United States approved the Universal Declaration of Human Rights (UDHR), which is part of customary international law. The UDHR forbids discrimination based on religion or national origin, guarantees equal protection of the law, and protects family life against arbitrary interference.

International Convention on the Elimination of All Forms of Racial Discrimination

The United States ratified CERD in 1994. That treaty also prohibits discrimination based on religion or national origin. “Racial discrimination” includes any distinctions and restrictions based on national origin. Article 1 specifies that states can only adopt “nationality, citizenship or naturalization” policies that “do not discriminate against any particular nationality.”

Like the CCPR, CERD does not limit its non-discrimination provisions to citizens or resident noncitizens. “While CERD does not speak specifically to restrictions on entry of nonresident aliens,” the brief says, “the general language of CERD expresses a clear intention to eliminate discrimination based on race or national origin from all areas of government activity.”

In Article 4, CERD provides that states parties “[s]hall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.” This includes discrimination based on national origin.

The Committee on the Elimination of Racial Discrimination, the body of independent experts that monitor the implementation of CERD, interprets Article 4 as requiring states to forbid speech that stigmatizes or stereotypes noncitizens, immigrants, refugees and those seeking asylum.

International Law Should be Considered in Evaluating the EO

“Those international law principles require courts to reject any attempt by the President to define classes based on national origin or religion, and then to impose on those classes disparate treatment, except to the extent necessary to achieve a legitimate government purpose,” amici wrote.

Their brief continues, “The EO ... makes an explicit distinction based on national origin that, unless necessary and narrowly tailored to achieve a legitimate government aim, would violate US obligations under international law.”

In effect, the EO makes a distinction based on religion. All six of the listed countries have majority Muslim populations. As the brief says, “the EO does not suspend immigration from any state with a non-Muslim majority.”

Amici also argue that international law is relevant to Section 11 of the EO, which requires the Secretary of Homeland Security to “collect and make publicly available” information relating to convictions of terrorism-related crimes, government charges of terrorism, and “gender-based violence against women” by foreign nationals. But the EO does not require publication of this information on U.S. citizens.

“By mandating that the Secretary publish pejorative information about noncitizens without comparable information about US citizens,” amici wrote, “Section 11 makes a suspect distinction based on national origin.”

Section 11 “may bear on the intent to discriminate, because the decision to publish derogatory information about noncitizens alone is stigmatizing, and appears to be motivated by a desire to characterize noncitizens as more prone to terrorism or gender-based violence than US citizens.” Moreover, “a measure designed to stigmatize noncitizens cannot be proportionate and thus violates article 26 of the CCPR and articles 2 and 4 of the CERD.”

Thus, amici “request that the Court consider US obligations under international law, which forms part of US law, in evaluating the legality of the EO.”

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Trump Slips into ‘Endless War’ Cycle

Exclusive: President Trump’s foreign policy is falling into line behind continuing wars in the Middle East, a disappointment to supporters who hoped for a change in course, writes James W Carden.

By James W Carden

There was, during the course of the 2016 campaign, a small but vocal group of antiwar libertarians and conservatives who had convinced themselves that Donald Trump was preferable to Hillary Clinton because he, Trump, had made his (fictitious) opposition to the Iraq War a cornerstone of his candidacy. Trump, some believed, was a Republican in the mold of Senator Robert Taft, someone who would turn away from neoconservative, interventionist orthodoxy.

If, as the adage suggests, we can judge a man by his enemies, a cursory look at Trump’s most vocal Republican critics would seem to confirm this judgment. Why, here’s Bill Kristol in [January 2016](#), asking “Isn’t Donald Trump the very epitome of vulgarity?” *Commentary*’s John Podhoretz declared that Trump “would be, unquestionably, the worst thing to happen to the American common culture in my lifetime.” Professor Eliot A. Cohen and his merry band of think tank militarists published [an open letter](#) in opposition to Trump’s candidacy while *National Review* convened a symposium of anti-Trumpers for a special issue titled “Against Trump.”

Perhaps, though, Kristol, Cohen, Podhoretz, *NR* and the rest needn’t have worried so. Trump, it turns out, seems every bit as captive to the bipartisan foreign policy consensus as was his predecessor. Many supporters of Barack Obama held the errant hope that Obama would finally break the cycle of wars begun a quarter-century ago when George H.W. Bush launched Operation Desert Storm against Iraq and in defense of desert petro-states, Kuwait and Saudi Arabia.

Trump partisans may object that he’s only been in office for about two months. Give him time, they say. That’s fair enough, but it is worth reviewing Trump’s foreign policy record up to this point.

An administration’s budget is generally a reliable indicator of its priorities.

Here we find, in Trump's first budget proposal, nearly \$11 billion in cuts to the U.S. Department of State, a cut of roughly 29 percent, while the Pentagon is budgeted for an additional \$54 billion, an increase of 9 percent.

Afghanistan, where the U.S. has been at war for 15½ years, is by far American's longest and perhaps most futile overseas engagement. Here the Trump administration seems intent on ratcheting up airstrikes on the Taliban in a departure from the narrower focus on anti-terrorism that characterized the late Obama administration policy.

The head of U.S. Central Command, U.S. Army Gen. Joseph Votel, told the Senate Armed Services Committee last week that he will recommend an increase in troops in order "to make the advise-and-assist mission more effective." This comes on the heels of testimony by the top commander in Afghanistan, Army General John Nicholson telling Congress in February that he would need "a few thousand more" troops to carry out the mission.

More Troops

Meanwhile, more troops are being deployed to Kuwait. On March 9, the Army Times reported that the U.S. is sending "an additional 2,500 ground combat troops to a staging base in Kuwait from which they could be called upon to back up coalition forces battling the Islamic State in Iraq and Syria." This is in addition to the already roughly 6,000 American troops that are currently in Syria and Iraq assisting in the fight against the Islamic State. American units are now in the northern Syrian city of Manbij and on the outskirts on Raqqa.

The latter deployment of Marines from the 11th Marine Expeditionary Unit marks, according to the Washington Post, "a new escalation in the U.S. war in Syria, and puts more conventional U.S. troops in the battle." The Post, like all other mainstream outlets, leaves out mention that this new deployment is illegal under international law, a point Syrian President Bashar al-Assad made in an interview with Chinese state media last weekend.

And then, perhaps worst of all, there is the ongoing American support for Saudi Arabia's war on Yemen. As Council on Foreign Relations analyst Micah Zenko recently pointed out, Trump has already "approved at least 36 drone strikes or raids in 45 days – one every 1.25 days." These include, according to Zenko, "three drone strikes in Yemen on January 20, 21, and 22; the January 28 Navy SEAL raid in Yemen; one reported strike in Pakistan on March 1; more than thirty strikes in Yemen on March 2 and 3; and at least one more on March 6." The strikes, we are told, are a necessary part of the "global war on terror" and are portrayed by military and administration spokesmen as such.

A Pentagon spokesman told longtime CNN stenographer Barbara Starr that the wave of 30 strikes on March 2 and 3 were “precision strikes in Yemen against al Qaeda in the Arabian Peninsula” in order to “maintain pressure against the terrorists’ network and infrastructure in the region.” The U.S.-Saudi war on Yemen has predictably resulted in a humanitarian catastrophe. According to the Brookings Institution’s Bruce Reidel, “a Yemeni child dies every 10 minutes from severe malnutrition and other problems linked to the war and the Saudi blockade of the north.”

All this on behalf of our old friends the Saudis. In the decade and a half after aiding the 9/11 hijackers, the Kingdom of Saudi Arabia has, with American acquiescence, embarked on a campaign to destroy Yemen because of an illusory threat posed by Iran. Yet the reason behind KSA’s aggression on the southern end of the Arabian peninsula has not a bit to do with “security” or Iranian “aggression” or fighting “terrorism”; it is a sectarian campaign waged by Saudi extremists, nothing more. What could possibly be America’s interest in assisting the Saudis in such an endeavor?

Yet, despite the heinous nature of Saudi Arabia’s anti-Houthi campaign in Yemen, its mastermind, the young Saudi Defense Minister Prince Mohammed bin Salman, was treated to lunch at the White House with the President this week. In an ominous sign of things to come, a statement from the Saudis noted that Trump and bin Salman “share the same views on the gravity of the Iranian expansionist moves in the region.”

And so, to sum up: President Trump, in the space of two months, has proposed a budget that slashes funding for diplomacy, spends lavishly on military, has committed thousands of troops, conducted dozens of airstrikes, and cemented the U.S. commitment to the wars in Iraq, Syria, Yemen and Afghanistan for the foreseeable future. Meanwhile, he and his team have signaled to the Saudis that they fully share the Kingdom’s obsession with Iranian “expansion.”

An Unending Cycle

What can be done to break the seemingly unending cycle of American intervention in the Middle East? What all the aforementioned interventions have in common is that they are, as the constitutional lawyer and former Justice Department official Bruce Fein has pointed out, presidential wars, which he defines as “wars in which the President decides to take the United States from a state of peace to a state of war.”

Fein, a founding member of the anti-interventionist Committee for The Republic, has written at length on what he views as the steady erosion of the congressional prerogative in matters of war and peace. Fein writes that the

Founders “unanimously entrusted to Congress exclusive responsibility for taking the nation to war in Article I, section 8, clause 11 of the Constitution” because they understood “to a virtual certainty that Congress would only declare war in response to actual or perceived aggression against the United States, i.e., only in self-defense.”

Accordingly, the Committee for The Republic has embarked on a timely project aimed at having “the House pass a resolution that defines presidential wars under the Constitution going forward and declares them unconstitutional in violation of Article I, section 8, clause 11 (Declare War Clause).” Furthermore, the “End Presidential Wars” project seeks a further resolution, which would warn “the President that such wars will be deemed high crimes and misdemeanors under Article II, section 4 of the Constitution resulting in his or her impeachment, conviction, and removal from office.”

Fein points to Alexis de Tocqueville’s observation in *Democracy in America* that, “All those who seek to destroy the liberties of a democratic nation ought to know that war is the surest and shortest means to accomplish it.”

Unless we come to grips with our current mania for overseas intervention and find a remedy for Congress’s abdication of its constitutional responsibilities, we are doomed to remain in the 25-year grip of endless, counterproductive and illegal military interventions in the Middle East and beyond.

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Testing the Principle of Free Speech

A surge in hateful speech toward minorities in the Age of Trump has been met by a pushback from angry activists, sometimes trampling the vital principle of free and open debate, writes Michael Winship.

By Michael Winship

At the risk of sounding like a geezer complaining about “these kids today,” back in my college days, when it came to points of view we were unhesitatingly exposed to literature, teachers and on-campus speakers covering the ideological waterfront.

In one instance, the student body was addressed by civil rights activist and comedian Dick Gregory, radical Irish activist Bernadette Devlin and the conservative writer and critic Russell Kirk – all in the course of a week or so.

Such variety was a common occurrence, and freewheeling, open discussion was encouraged. We didn't always like or agree with a lot of what we heard or read – from time to time there were vehement protests – but all of it was invaluable. None of us were harmed in the making of our education.

So I was appalled other day when I read about the attempt by Republican Arkansas legislator Kim Hendren to ban from that state's public schools all books written by the great radical historian Howard Zinn, including his seminal *A People's History of the United States*, a truthful, lacerating look at the heroes and villains of America – especially the oligarchs and kleptocrats who once again have their heels on the necks of the poor and middle class.

But I also was deeply troubled by the incident at Vermont's Middlebury College on March 2, when controversial social scientist Charles Murray was invited by a conservative student group and attempted to speak on campus. Here's what happened, according to the Associated Press:

"Hundreds of students chanted as Murray began to speak Thursday, forcing the college to move the lecture to an undisclosed location. Murray's talk was live-streamed to the original venue, but protesters drowned it out. The topic, he said, was the divergence of the country's culture into a new upper class separated from mainstream America.

"Afterward, a group of protesters surrounded Murray, professor Allison Stanger and college administrator Bill Burger as they were leaving, he said. The protesters became violent, with one pulling Stanger's hair, twisting her neck, the college said.

"After Murray and the two Middlebury staff members got into a car to leave, protesters banged on the windows, climbed onto the hood and rocked the vehicle, the college and Murray said."

Professor Stanger, by the way, went to the ER and was subsequently diagnosed with concussion. She's a respected political scientist at Middlebury and a fellow at the progressive New America, and was there the other night because the conservative student group had asked her to provide a counterpoint to Murray's speech, to interview him from the stage after his prepared remarks. She had prepared some tough, challenging questions.

Odious Opinions

Many of Charles Murray's opinions are indeed odious and his research highly questionable. He was co-author of *The Bell Curve*, a notorious book that seemed to link race and IQ. He describes himself as a libertarian, but the Southern Poverty Law Center (SPLC) calls him a white nationalist and reports:

"According to Murray, the relative differences between the white and black populations of the United States, as well as those between men and women, have nothing to do with discrimination or historical and structural disadvantages, but rather stem from genetic differences between the groups... Murray's attempts to link social inequality to genes are based on the work of explicitly racist scientists."

At the beginning of Murray's attempt to speak at Middlebury, students turned their backs to him and chanted in protest. I probably would have done the same. But to not let him speak and to allow the protests to lead to violence is inexcusable.

I realize that this raises all sorts of questions about freedom of speech and academic liberty, the nature of dissent and when and if political violence is ever justified, but looking at what happened coolly – and admittedly, from a distance – it seems clear that this went far beyond the boundaries of civil discourse that especially today must be defended against the barbarians who already have run roughshod, pushing through the gates and seizing the reins of power and governance.

Professor Stanger said it best herself. She wrote:

"To people who wish to spin this story as one about what's wrong with elite colleges and universities, you are mistaken. Please instead consider this as a metaphor for what is wrong with our country, and on that, Charles Murray and I would agree. This was the saddest day of my life. We have got to do better by those who feel and are marginalized. Our 230-year constitutional democracy depends on it, especially when our current President is blind to the evils he has unleashed. We must all realize the precious inheritance we have as fellow Americans and defend the Constitution against all its enemies, both foreign and domestic. That is why I do not regret my involvement in the event with Dr. Murray."

And then she quoted James Baldwin: "Not everything that is faced can be changed, but nothing can be changed until it is faced."

I can be as guilty as the next person about tuning out and trying to ignore the voice of someone with whom I vehemently disagree. I know, too, that this indeed is a time to speak out against the ignorance and despotism sweeping our nation.

Further, I realize that the religious, racial and homophobic hate crimes that have been on the upswing since Donald Trump's candidacy and election – and increased in 2016 for the second year in a row according to the Southern Poverty Law Center – far exceed in numbers and intensity any violence or brutishness that has occurred on college campuses. No question that they're more frightening and dangerous.

But, in the words of Andrew Sullivan, "Universities are the sanctuary cities of reason. If reason must be subordinate to ideology even there, our experiment in self-government is over."

Two sides of the same coin: whether the Trump White House or those who would physically attack a college professor. Their unthinking, unyielding enslavement to a single viewpoint is fatal.

Ignorance begets ignorance and hate begets hate. And like a virus, each can infect without regard to race, gender, creed or political perspective. At a time when those in charge are fueling a pandemic of intolerance we must make sure not to succumb ourselves.

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The Misguided 'Vault 7' Whodunit

Typically, the mainstream U.S. media responds to a major leak of U.S. intelligence secrets as a whodunit search for the leaker rather than focus on the troubling disclosures, as Jesselyn Radack notes after the "Vault 7" release.

By Jesselyn Radack

It is the leakiest of times in the Executive Branch. Last week, Wikileaks published a massive and, by all accounts genuine, trove of documents revealing that the CIA has been stockpiling, and lost control of, hacking tools it uses against targets.

Particularly noteworthy were the revelations that the CIA developed a tool to hack Samsung TVs and turn them into recording devices and that the CIA worked to infiltrate both Apple and Google smart phone operating systems since it could

not break encryption. No one in government has challenged the authenticity of the documents disclosed.

We do not know the identity of the source or sources, nor can we be 100 percent certain of his or her motivations. Wikileaks writes that the source sent a statement that policy questions “urgently need to be debated in public, including whether the CIA’s hacking capabilities exceed its mandated powers and the problem of public oversight of the agency” and that the source “wishes to initiate a public debate about the security, creation, use, proliferation and democratic control of cyber-weapons.”

The FBI has already begun hunting down the source as part of a criminal leak investigation. Historically, the criminal justice system has been a particularly inept judge of who is a whistleblower. Moreover, it has allowed the use of the pernicious Espionage Act – an arcane law meant to go after spies – to go after whistleblowers who reveal information the public interest.

My client, former NSA senior official Thomas Drake, was prosecuted under the Espionage Act, only to later be widely recognized as a whistleblower. There is no public interest defense to Espionage Act charges, and courts have ruled that a whistleblower’s motive, however salutary, is irrelevant to determining guilt.

The Intelligence Community is an equally bad judge of who is a whistleblower, and has a vested interest in giving no positive reinforcement to those who air its dirty laundry. The Intelligence Community reflexively claims that anyone who makes public secret information is not a whistleblower. Former NSA and CIA Director General Michael V. Hayden speculated that the recent leaks are to be blamed on young millennials harboring some disrespect for the venerable intelligence agencies responsible for mass surveillance and torture.

Not only is his speculation speculative, but it’s proven wrong by the fact that whistleblowers who go to the press span the generational spectrum from Pentagon Papers whistleblower Daniel Ellsberg to mid-career and senior level public servants like CIA torture whistleblower John Kiriakou and NSA whistleblower Thomas Drake to early-career millennials like Army whistleblower Chelsea Manning and NSA whistleblower Edward Snowden. The lawbreaker does not get to decide who is a whistleblower.

Whistleblowing or Not

Not all leaks of information are whistleblowing, and the word “whistleblower” is a loaded term, so whether or not the Vault 7 source conceives of him or herself as a whistleblower is not a particularly pertinent inquiry. The label “whistleblower” does not convey some mythical power or goodness, or some “moral

narcissism," a term used to describe me when I blew the whistle.

Rather, whether an action is whistleblowing depends on whether or not the information disclosed is in the public interest and reveals fraud, waste, abuse, illegality or dangers to public health and safety. Even if some of the information revealed does not qualify, it should be remembered that whistleblowers are often faulted with being over- or under-inclusive with their disclosures. Again, it is the quality of the information, not the quantity, nor the character of the source.

Already, the information in the Vault 7 documents revealed that the Intelligence Community has misled the American people. In the wake of Snowden's revelations, the Intelligence Community committed to avoid the stockpiling of technological vulnerabilities, publicly claiming that its bias was toward "disclosing them" so as to better protect everyone's privacy. However, the Vault 7 documents reveal just the opposite: not only has the CIA been stockpiling exploits, it has been aggressively working to undermine our Internet security.

Even assuming the CIA is using its hacking tools against the right targets, a pause-worthy presumption given the agency's checkered history, the CIA has empowered the rest of the hacker world and foreign adversaries by hoarding vulnerabilities, and thereby undermined the privacy rights of all Americans and millions of innocent people around the world. Democracy depends on an informed citizenry, and journalistic sources – whether they call themselves whistleblowers or not – are a critical component when the government uses national security as justification to keep so much of its activities hidden from public view.

As we learn more about the Vault 7 source and the disclosures, our focus should be on the substance of the disclosures. Historically, the government's reflexive instinct is to shoot the messenger, pathologize the whistleblower, and drill down on his or her motives, while the transparency community holds its breath that he or she will turn out to be pure as the driven snow.

But that's all deflection from plumbing the much more difficult questions, which are: Should the CIA be allowed to conduct these activities, and should it be doing so in secret without any public oversight? These are questions we would not even be asking without the Vault 7 source.

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<https://exposefacts.org/is-the-vault-7-source-a-whistleblower/>]

Lynne Stewart: 'War on Terror' Casualty

In America's "war on terror," normal actions, such as lawyer Lynne Stewart passing a client's message to friends, became criminalized. Stewart was imprisoned, likely speeding her death from cancer, reports Dennis J Bernstein.

By Dennis J Bernstein

Civil rights attorney Lynne Stewart, who died March 7 from cancer, saw her condition worsen while she was in prison as a result of her legal representation of Sheikh Omar Abdel-Rahman, an Egyptian cleric who was convicted of planning terror attacks. The U.S. government then won a conviction against Stewart for passing on messages to the Sheikh's friends and supporters.

Journalist Chris Hedges wrote about Stewart in 2014 after Stewart was released having served four years of a ten-year sentence. Suffering from terminal cancer, she received a compassionate release after thousands protested and signed petitions against her continued incarceration.

Hedges wrote: "The lynching and disbaring of civil rights lawyer Lynne Stewart, who because she has terminal cancer was recently released from prison after serving four years of a 10-year sentence, is a window into the collapse of the American legal system. Stewart—who has stood up to state power for more than three decades in order to give a voice to those whom authorities seek to crush, who has spent her life defending the poor and the marginalized, who wept in court when one of her clients was barred from presenting a credible defense—is everything a lawyer should be in an open society. But we no longer live in an open society. The persecution of Stewart is the persecution of us all."

Stewart upheld the tradition of the people's lawyer as embodied in the work of Clarence Darrow and William Kunstler. Like them, she deeply believed that all people deserved a vigorous defense.

I interviewed Stewart for the Flashpoints show on Pacifica Radio, along with her husband, Ralph Poynter, in 2014, right after her release from Maximum Security prison in New York.

Dennis Bernstein: Why do you think they put you in jail? Is it because for a zillion years you represented the poorest of the poor, the people who really had the right to be represented, but not the money?

Lynne Stewart: Well, I think it's a combination really of wanting to send a warning shot, as we say, to ice the zeal of lawyers who represent such people. I mean, the fact of the matter is that I was the stalking horse, and they wanted

to let lawyers know they could represent controversial people but they had to do so within the bounds set by the government: "Do it our way." Don't do it the way, you and the client, I mean which is traditional thing. You sit with the client, you decide on a strategy and you do it. But, no, they wanted to make it, "You have to do it within the parameters we suggest." And that, of course, is a terrible incursion on the attorney/client privilege, and the relationship.

DB: How thoroughly were you and your clients bugged?

LS: Well, we didn't know it, at the time. But, it was visits, in a prison setting, and they recorded everything. They had audio and visual. And it was very funny because they couldn't put it like where we would be seeing a camera or anything, so they mounted it above our heads. So you see these hands moving across a table. The Sheikh's hands, my hands, my interpreter's... really showing nothing. But they liked that, they liked that, just everything they could get.

DB: And where are we? Here we are, 2014, where we're seeing endless revelations about the level of national security activities that undermine all the core aspects of free speech. How would you evaluate where we are now, in that world of first amendment free speech? Do we have any left?

LS: Well, I tell you, it was interesting. You know, of course, we raised that as an issue for the case, when I was indicted. That their intrusion in 6th amendment sacred precincts should preclude them from being able to prosecute. However, by that time, the Patriot Act had been passed, in the interim between the time they did it, and the time that we raised this. And it was more or less to say, well, under the Patriot Act they could do it, so what's the problem?

Even though it was not done under the Patriot Act. But it's the halo effect of the Patriot Act that allowed them to do it. And I think that that covers a lot of situations nowadays. Now they want to be able to take someone's cell phone, which is really a mini-computer. And if you're arrested they can get any information off there, including medical information, including any information that's private and confidential. So the fact of the matter is, I think we all have to say ourselves [...] "What would I say, freewheeling. They're out there, they can get anything they want, whenever they want it." And we act accordingly.

DB: Lynne Stewart in the studio, she's free, she's with us. What's the advice [for lawyers]? Should they take on these tough clients? Should they be afraid?

LS: Well, [...] I was being interviewed today by an AP reporter from New York, who was doing a thing on how people who represent difficult clients are punished personally and professionally. And so we were talking about this very point and he said, "Do you see anybody coming along that's going to take your place, that

could do what you did?" And I said, "There are some folks, I count my own son as one of them, although he does it in a very low key way without publicity, etc."

But, I said to Larry Undermeister, I said, "Listen, I got, I would say, upwards of 100 letters when I was in prison, and they were from young lawyers, either in law school or about to enter law school, or just starting on their careers." And they said, "I became a lawyer because I want to be a lawyer like you are." And [...] they say, "What's your advice?" and I said, "If you have that fire in your belly, do it, do it."

Although I recognize that they enter the arena in a very different way... when I entered, I had no debt. I could hang out my shingle and say, "Okay, let's see who comes in the door." They can't do that. They've got these enormous student loans that they've got to pay off. They've got to get something that gives them a salary, that enables them... and, of course, by the time you pay off the student loans the fire has sometimes become embers.

DB: So, there's a real temptation to start lying for some bank or major corporation to pay off your debt.

LS: Oh, yeah...or government, even. Work for the government, and do their bidding. But there are enough others that I think ... [are] out there still. The sense is out there that if you're going to do this work, you ought to do it for the least among us. You can do it for the Wall Street, you can do it for inside traders.

But the real people to do it for, where it's you and the government and everybody in the courtroom hates you (which was many times the case, for me), those are the cases you really want to do, as a lawyer. You need to do. And I still, I still have a pang. I'll read about something in the newspaper and I'll say, "Gee, I would have loved to have done that case" or "I would like to do this case." [...]

DB: Have you been asked to give counsel in certain cases?

LS: I'm not allowed. I'm disbarred, and you're not even allowed to... you can't work in a law office alphabetizing. You can't go anywhere near a law office. Because I think that they understand that lawyers, being the wily people we are, if you're in a law office, you're going to do a little bit more than alphabetize the files. But the answer is, I can't help but be interested or make comments, or get mad at the T.V. set when they do these outrageous programs...

DB: Well, you can alphabetize my legal files any time. Also in the studio, and we thank Jeff Mackler for bringing you to the Bay Area, and not only that, we thank Jeff Mackler for being unrelenting in this fight to free you. I mean, and I'm serious, knock-the-door-down unrelenting in this fight. And I have to be

honest, I was sort of hopeless, I didn't think he was going to be able to do it. I didn't think the folks who rose up around the country could do it. But they did, and you're here. Jeff how does it feel to see Lynne here?

Jeff Mackler: Magnificent. Of course, I visited her in prison, and she was upbeat that we could win. But since I have the opportunity, I want to make some criticisms of Lynne. First, when she was on the witness stand and they said to her in court, and I attended the entire proceedings, they said, "Lynne, if you had to do it all over again" said her attorney, Mike Tigar, "would you do the same thing?" That is, pass out a press release on behalf of your client, for which she was convicted of conspiracy to aid and abet terrorism. And I watched Lynne closely and I could see a tear come out of her eye. And she said, "I would hope I would think...no, I would do it again. I have a duty to my client." That's one criticism. Lynne, you should have lied.

And second, they said, "Well, why did you do it? I mean, why didn't you just appeal this special administrative order that prevented you from passing a press release?" And she said, "Well, let me give you a story. A friend of mine, named Mumia Abu Jamal," this is a quote, "a convicted murderer," and she was using him as a reference in front of a jury, where her life is at stake, "complained that they were opening his mail, and he filed a lawsuit and it took years. Well, I have a duty to my client. I'm not going to let him stand there in prison for years, so I just did the right thing for my client." Well, that's Lynne Stewart and that's why she's here and she's free with her dignity.

Dennis J Bernstein is a host of "Flashpoints" on the Pacifica radio network and the author of Special Ed: Voices from a Hidden Classroom. You can access the audio archives at www.flashpoints.net.

Fresh Doubts about Russian 'Hacking'

Exclusive: The gauzy allegations of Russia "hacking" the Democrats to elect Donald Trump just got hazier with WikiLeaks' new revelations about CIA cyber-spying and the capability to pin the blame on others, reports Robert Parry.

By Robert Parry

WikiLeaks' disclosure of documents revealing CIA cyber-spying capabilities underscores why much more skepticism should have been applied to the U.S. intelligence community's allegations about Russia "hacking" last year's American presidential election. It turns out that the CIA maintains a library of foreign

malware that could be used to pin the blame for a “hack” on another intelligence service.

That revelation emerged from documents that WikiLeaks published on Tuesday from a CIA archive that WikiLeaks said had apparently been passed around within a community of former U.S. government hackers and contractors before one of them gave WikiLeaks some of the material.

The documents revealed that the CIA can capture the content of encrypted Internet and cell-phone messages by grabbing the material in the fraction of a second before the words are put through encryption.

Another program called “Weeping Angel” can hack Samsung “smart” TVs with built-in Internet connections, allowing the CIA and British intelligence to covertly use the TVs as listening devices even when they appear to be turned off.

Besides the 1984-ish aspects of these reported capabilities – Orwell’s dystopia also envisioned TVs being used to spy on people in their homes – the WikiLeaks’ disclosures add a new layer of mystery to whether the Russians were behind the “hacks” of the Democratic Party or whether Moscow was framed.

For instance, the widely cited Russian fingerprints on the “hacking” attacks – such as malware associated with the suspected Russian cyber-attackers APT 28 (also known as “Fancy Bear”); some Cyrillic letters; and the phrase “Felix Edmundovich,” a reference to Dzerzhinsky, the founder of a Bolsheviks’ secret police – look less like proof of Russian guilt than they did earlier.

Or put differently – based on the newly available CIA material – the possibility that these telltale signs were planted to incriminate Moscow doesn’t sound as farfetched as it might have earlier.

A former U.S. intelligence officer, cited by The Wall Street Journal on Wednesday, acknowledged that the CIA’s “Umbrage” library of foreign hacking tools could “be used to mask a U.S. operation and make it appear that it was carried out by another country.... That could be accomplished by inserting malware components from, say, a known Chinese, Russian or Iranian hacking operation into a U.S. one.”

While that possibility in no way clears Moscow in the case of the Democratic “hack,” it does inject new uncertainty into the “high confidence” that President Obama’s intelligence community expressed in its assessment of Russian culpability. If the CIA had this capability to plant false leads in the data, so too would other actors, both government and private, to cover their own tracks.

Dubious Forensics

Another problem with the U.S. intelligence community's assessment is that the forensics were left to private contractors working for the Democrats, not conducted independently by U.S. government experts.

That gap in the evidentiary trail widens when one notes that CrowdStrike, the Democratic Party's consultant, offered contradictory commentary about the skills of the hackers.

CrowdStrike praised the hackers' tradecraft as "superb, operational security second to none" and added: "we identified advanced methods consistent with nation-state level capabilities including deliberate targeting and 'access management' tradecraft – both groups were constantly going back into the environment to change out their implants, modify persistent methods, move to new Command & Control channels and perform other tasks to try to stay ahead of being detected."

In other words, CrowdStrike cited the sophistication of the tradecraft as proof of a state-sponsored cyber-attack, yet it was the sloppiness of the tradecraft that supposedly revealed the Russian links, i.e. the old malware connections, the Cyrillic letters and the Dzerzhinsky reference.

As Sam Biddle wrote for The Intercept, "Would a group whose 'tradecraft is superb' with 'operational security second to none' really leave behind the name of a Soviet spy chief imprinted on a document it sent to American journalists? Would these groups really be dumb enough to leave cyrillic comments on these documents? Would these groups that 'constantly [go] back into the environment to change out their implants, modify persistent methods, move to new Command & Control channels' get caught because they precisely *didn't* make sure not to use IP addresses they'd been associated [with] before?"

"It's very hard to buy the argument that the Democrats were hacked by one of the most sophisticated, diabolical foreign intelligence services in history, and that we know this because they screwed up over and over again."

Sources and Methods

The WikiLeaks' disclosures on Tuesday also demonstrate that the pro-transparency Web site has a well-placed source with access to sensitive U.S. intelligence data.

That reinforces the suggestion from WikiLeaks' associate, former British Ambassador Craig Murray, that the emails purloined from Hillary Clinton's campaign chairman John Podesta originated from U.S. intelligence intercepts and were then leaked by an American insider to WikiLeaks, not obtained via a "hack" directed by the Russian government.

Podesta's association with the international lobbying firm, the Podesta Group, could justify U.S. intelligence monitoring his communications as a way to glean information about the strategies of Saudi Arabia and other foreign clients.

Murray suggested that the earlier WikiLeaks' release of Democratic National Committee emails came from a Democratic insider, not from Russia. In addition, WikiLeaks' founder Julian Assange has denied that Russia was the source of either batch of Democratic emails, although he refused to say who was.

Of course, it would be possible that Russia used American cutouts to launder the emails without WikiLeaks knowing where the material originated. And some cyber-experts, who were cited in press reports about the new WikiLeaks' disclosures on Tuesday, speculated, without evidence, that perhaps Russia was the source of them, too.

Still, there are now fresh reasons to doubt the Official Narrative that Russia "hacked" into Democratic emails in a covert operation intended to throw the U.S. election to Donald Trump.

Those doubts already existed – or should have – because the U.S. intelligence community refused to release any hard proof that the Russians were responsible for the purloined Democratic emails.

On Jan. 6, just one day after Director of National Intelligence James Clapper vowed to go to the greatest possible lengths to supply the public with the evidence behind the accusations, his office released a 25-page report that contained no direct evidence that Russia delivered hacked emails from the DNC and Podesta to WikiLeaks.

The DNI report amounted to a compendium of reasons to suspect that Russia was the source of the information – built largely on the argument that Russia had a motive for doing so because of its disdain for Democratic nominee Clinton and the potential for friendlier relations with Republican nominee Trump.

A Big Risk

But the DNI's case, as presented, was one-sided, ignoring other reasons why the Russians would not have taken the risk.

For instance, while it is true that many Russian officials, including President Putin, considered Clinton to be a threat to worsen the already frayed relationship between the two nuclear superpowers, the report ignores the downside for Russia trying to interfere with the U.S. election campaign and then failing to stop Clinton, which looked like the most likely outcome until Election Night.

If Russia had accessed the DNC and Podesta emails and slipped them to WikiLeaks for publication, Putin would have to think that the National Security Agency, with its exceptional ability to track electronic communications around the world, might well have detected the maneuver and would have informed Clinton.

So, on top of Clinton's well-known hawkishness, Putin would have risked handing the expected incoming president a personal reason to take revenge on him and his country. Historically, Russia has been very careful in such situations, holding its intelligence collections for internal purposes only and not sharing them with the public.

While it is conceivable that Putin decided to take this extraordinary risk in this case – despite the widely held view that Clinton was a shoo-in to defeat Trump – an objective report would have examined this counter argument for him not doing so.

But the DNI report was not driven by a desire to be evenhanded; it was, in effect, a prosecutor's brief, albeit one that lacked any real evidence that the accused is guilty.

Though it's impossible for an average U.S. citizen to know precisely what the U.S. intelligence community may have in its secret files, some former NSA officials who are familiar with the agency's eavesdropping capabilities say Washington's lack of certainty suggests that the NSA does not possess such evidence.

That's the view of William Binney, who retired as NSA's technical director of world military and geopolitical analysis and who created many of the collection systems still used by NSA.

Binney, in [an article](#) co-written with former CIA analyst Ray McGovern, said, "With respect to the alleged interference by Russia and WikiLeaks in the U.S. election, it is a major mystery why U.S. intelligence feels it must rely on 'circumstantial evidence,' when it has NSA's vacuum cleaner sucking up hard evidence galore. What we know of NSA's capabilities shows that the email disclosures were from leaking, not hacking."

Released last summer – around the time of the Democratic National Convention – the DNC emails revealed senior party officials showing a preference for former Secretary of State Clinton over Sen. Bernie Sanders although the DNC was supposed to remain neutral.

Later in the campaign, the Podesta leak exposed the contents of speeches that Clinton gave to Wall Street banks, which she wanted to keep secret from the American voters, and the existence of pay-to-play features of the Clinton

Foundation.

News articles based on the WikiLeaks' material embarrassed the DNC and the Clinton campaign, but the rupture of secrets was not considered a very important factor in Clinton's loss to Donald Trump. Clinton herself blamed that surprising outcome on FBI Director James Comey's last-minute decision to briefly reopen the investigation into her improper use of a private server for her emails as Secretary of State.

After Comey's move, Clinton's poll numbers cratered and she seemed incapable of reversing the trend. More generally, Clinton faced criticism for running an inept campaign that included her insulting many Trump supporters by calling them "deplorables" and failing to articulate a clear, hopeful vision for the future.

However, after the shock of Trump's stunning victory began to wear off, the outgoing Obama administration and angry Democrats began singling out Putin as a chief culprit in Clinton's defeat.

Despite the appearance that they were scapegoating America's old adversary – the Russkies – liberals and Democrats have used the allegations to energize their base and put the young Trump administration on the defensive, even though hard evidence to support the accusations is still lacking.

The liberals and Democrats also don't seem to care that they are using these dubious allegations to ratchet up tensions between the world's two nuclear superpowers, thus putting the future of the world at risk.

Investigative reporter Robert Parry broke many of the Iran-Contra stories for The Associated Press and Newsweek in the 1980s. You can buy his latest book, *America's Stolen Narrative*, either in [print here](#) or as an e-book (from [Amazon](#) and [barnesandnoble.com](#)).

America's Homegrown Assault on Democracy

WikiLeaks' new dump of CIA documents reveals that when it comes to undermining the Constitution and democracy, U.S. intelligence agencies and their political "overseers" are doing the jump quite nicely, thanks, says Norman Solomon.

By Norman Solomon

For months now, our country has endured the tacit denigration of American ingenuity. Countless statements – from elected officials, activist groups,

journalists and many others – have ignored our nation’s superb blend of dazzling high-tech capacities and statecraft mendacities.

Fortunately, this week the news about release of illuminating CIA documents by WikiLeaks has begun to give adequate credit where due. And not a moment too soon. For way too long, Russia has been credited with prodigious hacking and undermining of democracy in the United States.

Many Americans have overlooked the U.S. government’s fantastic hacking achievements. This is most unfair and disrespectful to the dedicated men and women of intelligence services like the CIA and NSA. Far from the limelight, they’ve been working diligently to undermine democracy not just overseas but also here at home.

Today, the massive new trove of CIA documents can help to put things in perspective. Maybe now people will grasp that our nation’s undermining of democracy is home-grown and self-actualized. It’s an insult to the ingenious capacities of the United States of America to think that we can’t do it ourselves.

Contrary to all the public relations work that U.S. intelligence agencies have generously done for them, the Russians don’t even rank as peripheral to the obstacles and prospects for American democracy. Rest assured, throughout the long history of the United States, we haven’t needed foreigners to get the job done.

In our current era, can Vladimir Putin take any credit for purging huge numbers of African-Americans, Latinos and other minority citizens from the voter rolls? Of course not.

Did Putin create and maintain the barriers that prevented many low-income people from voting on Nov. 8? Only in his dreams. Can the Kremlin hold a candle to the corporate-owned cable TV channels that gave Donald Trump umpteen free hours of uninterrupted air time for speeches at his campaign rallies? Absolutely not.

Could any Russian operation claim more than a tiny sliver of impact compared to the handiwork of FBI Director James Comey as he boosted Donald Trump’s prospects with a pair of gratuitous announcements about a gratuitously re-opened probe of Hillary Clinton’s emails during the last days of the 2016 campaign? No way. Is Putin anything but a miniscule lightweight in any efforts to manipulate the U.S. electorate compared to “dark money” American billionaires like the Koch brothers? Give us a break.

And how about the Fourth Amendment of the U.S. Constitution? The Kremlin can only marvel at the way that the CIA, the NSA and the bipartisan leadership in

Washington have shredded the Fourth Amendment while claiming to uphold it. To sum up: The CIA's efforts to tout Russia add up to jaw-dropping false modesty! The humility of "deep state" leaders in Langley is truly awesome.

Let's get a grip. Overwhelmingly, the achievements of thwarting democracy in America have been do-it-yourself operations. It's about time that we give adequate credit to the forces perpetuating this country's self-inflicted wounds to American democracy.

To loosely paraphrase the beloved comic-strip character Pogo, when the subject is grievous damage to democracy at home, "We have met the ingenuity and it is U.S." But we're having a terrible time recognizing ourselves.

Norman Solomon is the coordinator of the online activist group [RootsAction.org](https://www.rootsaction.org) and the executive director of the Institute for Public Accuracy. He is the author of a dozen books including *War Made Easy: How Presidents and Pundits Keep Spinning Us to Death*.

Official Washington Tips into Madness

Exclusive: President Trump responded to evidence-lite accusations from Democrats about his ties to Russia with his own air-filled allegations about President Obama wiretapping Trump Tower, as Robert Parry shakes his head.

By Robert Parry

The intensifying hysteria over Russia has pushed Official Washington over the edge into outright madness. On one side of this asylum, you have the Democrats, neoconservatives and mainstreammedia, while on the other, you have the embattled Trump administration. Both sides have been making grave allegations with little or no evidence to support them.

The Democratic/neocon/MSM side has pushed the conspiracy theory that Donald Trump's campaign colluded with Russians to put the real-estate mogul in the White House, but there is, as yet, no evidence that such a thing happened.

Even one of the top advocates feeding this Russia frenzy, New York Times correspondent Thomas L. Friedman, acknowledged on Sunday on [NBC's "Meet the Press"](https://www.nbc.com/news/politics/2017/08/13/friedman-acknowledges-no-evidence-trump-russia) that "I agree, there is no evidence," but then added: "which is why we need a special prosecutor or an independent commission to get to the bottom of it."

But that is not how investigations are supposed to work. You're supposed to have evidence of wrongdoing and then examine it in the investigative phase to see if the evidence withstands scrutiny. What Friedman is suggesting is more like a "fishing expedition" or a "witch hunt."

The drip-drip of this investigative water torture finally got to President Trump last week as he flew down to his winter home at Mar-a-Lago. He joined the crazy melee early Saturday morning by sending out a flurry of tweets accusing President Obama of wiretapping Trump Tower in New York City in the weeks before the Nov. 8 election. Trump also offered no evidence while demanding an investigation to get to the bottom of this.

By contrast, in all the major investigations that I have handled as an investigative reporter, such as Oliver North's secret White House paramilitary operation; the related Nicaraguan Contra drug trafficking scandal; Richard Nixon interference with President Lyndon Johnson's Vietnam peace talks in 1968; and Ronald Reagan's campaign sabotage of President Jimmy Carter's Iranian-hostage negotiations in 1980 – there was substantial evidence from eyewitnesses and documents supporting the suspicions *before the story was published*.

At no point would I have argued that just because Oliver North met a Contra leader that it was time to investigate whether he and his Reagan administration superiors were breaking the law. I first found multiple insiders, including people in the U.S. government and the Contra movement, describing how North was running his back-channel war. In some of these investigative situations, we had two dozen or so sources describing detailed aspects of these operations *before we made any allegations in print*.

Now the argument is that because some people suspect something, even without evidence, major investigations are warranted. That is usually what a conspiracy theory sounds like. Someone claims not to understand how something could have happened a certain way and thus a full-scale inquiry is needed into some highly unlikely and speculative scenario.

Opening Salvos

In the case of the Russia investigation, the opening salvos came from President Obama's intelligence agencies, which alleged that Russia had "hacked" Democratic emails and slipped the contents to WikiLeaks, but the agencies offered nothing in the way of U.S. government evidence to support that supposition.

The two reports that were issued were heavy on the word "assesses" – which in intelligence jargon usually means "guesses" – but short on anything that could be checked out or verified.

The Jan. 6 report, issued by the Office of the Director of National Intelligence, admitted as much, saying, “Judgments are not intended to imply that we have proof that shows something to be a fact. Assessments are based on collected information, which is often incomplete or fragmentary, as well as logic, argumentation, and precedents.”

Meanwhile, WikiLeaks representatives denied getting the two batches of Democratic emails from Russia, suggesting that two different American insiders had leaked the material.

Yet, despite this dubious send-off, the “scandal” careened into the area of “secondary” offenses, such as the conversation between Trump’s National Security Adviser-designate Michael Flynn and Russian Ambassador Sergey Kislyak which was intercepted by the National Security Agency on Dec. 29, 2016.

Rather than redact Flynn’s name as “minimization” procedures usually require for an American citizen who is inadvertently picked up on an intelligence wiretap, the transcript was given to the FBI which then tested Flynn’s memory of the conversation and found it wanting.

The Flynn case should be of particular concern to civil libertarians because it shows how NSA whistleblower Edward Snowden’s warning of a “turnkey tyranny” could work, with the Surveillance State monitoring phone calls and then finding flimsy legal excuses to justify an FBI probe – in Flynn’s case the never-tested-in-court 1799 Logan Act was used – and then manufacturing the crime of lying to the FBI if a person’s memory doesn’t match with the NSA transcript.

For Flynn, who was on vacation in the Dominican Republic when Kislyak called and thus didn’t have his usual support network with him, the immediate penalty for lacking total recall of the conversation was to lose his job. But there is still pressure for him to be prosecuted.

Similar demands have come from Democrats who want Attorney General Jeff Sessions to resign and face prosecution for perjury over his clumsy answer to a question about the Trump campaign’s possible collusion with Russia to which Sessions claimed he had not met with Russians (although it turned out he had two conversations with Kislyak, one a group meeting with several ambassadors at the Republican National Convention and the other in his Capitol Hill office with aides present).

Again, there is no evidence that Sessions conspired with Kislyak on any plans to have the Russians undercut Hillary Clinton’s campaign, an unlikely possibility in either of the two settings. But Sessions is under fire for lying about the seemingly innocuous meetings – and there are demands that the Sessions-Kislyak

contacts be investigated, too. In this Russia case, the absence of evidence appears not to be evidence for the absence of a special prosecutor.

On “Meet the Press” on Sunday, President Obama’s Director of National Intelligence James Clapper also said he was unaware of evidence that the Trump campaign had colluded with the Russians.

Moderator Chuck Todd asked, “Does intelligence exist that can definitively answer the following question, whether there were improper contacts between the Trump campaign and Russian officials?”

Clapper: “We did not include any evidence in our report, and I say, ‘our,’ that’s N.S.A., F.B.I. and C.I.A., with my office, the Director of National Intelligence, that had anything, that had any reflection of collusion between members of the Trump campaign and the Russians. There was no evidence of that included in our report.”

Todd: “I understand that. But does it exist?”

Clapper: “Not to my knowledge. ... at the time [of the report in early January], we had no evidence of such collusion.”

Bill Clinton Echoes

In many ways, what is happening now to Trump reminds me of the situation in 1992-93 at the start of Bill Clinton’s presidency when Republicans were furious that they had lost the White House after 12 years of Ronald Reagan and George H.W. Bush. They considered Clinton an unworthy interloper and sought to cripple his presidency from the outset by pursuing one investigation after another.

During the campaign, President Bush and his team even suggested that the Arkansas governor may have been a KGB mole because of a student trip to Moscow in 1970. The idea was to portray the trip to the Soviet Union as prima facie evidence of Clinton’s disloyalty even though there was no evidence of any wrongdoing by Clinton.

Back then, Bill Clinton countered that smear by accusing the elder President Bush of stooping to the tactics of Sen. Joe McCarthy, the infamous Red-baiter from the 1950s. But today’s Democrats apparently feel little shame in whipping up an anti-Russian hysteria and then using it to discredit Trump, who – like Bill Clinton in 1992 – is being forced to fend off vague accusations that he is some kind of Manchurian candidate.

However, unlike Bill Clinton who seemed able to “compartmentalize” between governing as president and sparring with Republicans over their unending

accusations, Trump lashed out in a flurry of Twitter messages accusing President Obama of wiretapping phones at Trump Tower.

“Terrible! Just found out that Obama had my ‘wires tapped’ in Trump Tower just before the victory,” [Trump said](#). “Nothing found. This is McCarthyism!” [Trump added](#): “This is Nixon/Watergate. Bad (or sick) guy!”

In making this extraordinary charge against his predecessor, Trump offered no evidence to back it up, leaving the impression that he may have gleaned this information from the right-wing Breitbart News web site which published an article summarizing claims by conservative radio talk show hosts. Trump and White House officials then called for an investigation into Obama’s alleged wiretapping.

Obama’s spokesman Kevin Lewis responded with a statement of dubious veracity, saying: “neither President Obama nor any White House official ever ordered surveillance on any U.S. citizen. Any suggestion otherwise is simply false.” However, Obama did more than surveil at least one U.S. citizen; he had an American Al Qaeda operative Anwar al-Awlaki not just put under surveillance but killed by a drone attack in 2011 in Yemen.

Reacting to all these crazy exchanges, a Wall Street Journal editorial even managed to make some sense. Entitled “Washington Goes Nuts,” the editorial said:

“What the country desperately needs are some grown-ups to intervene, discover the facts, and then lay them out to the American people,” both regarding any untoward contacts between Russian officials and Trump’s advisers and whether the Obama administration crossed any lines in its zeal to nail Trump’s team over Russia.

The Journal’s editors expressed hopes the congressional intelligence committees could step up and perform this function. But the problem with the Journal’s idea is that it will be hard, if not impossible, to find the requisite “adults” in Official Washington where traditional standards of evidence and fair play have long since disappeared.

Investigative reporter Robert Parry broke many of the Iran-Contra stories for The Associated Press and Newsweek in the 1980s. You can buy his latest book, *America’s Stolen Narrative*, either in [print here](#) or as an e-book (from [Amazon](#) and [barnesandnoble.com](#)).

Another Hatchet Job on Snowden

Exclusive: The hatchet jobs against NSA whistleblower Edward Snowden keep on coming with a new book whose author says he applied James Angleton's counterintelligence techniques to Snowden, says ex-CIA analyst Ray McGovern.

By Ray McGovern

In depicting National Security Agency whistleblower Edward Snowden as a Russian spy, author Edward Jay Epstein acknowledges his debt to the CIA's famously paranoid counterintelligence chief James Jesus Angleton, who specialized in counterintuitive thinking that surely smeared more honest CIA officers than it snared actual spies.

At a recent book signing at the Hoover Institute in Washington, D.C., for *How America Lost Its Secrets: Edward Snowden, the Man and the Theft*, Epstein proudly announced that he learned the tricks of the counterintelligence trade from the now-deceased Angleton.

But Angleton, like other counterintelligence sleuths, assumed the carte-blanche right to smother a slender fact with weighty assumptions and then weave upon them a hefty garment of allegations, speculation and imagination fitting with the occupational predisposition to detect a spy.

Over the decades, it's conceivable that this "methodology" may have caught a spy or two (although Angleton is perhaps best known for missing the notorious Soviet spy Kim Philby). But creating a counterfactual, evidence-free scenario seems an irresponsible way to write about Edward Snowden, a whistleblower responsible for the most consequential intelligence leak in U.S. history.

In his new book, Epstein spins his intricate web to prove Snowden's supposed treachery around the fact that after leaking secrets to Western journalists in Hong Kong, Snowden wound up in Russia. The well-known reality is that Snowden never intended to get stuck in Russia but was stranded there when the U.S. government blocked his path to South America. Yet, however clear the record regarding how and why Snowden found asylum there, Epstein sees a more sinister logic.

As a veteran of the Central Intelligence Agency and a private citizen who has befriended many government whistleblowers, I happen to have known Angleton and currently know Snowden (whom I count among my friends).

I recall in 1974, when CIA Director William Colby finally fired Angleton, audible sighs of relief rippled through spydom. Angleton had ruined the careers

– and sometimes the lives – of many conscientious CIA officers. When, finally, Angleton was not in position to do any more damage, many of my contemporaries recounted personal examples of how misguided and harmful Angleton's periodic witch hunts had been.

Like Angleton, Epstein also has a tendency to see spies where they aren't, including asserting that Lee Harvey Oswald was a Soviet spy, a claim that finds zero support in the KGB records now available. That proclivity is also evident in Epstein's new book.

Before the book signing at the Hoover Institute, a New York Times review and Pulitzer Prize winner Barton Gellman had thoroughly panned Epstein's book, and more recently New York Times journalist Charlie Savage picked it apart. Their indictments suffice; I feel no need to again recite Epstein's errors of fact and analysis.

Squeezing in a Question

But I did squeeze a question in at the Hoover book event. Epstein's interviewer, Ben Witte of Brookings, had served up a few innings-worth of softball pitches but allowed no questions from the audience. However, when Epstein claimed that his best source on Snowden's perfidy was Russian President Vladimir Putin, whom Epstein proceeded to quote – incorrectly – to the effect that Snowden had met with Russian officials in Hong Kong. I spoke out, saying, "Putin did not say that."

Shock hit the audience at my impertinence, and Witte's eyes scoured the back of the room apparently looking for Security. But the ever-genteel Epstein saved the day by admitting that I was right and that he had misspoken.

After the Witte-Epstein dialogue, the audience was allowed to approach Epstein for conversation. I introduced myself and noted that I had joined other former intelligence officers in visiting Snowden in Moscow.

"Oh, yes, I remember your name," Epstein said, prompting me to ask why he did not seek to interview me for the book. "Yes, I should have contacted you," he said with a smile.

At the time I was unaware of the curious limits Epstein had put on his outreach. Besides those of us who had met with Snowden in Moscow, Epstein "should have contacted" Sarah Harrison, who stayed by Snowden's side during his five weeks at Moscow's Sheremetevo Airport and then for a few additional months; Julian Assange, who pulled out all the stops to facilitate Snowden's sudden and safe departure from Hong Kong; NSA whistleblowers William Binney, Kirk Wiebe and Ed Loomis; and Diane Roark, House Intelligence Committee senior aide who had the

NSA account for several years.

Epstein's book shows that – while ignoring people who know Snowden or have had painful experiences trying to expose NSA wrongdoing by going through the “proper channels” – he conducted many interviews with people who consider Snowden, as well as Putin, the devil incarnate.

There is also the issue of how much actual “damage” Snowden's disclosures caused. According to former NSA Technical Director William Binney, it is fair to say that the extent of the NSA's vacuuming up of bulk data on Americans and people around the world was a surprise, first and foremost, to Americans whose eyes were opened (as Snowden intended); that U.S. adversaries were generally aware of NSA's capabilities; and that damage to sources and methods typically has been exaggerated by those interested in overstating it.

Alarmist Complaints

Here there are shades of the alarmist complaints about the supposed damage caused by the disclosures about the wars in Afghanistan and Iraq from Pvt. Chelsea (formerly Bradley) Manning.

After Defense Secretary Robert Gates had joined other senior officials in lamenting the “grave damage” from Manning's revelations, Gates was asked by Senate Armed Services Committee Chair Carl Levin to put it in writing. Gates came back with an honest report: Early claims of damage had been, in Gates's words, “significantly overwrought.”

Bill Binney and his colleagues tell me the same is probably true of the hyperbole used to portray the damage from the Snowden disclosures.

Yet, balancing whatever that “damage” was is the significance of Snowden's argument that the warrantless bulk surveillance of Americans was illegal under the Constitution and created the risk of a future leader imposing a “turnkey tyranny” on the United States because of all the embarrassing and incriminating information that would be collected on American citizens.

There is now no doubt that Snowden's constitutional concerns were well-founded and it is not hard to imagine how an unscrupulous politician might make effective use of people's personal secrets or their unguarded comments.

But it is easier to discredit Snowden by simply portraying him as a Russian spy. After all, we are now deep in a New McCarthyism that accompanies the New Cold War. Any contact with Russians – no matter how unintentional in Snowden's case – is regarded as somehow disqualifying.

So, that is the tack that Epstein took. However, the evidence isn't there.

Chris Inglis, who was NSA's Deputy Director when Snowden made the disclosures and who headed the initial NSA investigation, said about Snowden a year ago: "I don't think he was in the employ of the Chinese or the Russians. I don't see any evidence that would indicate that."

Epstein – like so many others – also shows a basic lack of understanding of the important, graduated scale of values that Ed Snowden and other whistleblowers take with utmost seriousness. At one point, Epstein glibly says of Snowden, "In signing this [nondisclosure] document, he swore an oath not to divulge any of this information."

But that's not correct. The only *oath* that we, as military or other government officials swear is: **"To support and defend the Constitution of the United States against all enemies foreign and domestic."**

Ethicists describe such an oath as a "supervening value," far more serious than a promise like that embedded in the contract one signs in agreeing not to disclose classified information that could be harmful to U.S. national security. In other words, what do you do when your oath conflicts with the contract language, which one has the priority?

Snowden's Choice

Are promises important? Of course they are. But in the moral sphere, oaths supersede promises. NSA was playing fast and loose with the Constitution's Fourth Amendment (and arguably with the First and the Fifth as well) with warrantless surveillance. Snowden chose not to break his oath to the Constitution. Nor would he remain silent when others broke theirs.

Watching what happened to fellow whistleblowers – like Thomas Drake – who tried to "go through channels," Snowden knew that he had to "get out of Dodge" to have any hope of remaining at liberty long enough to complete his mission. He decided to run the huge risk involved in defending the Constitution against incipient "turnkey tyranny."

That may be difficult for Epstein and many cynical observers to believe, but without any evidence to the contrary, Snowden hardly deserves to be treated like the CIA officers who faced character assassination from Epstein's paranoid mentor, Angleton.

I first met Snowden in early October 2013 when I was a member of the first delegation of Americans to visit him as a political exile in Russia. Four of us, all members of Sam Adams Associates for Integrity in Intelligence, officially

presented him with our annual award for integrity.

My three colleagues, each of them an earlier awardee, were whistleblowers Coleen Rowley, Thomas Drake, and Jesselyn Raddack (ex-FBI, -NSA, -Department of Justice, respectively). After the award ceremony we spent seven hours relaxing and comparing notes with Snowden. And a year later, I had a long lunch with him in Moscow.

For my colleagues and me, this unassuming, courageous young man, known to us only by what he had said and done over the previous three months, proved to be the precisely the patriotic whistleblower we thought he was. His courage and motivation were altogether believable to Rowley, Drake and Raddack, for each of them had taken similar risks in blowing the whistle on U.S. government misconduct.

This is simply to say that all four of us seasoned professionals had a unique opportunity to take the measure of Snowden up close and personal. It is a truly a pity that author Epstein did not do the same.

Ray McGovern was a CIA analyst for 27 years; he briefed the president's daily brief one-on-one to President Reagan's most senior national security officials from 1981-85.

How the Press Serves the Deep State

Exclusive: Mainstream U.S. media is proud to be the Deep State's tip of the spear pinning President Trump to the wall over unproven allegations about Russia and his calls for detente, a rare point where he makes sense, notes Daniel Lazare.

By Daniel Lazare

The New York Times has made it official. In a Sunday front-page article entitled "Trump Ruled the Tabloid Media. Washington Is a Different Story," the paper gloats that Donald Trump has proved powerless to stop a flood of leaks threatening to capsize his administration.

As reporters Glenn Thrush and Michael M. Grynbaum put it: "This New York-iest of politicians, now an idiosyncratic, write-your-own-rules president, has stumbled into the most conventional of Washington traps: believing he can master an entrenched political press corps with far deeper connections to the permanent government of federal law enforcement and executive department officials than he

has.”

Thrush and Grynbaum add a few paragraphs later that Trump “is being force-fed lessons all presidents eventually learn – that the iron triangle of the Washington press corps, West Wing staff and federal bureaucracy is simply too powerful to bully.”

Iron triangle? Permanent government? In its tale of how Trump went from being a favorite of the New York Post and Daily News to fodder for the big-time Washington news media, the Times seems to be going out of its way to confirm dark paranoid fears of a “deep state” lurking behind the scenes and dictating what political leaders can and cannot do. “Too powerful to bully” by a “write-your-own-rules president” is another way of saying that the permanent government wants to do things its way and will not put up with a president telling it to take a different approach.

Entrenched interests are nothing new, of course. But a major news outlet bragging about collaborating with such elements in order to cripple a legally established government is. The Times was beside itself with outrage when top White House adviser Steve Bannon described the media as “the opposition party.” But one can’t help but wonder what all the fuss is about since an alliance aimed at hamstringing a presidency is nothing if not oppositional.

If so, a few things are worth keeping in mind. One is that Trump was elected, even if only by an Eighteenth-Century relic known as the Electoral College, whereas the deep state, permanent government, or whatever else you want to call it was not. Where Trump gave speeches, kissed babies, and otherwise sought out the vote, the deep state did nothing. To the degree this country is still a democracy, that must count for something. So if the conflict between president and the deep state ever comes down to a question of legitimacy, there is no doubt who will come out ahead: The Donald.

A second thing worth keeping in mind is that if ever there was a case of the unspeakable versus the inedible (to quote Oscar Wilde), the contest between a billionaire president and billionaire-owned press is it.

Both sides are more or less correct in what they say about the other. Trump really is a strongman at war with basic democratic norms just as innumerable *Times* op-ed articles say he is. And giant press organization like the *Times* and the *Washington Post* are every bit as biased and one-sided as Trump maintains – and no less willfully gullible, one might add, than in 2002 or 2003 when they happily swallowed every lie put out by the George W. Bush administration regarding Iraqi WMDs or Saddam Hussein’s support for Al Qaeda.

Riveting TV

Trump's Feb. 16 press conference – surely the most riveting TV since Jerry Springer was in his prime – is a case in point. The President bobbed, weaved, and hurled abuse like a Catskills insult comic. He threw out pseudo-facts, describing his victory, for instance, as “the biggest Electoral College win since Ronald Reagan” when in fact George H. W. Bush, Bill Clinton and Barack Obama all got more votes. But commentators who panned the display as a “freak show” or simply “batshit crazy” didn't get it. It wasn't Trump who bombed that afternoon, but the press.

Why? Because reporters behaved with all the intelligence of a pack of Jack Russell terriers barking at a cat up a tree. Basically, they've been seized by the *idée fixe* that Russia is a predator state that hacks elections, threatens U.S. national security, and has now accomplished the neat trick of planting a Kremlin puppet in the Oval Office. It doesn't matter that evidence is lacking or that the thesis defies common sense. It's what they believe, what their editors believe, and what the deep state believes too (or at least pretends to). So the purpose of the Feb. 16 press conference was to pin Trump down as to whether he also believes the Russia-did-it thesis and pillory him for deviating from the party line.

More than half the questions that reporters threw out were thus about Russia, about Mike Flynn, the ex-national security adviser who got into trouble for talking to the Russian ambassador before the new administration formally took office, or about reputed contacts between the Trump campaign staff and Moscow. One reporter thus demanded to know if anyone from Trump's campaign staff had ever spoken with the Russian government or Russian intelligence. Another asked if Trump had requested FBI telephone intercepts before determining that Flynn had not broken the law.

“I just want to get you to clarify this very important point,” said a third. “Can you say definitively that nobody on your campaign had any contacts with the Russians during the campaign?” A fourth wanted to get the President's reaction to such “provocations” as a Russian communications vessel floating 30 miles off the coast of Connecticut (in international waters). “Is Putin testing you, do you believe, sir?” the reporter asked as if he had just uncovered a Russian agent in the Lincoln Bedroom. “...But do they damage the relationship? Do they undermine this country's ability to work with Russia?”

When yet another journalist asked yet again “whether you are aware that anyone who advised your campaign had contacts with Russia during the course of the election,” Trump cried out in frustration: “How many times do I have to answer this question?” It was the most intelligent query of the day.

The press played straight into Trump's hands, all but providing him with his best lines. "Well, I guess one of the reasons I'm here today is to tell you the whole Russian thing, that's a ruse," he responded at one point. "That's a ruse. And by the way, it would be great if we could get along with Russia, just so you understand that. Now tomorrow, you'll say, 'Donald Trump wants to get along with Russia, this is terrible.' It's not terrible. It's good."

The prose may not be very polished, but the sentiments are unassailable. Ditto Trump's statement a few minutes later that "false reporting by the media, by you people, the false, horrible, fake reporting makes it much harder to make a deal with Russia. ... And that's a shame because if we could get along with Russia – and by the way, China and Japan and everyone – if we could get along, it would be a positive thing, not a negative thing."

If the Washington Post and the Times do not agree that bogus assertions about unauthorized contacts with Russia are not poisoning the atmosphere, they should explain very clearly why not. They should also explain what they hope to accomplish with a showdown with Russia and why it will not be a step toward World War III.

But they won't, of course. The media (with encouragement from parts of the U.S. government) are working themselves into a fit of outrage against Vladimir Putin just as, in past years, they did against Daniel Ortega, Manuel Noriega, Saddam Hussein, Slobodan Milosevic, Saddam Hussein (again), Muammar Gaddafi, Bashar al-Assad, and Viktor Yanukovich. In each instance, the outcome has been war, and so far the present episode shows all signs of heading in the same direction as well.

Reporters may be clueless, but working-class Americans aren't. They don't want a war because they're the ones who would have to fight it. So they're not unsympathetic to Trump and all the more inclined to give the yapping media short shrift.

This is a classic pattern in which strongmen advance on the basis of a liberal opposition that proves to be weak and feckless. Today's liberal media are obliging Trump by behaving in a way that is even sillier than usual and well ahead of schedule to boot.

A Fragile Meme

The anti-Russia meme, meanwhile, rests on the thinnest of foundations. The argument that Russia hacked the Democratic National Committee and thereby tipped the election to Trump is based on a single report by CrowdStrike, the California-based cyber-security firm hired by the DNC to look into the mass

email leak. The document is festooned with head-spinning techno-jargon.

It says of Cozy Bear and Fancy Bear, the hackers who allegedly penetrated the DNC in behalf of Russian intelligence: "Their tradecraft is superb, operational security second to none, and the extensive usage of 'living-off-the-land' techniques enables them to easily bypass many security solutions they encounter. In particular, we identified advanced methods consistent with nation-state level capabilities including deliberate targeting and 'access management' tradecraft – both groups were constantly going back into the environment to change out their implants, modify persistent methods, move to new Command & Control channels, and perform other tasks to try to stay ahead of being detected. Both adversaries engage in extensive political and economic espionage for the benefit of the government of the Russian Federation and are believed to be closely linked to the Russian government's powerful and highly capable intelligence services."

Impressive? Not to independent tech experts who have already begun taking potshots. Sam Biddle, The Intercept's extremely smart tech writer, notes that CrowdStrike claims to have proved that Cozy Bear and Fancy Bear are Russian because they left behind Cyrillic comments in their "metadata" along with the name "Felix Edmundovich," also in Cyrillic, an obvious reference to Felix Edmundovich Dzerzhinsky, founder of the Cheka, as the Soviet political police were originally known.

But, Biddle observes, there's an obvious contradiction: "Would a group whose 'tradecraft is superb' with 'operational security second to none' really leave behind the name of a Soviet spy chief imprinted on a document it sent to American journalists? Would these groups really be dumb enough to leave Cyrillic comments on these documents? ... It's very hard to buy the argument that the Democrats were hacked by one of the most sophisticated, diabolical foreign intelligence services in history, and that we know this because they screwed up over and over again."

Indeed, John McAfee, founder of McAfee Associates and developer of the first commercial anti-virus software, casts doubt on the entire enterprise, wondering whether it is possible to identify a hacker at all. "If I were the Chinese," he told TV interviewer Larry King in late December, "and I wanted to make it look like the Russians did it, I would use Russian language within the code, I would use Russian techniques of breaking into organizations. ... If it looks like the Russians did it, then I can guarantee you: it was not the Russians." (Quote starts at 4:30.)

This may be too sweeping. Nonetheless, if the press really wanted to get to the bottom of what the Russians are doing, they would not begin with the question of what Trump knew and when he knew it. They would begin, rather, with the question

of what we know and how we can be sure. It's the question that the press should have asked during the run-up to the 2003 invasion of Iraq, but failed to. But it's the question that reporters should be asking now before the conflict with Russia spins out of control, with consequences that are potentially even more horrendous.

It's not easy making Donald Trump seem like a peacenik, but that's what the billionaire's press has done.

Daniel Lazare is the author of several books including *The Frozen Republic: How the Constitution Is Paralyzing Democracy* (Harcourt Brace).
