

What NSA Leaks Reveal about Ethics in America's Intelligence Community

Written by Michael Andregg

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MICHAEL ANDREGG, JAN 12 2014

The NSA (National Security Agency) has been savaging the US Constitution lately by secretly collecting data on almost every US citizen. But most of that evil work has been done by citizens obeying orders from true believers in the security state. In their hearts, they are heroes. *It* (the security state), however, has no heart. The key to understanding this dilemma is to recognize that the Intelligence Community ('IC') bureaucracies have mastered the art of getting "good people" to do "bad things" in the name of "national security." There are just enough real maniacs on earth to frighten the hyper-vigilant at all times, even though actual deaths to real terrorists in North America are objectively far less each year today than deaths to bee stings, lightning strikes or televisions.[i]

So while I mention serious damage to American civil liberties and even to national security due to the recent growth of NSA activities, I need to be clear that this damage was done mainly by people with good intentions. In their minds, they are protecting the innocent from dangers posed by murky and sometimes stateless actors called "terrorists." The IC clan is largely sincere, partly because they are told constantly that they are patriots by the bureaucracies that hire them, and which enforce the secrecy rules that enable such dysfunction. 9/11 provided an excuse. But bureaucracies run on money, not consciences, 'free will,' ethics or love, so counting on them to enforce any restraint is a fool's conclusion. Bureaucracies are in it for the money, period.

The Illusion of Oversight

This overreach was enabled by 9/11 and a supine Congress whose "oversight" mechanisms were designed to fail decades ago, and have done so tragically. This was first told me by a sitting US Congressman, Bruce Vento (D), and strongly reinforced by the Chair of the Senate Select Committee on Intelligence at that time, Sen. David Durenburger (R). 24 years later, Congressman Alan Grayson wrote that "government oversight is a joke".[ii] Obsession with secret power, and indifference to Constitutional law, much less oversight or agreements on prudent intelligence sharing, has damaged our national security seriously by offending vital allies who don't like to be spied on any more than loyal citizens.[iii]

Spy agencies undoubtedly need some secrecy, but there are big differences between necessity and obsession. Agents may be killed, or "turned" if detected, and communications once known to be tapped by secret police are seldom used again for serious business. *Some* secrecy is essential for spies. However, that easily becomes an *obsession* with secrecy common to intelligence agencies that can blind them to important things that are obvious to outsiders. For example, Americans generally do *not* like to be targeted by weapons of war that we paid for. Surprised? The NSA is. Their bulk collection program turned what was originally an intelligence weapon of war directed at terrorists abroad, into a domestic tool used to scan most communications of almost all citizens at home. The only people surprised by public disgust at this are security gremlins deep inside their very secure cocoons, who ask sincerely "Why don't our citizens trust us to collect all their telephone calls and emails?" Allied heads of state also do not like to be treated like criminals when it comes to surveillance by any "Big Brother", including the US. Widespread distaste for such activities was a big surprise to the NSA, which felt that if it could eavesdrop on anyone's communications it should, then did, then lied about it.[iv]

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What ethical lapses are shown by the NSA revelations? To what extent are these system properties rather than episodes of individual activity (like espionage) which could occur even in theoretically perfect systems. At least as important, what can America do at this time to restore the balance?

Major Ethical Lapses and System Failures

The security clearance system (at least in America) systematically weeds out people with strong consciences in the name of "protecting the people" or the state. But the real concern is that very conscientious people will not always keep horrid crimes secret. This secrecy is required by the nondisclosure contracts all must sign. There is nominal instruction in "ethics" for the IC[v] and large reams of legalese explaining why employees should never steal from the government or lie to their superiors (even if lying to the rest of the world is part of their daily work). Career employees quickly learn, however, that taking a real ethics complaint to the Inspector General's office is a quick path to a bad assignment, or even dismissal if you persist. IG offices are where scandals go to die, not get fixed. If genuine whistleblowers go to media of any kind, they are prosecuted relentlessly, some even threatened with a penalty of death under the 1917 Espionage Act (more under President Obama than by all former US Presidents combined).[vi] At the same time, we see the promotion of senior people who authorized things like torture, "renditions," and the killing of US citizens overseas without due process, or convictions in courts of law.[vii]

Therefore much stronger whistleblower protection for national security professionals would help. They are uniquely vulnerable to retaliation by things like revocation of their security clearance (which ends their careers as well as current jobs). The National Security Whistleblowers Coalition can provide many suggestions about that, since all of their 50+ members have sacrificed much to tell America's public things it needs to know about life and death issues that have been covered up by the clearance and classification processes.

Sins like torture and murder of innocents or US citizens are not directly related to current NSA scandals except that signals intelligence often provides much of the data that determines which "targets" are OK for torture, kidnapping or death. Mistakes here have serious consequences. And alleged transcripts of alleged NSA intercepts are very easy to fabricate or "mistranslate." More broadly, the security clearance system provides an overall blanket of secrecy that silences insiders who know that wrong things are occurring (such as initiation of the 2003 war against Iraq, contrary to international legal principles).[viii] Insiders always know these rules that constrain 'good people' who want to retain their clearances and careers. At least as important, they know their coworkers as *good people*, who treat each other very nicely even if they are involved in the murder of innocents overseas. Like most professions, they are vividly aware of the difficulties of their jobs, and much less aware of the suffering they may cause for "targets" who are seldom identified as human beings in the technical jargon of their trade.

Very bright people whose careers develop within such toxic environments can lose whatever moral compass they arrived with to the extent that they may then routinely rationalize lying to Congress, the public and the press. Like members of cults, they learn secret, internal languages that are not the same as that which normal or "uncleared" people use who are automatically suspect for a variety of reasons. But I stress again that the people involved do not do this to hurt America, Congress, or the Constitution. They truly believe that because they have security clearances and access to secrets, they know *better* than Congressmen, the Constitution, or citizens what should be done to protect us. In fact, many hold Congress in contempt, a view widely shared outside the IC these days. This is how and why many very bright and "good people" learn to lie to Congress and the public. Learning to lie is not hard for spies, but learning to rationalize the torture and murder of innocents takes more work, and learning how to urge suspension of the Constitution by wordsmithing is an art.

What can we do to Restore the Balance?

There are at least three ways in which balance may be restored. First, a current legislative contest is between a "Cover Our Asses Act" (the FISA Improvements Act) sponsored by the current Chair of the Senate Oversight Committee, Dianne Feinstein (D, CA) and other true believers in the security state, that would 'legalize' a degree of state surveillance of American citizens that would appall our founding fathers, and a "Freedom Act" sponsored by civil liberties Senators and the very conservative Republican Congressman who authored the USA Patriot Act after

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9/11. That Act has been interpreted to overrule much of the first, fourth, and eighth amendments to the US Constitution, by staff including a secret court (FISA) that hears secret evidence and allows no testimony by defense or by critics of the people who profit from this system.

A bigger and better fix would be a complete overhaul of the security clearance and information classification systems that enable this dysfunction and waste, as described in the Moynihan Report on Government Secrecy of 1997. It found that secrecy is a very expensive form of government regulation, that excessive secrecy has negative consequences for the national interest when policy makers are not fully informed, that government is almost never held accountable for its actions in the secret services and that the public cannot engage fully in informed debate because of excessive secrecy. One of the few things almost all insiders and outsiders agreed with, then and today, is that information classification is grossly overdone because there are harsh consequences for employees who let information out, but no adverse consequences for playing it safe and classifying everything remotely risky or embarrassing. Yet, like many government reports, the Moynihan Commission's unanimous conclusions were almost totally ignored.[ix]

Most broadly, however, it is imperative to recognize key differences between the bureaucracies and the individual human beings they hire and train to do things. Bureaucracies have no natural consciences, and they are not just a sum of the individual human beings that make them up. Yes the humans matter a lot, of course. But bureaucracies have properties that transcend any simple sum of the humans in them that weigh heavily on assessments of blame in ethical cases. I have already mentioned one vivid example, how the security clearance systems characteristic of America's IC (and most of the world's, regrettably) systematically weed out the most ethically sensitive or enlightened citizens. That is a loss to the IC. The worst IC bureaucracies actively concentrate psychopaths (scattered at frequencies below 1 percent in 'normal' populations)[x] because they have found that psychopaths can make better spies. This is due to their indifference to moral norms and lifelong experience in persuasive lying to manipulate people. Concentrating psychopaths in positions of lethal, and secret, power can generate many self-inflicted wounds. Recall that the bureaucracies rely on money for their life force, and have no natural consciences. In biological living systems, energy can come from food or the sun, but for bureaucracies it is *money*; money is their energy. They use this to buy PR and to recruit the human resources they need to perpetuate that money flow. Like any living system, bureaucracies also want to grow, which makes them intrinsically greedy. Therefore, deep IC reform is increasingly urgent, as Snowden and many more national security whistleblowers have been warning for some time.

It is imperative to remember that most intelligence personnel are wholeheartedly devoted to the welfare of their countries and citizens. Many are willing to face death to protect their peoples and countries, and a few from the human intelligence and special operations groups go into the field to face harsh enemies who will torture and kill them if discovered. We need such heroes. But they need to work for institutions that honor American principles instead of betraying us. Today, American IC employees must deal with stultifying bureaucracies that often punish people who act on ethical insights. The worst concentrate psychopaths at the entry level, who then exploit advantages that concentrate them further among the senior ranks. Like refining uranium, this can lead to very bad consequences if carried too far, such as damaging true national security. The history of police-states shows that carried to the extreme, secret police with unaccountable power eventually destroy the nations they were created and empowered to protect.

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[i] Matt Bewig, of AllGov news, reported on Sunday June 10, 2012 that: "Since 9/11, a total of 238 American citizens have died from terrorist attacks, or an average of 24 per year, although only 15 American noncombatants died in 2010 and 17 in 2011 – none of them in the United States and almost all of them in Afghanistan or Iraq where the US has been waging wars for a decade." <http://www.allgov.com/news/top-stories/more-americans-killed-by-bees-and-wasps-or-falling-televitions-than-by-terrorists?news=844603> When people look at actual numbers, it turns out that lightning and falling furniture kill far more people in America every year than terrorists by any definition. Also note: "How Many Americans are Killed by Terrorism?" by Micah Zenko, June 5, 2012, Council on Foreign Relations. <http://blogs.cfr.org/zenko/2012/06/05/how-many-americans-are-killed-by-terrorism/>

[ii] Grayson, Alan (US Congressman). "Congressional Oversight is a Joke" in the Guardian, UK, Dec. 27, 2013. He notes here that "I have learned far more about government spying from the media than I have from Congressional briefings. ... It took this investigation to convince me that I had always been told lies, to make me realize I was tired of being told lies. I am tired of the spies telling lies too." The comments from Congressman Vento and Senator Durenberger 24 years earlier were private to this author when I had occasions to work closely with both of them during my early years of studying spies and dysfunctions within the "Intelligence Community" or IC.

[iii] "Der Spiegel: NSA Bugged UN Headquarters," by Tabassum Zakaria of Reuters, Aug. 25, 2013. "Brazil President Denounces Spying in UN Speech," by Julian Borger, Guardian UK, Sept. 24, 2013. "NSA Monitors Calls of 35 Heads of States," by James Ball, Guardian UK, Oct. 25, 2013. "NSA Spying Prompts Spain to Summon US Ambassador," by Paul Hamilos, Guardian UK, Oct. 28, 2013. A comprehensive list of such stories would have hundreds of entries.

[iv] There are many news reports about lies told to the US Congress by NSA Director Keith Alexander and his boss Director of National Intelligence James Clapper about the extent of NSA surveillance of US citizens in particular. When a member of the Intelligence oversight committees asked if the NSA was collecting information on millions of Americans, Clapper first lied, then admitted that he had said "the least untruthful" thing he "could." "Fire the Liar" Dec. 15, 2013, is a response by career Army Officer and CIA analyst (ret.) Ray McGovern. The best description about why good people do such evil things before Congress may come from former NSA executive and eventual whistle blower William Binney (who helped design the very machines and processes being criticized here) for the Huffington Post of October 17, 2013. "William Binney, another former NSA official turned whistle-blower resigned from the agency in October, 2001. He said this week that he saw Alexander as a "corporate" leader who was interested in getting as much money as possible from Congress to extend the agency's reach." This is the true key. "Corporate interests" have convinced many US intelligence agencies that their budgets are more important than the US Constitution, and they make it crystal clear to employees what will happen to them if they regard their oath to the Constitution as more important than non-disclosure commitments to their agency. They will be prosecuted severely for telling the truth, while higher officials go free and get rich by telling lies to Congress and many others.

[v] "The Intelligence Community Ethos: A Closely Regulated Profession" by Col. Christopher E. Bailey, *International Journal of Intelligence Ethics*, Vol. 3, No. 2, fall/winter 2012, pp. 54-76. This may be the best open source summary of many attempts to introduce ethical considerations into American IC institutions. But I must then also cite Andregg, M. in the same volume on "Do Intelligence Bureaucracies Fear Ethics, and if so, Why?" pp. 100-120 that describes why the bureaucracies strongly prefer *faux* ethics to people with active consciences whom they deny security clearances to or, once in, persecute, fire or even prosecute should they actually act on ethical concerns. A code of *omerta* trumps their oaths to protect the Constitution. The senior editor of this journal, Dr. Jan Goldman, was Bailey's predecessor at the National Intelligence University, where he wrote books on the ethical dilemmas that spies face: *Ethics of Spying: A Reader for the Intelligence Professional* in 2006, second edition in 2009.

[vi] "Office of Special Counsel Must Change Climate and Protect Whistleblowers" by Charles M. Smith, June 29, 2011; "Judge Rules Against CIA Whistleblower" AP, April 20, 2012; "Spies and Whistle-Blowers," by Gwynne Dyer, July 8, 2013 (at: <http://gwynnedyer.com/2013/spies-and-whistle-blowers/>); "The Secret Sharer: is Thomas Drake an enemy of the state?", by Jane Mayer in *The New Yorker*, May 23, 2011, CBS 60 Minutes report on Drake's case, http://www.youtube.com/watch?v=S1_b2iRq-A0, and essays at the National Security Whistleblowers Coalition.

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[vii] Specifically Anwar al-Awlaki killed by a drone attack in Yemen targeting him on September 30, 2011, followed 2 weeks later by his son Abdulrahman al-Awlaki, born in Denver, while attending an event to remember his father.

[viii] Two books lay out in great and heavily referenced detail how the invasion of Iraq was preceded by profound "politicization" of raw intelligence to produce propaganda used to sell this war. They are "A Pretext for War" by James Bamford, Anchor Books, 2005, and "The Greatest Story Ever Sold" by Frank Rich, Penguin Books, 2006. Before them, Britain's head of MI6 (their CIA equivalent) Sir. Richard Dearlove informed the British Security Cabinet that his visit to Washington DC in 2002 showed that "the evidence was being fixed around the policy." This is a definition of politicization, one of the greatest sins possible in ethical intelligence analysis, revealed by the Times of London on May 1, 2005. Alleged transcripts of alleged NSA intercepts are especially easy to manufacture or "mistranslate."

[ix] The full Commission Report can be found at <http://www.fas.org/sgp/library/moynihan/index.html> . Its warnings about excessive secrecy and cumulative damage are echoed by Britain's Rhodri Jeffreys-Jones in "A Critique of the Surveillance Flap" in e-IR of June 30, 2013. <http://www.e-ir.info/2013/06/30/a-critique-of-the-surveillance-flap/>

[x] Lobaczewski, Andrew M. "Political Ponerology (A Science on the Nature of Evil Adjusted for Political Purposes)", second edition by Red Pill Press of Edmonton, Canada, 2007.

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