



The Obama Administration May Be Our Least----Not Most----''Transparent'' Administration

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Traditionally, secrecy has been vital to effective intelligence. But now secrecy is causing some of our most significant intelligence failures.

(WASHINGTON DC) - President Obama promised to provide us with an open and "transparent" administration. In April 2010, Press Secretary Robert Gibbs declared that the The administration was, in fact, the "most transparent" in history. The current press secretary, Jay Carney, repeated this claim in April and the president himself declared that, "This is the most transparent administration in history...I can document that this is the case."

Shortly after his first inaugural, President Obama declared that, "For a long time now, there's been too much secrecy in this city," and ordered his attorney general to issue newly restrictive standards for government use of the "state secrets privilege," which allows government to shield national security secrets from civil or criminal discovery. Attorney General Eric Holder pledged that the administration would not "invoke the privilege for the purpose of concealing government wrongdoing or avoiding embarrassment."

Unfortunately, things have not worked out that way. Gene Healy of the Cato Institute notes that, "Earlier this year, in a case involving a Stanford graduate student erroneously placed on a no-fly list, we learned that the government had cried 'state secrets' to cover up a paperwork error. Holder himself assured the court that assertion of the privilege was in keeping with the new policy of openness. When the presiding judge found out the truth, he said: 'I feel that I have been had by the government.' In fact, the Obama administration has driven state secrecy to new levels of absurdity....In the president's version of 'transparency,' Americans have no right to debate even the most basic public questions...like the legal standards for spying on or killing American citizens...unless, of course, that information leaks, at which point the administration 'welcomes' the debate."

As a result of a recent ruling by the 2nd U.S. Circuit Court of Appeals, the administration must tell us when it believes it is legally entitled to kill U.S. citizens. The lawsuit arose out of Freedom of Information requests by two New York Times reporters for Office of Legal Counsel memoranda exploring the circumstances under which it would be legal to target American citizens. The administration argued that "the very existence of such documents or nonexistence of such documents is itself classified, and a federal district judge upheld the refusal in January 2013.

A month later, someone leaked a Justice Department white paper on the subject to NBC News, forcing a re-examination of the question. In April 2014, the three judge panel held "it is no longer either 'logical' or 'plausible' to maintain that disclosure of the legal analysis in the OLC-DOD Memorandum risks disclosing any aspect" of sensitive sources and methods.

"In matters of transparency," Gene Healy declares, "the Obama team can always be counted on to do the right thing---after exhausting all other legal options and being forced into it by the federal courts.."

In the case of the White House's machinations about what happened in Benghazi, Libya, where Ambassador Chris Stevens and two other Americans were killed in a terrorist attack, what we observe is the opposite of "transparency."

Investigators from the House of Representatives subpoenaed from the White House an e-mail written by Ben Rhodes, a deputy national security adviser to President Obama. It was never provided. But the White House was forced to respond to a Freedom of Information Act request filed by the watchdog group Judicial Watch. The e-mail reveals how the White House developed a narrative about Benghazi which, it seems, had little relationship to what really happened. It blamed a video, rather than terrorists, for the attack, lest voters come to believe that terrorism had not been finally defeated, as the White House sought to proclaim.

Now, a House select committee will be investigating what really happened in Benghazi and how the White House handled the matter. Our most "transparent" administration has already declared that many of the documents the committee will seek have been classified as top secret---something the president has the power to do for any reason he chooses, Republicans, however, can hardly complain---because they are the ones who gave this power to President George W. Bush. Of course, the committee can subpoena the records and a federal judge will finally decide whether or not they will be released.

At the same time, early in May, the administration clamped down on a technique that government officials have long used to join in public discussions of well-known but technically still-secret information: citing news reports based on unauthorized disclosures. A new pre-publication review policy for the Office of Director of National Intelligence says current and former employees and contractors may not cite news reports based on leaks in their speeches, opinion articles, books, term papers or other unofficial writings.

Timothy H. Edgar, a visiting professor at Brown University who worked at the intelligence office and the White House from 2006 to 2013, said it went too far to retroactively block former

officials from citing news reports in the public domain, as long as they did so neutrally and did not confirm them as factually correct. That would amount to a prior restraint on former officials' First Amendment rights that they did not consent to, he said.

"You're basically saying people can't talk about what everyone in the country is talking about," he said. "I think that is awkward and overly broad in terms of restricting speech." Is this what the administration means by "transparency?"

Government secrecy, of course, is bipartisan. In a typical recent year, the federal government spent \$6.5 billion creating 14 million new classified documents. The official in charge of information security at the Pentagon told lawmakers that at least half the information the U.S. Government classifies each year should not have been kept secret. When he chaired the 9/11 Commission, former New Jersey Governor Thomas Kean said that "three quarters of the classified material" he reviewed should not have been classified in the first place.

Excessive government secrecy may actually have put the government at risk before 9/11, and President George W. Bush's fanciful claims about Iraq's non-existent "weapons of mass destruction," might have never emerged without our pattern of secrecy.

Bruce Berkowitz, a research fellow at Hoover Institution, argues that U.S. intelligence agencies are so obsessed with keeping secrets that they have actually put us at risk: "Investigations into the September 11 intelligence failure and misestimates of Iraqi weapons of mass destruction have discovered an important new trend.

Traditionally, secrecy has been vital to effective intelligence. But now secrecy is causing some of our most significant intelligence failures. Investigators examining the September 11 terrorist attacks found that intelligence organizations were often unable to share information with intelligence users and thus could not provide effective warning. In other cases, intelligence organizations could not share information with each other and thus were unable to work effectively together."

In the case of Iraq's alleged weapons of mass destruction, Berkowitz notes that, "Preliminary investigation into the intelligence estimates of the Iraqi WMD program suggest some of the results of these policies. For example, CIA analysts assessing reports from the field sometimes believed they were reading information from several sources that corroborated each other, when in fact the reports all came from a single source...The whole purpose of intelligence is to give us an information advantage over our adversaries. Secrecy protects this advantage by keeping our opponents from knowing what we know. But poorly designed systems for protecting secrecy can give away any advantage we gain when they prevent us from using our intelligence effectively."

The rise in government secrecy, as measured by the number of newly classified documents, accelerated but did not begin during the George W. Bush administration. In fact, government secrecy rose during much of the Clinton administration. In 1997, a commission led by Senator Daniel Patrick Moynihan (D-NY) spoke of a government "culture of secrecy." and urged greater openness.

The more secrets government keeps, the less possible it is for us as citizens to understand what our representatives are doing and whether it is, indeed, our will which is being carried out.

We should remember the warning of James Madison: "A popular government, without popular information, or the means of acquiring it, is but a prologue to a farce or a tragedy, or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own governors must arm themselves with the power which knowledge gives."

Many were hopeful when President Obama promised "transparency." That is a promise he has certainly not kept, and seems to have made things worse than he found them, which were bad enough.

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Salem-News.com contributor Allan C. Brownfeld received his B.A. degree from the College of William and Mary, his J.D. degree from the Marshall-Wythe School of Law of the College of William and Mary and his M.A. in Government and Politics from the University of Maryland. He has served on the faculties of St. Stephen's Episcopal School, Alexandria, Virginia, and the University College of the University of Maryland.

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Mr. Brownfeld served as a member of the staff of the U.S. Senate Internal Security Subcommittee and was the author of that committee's 250-page study of the New Left. He has also served as Assistant to the Research Director of the House Republican Conference and as a

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