



Let's hear it for scandal!

By: Gene Healy - November 19, 2012

I can't abide the sort of Beltway scold who looks down his nose at political scandals as distractions from "the business of governing." Ringside seats at the latest --'gate are among the few redeeming features of life in this miserable company town.

At a minimum, scandals serve as a useful reminder that we're usually led by people of questionable competence, miserable judgment and a flexible relationship with the truth. At their best, they can even provoke much-needed reforms.

As disgraced former CIA head Gen. David Petraeus snuck over to the Hill Friday to testify about the Sept. 11, 2012, attack on the U.S. consulate in Benghazi, Libya, it wasn't clear whether this would end up being the latter sort of scandal.

With all the focus on "who altered the CIA talking points?" and "what did [U.N. Ambassador] Susan Rice know and when did she know it?" -- the Republicans seem to be missing more fundamental questions. For starters, how about, "what are we doing in Libya in the first place?"

After all, President Obama's 2011 Libyan adventure, the precursor to the Benghazi tragedy, was an unnecessary war according to the president's own secretary of defense. "I don't think it's a vital interest for the U.S.," then-Pentagon chief Robert Gates said on NBC's "Meet The Press" as the Tomahawk missiles flew.

Moreover, it was a war that the president's own attorney general apparently believes was illegal. Though the Justice Department's Office of Legal Counsel provided legal cover for the initial strike on Libya, they balked as the war approached the War Powers Resolution's 60-day deadline for stopping involvement in "hostilities" not authorized by Congress. Acting OLC head Caroline D. Krass told the president continued bombing would violate the WPR, and "Attorney General Eric H. Holder Jr. supported Ms. Krass' view, officials said," according to the New York Times' Charlie Savage.

Undeterred, President Obama shopped around for a second opinion, got one from a more compliant aide at State, and continued bombing.

An illegal, unnecessary war is worth at least as much attention as the Benghazi debacle is getting. By all means, Congress should investigate whether the administration deliberately misled the public, and should look into strengthening security for American diplomats.

But Congress should also consider strengthening the toothless War Powers Resolution. Rep. Walter Jones, R-N.C., has proposed legislation that would implement an automatic funding cutoff for unauthorized wars. Maybe that's worth a hearing.

As for l'affaire Petraeus, my colleague Julian Sanchez points out that "the serious scandal here may well be the breadth of the FBI's power to launch fishing expeditions through Americans' most intimate communications." Sanchez notes that the Electronic Communications Privacy Act was drafted in 1986, "when Atari was king," and under it, "investigators often don't even need a Fourth Amendment search warrant to go fishing through your emails." Sen. Patrick Leahy, D-Vt., has proposed amending ECPA to require probable cause and a warrant for email searches.

The scandal-packed Watergate period -- with its revelations of unauthorized wiretapping, secret wars, intelligence abuses and obstruction of justice -- was as riveting and edifying as anything in U.S. history. As a bonus, it helped spur reforms like the War Powers Resolution, the Privacy Act and the Foreign Intelligence Surveillance Act, which, while imperfect, at least began to address the problem of unchecked executive power.

Amid the tumult surrounding Gen. Petraeus' extracurricular activities and the administration's dissembling over Benghazi, it's becoming ever clearer that our National Security-slash-National Surveillance State is once again out of control. Settling scores and scoring points is always part of the scandal game; still, it would be nice if Congress could also start addressing the deeper problems these scandals reveal.