Case 12: To Leak or Not to Leak

Exposing government information, secret or otherwise, through leaks to the news media or other channels, goes back to the birth of the United States. Whistleblowers usually act out of a sense of duty to their conscience and to the American public. The reward for their efforts, however, is seldom positive. A whistleblower often risks losing a job, financial ruin, or being labeled a traitor to his or her country.

Samuel Shaw and Richard Marven were America’s first whistleblowers. In 1777, during the American Revolution, Ensign Shaw and Lieutenant Marven accused the Continental Navy’s commander-in-chief of ordering the torture of British prisoners of war. They were discharged and then sued for libel by Commodore Esek Hopkins. Luckily for Shaw and Marven, the scandal prompted the Continental Congress to pass the first whistleblower protection law and to pay for the men’s legal expenses. Commodore Hopkins was stripped of his command and his commission.

Had Shaw and Marven miraculously lived another 238 years, they would have, no doubt, been pleased when the US Congress dedicated the first National Whistleblower Appreciation Day, July 30, 2015, in their honor.

Ironically, the US government was, at the same time, conducting the most aggressive prosecution of whistleblowers since the administration of President Richard Nixon. The Department of Justice, using the 1917 Espionage Act, prosecuted six government employees and two contractors for leaking classified information to the news media. That surpassed the total number of all such cases going back to the Warren Harding administration.

The most prominent of those being prosecuted were, like Shaw and Marven, serving in national defense related roles when they became whistleblowers. One, Chelsea Manning, was enlisted in the US Army and the other, Edward Snowden, worked as a contractor with the National Security Agency. Unlike Shaw and Marven, they are unlikely to receive any declaration of praise on National Whistleblower Appreciation Day, at least not anytime soon.

Private Chelsea Manning released thousands of secret documents related to the US war in Iraq to the news media through the Wikileaks website. In a 35-page statement she read at her trial, she says she did what she did because she saw the US military committing illegal and unconscionable acts in Iraq and in the war in Afghanistan. Among the material she uncovered was a video of a US Army helicopter gunship firing on an Al Jazeera TV news crew and other reporters who were clearly not a threat to American forces on the ground.

Manning pleaded guilty to a number of the charges against her and received a 35-year sentence with the possibility of parole after eight years. Meanwhile, the US Department of Justice is pursuing an active and long-term investigation of WikiLeaks.

Edward Snowden, now living in exile in Russia, stunned the world when he released over a million documents revealing the vast extent of Internet and telephone surveillance being conducted by the US government, not only on people in other countries but also illegally on American citizens. Snowden said he was disturbed by the brazen disregard for privacy and the law. The US government responded by indicting Snowden on numerous counts of espionage.
Without the information leaked by Manning and Snowden to the news media, it is unlikely the American public would have found out about the issues they raised or, at least, not in as timely a fashion. And yet, there are those who call both traitors to their country. The US government certainly seems to think so.

One wonders what Samuel Shaw and Richard Marven would have to say about these modern-day whistleblowers.

Case from the 2017 International Ethics Bowl on February 26, 2017 in Dallas Texas

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