

[H-Diplo Roundtable XVIII, 14 on The War on Leakers: National Security and American Democracy from Eugene Debs to Edward Snowden](#)

Discussion published by George Fujii on Monday, January 23, 2017

H-Diplo

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Roundtable Review

Volume XVIII, No. 14 (2017)

23 January 2017

Roundtable Editors: Thomas Maddux and Diane Labrosse

Roundtable and Web Production Editor: George Fujii

Introduction by Thomas Maddux

Lloyd C. Gardner. *The War on Leakers: National Security and American Democracy from Eugene Debs to Edward Snowden*. New York: The New Press, 2016. ISBN: 978-1-62097-063-8 (hardcover, \$26.95).

URL: <http://www.tiny.cc/Roundtable-XVIII-14>

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Introduction by Thomas Maddux, Professor Emeritus of History at California State University Northridge

Citation: George Fujii. *H-Diplo Roundtable XVIII, 14 on The War on Leakers: National Security and American Democracy from Eugene Debs to Edward Snowden*. H-Diplo. 01-23-2017.

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In his emeritus years Lloyd Gardner has continued a distinguished teaching and publishing career that includes more than a dozen historical studies, with several being the subject of H-Diplo Roundtables.¹¹ Gardner begins his latest study of the leaking of government documents with the Espionage Act of 1917, which aimed to prevent dissent against U.S. involvement in World War I. It was used against Eugene Debs, leader of the Socialist Party, who spoke and wrote against the war. Debs was arrested, tried, and convicted of attacking the draft for the war effort and held in jail until his release in 1921. Leaking of official U.S. governmental documents may not be as widespread as the providing of confidential information by Congressmen, their aides, White House and executive branch officials, and officials in many of the branches of the government. ‘Leaks’ of official documents have not attracted headlines in the current U.S. presidential campaign as it closes in on the finish line. Instead, the campaign has been preoccupied at least on the side of former Secretary of State Hillary Clinton with her use of a private server and the issue of confidential documents on the server. ‘Hacking’ of her campaign manager John Podesta’s email account has brought a steady stream of emails being ‘leaked’ to the media by WikiLeaks, founded by Julian Assange, who is currently residing in the Ecuadorian Embassy in London, to avoid being extradited to Sweden where authorities want to question him on an issue of sexual assault. According to Obama administration officials, Russia participated in the hack, just as it had earlier gained access to the emails of the Democratic Party Headquarters which were released by WikiLeaks. Unlawful access to stored communications violates federal and state laws in most states but perhaps the most serious issue is the effort by WikiLeaks and the ‘hackers’ to influence the results of the U.S. election. The irony is that the most serious criticism of Clinton’s use of a private server rather than reliance on the Department of State server for all official email is that it would have exposed confidential emails to ‘hackers’ and adversaries of the U.S. such as Russia. Less than a day before the November 8th 2016 election, WikiLeaks has not released any emails from Clinton’s server.

After discussing the Debs case, Gardner moves quickly to the ‘Pentagon Papers’ case of 1971 in which Daniel Ellsberg, an employee of the Defense Department, leaked to the *New York Times* and other newspapers a secret Pentagon study on the involvement of the U.S. in Vietnam from 1945 through 1968. Although the Pentagon Papers did not cover the Nixon administration’s policies in Vietnam, President Richard Nixon decided to charge Ellsberg with violation of the Espionage Act and attempted without success to stop publication of the papers. The case against Ellsberg ended in a mistrial, when the presiding judge learned that the White House had sent a group called the “Plumbers” to break into Ellsberg’s psychiatrist office to obtain damaging evidence against Ellsberg. (60-64)

In exploring the creation of the national security state under the impact of the Cold War and its extension in the aftermath of the al-Qaeda terrorist attacks on September 11, 2001 with the creation of the National Security Agency (NSA) and the proliferation of overlapping intelligence agencies using the latest technology to monitor and collect electronic communications, Gardner expresses heightened concerns about the balance between “protecting national security and honoring individual rights under the Constitution” (263). Gardner explores this development through a discussion of several cases of the prosecution of ‘leakers’ under the Espionage Act under the Obama administration. Just as Gardner emphasized how President Barack Obama turned to the use of drones to prosecute al-Qaeda leaders in Afghanistan, Iraq and Pakistan and self-proclaimed affiliates elsewhere in his 2013 *Killing Machine. The American Presidency in the Age of Drone Warfare*, he

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emphasizes how Obama went along with the recommendations of his intelligence advisers to use the Espionage Act to protect governmental secrets against both journalists and those who leaked such as Chelsea (Bradley) Manning, who in 2010 leaked State Department cables and U.S. Army incident reports to Assange for release on WikiLeaks (110-111). Gardner devotes the most attention to the biggest 'leaker' of all, Edward Snowden, who early in 2013 provided a large amount of governmental documents that significantly exposed the extent to which the NSA secretly collected a massive amount of electronic communications from abroad and in the U.S. beyond its legal authority and provided embarrassing information such as NSA officials taping German Chancellor Angela Merkel's cellphone (83).

All of the reviewers recognize that Gardner has provided a coherent contemporary study with historical connections back to 1917 and has reviewed a significant amount of available published materials. Austin Carson points to the value of Gardner's resurrection of the Espionage Act, his inclusion of prosecutions of leaks to journalists "rather than just leakers," and his depiction of Obama's aggressive prosecution of national security leaks versus his "rhetorical embrace of government transparency." Benjamin Fordham notes how Gardner points out that not all leakers get prosecuted under the Espionage Act and its assertion that they were spying for a foreign government and that "it is difficult to condemn unambiguously the actions of these leakers, illegal though they may be, when they uncover illegal activity. Glenn Hastedt is also impressed with Gardner's assessment of Obama as being concerned not only about the leaking of military secrets but also desiring to maintain a foreign policy consensus and avoid a "public debate over the relative merits of protecting national security and civil liberties." As John Prados emphasizes, Gardner "has been our canary in the coal mine [and] regularly stands at the intersection of current events with history, senses issues that are—or soon will be—of concern to historians, and gives us edgy commentary, and analysis plus a first cut at the issues."

Several of the reviewers offer minor criticism of Gardner's analysis. Prados, for example, does suggest that Gardner's book is "better at illustrating our problem than in proposing a solution."

Carson is more critical and suggests that the book "is informative but polemical and unfocused, missing an opportunity to improve scholarly understanding of the links between democratic civil liberties, secrecy, and national security." Carson believes that Gardner's sympathies preclude a balanced perspective that includes the views of the intelligence community and the executive branch with sympathetic treatment of "leakers" such as Ellsberg and Snowden and less attention devoted to "lesser-known and less sympathetic leak cases." The impact of technology is also noted by Carson in turning limited tolerated leaks into a massive disclosure of digital records, which increase the risks for the government.

In his response to the reviews, Gardner asserts that "I have no problem with being labeled a polemicist" as this "was my primary purpose in writing the book, to start an argument with my readers, and through them with others I do not disguise my belief that we are not doing all that well in meeting the challenges to American democracy posed by Fort Meade's penchant for collecting hay stacks."

Participants:

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Lloyd C. Gardner is Professor Emeritus of History at Rutgers University. A Wisconsin Ph.D., he is the author or editor of more than fifteen books on American foreign policy, including "Safe For Democracy," (Oxford University Press, 1984) "Approaching Vietnam," (W.W. Norton, 1988) and "Pay Any Price: Lyndon Johnson and the Wars for Vietnam." (Ivan R. Dee, 1995) He has been president of the Society for Historians of American Foreign Affairs.

Austin Carson is Assistant Professor of Political Science at the University of Chicago. His research analyzes secrecy and intelligence in world politics. He is currently completing a book manuscript analyzing the use of secrecy as a tool for helping keep war limited. He is the author of "Facing Off and Saving Face: Covert Intervention and Escalation Management in the Korean War," *International Organization* 70:1 (2016). His Ph.D. is from Ohio State University.

Benjamin O. Fordham is a professor of political science at Binghamton University (SUNY). He is the author of *Building the Cold War Consensus* (University of Michigan Press, 1998), as well as articles on foreign policy and international political economy in journals such as *International Organization*, *International Studies Quarterly*, the *Journal of Conflict Resolution*, and the *Journal of Politics*.

Glenn Hastedt holds a Ph.D. in political science from Indiana University. Formerly the chair of the political science department at James Madison University he is now professor and chair of the justice studies department. He is the author of *American Foreign Policy: Past, Present, Future*, 11th edition (forthcoming Rowman & Littlefield, 2016), senior author of *Pathways to Conflict and Cooperation* (CQ Press, 2014) and editor of *Readings in American Foreign Policy* (Rowman & Littlefield, 2016). He edited *Controlling Intelligence* (Frank Cass, 1991) and co-edited *Intelligence Analysis and Assessment* (Frank Cass, 1996). Hastedt has also authored articles on intelligence in *Intelligence and National Security*, *Journal of Intelligence History*, *Defense Intelligence Journal*, *International Journal of Intelligence and Counterintelligence*, *The Journal of Intelligence History* as well as chapters in edited volumes on intelligence.

John Prados is an analyst of national security based in Washington, DC. Prados holds a Ph.D. from Columbia University in Political Science (International Relations) and focuses on presidential power, international relations, intelligence and military affairs. He is a senior fellow and project director with the National Security Archive at George Washington University. Prados heads the Archive's documentation projects for the CIA and for Vietnam, and assists with the Archive's projects on Afghanistan and Iraq. His current book is *The Family Jewels: The CIA, Secrecy, and Presidential Power* (University of Texas Press). Prados is author of twenty-two other books. His papers have appeared in the journals *Intelligence and National Security*, *Journal of American History*, *Diplomatic History*, *Political Science Quarterly*, and the *Journal of East-West Studies*. His "Electronic Briefing Books" on important subjects of Iraq, intelligence, and Vietnam war history can be found on the National Security Archive website, www.nsarchive.org.

Review by Austin Carson, The University of Chicago

Lloyd Gardner's *The War on Leakers* offers a split-screen view of the relationship between unauthorized disclosures of national security information and democracy in the United States. In eight chapters, Gardner seeks to do both history and current affairs, to both describe the "long-standing campaign against leakers" (ix) and leak controversies that have been "ripped from today's headlines" (dust jacket). In practice, center stage is taken by leaker Edward Snowden's revelation of top secret surveillance by the National Security Agency (NSA) and the many twists and turns that followed. The book is at its strongest when tacking back to a historical vantage point, linking Snowden to dissenter Daniel Ellsberg and other leakers from the past to provide useful context to better understand the executive, legislative, and judicial reactions to leaks. Unfortunately, *The War on Leakers* does not offer an even-handed analysis. The result is a book that is informative but polemical and unfocused, missing an opportunity to improve scholarly understanding of the links between democratic civil liberties, secrecy, and national security.

The first two chapters in *The War on Leakers* provide a useful history of unauthorized disclosures, the American intelligence community, and presidential responses to those leaks. While lacking in nuance, these early chapters allow Gardner to show that an expanding national security state and the accompanying exponential growth of classified documentation laid the groundwork for modern leaks. These early chapters also review the origins of the 1917 Espionage Act, a statute that has become the weapon of choice in the Obama Administration's surprising battle with leaks and the journalists who use them. The bulk of the book, however, unfolds in the remaining six chapters on post-2001 leaks and their consequences. Gardner cannot be faulted for insufficient attention to detail in these chapters; he devotes considerable effort to documenting the complex, evolving, often tedious legal and political back-and-forth over Snowden and the NSA's surveillance program.

Some aspects of *The War on Leakers* are strong. Gardner rightly frames his chosen topic as equal parts puzzling and important. Given the President's rhetorical embrace of government transparency, few predicted the Obama Administration's campaign to aggressively prosecute national security leaks. The resurrection of the dormant Espionage Act to enable prosecutions of leaks – not of adversaries but of journalists – deserves careful unpacking. Moreover, the book's discussion of the targeting of journalists rather than just leakers (Chapter 4) nicely contextualizes what seems an even more troubling practice. Finally, while disappointingly selective in its history, the book does unearth a few gems that provide rare historical context about Snowden and other recent figures. Especially interesting is Gardner's review of the Kennedy White House's efforts to plug leaks and wiretap possible leakers (36-38), behavior that sounds downright Nixonian in its intention to intimidate internal dissent. These Kennedy passages, however, are the exception rather than the rule. They hint at the contribution that a book dedicated to an even-handed analysis of the long, and often forgotten, history of leaks and leak responses from the Wilson White House to President Obama's might have provided. Gardner's book does not accomplish this, despite the subtitle's promise of an account from "From Eugene V. Debs to Edward Snowden."

Instead, *The War on Leakers* moves between several distinct but related topics, more often than not directing the narrative to the last decade rather than the past. Regardless of a given reader's hopes for the book, its organization and its writing often lack focus. While serving some light historical fare, much of the rest of the menu is a laborious, journalistic account of Edward Snowden's leak, the NSA's surveillance efforts, interspersed with hyperbolic descriptions of an ominous surveillance state. Gardner's writing style at times derails the narrative. His prose frequently packs far too many details

in too few sentences. At one point during a particularly tedious account of the aftermath of the NSA's surveillance program, Gardner admits that "[a]ll this exposition is complicated" (182). Indeed. While this comment is refreshing, a more steady and forceful editing hand would have been the preferred remedy.

An additional weakness is Gardner's obvious sympathies with the Ellsbergs and Snowdens of the world and his refusal to provide a more sympathetic perspective from, say, the intelligence community or the executive branch more broadly. Gardner uses apocalyptic language about the "swelling hegemony of the intelligence community" (30), of the "prying hand...of the surveillance state" (145), and a total surveillance system that is a "Leviathan" (89) and "panopticon" (154). He attributes all of this to a "society obsessed with national security threats" (30) and overlooks periods when the Leviathan was tamed, as in the aftermath of the 1970s Church Committee investigations. The book supports this hyperbolic terminology with claims that strain believability, as when Gardner compares the influence of the Central Intelligence Agency to the Pentagon, State Department, and FBI and concludes it was a "far more agile player in the game of high-level Washington politics than all the others" (33). One can easily think of counter-examples when the CIA suffered bruising losses in battles over intelligence estimates, defense spending, and specific foreign policy initiatives.

Sympathies are understandable given the civil liberty and national security issues at stake in leaks and their legal prosecution. Less excusable is Gardner's selective, misleading account of leaks and their aftermath. The list of characters reviewed in *The War on Leakers* is too selective. Its overwhelming focus is on the most sympathetic leaks, specifically Snowden and Daniel Ellsberg. Too often the narrative becomes a simple drama of heroes ('leaks-as-civil-disobedience') and villains (White House 'war' fighters). Minimized or entirely overlooked are leak cases that do not fit the script; this has the disappointing effect of obscuring the complexity of unauthorized disclosures.

Take, for example, former intelligence analyst Samuel Loring Morison.^[2] Morison disclosed reconnaissance of Soviet shipbuilding in 1984 to a British national defense magazine. Morison's leak was not the product of a conscience shocked by unethical and unconstitutional government practices. Rather, upon arrest, Morison clarified his goal was to create a climate for stronger funding levels for the U.S. Navy. Caution had reigned too long; headlines about Soviet naval advances were needed to prompt better policy. Even more importantly, Morison's case was the first successful prosecution of unauthorized disclosure under the Espionage Act of 1917. The largely moribund statute was resurrected by President Ronald Reagan, not Obama, thirty years before Snowden made headlines. Despite the significance of this case, Morison's name does not appear in the *The War on Leakers*.

Leaving aside its significance for legal precedent, evaluating lesser-known and less sympathetic leak cases is critical to squarely confronting the genuine dilemmas in a democracy's response to leaks. If leaks are simply heroic, then ending a 'war' on those leakers straightforwardly expands political accountability and protects conscientious civil servants. This is the lasting impression left on readers from *The War on Leakers*. However, if leaks are also the result of idiosyncratic political agendas, bureaucratic grievances, and poorly informed ideological views, then raising the barrier to leaking appears much less war-like. Samuel Morison is no exception here. Former State Department contractor Stephen Kim leaked intelligence on North Korea's nuclear program in 2009 to Fox News in order to undermine a diplomatic track and steer American policy towards a more muscular approach to Pyongyang.^[3] Former Army intelligence analyst Chelsea Manning objected to conduct in

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Iraq and Afghanistan. Her response was not just to leak video of a deadly helicopter attack but also to leak enormous, uncurated batches of hundreds of thousands of diplomatic cables and war logs. Gardner touches on the cases of Kim and Manning but devotes far more attention to those of Snowden and Ellsberg. The book repeatedly elides this most basic dilemma of leaks: they are both vulgar and virtuous, conscientious and harebrained.^[4]

The reality of heroic and unheroic leaks, moreover, is essential to solving the basic puzzle that motivates the book: why an Obama Administration otherwise inclined to advocate transparency would wage a 'war on leakers.' Other important aspects of leaking are ignored and contribute to the one-sided tone of the book. As Rahul Sagar's valuable book on leaks notes, it is particularly hard to assess the trade-offs in public knowledge of classified information in the public sphere. Doing so requires informed conjecture about the damage that the leaks may have done; this, in turn, can require access to significant amounts of additional classified information. Gardner argues that the White House and intelligence officials struggled to provide unclassified information to support their claim of damage to terrorism-related intelligence from exposing NSA surveillance (87, 97, 144, 155). The larger problem this creates in assessing any leak's virtues or vices is important but not addressed.

Equally important to understanding the Obama Administration's puzzling crackdown on leakers is the role of technology. Information technology has changed the practicalities of leaking in ways that grossly magnify their potential negative impact and may have rendered the old model of tolerated leaks outdated. Gone are the days of Ellsberg furtively photocopying the Pentagon Papers. Today, digital record-keeping within government and digital transmission outside it have made Manning-style bulk disclosures all too easy. There is a basic spectrum of specificity in the documents in a given leak, ranging from judiciously limited leaks targeting a specific unconscionable program to mass leaks of documents with no vetting. The former tend to reflect acts of measured conscience most worthy of protection. The latter, however, maximize damage and seem to stand little chance of improving accountability for specific acts or policies in a meaningful way. Digitization has drastically reduced the barriers to bulk leaking. This seems essential to understanding why an Obama White House would react to Snowden and other leakers with the blunt tool of the Espionage Act. A 'live-and-let-live' approach was likely seen as risking large-scale hemorrhaging of classified information given the new realities of the digital age.

Leaks are an imperfect solution to a recurring problem in democratic government: how to permit secrecy while retaining some degree of accountability. Governments often condone leaking for a variety of instrumental and principled purposes.^[5] These and other indirect means have, in some ways, placed checks on an otherwise imperial presidency.^[6] Gardner's *The War on Leakers* usefully brings attention to the novelty of the Obama White House's aggressive legal responses to leaks. Yet its polemical tone, selective history, and headline-driven content mean that it avoids confronting the underlying challenges created by leaks in the modern era. The book therefore misses an important opportunity to historically contextualize contemporary American unauthorized disclosures and grapple with the challenges of regulating secrecy and dissent in today's democracy.

Review by Benjamin O. Fordham, Binghamton University

In *The War on Leakers*, Lloyd Gardner argues that the government has come to use the 1917 Espionage Act as its weapon of choice for preventing the public from finding out about the unsavory and possibly illegal activities of the intelligence community. The Act originated as a way to suppress dissent during World War I, providing the basis for the imprisonment of Socialist Party presidential candidate Eugene Debs for speaking out against the draft. It was later used to prosecute RAND Corporation military analyst Daniel Ellsberg when he leaked the Pentagon Papers study to the press in 1971. The government has used it more extensively against individuals who have provided information about the activities of the intelligence community to the press since 9/11. Gardner contends that the Espionage Act amounts to a “form of profiling” because it equates leakers with agents of an enemy government (25).

Although Gardner is a distinguished historian of American foreign relations, *The War on Leakers* is not primarily a work of history. The book begins with a brief history of the Espionage Act, most notably its use against Debs and Ellsberg. However, its principal focus is the prosecution of those who have leaked information about the intelligence community since 9/11, and especially since President Barack Obama took office in 2009. Gardner notes that recent Espionage Act cases differ from those of Debs and Ellsberg in some important respects. Debs revealed no secret information but instead gave speeches criticizing government policy. The Pentagon Papers study that Ellsberg leaked was classified, but concerned past rather than current policy. It was also not primarily concerned with the activities of the intelligence community, which have become the nearly exclusive focus of recent Espionage Act cases.

Gardner points out that the government does not prosecute all leakers to the same extent, or invoke the Espionage Act in all cases. I. Lewis Libby, Chief of Staff to Vice President Dick Cheney, was convicted of perjury and obstruction of justice in connection with his exposure of Valerie Plame’s identity as a covert intelligence agent of the CIA. President George W. Bush later commuted Libby’s prison sentence, though not the financial penalties imposed on him (117). David Petraeus, then CIA Director, pled guilty to a misdemeanor, paying a fine and receiving a suspended sentence for providing classified information to his biographer/mistress (262). Neither man was charged under the Espionage Act, and their treatment was far more lenient than that meted out to other recent leakers, such as CIA analyst John Kiriakou, who served thirty months in prison for exposing the CIA’s use of waterboarding (117-118; 135-139), as well as NSA official Thomas Drake, CIA employee Jeffrey Sterling, and others. Gardner argues that the differences in these prosecutions reflect the attitude of the executive branch—and especially the intelligence community—toward leakers who cast them in an unfavorable light.

The book deals with two issues that should be separable but turn out to be inextricably intertwined: overreach by the intelligence community after 9/11, and the prosecution of those leaking classified information. Even if one regards the activities of the intelligence community as important for national security, one might still object to the way the government has treated those who have revealed classified information to the media. Gardner stresses the use of the Espionage Act against them, but other aspects of the handling of these cases are arguably even worse. The government does not always get what it wants in formal legal processes, as the dismissal of charges against Ellsberg, and the reduced penalties in the case of Drake demonstrate. The political actions against leakers and journalists face no judicial hurdles. The elision of leaking classified information to the press with spying for a foreign government, let alone treason, is all too common among journalists and

government officials who should know better. Even worse, the legal and extra-legal harassment of journalists like Glenn Greenwald and Laura Poitras is alarmingly reminiscent of the Nixon administration's attempts to steal information from Ellsberg's psychiatrist (88-89; 145-147).

Conversely, even those who think that the prosecution of leakers is entirely justified might still object to some of the activities of the U.S. intelligence community since 9/11. These include very broad efforts to gather information on Americans' private communications inside the United States, some of which have been ruled illegal (267). These programs, as well as spying on close American allies such as German Chancellor Angela Merkel (148-149), the use of torture on detainees, and other excesses have provoked opposition even from some former intelligence officials and members of Congress, who typically support the intelligence community. *The War on Leakers* does not focus primarily on detailing these activities, but the author's concern about them is never far from the surface.

Although the handling of leaks and the activities of the intelligence community are separable issues in principle, Gardner shows that they are much harder to disentangle in practice. Above all, the public is reliant upon leaks to monitor the intelligence community. Without Kiriakou's disclosures, the CIA's use of waterboarding and other forms of torture might not have come to light. The Agency destroyed evidence of what it had done (136-137), and effectively stymied Congressional efforts to investigate these practices (234-249). Without NSA contractor Edward Snowden's leaks, the extent of the NSA's information-gathering efforts might also have remained a matter of unconfirmed rumor. It is difficult to condemn unambiguously the actions of these leakers, illegal though they may be, when they uncover illegal activity. This is particularly true when those responsible for it are not held to account. As Gardner points out, Kiriakou was the only person to go to prison in connection with the CIA's use of torture, and his offense was to expose it.

Gardner also argues persuasively that the executive branch's reliance on the intelligence community has compromised its willingness to rein in the community's excesses, another factor that magnifies the importance of leakers. Although the Obama administration was rhetorically committed to transparency, it declined to investigate Bush-era use of torture in order to avoid damaging the morale of the intelligence community (32). The President's commitment to avoiding actions that would chill investigative journalism did not prevent the administration from attempting to get journalist James Risen to reveal the source of classified information he obtained about intelligence activities against North Korea and Iran (69). There is evidence that the government harassed Poitras and Greenwald in order to retaliate for their role in the Snowden leaks (145-147). In all probability, these contradictions reveal internal conflict within the administration rather than conscious hypocrisy, but they illustrate the extent to which the White House accommodates the priorities of the intelligence community. The administration may actually be restraining the intelligence community's most extreme impulses—Attorney General Eric Holder has suggested as much (260)—but the record thus far is not encouraging.

While Gardner paints a fairly dark picture, he provides a few glimmers of hope that American institutions may yet be able to restrain intelligence community overreach. The government has not always been able to fend off challenges to its activities in court. There is bipartisan congressional opposition to the broad collection of phone records, and the technology industry has begun to resist some government demands. A presidential panel rejected the claim that NSA bulk data collection programs had foiled more than fifty terrorist attacks (155). Even so, it seems likely that the

unauthorized release of information to the press by concerned government employees will continue to play an important role. It may be that these individuals should face legal penalties for their actions. Nevertheless, Gardner makes a strong case that they should not be regarded as enemy spies or traitors.

Review by Glenn Hastedt, James Madison University

In *The War on Leakers*, Lloyd C. Gardner focuses our attention on an enduring dilemma in American politics: “what is the government obligated to tell citizens about what it plans to do, what it is doing, or has done” (272). Gardner concludes that from the point of view of presidents, congressional leaders, and senior officials in the intelligence community, the standard answer is not very much, if anything, when that information might create political problems for them.

Gardner traces the war on leakers from the passage of the 1917 Espionage Act that was used to silence Eugene Debs, a socialist union leader who opposed WW I, through efforts to prevent the release of the Pentagon Papers and silence Daniel Ellsberg, a military analyst who opposed the Vietnam War and released classified documents, up to the present with steps taken by the Obama administration to suppress the information leaked by Edward Snowden. A significant contribution Gardner makes in presenting this history is to draw attention to governmental efforts stop information leaks by bringing charges against former officials and contractors for discussing national security information with reporters. By January, 2015 the Obama administration had brought charges against eight officials, more than all previous administrations combined.

From the outset, a central element in presidential strategies to silence leakers has been to publicly attack their motives and conduct an unofficial trial through a form of accusatory profiling. As Gardner puts it, according to the government, “loyal citizens do not act upon their individual judgment about the common good by undermining government efforts to keep secrets that protect the nation, therefore, those who behave this way must be egoistical publicity seeks or agents consciously action on behalf of another power, or quite possibly both” (25). The end result is that whistleblowers, leakers, and protestors are all lumped together in a category sure to mobilize feelings of betrayal and hostility on the part of the American public even if the facts of the case speak to a quite different reading of events.

Gardner’s book makes a convincing case that profiling has been a weapon of choice and an effective one. It is also one that could profitably be expanded upon in two ways. The first is to draw attention to the different meanings associated with the term ‘whistleblower.’ For example, as used in the media, the label applies to Edward Snowden since his release of the National Security Agency (NSA) documents brought attention to a highly controversial secret government program and promoted public debate over its merits. From a legal perspective Snowden is not a whistleblower. As defined in legal statutes and policy directives, whistleblowing refers to the lawful disclosures of wrongdoing made through appropriate channels to those who can correct them and includes channels for bringing them to the attention of Congress. From this perspective, whistleblower protection neither refers to nor covers unlawful communications.

The second point of expansion is to place Snowden's leaks in a more generalizable context: what options are open to an individual such as Snowden or Ellsberg? Long ago, Albert Hirschman identified three: exit, voice, and loyalty.^[7] To 'exit' is to leave an organization and cut one's ties to it. Most often this is done in silence. 'Voice' is whistleblowing; it is protest from within designed to alert organizational officials of a failing in need of correction. 'Loyalty' is to remain in an organization and support it out of a sense of commitment to its mission. Complete exit is impossible when the organizational product is a public good. One cannot walk away from the consequences of intelligence failures or secret electronic surveillance. In these cases, 'exit' is unlikely to be a silent departure but one that takes on an accusatory tone whose charges, in Hirschman's words, are "unanswerable" (126). None of these three options are without costs, both for the organization and individual. Snowden has noted that some of those who had gone before him had been destroyed by the experience. Voice also can be overdone and hinder rather than promote organizational reform if it produces a backlash within the organization. Alternatively, it may be routinized to the point where it loses its ability to promote change.

In explaining how the campaign against leakers that began in 1917 became transformed into a war on leakers, Gardner examines the evolution of the CIA and the intelligence community from a set of organizations dedicated to defeating Communism abroad to one that came to focus much of its energies on domestic activities and ones on which presidents came to be increasingly dependent. As presented in the book, there is a certain sense of inevitability surrounding this evolution that may strike readers as having an almost conspiratorial flavor. I think that one line of reasoning that runs parallel to this history and lends support to the argument that the intelligence community plays a key role in profiling is rooted in classical organizational theory which holds that organizations are best seen as rational, open, problem facing-problem solving systems.^[8]

The central challenge facing organizations from this perspective is one of responding to uncertainty in their operating or task environment. This often means seeking to manipulate and control their environment rather than changing organizational behavior.^[9] A key element in creating secure operating space for the organization is influencing the standards used to assess its performance. Organizations typically turn to measures of success which are concrete yet at the same time offer them a significant degree of control over how they are formulated and applied. Such measures include demonstrating past efficiency, historical improvement, positive comparisons with other organizations, employing symbolic measures of fitness for future action, and casting doubt open the expertise and motivations of critics. As Harold Wilensky wrote in 1967, "there is a general tendency for agencies charged with gathering intelligence on internal security to magnify the internal threat and for agencies responsible for external security to magnify the power of the outside enemy"^[10]

In the Snowden case, the NSA and its supporters have engaged in a wide variety of symbolic and rhetorical lines of defense to justify its actions. Former Speaker of the House John Boehner quickly identified Snowden as a traitor. The Government Accountability Project characterized such negative commentaries as "classic acts of predatory reprisal...that constitute retaliation." The goal is "to discredit the whistleblower by shifting the spotlight from the dissent to the dissenter...when what truly matters is the disclosure itself."^[11] Agency officials also argued that collecting data is largely a technical and professional matter, and that the NSA program played a role in protecting the United States. While short of concrete examples, it employed strongly symbolic imagery. General Michael

Citation: George Fujii. *H-Diplo Roundtable XVIII, 14 on The War on Leakers: National Security and American Democracy from Eugene Debs to Edward Snowden*. H-Diplo. 01-23-2017.

<https://networks.h-net.org/node/28443/discussions/162912/h-diplo-roundtable-xviii-14-war-leakers-national-security-and>

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Hayden who served both as Director of the National Security Agency and Director of the CIA quickly dismissed any notion of clemency for Snowden, describing the NSA leaks as “the most destructive hemorrhaging of Americans secrets in the history of the Republic”^[12]

I think that one of the most potentially interesting arguments Gardner makes has to do with his accounting of President Barack Obama’s logic in pursuing leakers with such intensity. It is little surprise to see that President Richard Nixon was consumed with secrecy in conducting foreign policy (46, 63) or that policy makers in general were consumed with preventing leakers from revealing past military secrets (56). Obama, too, is pictured as sharing these types of concerns but Gardner notes that his biggest fear was having his administration drawn into the public debate over the relative merits of protecting national security and civil liberties (74). Obama is also portrayed as being concerned with maintaining a fundamental foreign policy consensus (202).

To the extent that this is correct and that other presidents have shared this perspective, the story of the war on leakers, as Gardner puts it, goes “far beyond which party controlled Congress or held the White House” (202). His accounting raises questions of the extent to which presidents are prisoners of the past and how far they are willing to go to change the direction of American foreign policy. Just as important, it raises questions of what types of changes in this foreign policy consensus are possible, and which are desirable.

Review by John Prados, National Security Archive

For decades now, Lloyd C. Gardner has been historians’ canary in the coal mine. Gardner regularly stands at the intersection of current events with history, senses issues that are—or soon will be—of concern to historians, and gives us edgy commentary and analysis plus a first cut at the issues. Whether it was President Richard Nixon in 1970, Ronald Reagan in 1984, Iraq and the Gulf, the road to Tahrir Square in the Arab Spring, the drone war, or Indochina, Gardner has been at the forefront of America’s engaged historians. His eye for relevant detail and key statements from protagonists is formidable. His major histories are deeply researched and well argued, his excursions to the front lines of history insightful and often prophetic. *The War on Leakers: National Security and American Democracy, from Eugene Debs to Edward Snowden* is a work of the latter kind. It commands our attention for at least three reasons.

First, at history’s working level, Gardner relates present to past in a striking way. While it is often said that the Obama administration has persecuted whistleblowers more persistently than any previous one, and though parallels are frequently made between National Security Agency whistleblower Edward Snowden plus others today and Vietnam-era dissenter Daniel Ellsberg with the Pentagon Papers, too many historians have regarded the matter as one of journalism. To leave the discussion to journalists not only slights the intrinsic importance of issues the whistleblowers raise, it bypasses slices of history that are or will become relevant, *and* it skirts an issue of evidence that should be of critical importance to every historian.

Gardner starts us off with President Woodrow Wilson, the creation of the 1917 Espionage Act, and

World War I. Playing on Wilson's use of the Espionage Act to suppress dissent against the Great War is a startling reminder that *The War on Leakers* is grounded in history. Eugene Debs, labor organizer and socialist activist, we learn, became a victim of this very calculated approach. Then as now, a place exists in the minds of some officials that equates whistleblowing ^[13] with sedition and acts that are alien. Then as now, that attitude should be properly understood as a token in political plays for power, not as a legitimate effort to protect classified information. The very terminology of the instrument used in these efforts—the 'Espionage' Act, the author points out—has the intent of casting the target as disloyal, a villain, a spy.

This is an important point. It could have been driven home even more powerfully had Gardner been able to contrast the prosecution of the 'disloyal' whistleblower with the accolades and medals handed to officials who engage in leaks for the purpose of advancing policy. A higher bar applies to stories of leaks of that kind, since presidents rarely demand investigation of leaks that are maneuvers to affect policy, many of which come at their own instigation. One of the few examples where sufficient attention has been devoted to document such a process came with investigations of the manipulation of public opinion leading up to the Iraq war. Of course, the author has written of this already in another of his books. ^[14]

Sometimes there are drawbacks to being the canary.

The War on Leakers brushes very quickly past a lot of history because the author is interested in reaching the present. This is unfortunate, because there are good examples in the run-up to World War II, the war itself, and the Cold War, that would extend the point. The fight to open the grand jury records for the atomic spies in the Rosenberg case, now solved with their release, put in the public domain documents that reveal the strategies of players who sought to prosecute the couple under the Espionage Act; even in a real spy case there are private agendas. A similar fight is going on as this is written to open grand jury records for an Espionage-Act prosecution which *did not* happen, the prosecution of the *Chicago Tribune* and reporters for a story published about the 1942 battle of Midway—here government authorities woke up to the notion that prosecution would damage them more than forgetting about the whole thing.

A second reason historians need to pay attention to whistleblowers is that the content of the leaks often becomes the stuff of history. Nothing illustrates this better than the Pentagon Papers. For years, until the Freedom of Information Act plus routine declassification made more records available, Daniel Ellsberg's leak gave historians their most authoritative documentation on a critical conflict in American history. There are a generation of important histories ^[15] of the Vietnam war out there that relied primarily on the Pentagon Papers, and that material still turns up regularly in evidence when new histories are written. ^[16] Without a doubt, Edward Snowden's documents from the National Security Agency (NSA) are going to fuel new studies of the NSA, even more so when put together with other material on the stupidity of that agency's procurement and development programs from other whistleblowers.

Historians also need to pay attention because the whistleblower, as a character, is the obverse side of a coin of runaway secrecy. Gardner's later chapters, with their passages on Snowden, on former CIA officer John Kiriakou, imprisoned on a trumped up charge of revealing intelligence identities; and on the Senate intelligence committee report investigating CIA torture, show chapter and verse on how

the Executive has acted to stem the outflow of the very kinds of information that concerned Ellsberg. In my book *The Family Jewels: The CIA, Secrecy and Presidential Power* a good deal of space went to describing 'pillars of secrecy' that flesh out *The War on Leakers*. At least on the intelligence side, which includes the Kiriakou case and the torture report, the CIA minimizes information by controlling declassification, asserting 'equity' over others' information, censoring what employees can write, claiming a right to the earnings of persons who did not submit to censorship, exaggerating the scope of 'sources and methods,' and obstructing feared historians while favoring approved ones with access not permitted others.

In effect, history will be harder (for a host of reasons, not solely the selfish restrictions being put on the release of information, but including the National Archives and Records Administration's failure to safeguard electronic records, the changing modes of expression as individuals adapt to forms of electronic communication, etc.). Historians have a clear interest in preserving the record, and thus in preventing the construction of a 'wall of secrecy.' *The War on Leakers* is better at illustrating the problem than in proposing a solution, but Lloyd Gardner does tell us that the nation has come full circle since passage of the Espionage Act, and that there are real choices to be made on what the government is obliged to tell citizens about its plans. Historians have a role in helping the wider public understand what is at stake.

Author's Response by Lloyd C. Gardner, Emeritus Rutgers University

Years ago in the faculty lunchroom at Rutgers University, three historians and a physicist sat discussing the question of why so many historians were drawn into administrative positions in the academy? Deans, provosts, and ranks above seemed to have an unusually large number of historians occupying those offices. One of the participants suggested it was because historians have the ability to see all sides of a question. Relatedly, added another, they have a certain temperament that suits them for refereeing disputes—perhaps something they are born with, not a learned behavior pattern. The physicist had heard enough of this introspective rot. Truth is, he said, your discipline is so boring that by the age of forty you are desperate for some excitement. Well, the discussion did raise, at least tangentially, a bigger issue: What does one owe to the profession and the country? Everyone has to answer for him or herself. I have no problem with being labeled a polemicist in connection with *The War on Leakers*. Indeed, that was my primary purpose in writing the book, to start an argument with my readers, and through them with others. Moreover, I do not disguise my belief that we are not doing all that well in meeting the challenges to American democracy posed by Fort Meade's penchant for collecting hay stacks.

And I would (obviously) disagree that the Church Committee actually 'tamed' the intelligence community 'Leviathan,' no more than the War Powers Act has prevented President Barack Obama from waging, what common sense would tell us, are undeclared wars in Libya and Syria. The CIA may no longer plot the assassination of world leaders like Patrice Lumumba or Fidel Castro, but now it has drone 'Killing Machines' instead of ZR-Rifle assassins. The digital age has provided much greater access to personal information, moreover, than old-fashioned wire-tappers could ever have imagined.

On the other hand, Arthur Schlesinger may have objected to being called a court historian. But why should he? There are reasons why court historians are essential: to speak up for those who made policy, as in a trial. If history is indeed argument without end, there must be court historians and supposedly 'neutral' participant historians, and antagonists-as in a European Ph.D. oral examination (at least in some countries).

All of the commentators do take note of my attempt to link the present state of affairs with the past through the government's use of the 1917 Espionage Act, which is the major theme of the book. It was enacted as an emergency war measure immediately after Congress declared war, but President Woodrow Wilson had actually sought additional powers to censor the press. The Socialist Eugene Debs was the most famous of those indicted under the Espionage Act-for speaking against the war. The capriciousness of using the Espionage Act in such fashion was well illustrated when President Richard Nixon ordered his Attorney General, John Mitchell, to find some way to stop the publication of the "Pentagon Papers," and then to put the leaker of those papers, Daniel Ellsberg, in jail. When the Nixon tapes became available-and only then-did we learn that at first Nixon thought that the Pentagon Papers would sink the Democratic Party. And he was delighted about that. He even wanted to go back to Pearl Harbor and find documents confirming President Franklin D. Roosevelt's supposed deceitfulness in courting war that led to Pearl Harbor. Of course, he then changed his mind, and worried about what might be in the Pentagon Papers concerning his 1968 dalliance with the Vietnamese regime in Saigon during the final weeks of the election. He feared that his pre-election gambit might it come out and would not sit well with the public so very wearied by the continuing war and starting to blame Nixon? To the public, of course, this concern was transformed into the high-politics fear that presidents could not conduct foreign policy if their negotiating partners feared revelations.

To pre-empt such a possibility, Nixon even thought of threatening the CIA into cooperation on Ellsberg by releasing still secret things about the Bay of Pigs-materials classified as containing information that would-if revealed-supposedly do terrible damage to National Security. Nixon believed such materials were being held back in the desire to protect the agency from criticism, not from a concern for national security, something he understood could give him possible leverage. We know all of this now. We know (or should know) that National Security pleas are often the last refuge of bureaucrats under assault from a variety of 'outside' sources labeled troublemakers. Not surprising that.

But here is an area where I wish I had been plainer in the book in linking up Nixon's concerns with those of liberal commentators on the Edward Snowden 'case.' What I found in many places where liberal intellectuals hang out, e.g., *The New Republic*, *The New Yorker*, et al., was a concern not about how much damage Snowden had done in revealing to terrorists, or terrorist-inclined, that they were being watched, but that his acts had undermined faith in the modern liberal state. That was the big concern of many. If everyone acted like an Ellsberg or Snowden, would not that (ultimately) lead to a state of anarchy? A Hobbesian-like state of nature? And, of course, some would say that Snowden's 'betrayal' produced (or at least helped to produce) precisely that result. One could point to the presidential campaign of 2016 as indicative of the rapid devolution of American politics.

This is an area that I believe deserves special attention because I do think the underlying issue in the Snowden 'case' comes down to the argument that his actions, and those of his supporters, undermine

confidence in the modern liberal-capitalist state. In similar fashion, both internationalist liberals and neo-conservative warhawks share important assumptions about how the nation regards its citizens as the legitimate “tough-minded masters of power.” So writes Michael MacDonald in his excellent survey of how assumptions about the exceptional nation set American choices (indeed command) in world affairs. In undertaking the Iraq War, he writes, instead of controlling events, “they were captives of the axioms.”¹⁷ —

In other words, to challenge the liberal state’s decisions about what it does in foreign affairs, or how it decides it is necessary to spy on its own must be a matter of espionage against the state, even if the leaker provides materials openly to the media rather than in secret to an enemy power or person. This is really the crux of the matter. For a brief time there was a serious challenge mounted to this assumption. In the book I point to the efforts by some in Congress to challenge the axioms. Senator Diane Feinstein, a critic of Snowden’s actions, finally decided enough was enough when CIA Director John Brennan attempted to block off her Committee from using the CIA’s own report on past interrogation methods in its final report—a report yet to be seen by the public today. Her actions caused a flare-up among colleagues, but the consensus proved stalwart in resisting the challenge, aided, it should be said, by the White House. Richard Clarke, White House counter-terrorism expert in the Bush Administration, took up a seemingly contradictory position on Snowden: yes he should be prosecuted, but no he had not done anything to damage national security. Here was a perfect example of how difficult it is to sort out actual threats to national security from the claims of necessary secrecy. Of the purported attacks prevented by the National Security Agency’s various programs that Snowden revealed, Clarke would say, there was not one instance where that was the case. Thus far, he then said as chair of President Obama’s ad hoc commission on reforms, the NSA had been a force for good. But it was an organization that could become a danger: “A future president may decide to turn the surveillance state on. And in the future, once you give up your civil liberties, you may never get them back” (195).

Keep in mind that this is Richard Clarke speaking, not an outsider. It was a bravura performance. Also keep in mind that there would have been no inquiry, no commission, no promises to correct the abuses, had it not been for Edward Snowden’s actions.

Chelsea Manning’s thirty-five year sentence for leaking classified material is a powerful reason for Snowden not to come home to face trial. Manning’s case was different in many ways, of course. She did reveal hundreds of thousands of documents through Wiki-leaks, not just the embarrassing helicopter attack that the government tried to hush up—and that revealed the difficulties of fighting an asymmetrical war. But Secretary of State Hillary Clinton tried to have it both ways in a press conference about the leaks. First she attempted to say that it was an attack on the international community and the alliances and partnerships that safeguarded global security and promoted economic prosperity. Later, she quipped in response to a question, that one foreign leader had shrugged off the leaked documents, telling her: “You should see what we say about you” (111).

When Secretary Clinton faced accusations of having neglected national security by use of a private email server, moreover, she responded that the accusation really resulted from an overly protective classification system that simply targeted way too many communications. She had roundly condemned Snowden for his actions in making public what the NSA was doing, but denied anything she had done jeopardized national security. Still, her ‘case’ caused FBI director James Comey to make

an unusual public appearance to explain why she had not been prosecuted. It could be argued that the whole affair suggests the degree to which we have become accustomed to the state of affairs and the axioms controlling public and private life.

As matters stand, the best historical commentaries on our age are being offered as fictional accounts. I am talking about novelists who have served in the intelligence community at one post or another. I have in mind Edward Wilson, Barry Eisler, Valerie Plame, Bob Graham, and, yes, even Casper Weinberger, Secretary of Defense in the Reagan Administration. Plame has said outright that she has turned to novels to avoid government redaction of what she writes, a clue that she really thinks that she is talking about real events—in the sense of not being inconsistent with reality.^[18] Weinberger's novel *Chain of Command*, published with Peter Schweizer, only four years after 9/11, is subtitled on the cover, "A Thriller." Now, to be sure, Weinberger would not be in danger of prosecution for anything he wrote in the novel about secret documents. But there is a conspiracy afoot in the novel that speaks to Richard Clarke's non-fictional warning about the dangers of the 'surveillance state.' The plot revolves around the desire of a vice-president, Morgan Boyd, to kill off the president, blame it on a terrorist, and secure passage of a Freedom From Fear Act. By breaking with all past laws to the contrary, the FFA would allow the U.S. military to establish martial law. Once it passes, says one of the leading characters, Boyd will be able to "send soldiers into offices of the *Washington Post*, seize whatever evidence I've turned up, and walk out again. With impunity."^[19]

Eric Holder did not send troops into the offices of the *Washington Post*, but he did attempt to search reporters' phone records to trap a leaker until Dana Millbank revealed his actions in that newspaper. Hopefully there will never be a law like Morgan Boyd's proposed Freedom From Fear Act – but the odds are not overwhelming against it. And we cannot say that Snowden and Weinberger have not warned us about it.

Notes

[1] Gardner has completed four books on U.S. policy in the Middle East from President Franklin D. Roosevelt during WWII to U.S. relations with Egypt from the rise of Gamal Nasser to the overthrow of Hosni Mubarak in 2011. Gardner also examined U.S. policy in the Middle East from the 1970s through most of George W. Bush's war in Iraq and finally a study on Barack Obama shift from counterinsurgency in Afghanistan to an increasing reliance on drones there and elsewhere in the pursuit of al-Qaeda and its allies. See Lloyd C. Gardner, *Three Kings: The Rise of an American Empire in the Middle East after World War II* (New York: The New Press, 2009), *The Long Road to Baghdad; A History of U.S. Foreign Policy from the 1970s to the Present* (New York: The New Press, 2008); *The Road to Tahrir Square: Egypt and the United States from the Rise of Nasser to the Fall of Mubarak* (New York: The New Press, 2011); and *Killing Machine. The American Presidency in the Age of Drone Warfare* (New York and London: The New Press, 2013).

[2] James W. Tankard, "Samuel L. Morison and the Government Crackdown on the Leaking of Classified Information," *Journalism History* 24:1 (Spring 1998): 17-25.

[3] Peter Maass, "Destroyed by the Espionage Act," *The Intercept*, 18 February 2005, <https://theintercept.com/2015/02/18/destroyed-by-the-espionage-act/>.

[4] Rahul Sagar, *Secrets and Leaks: The Dilemma of State Secrecy* (Princeton: Princeton University Press, 2013).

[5] David E. Pozen, David E. "The Leaky Leviathan: Why the Government Condemns and Condone Unlawful Disclosures of Information," *Harvard Law Review* 127:2 (December 2013): 512-635.

[6] Jack Goldsmith, *Power and Constraint: The Accountable Presidency After 9/11* (New York: W.W. Norton & Company, 2012).

[7] Albert Hirschman, *Exit, Voice, and Loyalty* (Cambridge: Harvard University Press, 1970).

[8] James Thompson, *Organizations in Action* (New York: McGraw-Hill, 1967); James March and Herbert Simon, *Organizations* (New York: Wiley, 1957); and Richard Cyert and March, *A Rational Theory of the Firm* (Englewood Cliffs: Prentice Hall, 1963).

[9] John K. Galbraith, *Economics and Public Purpose* (New York: Houghton-Mifflin, 1973).

[10] Harold Wilensky, *Organizational Intelligence* (New York: Basic Books, 1967), 136.

[11] Government Accountability Project. "GAP Statement on Edward Snowden and NSA Domestic Surveillance." 3 January 2014. <http://www.whistleblower.org/press/press-release-archive/2013/3125-gap-statement-on-edward-snowden-and-nsa-domestic-surveillance>. [Accessed 4 January 2014]

[12] Peter Baker, "Moves to Curb Spying Help Drive Clemency Argument for Snowden," *New York Times*, 5 January 2014, A16.

[13] Lloyd C. Gardner, *The Long Road to Baghdad: A History of U.S. Foreign Policy from the 1970s to the Present* (New York: The New Press, 2010).

[14] John Prados, *The Family Jewels: The CIA, Secrecy and Presidential Power* (Austin: University of Texas Press, 2014).

[15] For example, Stanley Karnow, *Vietnam: A History* (New York: Viking Press, 1983); George C.

Herring, *America's Longest War* (New York: Wiley, 1979); or Gabriel Kolko's *Anatomy of a War* (New York: Pantheon Books, 1985).

[16] Examples here might be A. J. Langguth, *Our Vietnam: The War 1954-1975* (New York: Simon & Schuster, 2000), or Robert D. Schulzinger's *A Time for War: The United States and Vietnam, 1941-1975* (New York: Oxford University Press, 1997).

[17] Dwight MacDonal, *Overreach: Delusions of Regime Change in Iraq* (Cambridge: Harvard University Press, 2014), 69.

[18] On this subject, see Timothy Melley, *The Covert Sphere: Secrecy, Fiction and the National Security State* (Ithaca: Cornell University Press, 2012).

[19] Caspar Weinberger and Peter Schweizer, *Chain of Command* (New York: Atria Books, 2005), 247.