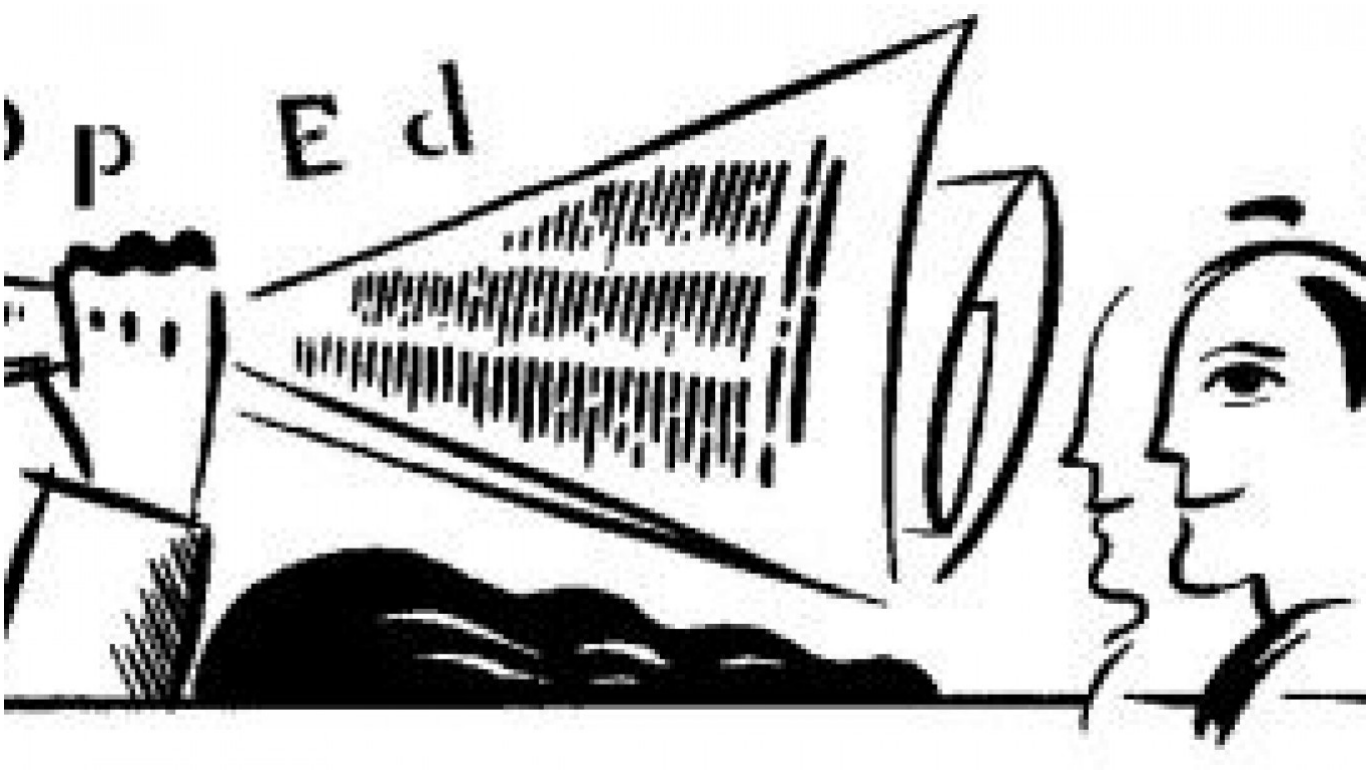
The Moscow Times
30 YEARS
INDEPENDENT NEWS FROM RUSSIA

When the U.S. Transforms Journalists Into Spies

By Naomi Wolf

October 06, 2013



The recent guilty plea by Donald Sachtleben, a former FBI bomb technician charged with leaking classified information, after government investigators identified him by secretly obtaining the phone logs of some Associated Press reporters, represents the latest chapter in the ongoing drama over U.S. security officials' behavior.

A few days earlier, another chapter played out in a New York City television studio: Spies and recipients of leaked information confronted each other onstage. It was a remarkable event for an audience of 400 journalists. I was present.

The venue was a taping of the U.S. interview program "Charlie Rose: The Week." Stewart Baker, the National Security Agency's former general counsel, defended the agency against the criticism that it has faced since former intelligence contractor Edward Snowden leaked thousands of documents exposing the scope of its surveillance activities to The Guardian columnist Glenn Greenwald. Joining Baker on the dais were two journalists of great courage: Janine Gibson, editor-in-chief of Guardian US, and Alan Rusbridger, The Guardian's editor.

Baker's talking points seemed to be aimed at establishing a "new normal," in which the legality of official behavior is not to be questioned and journalists who do so are threatened. Indeed, he stressed multiple times that the spying revealed by Snowden's disclosures was "lawful."

This was a stunning assertion. U.S. Senators Ron Wyden and Mark Udall have risked much, including potential accusations of releasing classified information themselves, by warning that NSA surveillance of Americans' e-mails was occurring under secret interpretations of "secret law" and criticizing the NSA for violating court-ordered privacy protections "thousands of times a year." Secret law that is secretly interpreted is, of course, no law at all. It is the handmaiden of authoritarianism.

Baker did not stop there. He insisted repeatedly that the NSA's PRISM program, revealed by Snowden, had proceeded under congressional oversight, though members of Congress protested loudly in the wake of the revelations that they had never been briefed on the NSA's clandestine data-mining operation. Even members of the Senate intelligence oversight committee issued statements asserting that they had been misled about the PRISM program.

In response to my direct question concerning whether the NSA's surveillance activities violated the Fourth Amendment of the U.S. Constitution, which protects Americans from "unreasonable searches and seizures" by government officials, Baker claimed that the Supreme Court had ruled on the issue in the agency's favor. He argued that in Clapper vs. Amnesty International USA, the court had ruled that people gave up their privacy online. But Clapper was about privacy violations concerning people outside the U.S.

Baker's talking points were recently echoed in a letter from the NSA to its employees' families, lamenting that "sensationalized" press accounts had cast the agency as a "rogue element" rather than as a "national treasure." It, too, contains untruths and encourages family members to repeat them. The letter reproduces the NSA's claim that its surveillance programs have foiled "54 terrorist plots" — a claim that has been challenged repeatedly by Wyden and Udall, among many others, as lacking any evidence.

There were other extraordinary moments onstage. Rusbridger held up a computer hard drive that had held documents leaked by Snowden. Guardian employees had drilled a hole through it rather than hand it over to the British government. He carries it everywhere, he said.

Most shocking of all, though, was the exchange at the end. Having clearly failed to win over his audience, Baker gave a staggering response to a Huffington Post reporter's question about the Fox News correspondent James Rosen, whose e-mail and phone records were searched by the U.S. Department of Justice after he reported on classified material related to North Korea. The reporter asked, would there be other such investigations?

Baker replied that it was one thing to publish leaked information, as the Guardian had done, and another, far more serious matter to engage in a "criminal conspiracy" by "soliciting" leaked, classified information. Then he said that the Guardian had "drawn a red line" in this regard and that the Guardian itself had crossed it in its reporting on the material leaked by Snowden. He used the terms "criminal conspiracy" and "co-conspirators" several times at this point in the exchange.

Hisses arose from the audience and cries of "You threatened them!" There was silence, perhaps from shock, onstage. Then Rusbridger, with considerable presence of mind, asked Baker several times to repeat what he had just said. Baker did so. And Rusbridger several times asked Baker to agree that the Guardian had not engaged in "criminal conspiracy" by "soliciting" leaked classified information. Rusbridger evidently was seeking to establish a record with which he could defend the Guardian from what he immediately must have understood could potentially become a criminal charge — an idea that Baker appeared to be floating.

But what is "soliciting"? Is it returning a source's phone call? Is it meeting with an editor to discuss a source who is offering classified information? Is it setting up an encrypted e-mail account for that source as Greenwald had done at Snowden's request? That used to be called "reporting."

Baker's threat of prosecution in a room full of reporters seemed intended to stifle serious national security reporting. Indeed, Baker has hinted at a similar threat in print, arguing that by choosing to destroy Snowden's material in the presence of British intelligence agents, rather than hand it over to them, the Guardian was choosing to "sacrifice British intelligence sources and methods." That language comes close to warning that the Guardian editors involved might be accused of having "aided the enemy," which is an element of the U.S. Espionage Act.

The journalists present immediately understood the threat. Baker had not just sought to intimidate The Guardian. He was sending a message to every reporter in the U.S.: Get on board with the NSA or get out.

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