

DANIEL ELLSBERG



DANIEL ELLSBERG was Special Assistant to former Assistant Secretary of Defense John McNaughton. While working as a strategic analyst at the RAND Corporation, he publicly released in 1971 the top secret study of the Vietnam War, later known as the Pentagon Papers.

Secrecy Oaths A License to Lie?

Between 1968 and 1971, I repeatedly broke a solemn, formal promise that I had made in good faith: not to reveal to any “unauthorized persons” information that I received through certain channels and under certain safeguards, collectively known as the “classification” system.

I have never doubted that, under the circumstances facing me, I did the right thing when I revealed the contents of the top-secret Pentagon Papers on the Vietnam War to the US Senate and the press. Although it involved breaking the promises I had made to various government agencies and the Rand Corporation, it was the only way to inform the US Congress and the US public of information that was being wrongfully withheld from them; I had considered many other options and tried most of them. The information was vital to Constitutional processes of decision-making on an ongoing war in which tens of thousands of US citizens and many more Vietnamese had been—in effect—lied to death.

Moreover, this had occurred with the complicity of a generation of officials—myself among them—who had placed loyalty to their oaths of secrecy (and to their bosses and careers) above their loyalty to the US Constitution and to their opportunity to avert or end an unnecessary, wrongful, hopeless, and vastly destructive war. By 1971, it was clear to me that it was my earlier complicity with the secrecy system

that was mistaken and censurable, not my later choice to tell the truth.

I signed many secrecy “oaths,” or contractual agreements, over the years: as a US Marine officer, as an employee of the Rand Corporation, as a consultant to the offices of the US Secretary of Defense, the US Department of State, and the White House, and later as an employee of the US Department of Defense and the US Department of State. All of them were blanket promises that I would never give any information that was identified as safeguarded, “secret,” or “classified” to a person who had not been otherwise authorized to receive it by the person or agency that gave me the information.

Implicit in my promises not to reveal such information to “unauthorized” persons was that I would follow them no matter what this information might be: whether it revealed evidence of official lies, crimes, planning for wars in violation of ratified treaties or the US Constitution, violations or planned violations of laws made by the US Congress; whether the unauthorized persons or agencies were officials of the legislative and judicial branch who vitally needed the information to carry out their constitutional functions and had a legitimate right to learn the truth; whether an election, congressional investigation, or vote that decided issues of war and peace were affected by the silence and obedient

lies about the government's plans and actions; and whether countless people had died and were continuing to die because the information was being wrongfully withheld by my own colleagues and superiors under a policy of secrecy and deception.

That is how I was meant to understand those promises. And for many years, I followed the rules. Of course, they were not explicitly spelled out in the papers I signed, nor were they told to me in briefings. If they had been, they would have given me a good deal of pause, to say the least. I suspect this is the reason why they are not spelled out, since a contract so pervasive and perilous would make prospective employees much more hesitant to sign it.

Would I have signed those contracts regardless? Probably—at least in the beginning, which was in the mid- and late 1950s. Government secrets had been so well kept for a long time, that as a young citizen, I was unaware of ever having to handle such problematic information in the service of the government. I would not have believed that the circumstances or conflicts suggested were ever likely to arise. However, within a year after I first signed such an agreement in 1958, I knew better, though it was still a decade after that before I began copying secret information that had been wrongfully withheld and giving it to the US Congress and the press.

Had the obligation to keep silent about lies and crimes been made explicit during that period, it would have been more difficult for me to continue repeating these promises as I took new jobs, renewed old contracts, and received higher clearances. It would have been harder to conceal from myself that what I was being asked to sign was an agreement to participate in major governmental conspiracies and grave obstructions of justice by remaining silent, actively misleading or lying, or even committing perjury under oath. An oath so stated and interpreted would be in flagrant violation of my superseding oath to uphold the laws as consecrated in the US Constitution.

I should never have been asked to make such a promise, nor should any government official or citizen in a democracy be encouraged or obliged to make such a pledge in this form or under this interpretation, nor should they agree to make the promise if it is proposed. Yet the fact is that millions of patriotic citizens believe, in perfectly good conscience, that they have made just such a pledge, usually without realizing all that it entails. They see no constitutional problem in even being asked to give such an assurance as a condition of governmental employment. However, true popular sovereignty—in particular, democratic control of foreign and military policy—is simply impossible to achieve if official behavior reflecting this understanding is widespread, as it is now, and goes unchallenged.

The solution is not to make such an obligation to lie explicit in secrecy agreements (which may themselves be secret), but more drastic: to forbid agreements that encour-

age or permit such an interpretation of secrecy oaths. Every person should be made aware that an agreement or oath so interpreted is *not* legally or morally binding and is, in fact, wholly improper. There is no agreement that US citizens can sign that can require them lie to the US Congress or courts—or for that matter, to the electorate.

This is not to deny the necessity of discretion or even formal secrecy agreements in certain settings in a democratic republic. But if a democratic government is to survive and function in a meaningful sense, those secrecy agreements must be understood to be provisional and subordinate to higher loyalties and laws and obligations, and limited by the US Constitution and the Bill of Rights.

Very simply, every secrecy agreement should state explicitly: "I understand that nothing in this agreement obliges



Opposite: A squad leader shouts instructions to his squad after taking sniper fire on patrol on Hill 56, 70 miles south of Chu Lai, in Vietnam in January 1971. **Above:** A Vietnam veteran holds a rose up to the Vietnam Veterans Memorial in Washington, DC, on the wall's 20th anniversary, Veterans Day 2002.

me or permits me to give false testimony to Congress or a court, or in particular to commit perjury under oath." Such a statement would in itself bestow not a "right to disclose," but rather a "right not to lie to Congress." It would guarantee citizens the right not to be forced to commit perjury as a condition of employment involving classified information. It would deny that a security clearance or a non-disclosure agreement carries with it the right to lie under oath or that it constitutes legal protection against prosecution for perjury, which negates the right and duty of every citizen to tell the truth in sworn testimony.

The executive branch of the United States could not oppose such legislation with precisely the same constitutional and practical arguments it musters against congressional efforts to promote and protect disclosure. In fact, the executive branch would have a hard time opposing it at all (though it would do its best), since it is considerably more difficult to openly defend lying to the legislative branch than it is to defend the withholding of information, even though secrecy managers may feel with great conviction that one requires the other.

If enacted—over a probable presidential veto—this legislation would alert officials newly entering the secrecy system to the likely possibility that at some point they will be expected or asked by their superiors to give deceptive testimony or even lie under oath, and would inform them

that this will be presented to them as justified by the need for secrecy and their signing the non-disclosure agreement. This clause would at least prepare them to question that construction.

Reading and signing this clause will not end all perjury or all deceptive testimony to US Congress and domestic judicial bodies. Superiors will be able to suggest very strong bureaucratic incentives and give persuasive rationales for giving misleading or false reports to those outside their own agency. But obliging employees to read and sign this clause will force them to recognize that in such a situation, they face a choice involving personal responsibility and accountability.

Such a change will act to deprive them of the belief, widely held and strongly encouraged by the bureaucracy, that they "have no choice" but to deceive or withhold the truth, simply by virtue of their having signed this agreement and by the bureaucracy's decision to classify certain data. And it will warn them that this agreement will not protect them from the consequences of committing perjury.

In reality, at present these consequences are fairly mild and even hypothetical compared to the likely career consequences of defying one's superiors. It is likely that no official has ever spent a day in jail for lying to the US Congress on a matter of "national security." Still, quite apart from fear of prosecution or punishment, many officials have undoubtedly

been influenced in their willingness to lie because they believed that they had made a promise in good faith to lie, if necessary, to keep officially designated secrets under the lid. Eliminating this belief would therefore be a significant step toward the solution. Though this false belief will continue to be instilled through verbal warnings and non-codified behavior in ways that could not be prevented by any legislation, such legislation would at least warn people that it is not the compelling justification that people such as Richard Helms (the only director of the US Central Intelligence Agency to be convicted of lying to the US Congress about undercover activities) and Elliott Abrams (indicted for giving false testimony about his involvement in the Iran-Contra Affair) have put forth, perhaps with some sincerity, when their lies were exposed.

While the clause I propose seems obvious, as it merely states the signer's pre-existing obligations under US law, I believe that such legislation would have a profound and positive effect on



CIA Director George Tenet is sworn-in before the National Commission on Terrorist Attacks Upon the United States for his second public appearance before the committee in Washington, DC, in April 2004.

the democratic system. If this legislation were enacted and implemented, the effect will be a little more truth-telling and less deception in congressional testimonies and perhaps even to the public. There might even be marginally fewer policies adopted whose attractiveness depends on non-accountability and secrecy from the legislative and judicial branches and voters because of their criminal nature or their excessive costs and dangers.

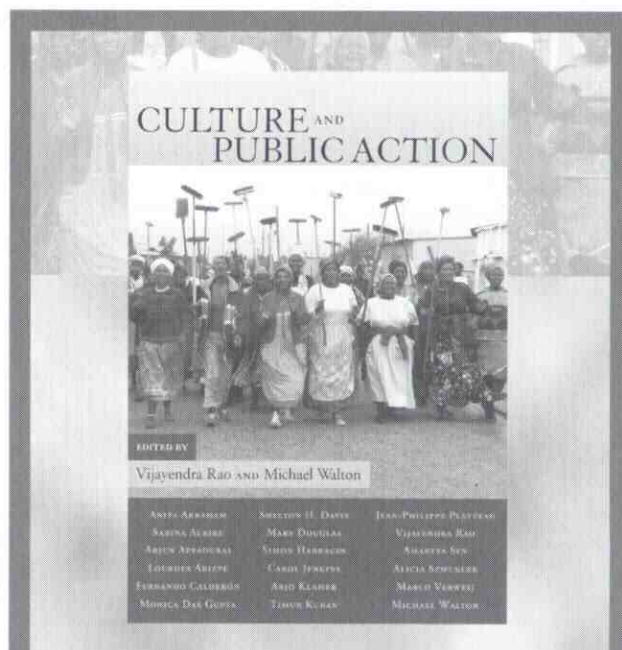
For this very reason, it would almost surely be opposed fiercely by "national security" agencies and the government in general. But the very process of proposing and pressing for this legislation, to the extent that it can force this opposition into the open, will be politically educational as discussions over the nature, implications, and dangers of the secrecy system come to the forefront. Forcing advocates of the "secrecy community" to explicitly defend the questionable right to demand that their employees be ready to lie would be enlightening to many. It could contribute to a general willingness to re-examine the need for the entitlements of the secrecy system in the post-Cold War era, as well as the threat to rational policy-making and democracy.

If such a paragraph had been in plain print on the secrecy agreements that were presented to millions of US citizens every year during the Cold War, I believe that there would be fifty thousand less names on the US Vietnam Veterans Memorial. Tens of thousands fewer nuclear warheads would have been produced (even in the Soviet Union, despite the secrecy that was indeed central to its form of government), though the actual arsenals on both sides would still be dangerously excessive. Over a hundred thousand lives might have been saved in Guatemala and the rest of Central America. And the United States would be far more secure today than it is from prospects of nuclear proliferation and terrorism.

This is not because no official would have ever lied to others, but because they would not have lied or concealed the truth under the genuine impression that they were obliged to do so by a promise they had made, or by loyalty to a boss or agency's interpretation of national security needs that outweighed loyalty to higher laws such as the US Constitution.

Under these circumstances, many officials—enough of them to have made a crucial difference—would have chosen not to mislead. The catastrophic follies whose preparation and perpetuation essentially depended on deception would have been averted.

Finally, one further mandated addition to the secrecy oaths would serve these vital goals. Since these oaths are signed so frequently and taken so seriously, there is no better place to remind government employees of their true obligations as stated in the United States' Code of Ethics for Government Service, passed by the US Congress on July 11, 1958: "Any person in government service should put loyalty to the highest moral principles and to the Country above loyalty to persons, party, or Government department." ■



Culture and Public Action

Edited by VIJAYENDRA RAO and MICHAEL WALTON

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—James D. Wolfensohn, President, The World Bank

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