

Don't Feed the Crocodiles: Public Administration's Role in Restoring Democracy

The journalist Edward R. Murrow once observed, “The obscure we see eventually. The completely obvious, it seems, takes longer.” (Quotations are from brainyquote.com.) What seems “completely obvious” to me, and hence may take longer to see, is that democracy in the United States is now at risk. Those who should be protecting it are hanging back. In the absence of leadership from the other branches of government, the bureaucracy may be democracy’s best hope.

This paper describes the eroding components of democratic governance, and then urges you—public administrators—to take some steps to repair the damage. Academics can help, but how career officials respond to this crumbling infrastructure is key because the process by which they carry out their daily tasks gives substance to or denies democracy. Democratic governance comes not just from the top down, but also from the bottom up.

THE EROSION OF DEMOCRACY

Although similar problems have occurred in prior administrations and are now occurring at the state and local level, I am focusing on the present administration in Washington, for three reasons. First, the national government sets a critical context for democracy for the whole nation. Second, in recent years, the attacks on democratic institutions and processes have been broad, deep, and continuous. Third, if the public administration community is going to respond, we need to know the present situation, not what occurred in the past. My intent is not to blame either political party as both have an abiding interest in the proper functioning of democratic institutions.

CORE CONDITIONS NECESSARY FOR DEMOCRACY

In my opinion, there are four critical requirements for democracy: (1) adherence to *the constitution* and *the rule of law*; (2) *accountability*; (3) the *right to protest*; (4) and *popular control*. All have been weakened in recent years.

Constitutionalism and the Rule of Law

The Constitution requires Congress, the president, and the courts to check each other’s powers, to keep government limited and the people free. Yet in recent years, the president has made it difficult for Congress or the courts to oversee or curtail the executive branch. At times he has ignored the law.

The president's assumption of increased control complicates the bureaucracy's role. The administration forbade a social security actuary from revealing to Congress the likely costs of the proposed Medicare Part D drug benefit until after voting had occurred. The Justice Department and the Office of Management and Budget have instructed agency officials to ignore judgments of illegality delivered by congressional agencies. The administration has also instructed officials to bypass court supervision. When the president says he is free to ignore the law, he means he will tell the bureaucracy (or instruct contractors) to violate the law, putting the bureaucracy between a rock and a very hard place.

The president's claims of increased power show up in signing statements, messages presidents write about a bill they are signing. President George W. Bush has used these signing statements to reject or reinterpret parts of legislation, especially portions that curtail his discretion. For example, President Bush wrote in a signing statement that he is not bound by a law forbidding the torture of prisoners because he has the right to ignore the law if the security of the country requires it.

The president's arrogation of power includes ignoring a 1978 law requiring the administration to go a special court to get permission to wiretap. Responding to presidential complaints that the law hampered security measures, in 2002 Congress offered to lower the legal threshold for conducting surveillance of non U.S. persons from *probable cause* to *reasonable suspicion*, (in S.2659). The administration opposed the proposal, arguing it was unnecessary and might be illegal, and hence jeopardize ongoing investigations (http://www.fas.org/irp/congress/2002_hr/073102baker.html). Rather than support a revision in the law, the administration created a *secret* program using the lower standard of evidence (*Secrecy News*, from the FAS Project on Government Secrecy Vol. 2006, No. 10, January 25, 2006, "White House Rebuffed 2002 Effort to Relax FISA Standard").

The administration's argument for a strong president and weak legislative body extends well beyond issues of national security. In budgeting matters, the Bush administration has argued for enhanced executive flexibility at the expense of congressional control.

Congress often writes detailed directions into appropriation language, to assure that the president adheres to congressional intent. Such constraints have irritated Presidents and their staffs for years, but the Bush administration decided it was safe to ignore them. If the president can ignore congressional directives, including limits on transfers and reprogrammings, he can spend money on whatever he wants, regardless of congressional intent.

A transfer is a shift of funds between appropriation accounts; reprogramming is a shift from one item to another within an appropriation account. Congress grants the administration broad discretion to move money around within an appropriation, although it sometimes includes its expectations in committee reports that lack the force of law. If agencies evade this informal guidance, legislators can put binding restrictions in the statutes.

In the 2005 Defense Appropriations Act, Congress did put transfer and reprogramming constraints into public law. The constraints on transfers and reprogrammings—that they be for similar purposes as in the appropriation, that they be for higher priority items, that they be warranted by unexpected military conditions, and that they not be spent on items that Congress had already explicitly refused—were routine and moderate. Congress prohibited the Department of Defense from spending any money to prepare a reprogramming request if the purpose were for something routine or previously rejected by Congress.

The president rejected these constraints on reprogramming. He argued that, based on the supreme court's decision in *INS v. Chadha*, he was free to move money around within an appropriation for any purpose he chose, even if Congress had explicitly forbidden spending for such purposes, as long as he told Congress what he was doing. But *Chadha* does not say what the president says it says. In *INS v. Chadha*, the court concluded that one house or committee vetoes were unconstitutional. The Department of Defense Appropriations Act, 2005 (P.L. 108-287), did not include a one house or committee veto. The reprogramming constraints were written into law duly passed by Congress and signed by the president. Apparently, the president was prepared to defy congressional reprogramming constraints of any sort other than notification, whether written into law or not.

Accountability

A second requirement for democratic governance is open, accurate, and timely provision of information that allows for oversight and accountability. Yet, the administration has refused to provide Congress information on its domestic spying program and its response to Hurricane Katrina. Congress is supposed to be able to ask administrators questions in order to carry out its oversight role, but the White House has sometimes forbidden those requested to speak to Congress. These issues go beyond security matters to include those that might embarrass the White House.

The administration has blurred the distinction between objective information and propaganda. Several government agencies paid conservative commentators money to tout the advantages of administrative policies and programs and portray the opinions as their own. More widespread is a practice in which agencies pay public relations firms to produce infomercials that are delivered to television stations. The television stations often air these pieces as if they had produced them themselves, so the public cannot tell they were produced by the government to put forward a particular, pro administration story.

The practice of preparing videos that present the administration's point of view and distributing them to television stations began during the Clinton administration but accelerated during the Bush administration. In these videos, the questions to administrators and their answers are scripted, and any suggestion of criticism is omitted. The Government Accountability Office judged that such videos consti-

tuted domestic propaganda and should be stopped, but the Justice Department and OMB instructed the agencies to ignore the GAO decision (David Barstow and Robin Stein, "Under Bush, a New Age of Prepackaged Television News," *The New York Times*, March 13, 2005).

The clearest example of propaganda is produced by the Department of State. After the events of 2001, the president's communications advisers decided to encourage supportive news coverage of the fight against terrorism. In 2002, *The New York Times* described, an office in the Department of State "with close editorial direction from the White House" began to produce "narrated feature reports, many of them promoting American achievements in Afghanistan and Iraq and reinforcing the administration's rationales for the invasions. These reports were then widely distributed in the United States and around the world for use by local television stations" (David Barstow and Robin Stein, "Under Bush, a New Age of Prepackaged Television News," *The New York Times*, March 13, 2005).

At the same time that the administration was distributing videos that viewers were unable to distinguish from news reports, it reversed the Clinton era emphasis on declassifying public documents, increasing the number of state secrets and reducing the scope of the Freedom of Information Act.

The administration has denied some FOI requests, charged large sums for information that should be publicly available, and delayed responding until well past the date when the information would be useful to reporters. As formerly open information has been removed from public view, FOI requests have increased, but the staff assigned to fulfilling those requests has not increased proportionately. The GAO reported that the backlog of FOI requests had increased 14 percent between 2002 and 2004 (Laura Gordon-Murnane, "Shhh!!: Keeping Current on Government Secrecy," *The Searcher*, Vol. 14, No. 1, January 2006, <http://www.infotoday.com>).

Reducing information given in response to FOI requests is government policy. The attorney general issued an advisory to agencies in 2001 to reduce information released under the Freedom of Information Act (*Government Secrecy*, Vol. 15, No. 42, December 2, 2005, p. 1008, www.thecqresearcher.com). Agencies have used this guidance in responding to non-security-related requests:

- ◆ In 2004, the Mine Safety and Health Administration stopped disclosing to the public the reports filed by inspectors documenting safety violations. This information could be used by labor to force safety improvements. The agency offered no explanation for the sudden secrecy (Public Citizen, "Now Mine Safety is Secret Too," posted January 19, 2006, www.bushsecrecy.org).
- ◆ In 2004, the IRS stopped providing documents to a university researcher, Susan B. Long, who in 1976 had won a court judgment requiring the agency to provide the data free of charge. The requested information in-

cluded whether the rich or poor were getting audited more frequently and how deeply the agency discounted the amounts owed to it. It is impossible to evaluate the agency without this information. Agency officials initially denied there was a court order, but even after they were shown a copy refused to provide the information. They argued that if they were to ever provide the information again, they would charge \$12,000 a month for electronic versions. The IRS ignored the court order (David Cay Johnston, "I.R.S. Is Sued on Failure to Release Tax Data," *The New York Times*, January 10, 2006). Professor Long noted that other agencies on whose data she has routinely relied are also obstructing her.

- ◆ Recently, the Department of Education first delayed responding and then charged a large fee when a small, nonprofit advocacy group, Students for a Sensible Drug Policy, requested data on the number of people affected by a government policy to deny financial aid to students who had ever committed a drug offense. The absurd reasons given for denying a waiver of the fee were that the nonprofit advocacy group was not acting in the public interest because the information it requested would undercount the number of students affected and so would be misleading (apparently, they didn't ask for enough information), and the group stood to benefit financially from the legalization of drugs (they did not). The real reason was that the group wanted to challenge an administration policy. The group sued to overturn, and Congress has in fact softened the effects of the law (*The New York Times*, "Editorial: The High Cost of Public Information," February 4, 2006; Anne K. Walters, "Students, With ACLU's Help, Challenge Federal Law Denying Financial Aid to Drug Offenders," March 23, 2006; Stephen Burd, "Lawsuit Accuses Education Dept. of Unfairly Withholding Data on Drug Offenders and Student Aid," *The Chronicle of Higher Education*, January 27, 2006).

Part of the reason for the increase in the number of FOI requests has been an increase in the number of classified and reclassified documents. Many of the reclassified documents are not security related. The result of the reclassification program is that historians will not have access to the whole story and the public will not be able to hold agencies accountable.

The secret reclassification program began in 1999, but has accelerated since 2001. Six agencies sought to reclassify documents they claimed were too hastily declassified in the mid-1990s. There is no legal basis for the reclassification program (Matthew M. Aid, "Declassification in Reverse, The Pentagon and the U.S. Intelligence Community's Secret Historical Document Reclassification Program," National security archives report, National Security Archive at The George Washington University, February 21, 2006, <http://www.gwu.edu/nsarchiv/NSAEBB/NSAEBB179/#report>). Although the documents in question were released according to the rules, the intelligence agencies argue that the reclassified documents were never *properly* declassified, so removing them from public access is not *really* reclassification and hence does not require a legal authorization.

(Scott Shane, “U.S. Reclassifies Many Documents in Secret Review,” *The New York Times*, February 21, 2006).

The likely reason for reclassification is that some of the documents are embarrassing to the agencies involved. Embarrassment is expressly prohibited as a justification for classification according to Executive Order 12958, as revised by President Bush. Researchers at the National Security Archive at The George Washington University described some of the removed documents:

Document No. 6 contains a complaint from the Director of Central Intelligence to the State Department about the bad publicity the CIA was receiving after its failure to predict anti-American riots in Bogota, Colombia in 1948. Document No. 7 deals with an early unsanctioned CIA psychological warfare program to drop propaganda leaflets into Eastern Europe by hot air balloon that did not go particularly well. ... Document No. 9 reveals that as of the spring of 1949, the U.S. intelligence community’s knowledge of Soviet nuclear weapons research and development activities was poor, at best. As a result, the American and British intelligence communities were completely surprised when the Russians exploded their first atomic bomb six months later in September 1949. Document No. 10 paints a portrait of the state of affairs inside the CIA which is not particularly flattering. Document No. 13 reveals that the CIA and the rest of the U.S. intelligence community badly botched their estimates as to whether or not Communist China would intervene in the Korean War in the fall of 1950.

—Matthew M. Aid, “Declassification in Reverse, The Pentagon and the U.S. Intelligence Community’s Secret Historical Document Reclassification Program,” National security archives report, National Security Archive at The George Washington University, February 21, 2006, <http://www.gwu.edu/nsarchiv/NSAEBB/NSAEBB179/#report>

Reclassification was driven by bureaucratic sensitivities, but as Steven Aftergood, editor of the oxymoronically titled *Secrecy News* argued, it was encouraged by the administration’s preference for secrecy (Scott Shane, “U.S. Reclassifies Many Documents in Secret Review,” *The New York Times*, February 21, 2006).

Some documents that are still released, such as the budget, contain less reliable information. By omitting \$70 to \$80 billion a year for the wars in Afghanistan and Iraq, the president seems to make those costs disappear. The way the administration scores its tax cuts makes those reductions look as if they do not cost the government any money. A third trick for making costs disappear is to drop the “outyears” from the budget. In 2005, these outyears were dropped for the first time since 1989. The future consequences of current decisions suddenly vanished.

Estimates of the size of the deficit from the White House have lost credibility because it has intentionally exaggerated its prediction of the deficit each year, so that it can claim at the end of the year that it brought the deficit under control because the deficit was smaller than the administration’s initial estimate—even

when the actual deficit is climbing from year to year. (Jonathan Weisman, "Deficit Could Top \$400 Billion," *The Washington Post*, January 13, 2006, p. A19).

Due to these and other budget gimmicks, the ability of the budget to act as a tool of public accountability is decreasing.

Freedom to Protest

As the right to oppose government is curtailed, democracy yields to authoritarianism. Democratic regimes limit police powers and guarantee the right to protest. These protections have been seriously eroded in the past few years. The National Security Agency, DoD, and FBI have all been engaged in spying on Americans. Much of the domestic spying engaged in by DoD and the FBI is justified as *preventing* terrorism, but the scope of spying activities has spilled over into groups opposing Bush administration policies.

The American Civil Liberties Union has been the leading critic of the Bush administration's antiterrorism policies. The FBI created a dossier on the ACLU over 1100 pages long. The Department of Justice said it is not their policy to threaten free speech, that they are only trying to prevent illegal activities and violence, but this argument does not justify gathering a dossier on the ACLU, which engages in neither illegal activities nor violence (Eric Lichtblau, "Large Volume of FBI Files Alarms US Activist Groups," *The New York Times*, July 18, 2005).

In 2003, DoD created a database called TALON, Threat and Local Observation Notice, to track groups and individuals with links to terrorism who might have plans to infiltrate or threaten military bases, but leaks to the media revealed that TALON was also used to monitor or spy on peace groups, including the American Friends Service Committee (a peaceful Quaker group), Veterans for Peace, and United for Peace and Justice.

Newsweek ran a story on DoD monitoring and spying on civilian protesters, using as a peg a group of about 10 peace activists who were demonstrating outside Halliburton headquarters. The protesters handed out peanut-butter-and-jelly sandwiches to symbolize Halliburton's overcharging for meals provided to soldiers. This demonstration was monitored and reported by the Army Counter Intelligence Field Activity (CIFA) program, the action end of the TALON database. According to *Newsweek*, Cheney had recently called the TALON program "'vital' to the country's defense against Al Qaeda." One wonders what the sandwich protest has to do with Al-Qaida. The surveillance seemed more designed to prevent embarrassment to DoD for failure to monitor Halliburton contracts appropriately. When asked why the Army's surveillance extended to a private company although it was formed to warn of threats to military bases and infiltration of computers, DoD declined to answer (Michael Isikoff, "Inside the Pentagon's Domestic Spying Program: The Other Big Brother," *Newsweek*, January 30, 2006).

NBC reported that the TALON database contained reports on more than four dozen antiwar meetings (Lisa Myers, Douglas Pasternak, Rich Gardella, and the NBC Investigative Unit, "Is the Pentagon Spying on Americans?" MSNBC, December 14, 2005). The NBC report concluded, "the Pentagon now collects domestic intelligence that goes beyond legitimate concerns about terrorism or protecting U.S. military installations." DoD monitored protests that were far from military bases or recruitment centers, taking the names of participants and observing their vehicles and license plates. The names of individuals remained in the database past the 90-day limit for unsubstantiated claims (NBC story).

One method of gathering data for these investigations is surfing the Web. In the aftermath of 2001, the intelligence community wanted to create a program to utilize huge private databases, such as credit card records, credit reports, medical records, Web searches, and phone records, and search them using powerful computer programs that look for key words by frequency of occurrence and associated ideas and names, to try to make sense of the communications and look for evidence of terrorist plans. DoD created the Total Information Awareness program to pay contractors to invent such a method. The program roused concerns about loss of privacy and possible errors. Consequently, Congress shut the program down in 2003 by denying funding for its use in the United States and against U.S. citizens. **The president opposed this congressional prohibition, but signed the law when it was passed by Congress.**

The program did not end. Many of the contractors who worked on the DoD's Total Information Awareness continued to work on the successor programs. Congress permitted ARDA (the Advanced Research and Development Activity), created by CIA director George Tenet in 1998, to continue its program, called Novel Intelligence for Massive Data. Many of the employees who had worked on the DoD program transferred into the ARDA program (Shane Harris, National Journal, "NSA spy program hinges on state-of-the-art technology," GOVEXEC.com, January 20, 2006, <http://www.govexec.com/dailyfed/0106/012006nj1.htm>; Michael J. Sniffen, "Pentagon's terrorism research lives on at other agencies," Associated Press, February 23, 2004, <http://www.fas.org/irp/news/2004/02/ap022304.html>). What appeared to be a congressional check on presidential power turned out to be a shell game.

The FBI's domestic terrorism program has focused less on Al-Qaida than on groups identified by right wing think tanks as threats to businesses, such as PETA and Greenpeace, but it has also targeted peace groups (*OMB Watcher*, "Inquiry into Gov't Spying on Nonprofits Expands," February 7, 2006). The FBI tracked the names and license plate numbers of people who attended a protest at the North American Wholesale Lumber Association's convention in Colorado Springs in June 2002. Documents released to the ACLU showed that the joint terrorism task force recommended a domestic terrorism investigation of people planning to participate in training on nonviolent protest. The FBI has also tracked antipoverty workers. ACLU of Colorado Legal Director Mark Silverstein concluded, "The

FBI is unjustifiably treating nonviolent public protest as though it were domestic terrorism. The FBI's misplaced priorities threaten to deter legitimate criticism of government policy while wasting taxpayer resources that should be directed to investigating real terrorists" (*OMB Watch*, "More Government Spying on Non-profits Revealed," January 11, 2006).

Popular Control

Democracy depends on a belief that voting is honest and that those elected do not sell influence to the highest bidder. Corruption corrodes a belief that the system works and that elected officials are accountable to the people.

Influence peddling corrupts not only the legislative but also the executive branch of government. Lobbyists and industry representatives not only buy congressional support, but also pressure the bureaucracy to shape regulations; influence the sale, lease, or use of publicly owned property; and award contracts.

The recent story about lobbyist Jack Abramoff highlights the relationship between lobbyists, legislators, and political appointees in the executive branch. In exchange for trips, payments to wives, and political contributions, Abramoff got benefits for his clients, friends, and favorite charities (Susan Schmidt and James V. Grimaldi, "Abramoff Pleads Guilty to 3 Counts: Lobbyist to Testify About Lawmakers In Corruption Probe," *The Washington Post*, January 4, 2006, A01). Abramoff was interested in two parcels owned by the federal government in the DC area and asked his old friend David Safavian, who was then chief of staff at the General Services Administration, for help in leasing them. According to *The Washington Post*, on July 22, 2002, Abramoff sent Safavian an e-mail with a proposed draft letter: that "at least two members of Congress" could send to GSA supporting the lease [material deleted]. Three days later, Safavian forwarded Abramoff an e-mail describing how an employee at OMB was resisting Abramoff's plan to lease space at the post office: "I suspect we'll end up having to bring some Hill pressure to bear on OMB..." (R. Jeffrey Smith and Susan Schmidt, "Bush Official Arrested in Corruption Probe," *The Washington Post*, September 20, 2005).

What is important about the story is not only how lobbyists work through appointees and members of Congress to pressure the bureaucracy, but that someone in OMB said, "No."

In exchange for benefits, businesses not only have to give campaign contributions, they have to provide financial support for the administration's legislative agenda, including the privatization of social security and the Central American Free Trade Agreement, CAFTA (*Business Week*, "Bush's Reluctant Business Allies," *Businessweek.online*; *New York Review of Books*, May 9, 2005). With such high profile vote buying on the one hand, and industry pressure and expendi-

ture for the administration's unrelated policy proposals on the other, there does not seem to be much room for popular control of government.

PROPOSALS: WHAT CAN PUBLIC ADMINISTRATORS DO?

The defense of democracy may be difficult, but quoting again from Murrow, "Difficulty is the excuse history never accepts." There is much that we can do.

Preserving and Disseminating Information

Without substantial openness, there can be no accountability. We can take a number of steps to increase government openness.

FREEDOM OF INFORMATION

Although the Justice Department has advised agencies to use all possible legal excuses to withhold information, and indicated it would defend officials who do so, it has not prohibited greater clarity in rules and more transparency in the decision making process.

Agencies need to assure that requests for information are handled expeditiously. Lapsed time between request and reply should be routinely recorded and reported annually. Trend data should also be reported. Explanations should accompany rejections or delays, and fees charged should be justified on the basis of costs incurred.

CONTROLLING HISTORY

The ability of the administration to control the story, getting out only those portions it wishes with the spin it wishes to have, limiting circulation of documents in a variety of ways, is an unnerving tilt toward authoritarianism. Democracy cannot work without an actual reporting of performance.

Much of the reclassification of declassified documents is unjustified, especially when those documents are old, are in presidential libraries, or have already been published. Much more care needs to be given to establishing, modifying, and implementing guidelines for the classification and release of documents, and especially for reclassification.

Since first-hand knowledge of policies and events is an antidote to the sanitizing of history, more attention needs to be paid to exit interviews, to interviewing retirees, and to the creation of archival databases and institutional histories. This effort can be a joint one between academic public administrators and practitioners. Other than in intelligence agencies where officials may be sworn to secrecy for life, interviewing former officials may be done outside the agency and without

the administration's blessing, if need be. Institutional history has been a much maligned form of research in public administration, as it tends to be uncritical or unanalytical (and unquantitative), but it may be essential to understanding, to learning, and to democratic accountability.

Public officials need to be aware of the historical value of what they do and see. They also need to keep in mind their agency's claim of ownership of office computer files. It is a good idea to keep unclassified documents, in hard copy and on the computer, at home or off site, with your notes, minutes, news stories, presentations at conferences, or video conferences. Today's pack rat provides tomorrow's raw data in a world where raw data are increasingly controlled.

PRESERVING THE QUALITY AND CREDIBILITY OF INFORMATION

What can be done if appointees demand data that supports particular policies they prefer? Should agencies compromise, provide what is requested, and bask in the glow of power, or should they demur, keeping their reputations for integrity intact, letting some other agency take on the burden of official wrong numbers? How can agencies comply with such directives while keeping their reputations for unbiased estimates intact? When the quality of data declines, how can an agency signal users about the level of reliability of different estimates?

One approach I call the "with-and-without" model. You asked for estimates of the deficit with social security included, but there is a firewall around social security because its balances may not be used for other purposes, so we will show you what the aggregate deficit is with and also without social security included. Or you wanted us to include dynamic scoring, estimating the impact of tax reductions on the economy and hence on future revenues. We find the method for doing that unstable and possibly inaccurate, but we will show you two estimates, one with and one without dynamic scoring.

The with-and-without model allows for technical compliance while maintaining professional integrity. It is likely to signal those who request biased reports to go "shopping" somewhere else. They may choose an agency that has no ability to resist, but the degree of distortion and ultimately lack of reputation for professional integrity will undermine the credibility of the results, and ultimately undermine the agency itself. Let someone else do the distortion job, even if the administration has to create an entirely new office to turn out *their* numbers.

If there has been an erosion of data quality, it is important to signal users of the level of reliability. If definitions have changed, and those definitions obscure the consequences of an administrative policy, call attention to the changing definitions. An increasing gap between the rich and the poor has been tracked by the Census Bureau for years; recently, it adopted a measure of income that includes the unrealized gains from home values, a measure that typically makes the gap between rich and poor look smaller. The Census Bureau carefully described how

the measure changed and presents the data in such a way that readers can exclude the new definition and see the results according to the older definitions as well.

Another approach is to give responsibility for particular policy analysis or data series to agencies that are more buffered from political pressure. The division of tasks between agencies is sometimes open to negotiation. Not only can some tasks sometimes be traded off between agencies, but interagency contracting provides additional flexibility, and at times inspectors general have been able to take on tasks that agencies have been unable to do. Although the IGs were then attacked in turn, collectively, they successfully weathered the storm. Some monitoring functions may need to be removed outside of government, funded by foundations or donations or both, to keep up the flow of information.

Sometimes, career officials can speak indirectly, not leaking in the sense of giving a report to someone not authorized to see it, but dripping a little, giving a hint about a study that was done, or what questions would be good to ask and research or to request through FOI. Think tanks may be able to pick up the topics, university professors may be able to build on these insights, and others, such as advocacy groups, which are not bound by the bureaucratic hierarchy, may be able to run with them. Anonymous tips to the IG's office can sometimes be productive, and may provide some protection. Leaks have increased as a response to illegal and secret programs. Those who adopt such tactics are "canaries" in the mines, warning the public, at considerable personal risk, in the hope of averting a disaster. (For more on leaking as a strategy see Rosemary O'Leary, *The Ethics of Dissent: Managing Guerilla Government* (CQ Press, 2005), as reviewed by George Frederickson, *PA Times*, February 6, 2006.)

Monitoring, Goal Setting, and Evaluation

The weakening of democratic governance that I have described has not roused widespread opposition. Citizens typically do not get excited about other people's loss of rights. They do not imagine that it could be themselves who are banned from airplane flights or arrested and sent abroad to be tortured. Some, contrary to the advice of Benjamin Franklin, are willing to sacrifice a little freedom in the hopes of increasing their security. But mostly, people do not see the implications of the everyday things they do. The ordinariness of the loss hides it from public attention.

I do not believe that if we make visible the erosion of democracy, somehow automatic mechanisms will kick in to repair the damage. But as long as attacks on democratic institutions and processes remain "below the radar," nothing can happen to correct the situation. The first call for public administrators, then, should be to assess and publicize the damage. The second step is to set ourselves achievable objectives toward the goal of restoring democracy's infrastructure.

How can we assess the condition of democratic institutions and processes?

We can measure the level of and direction of secrecy. We could include the number of documents withheld from the public under various categories, formal and informal, the amount and type of information available on Web sites, the number and seriousness of refusals to provide information to the GAO or congressional oversight committees, the delays in responding to FOI requests. It should not be too difficult to come up with at least a rough indicator of secrecy in the budget document. We can include the size and inclusiveness of the black (not public) budget and omissions of major expenditures from the president's budget proposal.

We can include measures of disregard for the law. Secret programs that skirt the law can be counted when they come to light. Another component might be the number of times that the president signs a law and then announces his own interpretation of that law that differs from congressional intent, or his unwillingness to be bound by the law. Justice Department guidance to the agencies to ignore law or judgments of illegality should also be included.

Third, we need to monitor the instances, mechanics, and intensity of efforts to shut off debate, intimidate opponents, and silence the press, as well as punish those who would leak information. We need to build some sensitive indexes that are able to distinguish between helpful antiterrorist controls and monitoring and intimidating animal rights groups, peace groups, or the environmental lobby.

Fourth, we need to examine the rules set up to preserve privacy of American citizens, measure their frequency, adequacy, and implementation, or violation.

Fifth, we need a sensitive indicator that will let us monitor increases and decreases in the amount of corruption over time, focusing specifically on vote selling and influence peddling.

When we have measures, we need to publicize them. That means we need reach out to the press, to think tanks, and to interest groups. Perhaps we need a vehicle like the report card to attract attention, and someone to fund the collection and collation of the data. The essence of this step is to make a lot of noise.

Proposing and Implementing Reforms

Once we can map the waxing and waning of democratic institutions and public accountability, we should be able to figure out where we need to put our reform efforts. What actions do we need to take to improve our performance, what resources do we need to devote to it? Do we need new laws—to strengthen the Freedom of Information Act, or to publicly fund legislators' travel, eliminating lobbyists' payments? Do we need amended regulations? Better enforcement? Better training or greater clarity of what the rules mean? Do we need more resources devoted to freedom of information requests, or would more information on Web sites, commensurate with public safety, help reduce the backlogs of requests? Where are the major problems occurring, where is progress happening, who are

the laggards, and why? We can build the necessary action steps into a national performance plan for democracy and measure our progress toward those milestones, and then when they are in place, evaluate how well they are working by monitoring our overall scores.

If we find ourselves unable to set up a formal system of performance measurement for democratic governance, if the idea is viewed as too inflammatory or too easily highjacked by partisans, then we should set up an informal one, shared and maintained by some of the major think tanks of the left and the right—both of which have an interest in maintaining democracy.

Once we have a set of measures and an idea of what reforms are likely to be most effective, each agency will need to establish appropriate expectations for the measures within its control. If your agency has done something good—reduced backlogs or processing times for FOI requests or reduced rejection rates—flaunt it. Share information on how you did it. In the process you might remind someone in another agency of the importance of open information in making democracy real.

Resistance

Perhaps it needs to be said that career officials should not disobey the law simply because a Justice Department memo says it is okay, or that the Justice Department will defend you if you get caught. There is no justification for doing things that are not only illegal but wrong, such as torturing people, holding them without charge incommunicado, intimidating regime opponents into silence, or withholding or distorting public data. The last resort for the ethical bureaucrat is the strategic resignation.

We need to see through the rhetoric that mentions the name Al-Qaida and then infiltrates a Quaker peace group with the rationalization that it might be planning violence. To paraphrase one of my favorite quotes from the Harry Potter series, the time is coming when we will have to choose between the easy thing and the right thing to do.

CONCLUSION

I have identified four critical components of democratic governance in this country, all of which are in some jeopardy. Congress has been passive in its acceptance of the loss of its powers, hesitant to curtail a president of the same party, while the bureaucracy has become too weak even to make some of its scientific and financial estimates part of the public debate.

Far from being a feared and independent fourth branch of government, making policy without political controls, the bureaucracy may have become too obedient. The bureaucracy should not be expected to accept or implement the abuse of

power, report false or misleading data, or implement unconstitutional or illegal directives. Nor should government benefits be distributed according to lobbyists' requests. How can the bureaucracy protect itself from such directives? To quote Ronald Reagan, "To sit back hoping that someday, some way, someone will make things right is to go on feeding the crocodile, hoping he will eat you last—but eat you he will." Democracy is threatened in the United States, but we do not have to keep feeding the crocodile.