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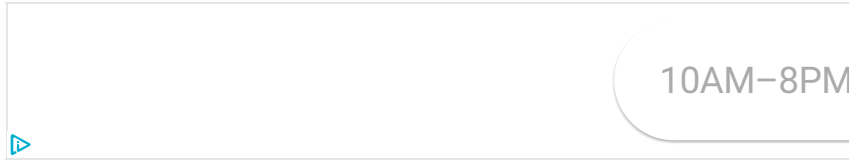
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**POLITICS** 09/24/2019 03:16 pm ET

# The Trump Whistleblower Scandal Is Proving Edward Snowden Right

Snowden should've gone through "official channels," his critics yelled. Here's what happens when you do.



By Nick Baumann



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Edward Snowden did it all wrong, his critics thundered.

The former National Security Agency subcontractor should have used "other avenues available for somebody whose conscience was stirred and thought that they needed to question government actions," then-President Barack Obama claimed in an August 2013 press conference, citing an executive order he had signed that — in theory at least — gave intelligence officers

some [whistleblower](#) protections for the first time ever.

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“Snowden could have come to me,” George Ellard, then the NSA’s inspector general, [claimed in 2014](#).

Snowden did, in fact, try to report his concerns through official channels. He questioned the legality of surveillance programs 10 times, he later [testified before the European Parliament](#). He said he was brushed aside. So in 2013, he leaked [reams of national security information](#) to journalists [Glenn Greenwald](#) and [Laura Poitras](#), revealing the details of multiple surveillance programs and launching a global debate on privacy. Thanks to Snowden, people all over the world now know far more than they otherwise would have about the NSA’s [collection of millions of Americans’ phone records](#), its [use of data from internet giants like Google](#) and its [spying on the phone calls of world leaders like Angela Merkel](#).

Snowden’s reward was criminal charges and effectively permanent exile from the U.S. But his concerns were aired publicly and the proper scope and scale of massive government surveillance programs was debated in the open.

So far, the latest fight over an intelligence community whistleblower seems to be vindicating Snowden’s decision. Recently, the intelligence community’s inspector general received a whistleblower complaint that he deemed “urgent and

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credible.” The inspector general then sent it up to the acting director of national intelligence. The law says the director of national intelligence “shall” at that point pass the complaint on to Congress. But President Donald Trump and his administration are blocking that complaint — which reportedly concerns a call Trump made to the president of Ukraine in which he [asked for Ukraine to investigate former Vice President Joe Biden](#) — from being seen by Congress.

That sort of politicization “is precisely the reason so many [whistleblowers] go to the press,” said Jesselyn Radack, a former Justice Department legal ethics adviser and whistleblower who now works as a lawyer for whistleblowers.

Snowden faced similar challenges. He received two kinds of responses to his internal complaints, he [told the European Parliament](#):

*The first were well-meaning but hushed warnings not to “rock the boat,” for fear of the sort of retaliation that befell former NSA whistleblowers like [J. Kirk] Wiebe, [William] Binney, and [Thomas] Drake. All three men reported their concerns through the official, approved process, and all three men were subject to armed raids by the FBI and threats of criminal sanction. Everyone in the Intelligence Community is aware of what happens to people who report concerns about unlawful but authorized operations.*

*The second were similarly well-meaning but more pointed suggestions, typically from senior officials, that we should let the issue be someone else’s problem. Even among the most senior individuals to whom I reported my concerns, no one at NSA could ever recall an instance where an official complaint had resulted in an unlawful program being ended, but there was a unanimous desire to avoid being associated with such a complaint in any form.*



The choices for intelligence community whistleblowers are inherently limited. “You can stay silent, risk your career, or risk worse, like prison,” said David Colapinto, a whistleblower lawyer at [Kohn, Kohn & Colapinto](#). “None of those choices are good.”

This system, in which even those who follow the rules are persecuted for talking out of turn, is not new, Radack noted. “Thomas Drake — an NSA surveillance whistleblower pre-Snowden — was prosecuted under the Espionage Act after following the procedures in the Intelligence Community Whistleblower Protection Act,” she said. Seeing what happened to Drake, she added, led “Snowden to correctly conclude that using the same channels that entrapped Drake to make his disclosures ... would be an exercise in futility.”

Snowden’s government critics should have known this better than anyone. Obama’s administration used the Espionage Act against more alleged leakers than any administration before or since. An interagency review panel later found that Ellard, the NSA inspector general who said Snowden should’ve come to him, had himself retaliated against a whistleblower. The panel, composed of inspectors general from outside the Defense Department, [recommended Ellard be fired](#); the Defense Department later [overruled that decision](#).

The basic problem with government whistleblowing, as [Snowden noted](#) in October 2013, is that “you have to report wrongdoing to those most responsible for it.”

And as Snowden recognized, there are real advantages in going to the press. When journalists do their jobs, they can verify and then help lend legitimacy to complaints. Cooperating with “some kind of media organization would defend me against the worst accusations of rogue activity, and correct for whatever biases I had, whether they were conscious or unconscious, personal or professional,” Snowden writes in “Permanent Record,” his memoir published last week.

Trump's efforts to "intimidate" this whistleblower could risk "a chilling effect on future whistleblowers," Democratic Reps. Adam Schiff (Calif.), Elijah Cummings (Md.), Jerry Nadler (N.Y.) and Eliot Engel (N.Y.) warned in a [press release last week](#). But whistleblowing, especially on national security and intelligence matters, has always been difficult and dangerous. The Supreme Court had to intervene to ensure that The New York Times could even publish [the Pentagon Papers](#); Daniel Ellsberg, who released them, was charged with multiple federal crimes. The Obama administration was [the most vigorous in modern history in its pursuit and prosecution of leakers](#), even as it claimed to create the strongest whistleblower protections in history.

It's true that, thanks to Obama, there is theoretically a legal way for members of the intelligence community to make sure their concerns are heard. But those protections weren't enough to make Snowden feel safe running his complaints too far up the chain and they didn't give him confidence that his concerns would be heard.

"In organizations like the NSA — in which malfeasance has become so structural as to be a matter of not any particular initiative, but of an ideology — proper channels can only become a trap, to catch the heretics and disfavorables," he argues in "Permanent Record."

Whistleblower protections are most useful when someone is reporting an isolated instance of misconduct, said Ben Wizner, an American Civil Liberties Union lawyer who represents Snowden. "They have nothing to offer when someone is arguing that government programs that have been approved at the highest levels are unconstitutional," he continued. "In those instances, the only way to affect change is to bring the public into the conversation by disclosing information to journalists."

Now, a whistleblower inside the intelligence community is trying to do what Snowden claimed he couldn't. So far, that person has been effectively silenced by the Trump administration's refusal to

provide the complaint to Congress as required by law. It's possible that the administration will eventually comply with its legal obligations. But the political system has already sent a clear signal: Even intelligence community whistleblowers who follow the law can't be confident their concerns will be heard.

Should the Trump administration continue to defy Congress, the whistleblower, and others who follow, can always do what Snowden did and try the First Amendment route. It is a big risk, and they should be careful. Our SecureDrop information is [here](#).

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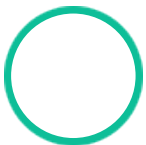
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