

TRANSCRIPT

"WHISTLEBLOWER PROTECTION AND THE SNOWDEN EFFECT"

A Conversation With Sandra Coliver, Bea Edwards, Anna Myers, and Florin Postica
Moderator: Conrad Martin

ANNOUNCER:

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CONRAD MARTIN:

Welcome everybody. I'm Conrad Martin. I'm executive director of the Fund for Constitutional Government and the Stewart Mott Charitable Trust. Today I'm here more wearing my Fund for Constitutional Government hat. And-- it's a pleasure to see you all. I want to thank the organizers here, the Open Society initiative, Open Society Foundation, and Sandy, who has been-- a driving force in pulling us together here and working on-- on information policy-- to-- to Mark Randazzo and the EDGE Funders Alliance-- to-- the ch-- Foundation Charles Leopold Mayer, CS Fund, and the International Human Rights Funders Group.

I think-- if you haven't been paying attention to the news-- it's important to start to listen to what's gonna be coming up here. I think it's hard to have avoided the-- the issue of whistleblower protection. I think one of the things that I wanna touch on here is that-- regardless of what you're funding in, whatever field it may be, the environment, human rights, national security, that ultimately, transparency itself, that ult-- ult-- ultimately, whistleblowing is an important part of-- of your work.

We can think of examples and thought of examples-- last night that have been seminal in terms of protecting rights, from the-- from the Serpico case, in the case of police abuse-- to the Silkwood case in the environment, and-- the Ellsberg case to Snowden's case today.

In each of these instances, it's been an underlying and critical part of information as a human right. And I think that we spend a lotta times talking about the technology. But whistleblowing is really the human component of it. And-- and so we're gonna spend some time talking about that today and hear from experts in the field and talk later among ourselves about what funders can do and how it can be a part of-- of your folio.

I also, I missed a sponsor of the organization of the-- of the-- of the-- of the gathering, and that's Rockefeller Family Fund and just wanna say thank you to them as well. So our speakers are, we're gonna have five minutes from each of our speakers and then open it up to questions. I'm gonna introduce them all now. And then we'll-- we'll go into the discussion. Our first speaker will be (THROAT CLEAR) Florin Postica. Did I pronounce that correctly?

FLORIN POSTICA:

That's correct.

CONRAD MARTIN:

Who is a former prosecutor and currently a senior investigator in the Office of Internal Oversight Services at the UN. Florin has 18 years of experience as an investigator on international cases under the auspices of the UN and has now, himself, become a whistleblower in-- in having revealed irregularities in the investigation process and so is in a good position to give us an analysis of both sides of-- of-- of whistleblowing and-- and where things stand within the UN.

Our next speaker will be Bea Edwards. Bea is the executive director of the Government Accountability Project, which is a Washington-based-- public interest law firm. I guess you're not a public interest law firm any longer, but provides-- it's a technical distinction, but provides-- legal support to whistleblowers, has worked on advocacy helping pass the Enhance Whistleblower Protection Act, and has been successfully defending whistleblowers-- for more than 40 years.

Our third speaker will be Anna Myers, who is the expert coordinator of the Whistleblowing International Network. She's a lawyer and expert in the field of public interest whistleblowing and anti-corruption and has worked in numerous national context around the world and advises individuals, businesses, and NGOs.

I think I'm gonna just note here that, as information policy has-- has become global, the-- the same way that information has changed, so has the need in the way that we approach whistleblower protection. It's-- it needs to be coordinated. It needs to be-- thought of in an international context. And-- and Anna's gonna help us better understand how that might happen and how we can help.

Finally, Sandra Coliver's gonna come in as our sweep hitter here-- talking about what's happening-- within the foundation community. Sandy is the director, legal

officer of the Open Society Justice Initiative's Freedom of Information and Expression project and has led a process inviting more than 500 experts and countries to draft a set of global standards, which is the Tshwane Principles, yes?

SANDRA COLIVER:

Tshwane.

CONRAD MARTIN:

Tshwane principles.

SANDRA COLIVER:

Like Tshwane River.

CONRAD MARTIN:

Excuse me, pardon me. And I won't sing Suwannee River. (LAUGHTER) That provides-- that provides guidance on balancing national security considerations and the right to know. Welcome, everyone. And I also want to-- to-- I admitted that CS Fund is another sponsor of our-- of our gathering today.

So thank you all. It's-- (PHONE RINGING) it's great attendance, right when my phone starts to ring. And-- I-- it's gonna be an interesting and an important discussion. So let's get started. Florin, if you could start to talk to us a little bit about the UN and your personal experiences.

FLORIN POSTICA:

Yes, thank you, Conrad. Thank you all for having me here. I just wanna-- make a quick comment that what I'm gonna say is in a personal capacity. It doesn't engage the UN or reflect the UN position. I have to be careful from that perspective. I am still a UN staff member and also staff member of the Anti-Fraud office in Europe. So but-- if you need further information on that, we can-- (PHONE RINGING) I can answer any questions.

I would be speaking very briefly for the five minutes I have about my office first, what it is and what it does, then what the Ethics Office within the United Nations is and does briefly and then-- where we are in terms of whistleblower protection.

I don't know, can you all hear me? I-- I assume so. Okay, so-- in 1994-- the General Assembly of the United Nations decided to set up an independent oversight office within the United Nations. And-- within that office, there is an investigations

division. And I'm-- work there.

Now, what do we do? We receive reports of violations by UN staff members, in-- in principle-- about possible fraud, corruption-- misconduct, waste of and abuse, to put it very generally. But we have the mandate and all that available for you. And we are fact finders, investigators.

We just establish the facts and then write the report and make recommendations. So we don't take decisions as to the disposition of that case. We don't do criminal investigations. But we may have an interface with the local authorities whenever a crime has been committed by one of our staff members, in which case, we have to waive the immunities, et cetera, et cetera. I won't-- but just to set it.

How do we receive these reports? First, staff members have an obligation to report wrongdoing to us, statutory obligation. Second, and here's the interesting part, is the whistleblowers that come into play. And they report from doing, let's say, fraud. And we have an obligation to protect them ourselves against any retaliation.

Now, many of you may know that fraud, if I take just that category, is mostly uncovered by accident. It's not because of whistleblowing. And often, when we do an investigation, we go and say, "Why didn't you tell us," to a witness or someone who is a staff member, and say, "Well, I was afraid to come forward."

"Why were you afraid?" "Because despite these policies and setup and mechanisms in place, I have to still think about my job, security, family, et cetera." So in 1996-- the-- sorry, in 2006-- the Ethics Office was created. In fact, in December 2005, they issued our policies and then started to work.

And it was set up also to ensure protection-- against retaliation to those who cooperate with an investigation or an audit in the United Nations. And how do they work? Someone complains that they cooperated, let's say, with my office. And then their boss said, "I'm gonna fire you," threaten, or really do that, or harm them in any other w-- detrimental manner for them.

And they go to the Ethics Office. The Ethics Office then establishes whether there's a prime officiate case and sends it back to us to investigate. So we also investigate-- retaliation. And then we send it back to the Ethics Office with recommendations.

Should any investigator, from my office, engage in retaliation, then a parallel mechanism, outside mechanism, will be set up to ensure-- and to avoid the conflict of interest. Now-- how is it in the UN? I would say-- great efforts have been made to-- to-- to-- ensure protection.

And if I were to paraphrase some, I would say it's-- it's alive but not well, the protection of whistleblowers in the UN. And there are a number of reasons for that. The first would be that, even per the head of the Ethics Office, the current head, I don't wanna speak on their behalf, but this is from their public documents.

They realize that there are significant, quote, "Significant-- deficiencies, both procedurally and substantive." And they of course did what a huge bureaucracy always does, set up a panel to review. And we'll see 'til when. They have been asked

to finalize this by this sum-- this-- (COUGH) coming session in the fall. So let's see what's coming out of that.

The second thing is that some of you may know that the UN has also set up a new internal justice system, which means that we have some professional judges that are reviewing decisions by the UN managers, including the Ethics Office and others.

Now, the Ethics Office, being an independent office, is unhappy with that and has stated so, because they don't want those to be reviewed. And-- there are some interesting judgments I can provide you more information with later, should there be any interest in this. But they were criticized for that, because the UNDT, the United Nations Dispute Tribunal, has evolved-- and has-- gotten some jurisprudence which stands to support whistleblowers rather than not.

It tends to support accountability and transparency rather than not. And here is the natural instinct of the huge bodies to protect themselves. And-- this is how I-- came to meet GAP and-- Bea Edwards here, because-- I'll put it very shortly. The case is still pending litigation.

But in an investigation I was supervising together with another colleague on a team-- my then-supervisor-- doctored some evidence, if I can say it like that, tampered with that. And I disclosed this. And then they came against me for that, which is a classical scenario. And of course, I-- contacted GAP. And we were very successful in ensuring a judgment.

And-- I just wanna tell you that, in-- for this judgment, this judge said that, "It's hard to find a more direct link between a protected activity and a retaliatory act." Now, courage is not contagious in the UN. And-- regrettably, not everybody is happy or willing to come forward.

I did this only because of a matter of principle. And I hope, and I see some signs that some policies are gradually changing. No one says why, really. Because it would assume accountab-- admitting accountability. And just to close it, the villains are still around. And let's see what happens. I think I went within the five minutes, I don't know--

CONRAD MARTIN:

You made it.

FLORIN POSTICA:

Thank you. (LAUGHTER)

CONRAD MARTIN:

Thank you, Florin. And Bea-- start where Florin left off and talk to us a little bit

about how GAP works.

BEA EDWARDS:

Okay, thanks, Conrad. And-- and thank you OSF and the other sponsors, who are allowing us to come and-- and talk to you today. The place to begin, I think, to talk about what we do and international action to protect whistleblowers is the United Nations. Because we are-- GAP, the Government Accountability Project is-- a national NGO here in the U.S. based in Washington.

We've been working on U.S. legislation and with U.S. cases. And as a whistleblower protection organization, and I think you'll hear this throughout the-- the session, we get the call when something terrible has already happened, typically.

We're working along defending our-- our clients. And we're working on policy and legislation and so on. We-- we-- we became involved at the United Nations in the wake of the Oil-for-Food scandal. And-- and you all, I'm sure, will remember aspects of that. It was an enormous-- fraud that took in-- heads of state, major corporations-- in-- in different continents, and so on.

And the-- the astonishing thing is, as Florin-- mentioned, there were many, many people who knew what was happening. In fact, there's a book about that particular-- that particular scheme that is called *Backstabbing for Beginners*. (LAUGHTER) It's-- it's just a great book. I can't remember the name of the author. But it is a story of this fraud.

And the fact is there weren't any whistleblowers. At that point, there weren't any, because there weren't any whistleblower protections. And-- and I think-- as-- as Florin pointed out, if you have a job and a mortgage and two kids in college, why are you gonna call attention to yourself in this potentially career-wrecking way? And-- and so GAP tends to get the call when there's already a scandal, when there's already a very-large-scale problem.

And-- and the reason people don't speak up is because retaliation can be very, very fierce. And it can mean the end of your career, the end of your-- really, your personal and professional life. So people are not gonna put themselves in that position without any protections at all.

And this is an alarming-- situation, because there are statistics from-- auditing firms, accounting firms, the Securities Exchange Commission, something like 90%-plus of-- of disclosures or discoveries of fraud come from tips. That is, an investigator doesn't just happen on something, although, as-- as Florin said-- they're discovered by accident. But once the discovery is made, the whole situation is flushed out and filled in by people who have known, usually for a while, what's going on or at least-- suspected it.

So that's why the issue of protecting whistleblowers is very important. A large-scale fraud or-- or-- or violation of the Constitution is not something, really, that can be

concealed very easily. However, we do see, and as-- as Florin also-- also mentioned, the classic pattern of retaliation.

This is-- working in whistleblower protection, you see a pattern of-- of action and reaction over and over again. So when a whistleblower comes forward, there's a kind of caucus in the institution. And the-- the authorities decide what they're going to do. What we've seen is, the more significant the disclosure, the more ferocious the retaliation. Because it's embarrassing. And it is potentially damaging in some existential way to the institution.

If a disclosure is fairly minor, can be compartmentalized, then it's really in the interests of the whistleblower and the institution to address it effectively. That is, you wanna fix what's wrong in an isolated part of your business or your agency.

But what if the whistleblower comes to you and says, for example, "The president of the World Bank is corrupt"? Then you face a systemic dilemma, where if you expose that, if you address it, the institution, in a sense, will cease to exist in its current form.

This is what happened in the financial crisis, we know. There were people talking all along, at least-- for at least two, three years before the collapse of September 2008. But what they were saying was so threatening to the whole system that it could not actually be addressed in-- in any effective way. So we have seen this now at GAP over a period of years.

The disclosures (COUGH) coming to us tend to be of greater and greater import. And I think the reason for this is, and-- and we can get into this in more detail, but-- but-- but we've had a long period, decades now, of deregulation in-- in government, so that the private sector functions without any objective-- oversight.

And therefore, the place where we're going, as the public, where we're going to get information about what's wrong comes from whistleblowers. And whistleblowers will be telling us more and more fundamental-- things. That means whistleblower protections are more important and that they're more difficult to-- effect, because the stakes are higher and higher.

And of course, later on today, we'll be talking about the Edward Snowden case. But in general, then, as the disclosures are more fundamental, and their scope is greater, we're seeing that international-- that whistleblower protection needs to scale up to an international level too.

And we were talking, a group of us, last night that this is actually-- this has happened, say, with the labor movement, with civil rights, with human rights, with the environmental protection movement. All of these things began in national settings and then had to scale up to an-- to an international-- scope. And that's where we are right now.

What we do in protecting whistleblowers, because even if you have policies and legislation, it's difficult to oblige authorities to implement them fairly, is that when a disclosure and a whistleblower come to us, we try to relieve the pressure on that

person of the institution he or she has exposed. So that makes us very dependent on legislative bodies, the Congress, parliaments, regional-- parliamentary bodies, and particularly the media. Because often, if we can get a disclosure to the public, we will see the public respond and turn the pressure back on the government, on the institution, on the corporation that is trying to retaliate.

And I just wanna end by saying that we try to work in almost-- a kind of triumvirate of whistleblower protection, advocacy organizations, and sometimes investigative journalists. Because the journalists will get the story. They'll get the public attention. Advocacy organizations will pick up the disclosure and make sure that something happens as a result.

Most whistleblowers tell us that the reason they come forward is they want something to change. They want something to get fixed. And then we are the kind of third arm of that-- of that trio where it's our responsibility to make sure that the whistleblower comes away from the whole process of disclosing and potentially retaliation with some semblance of the life he or she had before. Sometimes, we're successful, and sometimes, we're not. And that's why, I think, we're here today, because we know that we need to shore up those protections on an international scale.

CONRAD MARTIN:

Thanks, Bea. So Anna, how are we working to coordinate it internationally?

ANNA MYERS:

Well-- I wanna first of all say I'm absolutely delighted to be here today to explore with you-- the links between the work we have been doing to connect-- whistleblowing more systematically across borders. So the work I hope is that you are interested in and want to talk about today-- and the work you wanna do to support to make a real and lasting difference.

Just as sort of-- what didn't make it onto my-- biography there was that I was Deputy Director of Public Concern at Work, which is the U.K. whistleblowing organization for nearly 10 years. And the founding members of the-- international network-- that I am coordinating really stems from, and if you look at the history-- Public Concern at Work was set up in 1993.

Before we set it up, we came and talked to GAP. And we looked at the American model. And we set it up differently in the U.K. We learned from the American model. But we also put what was a U.K. spin on it. Some people are now looking at that spin and saying, "That's a spin, and we'll do it differently."

And one of the things that the U.K. model did was-- was say, "Well, there are lawyers who can take on whistleblowing cases." So what the U.K. NGO wanted to do was provide the early advice. You're at work. You've got a dilemma. You're not sure

where to go. You can call com-- Public Concern at Work. You can discuss your options and-- and do it that way. If-- if they then do it in-- in a way that makes sense, then-- then-- if they are-- retaliated against, then they have strong-- protections, because they've done it in the most reasonable way, so to help individuals do it that way.

So again, that just shows that there has always been this link between civil society talking to each other. When the Open Democracy Advice Center was set up, they came to Public Concern at Work. And we were very involved in talking to the and helping them look at the Freedom of Information law and whistleblowing as key components of their democracy-building exercise.

When the whistleblower network in Germany, another founding member was looking at it in 2006. They came to GAP, to the Federal Accountability Initiative Reform in Canada, another member, Public Concern at Work. And that, obviously, to me, over the years, has made a lotta sense. So the societies that want to address it are talking to the civil societies that are addressing it.

And they are able then, because the civil societies that are addressing it aren't trying to tell them how to do it. We're saying, "We're doing it this way. These are the challenges we're facing. And then they, as they set it up, can come back and talk. And this, in a sense, is what the network is trying to do is systemat-- systematize what has been an ad hoc, important-- networking project over many years. But we can't afford anymore to be sitting back and just-- just talking to them when they come to us. We need to help this happen much faster. And I hope I can explain a little bit why.

Whistleblowing has and continues to be one of the most effective ways that failures of accountability are identified accurately. This is the information that allows civil society and others to effectively engage with the root causes of problems and demand significant reform.

So a very quick example in the U.K., because that happens to be where I've had the most experience, whistleblowing (UNINTEL) Stephen Bolsin about the unusually low success rate of doctors operating on children in the baby cardiac unit at the Royal Bristol Infirmary Hospital didn't just cause a public scandal, but it actually changed the medical profession and how it's self-regulated in the U.K.

Because for the first time, doctors who were managers were struck off the medical com-- register for acts of omission, failures to prevent harm in the hospital, rather than as doctors who had committed medical negligence. So these kind of issues can make significant changes in how things are regulated and can push what we think about in terms of accountability.

When the link between whistleblowing and reform has been made at the national level, it has been achieved primarily by civil society that is focused on whistleblowing as a matter of public interest. And I say this to distinguish it from the more top-down approach to whistleblowing as a tool, so for instance, to fight corruption or to bring those who commit serious crimes or abuses to justice.

Because important though those elements are, the block that it continually runs up against is, how do we orchestrate whistleblowing for our needs? At some levels, I say we can't, and we probably shouldn't try. But that's partly my background. What can be prepared is the groundwork for when the whistle is blown and, through advocacy and public awareness, make it much easier for individuals-- to raise concerns locally, to do it earlier and safely, and to ensure they are protected when they need to go public.

And in some jurisdictions, the need to go public will be faster than in others. So in a lot of our jurisdictions, the media has always been the backup, the failsafe. But in some jurisdictions, it's the only way the information's gonna go out, because there aren't democratic institutions that most of us rely on to make whistleblowing work.

So national civil society organizations that establish the network and have been trying to address whistleblowing for a long time have been and are regularly contacted by civil society around the world who want to learn more in order to address it in their own national context. And until recently, as I said, this has been primarily reactive.

And they need, we now know, that we can no longer ourselves work in isolation nationally. And that has become clear over the last decade, and that we need and they need access to the-- the legal and practical and-- expertise and technical expertise that we've been building up in our national settings for a long time.

So I ask the question, why? And it is not because we dreamed up-- something that, because we have a lotta time on our hands, and we now want to go global. We still are fighting our battles nationally. And it is an ongoing process. And it is constant.

But this is because, I believe, the nature and scope of whistleblowing disclosures has changed. The voluntary canaries in the mine are telling us when the gas is leaking. And it is leaking across borders. So-- whistleblowers can continue-- are continuing to alert us about failures in accountability.

And these now transcend borders in ever-inc-- increasing numbers. So if we think about the global financial crisis, there were, and I can say this, on the advice line at Public Concern at Work, when I was answering the phone six and seven years ago, there were national whistleblowers raising concerns about the practice of credit rating agencies who operated globally. But we were giving then advice nationally.

There were-- banking whistleblowers raising concerns about their bank's compliance systems. And some of them were heads of compliance that were effectively saying that the-- they-- they were saying the compliance system were-- effectively gagging information, keeping it away from regulatory oversight. These banks were operating globally. And we were dealing with the whistleblowers nationally.

So in 2011, the Informal Network of Civil Society Organizations began to col-- coalesce-- strategically. And in 2012, the steering committee was established, and outreach began. So there's GAP. I've mentioned Public Concern at Work, the Federal Accountability Initiative for Reform in Canada, the Open Democracy Advice Center in South Africa, the Whistleblowers' Network in Germany, and we have two advisory

members, one from-- the Commonwealth Human Rights Initiative in India, and the Center of Human Rights-- in-- at the University of Chile.

And we have room for, and we've been talking to people about-- filling perhaps one or two more gaps. The word, "gap," we try not to use as much. (LAUGHTER) The founding members of the network are well versed not only in the methodology of reprisal but in the methodology of supporting whistleblowers from the early stages, so designed to help whistleblowers get it right from the start and minimize the risk to themselves, which I know feeds into some of those around the table who-- want to help ensure that early whistleblowing can be harnessed as a preventive tool in human rights abuses-- and other (UNINTEL) standards rather than waiting until the abuse and damage occurs.

And then the whistleblowing helps mop up the mess very effectively, I know. But also, there are organizations who do full-blown legal advocacy-- and legal representation when the information has gone public, and the whistleblower is targeted for reprisal but also when it has gone terribly wrong, and getting the information out is part of the protection.

This is what we know. These are all the angles that those who've been working on whistleblowing as a public interest issue, not to protect-- protect, particularly, a thematic issue, have been working with an dealing with for years. So a development plan is-- what I was asked to talk about-- sort of what is the plan.

And it's not only ensuring that the network can respond to civil society requests for support but to actually reach out to newcomers to the field, helping them identify where and how whistleblowing protection fits already.

Many are doing it but haven't had, actually, the time to identify that that is what they are doing, and hook them in quickly to this expertise. So in the little time that I have been-- well, I've been working internationally for a long time.

So I know that there's been interest. And I've been asked to talk about it in so many different-- different contexts. But the response has been really, really, incredibly positive and a little bit surprising to me, because they actually have been doing this work.

And they are ready for engagement. They're ready to talk about whistleblowing and what they want to do. So the network has already gauged in quick support to help keep a private sector whistleblower out of jail in Ireland. We've-- we've-- stopped, for the time being, the Macedonian-- government's attempt to put a law in that is just about information control and not about-- public interest accountability, and a request this week from civil society in Poland will mean that we'll set up a conference call to discuss various strategic possibilities, because the Polish government has just recently removed anti-- whistleblowing protection from their national anti-corruption strategy.

We'd like to set up a legal peer advice group, which will help long-established and the new civil society whistleblower advisors working on particularly difficult cases to help build up quickly their advocacy expertise but also be an-- an additional way to ensure

cross-border-- issues are picked up.

So I think one of the-- the couple of the main points that I'd like to leave and think about, which has come out of the national-- I think the national circumstances in which whistleblowing has been dealt with is that civil society action has been the only reason that whistleblower laws have made it onto any statute book, at the national level and the inter-- international requirements, which are now prompting governments to do-- to put something in place.

Civil society has understood what is needed to get laws passed, which is often ready to strike when the iron is hot, when there is an opportunity that rises in their national context. They are, by definition, quite nimble. And the network wants to continue to be that way for them.

But most importantly, they're there when the laws do not work, are not implemented, and are, quite conveniently, ignored. Civil society has also, I think-- done a lot of work to-- to-- to shift the view and attitudes of whistleblowers, which, in many parts of the world, were highly negative: betrayal-- disloyal to acts of public courage and acts of public interest.

And I think the level of debate and discussion, this is something that I've been really amazed on-- in the last few years-- internationally, is mature and very considered. And I wouldn't say that this has been replicated by the governments that we're talking to in our national-- settings.

We're still saying, "Are whistleblowers good, or are they bad?" And we're having those discussions. At international level, we're talking about, when do we want the whistle to be blown? Who can we ensure it's done safely? And how can we make sure it sits with democratic accountability and doesn't get into this potential to be a very-- efficient way of managing information for those who want to keep it secret? I will end there.

CONRAD MARTIN:

Thank you, Anna. So our final panelist-- Sandy Coliver-- to sweep it and help put it into a context for us, I mean, how-- how whistleblower protection r-- relates to human rights and what the funding community can do about it.

SANDRA COLIVER:

Great. And I will speak briefly, 'cause I recognize that I'm between you and questions-- to some very interesting panelists. Let me first just touch base with the folks on the telephone. Can you hear us adequately? And is-- is the feedback okay? I mean, there's-- technically, can you hear us okay?

MALE VOICE #2:

They're all on mute.

MALE VOICE #3:

We put 'em on mute. (LAUGHTER)

SANDRA COLIVER:

Great.

CONRAD MARTIN:

(UNINTEL) come off.

SANDRA COLIVER:

So-- while I'm speaking, feel free to interrupt if you can't hear. So I'm primarily here on this panel because of my work in developing these Tshwane Principles on National Security and the Right to Information. And the reason that they were developed is part of the story here.

I was at a meeting with some of you about three years ago-- called Transparency 2020, to look at where the transparency field had come and where it was going. And-- there was agreement at that meeting that there was not much attention being paid to the interplay between national security and right to information, and that-- serious-- abuses of right to-- to know were being committed-- on the pretext of national security.

I had 18 years earlier, been involved, when I was at Article 19, as the law program director and developed-- the Johannesburg Principles on National Security, Freedom of Expression, and Right to Information. And those-- although a civil society document, had acquired-- normative value by virtue of being quoted by UN bodies and by governments and civil society.

And-- these principles were issued last June-- before the Snowden revelations that the s-- the work on them beg-- began even before-- the Manning revelations. They have-- quickly acquired-- normative status in part because of Anna's work.

She has-- been effective in getting members of the European Parliament to pay attention to them, so that the European Parliament has endorsed these principles for the guidance they provide regarding whistleblowing as well as transparency and surveillance policies.

The Parliamentary Assembly of the Council of Europe-- was considering a report on

national security and right to information as we were developing these principles. The Parliamentary Assembly have been brought into this because of the revelations about European government complicity with the C.I.A.'s rendition program.

And this had led the Parliamentary Assembly to say-- "What mechanisms are there in European states (COUGH) to prevent his kind of abuse? Let's look at parliamentary oversight. Let's look at the laws." And f-- you know, finding that parliamentary as-- oversight was not adequate-- then said, "Let's do-- a review of the impact of these access to information laws."

Almost all the countries of the Council of Europe h-- have laws that are more or less similar to the United States, although even stronger in that they apply to the judiciary and the legislatures. And the Council of Europe found that-- the access to information laws have not been sufficiently effective-- that there hasn't been-- enough-- emphasis put on implementation, but that public scrutiny via access to information-- is crucial-- that it is-- perhaps we would call it the fifth estate-- civil society and public scrutiny.

We have the fifth column that we're often accused of being. But I'd like to suggest that-- the-- the civil society plays this crucial role. So-- these standards-- on the Tshwane Principles-- are (UNINTEL) nine of them all together. But, in particular-- where there's-- advance over, say, where the standards were five years ago is in elaborating the public interest defense to the crime of unauthorized disclosures.

This is an area of law that has-- evolved rapidly in the last several years. Whistleblowing-- h-- the focus of-- of civil society work has focused on whistleblowing as a tool for anti-corruption. (BEEPING) And it's focused on facilitating internal disclosures, protecting the confidentiality of the source.

National security whistleblowing is dealing-- with two different elements. One-- the information-- is classified. And its disclosure is a crime. So we're talking here primarily about criminal penalties. And-- secondly-- that-- the mechanisms of internal oversight are particularly ineffective, as ineffective as they have proved-- in-- other areas.

Globally, there's really no country we can point to-- which has set up an institution which can-- receive complaints of national security abuses and act upon them effectively. So-- these principles now reflect a consensus, as I say, that has been en-- widely endorsed and also has been endorsed by the UN rapporteurs on free expression and counterterrorism and by the regional rapporteurs on free expression.

They f-- s-- affirm that-- this norm that public servants should be protected from criminal penalty for disc-- unauthorized disclosures, if the public interest in the information outweighs the harm and that-- to the extent that the public interest does not outweigh the harm, any penalty should be proportionate to the actual harm, and that the government has the obligation to assert, with some particularity, the nature of the harm.

I should note that, in developing these principles-- we've had the assistance of 22 civil society organizations from around the world and academic centers. In the United

States, we've been advised by Mort Halperin, who himself was a subject of surveillance-- and-- whose interest is-- in-- s-- assuring-- that we have tools that we can use that are-- progressive and practical.

So his perspective, from having been inside the national security establishment-- (COUGH) is it effective to-- have such-- such a standard? We were together in South Africa, which is one of the countries where we are focusing, because-- there has been an elaboration of a protection of state information bill, the State Secrets Bill. (THROAT CLEAR) And the concern there of-- public servants was that the public interest defense was-- was-- was too broad-- and-- and vague.

And we didn't want public servants to be making a decision about when they could go public. The-- we had debate-- with members of the justice department, et cetera. And-- they eventually were satisfied that-- what these principles do is to elaborate-- guidance for what would be-- disclosure in the public interest and what are the procedures that are needed.

So-- we are working, in addition-- in Japan. And just very briefly, that the reason that-- Japan is a particular challenge is that it has passed a State Secrets Bill in December-- at the request of the United States, which refused to share certain top s-- secret information until-- Japan did two things: increase the penalties for unauthorized disclosure from five years to 10 years, and increase the discretion of government officials to classify-- so not just-- information that would harm national security-- but a range of other categories.

Japan is-- is but one of the many countries that we hear are being subject to this pressure, which is-- which signals-- that there is a new assault on this right to know-- and that-- we're-- we're at a position, as-- many of us were-- in addressing the International Criminal Court, where-- we needed to really-- push back against the U.S. calling upon states to-- bring down the international standard.

So in closing-- this field of-- of whistleblowing-- I feel-- really is at a new level that-- Snowden and Manning have called public attention to this field and have created an opportunity to substantially make-- advance the standards.

In the way that the Pentagon Papers and-- the resulting investigation of Daniel Ellsberg led to the strengthening of the U.S. Freedom of Information Law, which then led to a whole movement of freedom of information and transparency around the world, we are now at a similar brink in launching this whistleblower community.

There are-- two needs in this-- in-- in this movement. One is the particular protection of the whistleblowers in the way that many of us in transparency were working to protect the institutions of transparency. And in addition, there is the (UNINTEL) work. So for those working-- to protect-- human rights defenders-- and to prevent human rights violations, for those working in the anti-corruption field, for those working in the investigative journalism field, whistleblowing is sort of the fourth leg-- that really needs to be strengthened. So thanks.

CONRAD MARTIN:

Thank you, Sandy. And thank you to all of our panelists. I'm-- I'm gonna take the prerogative, moderator's prerogative, and start with a question and actually push back a little bit on what Sandy closed on there-- which was the statement, I com-- agree completely that this is a watershed moment that we have the world focused on whistleblowing with the Snowden case and the revelations of-- of the NSA surveillance.

But are we seeing the same kind of responses and reforms that were put forward when the Pentagon Papers came out and/or when the COINTELPRO revelations came forward? And I would argue that we are not. I-- certainly, it is a watershed moment.

And I think it's something that we need to think through. What has changed-- that-- that we're not seeing outrage that then leads to reform? And you know, as I was looking-- as we were-- as people were talking, I just made notes of-- of examples where whistleblowing has really changed the world. And I'm certain that this is-- not a complete list. But if you start with Milai Ridenour (PH), you go to Ellsberg, that information helped stop the war. I mean, it was key to those 40 appropriation votes.

You can go forward to-- what's been going on with the welds on Comanche Peak Power Plant, the-- the Hanford (UNINTEL), where nuclear power plants were shut down because of the revelations of whistleblowers, that the welds and the way that they were constructed was not safe.

Now we have Snowden, and we have the revelations of wiretapping of the UN Security Council votes-- and the run-up, again, to a war. And we're not seeing responses like you saw when Frank Church came together and-- and started to put constraints on the intelligence community at that time. It created the FISC. It created the-- the Foreign Intelligence Surveillance Court, the foreign-- the FISA, none of which are perfect. I mean, I'm not saying now that those-- that those reforms-- we're now seeing those reforms being undone, actually.

I mean, they're inadequate to the time. So let me take that-- and actually put it to Bea. Let me add one more piece of information to that. When-- when Ellsberg's revelations came forward and the *New York Times* ran them, there was something that I just learned about in *The Most Dangerous Man in America*, which is that the *New York Times* ran the piece as the White House prepared to file an injunction to stop the further release of the Pentagon Papers. (LAUGH)

There were 20 newspapers lined up to continue to pr-- print the documents in their entirety if the injunction had been filed against the-- against the *Times*. The *Washington Post* was next on line. The *Cleveland Plain Dealer* was next on line. And the press stood in the face of what was going to happen there.

And actually, they backed down. The-- the White House backed down, because they were gonna have to stand against the 20 largest newspapers in the country in order to bring that forward. So Bea-- what has changed?

I mean, you-- you at GAP, all of you at GAP, have really worked to pass the Enhanced Whistleblower Protection Act. I think that we can say that it is-- that that has extended protections, at least in the United States, to-- for-- for protective disclosure to a huge number of employees.

But where has it failed? And-- when-- when Secretary Kerry says, to Edward Snowden, he just needs to man up and return-- which I-- I'll be honest with you, a part of me sympathizes with that sentiment, that you would want to have him come and stand his ground, if due process were to be allowed. But where are the failures? What-- what do we need? Where-- what do we need to get the kind of responses and reforms that we've seen when other kinds of disclosures like this have gone forward? And-- and what, specifically in the case of Snowden, do you see?

BEA EDWARDS:

Well, I-- I think-- you're right, that the-- the public reaction to Snowden-- is probably much more muted than-- than what happened in the wake of the Pentagon Papers. Why that is is, in a way, the reforms that came about as a result of the release of the Pentagon Papers left the door open to the abuses that Snowden has revealed, so that-- that there were reforms. But they were not-- they didn't successfully address the problem of government overreach.

And the-- the-- the open door was the creation of the FISA court, that is a secret court. And what we see over and over and over again from whistleblowers, whether it's from the UN or Deutsche Bank, or the NSA, is that when there is a combination of secrecy and a lot of money, there is going to be fraud.

And in the last 30 years, we-- our economy has consolidated on the corporate side. And government agencies have become more powerful on the public sector side. Now one of the things that-- that seems to be-- revealed by Snowden is the very alarming extent to which public and private power cooperates to further its authorities.

I-- I mean, the-- this-- the suspicion that we have at GAP about why there's been a sort of timid reaction to the Snowden disclosures is because there is a suspicion that Congress is under surveillance, that the Supreme Court is under surveillance, that anyone who might do something to oppose the interests of the national security apparatus is potentially a target for retaliation.

There is no Frank Church. There is no objective actor out there who would be willing to take on the National Security Agency. And in fact, James Clapper told the press, less than a week ago, "The national security apparatus has been running everything for the last four years in the United States."

So if you are a congressman, and you're thinking you wanna take on Keith Alexander, you might wanna think about that perhaps dubious campaign contribution you took a couple of years ago, whether you made a call from your-- your senate office or your congressional office instead of your campaign headquarters. Maybe you have an

embarrassing relative or you gamble online. There's some-- a lot of things you have to take into account before you wanna step forward and be Frank Church now.

CONRAD MARTIN:

A quick interjection. I'm gonna then open it up to the floor. One of the interesting things that led to the fact that-- that-- that the Church Committee went forward was that in the COINTELPRO documents that one of the first very successful Freedom of Information Act requests that came forward was that the F.B.I. was wiretapping Congress and that they did have files on Congress. And Congress reacted strongly in its own interests at that time.

I just say that as an aside. It pissed them off. But again, there was real outrage to those responses in Congress, and Congress reacted. Let me b-- Anna, a question from within the panel, and then I'm gonna open it up.

ANNA MYERS:

It was just a quick comment. I've-- I slightly missed-- my generation is not the generation of collective outrage. And-- and I don't like being part of this managerial-- generation. And I think what has happened and what we have-- in the whistleblower community, I think-- we were talking about this the other night.

I do not want to rely on whistleblowers, that-- for my child to be safe when they go into hospital. I do not want to rely on whistleblowers for the bank to stay in the bank and give me some returns. I don't wanna rely on whistleblowers when I get on a ferry that it's not gonna sink.

And we have-- seem to be in a period, a long period, where we have individualized collective responsibility. And my view is that we need to re-collectivize individual action and that that is a real part of what has changed. I'm not of the generation. We've been individualized into thinking that we are in control of all of this, and that any risks we take, we take responsibility for, and that things happen to us. And somehow, it's our fault.

And I think that that has to change. And that-- there is a generation coming up right behind me and the generation that has been asleep that I've been a member of who are going, "This is craziness." But they actually have been deskilled.

And they don't know how to get together-- and make a march. And they feel silly doing it. But they are. If you go to independent journalist-- conferences, there is a lot out there being active-- doing a lot. And civil society is doing a lot. And that's the thing we have to kind of galvanize. That's just my--

CONRAD MARTIN:

Lance (PH). Lance (UNINTEL).

LANCE:

Just one brief comment, and then I have-- a question. One is-- is that first of all, the *New York Times* got courage in 1973. They were cowards in 1971. When the Media Pennsylvania stuff was sent to them, they couldn't hand it over to the F.B.I. fast enough but-- but broke out the COINTELPRO thing. One always has to remember media, and the different forms of media, have their own interests, and they're not always the public good.

Okay, that-- that aside, number two, people never said freedom was free. I mean, part of-- if you wanna know a generational change, and boy, this makes me sound like an old fogey, both as somebody who's sued the F.B.I., somebody who's been under surveillance, and somebody who resigned from the armed forces over certain issues.

The fact of the matter is nobody said it was gonna be costless. Nobody said that you were going to, you know, come out of this free. There aren't-- there-- when somebody takes a stand, I mean, I'd like it to be less costless (SIC). But if it's really important, it's the importance that has to take precedence.

And this whole idea that there's an equation, you know, in which you have to balance all of these things personally, I mean, whenever you talk to real whistleblowers, I think, virtually none come out unscathed. In fact, I don't know anybody who comes out unscathed, especially (COUGH) within their-- within their personal life.

But if you ask them why they do it, they sort of look at you like, "Well, but this was wrong." I mean, it's not a deep philosophical discussion. Okay, all that two aside, there's a new part of the equation that's come in, that-- that-- and that is, let's look at the Manning and Snowden-- operations, especially when we go to the international area.

One can say that there's a violation of domestic law that's known, and even Manning (UNINTEL). It's like the old (UNINTEL), when you-- secret bombings of Cambodia. The Cambodians knew they were being bombed, you know? The secret was we weren't telling the American people that the Cambodians were being bombed by the Americans. But it's different, I think, when you raise questions where Manning is-- is-- is exposing, you know, judgmental issues that diplomats are given to each other within a system. It sort of undermines the-- the-- candor that one can operate within-- within foreign service.

Or when you look at Snowden, I mean, I can see a zillion things that he said that were very important, that raised very important issues. But does the fact that we can tap Chinese servers, is that an important thing to d-- you know, to expose? And even the fact that-- that we can listen to Merkle's phone calls, is that important to know?

Well, it's important to know if we have a philosophy of everything is free, if information is free.

That's a certain ideology, though, that we have to-- and we may believe it. But that's an ideology. That is a political fight about that exposition of w-- and-- and that's part of the problem that I see with Snowden and stuff. I'm actually surprised that-- that he's not vilified more than he is.

I mean, that to me actually was-- was a very good thing, you know, that he was viewed as, mostly, a whistleblower. But how do you reconcile those issues that are-- that are-- that are, like, the Merkle issue or the Chinese server issue, the Brazil questions, that not only it's about a source of information, but it also affects the relationships with those countries on a whole multitude of other issues.

CONRAD MARTIN:

Response?

FLORIN POSTICA:

I just wanted-- thank you. I wanted to follow up, just while listening to what has been said. But if we go back a bit in time, in 1994, 6 April, and the Rwandan genocide, (PAPER RIPS) now, there was an informant who came forward and approached General Dallaire, our fourth commander of the UN, on the ground, and said, "The genocide is being prepared. Here are the machetes. They're purchased there.

"You, UN, and you, diplomats, need to do something." I was just-- for the room and for those who have-- a wider interest in international law, human rights, and all that, when you look from that holistic approach and say, "Well, perhaps if someone would have actually listened to that person and do something about it, perhaps over a million people would not have die." So it-- it's in that context that I wanted to follow up on what you said. Sorry.

CONRAD MARTIN:

Fine. No, I'm glad that you answered. Louie.

LOUIS CLARK:

Yeah, just--

CONRAD MARTIN:

Louie Clark (PH) (UNINTEL PHRASE)

LOUIS CLARK:

--had a comment. I'd like to hear a little bit about Europe's response to-- Snowden. Because for example-- I mean, entire parts of, you know, countries are-- their data has been gathered up by the-- the NSA and the British and together. And I'd like to know what the response is there. Has that not had an impact in Europe?

ANNA MYERS:

Sure.

LOUIS CLARK:

You guys were talking about the United States, less impact than we would like. But what about Europe--

ANNA MYERS:

Yeah, I-- I-- I-- I just skipped, 'cause I realized you were really gonna keep me to my five minutes. But I-- I started thinking about what the impacts of Snowden from a whistleblowing perspective. And I'm sitting in Europe. So I'm not-- a national s-- securities expert. I'm not a surveillance expert. And all of a sudden, we're having all these conversations.

But I think that-- that the-- the thing that I perceive is that-- the world is still talking as much, if not slightly more, and certainly outside the U.S. and in the public domain and in Europe. It's about the substance. It's where the line-- where is the line? Where should we draw it?

And it is not as much about the fact that he did it. In fact-- and-- and that's-- you see that in national context. So the whistleblower, another anesthetist who then-- followed on Bolsin years after that one that I described to you, you know, he-- the guy who raised it locally was hated by his colleagues.

He-- he raised things and put all the things that we-- we said. But the public message, what remained for the anesthetist, five years later, who said, "But he saved babies." And we-- and those who aren't sitting there being really cross, that's what gets-- that's what remains. So in the European context, what-- what the real grappling is, and it's raising-- and in the European context, corporate use of private data has been already a huge issue.

So whistleblowing when the CNIL, which is the commission for their data protection, didn't like SOX and-- and-- which said that French information that a whistleblower might raise would go to an American company who's running a hotline for the multinationals.

And-- and we were there to try and debate what that c-- could mean in the European context. Because there were issues. And they are valid issues. But for an American, that was-- just didn't-- didn't even come up. And so this is not-- again, it's not new.

It's fitting into a history as well, where it's quite clear people fought to have their privacy regained. Because they've lived under governments that didn't give them any. And so although that seems like, "Oh, the French are really uptight. And they don't--" you know, on the one hand, and there may be aspects of that.

And whistleblowing isn't easy in France either, by the way. But that is a really important discussion that is happening in Europe. And so Snowden is being invited, say-- say by Edward Snowden is being invited by the-- Parliamentary Assembly of the Council of Europe to think about m-- mass surveillance but also to speak about are there issues having experienced around whistleblower protection? What does that mean?

And I would pick up on your point. Whistleblowing is not risk free. What we want is whistleblowers to have advice and to go in with their eyes open and know the risks and opportunities they're taking. Then it's not such a surprise when people do-- start to-- make teamwork out-- out of retaliation. And if we're there with them, they're not alone.

LOUIS CLARK:

It's easy for France to call Snowden. Let them call the head of the French Secret Service or the-- or the German Secret Service. I mean, that's the test for Europe. The other part's easy, okay?

FLORIN POSTICA:

Well, I'm-- I think it is also, is it not the first time the American president has actually-- expressed himself in relationship to the spying on other leaders as well as expressed himself in terms of the-- of the-- world citizens being spied on, I mean, at least in some positive way.

SANDRA COLIVER:

But let me say something, Anna. I-- I just wanted to bring up-- I think some of this, it's-- it's an example of how the Snowden disclosures have moved the whistleblower question beyond a national setting. (THROAT CLEAR) And-- and I-- we had talked

about a couple-- a couple of months ago, we had a steering committee for the Whistleblower Network call.

And we were talking about what Snowden had done. And I was saying, "I think this is unconstitutional in the United States." And our German colleague says, "Well, so it is not okay for your government to spy on you. But it is okay for him to spy on me." And I had no answer to that. That is--

LOUIS CLARK:

The answer is yes.

SANDRA COLIVER:

This is beyond-- (LAUGHTER) no, no. The-- the question then becomes an ethical question, not a legal question. And that's where whistleblowing often takes us. What do you do when it is a crime to report a crime?

CONRAD MARTIN:

Right. I'm actually gonna open it up to the phone for a question now. Anyone on the phone have a question they would like to ask?

DAVID ABRAMOWITZ:

Hi, this is David Abramowitz from Humanity United. I guess this is a question for Anna, but perhaps for others who have-- are looking at the international context. We've been talking a lot about Europe and-- the-- the United States. There was-- a mention of the Rwanda genocide.

What about countries where rule of law challenges everything greater-- you know, whether it's corruption cases in Kenya or-- in-- issues that come up in South America? What kind of challenges are there? And how have whistleblowers and others dealt with them, particularly when it's not just about losing their livelihood but also their personal security is-- is-- is at threat, which you know, could be also address here in the U.S. and-- and in Europe but, you know, p-- poses particularly difficult challenges in-- the global south? Thanks.

ANNA MYERS:

Yeah. Yeah, thanks very much-- David. I think that is something, again, the-- the network needs to and is being-- considering. Certainly, we have on the founding members is-- is-- the Open Democracy Advice Center in-- in-- in South Africa. And

that's a clear issue there and-- and on the continent.

And I think one of the cle-- clear things is that we have developed whistleblowing as a democratic accountability mechanism in countries where we at least thought we had-- democratic accountability checks and balances already there. And I have always, and I will say-- put this on the table, have always had some real-- discomfort with the international anti-corruption. When-- when-- when the international instruments start to put in whistleblowing protection, it goes back down to national states.

And they start to implement whistleblower protection that looks like it would look in-- in-- in the countries that-- where it's been developed. And it doesn't really fit-- there, because they're trying to get around the fact that they don't have a strong criminal-- justice system, they don't have an independent judiciary, and they don't even have an independent media.

So as-- I don't have an answer-- except the one that-- that the civil society network is trying to develop, which is-- that we need to be talking to the investigative journalist networks. And we've already done that. I've delivered-- a seminar to-- reporters in Amman, in the Mina region, to begin to talk about it. Because investigative journalists themselves are fragile.

And if the whistleblowers, they're one of the few places they can go, well, it isn't actually. They are in it together like a sinking ship. And we need to, again, sort of bolster that. And it fits in with a lot of the work that is being done with-- investigative journalism.

So getting them to understand what-- what whistleblower position is and also working it in the network to say, "Having a strong, independent media is really important for whistleblowing." And we've been saying that a lot. And the other networks, I think, are public interest and human rights lawyers.

And already, we've made some connections there. So we've made connections with the Global Investigative Journalists Network, the International Press-- Institute in Vienna. We've made connections with PIL, the Public Interest Lawyers network. And we'll continue to do that.

We can't-- what we're trying to say is whistleblowing is something you need to think about and we need to help you with. We don't have all the answers. It's certainly (COUGH) much more risky in those countries. But we need to build up the expertise and not lose the momentum that we have.

CONRAD MARTIN:

Let me take one more question from the phone, and then we'll bring it back into the room.

RENETTA:

I'd like-- something. It's-- this is Renetta (PH) from Mexico. Can you hear me properly?

CONRAD MARTIN:

Yes.

RENETTA:

Okay. I would like to ask if any of the panelists could speak to the issue of legislation that actually foster whistleblowing about corporate or private sector practices, you know, like the SEC in the U.S.? 'Cause I mean, we're analyzing that in Mexico. And things are moving really slowly here. I would like to know if any of you know of any reforms internationally that are addressing this issue.

ANNA MYERS:

So I wasn't quite sure, did you mean the corporate whistleblowing protection? So-- so is that what you mean, the--

RENETTA:

Yeah, kind of the-- the legislation that, you know, that is in the U.S. that is related to the Security and Exchange Commission that actually kind of rewards whistleblowing of-- shady corporate practices. (LAUGH) If you know of any other experiences internationally that have kind of a similar approach to it.

ANNA MYERS:

I-- I think what I get is a lotta member states are looking at that. And they're looking at rewards. And they're trying to figure it out. And-- member states as in member states of the UN and the UNCAC, the United Nations Convention Against Corruption.

And again-- they're trying to both facilitate-- it's an interesting-- it's sort of paradoxical. They're trying to facilitate whistleblowing to get the information-- and protect them. But then they narrow down what people can tell them. And it becomes a criminal issue. And the public interest accountability somehow gets lost in that. And then they talk about rewarding whistleblowers.

And in Albania, the-- president, I think, in 2006 did a law and said that all

whistleblowers were-- were rewarded. And it was all big fanfare. And-- and everyone was shocked (MIC CUTS OUT) because it was like you were as-- you're paying people to be snitches. He hadn't thought about the cultural impact.

And it is a law on the books that everyone in Albania has ignored, as if it doesn't exist. And they're now talking about setting up a whistleblower law. And you know, we were there going, "But you have a law. How can you not be even looking at it?" We-- they just wanna pretend it didn't happen.

So it-- it is this funny thing where they are looking at it. But I don't think sort of-- any other country, because it came out of American context and American culture, has quite taken it on the way that-- that it has-- has happened in the U.S. But it's certainly being explored and talked about every time I have a discussion with governments about whistleblowing protection.

BEA EDWARDS:

Could I say some--

CONRAD MARTIN:

Please, Bea.

BEA EDWARDS:

Also-- we have, of course, seen more of these bounty claims from whistleblowers who are reporting financial fraud or-- or crime at-- at the national level. There-- there aren't that many who are act-- you don't go into whistleblowing to get rich. (LAUGHTER)

So whether that actually functions in some way is-- is the-- I think the-- the jury is-- is still out. But most whistleblowers, in any survey we've seen, say they-- they did what they did because they wanted something to change. They did not-- do it for money.

And-- and since you did bring up s-- the Sarbanes-Oxley-- legislation, it-- and we were talking about this a bit last night, how whistleblower protections, corruption, and fraud, it's always a moving target. And civil society organizations have to monitor the way legislation is implemented and the impacts it has.

Because Sarbanes-Oxley obliges the managerial authorities, the CEO, to sign a statement at the end of the year that the internal controls in his or her corporation are functioning and adequate. So we have a whistleblower who comes to us. And his disclosure is that the CEO of Citibank would not speak to him until January 2nd, because on December 31st, he had to sign the certification for Sarbanes-Oxley. So again, it's-- you have to stay with it. There is-- when there is an opportunity for a

fraud to happen, it's-- it's going to happen.

SANDRA COLIVER:

Briefly--

CONRAD MARTIN:

Sandy.

RENETTA:

Thank you.

SANDRA COLIVER:

--Anna coordinates a wonderful-- (UNINTEL) list, network, of-- people-- who are members of whistleblower organizations. And-- that really demonstrates the-- the level of interest, creativity. There's a lot of discussion back and forth-- you know, that a bill is proposed (MIC CUTS OUT) by a country, and it's got (UNINTEL) what do other people think? We make it stronger. Is-- is there some pernicious element that we don't see?

One of the discussions was, what do we call a whistleblower? And-- I think-- one of the winning suggestions was from the Netherlands, where they call them bell ringers. And that now has picked up. It's (UNINTEL) eastern Europe as well.

Spain has seven different words for whistleblowers, you know-- roughly or along the lines of informant and snitch. (LAUGHTER) And-- but they-- they have, like, different, you know, different-- different ways of treating them in-- in law-- et cetera. So-- the-- it's a very vibrant discussion on-- on this listserv.

CONRAD MARTIN:

Let me just-- I'll say-- two things. One, there's gonna be a syllabus distributed or reading materials that will be distributed after this meeting (UNINTEL). Going to GAP's website, to-- other websites, you'll see the Enhanced Whistleblower Protection Act Bill.

There has been some progress that's been made here. It doesn't extend to contractors. It hasn't extended to national security whistleblowers. That fell down in the final-- final days of working on the Whistleblower Protection Act. Louie, you're shaking your head at me.

LOUIS CLARK:

All contractors are covered, except for national security.

CONRAD MARTIN:

Except for national security contractors, right. So there has been progress. Putting it into the-- into contract language, we now have to-- when you're filling out your 990-PF for your private foundation, you have to tick a box that says, "Do you have a whistleblower protection policy?"

So there-- there has been some progress and reforms. We'll distribute those materials-- and-- and-- and additional materials that are here (UNINTEL). And on the references, I mean, if people that commit truth-- and society verification, I think that there are-- we won't spend time here talking about the ways that we refer to whistleblowing.

But I think that it is-- it's important that we get rid of the pejorative and look at it ourselves and in our funding as something that's essential to and part of transparency funding. Another question here in the room, (UNINTEL), yeah.

MALE VOICE #2:

Yeah, thank you. So there was some talk over here about the-- the motivation for whistleblowers being that they did it on moral grounds. They're stepping forward. And of course, when you know, we-- we think (UNINTEL PHRASE) why we think it's wrong-- when those reasons don't jive with the law, then we have advoc-- advocacy, right?

And so my question is about-- the kind of justification that you or we have in dialogue about whistleblowing. And the-- I-- the sense I got from the panelists was that it's kind of a cost-benefit analysis, where whistleblowing is justified just in case the benefits are greater than the harms brought to civil society. And that, to me, seems like a very precarious justification. And so I wanted to ask you kind of what that dialogue is like-- amongst those who think about it more often than I.

ANNA MYERS:

I don't think I quite-- sorry, I-- I'm a bit tired. I don't think I quite understood what you--

MALE VOICE #2:

Yeah, so the thought was that, well, you know, s-- when can we, for example-- have

surveillance on, you know, servers in China? Well, if it has-- comes at a very little low cost to the American's, you know, civil society no big deal then, right?

But of course, when-- in other cases of whistleblowers stepping forward, they're justified-- because-- what they're divulging-- is at actually great harm to civil society. So there's-- there's sort of a cost-benefit analysis as to when whistleblowers should be stepping forward and when they should keep their mouths shut. And my thought is that that's actually a really bad justification-- for whistleblowing. And so I wanted to know if that was--

BEA EDWARDS:

One-- one thing about what-- what you're say-- you're putting a great deal-- a great burden on the whistleblower to draw the lines exactly right about what should be disclosed. And often, there's a s-- like, Bradley Manning disclosed too much. But maybe Bradley Birkenfeld didn't disclose enough. And-- and that's-- that's a heavy burden to bear.

The-- the other thing to bear in mind about (COUGH) surveillance disclosures is it's very in-- in practice, it's very difficult to separate disclosures about national from international surveillance. Because the backbone of communications goes through the United States. And-- and again, it's just too large a burden to put on a single individual.

So yes, there is a balance. There's a balance that you would look at in-- in-- there are always balances struck in-- in law, that is. But here we are, one person who said there are whole countries under surveillance. We needed to know that. If into the bargain we found out that the United States government is also in Chinese servers, I would say that that's a fair bargain. That on balance, that's-- that's fair.

CONRAD MARTIN:

You know, I-- I wanna-- sorry. Sandy?

SANDRA COLIVER:

Well, very briefly-- I work in the area of human rights, which, of course, is anchored in human dignity and morality. But I talk law. And the engines of law include the courts and the prosecutors. And some of the most interesting guidance comes from prosecutory guidelines. When does a prosc-- when should the prosecutors decide-- to initiate investigation?

So the U.K. has the Official Secrets Act, which we think is one of the strongest secrecy laws in the world. The prosecutory guidelines say, "We must take into account the public interest," not the civil society, the public interest. And outside of the United

States, public interest is-- has meaning-- as like, due process has meaning.

It sounds vague. But there is a lot of judicial interpretation-- which narrows it, what we can look at. And embar-- in a lot of the-- elaboration is what is not in-- the government interest to keep secret. So embarrassment is not justification for a secret. Promoting and-- and consolidating an ideology is-- not sufficient. And there-- there-- a lotta fact situations-- in the common law, it's just-- it's part of the way that-- that-- that we establish the norms and-- and what is lawful and what is not. So it-- there's more clarity than it might sound.

CONRAD MARTIN:

Louie, quickly, and then--

LOUIS CLARK:

Just-- just--

CONRAD MARTIN:

--we're going to--

LOUIS CLARK:

--to say in-- in terms of the-- Snowden himself is that there-- in terms of the U.S. law, he is being tried as a traitor's, you know, potentially tried as a traitor. And public interest has no bearing on the situation whatsoever in-- according to U.S. law.

And that's a problem. So it's actually a great step forward to say the public interest is a major part of the consideration of any of the whistleblower cases in terms of their-- their rights and-- you know, and-- protect-- potentially protection.

FLORIN POSTICA:

He's being charged under the espionage law--

CONRAD MARTIN:

(UNINTEL) Espionage Act, and that there's no public interest defense is one of the problems with all of the national security cases that have been brought. And the Obama administration has used the Espionage Act more than anyone else has. So it's a serious flaw to Senator-- to Kerry's argument, "Come back." It's the same thing

with-- with Chelsea Manning. I mean-- it's a blunt tool-- that has been a huge problem.

I-- I wanna shift us, because we're running really short on time here-- to-- to sort of what funders can do about it. I mean, I-- I know, in the case of GAP, and Bea, you mentioned this at our dinner last night, that-- that the intake that you have-- that you pick up 5%, was it, of-- of the case--

BEA EDWARDS:

Of the calls.

CONRAD MARTIN:

--of the calls that come in. I don't know, in-- in the-- in the WIN network-- whether you have similar sort of data.

ANNA MYERS:

There is data from-- what-- what public-- what the different-- organizations have been doing for years. They are-- that's partly-- it's interesting. One of the things that came up is the reason we keep looking at some of the usual suspects is because they've been doing it long enough, and they have the data, but what it means and what's been happening.

And certainly, in-- Public Concern at Work-- they-- they don't take on the legal fight. But they get eight calls a day. And what they look at on-- on reviewing the data is-- is how many times people try internally to raise things, how many times-- they then take it further.

And it gets, obviously, smaller and smaller. And it really does show that-- that organizations miss a trick by-- by not listening early enough. And-- and I would say, in-- in an interesting way, for-- from a point of view, if you're just looking at it simply, about Edward Snowden, is you-- you know, the National Security Services had plenty of opportunities earlier to address the same issues when they were more manageable. And they didn't.

And you-- what's-- I can never remember the right phrase. We go back to our curmudgeonly, old-- old phrases. But you know, once is an accident. Twice is, whatever. And this is-- he's number five or six, you know? So-- it's no surprise to those who are in that space-- what has been happening.

CONRAD MARTIN:

'Tis human to err, but only an idiot makes the same mistake twice. (LAUGH)

(OVERTALK)

CONRAD MARTIN:

Or-- or men, right. Anyway, so-- so I wanna point to this is really an underfunded. You take a look at foundations that fund whistleblowing, per se, and the people, (MIC CUTS OUT) it's a very small handful. And it's an unmet need. If we look at the foundations that fund transparency broadly-- and I think there are a number of them in this room, it's critical work.

You know, I would argue, and we-- we through both the Mott-- Stewart Mott Foundation and through the Fund for Constitutional Government, have (MIC CUTS OUT) specifically on the whistleblower area and have felt that there's been extraordinary return on new investment of (UNINTEL) dollars.

If you're really funding transparency, this is a key part of your transparency funding. The-- the technological, the open data, the automatic disclosure requirements, all of those are really important. But ultimately, if you're dealing with a culture of secrecy where there are reprisals against those who come forward to commit truth, you don't know that your openness architecture is as open as it should be, right?

So I just really do want to encourage funders interested in information and human rights and transparency to look at the whistleblower protections (MIC CUTS OUT) increasing that transparency. I'd also say to those that are funding in areas that government regulations, the-- the financial crises-- the-- the secrecy jurisdictions that have been so well reported on now, be it by ICIJ in-- in their coverage of disclosures of released documents out of Australia-- are also looking at what's required in order to protect the people that come forward with this information. (MIC CUTS OUT) dialogue. Sandy, do you wanna-- do you wanna follow on that?

SANDRA COLIVER:

No. (LAUGHTER) You said it very well.

CONRAD MARTIN:

Well, I know that--

SANDRA COLIVER:

I can just underscore that I know that we still have some folks from Open Society, and Open Society has been in this area. But-- it's really small compared to the general support for other forms of transparency work. And that's (UNINTEL

PHRASE).

Transparency International itself has developed its network of anti-c-- corruption centers. But those-- vary from country to country in terms of whether they actually provide advice to whistleblowers. And-- they vary in terms of-- their availability to national security-- whistleblowers.

Their primary outreach, I think, is-- is to the anti-corruption field, which of course, should inc-- they-- TI has just come out with a publication from its defense and security sector, which actually-- is a commentary on the Tshwane Principles-- to push out to military contractors, et cetera.

CONRAD MARTIN:

So there will be an email that will follow this with some of the resources that are here. We encourage you all to make suggestions in terms of follow up-- whether we can do something-- to help better inform-- funders on who's doing work in the field.

And maybe th-- organically from this discussion, there will be some sort of a working group that-- that we can continue this discussion. So-- I have us as scheduled as wrapping up at 1:30. There-- are there any b-- one burning last comment on the phone? No? Burning last comment around the table?

MARK:

Maybe I'll just say one word quickly. I just, first of all, wanna thank everybody. This is Mark with-- EDGE Funders-- for-- for this. I-- I've learned a lot as we were preparing this over the last-- month or so. And it makes me realize that there's an element in the discussions here that-- you know, I-- we hadn't been considering enough.

And I just wanna say one thing quickly about the subtitle part-- not to take it away too far from the whistleblowers, but democratic accountability-- and justice in human rights in the age of mass surveillance. We-- we tend to look at-- the social crisis, the economic crisis, and the ecological crises as linked and systemic.

And you can't address the ecological crisis without addressing the-- the-- dimensions of the economy and the structures and nature of the economy. You can't address the economy without looking at the ecological crisis and the limits to growth.

But I'm realizing more than I have in the past through this discussion that-- the social crisis, the crisis of governance and-- and democracy-- also pertains to all of this. We saw the study that came outta Princeton-- and Northwestern recently that shows that, basically, economic leads have a lot of sway over policy, and the rest of us don't.

But the new element for me, and something I think we should really build on, and we can work, certainly, with the human rights funders and others to continue this conversation, is just that, as the crisis, the systemic crisis or the crisis in ecology and

economy-- exacerbate-- the fact that the powers that be have all of this information on all of us is gonna-- it's gonna make it very, very difficult to imagine how, if there are citizens' responses to the economic-- the dominant economic-- models and there's some kind of a pushback, it's gonna be very, very difficult to imagine how we'll be able to move forward and imagine new structures of society as we're going to need to if all information and all power is concentrated.

And so I think that this just means to me that funders who are concerned with the environment and-- and-- the climate crisis, funders who are concerned with any number of things-- including-- economic issues and agro-ecological issues, are going to have to contend, at some point, with what all of this means in terms of-- democratic accountability-- in this-- in this national security state.

So I'm just looking forward to finding more ways we can (UNINTEL) this-- this conversation-- again with our colleagues from the International Human Rights Funders and the Peace and Security Funders and others. But I just wanna thank everybody. I've learned a lot from this. Thanks.

CONRAD MARTIN:

Thank you. Thank you, everybody. We'll be in touch-- by email. And thank you to our panelists. And-- and (UNINTEL) stay in touch--

(BREAK IN TAPE)

* * *END OF TRANSCRIPT* * *