

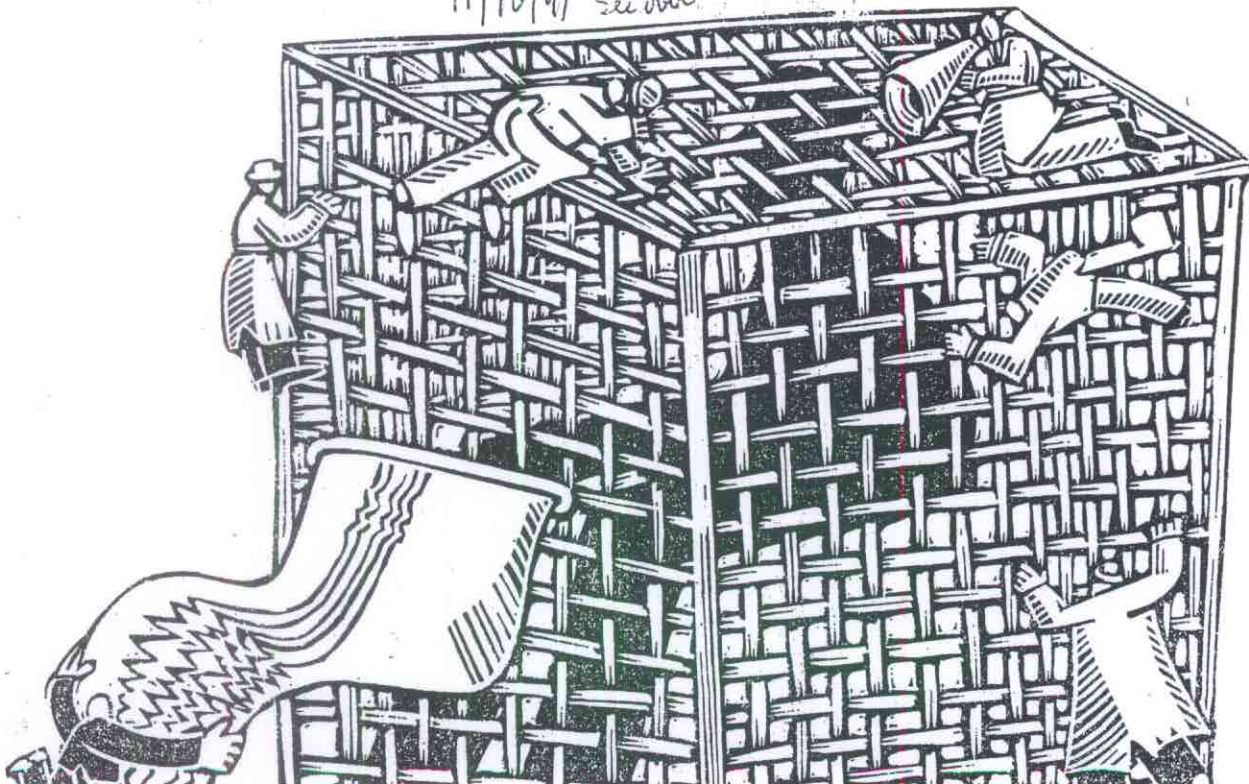
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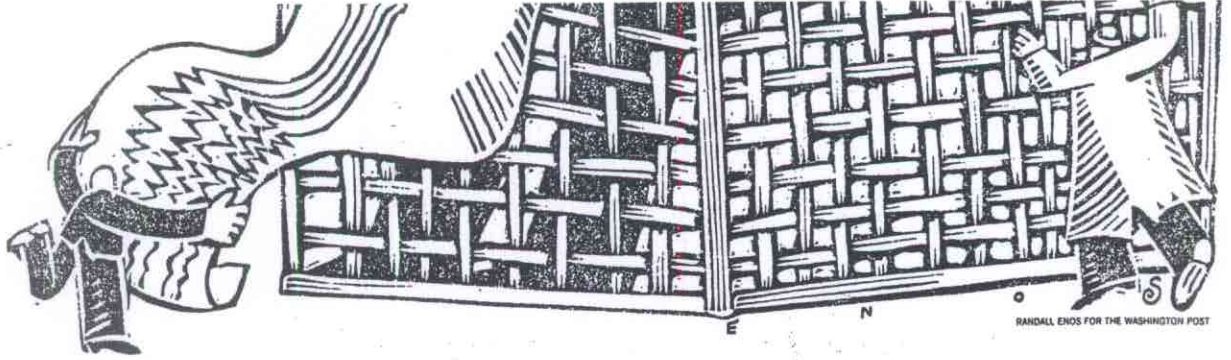
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OUTLOOK

Commentary and Opinion

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Drowning in a Leak

I Was the Victim of Trial by Polygraph—Here's a Guide for the the Next Probe Targets

By Michael Pillsbury

WITHIN HOURS after George Bush demanded that the Senate set up a special counsel's office to find the leaker of Anita Hill's FBI report, the Senate voted 86-12 to appoint a special counsel to initiate an investigation.

It is difficult to imagine this having a happy outcome. Writing as a survivor—barely—of a leak investigation, let me offer a warning not only to those who'll find themselves in the harsh light of an investigation, but also to the public who'll be following the probe: Typical leak investigations, with their reliance on polygraphs, are far more likely to produce scapegoats than truth.

With access to previously classified files, I've

Michael Pillsbury, a Senate staffer, has a research contract with the Agency for International Development, identifying lessons for reforming socialist economies. The author asked for—and received—CIA clearance for this article.

recently gained a clearer picture of why I was fired in April 1986 from my job as assistant undersecretary of defense. At that time, I was falsely accused of leaking information concerning the sale of Stinger missiles to anti-Marxist rebels in Afghanistan. As commentators noted, I was the highest-ranking official ever dismissed for leaking after his "guilt" was established by polygraph. I was also told this: "You confessed." The news stunned me, because I knew I'd done no such thing. Only recently, with access to my files, have I solved that mystery, too.

The news of my firing was promptly leaked to three newspapers—within hours after the polygraph results reached the Pentagon; there has never been a story written about my exoneration.

My experience has not been without its rewards. I learned a good deal about the slippery slope of polygraph tests. I feel qualified to warn others of the pitfalls of undertaking leak investigations, as the FBI is about to do.

Above all, I can forecast the evolutionary stages of the coming Senate probe—and give some useful

tips to any innocent who might suddenly find himself a target:

■ *Stage One.* The FBI will try to pin down the precise information that was illegally disclosed. A few words make a big difference—both in deciding the penalty and in trying to determine who had access. If the Anita Hill leak had been of "national security classified information," including words taken solely from the FBI report on its interviews with Hill, the words would be protected by the Espionage Act—carrying a possible 40-year prison term. If the words are from an unclassified Senate document, one conceivably could be charged with theft of government property.

In my case, the CIA provided only a vague description of what was classified—and what is still classified—top secret. But the background politics were intense: National Security Council staff had reported that President Reagan was already angry about a series of leaks concerning highly restricted covert actions, of which the Stinger missile decision leak was the last straw.

■ *Stage Two.* The FBI will determine whether or

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LEAKS, From C1

not the leak was authorized and check the appropriate box. This check heads off mistakes. A Justice Department study in 1984 found that many FBI leak investigations reveal that the disclosures were more or less "authorized" by Cabinet level officials or the White House.

Senate Majority Leader George Mitchell (D-Maine) last week raised the possibility that a leak three years ago about drug use by a judicial nominee had been a deliberate tactic by the White House. Mitchell has insisted that the coming Senate investigation deal with the possibility that "the executive branch [was] responsible for the unauthorized disclosure."

■ *Stage Three.* The FBI will conduct interviews to figure out who had access to the information; the bureau will then draw up a list of suspects. Here's where everyone involved should watch his back. Or her back.

These extensive FBI interviews will elicit comments as to who had the motive and opportunity to disclose the information. Personal jealousies among those who had access to the information will prompt fingers to be pointed, and suspects will emerge.

In the Thomas-Hill matter, unscrupulous rivals will have a free shot at you—to allege that you must be the leaker because of, say, your zeal to stop Clarence Thomas, your frequent contacts with the press, your general scheming nature, or the way you seemed to behave furtively after the leak. You will have absolutely no chance to hear or rebut these allegations.

In my case, declassified documents showed that I'd become a suspect in the Stinger leak investigation because of allegations by a member of John Poindexter's NSC staff who opposed the stingers-to-Afghanistan decision. The documents show that 19 Department of Defense officials had access to the decision, in addition to the congressional intelligence committees and their staffs.

I could not rebut his secret allegations—an elementary denial of due process—and I was knocked out of the Stinger policy game. My exclusion from the meetings to implement the Stinger transfer to the Afghans—which I had originally proposed—stalled the decision for six months.

In the current investigation, some are already trying to inoculate themselves against this sort of outcome. Sen. Howard Metzenbaum (D-Ohio), a member of the Judiciary Committee, has said that the two stories using the leaked information characterized the source as someone who had already seen the FBI report; Metzenbaum said he had not

seen the report prior to the leak. He added, though, that he had read Hill's confidential statement, but placed it back in a sealed envelope to be returned to the committee.

Metzenbaum complained that he is still on the "list of suspects." Mitchell seemed to be presenting his defense, too, by claiming no one in his office has never been accused of leaking because his staff know he will fire them for it, no matter what the issue.

■ *Stage Four.* The FBI will seek physical evidence and background on the pattern of the reporter's sources. This helped in my case because the reporter had published nearly 50 leaks of covert action stories from the congressional intelligence committees. After I was fired, he called the NSC and three Senate investigators to deny that I was his source, according to a Senate report. This evidence was not taken as seriously as my failed polygraph.

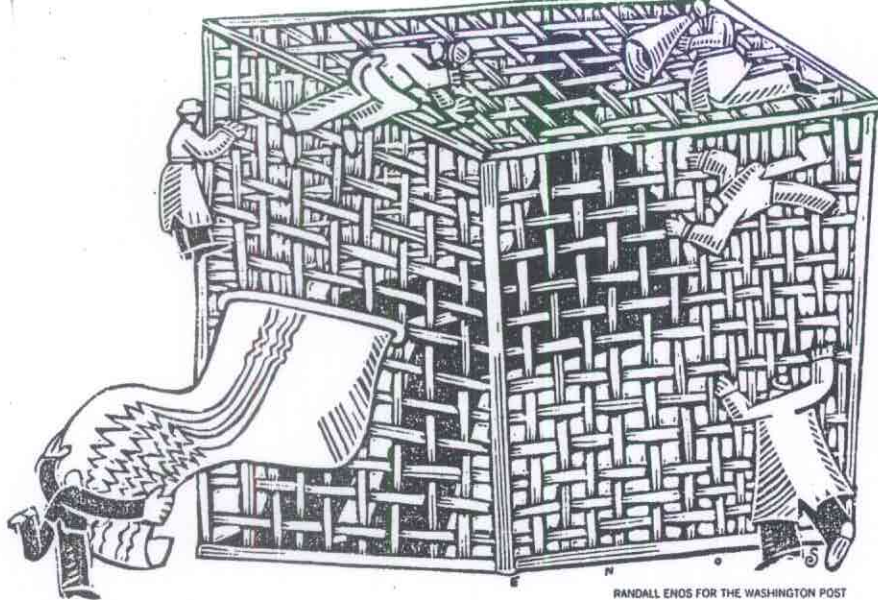
In the current case, the Senate's special counsel has been voted the power to subpoena a reporter's notebooks and compel testimony. The FBI can be expected to examine the record of past sources of all stories reported by NPR's Nina Totenberg. Ditto for the Newsday reporter. When dozens of articles by one reporter are examined like this and collated with information that the FBI will seek in interviews, a pattern may become apparent—a sort of latent fingerprint.

The FBI and CIA have for years kept track of articles that contain classified information; naturally, expertise has developed about individual reporters. And the FBI has conducted hundreds of leak investigations. But the one criminal conviction to its credit came after a publisher identified the source of the leak. In 1986, secret satellite photos of a Soviet aircraft carrier had been leaked by a U.S. naval analyst who worked part-time for Jane's Defence Weekly.

The trial considered the plea that his intent was to alert the public to the threat of a new large Soviet aircraft carrier, not to damage national security. Nevertheless, he was convicted of theft of government property—the photos. The analyst served time in prison, and the Justice Department got a new precedent that leaking information could be prosecuted as theft of government property.

■ *Stage Five.* The FBI may "offer" leading suspects the opportunity to exonerate themselves by taking a polygraph. Trust me—this will not have a happy ending.

The FBI will eventually evaluate polygraph results to see who admitted the most involvement with the reporters; the "polygrams" will be analyzed to see who had the worst score on the spread between "control" questions (usually something highly personal) and rel-



evant questions (affecting the case at hand). The assumptions behind the scoring system for "detecting lies" would appall you; in fact, the scoring system, according to experts, explicitly favors someone who has something to be mildly guilty about when asked the "control" question.

How can people be persuaded to take polygraphs? Some hope the polygraph will exonerate them "scientifically." In my case, I believed the Stinger decision hung in the balance because of a year of inter-agency quarreling about it. The declassified documents tell the story: "Admiral Poindexter . . . specifically banned Pillsbury from any future meetings regarding Stinger missiles," unless I submitted to a Navy polygrapher his staff selected. My ally from the State Department also told me that my creativity—and congressional friends—would be needed to push the controversial decision to implementation—which I saw as a matter of life and death to the rebels.

■ *Stage Six.* A few minutes after anyone on the "suspect list" obtains a polygraph score of "inconclusive" or "deceptive," he will be encouraged to make what my declassified documents label "post-test admissions." By now, the subject has already signed a suspect waiver form which explicitly waives his Miranda rights, a little-known precondition for government polygraphs.

In this situation, without witnesses or recorders or even your own attorney permitted inside, the FBI hopes for "admissions" it can characterize as a partial confession. In many cases, the "confessors" are horrified to learn that they have confessed—and still may not be told for several years what they are alleged to have admitted. That is precisely

what happened to me.

(The CIA, whose polygraphs I have never failed, ask a third party to monitor the entire exam.)

At the least, your security clearances may be immediately removed. There is no due process in these decisions, and even the Supreme Court in a 1988 decision refused to tread on the toes of security experts. So here is your dilemma: Unless another suspect did worse on his baseline scores or his post-test conversation, you are now at risk of being wrongly identified as the leaker of the FBI report on Anita Hill.

Four years ago, this is how The Washington Post looked at my situation: "[I]n the murky world of Washington's sub-Cabinet struggles, Pillsbury is an acknowledged master of political machination. Most of his failures were preceded—brought on, according to his friends—by the kind of policy victories that incur powerful enemies for their engineers." I don't know if my policy victories did me in, but I do know that only if you're very lucky will your case be straightened out in a few years—like mine was. In my case, it took a year to schedule another FBI polygraph, and a year after that to learn that what I had "leaked" was not classified after all.

Finally in April 1989, an assistant attorney general wrote that "I hope this whole matter can be seen in the context of the restoration of your Top Secret clearance by the Defense Department." The secretary of defense told Sen. Gordon Humphrey (R-N.H.), "Restoration of his clearance is sufficient exoneration. There will be nothing else." A CIA letter to Humphrey, dated Dec. 26, 1989, acknowl-

edged that a question I discussed with a reporter was not classified after all.

But again, I had a lot of help. Within days of my public firing, four Republican senators hired me and championed my case. By chance, they knew firsthand of my two year crusade for the Stinger decision. They could not believe I had a motive to leak something that would jeopardize its implementation. They also knew that I had passed a full CIA polygraph examination in 1983 while on the Senate staff prior to going to the Pentagon. Senators David Boren (D-Okla.) and Bill Bradley (D-N.J.), who I'd accompanied to the Afghan border in June 1985 when they became Stinger advocates, provided bipartisan help to me.

Within six weeks, my credibility was enhanced when a reporter for a New York newspaper told a Senate investigator the names of two senators who were the sources of the leak for which I had been fired from the Pentagon.

In addition, my boss, Undersecretary of Defense Fred Iklé, wrote a memorandum and two letters stating that I had called him at home immediately to report my effort to stop the newspaper story and that the information I provided the reporter was not classified.

The climate for the current investigation is even uglier. As an example of the passions at play, consider that Sen. Mitch McConnell (R-Ky.) has already introduced a bill to make it a crime with a prison term to leak, solicit or even receive an FBI background investigation report. And consider how opinions change. Polygraph exam results, to be sure, have a mesmerizing effect on many senior officials when there is pressure to catch a leaker, or find a scapegoat. But many officials who once applauded the use of polygraph suddenly began to show great skepticism in the recent round, when Anita Hill's supporters revealed that she'd passed with flying colors. (In a similar reversal, the 1989 Bush White House was reluctant to offer me more than mid-level positions, fearing I couldn't win Senate confirmation with my polygraph stigma; this year, Secretary of State James Baker nominated an ambassador who'd admitted, before being speedily confirmed, that he'd failed a secret FBI polygraph concerning his knowledge of the Felix Bloch leak.)

Due process of law means the accused must be told all the allegations and have a fair chance to present evidence and witnesses to refute all allegations before any taking of his security clearance or job. Due process does not mix with leak investigations conducted by polygraph, as this one almost surely will be. A witch hunt is so much quicker and more emotionally satisfying. Just like a lynching used to be.

I've Got a Secret

You'll Never Guess Who Leaked It to Me; Maybe Somebody Who 'Hates' Leaks

By Ann Devroy

FARLY IN the 1988 primary campaign season, my phone started ringing off the hook. Look at Pat Robertson's fundraising apparatus, the callers said: He is using religious donations from his televangelical ministry to run a campaign, a blatantly illegal operation.

Check out the campaign team around Sen. Bob Dole (R-Kan.), another caller whispered: It's total chaos and hysteria. Ask Jack Kemp, the New York Republican, how much money he borrowed yesterday to keep his campaign running, gloated another caller: You'll find out his campaign is hopeless because he can't raise the cash.

Who was whispering all these negative things about many of the Republican class of candidates? Other Republicans, of course, and many of them the same Republicans who cried crocodile tears about the terrible injustice of the leak of Anita Hill's charge that she had been sexually harassed by Clarence Thomas.

Remember John Tower, President Bush's first nominee to be secretary of defense? His name was barely in the newspaper as a potential nominee when Republicans, not Democrats, began calling to question the choice. Two of my callers about whether Tower had the right "temperament" to head the Defense Department. From long associations with him, they had their worries. One caller, long after the leaks about Tower's alleged drinking and other personal problems had emerged, called back and added details about an incident that, it turned out, the FBI had also found in a background check on Tower.

Was that an illegal leak of information in an FBI report? Some might say so because the information was, in fact, in an FBI report. But it was also information based on personal knowledge of an incident. It is not a crime to tell reporters had things about people who are being asked to serve in the highest level of government.

Clarence Thomas, meanwhile, was a central figure in a veritable deluge of leaks. The most prominent one was Anita Hill's allegation, but Republicans were leaking to help Thomas, too. Shortly after he was nominated, a Republican and I were discussing his chances. Reporters around the country were concluding their early investigations of the nominee, who was a stranger to all but a few Washington insiders. Knowing that serious personal allegations can kill a nomination a lot faster than ideological challenges, this source told me that Thomas was clear—that his FBI reports from this and prior confirmations for other positions had found nothing to disqualify him.

When I noted there was a lot of gossip about drug use in the distant past, the Republican dismissed it. The only thing that showed up, he said, was experimental marijuana use in college. Thomas, he added, had himself revealed that fact in each of his confirmation interviews, and President Bush had decided early in his administration that such incidents would not disqualify anyone from service in the government.

Why did the Republican tell me Thomas once tried marijuana? I assumed it was to inoculate Thomas from a later "revelation" that would take on larger and maybe controversial meaning closer to the confirmation vote. Was that a leak of FBI information? Bush might call it that in other circumstances, but the first rule of leaks is this: Leaks that further your aims are acceptable, sometimes brilliant strategy, and those that hurt your aims are vile, perhaps illegal and certainly perpetrated by the other side with malice.

Republicans, as President Reagan and now President Bush have found out, like leaks as much as Democrats. They use them to force public debates on issues that might otherwise be decided behind the closed doors that Bush loves so much. They use them to explain the idiosyncrasy of policy formulations being made by their ideological opposites,

whether Democrats or other Republicans. They use them to warn allies that they should register their opinions quickly before the policymakers shut off the argument. They use them to explain the fallacy in a decision the president is about to make. They use them to strengthen and support a possible action the president might take. They use them to diminish their enemies and bolster their friends. They use them when they think the president is going to make a tragic or stupid mistake. They use them when they think the president is doing something courageous and should get some internal support. They use them when the president won't pay attention to their ideas or concerns. They use them when they think the president is being wrongly served by his (other) aides.

And while Republicans are busily leaking all this to reporters, anonymously of course, the public is finding out what makes the White House work. Or not work.

Republicans who denounced the Anita Hill leak today are the same Republicans who may be whispering tomorrow about the latest policy dispute or personal controversy inside party and administration circles. I hereby thank them for calling in the past and am counting on them to call again. A reminder: My number is 202-334-7450. The phone lines are open.