

BOOK REVIEW:

Blowing the Whistle

Blowing the Whistle, edited by Charles Peters and Taylor Branch. Praeger, 305 pages, \$8.95.

By John H. F. Shattuck

On Nov. 5, 1963, Otto Otepka, chief of the State Department's security evaluation division, lost his job. Several months earlier, as part of a long personal campaign to root communist sympathizers out of the State Department, he had leaked classified documents to Julian T. Sourwine, the chief counsel and venerable Red hunter of the Senate Internal Security Committee.

From the moment he was discovered Otepka staunchly defended himself on the principle that "every government official enjoys the right to furnish information to Congress." His right wing supporters were quick to point out that the security of the nation often depended on the willingness of high-minded government employees to risk their jobs by blowing the whistle on superiors whom they believed were engaging in or covering up subversive activities.

The "Otepka defense" was sharply repudiated by the *New Frontier*, *The New York Times*, and the rest of the liberal establishment, which caught a whiff of McCarthyism in Otto's caper and sneezed allergically and self-righteously. The *Times* was characteristically ponderous:

"The disturbing aspect of the case is that both Mr. Otepka and members of the Senate Subcommittee have defended their actions on grounds of 'higher loyalty.' . . . Orderly procedures are essential if the vital division of powers between the legislative and executive branches is not to be undermined. The use of 'underground' methods to obtain classified documents from lower level officials is a dangerous departure from such orderly procedures."

Vindication

Otepka was piped out of the *New Frontier* as a misfit and a threat to "orderly government procedures." The Otepka defense, however, has slowly been elevated to the level of principle in the decade since it was first asserted.

In Otto's own case vindication came with the passing of the *New Frontier* and the Great Society. On the eve of his confirmation in June, 1969, as a member of the revived Subversive Activities Control Board, Otepka was characterized by Congressman John Rarick of Louisiana as the victim of a secret and self-protective government bureaucracy: "Why must Otto Otepka continue to suffer for placing his country above partisan politics? His last remaining appeal is to the American people—by telling them the full story. Otto Otepka has kept faith with his fellow countrymen. Let us hope the American people will not abandon this dedicated civil servant."

Two years later, when Otto had slipped into obscurity, the Otepka principle began to develop a cutting edge on the other side of the political spectrum. The Pentagon Papers were being serialized in *The New York Times*, notwithstanding the absence of "orderly procedure" in their disclosure, and Daniel Ellsberg was appealing to the people's right to know—and his duty to inform them—in explaining why he had leaked the documents to the press.

This time a newspaper like the *Richmond Times-Dispatch*, an early Otepka supporter, sounded as if it had reached into the *Times*' Otepka file for its editorial on Ellsberg: "If each clerk, administrative assistant or under secretary could ignore departmental policy and decide for himself how information should be classified, nothing would be safe."

Consistency

Ellsberg and Otepka are strange bedfellows. They have been skillfully compared, however, in *Blowing the Whistle*, a remarkable collection of articles by whistle

"Oh, You Wouldn't Be Interested In The Others"



From Herbblock's *State of the Union*, Simon & Schuster, \$6.95 © 1972

blowers who have surfaced on the pages of the *Washington Monthly* over the past four years. In presenting a spectrum bounded by Ellsberg and Otepka, the editors suggest that "anyone who wants to fight institutional rigor mortis by encouraging people to speak out from within government is obliged by honesty and consistency to take . . . a man like Otepka, who thought his bosses were ruining the country by being too sweet to Communists everywhere, with one like Ellsberg, who thought his former colleagues were ruining the country by killing people and lying about it."

To be sure it is not all that simple, nor do the *Washington Monthly* editors suggest that it is. The principle that government information should be freely and openly available to inform the electorate and their representatives in Congress about matters of public importance cannot be used to justify ideological blacklisting of government officials. By the same token, the principle of full disclosure cannot be defended solely by an argument based upon the obvious weaknesses in the classification system. Instead, Ellsberg must be viewed not only in terms of government secrecy, but also in terms of the content of his disclosures and the moral and political issues which they raise for the public.

"Whistle-blowing" is an ad hoc and generally unsatisfactory antidote to the obsessive secrecy and security practices of government. Guided by their own lights and a sense of personal outrage at what they have been privileged to see in the inner sancta of government, a small and diverse band of whistle-blowers has played variations on the Ellsberg-Otepka theme. From Chris Pyle's description of the Army's surveillance of domestic politics; to Ernie

Fitzgerald's disclosure of the huge cost overruns of the Air Force C-5A program; to James Boyd's revelations about the campaign finances of his old boss, Sen. Thomas Dodd, government insiders have opened small cracks in the wall of secrecy which surrounds most government business. Guided only by their own consciences, they have generally succeeded in convincing the public that the information they have brought to light merited disclosure. Perhaps this is not surprising: Whistle-blowing partially fills a vacuum created by the failure of traditional methods of institutional control to ensure that government agencies are guided toward the public interest.

Deterrents

The systematic practice of unauthorized disclosure (the numerous examples in the book suggest that it has indeed become a "practice") is nevertheless extremely tenuous. The David and Goliath tales which are recounted in *Blowing the Whistle* only occasionally suggest the devices available to Goliath in protecting government secrecy. Some of the devices are institutional and serve merely to prevent epidemics of whistle-blowing. For example, unauthorized disclosure is taboo for the "organization man" because it appears far too openly self-seeking at a time when aggressive self-effacement is a principal key to success. For this reason one of the most powerful weapons of an organization bent on conducting its business in secret is its encouragement of an employee's hope through an internal seniority system that he can do more tomorrow if he'll just hang on today. It is no accident, therefore, that those

government organizations where the walls of secrecy are thickest—the FBI, the CIA, and parts of the Defense Department—are exempt from the civil service laws and therefore bureaucratically self-sufficient.

Other devices are more direct and perhaps more serious because they prevent the growth of alternative legal channels to compel the free flow of information from the government to the people. One such weapon is the so-called "secrecy agreement" signed by employees of the CIA and various defense agencies as a condition of their employment. Long considered hortatory but not enforceable, secrecy agreements have recently been turned into Draconian silencing devices by virtue of the extraordinary case of *United States v. Marchetti*.

Marchetti

Victor Marchetti was an employee of the CIA from 1955 to 1969. When he joined the Agency he signed a three paragraph statement that he would "never divulge, publish or reveal by word, conduct, or by any other means, any classified information, intelligence or knowledge . . . unless specifically authorized in writing, in each case, by the Director of Central Intelligence . . ." More than 15 years later, having resigned from the CIA because, among other reasons, he felt that Congress and the public did not receive enough information about the Agency's overseas political activities, Mr. Marchetti undertook to write a critical analysis of the Agency. When he submitted the manuscript of a magazine article and the skeletal outline of a book to his publishers without the permission of the CIA director, however, he was enjoined from making further disclosures of information or knowledge he acquired while a CIA employee.

Solely on the proof that he had signed the 1955 secrecy agreement, the injunction was made permanent by the District Court, which refused to consider Marchetti's evidence that the information he had disclosed in his manuscripts did not touch upon the national security in such a way as to fall outside the area protected by the First Amendment under the Supreme Court's decision in the Pentagon Papers case. The District Court's decision was affirmed by the Court of Appeals, which held that the existence of the secrecy clauses in Marchetti's contract of employment placed all of his writing, including fiction, beyond the reach of the First Amendment. The case is now pending before the Supreme Court.

Victor Marchetti, whose brief and temporarily abortive attempt to enlighten the public about the CIA was too recent to have been included in *Blowing the Whistle*, is a victim of the government's new resolve to shut off the Ellsberg phenomenon. The government has argued, successfully so far, that Marchetti's secrecy contract means it does not have to prove that his disclosures would irreparably damage the nation (as it had to prove in the Pentagon Papers case), but only that they are unauthorized. There is every logical reason, therefore, for the executive branch to exact secrecy agreements from any of its employees.

Threat

While it is doubtful that the federal courts would be willing to permit such broad silencing of government employees, even an attempt to do so would effectively curtail whistle-blowing from within the government and drastically limit the public's access to information through both formal and informal channels of disclosure.

Blowing the Whistle is a lively first-hand account of the risks and excitement of helping the public to get glimpses of the mismanagement, waste and corruption that is often shrouded by government secrecy. The government's reaction to whistle-blowing, however, is increasingly to reduce the flow of information to the public at whatever cost to the First Amendment and to statutory channels of disclosure like the Freedom of Information Act. My prediction is that the next generation of whistle-blowers will either use less heroic forms of disclosure or be willing to lend their names to federal lawsuits.

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