

# OMAR SULEIMAN PROMISED THE 2006 ELECTION IN GAZA WOULDN'T TAKE PLACE

Back in 2008, David Rose had a fairly explosive article on Condi Rice and Elliot Abrams' incompetent meddling in Gaza, which he compared to Iran-Contra. Here's how I summarized its revelations at the time:

The story explains how the Administration pushed an election for the Palestinians, not seeing what every sane observer saw—that Hamas would win. Immediately after the election, Condi started pressuring Mahmoud Abbas to dissolve Parliament. When he refused, the Administration started backing the Fatah strongman, Mohammad Dahlan, in hopes that he could strengthen Fatah and the Palestinian Authority's security organizations—which had been devastated by Israel during the intifada—sufficiently to overcome Hamas. This set off a civil war between Fatah and Hamas. To end the bloodshed, Saudi's King Abdullah brokered a national unity government, without warning the US he would do so. In response to Abdullah's unity government plan, the State Department developed its own \$1.27 billion plan, what Hamas considered “a blueprint for a U.S.-backed Fatah coup.” The US handed that plan to Abbas and had him adopt it as if it were his own. Hamas responded by taking over Gaza and capturing the Egyptian weapons intended to strengthen Fatah.

Central to the whole story is how the State Department could have been so stupid as not to see that Hamas would win a democratic election

in Gaza in 2006.

Elections for the Palestinian parliament, known officially as the Legislative Council, were originally set for July 2005, but later postponed by Abbas until January 2006. Dahlan says he warned his friends in the Bush administration that Fatah still wasn't ready for elections in January. Decades of self-preservationist rule by Arafat had turned the party into a symbol of corruption and inefficiency—a perception Hamas found it easy to exploit. Splits within Fatah weakened its position further: in many places, a single Hamas candidate ran against several from Fatah.

"Everyone was against the elections," Dahlan says. Everyone except Bush. "Bush decided, 'I need an election. I want elections in the Palestinian Authority.' Everyone is following him in the American administration, and everyone is nagging Abbas, telling him, 'The president wants elections.' Fine. For what purpose?"

The elections went forward as scheduled. On January 25, Hamas won 56 percent of the seats in the Legislative Council.

Few inside the U.S. administration had predicted the result, and there was no contingency plan to deal with it. "I've asked why nobody saw it coming," Condoleezza Rice told reporters. "I don't know anyone who wasn't caught off guard by Hamas's strong showing."

"Everyone blamed everyone else," says an official with the Department of Defense. "We sat there in the Pentagon and said, 'Who the fuck recommended this?'"

But a Wikileaks cable released by Aftenposten may explain why State was taken by surprised.

They may have thought the election itself wouldn't happen.

In fact, they were warned by Israeli Defense Official Amos Gilad that if elections were held, "it will destroy everything" with attempts to foster stability (in the name of "peace") in the Middle East. But Gilad also told them Omar Suleiman promised to see to it that there were no elections.

Gilad said he warned Suleiman that if Hamas participates in the January 2006 Palestinian elections "it will destroy everything, as Hamas will take over and start a new process." According to Gilad, **Suleiman and his deputy told him, "There will be no elections in January. We will take care of it."** Gilad requested that the USG closely hold this information and strictly protect the sources. He clarified that neither Suleiman nor his deputy explained how Egypt would stop the elections or elaborated further on the subject. Gilad admitted that he does not know how the Egyptians could prevent the elections from taking place, but said, "The only people the Palestinians can trust now are the Egyptians."

All of which doesn't surprise me. But does remind me of two things. First, Obama invited Elliott Abrams to attend an experts meeting at the White House on January 31; Abrams declined to attend.

**Elliott Abrams**, the former Bush White House Middle East/democracy advisor, was invited but couldn't go. "I had other commitments I did not think I could fairly cancel at such short notice," he told POLITICO. While another colleague tried to soften Abrams's implication he had better things to do than offer counsel to the White House, saying he thought he was out of town, in fact

Abrams later said he had already committed to speak to the AJC along with Jordanian former diplomat **Marwan Muasher**.

So I guess this is the kind of catastrophe Obama thinks we should repeat?

I'm also reminded about Robert Grenier—who was head of CIA's Counterterrorism Center until just after the Gaza election—talking about American hypocrisy on democracy.

So nice to see that we want to put a guy who promised to prevent a democratic election the US was backing (at least in theory, though Suleiman didn't deliver on that promise) in charge of transitioning to democracy in Egypt.

Update: Changed description of cable for accuracy.

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## OUR DIPLOMATS NEED TO SPEND MORE TIME SURFING THE TOOBZ!

As I noted in my last post, DiFi is accusing the intelligence community of having missed the potential volatility of Middle Eastern unrest because they've been paying too little attention to social media.

So I decided to check the WikiLeaks State cables to see whether DiFi's complaint bears out.

Obviously, this is a totally insufficient test. Not only is State not the primary member of the intelligence community that should be tracking these things, we have no idea how representative the cables are of all State communication. (Though there are obviously intelligence community members working under official cover

at the Embassy, and one would hope a good deal of our specialists on any particular country's dialects are stationed in that country.) Nevertheless, it gives an idea of how attentively our Embassies track opposition viewpoints expressed in social media, and how they view social media as a source of information.

And DiFi may well be right.

There are just 14 WikiLeaks cables in this database mentioning both Egypt and bloggers (out of 325 that mention Egypt) but just one—dated March 30, 2009—that talks in detail about the actual content of blogs rather than Mubarak's persecution of them as a human rights issue. (This cable notes that bloggers and other journalists cover torture complaints and a few others refer to specific types of bloggers being persecuted.) The March 30 cable assesses,

KEY POINTS –

(C) Egypt's bloggers are playing an increasingly important role in broadening the scope of acceptable political and social discourse, and self-expression. –

(C) Bloggers' discussions of sensitive issues, such as sexual harassment, sectarian tension and the military, represent a significant change from five years ago, and have influenced society and the media. –

(C) The role of bloggers as a cohesive activist movement has largely disappeared, due to a more restrictive political climate, GOE counter-measures, and tensions among bloggers. –

(C) However, individual bloggers have continued to work to expose problems such as police brutality and corporate malfeasance.

[snip]

(C) Egypt has an estimated 160,000 bloggers who write in Arabic, and sometimes in English, about a wide variety of topics, from social life to politics to literature. One can view posts ranging from videos of alleged police brutality (ref B), to comments about the GOE's foreign policy, to complaints about separate lines for men and women in government offices distributing drivers' licenses. One NGO contact estimated for us that a solid majority of bloggers are between 20 and 35 years old, and that about 30 percent of blogs focus on politics. Blogs have spread throughout the population to become vehicles for a wide range of activists, students, journalists and ordinary citizens to express their views on almost any issue they choose. As such, the blogs have significantly broadened the range of topics that Egyptians are able to discuss publicly.

It's not clear whether anyone at the Embassy made an independent assessment of the blogs themselves; the cable is heavily reliant on the viewpoints of at least three different sources, as well as the comments of "two young upper middle-class bloggers" and one female political blogger not identified demographically.

Meanwhile, just 5 cables mention both Facebook and Egypt (two cables appear in both searches). Two of these cables simply count the growing number of Mohamed el Baradei Facebook fans. One of them—an April 16, 2008 cable titled, "Mahalla Riots: Isolated Incident or Tip of an Iceberg?" and reviewing the April 6, 2008 events—probably should have alerted US authorities to track Facebook more closely.

(C) April 6 brought together disparate opposition forces together with numerous non-activist Egyptians, with the Facebook calls for a strike attracting 70,000 people on-line, and garnering

widespread national attention. The nexus of the upper and middle-class Facebook users, and their poorer counterparts in the factories of Mahalla, created a new dynamic. One senior insider mused, “Who could have imagined that a few kids on the internet could foment a buzz that the entire country noticed? I wish we could do that in the National Democratic Party.”

Though the reference to the “senior insider” complaining that Egypt’s NDP couldn’t foment as much buzz as “a few kids on the internet” suggests the assessment of the importance of Facebook to the movement may have come from Egyptians, not from any analysis conducted in the Embassy itself.

Just as tellingly, most of the 7 cables on Egypt and April 6 are among those that discuss social media (that is, State knew or should have known that social media was an important tool for the April 6 movement).

Meanwhile, it’s even worse for Tunisia. Just one cable (out of 81) mentions Tunisia and either blogger or Facebook—and that’s a report on the Embassy’s own use of Facebook!

At least in the case of Egypt, the Embassy had both warning that Mubarak’s government considers bloggers enough of a threat to persecute, as well as some sense that social media has served an organizing function.

Yet even with that warning, Embassy staffers don’t appear to have spent much time learning from social media.

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# ABBE LOWELL'S LEAK AS GOVERNANCE THEORY

Josh Gerstein links to this fascinating filing from Abbe Lowell, the lawyer who successfully got leak charges against AIPAC employees dismissed, and now representing a former State Department contractor, Stephen Kim, alleged to have leaked Top Secret information on North Korea to Fox. Gerstein explains:

Stephen Kim, who worked at State as an intelligence adviser before being dismissed as a result of the leak probe, was indicted last August on one count of disclosing classified information and another of lying to the FBI. The charges appear to stem from information that Fox News reporter James Rosen received in June 2009 about North Korea's plans to conduct a nuclear test.

In motions filed earlier this week, Kim's defense team, Abbe Lowell, Paul Thompson and James Commons, argue that the charges against Kim should be dismissed because they're legally flawed. One argument is that the Espionage Act under which Kim was charged is too vague when it comes to situations involving verbal statements to someone outside government rather than giving classified documents to someone. (Kim was not charged with espionage.)

The defense lawyers also mount a defense of leaking as routine and vital to modern American government and note that the law gives no indication of who is "entitled to receive" closely-held defense secrets and who isn't.

The last bit is what I find particularly interesting. Lowell is obviously doubling down on his successful defense in the AIPAC case by



arguing that leaking classified information is central to our system of governance.

Government leaking is not a new phenomenon. **What makes these prosecutions particularly worthy of close scrutiny is the fact that the Executive Branch leaks classified information often to forward several of its goals and then prosecutes others in the same branch for doing the same thing.** In fact, this country has a long and storied history of government officials leaking information to the press. In one of the earliest leaks in this country's history, Benjamin Franklin publicly confessed to leaking letters authored by loyalist Thomas Hutchinson which were later published in the Boston Gazette. 5 *Albert Henry Smyth The Writings of Benjamin Franklin* 448 (1905). President George Washington was incensed upon discovering that the confidential terms of Jay's Treaty had been leaked to a newspaper editor. Todd Estes *The Art of Presidential Leadership: George Washington and the Jay Treaty*, 109 *Virginia Magazine of History and Biography* (2001). In one of the most storied leaks in history, the New York Times published sections of the so-called "Pentagon Papers" a top-secret Department of Defense report on America's political and military involvement in Vietnam. Neil Sheehan *Vietnam Archive: Pentagon Study Traces Decades of Growing U.S. Involvement*, N.Y. Times June 13, 1971, at A1. The leak revealed a deliberate pattern of government deception to mislead the country about the government's intentions to expand the war efforts in Vietnam. Id. The Abu Ghraib prison abuse scandal is another example of a leak that called into question important policies the government had tried to keep secret. Seymour M. Hersh, *Torture*

at Abu Ghraib, *The New Yorker*, May 10, 2004, at 42. **And the disclosure of Valerie Plame as an operative for the CIA was a government leak, at the highest levels, to advance an important policy interest of the Bush Administration.** David Corn Plamegate *Finale: We Were Right; They Were Wrong*, *The Nation* (Oct. 22, 2007). In this country's history, sensitive information has routinely been leaked to the press by officials at all levels of government, causing *New York Times* reporter James Reston to remark, "[t]he ship of state is the only known vessel that leaks from the top." David E. Rosenbaum, *First a Leak, Then a Predictable Pattern*, *N.Y. Times*, October 3 2003.

The practice of leaking has evolved over time and has become so widespread that it is not uncommon to open a national newspaper and find multiple articles attributing their sensitive content to anonymous government sources. During meetings with the press, government officials and members of their staffs routinely disclose sensitive information to further a variety of legitimate policy objectives. Members of the press then publish the information for consumption by the populace. **As the government has imposed ever-more stringent restrictions on information, while simultaneously broadening its definition of what constitutes classified information, leaking has become essential to provide context for messages delivered to the public through official channels. Although reliance on a "leak system" is counterintuitive for a nation that prides itself on open government and places immense value on democratic traditions, it has become a necessary practice, facilitating the exchange of information between the**

**government and its constituency.** Such practices have become so critical that, when Congress passed a bill that would have made disclosure of classified information a felony, President Clinton vetoed the bill, reasoning that "[a]lthough well-intentioned, [the bill] is overbroad and may unnecessarily chill legitimate activities that are at the heart of a democracy." 146 Cong. Rec. H11852 (Nov. 13, 2000) (statement of Pres. Clinton). In asking President Clinton to veto the legislation executives from the Washington Post, CNN, the Newspaper Association of America, and the New York Times wrote that "[a]ny effort to impose criminal sanctions for disclosing classified information must confront the reality that the 'leak' is an important instrument of communication that is employed on a routine basis by officials at every level of government." Raymond Bonner, *News Organizations Ask White House to Veto Secrecy Measure* N.Y. Times, Nov. 1, 2000, at A32. As discussed in more detail below, Bob Woodward's *Obama's Wars* is yet another example of senior government officials and administration staff leaking information whenever it is convenient.

[snip]

For centuries the government has leaked information, to the media and others, when it is convenient or advantageous to do so. Leaking is widespread and has become an essential tool that is frequently employed by officials at every level of government. As one former Director of Central Intelligence has explained:

[T]he White House staff tends to leak when doing so may help the President politically. The

Pentagon leaks, primarily to sell its programs to Congress and the public. The State Department leaks when it's being forced into a policy move that its people dislike. The CIA leaks when some of its people want to influence policy but know that's a role they're not allowed to play openly. The Congress is most likely to leak when the issue has political manifestations domestically.

S. Turner *Secrecy and Democracy* 149 (1985). **In fact, one survey of senior federal officials revealed that 42 percent of those officials had deliberately leaked what certainly could be described as "sensitive information to the press."** While this statistic suggests that an astonishingly high percentage of government officials leak information, it comports with the high frequency with which news articles attribute "sensitive" information to an anonymous government source.

[snip]

In a dramatic example of opportunistic leaking by the Executive Branch, Bob Woodward's *Obama's Wars* reveals details of the administration's inner workings and describes several highly classified programs and reports. The information contained in Woodward's book could only have come from senior government officials.<sup>6</sup> The book describes in great detail the planning leading up to President Obama's decisions concerning the wars in Iraq and Afghanistan. Specifically, the very first chapter of the book describes President Obama's first post-election intelligence briefing from Mike McConnell, then the Director of National Intelligence.

"Because the briefing contained highly classified information about ' sources and methods ' McConnell explained, only those ' designated to take a top national security cabinet post' could attend. Jack Goldsmith, *Classified Information in Woodward's Obama's Wars* Lawfare (September 29, 2010).

Nonetheless, in the book, Mr. Woodward recounts that highly classified information in detail, including several classified CIA and NSA programs (despite the inclusion of sources and methods information). The book also reveals that the CIA created, controls, and pays for a clandestine 3,000-man paramilitary army of local Afghans known as Counterterrorism Pursuit Teams. The book describes a new National Security Agency capability that has dramatically increased the speed at which intercepted communications can be turned around into useful information for intelligence analysts and covert operators. The book even contains a previously classified six-page "terms sheet" that the President dictated himself. **Most importantly, the book reveals that Woodward, while not a government official, received unprecedented access to classified information from the Obama administration. Thus, here is the latest example of the Executive Branch acting out of both sides of its mouth-it gives a specific journalist a vast amount of national defense information without blinking an eye and it indicts Mr. Kim for what, even if the allegations in the indictment are all true, is far less.**

Given the prevalence of government leaking to the media, even at the highest levels of government, and the relative paucity of Section 793 prosecutions for such disclosures, it is virtually impossible to determine the circumstances under which Section 793

will be enforced. [my emphasis]

Now, I presume Lowell is not relying on his argument that leaking has become a central tool of government to win this motion (indeed, I highly doubt this motion will succeed in any case). Rather, he seems to be setting up the same thing he set up with the AIPAC case: a reason to subpoena high ranking members of the Administration trying to prosecute a leak to demonstrate that his client was being prosecuted for actions that are elsewhere condoned.

But in the midst of debates about secrecy partly—though not entirely—focused on Wikileaks, the argument deserves to be fully fleshed out, particularly as the Obama Administration proves more aggressive on leak prosecutions than the Bush Administration.

Leaking, as currently practiced by our government, is precisely about wielding power attained partly through the clearance system. Yet, that system of power relies on the asymmetrical prosecution of leaks, such that authorized leaks to Woodward help catapult hagiography onto the best-seller lists, but unsanctioned leaks can lead to jail time.

Asymmetrical treatment of leaking is a cornerstone of the assault by the Executive on rule of law.

And yet, that's how our government has increasingly functioned of late.

Abbe Lowell may be mapping this out solely to develop a growing practice in leak defense. But it's an important argument about our government more generally.

On a related note, I will be hosting a Book Salon with Greg Mitchell at **3:30** [corrected time] PM ET to discuss his book, *The Age of WikiLeaks*.

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# UNLIKE THE GUARDIAN, THE NYT TOLD STATE PRECISELY WHAT WIKILEAKS CABLES IT WOULD PUBLISH

The Guardian has now posted its version of the US government's efforts last November to learn what cables WikiLeaks would publish, so I'd like compare the three versions to show what we know.

As I noted before, these negotiations started with the NYT giving the State Department a heads up. Following that heads up, offered on November 19, some reporters met with representatives of the foreign policy and national security **and law enforcement** establishment on Tuesday, November 23. Following that, the NYT appears to have provided the State Department with copies of every single cable they planned to release.

Because of the range of the material and the very nature of diplomacy, the embassy cables were bound to be more explosive than the War Logs. Dean Baquet, our Washington bureau chief, gave the White House an early warning on Nov. 19. The following Tuesday, two days before Thanksgiving, Baquet and two colleagues were invited to a windowless room at the State Department, where they encountered an unsmiling crowd.

Representatives from the White House, the State Department, the Office of the Director of National Intelligence, the C.I.A., the Defense Intelligence Agency, **the F.B.I.** and the Pentagon gathered around a conference table. Others, who never identified themselves, lined the walls. A solitary note-taker tapped away

on a computer.

The meeting was off the record, but it is fair to say the mood was tense. Scott Shane, one reporter who participated in the meeting, described “an undertone of suppressed outrage and frustration.”

Subsequent meetings, which soon gave way to daily conference calls, were more businesslike. **Before each discussion, our Washington bureau sent over a batch of specific cables that we intended to use in the coming days. They were circulated to regional specialists,** who funneled their reactions to a small group at State, who came to our daily conversations with a list of priorities and arguments to back them up. We relayed the government’s concerns, and our own decisions regarding them, to the other news outlets. [my emphasis]

Der Spiegel suggests that after that November 23 meeting, at the same time NYT was meeting in person with the State Department, it was also making phone calls to the other partners involved.

The *New York Times* negotiated with the White House, and there were meetings and telephone calls with the *Guardian*, *Le Monde*, *El País* and SPIEGEL. The US government had mustered a remarkable armada in its effort to appeal to the journalists. In addition to Assistant Secretary of State for Public Affairs Philip Crowley and Clinton’s Chief of Staff Cheryl Mills, it included representatives of the CIA, the Pentagon and the office of Director of National Intelligence James Clapper – a reflection of the combined national security expertise of the most powerful nation in the world.



In addition, Ambassador to Germany Philip Murphy met with the newspaper in person on November 25.

This was also the approach taken by Philip Murphy, the American ambassador in Berlin, when we met with him at the United States Embassy. It was Thanksgiving Day, and Murphy drove from his residence in the Dahlem neighborhood to the embassy on Pariser Platz in downtown Berlin. At home, his wife Tammy and their four children were waiting for him to return for their traditional turkey dinner. Murphy, a former investment banker and national finance chair of the Democratic National Committee, wasn't wearing a suit that day. He donned a jacket, casual trousers and loafers. In addition to all of the foreign policy turmoil Julian Assange had created, he had also ruined Thanksgiving for the ambassador and his colleagues in Washington, an offence for which Murphy would never forgive him.

"I am mad about it, and I don't blame our brethren in the German government if they are mad, too, that someone has downloaded these documents," Murphy said. "I'm incredibly angry. I don't begrudge SPIEGEL and the press, who are just doing their jobs. I am criticizing those who stole this material."

The ambassador looked haggard. He coughed a lot and had to interrupt the conversation to get some water. Like so many American diplomats around the world, Murphy would have to explain to his foreign counterparts why the embassy's internal assessments of German politicians were so much harsher than its public statements. This is a challenge for diplomats, whose job requires them to preserve as perfect a façade as possible.

But Der Spiegel doesn't reveal whether it told State precisely what cables it would publish. Nor does it reveal whether it spoke with the State Department directly.

Compare that to the Guardian's description, which reveals that under pressure from the US Embassy in London, Alan Rusbridger agreed to a conference call, which took place on November 26 (so after the NYT had started meeting daily with State and Murphy had met with Spiegel at their offices).

A few days before the cables' release, two senior figures from the US embassy in Grosvenor Square called in to the Guardian's London offices for a chat. This discussion led to a surreal transatlantic telephone call on Friday 26 November – two days before launch.

Alan Rusbridger agreed to ring Washington. He made the conference call from the circular table in his office. On the line was PJ Crowley, the US assistant secretary of state for public affairs.

The conversation began: "OK, here's PJ Crowley. I just want you to know in this phone call we've got Secretary of State Clinton's private secretary, we have representatives of the DoD [department of defence], the intelligence communities, and the national security council." All Rusbridger could offer in reply was: "We have our managing editor here."

Note, the reference to "intelligence communities, and the national security council" might well include the FBI; "representatives of the DoD" might include military criminal investigators. Thus it's possible – but by no means proven – that our government included those investigating the leak itself in meetings purportedly about editorial content.

The Guardian goes on to describe PJ Crowley and Hillary's private secretary trying to pressure the Guardian into revealing precisely what cables they'd publish.

Crowley set out the view from the lofty heights of US power: "Obviously, from our perspective these are stolen documents. They reveal sensitive military secrets and addresses that expose people to security risks."

Crowley made his pitch. **He said the US government was "willing to help" the Guardian if it was prepared to "share the documents" it had – in other words, tip off the state department which cables it intended to publish.**

Rusbridger was noncommittal.

Clinton's private secretary chipped in. She said: "I've got a very direct question for you, Mr Rusbridger. You journalists like asking direct questions and I know you expect direct answers. So I'm going to ask you a direct question. **Are you going to give us the numbers of the cables or not?"**

"No, we're not."

"Thank you very much." [my emphasis]

The contrast between the NYT and the Guardian is instructive: the NYT sent over every cable they planned to publish. Whereas the Guardian refused to specify which cables they'd publish.

Under cover of off the record meetings with top national security officials, the NYT collaborated with the government, at the least on damage control, if not their investigation of WikiLeaks. The Guardian, by contrast, was unwilling to do more than warn State what general topics they'd cover on a day to day basis.

One other point: the fact that the government was asking newspapers precisely which cables

they'd publish makes me wonder whether they didn't have – and may still not have, though given the numbers of copies floating around I suspect they now know – a clear idea of which cables were included in the document dump. Geoff Morrell's press conference last week made it clear that they still only consider Bradley Manning a person of interest in the leak of the larger dump, meaning that if he leaked them, they haven't identified how he did so. But is it possible that – at least in November – they didn't even know what cables were included in the dump?

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## WHAT STATE WANTED WITHHELD FROM WIKILEAKS PUBLICATION

There are now four versions of the cooperation between WikiLeaks and its journalistic “partners:” Vanity Fair, NYT, Guardian, and Spiegel. A comparison of them is more instructive than reading any in isolation.

For example, compare how the NYT and Spiegel describe the three things the State Department asked journalistic partners not to publish during the lead-up to publication of the diplomatic cables. The NYT says State asked them not to publish individual sources, “sensitive American programs,” and candid comments about foreign leaders.

The administration's concerns generally fell into three categories. First was the importance of protecting individuals who had spoken candidly to American diplomats in oppressive countries. We almost always agreed on those and were grateful to the government for pointing out some we overlooked.

"We were all aware of dire stakes for some of the people named in the cables if we failed to obscure their identities," Shane wrote to me later, recalling the nature of the meetings. Like many of us, Shane has worked in countries where dissent can mean prison or worse. "That sometimes meant not just removing the name but also references to institutions that might give a clue to an identity and sometimes even the dates of conversations, which might be compared with surveillance tapes of an American Embassy to reveal who was visiting the diplomats that day."

The second category included sensitive American programs, usually related to intelligence. We agreed to withhold some of this information, like a cable describing an intelligence-sharing program that took years to arrange and might be lost if exposed. In other cases, we went away convinced that publication would cause some embarrassment but no real harm.

The third category consisted of cables that disclosed candid comments by and about foreign officials, including heads of state. The State Department feared publication would strain relations with those countries. We were mostly unconvinced.

Spiegel describes those three things slightly differently. It says State asked them to withhold government sources, cables with security implications, and "cables relating to counterterrorism."

At first, less than a week before the upcoming publication of the leaked documents, Clinton's diplomats wanted three things from the participating media organizations. First, they wanted the names of US government sources to be

protected if leaks posed a danger to life and limb. This was a policy that all five media organizations involved already pursued. Second, they asked the journalists to exercise restraint when it came to cables with security implications. Third, they asked them to be aware that cables relating to counterterrorism are extremely sensitive.

Now the discrepancy may mean nothing. Both agree State had three categories of information they wanted withheld. Both agree State asked the newspapers to withhold both the names of sources and details on intelligence programs. But since the NYT notes the journalistic partners didn't take the third category—candid comments—very seriously, perhaps Spiegel just misremembered what that third category was, or just remembered a particular focus on counterterrorism. Presumably, after all, the counterterrorism programs would be included in category two.

But whatever the cause of the discrepancy, I am intrigued that Spiegel emphasizes counterterrorism programs rather than candid comments about foreign officials, not least because the Spiegel article describes working with US Ambassador to Germany Philip Murphy directly. Consider the two most sensitive revelations pertaining to Germany and counterterrorism. First, there was the news of Philip Murphy personally bad-mouthing the Free Democratic Party's opposition to US vacuuming up European data, particularly as it relates to the SWIFT database. Then there are negotiations about whether Germany would prosecute Americans involved in the rendition of Khalid El-Masri. As I showed, it appears that Condi was telling German Foreign Minister Frank-Walter Steinmeier one thing about a subpoena for those Americans, followed quickly by the American Deputy Chief of Mission "correcting" the US position on it.

That is, on both major disclosures about US counterterrorism cooperation with the Germans,

the US has reason to be embarrassed about its two-faced dealing with German officials.

In other words, there may be no discrepancy. It is possible that the third category of information State wanted suppressed has to do not with the substance of our counterterrorism program (after all, both the details of SWIFT and of our rendition program have been widely publicized), but with the degree to which our private diplomacy belies all the public claims we make about counterterrorism.

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## **DOD PRESS OFFICE SCRAMBLING TO EXPLAIN BRADLEY MANNING'S TREATMENT**

Something is badly amiss in DOD's efforts to tell its side of how it is treating Bradley Manning.

It started on Monday when NBC's Chief Pentagon correspondent Jim Miklaszewski (that is, not a hippie) published an article with two big scoops. First, that investigators have been unable to tie Manning directly to Julian Assange.

U.S. military officials tell NBC News that investigators have been unable to make any direct connection between a jailed army private suspected with leaking secret documents and Julian Assange, founder of the whistleblowing website WikiLeaks.

The officials say that while investigators have determined that Manning had allegedly unlawfully downloaded tens of thousands of

documents onto his own computer and passed them to an unauthorized person, there is apparently no evidence he passed the files directly to Assange, or had any direct contact with the controversial WikiLeaks figure.

In the same article, Miklaszewski reports what appears to be limited hangout push-back against allegations that Manning was “tortured” (but not “abused”). While Manning was not tortured, Miklaszewski’s sources say, he was improperly put on suicide watch for two days last week.

On Monday, U.S. military officials also strongly denied allegations that Manning, being held in connection with the WikiLeaks’ release of classified documents, has been “tortured” and held in “solitary confinement” without due process. The officials told NBC News, however, that a U.S. Marine commander did violate procedure when he placed Manning on “suicide watch” last week.

Military officials said Brig Commander James Averhart did not have the authority to place Manning on suicide watch for two days last week, and that only medical personnel are allowed to make that call.

Note that both of these scoops were attributed to “US military officials,” though a later reference refers to “official,” singular. Later in the article, he cites, “U.S. Marine and Army officials” stating that Manning “is being treated like any other maximum security prisoner.” If I had to guess, I’d say Miklaszewski was protecting whatever officials gave him the scoop, while more clearly identifying those who pushed back on it.

The following day, CNN’s Chris Lawrence wrote a piece reporting that Brig Commander Averhart was being investigated.



The U.S. military is investigating why the commander of the military jail put Pfc. Bradley Manning, suspected of leaking documents to WikiLeaks, on suicide watch for a few days last week, according to Pentagon spokesman Col. David Lapan.

[snip]

An investigation has been launched into whether Brig Commander James Averhart had the authority to place Manning on suicide watch, which is usually ordered by the medical staff.

That report was sourced to David Lapan, **by name**. Within three hours after that story appeared, CNN pulled the story, first explaining,

The CNN Wire has killed the story slugged US-WikiLeaks-Manning-1 that moved at 2:47 p.m. due to new information. The military spokesman identified in the story says there is no investigation into the decision to put Bradley Manning on suicide watch.

That retraction now names Lapan, again by name. Lawrence was among the first to report, the following day, that Averhart (who a day before was maybe or maybe not under investigation) was being replaced—pursuant to a decision made back in October.

But the really interesting thing came before that, in yesterday's press briefing by David Lapan's boss, Pentagon Press Secretary Geoff Morrell (whose resemblance to the Matrix' Agent Smith is uncanny, and who notes this was his first press briefing since November; here's a video of the presser). In response to the third question—basically following up on Miklaszewski's story, asking whether it is true that prosecutors have not been able to tie Manning to Assange—Morrell does not answer the question. Rather, based on his representation

that “this case is being taken extremely seriously” and that “they are hard at work at [sic] on building a case,” he “admonishes” journalists to proceed with caution. After that general admonishment, he repeats it, calling out Miklaszewski directly.

But I would avail myself of this opportunity to admonish or warn you all to be extraordinarily careful about how you report on this story, because one thing I can – I do feel comfortable in telling you is that this case is being taken extremely seriously by the investigators both here in the Defense Department and, of course, at the Department of Justice. They are hard at work at on building a case here.

So any pronouncements about a connection or lack of connection, those that have been found or are yet to be found, are just premature at this point. So I’d urge everybody to proceed with caution on this, and probably most stories, for that matter.

So I’m not in a position, unfortunately, to tackle that as directly as I’d like to. But that’s my admonition to you all, including Mr. [Jim “Mik”] Miklaszewski in the front row.

It’s actually not clear how the seriousness with which investigators are approaching a case should serve as a warning to journalists. The assertion is investigators have not yet been able to make a connection; even if Miklaszewski reported tomorrow they had subsequently done so, it would not change the accuracy of his previous reporting.

Morrell’s snide attack is followed by a series of questions, most of which Morrell bats away with details that focus on Manning’s Max status rather than his protection status (much less his suicide watch). But when he is finally asked

(putting aside Miklaszewski in the process) about Mannings protective status, he just starts making shit up. Perhaps as a way to save himself, he shifts the discussion from POI status to suicide watch.

Q: The protective order is not designed to punish him for being charged with those crimes. It's supposed to protect him. I guess we're trying to –

MR. MORRELL: The protective order – **I would – I would imagine that one** – when one is confined in the brig, it is not just for their protection that we are worried. We are always worried about our protection. He is charged with very serious crimes. That's why you isolate someone behind bars. That's why you confine someone, so that they cannot escape, cannot possibly commit the crimes that they are alleged to have done again.

So it's not – he is – I think you have it a little backwards. I think you have it that he is being held for his own protection in the manner which he's being held. That may be, that there – there are reasons that they think that it is for his own benefit that he be held so. But it can also be that he's being held behind bars because he is a – deemed a threat, that he has been alleged to have committed a very serious crime that potentially undermines our nation's security, and therefore he needs to be confined during the course of a trial.

Let me interrupt here to note that, according to the WaPo, Manning is 5'2" and 105 pounds. Morrell is suggesting that this scrawny guy whom I could probably beat up is such a threat to the trained Marines guarding him they put him on protection watch.

Morell continues:

But I would just – what I come back to time and time again, Chris, is the notion that the manner of his confinement is not in the least different from the manner in which anyone else at the brig is being held.

Q: But not everybody's under that protective order.

MR. MORRELL: I'm – I – you keep coming back to this protective order. **I'm not so sure I know what you're talking about.** I described conditions to you, the manner in which he's being held. And my understanding is that is consistent with how every other person in the brig is being held.

Now, the one exception to that could be this suicide-watch issue. He was placed on suicide watch, as I understand it, for two days. So that can be a difference between how others in the brig are being held. But my understanding is that the manner in which he is being held is not punishment for any behavior, but this is the standard protocol for how people at the brig are held, especially people with the gravity of the charges he is facing.

After claiming that the suicide watch was standard protocol, he finally gives Miklaszewski a chance, who starts by saying that the allegation that his reporting is incorrect is, itself, incorrect.

Mik.

Q: Well, since you mentioned me by name and, through implication, tied me to incorrect reporting, which would be incorrect, I do have a couple of questions.

Miklaszewski walks Morrell through the key scoop of his reporting—that Averhart violated protocol by putting Manning on suicide watch. And while Morrell claims that the Brig Commander—the same one whose replacement was announced this same day—has discretion to put anyone on suicide watch, when Miklaszewski asks if it was punitive, Morrell starts repeatedly answering that he doesn't know.

MR. MORRELL: Fire away.

Q: Was the brig commander at Quantico in error in putting Private Manning on suicide watch for two days last week? Did he violate protocol?

MR. MORRELL: My understanding is that he did not and that, despite your reporting, which suggests that only doctors at the facility can make a call of that nature, what I've been told is that the brig commander is ultimately responsible for the well-being and confinement of everyone in his charge. And so he has the wherewithal to make decisions based upon input from others, including doctors, about how it is best to treat people given the current circumstances.

He made a judgment call. It sounds like that he put him under suicide watch for a period of two days. But as I understand it, he was well within his rights to do so as the commander of the brig.

Q: And is it within his authority to put somebody on suicide watch for a disciplinary purpose?

MR. MORRELL: **I frankly am not aware of all the regulations that he operates under.** But I would imagine that, as the brig commander, he has extraordinary discretion in terms of how best to run that facility, how best to protect the well-being of the people he — who he's

charged with safekeeping. And I don't know all that goes into, frankly, Mik, making a decision about one – about when one needs to be watched more carefully in the event they may be considering doing harm to themselves.

Q: And was Manning taken off suicide watch at the urging of Army lawyers?

MR. MORRELL: **I don't know. I don't know.** But even if it were at the urging of Army lawyers, it would ultimately have to be a – the judgment of the brig commander that that was the appropriate course of action. And he would not have done it unless he thought that was the best way to proceed, both for his facility and the well-being of people there and, of course, for Private Manning's well-being.

That is, though Morrell was clear in asserting that Averhart had the authority to put Manning on suicide watch (which even Morrell concedes would be treatment different from that of others) for whatever reason, he admits he doesn't know what regulations guide Averhart's decisions and whether it was done punitively.

All of which doesn't offer much clarity on Manning's treatment. It's clear—with Lapan's flip-flop and Morrell's inability to answer key questions—that DOD's press shop is struggling to craft a party line about Manning's treatment that both appears coherent and that somehow refutes Miklaszewski's reporting.

But nowhere in Morrell's briefing does he actually get around to refuting the two main assertions in Miklaszewski's reporting.

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# THE NYT'S "HEADS UP" MEETING WITH THE FBI ON WIKILEAKS

The NYT has a very long profile on their interactions with Wikileaks, about which I will have more to say.

But I wanted to point to this meeting, which Bill Keller describes as the NYT's effort to give the government a "heads up" on the diplomatic cables.

Because of the range of the material and the very nature of diplomacy, the embassy cables were bound to be more explosive than the War Logs. Dean Baquet, our Washington bureau chief, gave the White House an early warning on Nov. 19. The following Tuesday, two days before Thanksgiving, Baquet and two colleagues were invited to a windowless room at the State Department, where they encountered an unsmiling crowd. Representatives from the White House, the State Department, the Office of the Director of National Intelligence, the C.I.A., the Defense Intelligence Agency, **the F.B.I.** and the Pentagon gathered around a conference table. Others, who never identified themselves, lined the walls. A solitary note-taker tapped away on a computer. [my emphasis]

It's bad enough that—as Keller also reports—the NYT has no secure communications.

But is it also the habit of the NYT to meet with the government—including the FBI—on upcoming stories? For all the NYT's insistence, with Judy Miller, that they would not be an accomplice to a government investigation, what the hell were they doing meeting with the FBI before they published a story?

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# VISA: WIKILEAKS GUILTY UNTIL PROVEN (TWICE) INNOCENT

The AP reports that a Swedish company Visa Europe hired to study whether WikiLeaks was breaking the law or Visa's own rules has "found no proof the group's fundraising arm is breaking the law in its home base of Iceland." But, the AP goes on, Visa will not accept WikiLeaks donations until it completes its own investigation, which has thus far lasted eight weeks.

Shorter Visa: "we're going to keep investigating this until we find some justification to explain why we'll accept donations to the Ku Klux Klan but not WikiLeaks."

Now, this says one of two things about Visa.

Either, Visa is saying it arbitrarily will decide to stop doing business with any customer it chooses until such time as it proves that customer is innocent. Imagine the absurdity of standing at a check-out counter while Visa not only does a criminal background check, but scrambles with its lawyers to invent new legal theories by which you might be breaking the law.

Or, Visa has stopped processing Wikileaks donations at the behest of the U.S. government based on lies. And even after the government admitted that it had told lies to shut down WikiLeaks, Visa continues to stall for time to come up with an adequate explanation for why it's doing so.

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# DID MANNING ZEROFILL HIS COMPUTERS? OR DID THE MILITARY?

Wired has a post on MSNBC's report that "there is apparently no evidence he passed the files directly to [Julian] Assange, or had any direct contact with the controversial WikiLeaks figure." In it, Kim Zetter looks to the chat logs to try to explain why there is no such evidence.

If it's true that investigators have found no evidence linking Manning and Assange, it may be because Manning allegedly erased it from his system. He discussed doing so in his chats with Lamo. Manning noted in the chats that any incriminating evidence of his activities had been "zerofilled", or erased, from his computers:

But that's not precisely what the passage she quotes says. Note, because I've used a different selection of chat log than Zetter, I have bolded the part she included in her selection (though she includes in her post).

(02:13:51 AM) Lamo: Why does your job afford you access?

(02:13:59 AM) Lamo: except for the UN.

(02:14:03 AM) Manning: because i have a workstation

(02:14:15 AM) Lamo: and World Bank.

(02:14:17 AM) Manning: \*had\*

(02:14:36 AM) Lamo: So you have these stored now?

(02:14:54 AM) Manning: i had two computers... one connected to SIPRNET the other to JWICS...

(02:15:07 AM) Manning: no, they're government laptops

(02:15:18 AM) Manning: they've been zerofilled

(02:15:22 AM) Manning: because of the pullout

(02:15:57 AM) Manning: evidence was destroyed... by the system itself

(02:16:10 AM) Lamo: So how would you deploy the cables? If at all.

(02:16:26 AM) Manning: oh no... cables are reports

(02:16:34 AM) Lamo: ah

(02:16:38 AM) Manning: State Department Cable = a Memorandum

(02:16:48 AM) Lamo: embassy cables?

(02:16:54 AM) Manning: yes

(02:17:00 AM) Manning: 260,000 in all

(02:17:10 AM) Manning: i mentioned this previously

(02:17:14 AM) Lamo: yes

(02:17:31 AM) Lamo: stored locally, or retrieveable?

(02:17:35 AM) Manning: brb latrine =P

(02:17:43 AM) Manning: i dont have a copy anymore

**(02:17:59 AM) Lamo: \*nod\***

(02:18:09 AM) Manning: they were stored on a centralized server...

(02:18:34 AM) Lamo: what's your endgame plan, then?

(02:18:36 AM) Manning: it was vulnerable as fuck

As Zetter correctly notes, in this passage Manning suggests files **had been** zerofilled. But in this passage, he doesn't say he did it.

Now, in a separate section, Manning says he zerofilled the original of the Reykjavik 13 cable.

(1:48:50 PM) Lamo: give me some bona fides ... yanno? any specifics.

(1:49:40 PM) Manning: this one was a test: Classified cable from US Embassy Reykjavik on Icesave dated 13 Jan 2010

(1:50:30 PM) Manning: the result of that one was that the icelandic ambassador to the US was recalled, and fired

(1:51:02 PM) Manning: thats just one cable...

(1:51:14 PM) Lamo: Anything unreleased?

(1:51:25 PM) Manning: i'd have to ask assange

(1:51:53 PM) Manning: **i zerofilled the original**

(1:51:54 PM) Lamo: why do you answer to him?

(1:52:29 PM) Manning: i dont... i just want the material out there... i dont want to be a part of it [my emphasis]

Contextually, this might suggest that both mentions of zerofilling refer to the same—all 250,000 cables—since they both come in response to Lamo's probing questions about the cables. Indeed, Manning's reference to zerofilling himself, in the context of the Reykjavik cable, may explain why he no longer has access to any cables he could give Lamo to prove his bona fides. But even if both references both mean to include all the cables, it would remain ambiguous whether Manning zerofilled his computer or someone else did.

And that's significant, because in a third reference, Manning provides a potential alternative explanation for who zero-filled his computers.

(02:38:45 PM) Lamo: What would you do if your role /w Wikileaks seemed in danger of being blown?

(02:38:48 PM) Manning: but i was a part of it... and completely helpless...

(02:39:01 PM) Lamo: sometimes we're all helpless

(02:39:34 PM) Manning: try and figure out how i could get my side of the story out... before everything was twisted around to make me look like Nidal Hassan

(02:40:15 PM) Manning: i dont think its going to happen

(02:40:26 PM) Manning: i mean, i was never noticed

(02:41:10 PM) Manning: regularly ignored... except when i had something essential... then it was back to "bring me coffee, then sweep the floor"

(02:42:24 PM) Manning: i never quite understood that

(02:42:44 PM) Manning: felt like i was an abused work horse...

(02:43:33 PM) Manning: also, theres god awful accountability of IP addresses...

(02:44:47 PM) Manning: the network was upgraded, and patched up so many times... and systems would go down, logs would be lost... **and when moved or upgraded... hard drives were zeroed**

(02:45:12 PM) Manning: its impossible to trace much on these field networks...

(02:46:10 PM) Manning: and who would honestly expect so much information to

be exfiltrated from a field network?

That is, Manning suggests that every time computers were moved, they were zerofilled. And whatever happened to his computer while he still had access to him, it might be safe to assume that the downloaded files got zerofilled routinely when the computers were reassigned (remember, as far as we know, he lost access not because of the alleged leak, but because of an altercation with a colleague).

Mind you, I'm skeptical that Manning zerofilled anything himself. That's because his charging sheet includes multiple references to things he downloaded onto his personal, non-secure computer. Which suggests the most solid evidence they have against Manning comes from that (though they do appear to have evidence he accessed things he did not download onto his computer).

But all that really just ignores the larger point: that none of that evidence—at least given reports—directly connects Manning to Julian Assange.

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## **CNN: MILITARY INVESTIGATING WHY BRIG COMMANDER PUT BRADLEY MANNING ON SUICIDE WATCH [UPDATE: OR MAYBE NOT]**



CNN elaborates on something MSNBC reported last night. Not only did Quantico Brig

Commander James Averhart improperly put Bradley Manning on suicide watch for two days last week, but the military is now investigating why he did so.

The U.S. military is investigating why the commander of the military jail put Pfc. Bradley Manning, suspected of leaking documents to WikiLeaks, on suicide watch for a few days last week, according to Pentagon spokesman Col. David Lapan.

[snip]

An investigation has been launched into whether Brig Commander James Averhart had the authority to place Manning on suicide watch, which is usually ordered by the medical staff.

Now, as MSNBC explained last night, the suicide watch came because Manning allegedly disobeyed the order of two guards, so it's not entirely clear what CNN means by "why."

But this is a really welcome development. I hope the investigation is as transparent as the reports to MSNBC and CNN have been in the last day.

Update: Now CNN has retracted this story, with the following notice.

The CNN Wire has killed the story slugged US-WikiLeaks-Manning-1 that moved at 2:47 p.m. due to new information. The military spokesman identified in the story says there is no investigation into the decision to put Bradley Manning on suicide watch.

I've put a screen cap of the original story up top.