

Preview of Chapter 1

Shoot The Messenger

I am the Department of Justice attorney who blew the whistle on the government misconduct in the case of John Walker Lindh, the "American Taliban."

Everyone remembers the indelible trophy photo of the "American Taliban"--one of the most prominent prisoners of the Afghan war--naked, blindfolded, tied up and bound to a board. That was our first glimpse of American-sponsored torture and we didn't even flinch. Lindh was found barely alive, shot in the leg, and suffering from dehydration, hypothermia and frostbite. Although Lindh was seriously wounded, starving, and exhausted, U.S. soldiers stripped him, blindfolded him, bound him, scrawled shithead across the blindfold, duct-taped him to a board for days in an unheated and unlit shipping container, and posed with him for pictures. Parts of his ordeal were captured on videotape. Sound familiar?

The Lindh case was a harbinger of what would occur on a much larger scale at the American-run Abu Ghraib prison in Iraq and elsewhere. Like an aggressive, contagious, deadly virus, this first outbreak of lawless behavior was spread by the CIA Army intelligence teams to the entire archipelago of American-controlled detention centers throughout the world. The scandal is not, in former President George W. Bush's words, the "disgraceful conduct by a few" bad apples, or in former Secretary of Defense Donald Rumsfeld's words, the "grievous and brutal abuse and cruelty at the hands of a few members of the United States armed forces." It's that the Bush administration thought it could torture people and get away with it, which--as I update this memoir a decade later--they essentially have, thanks to their refusal to police themselves and President Barack Obama's "Look Forward, Not Backward" posture toward war crimes, torture, and warrantless wiretapping.

As a thirty-year-old Justice Department attorney and legal ethics advisor, I recommended against interrogating "American Taliban" John Walker Lindh without his lawyer and, later, blew the whistle when evidence of my advice was destroyed and withheld from the court. The Justice Department forced me out of my job, placed me under criminal investigation, got me fired from my next job in the private sector, reported me to the state bars in which I'm licensed as a lawyer, and put me on the "No-Fly" list.

I don't wear the label "whistleblower" comfortably. Why should I get some special moniker for doing what I would have done anyway? The vast majority of civil servants labeled as "whistleblowers" rarely think of themselves in that role. In their minds, they were simply doing their jobs. Increasingly, the line between simply doing what is right and being a whistleblower has become blurred, particularly as society changes its expectations about how government employees should serve the public.

Yet our nation's top leaders pay lip service to the importance of whistleblowers. After his election, President Barack Obama's transition agenda said it was a priority to protect whistleblowers:

Often the best source of information about waste, fraud, and abuse in government is an existing government employee committed to public integrity and willing to speak out. Such acts of courage and patriotism, which can sometimes save lives and often save taxpayer dollars, should be encouraged rather than stifled. We need to empower federal employees as watchdogs of wrongdoing and partners in performance.

But the conscientious employee is not welcome by presidencies of either stripe; in fact, Obama has been worse than Bush--something to keep in mind as the following pages are read.

Our country has a love-hate relationship with whistleblowers. When one thinks of a "whistleblower," images from movies such as *The Insider* or *Erin Brockovich* spring to mind; so do Colleen Rowley of the FBI, Sherron Watkins of Enron, and Cynthia Cooper of WorldCom, who were *TIME Magazine's* "Persons of the Year" in 2002, when whistleblowers enjoyed a rare moment of admiration. One has visions of determined individuals risking it all to make explosive disclosures before Congress or on "60 Minutes." The media glorifies those who risk everything to expose corruption and illegal activity and rightly so; these lionized individuals deserve every ounce of praise they receive. But their happy outcomes are not typical--for every success story, there are a hundred stories of professional martyrdom. Mine is one of them.

Few paths are more treacherous than the one that challenges abuse of power and tries to make a meaningful difference. Whistleblowers often find that they have become the subject of the story. Any personal vulnerability they possess can, and will, be used against them and, through these smears, the whistleblower's charges become a subordinate issue. The Bush administration was expert at this subterfuge.

The conscientious employee is often portrayed as vengeful, unstable, or out for attention or profit. I have not been completely immune from such accusations, but the terms that have been used by "anonymous Justice Department officials" to describe me are far more incendiary: "traitor," "turncoat," and "terrorist sympathizer." Never mind that in debate circles, the lowest form of argumentation is name-calling. For an administration attempting to quell opposition through a campaign of secrecy and silence, neither the Bush White House nor the Ashcroft Justice Department were short of words.

One of the Bush administration's favorite tactics was to paint any sort of dissent or criticism--whether it came from whistleblowers, anti-war protesters, or advocates of the politically unpopular--as disloyal at best and unpatriotic at worst. With a crusader's fervor, Ashcroft warned in stark terms that critics who "scare peace-loving people with phantoms of lost liberty . . . only aid terrorists, for they erode our national unity and diminish our resolve." The reverse actually proved true. The government's fear-mongering among the populace became a frequent and effective tool to erode freedom and divide Americans in the name of national security and in the guise of fighting terrorists. In a ham-handed way, Ashcroft tried to portray the expression and exercise of civil liberties as treasonous. Such ill-considered exhortations have a very real, very chilling effect on the exercise of basic freedom of speech. The idea that you have to trade civil liberties for national security is a false dichotomy that its proponents should be ashamed to advance.

Although my story is different in its details, it shares many of the same elements with the experiences of other whistleblowers: abuse of government power, lack of due process (or any process at all), secrecy, political overkill, and pure retaliation. The Bush administration's vindictive response to its critics went beyond questioning their truthfulness, competence and motives. It sought to destroy their careers and livelihoods. I never could have imagined that President Obama would take it one step further; trying to put them in jail.

In most cases of whistleblowing, the executive branch attacks the person rather than the substance of his or her complaint. It shoots the messenger rather than addressing the message. It silences the critic rather than answering the criticism. It engages in intimidation, character assassination, and career destruction of those who break the code of silence. And it will not let go. As Jerome Doolittle, novelist and former White House speechwriter, characterized the Justice Department's venomous attacks on me: "There is something primordial about Team Bush's reaction to dissent, something reptilian. They're like the gila monster, its jaws holding their poisonous grip even after its head is severed." If the Bush administration was primordial, the Obama administration is downright pathological--and I'm saying this as someone who campaigned for, contributed to, and voted for Obama.

"You are either with us or against us"--Bush's Procrustean mantra during his inexorable march to war in Iraq--applied with even greater force to those who crossed him and, more broadly, to anyone he perceived as an "enemy." Ashcroft shared Bush's us-or-them mentality, and their binary thinking became reflected in the deep division between "Red America" and "Blue America," shorthand for Republicans and Democrats. Bush and Ashcroft also shared a limitless capacity to nurse incandescent grudges. Ashcroft made clear that forgiveness, while perfectly appropriate in religion, had no place at the Justice Department (except for the Department's own officials who broke the law). "The law is not about forgiveness," he said. "It is oftentimes about vengeance, oftentimes about revenge."

One of the most disturbing things about my story is that it's not an isolated incident. As bizarre, unbelievable, and outrageous as it sounds, it is not uncommon and has only worsened under Obama. These vicissitudes have happened to everyone from military officers to Muslims playing

paintball. It has even happened to other Justice Department attorneys, such as Thomas Tamm.

I've decided to tell my story because I vowed that if I could ever speak safely again, I would not remain silent out of some sort of misplaced gratitude that I was no longer being threatened with termination, criminal prosecution, disbarment or blacklisting.

My ordeal should have been able to end at many junctures along the trajectory. I was muzzled for over a year, so I have a lot of pent-up things to say. Also, I feel a moral imperative to say them because if people understand how a person like me who enjoys relative privilege--being white, a US citizen, educated, and comfortably middle-class--can so easily lose her freedom, then maybe people in this country can more easily understand the plight of those in post-9/11 America who are Arab or Muslim, who are immigrants, who are poor, or who don't speak English. Ironically, the role I played for which I suffered my loss of freedoms was downplayed by the very officials who worked so hard to strip them from me. As then-CBS commentator Andrew Cohen noted:

It was clear, although the government never explicitly conceded so, that prosecutors were open to a [plea bargain] deal with Lindh because of the brutal way in which he was treated by his military captors in Afghanistan and the spurious way in which federal law enforcement officials had observed Lindh's constitutional rights. It is no coincidence that the Lindh deal came about on the eve of a scheduled week-long [suppression] hearing that was going to bring into the open the specifics of how Lindh was treated and by whom.

Cohen, too, got a dose of government petulance for his efforts. In a classic case of "the lady doth protest to much," top officials at Justice took time out of their busy schedules to call him after his article ran to try to convince him that he was wrong; specifically, that I had *not* caused the Lindh case to implode. They minimized me and downplayed my role in Lindh's surprise plea bargain.

If I really had nothing to do with the unraveling of the Lindh case (in the words of investigative journalist Jane Mayer, "the prosecution collapsed"), then query why Ashcroft and his functionaries wasted so much time, energy, and taxpayer money "getting back at" me. If I were a crank making wild allegations about the Lindh case, I would have been ignored. But when the assistant attorney general starts throwing his weight around to keep me quiet, you have to wonder what I know.

Whether I played a large role or none at all, the government severely damaged my reputation and my psyche. It's hard to un-ring the bell. One person against an entire agency or government is a David versus Goliath struggle. In terms of raw power, the government holds all the cards. To sic the infinite resources of the United States government on someone is more than a mismatched contest--it is tyranny. It is also a tremendous waste of what we are reminded time and again are precious and limited government resources.

It has been hard for me to write this memoir because I suffer from the imperative of objectivity--the mistaken belief that impartiality will lend credibility to my story. But how can I be neutral when what I have experienced has been so personal and so driven by emotion, surmise, and partisan politics? I therefore confess up front that I have an ax to grind, and nearly \$100,000 in legal bills to show for it.

I'm here to tell you that the emperor has no clothes, and that those who expose the nakedness of government policies and practices should be applauded, not annihilated. Public service does not mean blind obedience to one's boss or subservience to an agency agenda that subverts the law and the public interest. Deciding to blow the whistle can be the single most important decision an individual ever makes. It should not be a question of whether to blow the whistle, but of how loudly to blow it. And in doing so, public servants should not be forced to choose their conscience over their career.

The years immediately following 9/11 were the most difficult of my life, but they were also a cataclysmic growth period that cemented my commitment to civil liberties and human rights, and the whistleblowers who risked their careers to preserve them. I fully realize that there are many stories like mine and that I am just a footnote in a seismic shift toward secrecy that has been growing in our country. However, I promised myself that if I could ever speak freely again, then I would use my voice to try to prevent this sort of political silencing from happening to anyone else.

A lot of commentators saw the John Walker Lindh case as an example of the government going after a minnow with a sledgehammer, and the same can be said for my case writ small. My saga, as did the life-altering journeys of so many others, began on September 11, 2001.