Returning Above the Fold into the Fold:

The Evolving Relationship Between the US Government and the Press

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Abstract

This paper examines the changes in the relationship between government and intelligence agencies and the news media. During the Second World War, the relationship was close and cooperative with press members given access to some of the most sensitive information concerning military developments in return for maintaining security with the promise of later publication. Beginning in the Vietnam era to today, the relationship has devolved into one characterized by adversarial interactions and mass disclosures of sensitive information. Occasionally, individual agencies have pursued active engagement with the media to mend the relationship, but agencies must establish strategic efforts for outreach and education to achieve success in developing a less adversarial coexistence with the Fourth Estate.

A watershed moment occurred when *The New York Times* (NYT) published the Pentagon Papers in 1971, a classified history of the United States' gradual entanglement into the Vietnam War. The Supreme Court overturned President Richard Nixon's administration's attempt to block publication of the papers in a 6-3 decision.[1] A *NYT* reporter stated the lesson he learned was to never again trust any source inside of the government.[2] By the end of the decade, the patriotic press that had previously aided government efforts to maintain secrecy passed into a forgotten era, replaced with an adversarial culture focused on demystifying and deconstructing the United States government's conduct of intelligence and foreign affairs.[3] The government, in turn, also shifted to the adversarial mindset when dealing with the media.

By 2005, this divide had grown to the point that the editor of the *NYT*, after leaving a meeting with President George W. Bush and the principals of the National Security Council (NSC) in which they discussed some security concerns relating to the harm that could result from revealing a National Security Agency (NSA) program designed to collect al-Qaeda communications. The reporter was told by the Bush administration that he would have blood on his hands if he published the revelations. The reporter responded, "Nothing I heard in there changed my mind,"[4] and proceeded to run the story. Since that period, indiscriminate mass leaks of classified information

1. Gary Ross. *Who Watches the Watchmen? The Conflict Between National Security and Freedom of the Press*. (Washington, DC: NI Press, 2011), 31-32.

2. Gabriel Schoenfeld, *Necessary Secrets: National Security, the Media, and the Rule of Law*, (New York: W. W. Norton & Company, 2010), 193.

3. Schoenfeld, 194-95.

4. Schoenfeld, 17-18.

have increased with the help of the traditional media. For example, the Edward Snowden leaks of highly classified information stolen from the NSA was published in *The Guardian*.[5] Many of the stories were often published simultaneously or in concert with anti-secrecy groups such as WikiLeaks.[6]

While the nation is unlikely to return to an era when the executive news editor of the *Associated Press* also served as the head of the government's Office of Censorship,[7] the means are still available for agency outreach to media organizations to publicize respective agendas. These outreach efforts have been used at one time or another, from the 1940s until at least 2006, but more often as one-off efforts without a clear strategy complete with guidance and objectives. A systematic program of media outreach would serve to educate the media on intelligence operations, allowing a better understanding of the kinds of information that constitute danger to the nation when the next big story about a big secret is inevitably written. The tension between national security and the public's need to know is not a problem with a solution, but it can be better understood and more actively managed.[8]

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[5] Ewen MacAskill and Gabriel Dance, "NSA Files: Decoded," *The Guardian,* November 1, 2013, https://www.theguardian.com/world/interactive/2013/nov/01/snowden-nsa-files-surveillance-revelations-decoded#section/1.

[6] Jenny Kleeman, "Wikileaks - whistleblowing made easy," *The Guardian,* September 17, 2007, https://www.theguardian.com/media/2007/sep/17/digitalmedia.humanrights.

[7] Schoenfeld, *Necessary Secrets,*146.

[8] Ross, *Who Watches the Watchmen?,* iv.

Disclosure of sensitive military and intelligence matters in public media is not a new problem. For example, the details of Napoleon's 1798 expedition to capture British holdings in Egypt and block the flow of commerce from India were published in French newspapers that were reviewed by British officials in London within a week of publication.[9] During the American Civil War, detailed accounts of Union Army troop movements were published in newspapers, including casualty reports that listed positions of brigades and regiments, reinforcement actions, and the strength of artillery units.[10] The Confederate leadership paid close attention to the contents of Northern newspapers and used the sensitive information they published as supplemental intelligence.[11] These incidents were fairly fresh in memory when President Woodrow Wilson's administration constructed the Espionage Act of 1917. A system of censorship and prior restraints, which President Wilson favored, was removed under strong pressure from the press and a budding civil liberties movement.[12] The Espionage Act did, however, criminalize the disclosure of information relating to the national defense to any person or any foreign government not cleared to receive it.[13] In practice, the Espionage Act of 1917 has been difficult to invoke in the matter of disclosures to the media due to First Amendment considerations. From 1917-2011 only four criminal

[9] John Keegan, *Intelligence in War: Knowledge of the Enemy from Napoleon to al-Qaeda,* (New York: Alfred A. Knopf, 2003), 45.

[10] Schoenfeld, *Necessary Secrets,* 97.

[11] Schoenfeld, 97.

[12] Schoenfeld, 85-86.

[13] Ross, *Who Watches the Watchmen?*, 16.

indictments under the Espionage Act were levied specifically for the unauthorized disclosure of classified information to the media.[14]

The heyday of the "patriotic media" willing to cooperate together with government authorities was the World War II (WWII) era. The first War Powers Act, not to be confused with the more controversial 1973 legislation bearing the same name, was passed days after the Japanese attack on Pearl Harbor in 1941 and contained a provision allowing government censorship of the press.[15] Immediately after passage the President Franklin D. Roosevelt's administration created the Office of Censorship, which was led by two journalists: Byron Price, the executive news editor for the AP and Nathaniel Howard, editor of the *Cleveland News.*[16] Adherence to the censorship codes was on a voluntary basis, however, and newspaper editors and radio broadcasters were issued guidelines containing explicit details about the matters they could not publish or discuss. While the Office of Censorship that had no authority to mete out punishments, the threat of public shame and subsequent referral to the Department of Justice (DOJ) for potential prosecution under the Espionage Act served as punishment enough.[17] The censorship efforts throughout the war were largely successful due to the media seeing themselves as trusted agents of the war effort.[18]

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[14] Ross, *Who Watches the Watchmen?*, 17.

[15] Schoenfeld, *Necessary Secrets,* 145.

[16] Schoenfeld, 145

[17] Schoenfeld, 146-47.

[18] Schoenfeld, 147.

The close relationship between the government and the news media in WWII was not limited merely to cooperation on censorship. Near the end of the war, a reporter was brought in to chronicle the government's most deeply held secret: the Manhattan Project and its atomic weapons.[19] William Laurence, a science reporter for the NYT, was placed on the government payroll and taken to the secret laboratories working on the project. Laurence was able to witness the first atomic bomb test detonation at the Trinity Test Site near Alamogordo, New Mexico. Laurence also flew onboard the observation aircraft during the atomic bombing of Nagasaki, Japan, and wrote President Harry Truman's statement about the bombing: "an atomic bomb, harnessing…the basic powers of the universe. The force from which the sun draws its power has been loosed against those who brought war to the Far East."[20] These events and Laurence's experiences can be viewed as the zenith of the cooperative relationship between the United States government and the American news media.

Disclosures of sensitive and classified information in the late 1960s and early 1970s dynamited the foundations of the relationship. The Pentagon Papers leak in 1971 and disclosure of the Central Intelligence Agency (CIA) "Family Jewels" report in 1974 severely undermined public confidence in the nation's intelligence apparatus, leading to multiple Congressional committees and hearings and further sharpening the public's appetite for knowing what their government was doing.[21] In fact, the myriad disclosures of illegal activity resulting from the Church Committee investigations cut across the

[19] Schoenfeld, *Necessary Secrets,* 149-52.

[20] Schoenfeld, 152.

[21] Ross, *Who Watches the Watchmen?,* 35-37.

entire Intelligence Community (IC), from the CIA's mail-opening operations and assassination plans to the US military's domestic surveillance of dissident groups, increasing the public interest and debate.[22] The passage of multiple intelligence oversight laws over the next few years, including the Foreign Intelligence Surveillance Act (FISA) in 1978 and the Intelligence Oversight Act (IOA) in 1980, served to restore enough public confidence to ease those fears.[23] Occasional disclosures and scandals would come to public attention, but the fever pitch of media disclosures was reduced through most of the next two decades.

The leak cycle began anew following the terrorist attacks on September 11th, 2001(9/11). This time around intelligence agencies attempted strategic engagement with certain media figures. Rather than pursuing the traditional reactive posture of single engagement with senior editors when agencies learned of an impending publication, the IC turned to proactive group engagements.[24] From 2002 to 2004, the NSA hosted a number of seminars aimed at educating journalists about the agency's mission and sensitivities, and also included analysis of previous disclosures to illustrate how sensitive information could be removed from publication without altering the impact of the article.[25] These seminars were supported at the highest levels of the agency with then Director, General Michael Hayden, participating in many of the engagements

[22] Loch Johnson, "Establishment of Modern Intelligence Accountability," in *US National Security, Intelligence and Democracy: From the Church Committee to the War on Terror*, edited by Russell Miller (New York: Routledge, 2008), 39.

[23] Johnson, 45.

[24] Ross, *Who Watches the Watchmen?,* 141-143.

[25] Ross, 141-43.

before they were phased out after personnel changes in the agency's public affairs office in 2004[26] Another cooperative effort during this time was the "Dialogue Group," an engagement for discussions of "ways to protect the most sensitive national security secrets without abridging the public's right to know."[27] This forum was attended by government officials from multiple departments such as the DOJ, NSC, Department of Defense (DOD, and various members of the IC. Media members consisted of senior staff of *The Washington Post* and *Los Angeles Times*.[28] These sessions allowed journalists and officials to discuss concerns from both sides in an informal and less adversarial environment but the Dialogue Group sessions stopped taking place around 2006.[29] These seminars and informal discussion groups provide a model for the foundation of positive formal engagement programs between the US government and the media in the future.

As confidence building measures between the US government and journalists broke down, the act of unauthorized disclosure was once again brought above the fold by the emergence of WikiLeaks, an organization founded in 2007 for the express purpose of publishing classified information. In 2010, WikiLeaks published 700,000 documents leaked by US Army Private Chelsea Manning.[30] In 2013, an NSA

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[26] Ross, *Who Watches the Watchmen?,* 141-143.

[27] Ross, 142.

[28] Ross, 142.

[29] Ross, 142.

[30] Mark Lowenthal, *Intelligence: From Secrets to Policy.* 6th ed. (Thousand Oaks, CA: CQ Press, 2015), 34.

information technology contractor, Edward Snowden, disclosed highly sensitive collection programs[31] before fleeing the country, eventually gaining asylum in Russia. While stopping individuals determined to disclose secrets is difficult in the digital age, especially with the assistance of aggressive anti-secrecy organizations, counter efforts can be assessed and engaged through the application of rational choice theory and modeling.[32]

The journalistic rational choice model, as described by counterintelligence agent Gary Ross, attempts to analyze a journalist's propensity to leak classified information by using a cost-benefit analysis. Costs are measured in several categories of harm and benefits, and are split among categories of motivations and justifications (Figure 1).[33]

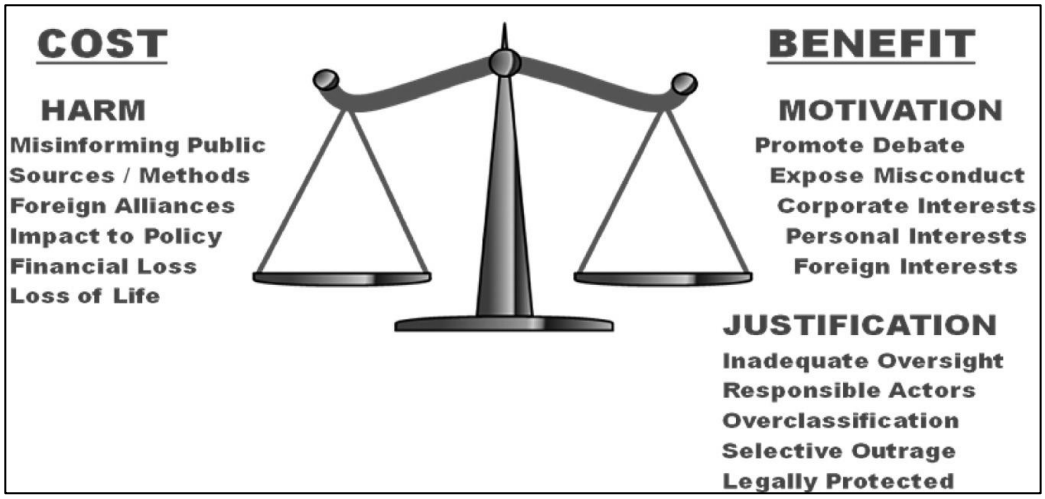

Figure 1. Psychology Scale – Unauthorized Disclosures
Source: Gary Ross, *Who Watches the Watchmen?*

As illustrated above, several factors are at work in the journalistic consideration of publishing classified information. From the IC perspective, journalistic motivations of

[31] Lowenthal*, Intelligence: From Secrets to Policy,* 34*.*

[32] Gary Ross, *Who Watches the Watchmen?,* 133.

[33] Ross*,* 123.

promoting debate and exposing misconduct, justifications of inadequate oversight, responsible actors, over-classification, and the stated harm factors in Figure 1, are all considerations in which a collaborative advancement of interests and concerns can be advanced through a program of media engagement.

The IC is an instrument of a democratic government, answerable to the public at large. The IC has a vested interest in promoting informed debate and exposing misconduct within the ranks of the profession. In a democratic society, the instrument of informing the public is generally the press. As Justice Stewart Potter wrote in his opinion regarding the Pentagon Papers:

> The only effective restraint upon executive policy and power in the areas of national defense and international affairs may lie in an enlightened citizenry—in an informed and critical opinion which alone can here protect the values of democratic government…a press that is alert, aware, and free most vitally serves the basic purpose of the First Amendment. For without and informed and free press there cannot be an enlightened people.[34]

Providing clear and correct information to the public and discovering wrongdoing are areas in which the press and the IC have a mutually-vested interest and may find an avenue for collaboration. Any effort working with multiple media organizations also has the potential to reduce disclosures targeted to satisfy the non-altruistic motivations of advancing personal and even corporate interests.[35] Information provided to multiple outlets at the same time from the IC has the potential to reduce the pressure to rush

[34] Schoenfeld, *Necessary Secrets,* 269.

[35] Ross, *Who Watches the Watchmen?* 39-47.

publication as multiple organizations are working from the same basic information points and will be able to develop further details and confirm what they are being told.

Another area ripe for cooperative efforts is addressing the justifications journalists use to when deciding to disclose classified information in their publications. Government over-classification and the media's ability to be a responsible actor when disclosing secrets are both areas where the IC has a vested interest and can address in media organizations through education efforts. Where over-classification is concerned, many media reports focus on annual Information Security Oversight Office (ISOO) reports without examining the context of those reports. For example, Ross cites the 2006 ISOO annual report as indicating over 20 million classification decisions were made that year.[36] At face value, that is a large number of decisions made relating to classification, especially without full context of the report. Rather, the report reads that out of 20,556,445 total classification decisions made in 2006, all but 231,995 were derivative classification decisions, meaning previously classified information was simply incorporated into different products.[37] Furthermore, the report states:

> At best, the derivative numbers provide a rough indicator of how prolific the agencies are in producing information and how much work will need to be done by declassification review teams 20 to 25 years from now. It is, therefore, important to recognize that original classification is a far more significant statistic on which to focus than derivative.[38]

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[36] Ross, *Who Watches the Watchmen?*, 49.

[37] Information Security Oversight Office, "2006 Report to the President," *National Archives,* May 31, 2007, https://www.archives.gov/files/isoo/reports/2006-annual-report.pdf (accessed July 28, 2017), 3.

[38] Information Security Oversight Office, 21.

This example illustrates an opportunity for educational outreach concerning the issue and providing context. Education also takes premier importance if journalists are to be truly capable of balancing their responsibility to inform the public while protecting the national security interests, as media advocates state they are.[39] Willingness to discuss disclosures with responsible officials prior to publication already exists in journalism.[40] The IC has the ability to allow journalists to approach these conversations from a more educated perspective through dialogue. The formal and informal outreach efforts in the late 1990s and early 2000s prove the usefulness of dialogue and education sessions to both the government and the media and provide a model for future cooperation.

The highest potential impact for dialogue efforts is mitigation of harm that can be caused when unauthorized disclosure of classified information occurs. The IC is most concerned with damage to sources and methods and effects on international alliances, but is also concerned with damage in each of the other areas Ross mentions: loss of life, impacts on foreign policy, financial costs, and inaccurate information which distorts public knowledge of the IC.[41]

Sources and methods for gathering and analyzing intelligence are some of the most closely guarded secrets of the IC.[42] Previous disclosures concerning sources and methods have often set back collection efforts for years, destroyed

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[39] Ross, *Who Watches the Watchmen?,* 61.

[40] Dean Keller and Bill Baquet, "When Do We Publish a Secret?" *New York Times*, July 1, 2006, http://www.nytimes.com/2006/07/01/opinion/01keller.html (accessed July 28, 2017).

[41] Ross, 82.

[42] Lowenthal, *Intelligence: From Secrets to Policy,* 96.

intelligence networks, or allowed adversaries to develop countermeasures against disclosed collection capabilities. A major setback occurred in 1958 after disclosure of the United States' ability to monitor Soviet missile launch countdowns.[43] In response, the Soviets reduced their countdown length by half, which eliminated the American ability to deploy aircraft to impact zones to gather information.[44] The military was eventually able to recover some of the lost capability, but the effort required millions of dollars to rebuild and the US government had to increase manpower in order to staff an airfield in Alaska that was closer to the normal impact area.[45]

In more recent times, media disclosed the seemingly innocuous fact that the government had obtained an al-Qaeda video of Osama bin Laden days prior to its public release by the terrorist network.[46] This destroyed years of painstaking work to penetrate al-Qaeda's internet communications network. Al-Qaeda's internal security division ordered use of the communications network discontinued.[47] These incidents illustrate the danger to collection capabilities resulting from unauthorized disclosures of seemingly harmless information.

International alliances and liaison relationships are also critical aspects of the IC that are damaged by unauthorized disclosures of classified information.

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[43] Ross, *Who Watches the Watchmen?,* 83.

[44] Ross, 83

[45] Ross, 119.

[46] Ross, 87.

[47] Ross, 87.

Over the years, multiple senior intelligence officials have bemoaned the damage many leaks have caused to various international intelligence relationships. Director of Central Intelligence (DCI) Porter Goss stated in 2006 that some international intelligence services were reconsidering their participation in antiterrorism efforts due to unauthorized disclosures of classified information.[48] Given the interconnected nature of modern intelligence services, loss of information from exchange agreements can greatly hinder collection and analysis efforts.

The IC and the media have a number of shared concerns related to unauthorized disclosures of classified information even if each side approaches them from a different perspective. Common ground exists for discussion in many of these areas and, just like intelligence personnel, journalists are always hungry for knowledge. This desire for knowledge, if properly harnessed, could result in a new age of understanding - if not collaboration - between the IC and the press.

The IC should institute formal programs for interaction with journalist organizations that go beyond traditional public affairs programs and ad-hoc one-on-one discussions between higher government officials and senior media figures. This is not to say that senior officials should not be part of the programs; in fact, their participation should be an integral part of any engagement program. Successful templates for these initiatives already exist in the NSA's media seminars and the higher level Dialogue Group. I propose at least two methods by which a better IC and news media relationships can be built and maintained.

[48] Ross, *Who Watches the Watchmen?,* 112-113.

First, each IC agency should establish a forum to provide journalists with unclassified information about the agency mission and specific sensitivities concerning those missions. A portion of this engagement should include specific discussion of past publications which affected the agency's ability to conduct its mission, and demonstrate ways in which more selective disclosure could have effectively advanced the media outlet's purpose for publishing while still protecting the agency's mission capability. Additionally, senior members of the agency should also make themselves available during the sessions to aid in the discussions and provide additional credibility to the program. A variety of national and local media personnel should be invited to attend these sessions, particularly in agencies located outside the Washington, DC, area to expand the number and types of organizations to include smaller organizations specializing in niche reporting. This formal education effort targeted to the levels of media closest to reporting should also include front-line agency personnel to facilitate dialogue and interface at similar organizational levels.

Second, a more informal group like the previous Dialogue Group should become institutionalized for regular senior level discussions in a group setting. From the government side, attendees should be from the deputy assistant secretary level or above from every executive department with responsibility over a portion of the IC. For military agencies, participants should be drawn from general and flag officers. This level of participation provides a large pool of senior officials with a broad spectrum of expertise. On the journalist side, high level attendees such as Washington bureau chiefs and senior editors offer a similar

body of expertise and journalistic authority. Formalizing this new Dialogue Group would allow relationships to grow between these two groups in a city that is built on trust and relationships.

Journalists and government intelligence officials were once trusted and reliable collaborators for one another. Reporters were once granted access to the nation's most vital secrets, and senior officials were taken at their word when they asked for certain things to remain unpublished to avoid damage. Over time, however, an environment of mistrust has developed, yet this is not an insurmountable obstacle. Formal programs for exchange and education, properly resourced, will not eliminate the gap but will serve to reduce the gap in perspectives between the media and government) as trust and relationships are built. To better serve the public's need to know, while at the same time increasing the protection of sensitive information, the IC should work considerately and seriously to bring those who work above the fold back into the fold.

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