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Secrets about Secrets: The Backstage Conversations between Press and Government

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SECRETS ABOUT SECRETS

The Backstage Conversations Between Press and Government

By Allan M. Siegal*

By now the roles are as well rehearsed as parts in a long-running play: reporters and editors who have unveiled government secrets, proclaiming a watchdog function that they trace to the Founders and the Constitution; intelligence chiefs who accuse them of undermining national security; presidents and cabinet officers who brand their actions treasonable or something close to it.

Since the terror attacks of September 11, 2001, and the growth of the Iraq war, the narrative has followed the familiar lines, but in 2006 tension reached a peak. Pulitzer Prizes were awarded to the *New York Times* for its report of warrantless telephone eavesdropping by the National Security Agency and to the *Washington Post* for unveiling a network of detention camps operated by the Central Intelligence Agency on European soil. And the *Times* overrode a presidential appeal to suppress a story about another antiterrorist program — the Treasury Department’s secret monitoring of foreign currency transactions through an international clearinghouse called SWIFT.¹

“The disclosure of this program is disgraceful,” the president said, when it was clear that his request, in an Oval Office meeting with the editors, had been declined.² Vice President Cheney went further: “Some in the press, particularly the *New York Times*, have made the job of defending against further terrorist attacks more difficult by insisting on publishing detailed information about vital national security programs.”³ The

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House of Representatives, then Republican-controlled, voted 227 to 183 to condemn the publication of classified information.⁴ A writer for *Commentary* magazine suggested that the *Times* might be prosecuted under the Espionage Act.⁵ One talk show host suggested the gas chamber as a fitting penalty for the editor of the *Times*.⁶

While the dialogue threw off heat, it shed little light on the actual state of journalistic decision-making on national security secrets, and of contacts between press and government. In interview after interview for this paper, writers and editors for major publications and broadcast networks depicted a process of consultation with government, and of voluntary self-restraint, that is continual and intense.

This paper will examine vetting arrangements described by journalists and capsule case histories of both agreement and refusal to withhold information. The examples, nearly all from the post-9/11 period, demonstrate that consultation is indeed commonplace. But they also illustrate premises on which government and media talk past each other.

While mainstream journalists almost uniformly advocate self-restraint on sensitive intelligence and military secrets, press and government are clearly unable to agree on definitions of “sensitive.” An unofficial forum of news executives and intelligence officials has been trying, in intermittent meetings since 2001, with scant success, to arrive at criteria and procedures for the voluntary vetting of sensitive stories. In 2006 a meeting of that forum crackled with such anger over the press’s CIA and NSA disclosures, and over officials’ charges of bad faith, that the organizers departed uncertain of whether the group would ever reconvene — “a crevice point,” one of them calls the juncture.⁷ Another says press-government contacts have become “broken,

dysfunctional.”⁸ The meeting adopted no recommendations and did not even agree to issue a summary, already drafted, for its session a year earlier.

Journalists contend that the post-9/11 atmosphere in Washington, coupled with the Bush administration’s own policies, has multiplied the amount of secrecy imposed by the government and thus incited aggressive news coverage. Lucy A. Dalglish, executive director of the Reporters Committee for Freedom of the Press, speaks of new barriers erected by the Homeland Security apparatus: “They keep coming up with new categories of secret information, in all agencies” — information, she says, that is “secret but not classified.” Dalglish’s organization has published six annual editions of “Homefront Confidential,” a catalog of information restrictions arising from the USA Patriot Act and related regulations; the 2005 edition runs to 88 pages.⁹

Walter Pincus, who has covered national security for the *Washington Post* for 25 years, says the new and complicating element introduced by the current administration is “nonclassified secrets,” adding: “It’s loony. You could lock the whole country up. Bus schedules and train schedules could be treated as secrets.”¹⁰ Bill Kovach, founding chairman of the Committee of Concerned Journalists, complains that “every sheriff in the country” now claims the ability to withhold information from the press, heightening the pressures that lead to media-government confrontations.¹¹

The central disagreements between media and government concern the proper definition of sensitive secrets in a world riddled with terrorism, and the right of journalists to second-guess official decisions. While most major news organizations say they believe in protecting American lives, and intelligence sources and methods,

government officials take a more expansive view of what should be secret, encompassing negotiating positions and diplomatic relationships.

The issue emerges starkly in a comparison of two statements — an Op-Ed article published jointly by the *New York Times* and the *Los Angeles Times* about the currency-monitoring story, and a comment by a top CIA official a few months later. The Op-Ed article is by Bill Keller and Dean Baquet, executive editors of the two newspapers,¹² which had printed stories on the currency-tracking program simultaneously.¹³

Responding to the White House denunciation, among others, they said:

... No article on a classified program gets published until the responsible officials have been given a fair opportunity to comment. And if they want to argue that publication represents a danger to national security, we put things on hold and give them a respectful hearing. Often, we agree to participate in off-the-record conversations with officials, so they can make their case without fear of spilling more secrets onto our front pages. ...

When we come down in favor of publishing, of course, everyone hears about it. Few people are aware when we decide to hold an article. But each of us, in the past few years, has had the experience of withholding or delaying articles when the administration convinced us that the risk of publication outweighed the benefits. Probably the most discussed instance was the *New York Times*'s decision to hold its article on telephone eavesdropping for more than a year, until editors felt that further reporting had whittled away the administration's case for secrecy.

But there are other examples. The *New York Times* has held articles that, if published, might have jeopardized efforts to protect vulnerable stockpiles of nuclear material, and articles about highly sensitive counterterrorism initiatives that are still in operation. In April, the *Los Angeles Times* withheld information about American espionage and surveillance activities in Afghanistan discovered on computer drives purchased by reporters in an Afghan bazaar.

It is not always a matter of publishing an article or killing it. Sometimes we deal with the security concerns by editing out gratuitous detail that lends little to public understanding but might be useful to the targets of surveillance. The *Washington Post*, at the administration's request, agreed not to name the specific countries that had secret Central Intelligence Agency prisons, deeming that information not essential for American

readers. The *New York Times*, in its article on National Security Agency eavesdropping, left out some technical details.

Even the banking articles, which the president and vice president have condemned, did not dwell on the operational or technical aspects of the program, but on its sweep, the questions about its legal basis and the issues of oversight.¹⁴

Perhaps the most vehement public response by an intelligence official came from Robert L. Deitz, senior councilor to the director of the CIA:

When pressed, the editor of a large metropolitan daily newspaper explained in writing that he goes through a balancing test, balancing potential risk and reader interest. Now, I sort of thought that national elections chose the balancer, and I didn't really grasp the training that senior editors of major metropolitan daily newspapers had which would give them the job skills in order to do an intelligent balancing test.

If you ask senior members of the press about this, they'll say a couple of things. My particular favorite is, "Well, of course, we would never print troop movements." That's very quaint. As my very young son says, "That's so six-seconds-ago." Publishing troop movements mattered in D-Day. General Hayden [the CIA director] pointed out that in the traditional Soviet-U.S. model of conflict, the Soviets were easy to find and hard to kill; by contrast Al Qaeda is easy to kill but hard to find. In that particular model, I don't want to hear about the press protecting troop movements. The whole world can know that a U.S. flotilla is floating across the Atlantic and nobody cares. What we do care about is that when NSA has spent a gazillion dollars tapping a system and the newspapers blithely explain and publish how it's all done. That we care about, because that is a road map for terrorists.

One is always put in the category of troglodyte if one suggests that the little dears of the Fourth Estate should curb their enthusiasms for publishing secrets. I do not want to be viewed as a troglodyte. What I would suggest is that we need serious reviews by the editors of the newspapers about what they publish ... giving more credit to people in these positions of authority, people such as the heads of NSA, CIA, DIA, and so forth — that these aren't a bunch of corrupt pols who are trying to keep secrets simply to cover their careers, that these are well-intended people who are deeply concerned about keeping the American people safe.¹⁵

THE MEDIA AND THEIR POLICIES

Jeffrey H. Smith, a lawyer with Arnold & Porter in Washington, was general counsel of the CIA in the mid-1990s. He now represents journalists and has been active in fostering press-government dialogue as a means of forestalling confrontations and punitive legislation. “Many people in government don’t understand how much restraint the press exercises,” he says. “Some think it’s a game of who can tell the most secrets without regard for the consequences. People who deal with the press — especially some of the more senior people — don’t have that view. But some people with enormous influence do.”

In one case Smith recalls, a government agency refused even to talk with a newspaper client of his, for fear of confirming secret information. The paper’s position was, “We want some guidance. We don’t want to put people’s lives at risk.”

Asked whether that attitude was widespread among journalists, Smith replied: “Yes, absolutely. All the big media, in my view.”¹⁶

Seymour M. Hersh has been reporting on military and intelligence secrets since 1969, when he was the first to expose the massacre of Vietnamese civilians by American soldiers at My Lai. Tough and famously brusque with sources, Hersh — now writing for the *New Yorker* — freely acknowledges that he engages in self-censorship. “It’s clearly understood,” Hersh says, “I’m not going to write a lot of what we have.”

“I have relationships,” Hersh says of his sources. “I want them to feel free to tell me things. I show drafts of sensitive paragraphs — operational stuff. It’s not necessarily

patriotic: their job is to keep secrets, and mine is to find them out. But it's a common-sense thing. I don't want to put anybody in danger."¹⁷

Hersh says he learned the lesson early — when Admiral Bobby Ray Inman was director of the National Security Agency and Hersh wrote for the *New York Times*. “Way in the bottom of a story,” Hersh recalls, he mentioned an American communications intercept in Saudi Arabia. “Inman called and said, ‘This was stupid,’ ” Hersh recalls. “So we made a deal: ‘Call me on anything.’ ” For years, Hersh says, he checked his most sensitive reporting with Inman and with comparably senior officials of the intelligence agencies and the National Security Council whom he is unwilling to name for publication.

But in the current administration, Hersh says, guidance is hard to come by. He blames the sensitivities arising from the post-9/11 mood, an unpopular war, minute-by-minute Internet reporting and 24-hour television newscasts, as well as what he sees as thin skin in the White House: “They don't trust anybody who doesn't agree with them. People who have been my friends for 20 years join this administration and stop returning phone calls. When my writing became openly critical, I was off everybody's list. So I go to extraordinary lengths to vet stories with staff officers outside the chain of command. I drive around leaving things in people's mailboxes.”

More fully than most other major news organizations, the *Washington Post* has openly articulated its practices for reporting classified information. Before her death in 2001, Katharine Graham, chairwoman and former publisher of the paper, delivered at least three speeches on the subject, telling CIA executives in 1988:

... [B]efore publication, the *Post*'s policy is *always* to go to the government officials responsible for the particular issue, for their official views and comments. ... The *Post*'s publisher, Don Graham, is informed when stories with national security implications are in the works, and Don participates in the decision-making process, as do I on occasion. ...

Instead of rushing to print everything we discover, an opposite tendency more often is at work: the tendency is to proceed cautiously, deliberately and, when there is substantial doubt about the potential impact of our information, to delay publishing or not publish at all.¹⁸

The *Post*'s executive editor, Leonard Downie Jr., dismisses the popular notion of rushing into print with a “leak.” Almost always, he says, intelligence stories result from a gradual fitting of reporters’ discoveries and deductions into a mosaic, during which “you’re bound to have the government know what you’re doing” and supply guidance at many stages. Initially the contacts may result in the reporter’s omission of sensitive details, or in an editor’s decision to drop them — “just one more editing decision, not an unusual editing decision.”

In a handful of times during his 16 years as editor, Downie says, the government’s appeals for restraint have escalated, with higher officials approaching him. That has happened under the Bush presidency more often than Downie can remember in other administrations, he says. He adds that on his watch, the process has never resulted in suppressing an entire story.¹⁹ (Notably, in November 2005, Dana Priest’s story on the CIA’s secret detention bases abroad was printed without the names of the host countries — and the omission was explained in the story.)

Barton Gellman, diplomatic correspondent of the *Post*, offered a reporter’s-eye view of the vetting process in a pair of lectures at Princeton University a few months after the invasion of Iraq:

The *Washington Post* and its peers routinely consult responsible agencies before publishing anything classified. My most frequent interlocutor says his job in these conversations is to “shed light and shed darkness.” Sometimes he corrects a fact or supplies a point of context. Sometimes he blusters. Sometimes he chooses not to engage. And sometimes he asks on behalf of his agency that the *Post* suppress publication of something he acknowledges to be true. We often ask for explanation of the stakes. And it happens from time to time that the government tells me something very sensitive, which I did not know, to explain why I should not publish something I did know.

Usually we find accommodation at the working level. Now and then it goes higher. In December [2002], on a particularly sensitive point, we did not reach a meeting of minds until a conference call — at her request — with Condoleezza Rice. Twice that I know of, a president has called the publisher.²⁰

While disclaiming any authority to speak for the *Post*, Gellman added: “We seldom if ever agree to withhold information that exposes a government lie, even a well-intended one. We give no special weight to preventing diplomatic embarrassment. We acknowledge no right of privacy for individuals acting in their capacity as government officers, and so their positions in internal debate are fair game.”

John L. Walcott of McClatchy Newspapers heads one of Washington’s most enterprising news bureaus. (It was part of Knight Ridder, before that newspaper chain was dismantled.) Walcott, whose staff is credited with some of the most hardheaded reporting of the prelude to the Iraq War, said that “as a matter of course” the bureau consults intelligence officials on disclosures of classified information. The omission of sensitive material on intelligence sources, methods and technology is “a no-brainer,” Walcott says, and beyond that, “we try to examine the merits of printing X or Y or Z.”²¹

At the outset of the war in Afghanistan, Walcott says, his bureau knew a great deal that it did not publish about American paramilitary forays. “Nothing was to be gained from saying where the Americans were,” he says.

“I do try to talk to people I know and trust without giving over a veto power,” Walcott adds. “Ultimately the decisions have to reside with us: that is a fundamental principle.” Fairly often, Walcott adds, he gets high-level appeals from the government to scale back sensitive information. Sometimes the conversations turn ugly, Walcott says: “If you print that, you’ll be killing our troops.” But he adds, “I welcome them, whatever turn they take.”

Like Hersh, Walcott says that the current administration and the current climate have made it hard to seek guidance. “Where it used to be possible to ring up a high official and have a conversation,” Walcott says, “it’s much more difficult now and sometimes impossible. We now have to reach deeper into the bureaucracy, and talk to multiple people. And opinions are sharply divided now about almost everything.”

Doyle McManus, Washington bureau chief of the *Los Angeles Times*, says his paper generally agrees to omit two broad categories of information:

- “Information that puts Americans or their allies at imminent risk.” Some troop movements are never reported, McManus says. And if there is a compelling public interest in such a development, “we ask, ‘How much time do you need to get these people out of harm’s way?’”
- Colorful “tradecraft” details that enrich a narrative but potentially help an enemy piece together important secrets — “intel porn,” McManus has heard intelligence

people call such tidbits: code words, operation names, the street address of a safe house, the name and description of a restaurant where operatives meet. “It is real easy when it’s not a sexy detail essential to the story,” McManus says. “But the intelligence people push to cut every detail out — ‘Holy shit, if you put *that* in the paper. ...’”²²

Christopher E. Isham, chief of investigative projects for ABC News, has overseen coverage of terrorist attacks before and since 9/11 as well as homeland security, espionage and nuclear proliferation.

In September 2006, his unit produced Brian Ross’s account of the CIA’s interrogation techniques — six methods, progressively harsher, that were called torture by critics but credited by the government with breaking the resistance of 14 top leaders of Al Qaeda. In 2002 the ABC unit smuggled 15 pounds of depleted uranium into the United States from Turkey, to demonstrate gaps in the Homeland Security system. “That drove them nuts, and they investigated us,” Isham recalls. But a year later, to show how flimsy the Customs improvements had been, ABC repeated the demonstration, this time smuggling uranium from Indonesia.

“When we work on a story,” Isham says, “we report till we’re comfortable enough to run it by an official U.S. agency — for example the CIA’s public affairs office. We ask them to respond, one way or another. We are upfront with them. They usually come back with, ‘That’s the dumbest thing we’ve ever heard,’ or ‘That will create serious problems for us.’”

“We ask for specifics: we can’t just take their word. We want to know what kind of problems. To delay or kill a story, we have to be convinced that it poses serious problems for national security, that it could get people killed or compromise intelligence operations or military operations.”

As for a claim of diplomatic problems, Isham added, “Well, that is a little soft.” If the government had said ABC’s report about CIA interrogation techniques “did not make us look good,” he added, “I’d have said no. There is a need for the public to know this.”

About the same time as the *Washington Post*, ABC was reporting on the CIA’s secret detention bases overseas. Like the *Post*, ABC was asked not to name specific countries in which operations were continuing, and it complied. “If the operations had been illegal under U.S. law, it would have been a different issue,” Isham says.

“Some stories are too hot,” Isham added, and officials refuse to supply guidance. But he said that under General Michael V. Hayden, the current CIA director, cooperation is generally professional. “A previous guy would outright lie,” Isham said. (He would not name that official.)²³

David Martin, who has reported for CBS News since 1983 and is now its national security correspondent, still regrets a couple of early missteps.

“Everybody makes mistakes,” he says. “On a Friday in October 1983, I reported that the U.S. was sending a carrier and a Marine amphibious group to Grenada.” He thought it was just a mission to rescue American students on the Caribbean island. “I ran it by Pentagon officials,” he says, “and nobody tried to warn me off.” Later he was told that his story had incited Fidel Castro to send troops to help Grenada.

In that same month, Martin says, he reported that communications intelligence linked Iran to the bombing of the U.S. Marine barracks in Beirut, Lebanon. “It was probably a mistake,” Martin says. “The Iranians went to using couriers.” Martin was called into the office of the NSA director, Lieutenant General Lincoln D. Faurer, who told him that the CIA director, William J. Casey, had lined up all the necessary government approvals to prosecute him. But Faurer said the NSA opposed prosecution because it would draw too much attention to the intelligence, Martin recalls.

“I learned caution early on,” he adds. “Today I would call somebody high enough to have the information and a meaningful opinion — somebody I had dealt with and could trust not to claim ‘national security’ automatically.”

Martin says his sources are hesitant to play that card — “You’ll get somebody killed” — and when they do, he takes notice. “I sure don’t know any reporter who wants to be responsible for getting a soldier killed,” Martin says.

Sometimes, Martin says, the issue is not whether to use a story but when. CBS knew about the first American raid on Afghanistan while it was happening, late in 2001, but agreed to withhold the story until the Rangers were out of Afghan airspace.

As an example of CBS’s current stance, Martin says, in April 2004 the network delayed its explosive report and photographs of the prisoner abuse at Abu Ghraib “for a couple of weeks.”

“The decision was easily made the first week,” Martin says, “but it got harder each week, with the Pentagon raising concerns that just weren’t going to change.” The chairman of the Joint Chiefs of Staff, he says, argued to the network that “this was the

worst possible time,” with Al Jazeera televising death threats against a captured American soldier who had disappeared in an ambush of his convoy near Baghdad.

Martin says he is not sure that argument would carry the day today, but “I just felt we couldn’t do the Abu Ghraib story while that guy was still a captive — but not week after week.” (As of February 2007, the soldier was still listed as missing.)

Recently, CBS withheld a report on American methods of combating improvised explosive devices in Iraq, Martin says. “The Pentagon didn’t want me to report it at all,” he adds. “We started down the road of negotiating the story point by point, but they convinced me not to use it. In retrospect, I think we could have done it without any great harm.”

Does consultation work?

“Tell me a better system,” Martin says. “You don’t want officials vetting your stories, and you don’t want to cost lives or blow huge investments in [U.S.] intelligence systems.”

Martin concludes by paraphrasing Churchill’s judgment of democracy as a form of government: “It is the worst system invented, except all the others.”²⁴

SOME CASES IN POINT

Dana Priest’s Pulitzer-winning story in the *Washington Post*, about the CIA’s overseas detention sites, was a product of lengthy consultations with the agency, and ultimately a meeting between President Bush and the *Post*’s executive editor, Leonard Downie Jr.²⁵

Priest says she followed her accustomed practice of approaching the government as soon as she was confident of her reporting on secret information and ready to put it on paper. “I call CIA public affairs and lay out what I have,” she says. “Then I wait for them to get back to me.” In this case, the response was a request for a meeting with Priest, after which she reported the CIA’s concerns to her editors. “They were sparse in their requests,” she says of the agency. The editors realized that the CIA had made what Priest calls “a huge decision” — not to object to the story in its entirety. “We were pushing for as much as we could have,” Priest says. “We wanted them to make the most detailed argument, using the most information possible.”

At that point the president asked Downie to the White House. Other members of the national security team were at the meeting, Priest says.

The goal of the editing process at the *Post* “was to help Len think about all the pros and cons,” Priest says. “Len was not willing to consider the possibility of political embarrassment in foreign countries,” she says, but he focused on two issues:

- Whether specific countries could become targets of terrorism.
- Whether foreign countries that were taking measures against terrorism (aside from being host to the detention sites) might halt those measures. “They wouldn’t help us know what things,” Priest says, but she knew of some from other sources.

In the end Priest says, the paper’s decision to print was influenced by the fact that the CIA sites were illegal in their host countries — countries that do in fact “observe the rule of law” — even while the *Post* withheld the countries’ identities and specified that officials had requested the omission. In her reporting, Priest adds, she learned much about

counterterrorist measures, more than she herself thought wise to print. “I was sort of hoping they would ask us not to use certain things,” she says of the CIA.

Priest says intelligence people tell her that her consultation process is not typical. Robert L. Deitz, senior councilor to the director of the CIA and one of the most emphatic critics of press disclosures, appeared on a panel with her in December 2006 and said Priest’s process “sounds like quite a responsible position.”²⁶

In his lectures at Princeton in 2003, cited above, Barton Gellman of the *Post* recalled a story he held back without even consulting the government:

In the 1991 Persian Gulf War, I was skeptical of General Schwarzkopf’s briefings on bombing progress. From one week to the next he increased his estimate of the daily damage to Iraqi tanks by a factor of 10. How could that be? Most of the tanks were buried, hard to find or hit. I learned that pilots had found a new way to use the FLIR, or Forward-Looking Infrared Sensor. Usually they search for hot spots. The pilots found, though, that armor sheds heat at a different rate than desert sand. If they looked soon after sundown, they could find tanks by aiming at cold spots.

The *Washington Post* did not seriously consider publishing that story. We did not bother to consult with the government. We just sat on it. I was sorry to give up a scoop, but this was obviously a technique to which Iraq could take countermeasures. Publication would do concrete harm to the war effort, and it served no grand public policy interest to disclose it. I do so now because it has since come into the public record.²⁷

Gellman mentioned a couple of stories on which the *Post* negotiated with the government:

[In 2002] my colleague Sue Schmidt and I learned that President Bush had deployed what we called, in shorthand, a “shadow government” of senior officials into underground bunkers far from Washington. There had been contingency plans for this all through the cold war, called COG/COOP — “Continuity of Government, Continuity of Operations” plans. Bush was the first president to activate them.

This was a watershed. For the first time a president was saying, because of Al Qaeda, that he could not be sure that Washington would be here tomorrow. It spoke volumes about the new insecurity of a post-9/11 world. And the whole thing was very highly classified, top-secret code-worded information.

When the government learned I was asking questions, White House Chief of Staff Andrew Card called the executive editor of the *Washington Post*. He said he couldn't believe the *Post* would publish such a thing, and if we seriously contemplated doing so, he wanted an opportunity to be heard. Len Downie, the editor, called me. I phoned Andrew Card's office the next day and said, "Here's your opportunity to be heard." His deputy invited me to pay a visit.

I asked what, exactly, the government sought to protect. He said everything. I said I didn't think that would fly, and I had the impression he did not expect it to. We talked some more. He cared most that we not disclose the sites of the bunkers, the names of those deployed, and the mechanics of the deployment. I told him, honestly, that I thought he had good reasons for concern, and I thought I would agree, but I wasn't completely convinced.

Details are vital in a story like this. Extraordinary claims require extraordinary evidence. If we are going to break something big, we need to show readers we know it's true. These bunkers had been designed to withstand a hydrogen bomb. What exactly, I asked, did the White House think Osama bin Laden could do to them?

On the other hand, I knew already from my executive editor that there was no way we would publish the details. But it was the uncertainty on that point that got me into the chief of staff's office, and I maintained it in part to continue the conversation. I said, "I'm sure you don't think I came here only to take things out of the story. What can you tell me?" I learned a few things, including the numbers of those deployed. Once he was sure we would run the story, he gave me an on-the-record quote. Only for that reason can I tell you I was talking to Joe Hagin [the White House deputy chief of staff]. The on-the-record quote served his purpose, but it also made our story much more credible.

A related case. In December [2002] I learned that the Energy Department's national labs had undertaken a crash deployment of a prototype system to detect nuclear materials entering the nation's capital. It was a distributed network of sensors called, aptly, Ring Around Washington. It didn't work. Again, very highly classified. The story I was writing, a long one, asked the question: Are we safer after 14 months of war with Al Qaeda than we were on 9/11? Ring Around Washington was highly relevant. I consulted with high-ranking officials I can't name. They wished we would not mention the Ring at all. What they really cared about, though, was that we not describe exactly why the

system failed — how it could be defeated. I proposed a very general way to describe the flaws, and after a while we came to a formula we all could live with.

For the same story, I learned something I can't describe here at all. It was a really nice find, something with considerable news value in the context of that story. All I can say is that it had to do with a technique Al Qaeda was using to elude its U.S. pursuers, and it spoke to the cleverness and innovation of our enemy. I spoke directly and at length with the head of one of the 15 U.S. intelligence agencies, and we worked out a form of words I could use. But then Condi Rice's office called. She asked for a conference call with me and with Len Downie, the editor. She said she could not live with the compromise, and she said a little bit about why. I tried to find another form of words. She asked us to drop it entirely. She very kindly said she thought I'd have an awfully good story anyway. And we dropped it.

Gellman also recalled a few earlier disclosures — and nondisclosures — about Unscm, the United Nations Special Commission in charge of arms inspections in the Iraq of Saddam Hussein:

As I traced the death throes of Unscm, I discovered its extraordinary development into the first — and probably last — U.N. intelligence agency. It was actually improvising high-technology spy tools against Iraq. The first time I wrote about that, authorities told me I would put the lives of inspectors and clandestine operatives at risk if I included details. We compromised on the following language: "Inspectors deliberately triggered Iraq's defenses against a surprise search and used a new synthesis of intelligence techniques to look and listen as the Baghdad government moved contraband from the site." A bunch of mumbo jumbo, and deliberately so.

I knew a great deal about the operation, and I sat on it for months. But Kofi Annan's office started hearing rumors, and Annan assigned a competent investigator to learn more. Anything that smacked of espionage against a member state represented a huge threat to the U.N. system, as he saw it. In January of 1999, I told my sources that the story was beginning to seep out. *Le Monde*, *Al Hayat* and the *Boston Globe* were pursuing it. On January 6, with notice to authorities, I wrote some of what I knew: Unscm had used eavesdropping equipment, carried by inspectors, to monitor communications that Iraq knew were safe from satellites. I knew the type of equipment, the identities of the inspectors, even the radio frequencies. I pursued those details to be sure my sources knew what they were talking about. We never considered publishing them.

A few months later, I discovered the most stunning aspect of the story. There had been yet another level of espionage. The U.S. government planted listening devices in Unscm equipment to spy on Iraq in ways that Unscm itself did not know about — and that had nothing to do with Unscm’s mission. All those years, Unscm said Iraq was hiding weapons, and Baghdad said Unscm was a nest of spies. It turned out that both sides, more or less, were right. The CIA told me that there were clandestine operatives still in Iraq, and asked for time to get them out if we planned to publish. We waited. Then we published. That was a hard decision — it is possible that we stopped a productive intelligence operation — but I think it was the right one on balance.

‘THE DIALOGUE’

While recriminations over leaks and secrecy hold the public spotlight, a quieter conversation has been taking place, begun in the immediate aftermath of 9/11. That conversation, known to its media and government participants as “the Dialogue,” aims at creating a shared understanding of best practices — no one dares speak of “ground rules” — for journalistic handling of sensitive information. The founders of the effort hoped it could avert secrecy legislation, specifically a version of Britain’s Official Secrets Act. In its first years, the Dialogue, always conducted “off the record,” seemed to be approaching a nonbinding consensus on some practices for contacts between journalists and the national security arms of government.

In 2006, however, the press-government clash over leaks of classified information all but ruptured the fabric of civility that had surrounded the project. One participant, Philip Taubman of the *New York Times*, described the new atmosphere as “civil war.”²⁸ It was the investigative journalist Scott Armstrong, an organizer of the Dialogue, who used the expression “crevice point” to describe the prospect that the talks might break off.²⁹ Numerous participants in the October 2006 session, while committed to keep the

proceedings private, agreed that talk of a new secrecy act was in the air — a threat that recalled the Dialogue’s beginnings.

First Amendment advocates in the news business remember 2000 as the year of the close call. Without public hearings or a recorded vote, the House and the Senate adopted an amendment to the intelligence authorization bill that would have made it a felony for present or former government officials to divulge classified information, punishable by fines and imprisonment up to three years. Civil libertarians now believe the provision, sponsored by Senator Richard C. Shelby, Republican of Alabama, was comparable to the British act. With the urging of Attorney General Janet Reno, President Bill Clinton was prepared to sign it.

At the eleventh hour, Armstrong, who heads a nonprofit anti-secrecy organization known as the Information Trust, mobilized a lobbying effort to change the president’s mind. Armstrong enlisted Jeffrey Smith, the former CIA general counsel, and Boisfeuillet Jones Jr., publisher of the *Washington Post*. With backing from other media leaders, including Arthur Sulzberger Jr. of the *New York Times*, they approached John Podesta, the White House chief of staff. They convinced Podesta, who in turn persuaded the president, that so much information is classified, with so much of it routinely dispensed in official press briefings, that the anti-leak provision would put government officials at all levels in legal jeopardy whenever they talked to reporters. And the president vetoed the bill.³⁰

In 2001, the Senate Intelligence Committee took up the Shelby provision again, now with George W. Bush in the White House. The Bush administration, while determined to shut down leaks, was nevertheless divided on the risks and benefits of the

amendment. Witnesses had lined up to testify on both sides, but this time the committee approved the intelligence authorization minus the amendment, and without calling witnesses. The bill designated Bush's attorney general, John Ashcroft, to appoint a task force to study the problem of leaks and report back in six months.

Six days later, on September 11, terrorists struck the World Trade Center and the Pentagon. Opponents of the leak amendment are convinced that if the attacks had come a week earlier, the secrecy amendment would have passed Congress.³¹

It was at this point that Armstrong and Smith, the former CIA counsel, assembled prominent figures from journalism and government for what became the Dialogue. At first they met periodically for dinner at the Metropolitan Club, in Washington. Participants included Washington bureau chiefs of major news organizations, senior intelligence officials and congressional aides representing national security oversight committees.³²

Smith says the Dialogue "has helped a lot." (Members of Secretary Ashcroft's task force on leaks consulted with Dialogue participants before drafting his report to Congress in October 2002.³³ Although Ashcroft recommended that the administration crack down on authorized disclosures of classified information, he concluded that anti-leak legislation was not needed.³⁴)

In 2003, a meeting convened in Queenstown, Maryland, under the auspices of the Aspen Institute. It was not formally part of the Dialogue series, but many of the same participants attended.³⁵ They included top officials of newspaper and broadcast organizations. The featured speaker, Attorney General Ashcroft, appealed for cooperation in the war on terrorism, without specifically addressing the issue of legal restrictions. The

Maryland meeting reached a consensus on a set of “best practices — not hard and fast rules — for journalists to consider in reporting stories that deal with issues of national security”:

1. Journalists not only have the duty to serve the public interest by reporting and informing, but also the responsibility to consider the consequences of their reporting, including the potential that publication might directly damage the nation’s security and the public safety.
2. Journalists have a responsibility to consider the government’s position if it objects to publication or asks for a delay.
3. Journalists should give serious consideration to the risk of compromising ongoing investigations and sensitive operations.
4. Before news is reported, a responsible editor or news executive should know the bona fides (the knowledge, expertise, credibility and interest) of critical confidential sources and be prepared to ascertain their identities.
5. Journalists have a duty to their audience to be transparent about agreements they make with the government and to reveal them when they report the news story itself.

The session’s “unofficial” report, commissioned by Aspen from Adam Clymer, an educator and former *New York Times* journalist, added: “These general principles may serve as important first steps on a path to resolving potential conflicts between journalism and the government in the post-9/11 world, but they may also be the easy part. For example, the Aspen Institute group was far more comfortable in prescribing for itself than for the government, but there was also a general sense that the government overclassifies

information and tries to keep secrets long after it needs to, with the result of cheapening the often legitimate case for secrecy.”

In July 2005, the Aspen Institute organizers concluded regretfully that the roundtable meetings of the Dialogue had gone into hibernation. The institute joined with Scott Armstrong and Jeffrey Smith to revive the conversations under its auspices, this time in Aspen, Colorado. An unpublished interim report, made available by the organizers, includes this passage:

“The bottom line for many was a sense that the status quo is unacceptable. For journalists, that means a current state of affairs where the public is not receiving adequate information about an antiterrorist campaign prosecuted almost entirely under cover of overly broad secrecy. For the government, it means public lack of awareness about its actions, misunderstanding of key national security threats and the publication of stories that are not informed by the government perspective because the policy has simply been a blanket refusal of comment.”

According to the interim report, “the conference participants concluded that several steps could meaningfully be taken to begin the elusive dialogue.” These included “creating a roster of public affairs people from each intelligence agency who are actually empowered to provide meaningful information, or at least could direct reporters to people who could answer. Given the current state of almost noncommunication, participants agreed this would be an invaluable step to bridging the gulf.”³⁶

The 2005 conference tried to set out criteria for consultation between press and government, and for self-restraint by the media. The participants visualized information falling into “concentric circles” of sensitivity:

Inside the first and most sensitive circle would be information reasonably expected to lead to imminent and demonstrable loss of

- a. U.S. lives (though several publications stressed that [this] was not determined to be a categorical reason not to publish a story)
- b. U.S. intelligence sources
- c. Any human life

The outer circle would comprise stories dealing with

- a. clandestine collection systems
- b. imminent war plans and military actions
- c. military capabilities and vulnerabilities
- d. diplomatic secrets and extraordinary negotiations
- e. law enforcement operations, such as a pending search warrant against alleged terrorists
- f. other extraordinary crises

The “circle” analogy was intended for discussion later in 2005 at a higher-level gathering. But that discussion was not to take place. The Dialogue went silent for more than a year as relations between press and government grew increasingly embittered.

In July 2005 Judith Miller of the *New York Times* went to jail for refusing to identify her sources to a grand jury investigating the leak of a CIA officer’s name and role.³⁷ That December, the *Times* printed its first story about the Bush administration’s warrantless telephone eavesdropping.

It was not until October 2006 that the Dialogue resumed, at Aspen’s Wye River conference center in Maryland.³⁸ As before, the meeting was officially “on background,”

meaning that its substance was not to be attributed to any speaker by name, but participants — from government and media alike — agree that recriminations were its central feature.

Thomas Curley, president and CEO of the Associated Press, was present, and wrote to the news agency's board afterward that the intelligence-agency participants “seethed at NYT's exposure of the government's terrorist money-transfer monitoring and are using that story as the hammer to press for the secrets act.” He added, “While the journalists cited examples of self-restraint, the intels said book publishers and the *New York Times* could not be trusted.” (Apparently the book comment was a reference to *State of War: The Secret History of the CIA and the Bush Administration* [Free Press, 2006], in which James Risen of the *Times* expanded on his reporting about warrantless telephone eavesdropping.)³⁹

Curley also told his board that Benjamin Powell, general counsel to the director of national intelligence, “claimed there was widespread belief within government that a concerted effort existed within the media to ‘out’ every program put in place to fight the war on terror.” Curley said that according to Powell, “The administration believed new approaches are needed to stop undermining their efforts.”⁴⁰

Scott Armstrong, the Dialogue organizer, says that in his experience, the intelligence community doesn't really want new anti-leak legislation. But he distills the view of top officials, especially the CIA, in unvarnished terms:

“If you guys keep fucking up, you're going to get an official secrets act — and shame on you.”⁴¹

The opening speaker, at dinner, was General Hayden, the CIA director. His comments were “off the record” (not merely “on background”). Exactly what he said, or meant, is debated by some who heard him, but all agree that it touched on the possibility of a new “official secrets act,” akin to the one vetoed by President Clinton in 2000. Curley told the AP board that Hayden had accused journalists of “engaging in a conspiracy to assure passage of a secrets act by dint of their moral depravity or gross incompetence.”

Curley added, though, that Hayden acknowledged “trying to be provocative for purposes of the conference.” And a more typical reaction to the speech, among a dozen conference participants interviewed, was this version, from John Walcott, the McClatchy bureau chief: “I chose not to find it threatening. Hayden was very straight-ahead, and I appreciated that. If he was seeking a frank response, I think he succeeded.”⁴²

Doyle McManus of the *Los Angeles Times* also took a milder view of the speech: “Hayden has a sophisticated, nuanced and open approach to the whole thing. ... He’s pretty unhappy with the limits of self-restraint that he perceives, and energetic about talking about it.” In Hayden’s earlier role as director of the National Security Agency, McManus said, “he was, of all the intelligence agency heads, the most open to debate and contact.”⁴³

Another journalist at the conference said that after his speech, General Hayden was asked directly whether he was threatening the media with an official secrets act. His answer was no.⁴⁴

What, exactly, did General Hayden say? His office refuses to discuss the speech, citing the “off the record” ground rules. But the CIA’s public affairs director, Mark

Mansfield, made available a transcript of a radio interview the general gave a month later, with language that closely echoes what conference participants recall hearing. When asked whether he could cite specific instances of damage from intelligence disclosures, the general replied:

It's a difficult question. The answer to your question is yes. I'm not going to sit here, certainly, in an open environment, and draw cause-and-effect relationships between this story and these activities. It's just not possible for me to do that. But I can say, as a matter of first principle, that the unauthorized disclosure of classified information has actually led to the deaths of individuals who would not otherwise have been subjected to that, had this information not been inappropriately put into the public domain. More broadly, the discussions of many of these activities publicly — and ... I'm the director of CIA but I'm also a citizen and I understand the nature of our republic and the nature of a free press, and a free press has a great deal of power and appropriately so — but that, then, imposes on the press a tremendous amount of responsibility. That they must take great care when they have information that can cause harm to the nation's security activities. They really have to weigh that carefully. And I've said this both privately and publicly in the last year or two: I'm not convinced at all times that that care has been taken. ...⁴⁵

According to Curley's comments, circulating among the AP directors, John Walcott of McClatchy responded that "Hayden chose his 'data points' selectively, omitting instances when the intel community showed ineptitude, disdain for the Constitution or leaked with the rest of Washington for self-serving gain." Curley said the intelligence officials at the meeting "had not provided convincing specifics" but "AP would be willing to be informed."

Jeffrey Smith, the lawyer, commented that "as a next step, we need the executive branch to give examples of where leaks have caused harm. The government always says there has been harm, but never says what the harm is. And there *are* examples."⁴⁶

In opening remarks at the meeting, Curley recalled an encounter in Washington five years earlier with George Tenet, who was then director of central intelligence:

“At the time, I was publisher of USA Today, which had been reporting an increased threat while other media were saying it was overstated. I asked Tenet simply for clarification: who was right? ...

“Tenet said emphatically and specifically that multiple hits on U.S. interests were expected before October, probably outside the U.S. but maybe not just outside. He also indicated that the plot involved Saudis, which added to strategic concerns.

“The newspaper was unable to get another official to confirm, or get anyone on the record. I later was told that Tenet made similar statements at the *Washington Post* and elsewhere around town. ... In retrospect, George Tenet seemed deeply frustrated that no one shared his alarm and acted on it.”⁴⁷

The conversation took place just two months before 9/11.

“So the question I ask the intelligence community is this,” Curley said. “Would you really want to live in a country in which you actually managed to keep the public from knowing anything but what the government wanted it to? Would it be a safer country? Which part of the government gets vested with the infallible ability of knowing what and when to share? Would its citizens be free people?”

Appendix

PARTICIPANT LIST

**Journalism and National Security:
Moving the Dialogue Forward
October 5-7, 2006**

Aspen Institute Dialogue
on Journalism and National Security

Scott Armstrong
Executive Director
Information Trust

Rajiv Chandrasekaran
Assistant Managing Editor
Washington Post

Thomas Curley
Chief Executive Officer
Associated Press

Michael Davidson
Minority Counsel
Senate Select Committee on Intelligence

Robert L. Deitz
Senior Councilor to the Director
Central Intelligence Agency

Chris Donesa
Chief Counsel
House Permanent Select Committee on
Intelligence

Melvin Dubee
Deputy Minority Staff Director
Senate Select Committee on Intelligence

Charles M. Firestone
Executive Director
Communications and Society Program
The Aspen Institute

Bob Grenier
Managing Director
Kroll

General Michael Hayden
Director
Central Intelligence Agency

Christine Healey
Senate Select Committee on Intelligence

Shirley Hung
Executive Producer
CNN

David Ignatius
Columnist
The Washington Post

Stuart Karle
General Counsel
The Wall Street Journal

Chad M. Kolton
Director of Public Affairs
Office of the Director of National
Intelligence

Bill Kovach
Chairman
Committee of Concerned Journalists

Mark Mansfield
Director of Public Affairs
Central Intelligence Agency

Doyle McManus
Washington Bureau Chief
Los Angeles Times

Brandon Milhorn
General Counsel
Senate Select Committee on Intelligence

(as of 10/23/06)
Staff Director
Senate Committee on Homeland
Security and Governmental Affairs

John Miller
Assistant Director for Public Affairs
Federal Bureau of Investigation

Wyndee Parker
Deputy Minority Staff Director
and Special Counsel
House Permanent Select Committee on
Intelligence

Benjamin Powell
General Counsel
Office of the Director of National
Intelligence

Lloyd Salvetti
Partner
Security Technologies International LLC

Jeffrey Smith
Senior Partner
Arnold & Porter LLP

Philip Taubman
Washington Bureau Chief
The New York Times

John Walcott
Washington Bureau Chief
McClatchy Newspapers

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Amy Korzick Garmer
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Mridulika Menon
Senior Project Manager
Communications and Society Program
The Aspen Institute

NOTES

¹ Eric Lichtblau and James Risen, “Bank Data Sifted in Secret by U.S. to Block Terror,” *New York Times*, June 23, 2006.

² Sheryl Gay Stolberg, “Bush Condemns Report on Sifting of Bank Records,” *New York Times*, June 27, 2006.

³ *Ibid.*

⁴ Carl Hulse, “House Assails Media on Disclosing the Tracking of Finances,” *New York Times*, June 30, 2006; H. Res. 895.

⁵ Gabriel Schoenfeld, “Has the New York Times Violated the Espionage Act?” *Commentary* 121, no. 3, March 1, 2006.

⁶ Joe Garofoli, “News Analysis: New chapter in battle of words over tracking terrorist financing; House plans debate to praise program, snipe at exposers,” *San Francisco Chronicle*, June 29, 2006. The talk show host was Melanie Morgan of KSFO-AM, in a *Chronicle* interview.

⁷ Scott Armstrong, interview, November 2006.

⁸ John L. Walcott, interview, November 2006.

⁹ Dalglish, Lucy A. and Gregg P. Leslie, eds. 2005. *Homefront Confidential: How the War on Terrorism Affects Access to Information and the Public’s Right to Know*. 6th ed. Arlington, VA: Reporters Committee for Freedom of the Press. www.rfcp.org/homefrontconfidential

¹⁰ Walter Pincus, interview, November 2006.

¹¹ Bill Kovach, interview, October 2006.

¹² Baquet was dismissed from his job in November 2006 in a widely publicized disagreement over staff reductions, and two months later announced that he was joining the *New York Times* as Washington bureau chief.

¹³ The *Wall Street Journal* reported on the tracking program the same day, but did not become a principal target of critics, apparently because the White House had not tried to dissuade its editors.

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- ¹⁴ Dean Baquet and Bill Keller, “When Do We Publish a Secret?” *New York Times*, Op-Ed, July 1, 2006.
- ¹⁵ Robert L. Deitz, in panel discussion, “National Security Secrets and Democracy: Leaks, Whistleblowers and the Press,” American Bar Association, Standing Committee on Law and National Security, Washington, D.C., December 1, 2006; transcribed from C-SPAN video, <http://www.c-span.org>
- ¹⁶ Jeffrey H. Smith, interview, November 2006.
- ¹⁷ Seymour M. Hersh, interview, November 2006.
- ¹⁸ Katharine Graham, “Secrecy and the Press,” speech for the Central Intelligence Agency, November 16, 1988; text furnished by the Estate of Katharine Graham. Emphasis in original.
- ¹⁹ Leonard Downie Jr., interview, November 2006.
- ²⁰ Barton Gellman, “Secrecy, Security and Self-Government: An Argument for Unauthorized Disclosures,” lecture, Woodrow Wilson School, Princeton University, September 17, 2003; transcript furnished by Gellman.
- ²¹ Walcott, interview.
- ²² Doyle McManus, interview, October 2006.
- ²³ Christopher E. Isham, interview, December 2006.
- ²⁴ David Martin, interview, December 2006.
- ²⁵ Dana Priest, “CIA Holds Terror Suspects in Secret Prisons,” *Washington Post*, November 2, 2005. The reporting process and the meeting with President Bush were described by Priest in an interview, December 2006.
- ²⁶ Deitz, panel discussion, December 1, 2006; cited above.
- ²⁷ Barton Gellman, “Secrecy, Security and Self-Government: How I Learn Secrets and Why I Print Them,” lecture, Woodrow Wilson School, Princeton University, October 9, 2003; transcript furnished by Gellman.
- ²⁸ Philip Taubman, interview, October 2006.
- ²⁹ Armstrong, interview.
- ³⁰ John M. Broder, “President Vetoes Measure to Punish Disclosing Secrets,” *New York Times*, November 5, 2000. The origins of the anti-leak amendment and the maneuvering for its defeat are ably recounted by

Jack Nelson, a former Washington bureau chief of the *Los Angeles Times*, in *U.S. Government Secrecy and the Current Crackdown on Leaks*, Shorenstein Center Working Paper 2003-1, pages 12-18.

³¹ Nelson, page 20.

³² A list of participants in the early phases of the Dialogue appears in the Nelson paper, cited above. The 2003 participant list is in Clymer (see note 35 below). Those who attended the stormy session of October 2006 are listed in the appendix to this paper.

³³ Nelson, page 21.

³⁴ The prospect of anti-leak legislation did not die. After the uproar over the *Times*'s currency-tracking story in 2006, Senator Kit Bond of Missouri and 11 co-sponsors, all Republican, introduced a bill substantially identical with the vetoed 2000 amendment. (Senate 3774, August 2.) In November, control of the Senate passed narrowly to the Democrats.

³⁵ Adam Clymer, *Journalism, Security and the Public Interest: Best Practices for Reporting in Unpredictable Times*, Aspen Institute, 2003.

³⁶ Although the Aspen grant provided for a public report of the 2005 session, the organizers have withheld it, hoping to avoid inflaming differences that might impede further meetings.

³⁷ In an interview for this paper, Bill Kovach, chairman of the Committee of Concerned Journalists and a key figure in the Dialogue, cited tensions over the Miller case among causes of the suspension. Miller's support among journalists did not seriously erode until September 2005, when she accepted a deal to testify and leave jail.

³⁸ Copies of the "concentric circle" proposal were distributed as background reading. But in the words of Charles Firestone, at Aspen, "it did not work" to raise it for discussion. (E-mail message to author, December 2006.)

³⁹ Thomas Curley, remarks to the Aspen Institute Conference on Journalism and National Security, October 5, 2006. Copies were distributed to the 22-member board of the Associated Press, and one was made available to the author by a confidential source.

⁴⁰ In a telephone conversation, Powell refused to comment on the content of the Aspen meeting. (The director of national intelligence at the time of the meeting was John Negroponte.)

⁴¹ Armstrong, interview.

⁴² Walcott, interview.

⁴³ McManus, interview.

⁴⁴ Interview for this paper. The participant, who has extensive experience as a news executive, declined to be identified because of the conference ground rules.

⁴⁵ Michael V. Hayden, interview with J. J. Green, Federal News Radio (WTOP), Washington, D.C., November 22, 2006.

⁴⁶ Smith, interview.

⁴⁷ Curley's summary, cited above. Tenet did not reply to a telephone message seeking confirmation of the anecdote.