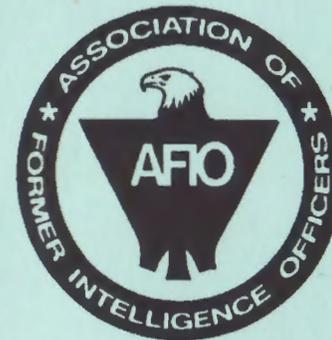


The Intelligence Profession Series

Number EIGHT



THE PRESS AND NATIONAL SECURITY SECRETS

by

Tim Hackler

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THE PRESS AND NATIONAL SECURITY SECRETS

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THE PRESS AND NATIONAL SECURITY SECRETS

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I. INTRODUCTION

During the early and mid 1970s, the U.S. government was reaping the benefits of one of the most daring and productive intelligence operations in history. Specially-outfitted U.S. nuclear submarines were regularly entering Soviet military harbors, where frogmen working with mini subs had installed listening devices near a crucial underwater communications cable.

The Soviets had not bothered to use their most advanced coding systems for communication across this cable, even though it carried some of the USSR's most sensitive information. The Russians had the means to detect any object touching the cable, and, detecting none, assumed the cable to be secure. What they did not imagine was that technical geniuses at the National Security Agency had invented a miniaturized, waterproofed "pod" that picked up electronic signals without ever touching the cable.¹

Because the NSA had no means to collect signals from these underwater devices remotely, U.S. submarines had periodically to thread their way into the Soviet harbor, then discharge frogmen who would locate the pod and change the tapes. That the U.S. government was willing to play this extremely dangerous game (the ramifications of a U.S. nuclear submarine being captured or destroyed in a Soviet harbor can only be imagined) testifies to the importance of the information the mission was producing.

But in 1975 the operation was detected and put to an end -- not by the Soviet Union but by *The New York Times*. When the White House learned that the *Times* was preparing an article which would describe the underwater operation. Mitchell Rogovin, Special Counsel to the Director of Central Intelligence and former lawyer for reporter Neil Sheehan in the Pentagon Papers case, phoned the newspaper several times urging that it not publish the article on grounds that publication would harm national security. But the *Times* decided to publish the story anyway. It did agree to postpone publication until after an American sub, which at that moment was on a mission off the Russian coast, could be called back to safety.² The *Times* had been advised it ran the risk of possible prosecution for compromising signals intelligence under 18 USC 798 if it went ahead with publication. But in the end, the government did not prosecute the *Times* because Attorney General Edward Levi decided that too many secrets would have to be revealed in any criminal trial.^{3, 4}

Commenting on this episode shortly afterward, Eric Sevareid told a nationwide audience:

"Free governments have never known how to handle the problem of secret information, and obviously a free press in a free society in peacetime does not know where to draw lines between secrets that damage the society by remaining secret and those that damage the nation by becoming public...."

"The fact that U.S. submarines have been able to penetrate Soviet harbors and pick up their communications was published. The practice had been going on for years. Publication has ended that source of information. Were these stories information the people had a right to know and benefited by knowing? Only a rather exotic cult of editorial thinkers would say yes."⁵

But is it, in fact, only an "exotic cult" of editorial thinkers who believe stories such as this should be printed? And what exactly is the origin of the "public's right to know" doctrine so often cited by those in the media?

Author David Wise, who has written extensively about the U.S. intelligence community, has observed:

"There is in this country a built-in tension between press and government that cannot, and should not, be reconciled. And the differences between them are intrinsic and fundamental. Government has the right to classify and attempt to protect its secrets. The press has a right to try to obtain and publish those secrets. These are two forces that will continually be in some degree of conflict."

IT IS THE point of view of this study that secret information has sometimes been published^(a) which has harmed legitimate national security interests, and that the justification of a "public's right to know" has sometimes served merely as a rationalization to cover up (to the journalists themselves as well as to the public) more prosaic and self-interested motives.

^a In this monograph the word "publication" is meant to include dissemination of information through broadcasting as well as through the print media.

Seymour Hersh and Bob Woodward are probably the best known investigative reporters in American journalism. What they say and do help shape the ethics of journalism as practiced in this country. In 1986, the American Political Science Association sponsored a panel to discuss the press and national security secrets. The moderator began in the time-honored way by trying to find a point of departure, a situation that both sides could agree involved national security secrets which should not be published. (The press was represented by Hersh and Jack Anderson, while the intelligence community was represented by former CIA director William Colby.)

Moderator: "Suppose that it's 1915 - World War One - and a reporter at The New York Times learns the departure time of a troop ship. Also assume that German submarines are waiting just outside New York Harbor. Surely, prior restraint would be justified here to prevent publication?"

No such thing: "The answer, of course, is 'Hey, no!'" Hersh responded. "And I'll tell you why. The assumption has to be made: if a reporter can find out about it, so can someone else. It's much better for the Times to exercise its responsibility to publish the date and the time of the troop ship and make the government get a new one that they can keep secret."⁶

Hersh's statement is a reflection of a kind of journalistic "macho" which tends to substitute knee-jerk emotionalism for a dispassionate cost-benefit analysis. (The fact that Hersh has, in fact, agreed to withhold publication of sensitive information, as described below, also illustrates the confusion surrounding this issue.) Some additional case histories may help elucidate the issues.

II. CASE HISTORIES

GAMMA GUPY. Beginning in the 1960s, U.S. intelligence agencies were able to listen in on Soviet officials as they drove around Moscow communicating with one another on their car telephones. But on September 16, 1971, Jack Anderson revealed the operation, code-named "Gamma Gupy," in his newspaper column, and Soviet car telephones instantly went silent. When the telephones came back to life, signals between them were sufficiently scrambled to withstand NSA scrutiny. According to a former intelligence official who had access to Gamma Gupy intercepts, Anderson's column was "completely gratuitous, it served no purpose and blew our best intelligence source in the Soviet Union."⁷

GLOMAR EXPLORER. In 1968 a Soviet submarine carrying nuclear missiles sank with its crew in about three miles of water somewhere northwest of Hawaii. The exact location was unknown to the Soviets, who searched unsuccessfully for the sunken craft. U.S. Navy sensors, however, managed to pinpoint the submarine's final resting place. Because the Russian sub contained torpedoes, nuclear missiles, codes and code machines, communications gear and perhaps other equipment of intense interest, the Navy approached the CIA to develop the capability to raise the vessel from its underwater grave.

The CIA, in turn, went to Howard Hughes, who approved the construction – by his Summa Corporation – of the *Glomar Explorer*, a 36,000-ton floating platform designed to raise the Russian submarine. The cover story was that the vessel had been designed to recover manganese nodules from the ocean floor. This story remained air tight until one night in June, 1974, when Summa Corporation headquarters were broken into and burglarized. (The burglars were never identified.) Bits and pieces of the *Glomar* story began to surface in U.S. newspapers the following February.

Former CIA director William Colby began a desperate attempt to plug the leaks. The *Glomar Explorer* had already raised one section of the submarine, and was scheduled to return to pick up the rest. Colby personally visited a number of print and broadcast newsrooms, explaining why any publication would scuttle a vital U.S. intelligence mission. The *Los Angeles Times*, *The New York Times*, *The Washington Post*, *The Washington Star*, the three major networks, N.P.R., *Time*, and *Newsweek* agreed to withhold the story. But Jack Anderson refused.⁸

Claiming that someone would eventually go with the story, and despite Colby's pleading – Colby's last telephone call occurred five minutes before air time – Anderson told the nation of the *Glomar Explorer* on a national telecast March 18, 1975. Once Colby learned that Anderson was going to go with the story, he called all the journalists with whom he had spoken and told them they were free to go with their stories. (This is an unwritten agreement that CIA directors – until Casey came to office – had with the press: if a news organization agreed to a CIA request that a story be delayed, the organization would be notified immediately as soon as the CIA learned that the story was about to be published elsewhere.) As a result of Anderson's broadcast, "there was not a chance that we could send the *Glomar* out again on an intelligence project without risking the lives of our crew and inciting a major international incident."⁹ (b)

MARINE BARRACKS BOMBING. In April, 1983, terrorists bombed the U.S. Embassy in Beirut, killing 60 people. At the time of the attack, U.S. intelligence services were intercepting and decoding radio traffic between Syria, where the terrorists had built the bomb, and Iran, which supplied tactical support. This radio traffic ceased abruptly when information about the U.S. operation was revealed by a television network and a newspaper columnist.

This undermined efforts to capture the terrorist leaders and eliminated a crucial source of information about future attacks. A few months later came an assault on the Marine barracks, apparently by the same terrorists, killing 241 American soldiers.¹⁰

^b The one journalist most often singled out by intelligence officials as irresponsible is Jack Anderson. Some of his fellow journalists agree (see comments by Daniel Schorr, below, for example). Katherine Graham may have had Anderson in mind when she delivered a speech in 1985 to the English-Speaking Union of the Commonwealth in London: "The most dangerous potential of unbridled competition is what we have come to call the lowest common denominator factor. I believe that all of the serious, professional media ... are anxious to be as responsible as possible. We want to do nothing that would endanger human life or national security.... But, unfortunately, high standards of professionalism do not guide every media organization nor every reporter. And I regret to say that once one of these less scrupulous or less careful people reports some piece of information, all the media feel compelled to follow. Thus it is true: the least responsible person involved in the process could determine the level of coverage."

LIBYA. In 1983 the governments of Sudan and Egypt decided to take action against Libyan president Moammar Gadhafi, whose aggressive military expansionism was destabilizing the entire region. The joint operation was designed to lure Libya into invading Sudanese airspace, whereupon the Egyptian air force would respond with a quick counterattack. The idea was to wipe out as much as one-third of Gadhafi's air force and deter him from destabilizing his weaker neighbors.

According to a report in *The Washington Post*, the U.S. government agreed to Egyptian President Hosni Mubarak's request that it send AWACS planes to support the mission by providing guidance for Egyptian pilots. The plan, a year in the making, was in its final countdown during the week of February 14, when *ABC News* Pentagon correspondent John McWethy prepared a report saying that the U.S. had moved the aircraft carrier *USS Nimitz* and three of its escorts from the coast of Lebanon to water nearer Libya to discourage Gadhafi from "starting a war."

When national security adviser William P. Clark learned of McWethy's reporting, he called ABC executives asking that they delay broadcast of the McWethy piece, citing "intelligence reasons, involving sources and methods." The government knew that any story about U.S. military movements toward Libya, no matter how harmless they seemed on the surface, would dash all hopes of getting rid of Gadhafi, because Mubarak had laid down an absolute condition that the American support role in the Egyptian-Sudanese plan remain secret. However, all he could tell ABC was that McWethy's piece would compromise sources and methods. ABC agreed to a 24-hour delay, but did not agree to any additional requests for delay. ABC went with the piece February 16, and was quickly followed by others.¹¹

According to the *Post*, "sources said the broadcasts not only telegraphed U.S. and Egyptian intentions to Gadhafi, but violated Mubarak's absolute condition that U.S. military support remain secret. 'The whole operation just kind of fell apart,' explained one source."¹²

PAYMENTS TO HUSSEIN. When the *Post* learned in 1977 that King Hussein of Jordan had received personal payments from the Central Intelligence Agency, it notified the Carter White House that it was going to run the story. President Carter requested a meeting with executive editor Benjamin Bradlee and reporter Bob Woodward. He tried to discourage them from running the article, because of its potentially damaging effects on his Mideast peace initiative.

They agreed only to Carter's fallback position, which was a request that they give him a 24-hour notice before the article was run, in light of Secretary of State Vance's imminent departure for an official visit to Hussein. The *Post* gave its 24-hour notice - and ran the article on the very day Vance departed for Jordan. (In his meeting with Carter, according to *Newsweek Magazine*, "Bradlee led off with the position that in his 29 years of experience, national security had never been a good reason to withhold a story.")¹³

DISINFORMATION. Someone in the U.S. intelligence community disagreed with a government decision to supply disinformation to both Iran and Iraq during their protracted war and leaked word of the disinformation plan to *The New York Times*. (In cases like this, members of the intelligence community feel more betrayed by their own people than by the press. And yet they criticize the press for publishing information that was leaked illegally.)

The report, in its January 12, 1987 edition read, in part:

"WASHINGTON, Jan. 11 - American intelligence agencies provided Iran and Iraq with deliberately distorted or inaccurate intelligence data in recent years to further the Reagan Administration's goals in the region, intelligence sources said today.

"These sources said, for example, that assessments of a Soviet threat provided to Iranian officials were 'doctored' to exaggerate the size of Soviet troop concentrations on the Iranian border.

"At the same time, the sources said, some information derived from satellite photography that was shared with Iraq was altered to make it misleading or incomplete...."

ANTITERRORISM. A banner headline article in the Sunday, May 12, 1985 *Washington Post* revealed that President Reagan had "approved a covert operation directing the Central Intelligence Agency to train and support several counterterrorist units for strikes against suspected terrorists before they could attack U.S. facilities in the Middle East...." The article said that members of one of those units, composed of Lebanese and other foreigners, and acting without CIA authorization, "went on a runaway mission and hired others in Lebanon to detonate a massive car bomb" which killed 80 persons on March 8, 1985, in a Beirut suburb.¹⁴

The CIA denied the story, and the House Permanent Select Committee on Intelligence found "no evidence that any U.S. intelligence agency has encouraged or participated in any terrorist activity in Lebanon."¹⁵

But before these findings were released, terrorists who had hijacked TWA Flight 847 murdered a young Navy diver aboard the plane, justifying his death by citing alleged CIA complicity in the Beirut March 8 car bombing.¹⁶ (See Appendix A for a further discussion of the media's involvement with international terrorism.)

SOURCES AND METHODS. In a speech to the American Society of Newspaper Editors, the late CIA director William Casey said the press had on numerous instances compromised intelligence sources. Noting that the director of Central Intelligence is required by law to protect the sources and methods by which intelligence is collected, Casey said:

"In recent years, publication of classified information by the media has destroyed or seriously damaged intelligence sources of the highest value. Every method we have of acquiring intelligence - our agents, our relationships with other security services, our photographic and electronic capabilities, the information we get from communications - has been damaged by the publication of unauthorized disclosures.

"Stories in both the print and electronic media have shown, sometimes in great detail, how to counter capabilities in which we have invested billions of dollars and many years of creative talent and effort. This, time and time again, has enabled those hostile to us to abort huge investments, to conceal and otherwise deny us information critical to our defense, and to deprive us of the ability to protect our citizens from terrorist attack."¹⁷

III. ADDING UP THE 'BITS AND PIECES'

Some of the most problematical cases occur when the press publishes information that it believes U.S. adversaries already possess, or when it publishes information that had already been published in "bits and pieces" elsewhere. In these situations, reporters and editors have a particularly difficult time understanding how the government could believe that national security is jeopardized.

Arguments that "the Russians [or the Iraqis, or the Iranians, etc.] already know" came to a head in the 1986 trial of Ronald W. Pelton, an NSA employee convicted of selling secrets to the Soviet Union. Reporters could not understand why Reagan administration officials tried to talk the press out of publishing certain information that was part of the sealed court record. After all, they reasoned, if Pelton is accused of selling these secrets to the Russians, then the government is admitting that it believes the Russians already have this very information. (c)

^c Sometimes, however, the press has published information that it explicitly did NOT have any assurance the Russians were already familiar with. The following is from a May 23, 1986 *Washington Post* article (p. A28), justifying publication of classified details from the Pelton trial on the grounds that the Russians "probably" already knew them:

"In January 1974, for instance, *The Washington Post* reported in a front-page article by the late Laurence Stern that 'the United States maintains a fleet of electronic eavesdropping submarines operating close to the Soviet coastline to monitor Russian submarine activity and secret military communications.'

"The article, describing the submarines as 'underwater U2s' roaming Soviet territorial waters as part of a project code-named 'Holystone,' said the ships were equipped to collect a wide variety of electronic communications and radar intelligence. It also said the Soviets probably knew about the surveillance...." If the Soviets only "probably" knew about the operation, the inescapable conclusion is that the *Post* knew there was a chance the Russians did NOT already have the highly secret information it was publishing.

The late CIA director William Casey responded to this line of thinking:

“How do the media know what the Soviets know about intelligence operations? How do they know how **much** the Soviets know? How do they know at what level he [Pelton] received attention? How do they know what this will tell other countries? It’s just intellectually shallow to say that we can publish anything because the Soviets already know about it.”¹⁹ (d)

Colby made the same case in an op-ed published in *The Washington Post*.²⁰ He began by stating his worry that too many national security secrets become circulated because of “the ripple-like quality of any interesting story among the cognoscenti of Washington. It gradually spreads outward until what starts as a core secret becomes known to a large number.”

“A complication of the issue arises when a project ... has been secretly reported to the Soviets, so the case is made that it cannot be suppressed to keep it from them. There are, however, still reasons for refraining from publishing. First, we do not necessarily know exactly what the Soviets learned. Publication of what a vigorous investigative reporter in Washington learns could be of great value in increasing the Soviets’ knowledge and confirming some of the information they may have.

“Publication of an innovative intelligence effort can also alert others than the particular Soviet target and cause them to examine their own situations to see if the effort is repeated against them. We have also seen many occasions in which a scoop by one newsman in Washington is followed by immediate revelation of additional details by members of the sophisticated and efficient Washington press corps, all of which can be to the benefit of a potential intelligence target.” (e)

^d Jack Anderson told Laurence Stern of *The Washington Post* (Dec 5, 1973) that he wrote the column which blew the “Gamma Gupy” operation because “his original source on the Soviet tap told him the Russians had already realized their phone traffic was being monitored.” His source was wrong.

IF SOME JOURNALISTS have difficulty understanding national security concerns over material that adversaries may already possess, they have an equally difficult time understanding how it could harm national security to publish information that has already been published elsewhere. Considerable tension between the press and the government is generated by the practice of taking “bits and pieces” of sensitive information that have already appeared in public, and shaping them into a larger story.

For example, in 1984 the *Post* disclosed that a just-launched spy satellite could collect electronic signals from Soviet missile tests and relay them to an Earth station. *CBS News* reporter David Martin had agreed to withhold a similar article after Pentagon spokesman Michael Burch told him that “his broadcast was not damaging in itself, but would offer leads for other reporters that would cause the full secret mission of the satellite to ‘unravel’ in the news media.”²¹

When the *Post* article appeared, U.S. officials hit the roof, and Defense Secretary Caspar Weinberger criticized the newspaper on national television. As a result, the *Post* received 4,000 angry letters of protest, some of them threatening bodily harm.

A shaken Ben Bradlee wrote an essay in the next Sunday’s Outlook section, in which he justified the article on grounds that “bits and pieces” of the article had already appeared elsewhere in public.

Former director Colby responded to Bradlee’s justification this way:

“The argument is sometimes made that items in the [media] have been previously mentioned in the public record in various places and that, therefore, no harm can be done by publishing them. This ignores the effectiveness of good researchers in journalism and in intelligence, who can put together a report that is greater than the sum of its parts.”²²

^e Because this issue is so complicated and so central to the question of the press and national security concepts, an excerpt from *Veil*, by Bob Woodward, is found here as Appendix B. In this excerpt, Woodward paraphrases several anonymous intelligence officials who tried to explain why it would harm national security to reprint information which Woodward believed the Russians already had.

In a letter to the editor of the *Post*, a knowledgeable reader further elaborated on "the widespread myth, taken for granted by the media, that because something has appeared 'in bits and pieces' elsewhere, or because so-and-so has leaked information to the other side, further publication of that information and protracted discussion of its significance is perfectly legitimate." He wrote:

"The intelligence game has come a long way since the days of withholding the sailing times of troopships. It is now played by governments drowning in data (most of it contradictory) on the other side's capabilities and looking for some coherent way in which to put it all together. Toward this end, even unofficial analyses that give a Western perspective to a kaleidoscope of sensitive data are inherently damaging to our security."²³

THE SUPREME COURT has tried to elucidate the government's legitimate concerns in his area. In ruling that the CIA had properly withheld certain information from Freedom of Information requests, the Court (*CIA vs. Sims*, 83-1075) held:

"Foreign intelligence services have both the capacity to gather and analyze any information that is in the public domain and the substantial expertise in deducing the identities of intelligence sources from seemingly unimportant details. In this context, the very nature of the intelligence apparatus of any country is to try to find out the concerns of others; bits and pieces of data 'may aid in piecing together bits of other information even when the individual piece is not of obvious importance in itself.'

"[Quoting from an earlier decision, *Halkin v. Helms*, the Court continued:] 'What may seem trivial to the uninformed may appear of great moment to one who has a broad view of the scene and may put the questioned item of information in its proper context.'

"... The decisions of the Director [of CIA], who must of course be familiar with 'the whole picture,' as judges are not, are worthy of great deference given the magnitude of the national security interests and potential risks at stake. It is conceivable that the mere explanation of why information must be withheld can convey valuable information to a foreign intelligence agency."²⁴

THE COURT HERE acknowledges what many individuals in the intelligence community find to be one of the most frustrating aspects of the clash between a free press and national security interests: their inability to respond when they believe national security has been compromised.

It is true that intelligence officials have from time to time called attention to stories which, in their view, jeopardized national security. For example, former director Casey complained publicly about disclosures (May, 1986) that the U.S. was intercepting Libyan communications at a time when intelligence agencies were trying to tie Libya to an attack on allied soldiers in a Berlin nightclub. "The Libyans stopped using those communications and this is bound to put other peaceful citizens in jeopardy," said Casey. "This is a severe problem we must address if our fight against terrorism is to succeed."²⁵

Most of the time, however, complaints and record-setting by intelligence agencies is impossible. Mike J. Levin, special assistant to the director of the National Security Agency, explains why:

"Cases which come to public attention represent the tip of the iceberg. In most cases we cannot publicly describe either the leak or the damage for fear of causing further damage. The intelligence community, the defense community, the diplomatic community must often suffer in silence. Investigate, yes; publicize, no."

Leaks of classified information have resulted in the loss of "millions of dollars, painstakingly developed sources and methods, human lives, and intelligence critical to the national security," said Levin.²⁶

IV. THE JOURNALIST AS SECRETARY OF STATE

When they decide to go with a story even though government officials plead national security interests, journalists usually cite as their motivation fulfillment of "the public's right to know." Would it be too cynical to suppose that occasionally other motivations are at work as well - such as making a name for one's self, or one's paper or network?

Sometimes yet another motivation appears to be at work.

Guenter Lewy, a professor at the University of Massachusetts, has discussed it. In referring to the many published leaks regarding CIA covert operations in Nicaragua in the early 1980s, Lewy said:

"Presumably, the journalists and editors responsible for these articles felt entitled to publicize these operations because they questioned their wisdom. Information about this covert effort is said to have come from intelligence officials and apparently also from those in the Congress, the Defense Department, and the State Department who are worried about the CIA's role in Central America.

" 'Some officials fear,' *The New York Times* wrote in December, 1982, 'that the activities may aggravate chronic political instability in the region and lead to eventual direct military involvement there.' It is possible that the CIA deliberately revealed information about these covert operations to exert pressure against Nicaragua. On the other hand, some of the information may have been leaked by people in the Reagan administration who [were] critical of this policy. If the latter, should the press be free to compound the impact of a lack of cohesion among decision makers by publicizing the leaked information?"²⁷

In a government where secrets are so freely leaked,^(f) it is a great temptation for journalists to allow their own political opinions to determine which secrets they publish and which they do not. Bob Woodward demonstrates this, perhaps unintentionally, in his book, *Veil*. Woodward gives a remarkably candid account of the arguments put forward by a number of former intelligence officials, whose counsel he and Ben Bradlee sought in trying to decide whether to publish details that arose from the Pelton trial. [See Appendix B for an account of these conversations.]

The arguments were so persuasive that at one point Bradlee turned to Woodward and said, "Remind me again, what social purpose is there in this story?" In response, Woodward at first invoked the public's right to know - in this case the right to know that it was possible for a low-level bureaucrat such as Pelton to give away "crown-jewels" of intelligence, but Bradlee remained uncertain. (That a low-level bureaucrat could give away "crown-jewels" was, after all, the essence of the voluminous reportage about Pelton.)

Later, Woodward provided additional arguments. Here is one of his conversations with Bradlee, as described by Woodward in *Veil*:

"Many intelligence people and others who use it are uneasy, I said, especially about Casey. They pose the possibility that the United States is pressing too much, not just through covert action, but through covert intelligence-gathering. Some said the result was a declaration of a kind of intelligence war against the Soviets."²⁸

ONE HAS TO BE amazed at the almost incredible naivete shown by Woodward: he is shocked to learn that the U.S. and the Soviet Union were in an intelligence war, and that the U.S. was actually employing "covert intelligence-gathering" in this war. It is difficult to reach any conclusion other than that Woodward revealed so many national security secrets (in the *Post* but to a much greater degree in *Veil*) partly because he thought the U.S. was "pressing" the K.G.B. too much. In doing so, Mr. Woodward seems to have appointed himself Secretary of State, with a veto decision over policies he finds unwise. He can at least be thanked for stating so openly what most reporters would not admit publicly, and perhaps not even to themselves.

(f) Lionel Barber, a reporter for *The Financial Times* (of London) said after his first three months of reporting in the U.S.: "Compared to my experience in London ..., Washington bureaucrats [have been] helpful, usually straightforward and above all open. They have to be. This city is best described as an information bazaar. Here, a multitude of lobbyists and government officials and Congressmen ply their wares daily, competing for the attention of the journalist to a degree which at times is overwhelming. Americans are never short of a quote or a document. And while this surfeit of information and views is not without pitfalls, it means that the newsman trying to find out what is going on behind Washington's closed doors is, in my view, privileged, if not cossetted." [*The Washington Post*, Oct. 20, 1985, p. C1.]

Ironically, Woodward became the target of anger among fellow journalists for practicing his own form of secrecy. Woodward withheld from his newspaper reports crucial information obtained from interviews with former CIA director Casey, in order to use that information in his best selling book, *Veil*. His critics pointed out that some of this information could have made an impact in the Iran-Contra hearings. In this case, the "public's right to know" seems to have been superseded by Woodward's right to high royalty payments. Wrote Flora Lewis in her *New York Times* column: "The familiar question has to be put again in another version. 'What did the editors of *The Washington Post* know and when did they know it?' ... This is a serious issue of principle for all the press, and there is a risk of undermining the important constitutional guarantee on which we all rely if the judgment on when to publish and how is seen to turn on sheer commercial impact."²⁹

Woodward's book was also attacked by intelligence agency officials, by administration officials, and by members of Congress for revealing information that compromised national security. The following is *The Washington Post's* own summary³⁰ of those reactions:

"[The book's] revelations about how the CIA bugs the leaders of other friendly governments, such as Egyptian President Hosni Mubarak, has provoked criticism that Woodward may have unnecessarily compromised national security interests....

"[Colby, Helms and Inman] all indicated last week they were disturbed about the impact of some of Woodward's disclosures on U.S. national security, specifically the CIA's cooperation with other governments and intelligence services.

"Colby predicted the book will result in more trouble for the U.S. government abroad and reinforce doubts among other secret services that they can share secrets and information with the CIA.

"The reaction, he predicted, is likely to be: 'Oh, God, there go the Americans again. You can't deal with them.'

"Helms, in an appearance on *Nightline*, said he thought Woodward's book had done 'grave damage' to U.S. interests abroad.

"Inman, interviewed on the same program, concurred. He denounced Woodward's 'cavalier description of very sensitive U.S. sources and methods which clearly harm this country's ability over the long term to collect intelligence from many parts of the world.' "

Woodward's 1991 book, *The Commanders*, continued the tradition of revealing national security information. According to Eliot A. Cohen, a professor at Johns Hopkins University School of Advanced International Studies: "His reporting is indiscriminate, and it includes sensitive information on intelligence gathering operations, even code words for programs that deserve to remain secret. These tidbits are added to enhance the impression of verisimilitude, not because they are necessary to the tale."³¹

Woodward is not the only journalist who has weighed the judgment of the U.S. government against his own, and found the former lacking. In 1975 Daniel Schorr, then with *CBS News* and now with *National Public Radio*, obtained a copy of a House intelligence committee's oversight report on the CIA. When the committee decided to keep the report classified, Schorr secretly arranged for long portions of it to be printed by the *Village Voice*. Schorr told newspaper ombudsman Charles B. Seib that his decision was based on "journalistic conscience" because, as the only person outside of official circles with a copy of the report, "I could not be the one responsible for suppressing (it)." (Schorr sold the right to print the report to the *Village Voice*, with the income going to the Reporters Committee for Freedom of the Press. He denied doing so until *The Washington Post* revealed the transaction. Schorr denounced the *Post* article as "unconscionable" because it used off-the-record material; he complained that his discussions with the Reporters Committee were confidential and therefore should not have been disclosed!)"³²

THE COMMENTS of Woodward, Schorr, Hersh and other journalists give support to Professor Lewy's analysis of how the press-government relationship has changed:

"The United States was able to fight World War II without compulsory censorship, but the consensus on goals between government and press that made this possible no longer exists.... [The media] are no longer merely occasional critics of government but permanent adversaries."³³

Their attitude also perhaps partly reflects a national psyche that

detests the whole notion of secrecy and spying. One thinks of Secretary of State Henry L. Stimson's closing of "the Black Chamber" (the government's code-breaking office) in 1929. Fortunately, the Army secretly continued its own code-breaking operations; had it not the nation would have been even more unprepared for the calamitous international events of the 1930s.³⁴

President Woodrow Wilson went into office as the personification of the American desire for open government, going so far as to call for a new international diplomacy of "open covenants, openly arrived at." It was a sadder and wiser President Wilson who reported to his nation only a few years later:

"You have got to think of the President of the United States as the chief counsellor of the Nation, elected for a little while but as a man meant constantly and every day to be the Commander-in-Chief of the Army and Navy of the United States, ready to order them to any part of the world where the threat of war is a menace to his own people.

"And you cannot do that under free debate. You cannot do that under public counsel. Plans must be kept secret. Knowledge must be accumulated by a system which we have condemned, because it is a spying system. The more polite call it a system of intelligence. You cannot watch other nations with your unassisted eye. You have to watch them with secret agencies planted everywhere.

"Let me testify to this my fellow citizens: I not only did not know it until we got into the war, but did not believe it when I was told that it was true, that Germany was not the only country that maintained a secret service. Every country in Europe maintained it, because they had to be ready for Germany's spying upon them, and the only difference between the German secret service and the other secret services was that the German secret service found out more than the others did, and therefore Germany sprang upon the other nations unaware, and they were not ready for it.³⁵

V. 'WE ARE WILLING TO COOPERATE ...'

While this study focuses on news stories that may have compromised national security, it is important to know that for the most part journalists have given serious consideration to government requests regarding national security, and have, in fact, agreed to withhold publication in many instances. A few examples:

* During the American Embassy crisis in Iran, at least five news organizations learned that six Americans were being sheltered by the Canadian Embassy. None of them reported this information until the other hostages were brought safely home.³⁶ These organizations were NBC, CBS, *Time*, *Newsweek* and *The New York Times*. *Times* managing editor Seymour Topping explained what happened:

"[Secretary of State] Cyrus Vance called me early one morning at home and said that the State Department felt that the substance of the story would endanger the Americans and would we withhold the story. I told him that out of consideration for the Americans we would do so but that I would expect that we would be told by the State Department if the circumstances changed so that publication would not endanger lives or if it appeared that the story was going to be released by another news organization.

"There was never any conflict in journalistic terms. It wouldn't serve the public interest in any way for us to print that story and it would simply endanger American lives, so we were quite prepared to cooperate in this context."

* In the 1985 crisis in which a group of Lebanese Shiites hijacked TWA Flight 847 with 153 hostages aboard, the media learned – but did not report – that one hostage was a member of the National Security Agency.³⁷

* As noted above, everyone (with the exception of Jack Anderson) contacted by former CIA director William Colby agreed not to publish information on the *Glomar Explorer* once Colby explained that the CIA was planning a second mission to retrieve the rest of the Soviet submarine. In spite of his comments at the American Political Science Association conference (see page 3), Seymour Hersh was among those who agreed to this request. As Colby remembers it:

"Hersh was on to the generics of it, not the specifics. And I said, 'Look, not only don't write about this, but don't even talk about it. Just blot it.' And he did."³⁸

* *The Washington Post*, among others, obtained details of the 1986 bombing raids in Libya, both before and after the mission. This information included details on Libyan defenses and contingency plans for future bombing runs. "We knew what we'd learned from the initial raids, and we didn't publish it because we felt it might aid Gadhafi," Rick Atkinson, a deputy national editor, told the *Washington Journalism Review*. "The ground rules are common sense; you don't put people in jeopardy, particularly American servicemen."³⁹

* During the Vietnam War, the *Chicago Sun-Times* learned that the U.S. had contingency plans to use atomic weapons against Hanoi. When James F. Hoge Jr., then publisher of the *Sun-Times*, satisfied himself that the plans were only contingent, he waited until the war was over before publishing the information.⁴⁰

* Going back to an earlier day, Chalmers Roberts, former diplomatic editor of *The Washington Post*, discovered the existence of the U-2 spy plane a year before Gary Powers was shot down in Russia. He said:

"I discussed whether it should be written about, but we decided against it. It turned out that some other newsmen also had discovered the secret, but they too remained silent.... We took the position that the national interest came before the story because we knew the U.S. very much needed to discover the secrets of Soviet missilery."⁴¹

MOST EDITORS and publishers would probably agree with the comment of Jerry W. Friedheim, president of the American Newspaper Publishers Association: "These decisions are always difficult. It is usually appropriate that editors consult with the government about such matters, and it is also appropriate that the ultimate decision about publication should be made by the editors and their newspapers."⁴²

"When the media obtains especially sensitive information, we are willing to tell the authorities what we have learned and what we plan to report," said *Post* publisher Katherine Graham in a 1985 speech in London.

"And while reserving the right to make the final decision ourselves, we are anxious to listen to arguments about why information should not be aired.... I believe that all of the serious, professional media ... are anxious to be as responsible as possible. We want to do nothing that would endanger human life or national security. We are willing to cooperate with the authorities in withholding information that could have those consequences."⁴³

Even Daniel Schorr, who once made a name for himself as both a consumer and leaker of classified information, has had a change of mind:

"I've painfully learned through the years that while I am dedicated to the publication of information, and at one point used to argue that I don't even have the right to withhold it from the public once I have it - I don't make that argument in that unqualified way any more. If there is anything I have learned about these things, it is the relativism of one value against another. I have now reached a point where I say that, I have a story. It is a hell of a good story. But it's a big secret.' And I would forego that story or find a way to change that story if I were convinced that there was a life involved or a real national security interest involved, or even the privacy of individuals who are defenseless involved. I no longer have an absolute sense about these things."⁴⁴

GIVEN THE REASONABLE nature of these responses, it is curious that so many reporters would continue to make absolutist assertions about revealing secrets deemed to involve the national security. We have already seen Seymour Hersh's statement that he would publish the time of departure of an American troop ship, during war time, with an enemy submarine waiting outside the harbor. At a 1983 seminar on the Constitution, held in Philadelphia's Constitution Hall, Supreme Court reporter Lyle Denniston said it was not his job to consider national security implications of newspaper articles: "I have only one responsibility and that is to get a story and print it.... The only thing I do in life is to sell information, hopefully for a profit."⁴⁵

One wonders if a respected journalist like Lyle

Denniston would really print a story that he was convinced would jeopardize national security. If the answer is that he would not, then why would he, along with other journalists, make such swaggering kinds of absolutist statements?

The fact that they could make such statements, and not be subjected to any ridicule from their peers, suggests that at least some important elements of the American media have refused to think through the complicated set of issues surrounding national security secrets – indeed, in some cases, have not yet admitted that a claim to national security is *ever* justified.

This attitude can affect even editorial writers, at least when their newspaper is under attack. Defending its decision to play up the CIA's payments to King Hussein, a *Washington Post* editorial said:

“The real point is that newspapers cannot be true to their trust if they allow themselves to get in the position of managing the news, or picking and choosing, or publishing or withholding.”⁴⁶

In light of the fact that the *Post* has on several occasions agreed to withhold information in its possession when asked to do so, this assertion can only be seen as a rather heroic form of institutional denial.

VI. A GENERALLY RESPONSIBLE PRESS

Most intelligence officers interviewed for this study were generally sympathetic to the American press. They felt that, overall, the press had been responsible – in most cases. (g) “After all, we’re all in the same business, in a way – the business of gathering intelligence” said one former CIA officer. “I don’t blame journalists for being aggressive at gathering intelligence; that’s their job.”

The following comments show that the intelligence community tends to place the greatest blame on those who leak, rather than those who print the leaks – though they do not absolve journalists from what they see as the journalists’ responsibility to evaluate whether publishing these leaks would jeopardize national security.

John Greaney, former executive director of the Association of Former Intelligence Officers, was representative in his remark that “the people who are most to blame are the people who leak this information in the first place.”⁴⁷ Presidential adviser Brent Scowcroft has said: “The problem is not with the press. They’re not doing the leaking.”⁴⁸

And Mike Levin, special assistant to the director at the National Security Agency, says:

“Who leaks information, and why? Well, the Congress frequently blames the Administration. The Administration sometimes blames the Congress. The executive branch blames the media. The media blame the government. There is plenty of blame to go around. Let’s get the culprits in the right order.

“First, the irresponsible government official who leaked the information in the first place, and only second the irresponsible newsman who prints or broadcasts it.”⁴⁹

Intelligence officials also agreed that cooperation is a two-way street, and that intelligence agencies could stand some improvement in this regard. In a speech to the National Classification Management Society, Levin said cooperation should come from the government as well as the press:

(g) Jack Anderson and Bob Woodward were cited as exceptions to this rule.

"We must do a better job of developing mutual trust with the media so that they'll more readily accept the government's statement of potential damage if certain information is disclosed. I recently had an interesting experience with one of the leading lay authors on intelligence. At the time my agency was at swords with him trying to get certain things taken out of the book he was writing, and there was a lot of disputation and we really were going at it tooth and nail. Now that situation has changed and this author happens to be a good friend of mine and he lets me see material before he publishes it. I get a galley proof of a book that he produces before it goes out. I'm able to comment on it, suggest that maybe some things might want to be played down, left out, and so on; and we get cooperation.

"Occasionally he'll ask for a little support of some kind in something that he wants to do. Not very long ago, for example, he asked for an interview with our director who handles COMSEC and handles computer security, we got it for him.

"That's the kind of cooperation and understanding that I think will do us a lot more good than pointing our fingers at the media and threatening them with the law when they really don't understand what the problem is and they think perhaps we're just trying to hide something that doesn't need to be hidden. We've got to make them understand that when we talk of removing something, we're not trying to cover up embarrassment, we're not trying to cover up government misdeeds but we're really trying to protect valid national security information. We've got to do more of that."⁵⁰

(That such cooperation goes against the grain of many intelligence officials - especially those at the NSA - was dramatized when a team of reporters from the *Boston Globe* met with former NSA director William Odom. William Casey had recently announced his goal of cooperating with the press, and in that spirit the *Globe* reporters contacted Odom. Odom seemed willing to spend as much time with the reporters as they needed, but he told them he could not discuss the information in their article, because he was required by law to protect intelligence sources and methods. "We thought we would get some direction from them," said one of the *Globe* reporters. "But that's not really what happened. They gave us what I consider telepathy. We came away with the sense that there was some stuff they

were not bothered by, but it was more by body language than by verbal assent. The only verbal message was 'Go away! Please don't do anything.'")⁵¹

Intelligence officials are also sympathetic to a frequent journalist complaint that the government is too liberal with "secret" and "top secret" classifications. They agree with the observation made by former Justice Potter Stewart: "When everything is classified, then nothing is classified, and the system becomes one to be disregarded by the cynical or the careless, and to be manipulated by those intent on self-protection or self-promotion."⁵²

Government agencies have taken a few preliminary steps to get a handle on the problem, and according to the government's Information Security Oversight Office the rate of decisions to classify information as "top secret", "secret" or "confidential" during calendar year 1989 dropped by 22 percent at the CIA and by 13 percent at the State Department, compared to the previous year. (The Defense Department showed a decrease of 80 percent, but most of this was due to new reporting methods.)⁵³ (h)

Harry Rositzke, a retired CIA officer, believes there would be less pressure for sensational disclosures of national security secrets if the intelligence community were allowed to be more open with the public. He believes there should be a public, national debate about the nation's long-term national security interests.

"The President can raise the level of that debate by being more open with the public on our present commitments, our industrial requirements and security situation.... He can also, without jeopardizing our security, publish some of the new classified information available within the executive branch - a sampling of our excellent satellite photographs, or select national estimates on strategic situations abroad, or current intelligence reports of significant events as they occur. If the CIA estimates on Vietnam included in the Pentagon Papers had been publicized when they were written, the war in Vietnam might well have been shortened."⁵⁴

(h) Stamping documents "secret" or "top secret" can have unintended consequences. Pat M. Holt, former chief of staff of the Senate Foreign Relations Committee, wrote in the June 4, 1986 *Christian Science Monitor* (p. 18): "Access to classified documents has become a status symbol. One way to increase the chances that a memorandum will receive attention is to mark it Top Secret."

VII. 'THE CONSTITUTION IS NOT A SUICIDE PACT'

One sign of the reluctance on the part of some journalists to grapple with the issue of a free press and national security secrets is the almost casual way they justify the publication of such information. The author of an article in the *Columbia Journalism Review*, while critical of intelligence agencies and defensive of the press, asked a number of journalists what they would do when "hard questions arise when the news value is real and the damage is real." He concluded that "a number of journalists ... did not appear to have given the matter serious thought. They said they would have to decide on a case-by-case basis. When asked if there were any general principles they would apply to such cases, they said there were not - that those had to be decided on a case-by-case basis, too. Given a hypothetical example, they said they could not reply in hypothetical terms."⁵⁵

In place of a serious analysis of the issue, some journalists substitute a reflexive citation of the First Amendment, or incantation of the magical phrase, "the public's right to know." "The media have this vaccination they say they got from Madison and George Mason 200 years ago that the public has a right to know," says Fred Friendly, former president of *CBS News* and now Edward R. Murrow professor emeritus at the Columbia University School of Journalism. "Well, that isn't in the Constitution. That isn't in the Bill of Rights. The public has a right to know *what*?"⁵⁶

Journalists who claim such rights are skating on very thin ice, from a legal point of view. History and Constitutional law scholars contend that no such right exists, at least not in any absolute sense.

As many historians and judges have pointed out, the Constitution and Bill of Rights were written by men who took as a given the need for government secrecy. (Indeed, the Constitution itself was written in rigidly enforced secrecy.) During the Revolutionary War, George Washington wrote to Col. Elias Dayton (July 26, 1777): "The necessity of procuring good intelligence is apparent and need not be further urged. All that remains for me to add is that you keep the whole matter as secret as possible. For upon secrecy, success depends in most enterprises of the kind and for want of it they are generally defeated."⁵⁷

Washington was not even above a disinformation campaign, even though the American public had to be a secondary victim of it. He took pains to exaggerate the size and readiness of the nation's army,

and did not shrink from the fact that Americans as well as the British would be fooled by this deceit.⁵⁸ (i)

Even Thomas Jefferson, whose name is probably invoked in connection with freedom of the press more than any other, wrote in 1803: "In speaking thus for the freedom of the press, I do not say there ought to be an unbridled license.... I do not stand here to say that no shackles are to be laid on this license."⁵⁹ (Journalists love to quote Jefferson's statement that he would prefer a nation of newspapers without government to a nation of government without newspapers. Less frequently quoted is Jefferson's statement, made after he had assumed the Presidency: "When I read the newspapers and see what a mass of falsehood and what an atom of truth they contain, I am mortified with the consideration that 99/100th of mankind pass through life imagining they have known what was going forward when they would have been nearer the truth had they heard nothing.")⁶⁰

THE COURTS have looked back to the founding fathers' thinking to guide them in deciding First Amendment cases. In *Halperin vs. Central Intelligence Agency* (629 F. 2d 144 [DC Cir. 1980]), Judge Wilkey quotes Madison at the Virginia ratifying convention, as saying, on June 12, 1788, in reference to Article I, Section 9, Clause 7: "That

ⁱ There is nothing new about press reports that jeopardize national security. During the Civil War, for example, Major General Joseph Hooker complained to the Secretary of War about a leak that had recently been published in the *Washington Morning Chronicle*:

"Already all of the arithmeticians in the army have figured up the strength of sick and well, as shown in this published extract, as belonging to this army. Its complete organization is given, and in the case of two corps, the number of regiments. The chief of my secret service department would have willingly paid \$1,000 for such information in regard to the enemy...."

An investigation disclosed that the information had been leaked to the newspaper by a member of the Surgeon General's staff, who said in his defense that he shared the information with the *Chronicle* reporter only because he knew it to be a loyal paper "and incapable of using to the public injury information that they might obtain...." [Sayle, Edward F. "The Historical Underpinnings of the U.S. Intelligence Community." *The International Journal of Intelligence and Counter-intelligence*, Spring, 1986, p. 18.]

part which authorized the government to withhold from the public knowledge which in their judgment may require secrecy, is imitated from the Confederation....” Wilkey then states:

“... As to what items might legitimately require secrecy, the debates contain prominent mention of military operations and foreign negotiations, both areas closely related to the matters over which the CIA today exercises responsibility.”

Journalists frequently assert the existence of a Constitutional ban on prior restraint, but in fact the courts have gone out of their way to say that under certain circumstances prior restraint would meet Constitutional muster. In a frequently cited case (Near vs. Minnesota, 283 U.S. 697 [1931]), the Supreme Court made it clear that the First Amendment was not absolute: “... the protection even as to previous restraint is not absolutely unlimited.... No one would question but that a government might prevent actual obstruction to its recruiting efforts or the publication of the sailing dates of transports or the number and location of troops.”⁶²

While the right of *The New York Times* and *The Washington Post* to publish the Pentagon Papers was upheld in 1971, Justice White, with Justice Stewart concurring, wrote: “I do not say that in no circumstances would the First Amendment permit an injunction against publishing information about government plans and operations.” Even Justice Marshall conceded that “in some situations it may be that under whatever inherent powers the Government may have as well as the implicit authority derived from the President’s mandate to conduct foreign affairs and to act as Commander-in-Chief, there is a basis for the invocation of the equity jurisdiction of this Court as an aid to prevent the publication of material damaging to ‘national security’ however that term may be defined.”⁶²

Judges have sometimes become so exasperated with First Amendment claims that their judicial writing becomes unusually curt, sometimes even sarcastic. Considering the case of Philip Agee vs. Central Intelligence Agency, Judge Gerhard A. Gesell ruled against Agee’s attempt to secure 8,699 documents from the CIA through the Freedom of Information Act. After reviewing a random sample of the documents, Gesell wrote:

“As far as can be determined this is the first FOIA case where an individual under well-founded suspicion of conduct detrimental to the security of the United States has invoked FOIA to ascertain the direction and

effectiveness of his Government’s legitimate efforts to ascertain and counteract his effort to subvert the country’s foreign intelligence program. It is amazing that a rational society tolerates the expense, the waste of resources, the potential injury to its own security which this process necessarily entails.”⁶³

In granting an injunction against publication in *The Progressive* magazine of an article outlining how hydrogen bombs are made, a federal district judge wrote:

“A mistake in ruling against the United States could pave the way for thermonuclear annihilation for us all. In that event, our right to publish is moot.... One cannot enjoy freedom of speech, freedom to worship or freedom of the press unless one first enjoys the freedom to live.”⁶⁴

And finally, in a 1963 decision, the Supreme Court held, “While the Constitution protects against invasion of individual rights, it is not a suicide pact.”⁶⁵

IN SPITE OF what the courts have said, the press has not shied away from making claims for special treatment under the law. In a June 1, 1986 editorial, *The Washington Post* responded to reports that the government was contemplating prosecution of five news organizations for violation of a 1950 statute that prohibits disclosure of classified information about codes “or communication intelligence activities of the United States or any foreign government.” (Section 798 of Title 18 of the U.S. Code) This followed widespread publication of classified information that comprised part of the record of the Pelton trial. The *Post* contended the media should not be held to the same standards as everyone else because they “apply cautious of their own” and are not “promiscuous” in exercising the rights of a free press.⁶⁶

In addition, the American Society of Newspaper Editors joined in the appeal by Samuel L. Morrison of his conviction under the Espionage Act of 1917. Morrison, a former U.S. Navy intelligence analyst, was convicted Oct. 17, 1985, of leaking classified spy satellite photographs to the news media. The editors realized that if allowed to stand, the conviction could make it more likely that the government would indict civilians – including federal workers and journalists – for leaking information the government deems vital to national security. In 1988, the Supreme Court upheld Morrison’s conviction.

The British historian Paul Johnson responded to pleas for special treatment by the press this way: "The idea that the journalist is, or ought to be, a legally and morally privileged member of society and entitled to place himself above the law emanates from America. [At a recent press conference in America] I heard one supporter of this new credo state, quite seriously, that a reporter would be justified in breaking into someone's house to obtain information which, in his opinion, the public had a right to know. I don't know whether our own media triumphalists would go so far but certainly they seem to be advancing the view that journalists, or at any rate editors, are better judges of what constitutes a legitimate state secret than a democratically-elected government."⁶⁷

In a speech to the Association of Former Intelligence Officers, former NSA director Odom summarized the intelligence community's view toward the press and First Amendment rights:

"If we do not save our intelligence capabilities, if we fritter them away through leaks and publicity, we may pay a very large price in blood to save not only the First Amendment but also the Constitution.

"What I am saying is that there is something called the 'national interest' which can and should limit from time to time the unbridled exercise of individual rights."

In regard to journalists, Odom said:

"Their invocation of the First Amendment inevitably includes an incantation regarding the public's 'right to know' included, either explicitly or implicitly, within the First Amendment. The notion that the media stands as an unelected ombudsman with a constitutionally conferred mandate to extract all information on Government activities and disseminate it to the uninformed citizenry has neither historical nor legal foundation."

VIII. CONCLUSION

In the end, it is not only the Supreme Court, but the court of public opinion, as expressed through the Congress, that will determine the precise meaning of the First Amendment guarantee "that Congress shall make no law ... abridging freedom of speech, or of the press...."

Surely it is in the media's, and the country's, best interest for journalists to drop the knee-jerk "macho" talk that sometimes substitutes for serious thinking about the need for national security secrets. As intelligence officials have stated, most journalists have acted responsibly most of the time. But the exceptions to this rule pose a real threat to their fellow journalists.

When Daniel Schorr said "if there is anything I have learned about these things, it is the relativism of one value against another," he was being interviewed on the PBS television show *Firing Line*. He cited as an example of a national security secret that he had willingly withheld the story of the *Glomar Explorer*, and pointed out that only Jack Anderson had not agreed to Colby's request for a delay. Host William F. Buckley asked Schorr, "What does a free society do with the Jack Andersons who violate what you consider to be the implicit priorities here? Or even explicit?" Schorr responded:

"Well, we are Americans. We search for an American way of expressing our disapproval. There is no - well, within limits there has not been prior restraint.... You assume that there is a certain amount of obloquy connected with it which Jack Anderson should feel. I don't know of any other way, given our freedom of expression."⁶⁸

But does Anderson receive any of the "obloquy" mentioned by Schorr? Perhaps over drinks in private conversations between journalists, but his column still appears in hundreds of newspapers and he is sought on several television shows for his scoops. One day a Jack Anderson or Bob Woodward might "blow" a national security secret with such grave consequences that Congress and an enraged public could decide it is time to more narrowly constrain the First Amendment rights of the press.

The precedent has already been set. In 1982, for example, Congress passed the Intelligence Identities Protection Act, which prohibits unauthorized disclosure of the identities of some U.S. intelligence

personnel.⁶⁹ (i) The conviction of Samuel Morrison (see above) also serves notice that the First Amendment is far from absolute. And the public has not been noticeably supportive of the press lately. Observed Daniel Schorr: "A startling lesson of the Grenada invasion episode is that the news media, arguing for the public's right to know, found themselves without general public support."⁷⁰

AFTER ACKNOWLEDGING the unavoidable and generally healthy tension between the press and intelligence agencies in a democracy, former CIA director Colby suggested that a set of standards could be generated by the press to guide its decisions on when to honor government claims of national security. These standards, he suggested, could include "whether the government is doing what is quite properly within its charter or whether some error or abuse is involved, whether it is acting under due authority and with appropriate Congressional oversight or whether it seems to be acting improperly or in contradiction to Congress' understanding, and whether the arguments for restraint seem to have justification in avoiding adverse foreign reaction."⁷¹ In a speech to the National Press Club, Alistair Cooke addressed the issue this way:

"The question is, how free can the press responsibly be? ... It seems to me to come down to [the journalists's] own judgment and his own conscience. If your aim is to write a juicy story to get the jump on your colleagues, to be the first on the network with a speculation or a 'sources say,' then, of course, you don't give a damn. But I would like to think there are journalists who feel that their job is as much a public duty as any politician."⁷²

Former Supreme Court Justice Potter Stewart, who once termed the concept of "the right to know" as "fuzzy and sloppy thinking,"⁷³ remarked to Fred Friendly: "The trouble with you journalists is that

i Congress was originally spurred to action by appearance of the *Covert Action Information Bulletin*, founded by CIA renegade Philip Agee, which regularly published names of CIA personnel and agents. The Intelligence Identities Protection Act of 1982 is aimed at persons who engage in a "pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States" The Act, Public Law 97-200 (amending the National Security Act of 1947), was passed 354 to 56 in the House and 90 to 6 in the Senate.

you are all mixed up between what the Constitution gives you a right to publish and the right thing to do."⁷⁴

Alexander Hamilton saw 200 years ago that any guarantee of press freedom rests ultimately on public opinion. Hamilton was arguing against the need for a bill of rights in *The Federalist* No. 84, but his comments are no less pertinent for the Bill of Rights having been adopted:

"What is the liberty of the press? Who can give it any definition which would not leave the utmost latitude for evasion? I hold it to be impracticable; and from this, I infer, that its security, whatever fine declarations may be inserted in any constitution respecting it, must altogether depend on public opinion, and on the general spirit of the people and of the government."⁷⁵

APPENDIX A: THE PRESS AND TERRORISM

Reckless media coverage has compromised anti-terrorism activities, and in one case resulted in a loss of life, according to Michael Ledeen, a senior fellow at the Georgetown Center for Strategic and International Studies. Ledeen cites these examples:

* On Nov. 22, 1974, a British Airways plane was hijacked to Cairo Airport. In response to terrorist demands that their comrades in other countries be freed, another plane supposedly carrying the released terrorists landed in Cairo. A newsman learned there were no released terrorists aboard and broadcast this information. The terrorists immediately killed one of the hostages on the BA aircraft.

* In 1974, terrorists seized a courthouse in Washington, D.C. The police had a momentary advantage: the room where the terrorists held hostages had a two-way mirror. When this was revealed in the media, the terrorists covered the mirror.

* In 1972, the hijacker of an American Airlines airplane parachuted to safety, and police developed plans to place transmitters in parachutes. But when news of it was published two days after implementation, the plan was aborted.

* During the TWA hijacking in the summer of 1985, an American television network announced that the 'Delta Force' was enroute to the Mediterranean to free the hostages. The terrorists, who had taken the plane to Algiers and given the authorities there until 7 a.m. to meet their demands, took off when they heard this news, thus ending plans by the governments involved to immobilize the aircraft in Algeria.⁷⁶

APPENDIX B: THE POST LUNCHES WITH A 'CIA ELDER'

In his best-selling book, *Veil*, Bob Woodward describes attempts by various members of the intelligence community to explain why publication of some kinds of information can compromise national security, even though there is reason to suspect that an adversary of the U.S. already received at least part of that information. The material discussed here was classified information that comprised part of the court record in the trial of convicted spy Ronald W. Pelton.

Intelligence officials told Woodward they did not want the Pelton trial to take place in a blaze of publicity, because in spite of Pelton's crime it was not known just how much the Soviets did or did not know about Ivy Bells (the operation wherein Navy submarines entered Soviet waters to attach listening devices to underwater cables). The intelligence officers were also afraid that a story in the *Post* could set off a "competitive feeding frenzy" among the media, with each new article revealing yet another detail of the operation.

The intelligence officials said a number of questions remained unanswered: How much had Pelton actually remembered? Did he hold anything back? Had he been believed?

At this point Woodward did a press search, and learned that *The New York Times* had run a Sy Hersh story on Ivy Bells 10 years previously. Didn't this cinch his case that articles in the *Post* were now justified? To find out, he scheduled a luncheon.

On February 7, 1986, Woodward, Bradlee and two other senior editors, Len Downie and Robert Kaiser, had lunch with a former senior official, "one of the elders" of the CIA, who gave them a long list of reasons why publication of the Pelton article could compromise national security. When Bradlee protested that the Russians already knew of the operation, the former CIA official responded, as paraphrased by Woodward:

"Ah, he asked, but precisely who? Which Soviets? There was no telling. The discovery of the 'tap' may have been a sufficient triumph for the leaders to have been told. But the line had been tapped for some time. That might have been embarrassing to those in charge of the military or KGB. There might have been an internal Soviet cover-up.

This official pointed out that bureaucracies everywhere are similar in their attempt to cover up bungs, and there was a good chance all the details of the U.S. operation had never made it to the top. But if articles began appearing on the front page of *The Washington Post*, then a red flag goes up. Woodward paraphrases the former official's warning:

"A search would begin for more espionage, spasmodic perhaps and clumsy no doubt, but the Soviets would go up on their toes. Precisely where the United States government did not want them. This might lead to the compromise of other U.S. operations, totally unrelated."

NSA operations were a series of interlocking secrets, the official told Woodward and his editors, and it was difficult to "rip out a single operation and discuss it in public" without potential damage.

The former official concluded, according to Woodward, with the warning that "the chief concern was about the dynamics of U.S.-Soviet relations. The story might harm those relations, and this rightfully belonged in the category of national security if anything did."

But Woodward and his editors felt if they looked long enough, they might find someone who would say publication of the material would not harm national security. "Now we found ourselves in the business of shopping the story around town to see whether we could get someone with impeccable authority to tell us it would be all right to publish." They finally found an unnamed former intelligence official who told them their story would not tell the Soviets anything new, whereupon the *Post* moved forward with publication.⁷⁷

FOOTNOTES

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