

Journalism and Terrorism:

How the War on Terrorism Has
Changed American Journalism

Free-press research by the Missouri School of
Journalism that raises important questions and
suggests surprising answers

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October 7-8, 2002

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Journalism and Terrorism: How the War on Terrorism Has Changed American Journalism



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1207 18th Avenue South
Nashville, TN 37212
615/727-1600

Publication No. 02-F05

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Hometown News: How American Journalists Are Covering the Post-9/11 World

by George Kennedy and Esther Thorson

“I think it’s a great moment in American journalism. Now, whether we can make this moment last, and how long we can make it last, these are the open questions. ... I’m mildly optimistic, but the italics must be on mildly.”

DAN RATHER, three weeks after September 11, 2001, as quoted in Leonard Downie and Robert Kaiser, *The News About the News*, p. 143

“In the aftermath of 9/11, there was an emphasis on international reporting, but by December questions arose: How long is this going to last? ... A feeling is creeping back in that if you lead [with] foreign [news], you die.”

DAN RATHER, *TV Guide*, August 31, 2002

OVERVIEW

This paper reports the results of a phone survey of managing editors and news directors from newspapers and television stations across the United States. The sample included approximately equal numbers of large, medium and small news organizations. The study also included follow-up interviews with a number of the original respondents.

SUMMARY

Anita Miller knows her town and her newspaper. She has lived in Topeka, Kansas, nearly all

her life. She has been managing editor of the *Capital Journal* for eight years. She knows that the events of 9/11 and the war on terrorism have changed her neighbors and the news they get.

“You saw a shift in society, and that changes the way you operate the paper and look at news,” she said. “I just think they’re more attuned to the world than they were a year ago. I know I am.”

Miller could have been speaking for most of her colleagues who direct the newsrooms of America’s daily newspapers and television sta-

tions. In a new national survey, managing editors and news directors said they are providing more and better international news coverage. Ten months after the attack, two-thirds of newspaper editors and 70% of TV news directors said their quantity of coverage is up. More than 80% of editors and 90% of news directors said the quality has improved.

That coverage is also more patriotic in tone and content. More than 80% of the respondents said they are covering more issues related to patriotism, while three-quarters of editors and 85% of news directors said they are featuring the flag or other patriotic symbols more than before. Nearly 60% of news directors said staffers have worn flag pins or other such emblems on air.

Deborah Johnson, news director of WFSB television in Hartford, Conn., was not having any of that. “We don’t wear anybody’s buttons, but we’re as patriotic as the next people.” The content of coverage has changed, she said, because the news itself has changed. “People are doing more patriotic activities, so we cover it.”

Coverage has not been easy. Many said there were increased problems gaining access to information from the national government. And most — 90% of editors and 70% of news directors — said they thought the Bush administration has used the availability of information to try to manipulate the press.

Like Miller, whose staff has shrunk in the last year because of economic pressures, most are providing coverage of the war on terrorism without extra journalists or increased budgets. “We kind of juggle what we cover,” she said. One-fifth of editors said profit pressure from owners has increased, while three-quarters said it has stayed about the same. Among news directors, two-thirds reported increased profit pressures.

Also like Miller, most newsroom managers are getting most of their additional international coverage from the wire services or the networks. Among

newspapers, the dominant provider of international news is the Associated Press. Among television stations, the primary source is the network with which the station is affiliated. About one-third of both newspapers and TV stations sent staffers to New York or Washington after 9/11. About one-third of stations and one-quarter of newspapers have dispatched staffers to other war zones.

As those assignments suggest, the focus of the increased international coverage, especially on television, seems to be on one topic — the war on terrorism. News directors rate international news much lower in interest to viewers than editors think it is to readers. Therefore, only 44% of news directors said international news is important for their newscasts, while 70% of editors said it is important in their reports. By contrast, more than 90% from both media rated coverage of the war on terrorism as important.

Johnson, of WFSB, explained, “We have troops on the ground. We’re more visibly part of the international scene than before. Nobody’s covering what’s happening in Siberia, because nothing’s happening in Siberia.”

She added, “To the average viewer, I don’t think international news is very important. It doesn’t directly connect with people’s lives. Here, for example, we’re so fragmented that unless you live or work in Hartford, you don’t even care much about that.”

Only about one-quarter of news directors and one-third of editors said they thought international news would increase audiences. However, more than half the news directors and nearly half the editors reported that their audiences were larger almost a year after the attacks.

The *Capital Journal* (circulation 58,489) has launched a new feature, “Know your neighbors,” that brings together small groups to discuss a variety of common issues and interests. Some participants write articles for the paper. “It’s a way to touch the community a little more,” Miller explained. “After

9/11, people kind of closed off. This is a good way to open doors and get people to talk and appreciate diversity.”

The survey did not ask for such examples of enterprise, but more than one-third of editors and 60% of news directors did report greater coverage of civic participation. About one-third of both groups said they have changed newsroom assignments to reflect changed priorities.

One other thing that may have changed is the ideology of the journalists. Previous studies have found large majorities of journalists placing themselves left of center on the political spectrum. Not so with these newsroom managers. Respondents from both media divided themselves evenly among left, right and center, with slightly more in the center than on either side.

STUDY BACKGROUND

In the weeks following 9/11 there was consensus among citizens, news professionals, and media critics that the coverage of the attack and the war on had been a high water mark for journalism, print and electronic. Downie and Kaiser¹ described television and print coverage:

So on September 11, 2001, and for some time after, Americans remained glued to their televisions, turned in record numbers to online news sites and bought millions of extra copies of their newspapers to help absorb and cope with the horrors of shocking terrorist attacks on the United States. In the weeks that followed, good reporting allowed Americans to participate vicariously in the investigations of the terrorists and the govern-

ment's planning for retaliation. Journalists could educate Americans about Islamic extremists, the history of Afghanistan, the difficulty of defending the United States against resourceful and suicidal terrorists, and much more. Journalism defined the events of September 11 and their aftermath. In those circumstances the importance of journalism was obvious and much discussed. (p. 4)

and

in the traumatic days that followed the terrorist attacks in September 2001, when the best newspapers published extraordinary editions filled with detailed reporting, emotion and explanation. (p. 9)

Critics at the Project for Excellence in Journalism² were similarly laudatory, noting that “solid sourcing and factualness dominated the coverage of the bombings and their aftermath.”

Some recent academic analyses³ criticized the immediate television coverage for its reporting of too many rumors (83) during the first five hours of coverage. Statements by television professionals themselves indicated they admitted to violating journalistic conventions during the immediate hours after the attack. Network news was also criticized for “excessive amounts of praise for the United States and New York City.” The Project for Excellence in Journalism⁴ similarly criticized television coverage for being too “interpretive” rather than objectively descriptive.

The willingness of news professionals to give up

their “objectivity” in favor of patriotism also raised concerns. For example, Bob Steele⁵ of Poynter wrote within a month of the attack:

You can see television anchors and other journalists across America wearing red, white and blue ribbons and American flags on their lapels. You can see television networks and local stations adding patriotic graphics and slogans to their presentation and newspapers publishing full-page American flags. I won't condemn these expressions, for I support the right of individuals and news organizations to make choices on such matters. I would not, however, do what they are doing. I don't believe in mixing my patriotism with my professionalism.

Stacey Woelfel, news director of KOMU-TV in Columbia, Missouri, commented⁶ about criticism he received from the Missouri legislature for directing his staff to “leave the ribbons at home” when reporting or anchoring for the station:

The principle centers on what messages — intended or unintended — we send the audience. While some would see the ribbons and flags as merely a tribute to the dead on the east coast, others see them as a sign of support for particular policies and positions. We cannot risk sending our viewers the impression that we have “taken sides” in this con-

flict. Instead, we show our patriotism best by being aggressive reporters asking questions of our leaders about the policies they are pursuing.

Journalism ethics scholars Sandra Borden and Michael Pritchard⁷ define “conflict of interest” as a situation in which the “independent judgement and performance of journalists *as journalists* may be compromised by interests that lie outside their journalistic role” (p. 88). The challenge for journalists reporting on attacks on their country is to provide the public with the most accurate, timely, and fair information about what is going on that they can. And they should do this in a way that is credible to citizens. If the use of visible symbolism threatens either the quality of the news content or news credibility, it is problematic. Leonard Downie, editor of the *Washington Post*, wrote⁸ about journalists that they “cannot be expected to completely cleanse their professional minds of human emotions and opinions,” but that he wanted his newspaper to “come as close as possible to doing just that.”

The question of whether patriotism is a conflict of interest for journalists is perhaps unanswerable. However, there is anecdotal evidence that news consumers like the presence of patriotic symbols mixed in with their news. Pew Research Center reported that attitude toward journalists and news took a significant upward tick immediately after the attacks, although attitudes have now dropped back to previous levels.⁹ Television audiences for the network evening newscasts are all up substantially.

Regardless of what ethicists or the public conclude about the appropriateness of connecting news with patriotic symbols, we thought it important to ask news executives how they had dealt with the issue immediately after 9/11, what, if anything, their policies were about patriotic symbols, and what their reasoning was about the issue.

Except then for a couple of questionable aspects, the consensus has been that 9/11 stimulated the news media to a higher standard of quality of reporting, and certainly more “international” coverage than had been seen for a significant period of time.¹⁰

Citizen evaluation of the immediate news coverage of 9/11 was also quite positive. A Pew Center survey¹¹ reported that 89% of Americans sampled gave the media either an “excellent” or a “good” rating for their reporting of 9/11. Evaluation of the news media on “usually getting facts straight,” “are highly professional,” and “care about the people” all increased 15-25 percentage points. The networks stayed on the air with the story for approximately four days without any support from advertising, and around two-thirds of Americans reported they could not stop watching this news.¹²

But even at this time of admiration for the news media having “stepped up to the plate,” there was doubt expressed about whether the changes in news product or newsroom process would last.¹³ Dan Rather’s quote above expresses this doubt as well as any. Recent analyses of changes in the ownership of news organizations have shown how the pressures of Wall Street on publicly owned companies have negative impact on news quality in general,¹⁴ and international news specifically.¹⁵

There has clearly been significant reduction of the amount of international news in the U.S. press over the last 20 years,¹⁶ along with often-articulated beliefs by news professionals that Americans are not really interested in international news. Indeed, a recent Pew Research Center poll indicated that most Americans said they pay attention to international news only when something important is happening.¹⁷

Corresponding to purported low interest by the public, there is a long history of scholarly research on international news that demonstrates its highly stereotyped nature. American press coverage of

international news has been shown to be consistently western-centric, and focused almost exclusively on violence, crisis and disaster, to the virtual exclusion of news about ordinary people and ordinary problems and opportunities these people experience.¹⁸

Finally, the role of the military had once again become critical in the days and months since 9/11. Although previous generations of news professionals had military experience themselves, we suspected that this was no longer the case. When understanding the operation and world view of the military is critical for the public, just what resources do news professionals draw on? Military journalist Thomas Ricks summed up what we suspected was the level of military knowledge in journalism with the following story of participating in a Marine night patrol in Mogadishu from his book, *Making the Corps*¹⁹:

As we walked in single file, with red and green tracer fire arcing across the black sky over the city, I realized that I had placed my life in the hands of the young corporal leading the patrol, a twenty-two-year-old Marine. In my office back in Washington, we wouldn’t let a twenty-two-year-old run the copying machine without adult supervision.

As the first anniversary of 9/11 approached, we began to ask ourselves just what had changed in newsrooms across the country as a result of 9/11. We also wondered whether news professionals thought any of the immediate changes had remained, had become a part of revised news process, and were perhaps having positive impact on news content. Although much had been reported about the impact of 9/11 on the country’s elite

newspapers and the networks and cable stations,²⁰ what was going on in the newsrooms that serve up the daily diet of local news to most Americans? How had these newsrooms first responded to 9/11 and the beginnings of the war on terrorism? How would they evaluate the quality of their own coverage? Had there been a wider impact on the reporting of international news in a way that resonated with Americans in towns and cities across the nation? Had 9/11 had any impact on the steady erosion of circulation and audience, and if so, was that effect still operating? Had news process changed in the immediate aftermath, and had structural changes been enduring? Had the war on terrorism affected how news professionals interacted with sources, at either the local, state, or national level? Had 9/11 and the war on terrorism influenced the public expressions of patriotism by news professionals? And finally, just how much military expertise were newsrooms able to call on to cover the war in Afghanistan?

Research questions

Review of the literature on the impact of 9/11 and the war on terrorism led us to six main areas of questions, to which we sought answers with a phone survey of newspaper editors and news directors across the country.

The first area of questioning concerned perceptions of the impact of 9/11 and the war on terrorism on overall news content and quality of international coverage. How has the amount of coverage changed over the year? What news has been squeezed out? What do news executives expect of coverage for the upcoming year?

The second area concerned perceptions of the impact on international news in general. How important do news professionals now see international news to be? Do they think more international news increased readership/viewership? How impor-

tant do they think international news was to the ordinary reader/viewer now? How did they evaluate the quality of their international news this year? The third area focused on what has changed in terms of news process. Are assignments different? Have new personnel been hired? Have newsroom budgets been increased? Were reporters sent to New York, Washington, Afghanistan, or other war-related sites? And what do news executives expect of coverage for the upcoming year? How has news of 9/11 and the war on terrorism affected the news hole during the year? What news has been squeezed out? What do news professionals expect about Year 2 of the war on terrorism?

The fourth area concerned the relationship between press and sources. Has information been harder to come by at the local, state, or national level? Have news organizations been more reluctant to push for information in the face of security issues?

The fifth area concerned aspects of felt and expressed patriotism. Do news professionals feel more patriotic? What are policies about display of patriotic symbols like flag pins? Have there been more "patriotic" symbols in the news content?

The sixth area concerned military knowledge and experience. Does the news organization have professionals who have served in the military? Are the news executives themselves experienced with the military? What are perceptions of the military knowledge capacity of the news organization?

METHOD

Survey structure

Appendix A displays the exact wording of the questions asked on the survey. We also asked demographic questions of those interviewed. The questions were developed by the authors. Several news professionals from both the broadcast and print side

were asked to review the questions for clarity.

Seventy-five newspapers evenly divided among large (>100,000 circulation), medium (between 50,000 and 100,000 circulation) and small (<50,000 circulation) were sampled from across the United States. We did not sample from either New York or Washington, D.C. For each newspaper, the managing editor was identified as the target interviewee.

Seventy-five network affiliate television news stations were likewise sampled from large (top 50), medium (second 50) and small (third 50) markets. The news director from each station was chosen as the targeted interviewee.

The surveys were conducted by a professional survey organization housed in the School of Journalism at the University of Missouri. The distribution of respondents is shown in Table 1.

Response rate was higher for newspaper editors (overall 84%; 88% for large, 84% for medium, and 80% for small newspapers) than for television news directors (56%; 52% for large, 48% for medium, and 68% for small stations). Given the lower response rate of the television executives, we sampled an additional five stations within each size category and were able to add 18 television responses. This meant the final response rate for television news directors was (overall 66%; 57% for large, 60% for medium, and 80% for small stations). In all, 64 newspaper and 59 television executives were interviewed.

Newspaper executives were slightly older (47 years) and fewer were male (69% males) than television executives (43 years; 73% males). Newspaper executives had a few more years of journalistic experience (25 years) than television executives (21 years), and were slightly more likely to have a journalism degree (72% compared to 68%). Asked to indicate political leanings on a scale from 0 (extreme left) to 100 (extreme right), the executives tended to characterize both the editorial position of

their medium and their own orientation in the middle of the scale. For newspapers the mean rating of editorial position was 56 and mean rating for self was 50. For television the mean ratings were 54 and 53.

All results were analyzed with analysis of variance. Most of the analyses were 2 (newspaper vs. television) x 3 (large, medium, and small). On two occasions, we used three way analyses, the design for which was 2 (newspaper vs. television) x 3 (large, medium, and small) x 3 (right after 9/11, during the middle of the winter, and during May and June of 2002).

RESULTS

Coverage of 9/11 and the war on terrorism

There was extensive agreement that news coverage of 9/11 and the war on terrorism was very important to all of the news outlets (Table 2), with all sizes of stations and newspapers rating the importance about a 6 on a seven-point scale where 7 was "very important."

When we asked about the quantity of international news coverage of as a function of time since 9/11, we found a not-surprising consistent decrease over time (Table 3). On a scale of 5 (greatly increased quantity) to 1 (greatly decreased), we found the mean quantity of coverage rated at 4.6 during the first two months after 9/11, 4.0 during January and February of 2002, and 3.7 during May and June. There was a significant medium by size interaction. Medium and small newspapers and television stations showed the same small degree in increase. Large newspapers, however, reported less increase than large television stations.

We expected that the executives would indicate that their quality of international news after 9/11 would be much improved. The perceived improve-

ment (Table 4) was more moderate than great (a mean of about 4, which indicated the coverage was “somewhat improved”). There was no difference in newspapers and television stations on this perception.

Most executives reported that even if there were no further terrorist attacks on the United States in the next six months, their coverage of the war on terrorism would remain about the same (mean 1.7 on a scale where 1 was decrease, 2 was remain the same, and 3 was increase). There were no differences as a function of medium or size of medium.

International news coverage

Newspaper executives indicated that international news was more important to their newspaper than television executives thought it was to their stations (Table 5), with the overall average rating just under a “5” on a seven-point scale (7= very important). There was a significant interaction between medium and size, with small newspapers rating international news as more important than small television stations did.

The greater importance of international news continued when respondents were asked how important international news was to the ordinary person (Table 6), although both newspaper and television executives considered international news less important to ordinary people than it was to their own station or paper (about 3.9 on the same seven-point scale).

Finally, when asked how important international news had been to increasing readership/audience, there was no difference for television and print (Table 7). There was a marginally significant interaction between medium and size, with the small television stations reporting less importance of international news to viewership than small newspapers.

Nine/11 and the war on terrorism did squeeze other news out of the news hole. Table 8 shows that

large newspapers and television stations were significantly more likely to agree that other news had been reduced. Open-ended responses from television executives indicated that the news that was squeezed out was of a great variety, with no one area dominating. In contrast, newspaper executives indicated that most of the reduction was in national news.

Changes in news process

Newspaper executives reported significantly more increase in newsroom budget to cover the war on terrorism than did television executives (Table 9), although virtually no one reported any increase of newsroom staffs to cover the War on Terrorism (Table 10). For the newspapers, the wire services provided most of the coverage of both 9/11 (mean percent 75) and the war on terrorism (mean percent 86). For television, network coverage provided an average of 40% of the coverage of 9/11 and 56% of the war on terrorism (Tables 11 and 12).

About a third of both newspaper and television executives sent staffers to New York to cover 9/11 (Table 13). About 15% sent staffers to Washington D.C. to cover 9/11 (Table 14), fewer than 10% sent staffers to Afghanistan (Table 15), and around 20% sent staffers to other war-related locales to cover the war on terrorism (Table 16). What was surprising about the data was that for all four measures, size of the news outlet interacted significantly with whether it was print or broadcast to affect whether staff was sent to other locations. Smaller and medium papers sent more staffers to New York than larger papers. Smaller papers were more likely to send staffers to Washington, Afghanistan, and other war-related locales than either large or medium papers. In contrast, large television stations were more likely to send staffers to News York, Washington, Afghanistan, and other war-related locales than medium or small stations.

Finally, we asked whether profit pressure from

the owners had increased, decreased or remained about the same since 9/11. There was a significant difference between print and broadcast. Newspaper executives were more likely to report “about the same” (mean = 3.1) than television executives (mean = 3.9) where 3 was “about the same” and 4 was “somewhat increased.”

Relationship between press and sources

News executives reported significantly more difficulty in accessing the national government for information than for state or local government (Table 17). Most responses lay between 2 (somewhat more difficult to access information) and 3 (about the same). The mean for local was 2.8, for state, 2.9, and for national government it was 2.5. There were also significant differences in the media’s perceptions of difficulty in obtaining information by size. Newspaper executives reported higher difficulty than television executives. Large and small media reported less difficulty than medium-sized media.

Virtually no one reported greater reluctance to push for access to information on the war on terrorism. However, there was lots of agreement with the view that the Bush administration has used information availability in an attempt to manipulate the press (Table 18). Newspaper executives were more likely to agree (93%) with this perception than television executives (70%).

The role of patriotism

Seventy-three percent of the newspaper executives and 77% of the broadcast executives reported more use the American flag and other patriotic symbols in the news after 9/11 (Table 19). There were no significant differences between news and print, nor among news outlets as a function of size.

The personal wearing of patriotic symbols like

flag pins varied significantly between the media, with only 19% of the newspaper executives reporting that they did so, but 55% of the television executives reporting they did so (Table 20). There was also a significant interaction between size and medium. For newspapers, the larger they were, the more likely their executive wore a patriotic symbol. It was just the opposite for television. The smaller the station, the more likely the executive wore patriotic adornment.

On a scale where 4 was “somewhat increased” and 3 was “about the same,” all of the media reported around a “4” when asked whether patriotism issues were more extensively covered after 9/11 (Table 21). The newspaper executives reported a smaller increase in coverage of patriotic civic participation (like participating in blood drives) than did television executives. The newspaper executives reported a mean of 3.4 on a scale where 4 was “somewhat increased” and 3 was “about the same.” The television executives reported a mean of around 3.8 on the same scale.

Military expertise

Newspaper executives (40%) were more likely to report (Table 22) that at least one reporter on their staff was a military expert than television executives (21%). Although similarly few newspaper and television executives (Table 23) had served in the military (a mean of 9%), on a scale where 3 was “very knowledgeable,” 2 “somewhat knowledgeable,” and 1 was “not very knowledgeable,” television executives reported themselves (Table 24) to be significantly more knowledgeable about military affairs (mean = 2.02) than did newspaper executives (mean = 1.78). There were no differences as a function of size of the media, nor was there any interaction between size and medium.

IN THEIR OWN WORDS

Several aspects of the survey responses were particularly intriguing or puzzling. We therefore phoned a number of the newspaper and television executives again and conducted brief, informal interviews. We also turned to some of the open-ended questions that had been asked in the survey to examine how these professionals talked about their experiences and views in their own words. In the section that follows, follow-up interviews are represented with specific names. The anonymous comments are from the survey.

About the quality and quantity of coverage

Most managing editors and news directors said that both quality and quantity of international coverage has gone up and stayed up over the past year, but this appeared to reflect only coverage of the war on terrorism, not a broader representation of the rest of the world.

Deborah Johnson, news director of WFSB in Hartford, Connecticut: “Up til 9/11 local TV news was on the road of touchy-feely stuff ... a lot of featurey pieces.... That’s taken a back seat. We’ve made room for more hard news. That’s what I see at a lot of stations.”

Mel Tittle, managing editor of the Lubbock, Texas, *Avalanche-Journal*: “We’re more attentive to national and international news than before September 11. We’ve sought ways to localize. You’ll see more international news on the front page. Our mission is to be THE local news provider; Sept. 11 changed that some.”

Randy Henderson, managing editor of the *Birmingham News* (Alabama): “The war on terrorism is the main international story, but wire coverage seems better overall — not just the war. We increased space for the first few months, but we’ve gone back to our normal news hole.”

Bill Wallace, news director of WRCB in Chattanooga, Tennessee: “We’re a local station. Obviously, there’s more relevance to international news than before. We haven’t had a large increase in time devoted to international stories on our local news. We’ve really tried to take what’s going on internationally and relate it to our audience.”

Dan Dennison, news director of KOAA in Colorado Springs: “Before 9/11, we were local, local, local; 9/11 created a new paradigm. Famine in Africa is not going to be on the local news. The drought we’ve been suffering here is No. 1 on our viewers’ minds. But international news is more important now, especially news related to the war on terrorism.”

Wayne Stewart, managing editor of the *Woonsocket Call* (Rhode Island): “Our coverage hasn’t really changed since the first few days. We’re 99% local on page 1. Our readers are paying more attention to international news. We’ve redesigned the paper to give more prominence to national and international.”

About the importance of international news

Newspaper editors rated international news as more important than did television news directors, but both groups agreed that news of the war on terrorism is highly important to them and to their audiences.

Dan Barkin, deputy managing editor of the *Raleigh News and Observer*: “I believe that our readers got an abrupt and very unpleasant lesson in the domestication of foreign news on Sept. 11. Right now it is hitting on virtually all the dimensions of newsworthiness. ... Once we dismissed foreign news as ‘Afghanistanism’ that had little to do with our readers. Now, because of the frictionless movement of global travelers with malevolent designs and the ease with which money can be moved around, our readers understand that news in

Indonesia or Sudan or Tanzania can affect them. ... They have learned about madrassas and why ' sleeper cells' in Hamburg are important."

Kevin Cope, news director of KSNT in Topeka, Kan.: "I can't say that I've heard a clamoring for international news in general ... except for the war. We're not really doing any more on Africa, for instance. By and large, the Middle East is 85% of it."

John Wendover, news director of KBAK in Bakersfield, Calif.: "International news to our viewers means something directly related to their lives, and that means the war on terrorism."

Randy Henderson, managing editor of the *Birmingham News* (Alabama): "International news is important when it intersects with readers' lives. In Alabama, we have the second-highest number of National Guard and Reservists called to active duty. This is traditionally a very patriotic state, so there are many Alabamians in military service around the world. So the war on terrorism is almost a local story for us. Now, if you're talking about some political developments in Australia, there's not much interest."

Deanna Sands, managing editor of the *Omaha World Herald* (Nebraska): "It's really a local story for us because of the University of Nebraska at Omaha's long-standing Afghanistan studies program and the proximity of Offutt Air Force Base. We've also tried very hard to explain the consequences of security changes to people's daily lives."

How has the news-gathering process changed? What news has been squeezed out?

Only about one third of our respondents said they have created new beats or changed staff assignments. News of the war seems to have crowded out softer, non-local or stories for which timing was not critical.

Dawn Keyes, managing editor of the *Beckley*

Register-Herald (West Virginia): "After 9/11 there was an immediate change on p.1, but we've come full circle. We've kind of turned back toward local. We haven't changed any assignments; we just try to make sure we get in stories that are pertinent.... (She turns away from the telephone for a few seconds and returns.) I've got to cut this off — we've got a fire uptown."

Bill Wallace of Chattanooga: "Right after 9/11, we put a clock on the wall in our newsroom set to bin Laden time. You know, it's a 7-hour time difference over there. That bin Laden clock is still there, with a map of the world we put up. I feel good every time I see one of my staff stop and check that map. Nine/11 didn't change everything. This is what we do; we cover the news."

Deborah Johnson of Hartford: "One thing 9/11 did change; it made us think twice about doing evergreen stories. Television news is expensive to do, and we've made more room for hard news."

Dan Barkin of Raleigh: "Many of the soldiers in Afghanistan have trained or are based in North Carolina, because of the Special Forces command at Ft. Bragg. So we have done a lot of stories on the role of the Special Forces. We have also done stories on the role of the Marines from Camp LeJeune/Cherry Point, the Air Force ... and the National Guard units that have been mobilized.... We have shifted some resources, but we have enjoyed the news hole and the budget to do what a quality regional newspaper should do in covering the war."

Deanna Sands of Omaha: "We didn't send anyone to Afghanistan, but our Washington bureau reporters have added war coverage to their topics. A bigger proportion of the national/international space is given to war coverage. I think the thing that has changed most here at the paper is our sensitivity to the impact that foreign events can have on our readers. We're more attuned to the ripples than we used to be."

How have relationships changed between reporters and sources? How has the national government managed news availability?

Many respondents reported greater difficulty of access to the national government. Most detected efforts by the administration to manage the flow of information.

A television news director: “Generally they manipulate the press. One of their goals is to garner positive press coverage of the president. Sometimes they tried to create a level of alarm that wasn’t really there. Terrorism alerts come to mind. There was really no substance.... The cases they’ve made against individuals are overblown. They’re just trying to show they’re on top of this and working hard to eliminate terrorism in this country.”

A newspaper managing editor: “Daily coverage over the wire shows evidence of a lack of willingness to question the Bush administration, and the administration takes advantage of that.”

A managing editor: “Every administration uses the press to further their own agenda, put their spin on information. But this administration is no worse than other administrations.”

A news director: “In general, it is the role of a president to put the most positive spin on all battle-field news. This is just what I have heard from network folks, that access to information is somewhat less.”

Has the news become more patriotic?

Many executives reported that the content and the tone of their news has become more overtly patriotic, both in terms of visual symbols of patriotism and in terms of coverage of community events that were themselves patriotic in nature. More than half the television executives said their staff had worn patriotic symbols on the air.

Wayne Stewart of Woonsocket: “Nine/11 changed what we worry about. People seem to care

more about patriotism. We are covering more flag-raising and memorials. It’s more on the minds of people than before.”

Dan Dennison of Colorado Springs: “This is an enormous military town, so there are lots of stories with a patriotic theme. We do cover those stories. I did not allow flags on the air. We did use NBC’s peacock with the flag for several weeks. I’ve had second thoughts about that. We shouldn’t be waving the flag.”

Bill Wallace of Chattanooga: “We’re a very traditional community, very patriotic. We’ve had more flags in town and so more on the air. Right after 9/11, there were street vendors selling flags. That was a good story for us.”

Dan Barkin of Raleigh: “I think that our coverage has been clear-eyed and has resisted jingoism. For example, we have covered the conflict between national security and constitutional safeguards.... I admit to feeling some qualms when the New York Times moves stories outlining the latest war plan to be leaked by some colonel in the Pentagon.... I would love to see *CJR* [*Columbia Journalism Review*] or *AJR* [*American Journalism Review*] examine what has appeared in the media regarding sensitive information.... This is a very dangerous moment, and newspapers should not let Donald Rumsfeld or Dick Cheney bluff us into submission like Robert McNamara and McGeorge Bundy bluffed editors 40 years ago over Vietnam.”

Newspaper managing editor: “We published the flag as an insert twice — not a newsroom decision but a company decision.”

TV news director: “We don’t wear anybody’s symbols on air because if we give it to one organization, like age ribbons, breast cancer ribbons, how can you not do it for another organization? As far as the flag pins, our basic premise and priority of being the watchdog enabling us to show the patriotic fervor and query our government on issues at hand was our reason not to wear flag pins.”

TV news director: “Generally we don’t let them wear pins or ribbons. Immediately following the attacks we wore them for about two weeks.”

CONCLUSIONS

Important realities and intriguing speculations emerge from this study. The responses of these newsroom managers show how the attack of Sept. 11, 2001, and the events of the year that followed have changed the practice of American journalism – and how the essentials haven’t really changed at all. The questions suggested by these responses should generate further research and perhaps some introspection among journalists, a group notoriously resistant to self-analysis.

First, the realities.

The overwhelming testimony of those who direct America’s newsrooms, print and broadcast, is that the quantity and the quality of international coverage increased dramatically in the aftermath of 9/11 and that much of that increase has been maintained. The improvement came with the help of little or no increase in either staff or budget. In the case of television especially, it came in the face of increased profit pressures from ownership.

The content of that increased coverage has been concentrated on the war on terrorism. That is no surprise when nearly all our respondents think the war is what is important to their audiences. In the survey and in follow-up interviews, they made clear that they see the war as more relevant to the lives of their communities than any other news from abroad. Editors and news directors emphasized their efforts to find and tell local war stories.

Both content and presentation immediately became more patriotic. That is especially, but not only, true of television. Readers and viewers seem to be responding. Other studies in the aftermath of the attacks show that the public’s favorable ratings of

journalism went up along with the public’s perception of journalists’ patriotism. Both ratings have now declined as flags have disappeared from television screens and the content of the news has become less inspiring. At the same time, readership and viewership of the news jumped on September 11, 2001. Most of that increase has disappeared, but nearly half the newspaper editors and more than half the television news directors reported increases in audience. In an era when newspaper circulation and broadcast television audiences are declining, war news is good news for journalists.

Access to information about the national government is more difficult, and most news executives perceive that the administration is using information to manipulate the news. However, few respondents seemed outraged, and most appeared to regard both as the inevitable side-effects of wartime. The most important question raised by these realities is whether the American public is being well served. Are readers and viewers getting sufficiently well-rounded reports and exposure to views other than those of government officials? Survey results and the comments of respondents suggest an answer less rosy than the journalists’ own assessment.

For one thing, local news organizations continue to rely almost exclusively on the major wire services and the networks. None of our respondents reported significant use of non-American sources. Few had their own correspondents in any war zone. Few gave much indication of interest in those parts of the world beyond the current war zones. Will this narrowly focused coverage leave Americans any better prepared for another attack? The narrow scope and homogeneous content of today’s coverage may have been symbolized by the report in early September that television networks and individual stations were elbowing each other for room to place their cameras side-by-side at the headquarters of the *Wall Street Journal* so that all could obtain identical views of Ground Zero.

The patriotic tone and content of the news, especially on local television, added to the widely suspected manipulation by the administration, leads to a suspicion that those Americans who rely on their hometown news organizations are getting a mainly one-sided picture of only part of the world. Television, most Americans' main source of world news, is more likely to be flag-waving and less likely to be challenging official views. In covering a war, television stations also are less likely to have military expertise on their staffs and more likely to be comfortable with that.

Many commentators have celebrated changes in

coverage by the national press post-9/11. Some now worry aloud that those changes are giving way to the less significant stories that filled pages and newscasts little more than a year ago. This study suggests that, for the newspapers and television stations that serve most American communities, the essentials have not really changed. What changed on September 11, 2001, was the news itself.

The men and women who direct America's newsrooms have responded just as they would to any other big story. The words of a Tennessee news director can serve as summary: "This is what we do. We cover the news."

The authors thank Christopher Beaudoin, Indiana University, for helping formulate the survey questions. At the Missouri School of Journalism, we thank Ken Fleming of the Center for Advanced Social Research for administering the survey, Judy Bolch and Geneva Overholser for their financial support of the survey, and Lee Wilkins for her contribution to the literature review. The survey also was funded by the Harte and Hurley chairs at the Missouri School of Journalism.

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TABLES

(Note: $^{\wedge} p < .10$; * $p < .05$; ** $p < .01$; *** $p < .001$)

Letters that are different indicate a significant difference in Scheffe post-hoc tests

	Large	Medium	Small	Total
Newspaper	22	21	21	64
Television	17	18	24	59
Total	39	39	45	123

	Large	Medium	Small	Total
Newspaper	6.05	5.90	6.33	6.09
Television	6.12	6.33	5.83	6.07
Total	5.08	6.10	6.07	6.08

Subjects	SS	DF	MS	F
Media	.014	1	.014	.000
Size	.039	2	.019	.017
Media X Size	4.637	2	2.319	2.061
Within	130.500	116	1.125	
Total	135.180	121		

Table 3: How quantity of international news has increased since 9/11

5 = greatly increased, 4 = somewhat increased, 3 = about the same, 2 = somewhat decreased, 1 = greatly decreased

		Large	Medium	Small	Total
Newspaper	2 Months	4.52	4.67	4.67	4.62
	Jan – Feb	3.68	4.00	4.10	3.92
	May – June	3.45	3.76	3.71	3.64
	Total	3.88	4.14	4.16	4.06
Television	2 Months	4.71	4.72	4.50	4.63
	Jan – Feb	4.25	4.06	3.73	3.98
	May – June	4.00	3.94	3.57	3.82
	Total	4.33	4.24	3.94	4.15
Total	2 Months	4.61	4.69	4.58	4.63 a
	Jan – Feb	3.92	4.03	3.91	3.95 b
	May – June	3.68	3.85	3.64	3.72 c
	Total	4.07	4.19	4.05	4.10

Note:

One-way ANOVA among SIZE in newspaper: $F = 2.632^{\wedge} / df = 2, 188 / p = .075$

One-way ANOVA among SIZE in TV: $F = 3.647^* / df = 2, 165 / p = .028$

- Post hoc analysis: Large (4.33) – Small (3.94)

T-test between newspaper and TV in Large: $t = 3.011^{**} / df = 112 / p = .003$

T-test between newspaper and TV in Medium: n.s.

T-test between newspaper and TV in Small: n.s.

Three-way ANOVA Table

Subjects	SS	DF	MS	F
Media	.910	1	.910	1.808
Time	50.625	2	25.312	50.260***
Size	1.311	2	.655	1.301
Media X Time	.445	2	.223	.442
Media X Size	6.455	2	3.227	6.408***
Time X Size	.132	4	.033	.065
M X T X S	.887	4	.222	.440
Within	171.739	341	.504	
Total	234.390	358		

Table 4: Quality of international news after 9-11

5 = much improved, 4 = somewhat improved, 3 = about the same, 2 = somewhat worse, 1 = much worse

	Large	Medium	Small	Total
Newspaper	4.05	3.95	4.14	4.05
Television	4.47	4.17	4.13	4.24
Total	4.23	4.05	4.14	4.14

Two-way ANOVA Table

Subjects	SS	DF	MS	F
Media	1.317	1	1.137	3.194 [^]
Size	.773	2	.386	.937
Media X Size	.983	2	.492	1.193
Within	47.822	116	.412	
Total	50.631	121		

Table 5: Importance of international news in your newspaper/TV station

7 = very important, 1 = not at all important

	Large	Medium	Small	Total
Newspaper	5.00	5.00	5.50	5.16
Television	4.82	4.59	3.88	4.36
Total	4.92	4.82	4.61	4.78

Note:

One-way ANOVA among SIZE in newspaper: n.s.

One-way ANOVA among SIZE in TV: n.s.

T-test between newspaper and TV in Large: n.s.

T-test between newspaper and TV in Medium: n.s.

T-test between newspaper and TV in Small: $t = 3.948^{***} / df = 42 / p < .001$ **Two-way ANOVA Table**

Subjects	SS	DF	MS	F
Media	16.199	1	16.199	8.092 ^{**}
Size	1.027	2	.513	.256
Media X Size	12.556	2	6.278	3.136 [*]
Within	230.213	115		
Total	262.975	120		

Table 6: Importance of international news coverage to ordinary person

7 = very important, 1 = not at all important

	Large	Medium	Small	Total
Newspaper	4.18	4.14	4.14	4.16
Television	4.12	3.44	3.29	3.58
Total	4.15	3.82	3.69	3.88

Two-way ANOVA Table

Subjects	SS	DF	MS	F
Media	8.776	1	8.776	5.782*
Size	4.266	2	2.133	1.405
Media X Size	3.495	2	1.746	1.150
Within	177.583	117	1.518	
Total	195.171	122		

Table 7: Importance of international news in increasing readership/audience

7 = very important, 1 = not at all important

	Large	Medium	Small	Total
Newspaper	3.59	4.10	3.95	3.88
Television	4.06	3.33	3.08	3.44
Total	3.79	3.74	3.49	3.67

Note:

One-way ANOVA among SIZE in newspaper: n.s.

One-way ANOVA among SIZE in TV: $F = 2.826^{\wedge} / df = 2,56 / p = .068$

T-test between newspaper and TV in Large: n.s

T-test between newspaper and TV in Medium: $t = 1.709^{\wedge} / df = 37 / p = .097$ T-test between newspaper and TV in Small: $t = 2.235^* / df = 43 / p = .031$ **Two-way ANOVA Table**

Subjects	SS	DF	MS	F
Media	4.558	1	4.558	2.415
Size	2.027	1	1.014	.537
Media X Size	10.951	2	5.475	2.901 [^]
Within	220.855	117	1.888	
Total	239.333	122		

Table 8: Did growth of international news come at reduction of other news?

1 = yes; 0 = no

	Large	Medium	Small	Total
Newspaper	.79	.45	.33	.52
Television	.71	.50	.52	.57
Total	.75 a	.47 b	.43 b	.54

Note:

Scheffe post-hoc analysis shows Large is different from other two – Medium & Small

Two-way ANOVA Table

Subjects	SS	DF	MS	F
Media	.078	1	.078	.333
Size	2.229	2	1.114	4.707*
Media X Size	.365	2	.182	.770
Within	26.042	110	.237	
Total	28.784	115		

Table 9: Increase of newsroom budget to cover war on terrorism?

1 = yes; 0 = no

	Large	Medium	Small	Total
Newspaper	.32	.24	.50	.35
Television	.35	.05	.00	.12
Total	.33	.15	.23	.24

Note:

One-way ANOVA among SIZE in newspaper: n.s.

One-way ANOVA among SIZE in TV: $F = 7.789^{**}$ / $df = 2,56$ / $p = .001$

- Post hoc analysis: Large (.35) – Medium (.05) / Large (.35) – Small (.05)

T-test between newspaper and TV in Large: n.s.

T-test between newspaper and TV in Medium: n.s.

T-test between newspaper and TV in Small: $t = 4.786^{***}$ / $df = 42$ / $p < .001$ **Two-way ANOVA Table**

Subjects	SS	DF	MS	F
Media	1.403	1	1.403	8.840**
Size	.689	2	.345	2.172
Media X Size	1.489	2	.745	4.692*
Within	18.409	116	.159	
Total	22.107	121		

Table 10: Increase of newsroom staff to cover war on terrorism?

1 = yes; 0 = no

	Large	Medium	Small	Total
Newspaper	.00	.00	.04	.01
Television	.00	.00	.04	.01
Total	.00	.00	.04	.01

Two-way ANOVA Table

Subjects	SS	DF	MS	F
Media	.011	1	.011	.007
Size	.056	2	.028	1.705
Media X Size	.024	2	.012	.008
Within	1.911	116	.016	
Total	1.967	121		

Table 11: % of the 9/11 coverage from wire stories or network

	Large	Medium	Small	Total
Newspaper	75.2	76.5	71.9	74.6
Television	34.8	35.6	45.3	39.2
Total	57.8	57.6	57.9	57.8

Two-way ANOVA Table

Subjects	SS	DF	MS	F
Media	37759.823	1	37759.823	62.143***
Size	268.544	2	134.272	.221
Media X Size	1329.217	2	664.608	1.094
Within	68054.093	112	607.626	
Total	106554.822	117		

Table 12: % of the war on terrorism news from wire stories or network

	Large	Medium	Small	Total
Newspaper	87.5	87.3	81.9	85.6
Television	55.1	51.9	58.9	55.6
Total	73.5	70.9	69.6	71.3

Two-way ANOVA Table

Subjects	SS	DF	MS	F
Media	26900.762	1	26900.762	49.606***
Size	53.110	2	26.555	.049
Media X Size	875.977	2	437.988	.808
Within	61278.998	113	542.292	
Total	88960.437	118		

Table 13: Sent staffers to New York for 9/11?

1 = yes; 0 = no

	Large	Medium	Small	Total
Newspaper	.09	.14	.76	.33
Television	.59	.22	.17	.31
Total	.31	.18	.44	.32

Note:One-way ANOVA among SIZE in newspaper: $F = 21.986^{***} / df = 2,61 / p < .001$

- Post hoc analysis: Large (.09) – Small (.76) / Medium (.14) – Small (.76)

One-way ANOVA among SIZE in TV: $F = 5.160^{**} / df = 2,56 / p = .009$

- Post hoc analysis: Large (.59) – Small (.17)

T-test between newspaper and TV in Large: $t = 3.845^{***} / df = 37 / p < .001$

T-test between newspaper and TV in Medium: n.s.

T-test between newspaper and TV in Small: $t = 4.888^{***} / df = 43 / p < .001$

Two-way ANOVA Table

Subjects	SS	DF	MS	F
Media	.011	1	.011	.007
Size	1.651	2	.825	5.147**
Media X Size	6.359	2	3.180	19.829***
Within	18.761	117	.160	
Total	26.634	122		

Table 14: Sent staffers to Washington D.C. for 9/11?

1 = yes; 0 = no

	Large	Medium	Small	Total
Newspaper	.00	.04	.38	.14
Television	.41	.17	.08	.20
Total	.18	.10	.22	.17

Note:One-way ANOVA among SIZE in newspaper: $F = 9.451^{***} / df = 2,61 / p < .001$

- Post hoc analysis: Large (.00) – Small (.38) / Medium (.04) – Small (.38)

One-way ANOVA among SIZE in TV: $F = 3.672^* / df = 2,56 / p = .009$

- Post hoc analysis: Large (.41) – Small (.08)

T-test between newspaper and TV in Large: $t = 3.822^{***} / df = 37 / p < .001$

T-test between newspaper and TV in Medium: n.s.

T-test between newspaper and TV in Small: $t = 2.507^* / df = 43 / p = .016$ **Two-way ANOVA Table**

Subjects	SS	DF	MS	F
Media	.183	1	.183	1.494
Size	.351	2	.176	1.431
Media X Size	2.653	2	1.326	10.810***
Within	14.356	117	.123	
Total	17.415	122		

Table 15: Sent staffers to Afghanistan for war on terrorism?

1 = yes; 0 = no

	Large	Medium	Small	Total
Newspaper	.00	.00	.29	.09
Television	.18	.05	.00	.07
Total	.08	.03	.13	.08

Note:One-way ANOVA among SIZE in newspaper: $F = 8.197^{**} / df = 2,61 / p = .001$

- Post hoc analysis: Large (.00) – Small (.29) / Medium (.00) – Small (.29)

One-way ANOVA among SIZE in TV: $F = .157^{\wedge} / df = 2,56 / p = .085$ T-test between newspaper and TV in Large: $t = 2.115^* / df = 37 / p = .041$

T-test between newspaper and TV in Medium: n.s.

T-test between newspaper and TV in Small: $t = 3.029^{**} / df = 43 / p = .004$ **Two-way ANOVA Table**

Subjects	SS	DF	MS	F
Media	.097	1	.097	.148
Size	.275	2	.138	2.091
Media X Size	1.212	2	.606	9.027***
Within	7.701	117	.065	
Total	9.187	122		

Table 16: Sent staffers to other war-related locales for war on terrorism?

1 = yes; 0 = no

	Large	Medium	Small	Total
Newspaper	.05	.14	.38	.19
Television	.41	.17	.21	.25
Total	.21	.15	.29	.22

Note:One-way ANOVA among SIZE in newspaper: $F = 4.575^* / df = 2,61 / p = .014$

- Post hoc analysis: Large (.05) – Small (.38)

One-way ANOVA among SIZE in TV: n.s.

T-test between newspaper and TV in Large: $t = 3.064^{**} / df = 37 / p = .004$

T-test between newspaper and TV in Medium: n.s.

T-test between newspaper and TV in Small: n.s.

Two-way ANOVA Table

Subjects	SS	DF	MS	F
Media	.159	1	.159	.979
Size	.407	2	.203	1.249
Media X Size	1.518	2	.759	4.662*
Within	19.054	117	.163	
Total	21.073	122		

Table 17: Difficulty in accessing to national government information after 9/11

5 = much easier, 4 = somewhat easier, 3 = about the same, 2 = somewhat more difficult, 1 = much more difficult

		Large	Medium	Small	Total
Newspaper	Local	2.82	2.52	2.76	2.70
	State	2.91	2.55	2.81	2.76
	National	2.61	2.21	2.48	2.43
	Total	2.79	2.43	2.68	2.64
Television	Local	2.81	2.83	3.00	2.89
	State	2.94	3.06	3.00	3.00
	National	2.63	2.41	2.81	2.63
	Total	2.79	2.77	2.94	2.85
Total	Local	2.82	2.67	2.89	2.79 a
	State	2.92	2.79	2.91	2.87 a
	National	2.62	2.31	2.64	2.53 b
	Total	2.79 a	2.59 b	2.82 a	2.74

Three-way ANOVA Table				
Subjects	SS	DF	MS	F
Media	3.536	1	3.536	9.481**
Region	7.698	2	3.849	10.321***
Size	3.122	2	1.561	4.186*
Media X Region	.069	2	.034	.094
Media X Size	1.582	2	.791	2.121
Region X Size	.651	4	.163	.436
M X R X S	.506	4	.126	.339
Within	124.926	335	.373	
Total	142.499	352		

Table 18: Bush administration's use of information availability for press-manipulation 1 = yes, 2 = no				
	Large	Medium	Small	Total
Newspaper	.84	.94	.100	.93
Television	.75	.76	.61	.70
Total	.81	.85	.81	.82
Two-way ANOVA Table				
Subjects	SS	DF	MS	F
Media	1.185	1	1.185	8.625**
Size	.061	2	.030	.223
Media X Size	.391	2	.196	1.424
Within	13.054	95	.137	
Total	14.792	100		

Table 19: Use of American flag and other symbols

1 = yes, 2 = no

	Large	Medium	Small	Total
Newspaper	.73	.76	.70	.73
Television	.87	.61	.83	.77
Total	.79	.69	.77	.75

Two-way ANOVA Table

Subjects	SS	DF	MS	F
Media	.049	1	.049	.261
Size	.260	2	.130	.684
Media X Size	.539	2	.270	1.417
Within	21.705	114	.190	
Total	22.500	119		

Table 20: Use of national emblems at workplace

1 = yes, 2 = no

	Large	Medium	Small	Total
Newspaper	.32	.19	.05	.19
Television	.41	.67	.57	.55
Total	.36	.41	.32	.36

Note:One-way ANOVA among SIZE in newspaper: $F = 2.677^{\wedge} / df = 2,61 / p = .077$

One-way ANOVA among SIZE in TV: n.s.

T-test between newspaper and TV in Large: n.s.

T-test between newspaper and TV in Medium: $t = 3.352^{**} / df = 37 / p = .002$ T-test between newspaper and TV in Small: $t = 4.325^{***} / df = 42 / p < .001$

Two-way ANOVA Table

Subjects	SS	DF	MS	F
Media	3.690	1	3.960	20.209***
Size	.307	2	.154	.784
Media X Size	1.081	2	.541	2.758 [^]
Within	22.733	116	.196	
Total	28.131	121		

Table 21: Increase of civic participation coverage after 9/11?

5 = greatly increased, 4 = somewhat increased, 3 = about the same, 2 = somewhat decreased, 1 = greatly decreased

	Large	Medium	Small	Total
Newspaper	3.33	3.52	3.38	3.41
Television	3.53	3.83	4.00	3.81
Total	3.42	3.67	3.70	3.60

Two-way ANOVA Table

Subjects	SS	DF	MS	F
Media	4.206	1	4.206	9.754**
Size	1.663	2	.832	1.929
Media X Size	.992	2	.496	1.150
Within	49.592	115	.431	
Total	56.959	120		

Table 22: Presence of military experts in reporters

	Big	Medium	Small	Total
Newspaper	.27	.33	.57	.39
Television	.29	.11	.21	.20
Total	.28	.23	.38	.30

Two-way ANOVA Table

Subjects	SS	DF	MS	F
Media	1.072	1	1.072	5.350*
Size	.606	2	.303	1.512
Media X Size	.773	2	.386	1.928
Within	23.439	117	.200	
Total	25.870	122		

Table 23: Have you served in the military?

	Big	Medium	Small	Total
Newspaper	.14	.14	.05	.11
Television	.06	.17	.13	.12
Total	.10	.15	.09	.11

Two-way ANOVA Table

Subjects	SS	DF	MS	F
Media	.019	1	.019	.018
Size	.108	2	.054	.521
Media X Size	.126	2	.063	.606
Within	12.181	117	.104	
Total	12.407	122		

Table 24: How knowledgeable are you personally about military affairs?

	Big	Medium	Small	Total
Newspaper	1.73	1.76	1.81	1.77
Television	2.00	1.94	1.96	1.97
Total	1.85	1.05	1.89	1.86

Two-way ANOVA Table

Subjects	SS	DF	MS	F
Media	1.230	1	1.230	4.595*
Size	.020	2	.010	.039
Media X Size	.083	2	.041	.155
Within	31.314	117	.268	
Total	32.650	122		

APPENDIX A

Survey Questions

Coverage of 9/11 and the war on terrorism

How important do you think news coverage of the war on terrorism is in your [medium]?

Compared to your coverage prior to September 11th, do you think the quantity of international news in your [medium] has [greatly increased to greatly decreased]?

Would you say the quality of international news coverage in your [medium] since September 11 and the war on terrorism is [much improved to much worse]?

If there are no further terrorist attacks on the United States in the next six months, what would you expect to happen to your coverage of the war on terrorism? [increase, stay the same, decrease]

Impact on international news in general

How relatively important do you think international news coverage is in your [medium]?

How important do you think international news coverage is to the ordinary person in your city?

How important do you think international news coverage is to increasing your [circulation/audience]?

To your knowledge did the growth in the international news coverage in your [medium] come at the reduction of other news? If so, what areas of news?

Changes in news process

Was there an increase in your newsroom budgeting to cover the war on terrorism?

Was there an increase in your newsroom staffing to cover the war on terrorism?

What % of the September 11th coverage in your [medium] comes from [wire stories/network]?

What % of the war on terrorism coverage in your [medium] comes from [wire stories/network]?

As a result of September 11, did you send staffers to New York?

As a result of September 11, did you send staffers to Washington?

For the war on terrorism did you send staffers to Afghanistan?

For the war on terrorism did you send staffers to other war-related locales outside your circulation/audience area?

Please consider the profit pressure that your [medium] has experienced from its owners since September 11th. Has it [greatly increased to greatly decreased]?

Relationship with sources

Since September 11th and the events that have followed, would you say that reporters' access to [local/state/national] government has been [much easier to much more difficult]?

Since September 11th and the events that have followed, has your [medium] been more reluctant to push for access to information relevant to the war on terrorism?

Since September 11th and the beginning of the war on terrorism, do you think the Bush administration has ever used information availability to attempt to manipulate the press? If yes, please describe an example.

Patriotism

Since September 11th and the war on terrorism, has your [medium] featured the American flag or other national symbols more often than before?

Since September 11th and the war on terrorism, have you worn flag pins, emblems, and other national emblems at your workplace?

Since September 11th and the war on terrorism, would you say your [medium's] coverage of civic participation like volunteering has [greatly increased to greatly decreased]?

Military knowledge and experience

Do you have a reporter at your [medium] who is a military expert?

How knowledgeable are you personally about military affairs?

Have you ever served in the military?

The Signs Were There: The Genesis of Post-Sept. 11 Freedom of Information Policy

by Charles N. Davis

Summary

Less than 24 hours after the events of Sept. 11, the federal government was hard at work scrubbing information from Web sites, stonewalling requests for paper records and denying journalists access to the most basic information.

Almost before the end of Sept. 12, the Department of Transportation had removed maps of the 2.2 million miles of pipeline in the United States. Only weeks before, the department had finished putting the maps online in an effort to alert the public to places where the pipes were prone to leaking oil, natural gas or hazardous chemicals.¹

The removal of the maps seems overwrought today, with the hindsight of a yearlong debate between advocates of openness and those who urge greater secrecy in the name of security. The year since the horrific attacks on the World Trade Center and the Pentagon has seen renewed emphasis on freedom of information, if for all the worst reasons: the Bush administration's seemingly daily attacks on the freedom of information.

The administration was under criticism long before Sept. 11, 2001, that it values secre-

cy and considers public access to information a hindrance to efficient governance despite years of evidence to the contrary. In a series of policy announcements, the administration has all but removed the presumption of openness in a combative FOIA memorandum by Attorney General John Ashcroft²; taken unprecedented steps to "depublish" information on government websites³; added an exemption to the FOIA for certain documents to be requested by the newly created homeland security department⁴; virtually rescinded through an executive order the Presidential Records Act⁵; and resisted every attempt by members of the American public to learn the most basic facts about Muslims detained by the Department of Justice after Sept. 11.⁶

Without a broader understanding of access policy in the United States prior to Sept. 11, these actions seem unprecedented. Indeed, by their sheer scope and size, the clampdown on government information since Sept. 11 is unrivaled in the nation's history. It is tempting to view developments in freedom of information law since Sept. 11 purely as a response to a cataclysmic event, an attack on American soil that

revealed very real justifications for secrecy. To do so, however, would gloss over the reality that some of the changes in FOI law since Sept. 11 represent changes in access policy that have been taking place for quite some time. FOI was in danger even before Sept. 11, its presumption of openness already under assault from judges intent on narrowing the reach of the federal FOIA, from lawmakers resistant to greater access and from a citizenry grown complacent and willing to entrust government with the all-powerful control of information.

This essay attempts to place a few of the more controversial aspects of post-Sept. 11 FOI into the broader context of the pre-Sept. 11 world. Its goal is to demonstrate that most of the changes to FOI law ushered in after Sept. 11 have clear ties to shifts in the judicial philosophy toward FOI law that have been developing for years. The changes to the FOI landscape are breathtaking, but they should not be viewed in isolation. Instead, they must be viewed as part of a troubling whole.

The Ashcroft Memorandum: Much Ado About Nothing?

The George W. Bush administration's post-Sept. 11 FOIA policy was succinctly portrayed by the Oct. 12, 2001 memorandum by U.S. Attorney General John Ashcroft. The memorandum, a standard administrative move by all new presidential administrations, directed federal agency heads to, in effect, search for and use any legal authority for denying access to records under the FOIA. The policy—effective immediately upon issuance—replaced a 1993 memorandum issued by Attorney General Janet Reno⁷, which ordered that agencies should make allowable discretionary disclosures except where there was “demonstrable harm.” This standard of “foreseeable harm” is dropped in the Ashcroft memo.

The memo affirmed the Justice Dept.'s commit-

ment to “full compliance with the Freedom of Information Act,” but then immediately stated that the Justice Department is “equally committed to protecting other fundamental values that are held by our society. Among them are safeguarding our national security, enhancing the effectiveness of our law enforcement agencies, protecting sensitive business information and, not least, preserving personal privacy.” Ashcroft then promised:

When you carefully consider FOIA requests and decide to withhold records, in whole or in part, you can be assured that the Department of Justice will defend your decisions unless they lack a sound legal basis or present an unwarranted risk of adverse impact on the ability of other agencies to protect other important records.⁸

The Ashcroft memo touched off a firestorm of criticism, providing the impetus for renewed analysis of FOI policy in a post-Sept. 11 world. Editorialists, lawmakers and policy advocates denounced the shift in policy ushered in by the memo. “These steps are contrary to the spirit of the FOIA,” said Patrick Leahy, Democratic senator from Vermont and one of the staunchest FOIA advocates on Capitol Hill. The Freedom of Information Act, he says, “is intended to give Americans answers to questions they believe are important, not just the information the government wants them to believe.”⁹

Daniel J. Metcalfe, co-director of the Justice Department's Office of Information and Privacy since 1981, downplayed the fears of the FOI community, saying that “in the context of the historical development of the FOIA, with the succession of attorney general memoranda over the years,” the

Ashcroft memo “ought not be viewed as such an alarming development.”¹⁰

Metcalf could have substituted “surprising” for “alarming.” The Ashcroft memo comes as no surprise to those who have witnessed the downward spiral of access rights under FOIA, but its current state is nothing if not alarming. Metcalf is quite right in his take on the historical context of the FOIA, however, as the Justice Department’s current cramped view of the Act did not suddenly spring up in the Oct. 12 memo.

It is important to note that Ashcroft’s memo also directs officials to be mindful of “institutional, commercial, and personal privacy interests” when considering FOIA requests.¹¹ This language reflects a line of argument central to the Justice Department’s standard reason for denial: privacy interests as defined by the United States Supreme Court in *Reporters Committee for Freedom of the Press v. Department of Justice*, a 1989 decision that dominates the FOIA landscape before and certainly after Sept. 11.

Until *Reporters Committee*, courts weighing privacy claims made by federal agencies seeking to block a FOIA disclosure request had balanced the public and social interest in disclosure against the individual’s interest in protecting personal privacy.¹² However, in *Reporters Committee*, the Department of Justice successfully argued for a change in this analysis.¹³ This new judicial analysis expands the scope of privacy under the FOIA while it restricts the scope of acceptable public interest arguments in favor of disclosure.¹⁴

The facts of *Reporters Committee* are noteworthy because they illustrate the specious nature of the privacy interests at stake and the virtual disregard shown by the judiciary for the public interest inherent in the information sought by a CBS journalist following a newsworthy story.

The reporter had filed a FOIA request¹⁵ asking for the FBI’s “rap sheet” on Charles Medico, a

Pennsylvania businessman whose company had received defense contracts allegedly in exchange for political contributions to former U.S.

Representative Daniel J. Flood.¹⁶ Flood, who eventually left office in disgrace, pleaded guilty on Feb. 26, 1980, to conspiracy to violate federal campaign laws, so this clearly was no journalistic fishing expedition.

The FBI released information on three of Charles Medico’s brothers, all deceased, but the agency refused to release Charles Medico’s records on privacy grounds because he was still alive.¹⁷ The reporter sued to gain access to the records, but the U.S. District Court for the District of Columbia granted the FBI’s motion for summary judgment to dismiss the suit. On appeal, however, the U.S. Court of Appeals for the D.C. Circuit ruled in favor of the CBS journalist and the Reporters Committee. The appeals court reasoned that the government cannot claim a privacy interest in an FBI compilation of law enforcement agency records when those same records would be available as public records from the individual agencies themselves.¹⁸

The Department of Justice appealed to the Supreme Court, which, after ostensibly balancing Medico’s right of privacy against the public interest in disclosure, reversed the appellate court ruling and allowed the FBI to withhold the information.¹⁹ Refuting its earlier balancing test for privacy cases, which took into consideration the broader public interest in the information contained in governmental information, the *Reporters Committee* Court said that the only aspect of public interest to be balanced against the privacy interest is that of disclosing only official information that directly reveals the operations or activities of the government.²⁰

Writing for the Court, Justice John Paul Stevens said the FOIA’s “central purpose is to ensure that the government’s activities be opened to the sharp eye of public scrutiny, not that information about private citizens that happens to be in the warehouse

of the government be so disclosed.²¹ Because a computerized compilation of an individual's criminal records does not directly reveal governmental operations or performance, it falls "outside the ambit of the public interest that the FOIA was enacted to serve."²²

The Court's definition of the FOIA's "central purpose" — created out of whole cloth in Reporters Committee — is the genesis of much of the government's FOIA posture in a post-Sept. 11 world. The "central purpose" test leads inevitably to the position that government-held information that does not necessarily reveal government operations but that still holds great public interest is not subject to disclosure under the FOIA.

Contrast *Reporters Committee* with *U.S. Dept. of the Air Force v. Rose*,²³ a 1976 case that marked the government's first try at arguing privacy as a potential bar to disclosure under the FOIA.²⁴ The *Rose* Court flatly denied such a narrow conceptualization of the public interest under the FOIA, declaring that the Act's legislative history makes clear that the statute was "broadly conceived" and that Congress intended for the statute to permit access to official information and open as much agency action as possible to public scrutiny.²⁵ The *Rose* Court did not say that disclosure was predicated on any conditions that a requested record must reveal agency performance or illuminate agency conduct. Instead, the *Rose* Court weighed the broader public interest in any and all information held by government, whether or not the information revealed government operations.

Emboldened by the *Reporters Committee* decision, agencies subject to FOIA have used its holding to withhold a wide variety of documents on privacy grounds, and the lower federal courts have, for the most part, enlarged upon its already expansive doctrine. In a 1998 report prepared for a House committee, the Reporters Committee for Freedom of the Press said that ever since the *Reporters*

Committee decision was handed down, the scales of balance in the test between the individual right to privacy and the public interest in disclosure has tipped heavily in favor of privacy over public access.²⁶ The Reporters Committee report concluded that the Supreme Court came up with a "narrow and crabbed interpretation" of the FOIA's congressional intent, critically impairing the ability of requesters to receive government information.²⁷

It thus should come as no surprise that the federal government has, in recent years, successfully denied access to a list of federal inmates in an Illinois county jail because it feared the "stigmatization" of the inmates should their names be made public;²⁸ and shut down access to the records of a long-completed investigation of a West Texas sheriff convicted for helping a drug-runner smuggle 2,421 pounds of cocaine — with a street value of \$1.1 billion — into the United States.²⁹ In that case, the court took *Reporters Committee* a quantum leap forward: the court said that in order to trigger the sort of public interest that would outweigh privacy concerns, the request must "put forward compelling evidence" that the agency involved is engaged in illegal activity.³⁰ In other words, unless the requester can *prove* wrongdoing, no public interest exists that would outweigh the privacy interests at stake.

Against this backdrop of an ever-narrower public interest under the FOIA, the Ashcroft memo seems little more than another incremental step toward full-scale adoption of the "central purpose" formulation: the Attorney General was articulating the current governmental thinking on the FOIA. Solicitude for the privacy interests of convicted felons, those arrested or merely detained by government, is a short step from what preceded it. Taking the *Reporters Committee* Court's logic and concluding that the American people have no right to know the names and charges filed against those swept up in the government's post-Sept. 11 dragnet makes perfect sense, if one agrees with the logic. Note the

Attorney General's defense of keeping the names secret: "The law properly prevents the department from creating a public blacklist of detainees that would violate their rights," Ashcroft said.

Never mind that arrest records are public at all levels of American government. Forget, for a second, the ludicrous notion that a detainee — in a federal prison with no charges filed against him — would for a nanosecond wish his detention be kept a state secret. Dismiss the political, cultural and societal ramifications, and the fact remains that such policies are but part of an uninterrupted march toward the secrecy we confront today.

Of Homeland Security and the Super Exemption

Like the Ashcroft memo, the proposed FOIA exemption for certain documents to be collected by the newly created homeland security department startled many Americans.³¹

The exemption came to light after President Bush submitted to Congress his proposal for the creation of a new Homeland Security Department. The bill — still being negotiated in conference at the time of this writing — would transfer about 100 federal entities into a single cabinet agency with an annual budget of more than \$37 billion and about 170,000 employees — reportedly the biggest government reshuffling since 1947.³²

Buried within the 35-page bill was a single sentence:

"Information provided voluntarily by non-Federal entities or individuals that relates to infrastructure vulnerabilities or other vulnerabilities to terrorism and is or has been in the possession of the Department shall not be subject to section 552 of title 5, United

States Code [the Freedom of Information Act]."

Unlike the Ashcroft memorandum, the history of the homeland security exemption is of a much more recent vintage. Indeed, the push to protect such information predates Sept. 11, and finds its true genesis in a legacy of litigation surrounding Exemption 4 of the FOIA, the so-called "trade secrets" exemption, as well as in the government's various attempts to control the dissemination of electronic information.

On July 15, 1997, President Clinton signed Executive Order 13010, which established the President's Commission on Critical Infrastructure Protection (PCCIP). The Executive Order listed eight sectors that the PCCIP was to examine for security vulnerabilities. They are: telecommunications, electrical power systems, gas and oil storage and transportation, banking and finance, transportation, water supply systems, emergency services, and continuity of government. The PCCIP began garnering industry support for such an exemption even before it was articulated by the commission in 2000.

The idea for an exemption for critical infrastructure information was mentioned, without elaboration, in one line in the Report of the President's Commission on Critical Infrastructure Protection.³³ Congressional efforts to design a similar exemption coincided with the PCCIP's efforts, culminating in Rep. Thomas Davis and Rep. Jim Moran's proposed Cyber Security Information Act of 2000.³⁴

The Davis-Moran bill foundered after FOIA and other public interest groups mounted a vigorous campaign pointing out that the exemption was unduly broad and noting that existing exemptions adequately protected the information. Senators Bennett and Kyl then revived the effort.

Then, less than 24 hours after the terrorist attacks on the World Trade Center and the

Pentagon, the Senate Governmental Affairs Committee convened a hearing in an otherwise empty government schedule on America's critical information infrastructure. What had been an obscure and relatively stagnant effort to protect such information from the FOIA suddenly became a homeland security issue.

The hearing was originally scheduled to examine the security of the critical cyber-infrastructure and to allow the Committee to hear the challenges that remain in government's efforts to secure critical infrastructure information. While the events of September 11 were not an attack on information systems, the members of the Committee examined what terrorist threats exist to these systems, and what should be done to minimize the risks.

Although the Committee has jurisdiction over information infrastructure of government agencies only, the Senators addressed both government and private sector issues. Lieberman said that the events of September 11 begin a new era for American national security, and that future attacks will also target critical information infrastructure. The primary witness, Joel Willemsen, Managing Director of Information Technology Issues for the GAO, testified that "federal computer systems are riddled with weaknesses that continue to put critical operations and assets at risk." A GAO report released on September 12 adds that, "Despite the importance of maintaining the integrity, confidentiality and availability of important federal computerized operations ... [b]ecause of our government's and our nation's reliance on interconnected computer systems to support critical operations and infrastructures, poor information security could have potentially devastating implications for our country."³⁵

The House and the Senate haven taken very different approaches to information provisions for the new Department, but both versions contain troubling, overreaching exemptions from the FOIA for a vast array of corporate information.

The final House provisions included a broad new FOIA exemption for information voluntarily submitted to the new Department with extremely vague definitions. The House information proposals would also preempt all state and local open records laws. State and local authorities would be barred from disclosing information that is required to be public under state or local law if it is withheld at the federal level.³⁶

Amendments were offered to strip out the FOIA restriction and other information provisions both while the bill was being considered by the Select Committee on Homeland Security, and while on the House floor. The House Select Committee defeated the amendment to remove the FOIA exemption section offered by Rep. Rosa DeLauro (D-CT) in a party line vote of 4-5, with all of the Republicans voting to keep the exemption, and all of the Democrats voting to remove it. While debating the Homeland Security Act on the House floor Rep. Janice Schakowski (D-IL) offered another amendment to strip out the restrictive information provisions. The amendment was defeated in a highly partisan vote of 188 in favor and 240 against.³⁷

These provisions, supported by the Bush administration, are similar to those originally presented in The Critical Infrastructure Information Act (S. 1456), recently pushed by Sens. Bennett and Kyl, but are broader in scope and even more difficult to envision working in any way but to utterly frustrate access to any sort of corporate information filed under its auspices.

In the Senate, the Government Affairs Committee, chaired by Senator Lieberman, began differently by considering his own bill for establishing a Department of Homeland Security rather than legislation based on the administration's proposals. Sen. Lieberman's National Homeland Security and Combating Terrorism Act of 2002 (S. 2452) did not include any restrictive information provision or FOIA exemptions. Several amendments

addressing FOIA exemptions and information were filed but eventually a compromise amendment emerged sponsored by Sens. Levin and Bennett. The compromise amendment narrowly defined the information that was exempt from FOIA to be only documents submitted to the new Department that addresses vulnerabilities and which no government agencies have the authority to request from companies.³⁸

The Senate bill still faces additional markups and debate on the Senate floor, and then it faces changes in a House-Senate conference committee.³⁹ As of this writing, House-Senate conferees had not yet begun discussions on the amended bill, but if the Bennett-Levin compromise holds, there remains just cause for limited celebration by access advocates.

Whatever its final form, there is no doubt that the homeland security exemption will suffer from unnecessary vagueness, encouraging corporate submitters to continue to resist disclosure of a wide variety of documents on homeland security grounds, whether legitimate or not. Critical questions will remain, apparently for the judiciary to sort out: Exactly what types of information may be withheld? What qualifies as “infrastructure” or “vulnerabilities”? What counts as “voluntarily provided”?

One must not end the investigation with critical infrastructure, though, for like other post-Sept. 11 pronouncements, the conflict between corporate secrecy and FOIA has a long and interesting pedigree. Corporations have fought disclosure of documents under FOIA since its inception, and a look back at the way the courts have handled disputes involving exemption four — which covers “trade secrets and commercial or financial information obtained from a person and privileged or confidential” — reveals another area in which any countervailing interest in disclosure has received little if any judicial recognition.

Exemption 4 is littered with case law, but two cases tower above the rest. In 1974, the Court of Appeals for the D.C. Circuit established a long-standing standard for Exemption 4 cases in *National Parks and Conservation Association v. Morton*.⁴⁰ The *National Parks* decision — which established a two-prong test that balanced FOIA’s presumption of openness and its recognition of the periodic need for confidentiality — clearly stated that Exemption 4 was intended to permit reasonable confidentiality while allowing public scrutiny of businesses regulated by government.

Exemption 4 reflects congressional concern that “legitimate governmental and private interests could be harmed by release of certain types of information.”⁴¹ Because the government regularly interacts with private businesses, full public disclosure by the government of its own affairs can result in disclosure of information submitted by private businesses.⁴² Regulated businesses must submit voluminous amounts of information to federal regulatory agencies, so Exemption 4 has from its very birth pitted the interests of corporations required to share information with the government against the interests of FOIA users, many of whom are corporate competitors.

The early case law of Exemption 4 is rested on the common law “promise of confidentiality” test in which the sole question was whether the government had given an express or implied promise not to divulge the information. If such a promise was made, or implied, no further inquiry was needed: the information was kept secret. This approach, which originated from language in the 1966 House report on FOIA that discussed the government’s need to be able to keep its promises of secrecy⁴³, as quickly abandoned, according to the 1978 House Government Operations Committee report, because it gave agencies complete discretion in making such promises.⁴⁴

The courts then turned to the “expectation of confidentiality” test — basing the decision to dis-

close information under FOIA on the customary uses of information by the submitter. If the submitter typically didn't release the information to the public, according to that reasoning, neither should the government.⁴⁵ Courts derived this test from the 1965 Senate report on FOIA, which discussed the necessity of maintaining the confidentiality of information submitted to government "but which would customarily not be released to the public by the person from whom it was obtained." The weaknesses of this test are obvious. As the House Government Operations Committee noted, "The Government's disclosure policy cannot be contingent on the subjective intent of those who submit information."⁴⁶

The *National Parks* court attempted to provide protection for sensitive information by instructing judges to examine the potential consequences of releasing certain corporate information, explicitly stating that Exemption 4 protects not only the efficient operation of government (because confidentiality provides an incentive for information sharing) but also protecting the proprietary interests of corporate submitters.⁴⁷ To protect both purposes for the exemption, the court formulated its two-part test for determining whether information is confidential. The court held that information is confidential under Exemption 4 if disclosure is likely: (1) to impair the government's ability to obtain necessary information in the future or (2) to cause substantial harm to the competitive position of the person from whom the information was obtained.⁴⁸

The *National Parks* test clearly demanded a detailed inquiry into whether the interests that Exemption 4 seeks to protect are really endangered by public disclosure. The test required some showing of harm, not merely a showing that such information was not customarily released to the public, upping the ante for corporate submitters seeking to bar disclosure under the FOIA.

Other federal courts quickly adopted the *National Parks* test, albeit with subtle changes.

Corporate submitters continued to challenge dozens of FOIA requests annually, resulting in a dizzying patchwork of case law from all of the federal circuits that culminated in a series of cases that arose out of a long-standing FOIA dispute between the Critical Mass Energy Project and the Nuclear Regulatory Commission centered on the definition of "confidential" in the exemption's language.

In a 1992 *en banc* decision, the United States Circuit Court of Appeals for the District of Columbia — the nation's busiest and most influential intermediate appellate court for purposes of FOIA — significantly altered the *National Parks* test by establishing differing treatment for voluntarily submitted information and material required by statute or regulation.

The D.C. Circuit in *Critical Mass III*⁴⁹, as the case is known, affirmed the basic holding of *National Parks* but limited the test's application to cases in which the information is required by the government.⁵⁰ When information is required to be submitted by law, the court said that the inquiry should focus on the effect public disclosure has on the government's ability to gather information in the future. This thinking follows the logic of *National Parks*.

When the information is voluntarily submitted, however, the court said that the focus of the inquiry should be on the effects of public disclosure on the private interests involved.⁵¹ The *Critical Mass III* court thus introduced a new variable to the equation: the private interest of competitive disadvantage. This logic marks a return to the pre-*National Parks* emphasis on whether information is customarily released to the public, a move described by one commentator as "an incremental step backwards towards the initial tests governing exemption 4 confidentiality — subjective tests that, relying primarily on information providers' one-sided subjective ascriptions of confidentiality, unacceptably broadened Exemption 4 beyond congressional intent."⁵²

A reading of the post-*Critical Mass* case law certainly bears out that analysis, as the courts clearly have struggled to determine what constitutes a voluntarily submitted document and, more important, over whether to consider any countervailing interests other than the nature of the submission.⁵³ The overall impact of the decision, though, is that voluntary submission renders moot any other interests at stake, no matter their significance.

Critical Mass III thus offers much evidence of the genesis of the critical infrastructure proposal, which transformed itself after Sept. 11 in the form of the homeland security exemption currently under discussion in Washington. The withholding of corporate submissions on a categorical voluntary/non-voluntary basis and the recognition of a protective interest of competitive disadvantage — both prominent in the current debate — drew their inspiration from this decade-old decision, the flaws of which are readily apparent.

There is another assumption lying at the heart of *Critical Mass III*, however, and it reflects a fundamental problem with Exemption 4 jurisprudence: the argument that corporate interests dictate access policy. In *Critical Mass III*, the fear was that data sharing would dry up if corporate interests didn't get their way. Today, the argument is that, in order for the government to protect the nation, it needs to know the vulnerabilities of corporate entities under federal regulation. Since the vast majority of those resources are maintained by the private sector, the argument follows that business executives must feel comfortable submitting sensitive information to the government — without fear that it will fall into enemy hands, whoever the enemy may be.

The argument would stand if *Critical Mass III* were not controlling law in this area. But given the expansive protections already offered under Exemption 4, the current homeland security bill's FOIA language seems superfluous at best, dangerous at worst.

First, and most obvious, the homeland security exemption would allow submitters to dictate government disclosure policies to an extent never before contemplated under the FOIA. As Judge Ruth Bader Ginsburg wrote in dissent in *Critical Mass III*, such a posture removes the “independent judicial check on the reasonableness”⁵⁴ of the provider's custom of not releasing the information to the public and instead lets the submitter call the shots. Given the revelations of the past few months on Wall Street, corporations seem unlikely allies in the battle for openness.

The wholesale adoption of the voluntary submission standard within the homeland security proposal requires government to become a partner of business rather than a watchdog. Under such a schema, to obtain the maximum amount of cooperation (and information) from the business world, regulators must gain information through voluntary agreements rather than through regulations requiring such documents.⁵⁵ Courts have noted the unhealthy nature of this chummy government-business relationship.⁵⁶

The facts of *Critical Mass III* are instructive on this point. The NRC had every legal right to require the submission of these safety reports; yet it took the path of least resistance by accepting them voluntarily on the promise that they would not be released to the public. Never mind that the public interest demanded the submission of such information; rather than rely on the commission's ability to collect the information, the court focused on the submitter's categorical argument.

The immutable fact, as Ginsburg noted, was that allowing these safety reports to remain confidential simply because they were provided to the government voluntarily ignored FOIA's fundamental policy of disclosure. There were no personal privacy issues involved, she noted, nor were any commercial interests at stake. The appellant, she argued, was merely seeking information that was critical to

public safety and would “undoubtedly shed light” on the NRC’s regulatory mission.⁵⁷

Lawmakers, however, appear undeterred by the fact that federal circuit courts have not embraced the *Critical Mass III* logic as readily as they adopted *National Parks*. The homeland security legislation will embed the *Critical Mass III* standard — with all of its attendant problems — into the heart of the FOIA itself. History, it seems, is doomed to repeat itself.

Conclusion

Nothing we are witnessing with regard to the FOIA today is without precedent. One should view information policy since Sept. 11 not as a series of isolated events, but as the culmination of a narrowing of the public interest in disclosure that began, in earnest, with *Reporters Committee*.

Long before Attorney General Ashcroft issued his Oct. 12 memorandum on the FOIA, the federal judiciary, at the urging of the Justice Department in case after case, began what I see as a gradual shift toward a categorical approach to many access cases, trading the balancing of interests that had long

served well the FOIA for a reflexive jurisprudence seemingly aimed at narrowing the scope of the FOIA.

From the “central purpose” standard articulated in *Reporters Committee* has come an embrace of privacy to prevent disclosure of documents teeming with public interest. From the *Critical Mass III* decision came the withholding of “voluntary” submissions of information under Exemption 4, and from its logic the current homeland security exemption.

Left out of all of this legal history is the statutory right of the people to gain access to information about businesses and individuals affiliated with or regulated by the government. The public interest that gave rise to the FOIA seems a quaint afterthought, a relic of an era when government served as watchdog and the judiciary refused blind deference to the corporate interests of the day.

Extraordinary measures for extraordinary times, goes the time-worn cliché, invoked often since Sept. 11 by proponents of greater secrecy. Only time will tell if these measures were justified by the threat made real that awful day. From the vantage point of September 2002, it seems the die was cast long before Sept. 11, 2001.

The author is indebted to Geneva Overholser and to the Curtis P. Hurley Chair in Public Affairs Reporting, which has provided valuable assistance to the FOI Center’s efforts to study government controls of information since Sept. 11, of which this essay is a preliminary effort. Thanks also to George Kennedy and Daryl Moen, professors at the School of Journalism, who read earlier drafts of this essay and offered helpful commentary.

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- 13 See 489 U.S. 749, 780.
- 14 See *id.* at 772-74.
- 15 See *id.*

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Challenges to the Unpatriotic: International Media and Perspectives

by *Byron T. Scott*

Summary This paper argues that the pressures of “patriotism” affect journalism in differing countries in differing ways and that American journalists cannot afford to be myopic about news values as they are expressed between and across cultures.

American newspaper editors and television news directors report in the Kennedy-Thorson survey that they’re providing more international coverage, but that coverage is focused on the regions involved in the American-led war on terrorism. Most also reported that coverage since Sept. 11, 2001 has been more patriotic in tone and content. Simultaneously, most scholars and policymakers would agree that international news is more important than ever, particularly as we seek to understand the future of America’s position in a changing world.

This paper focuses on two case studies from markedly different cultures on markedly differing continents. In Albania, a predominantly Muslim nation still reeling from the Balkan conflicts of the 1990’s, the entire society from president to press to public was at pains to express solidarity with American interests after 9/11. When a story surfaced that Bin Laden might have trained operatives in Albania, even holding Albanian citizenship, the response was immediate and almost anaphylactic. Such stories met vehement denials from U.S. and Albanian sources and were seen as “unpatriotic” and against national and regional interests. In South Africa, media generally regarded the events of September 11 as distracting the Western powers from the longer term problems of the continent: AIDS, poverty and post-colonialist development. No less a figure than ex-president Nelson Mandela commented at an international conference that South African journalists were “unpatriotic” by doing stories on crime, corruption and international terrorism. In the months following the attacks on the United States, little attention — compared to the U.S. and Europe — was paid to the “war against terrorism.” Many of the articles that did appear were critical of U.S. and British policy.

The other day a colleague of mine at the Missouri School of Journalism, Stuart Loory, was commenting on the unexpected turn a discussion had taken in one of his classes. A student asked: "Whatever happened to Christiane Amanpour?" Immediately I knew a couple of things: that I had had that same thought too, and that I had my lead for this article.

Many of you know that Stu Loory is, among other things, a former vice president of CNN. In fact, while Moscow bureau chief, Loory's Atlanta-based "gofer" was this same CNN journalist who is now recognized as one of the great international reporters of her generation. Of course, those who travel abroad see much more of Ms. Amanpour on that network's satellite services in Europe, Asia, Africa and elsewhere. But CNN's domestic service always has carried less of her reporting. Since 9/11, it seems to many Americans including myself, her sightings have been even less. Instead, what is more typical is a recent Saturday noontime when Headline News aired not a single international story that lasted more than 10 seconds. The major pieces were a sycophantic interview of the rapper L.L. Cool J about his new book for children ("Can I keep your book?" the anchor excitedly asked the artist.) and in-depth coverage of a sword swallower's convention.

This paper is not intended as a targeted criticism of news or programming judgment at CNN or any other news organization. Nor am I suggesting that we all don't need to laugh and let down a little on a Saturday morning. Numerous media analysts have complained that the competing cable news networks emphasize a low-fact diet in search of younger demographics.

Rather I am suggesting something broader and more serious: that American journalism appears to be paying less attention to the rest of the world since September 11, 2001. A focus on fire, flood and bloodletting abroad only emphasizes to

Americans that the rest of the world is a dangerous place. The natural response to national tragedy includes introspection and a focus on the nation itself. Perhaps that period is over.

Instead, I believe we should be trying more than ever to help our audiences understand and be aware of events elsewhere on the globe. What follows is an attempt to combine cultural relativism with free press absolutism; suggesting those three nations — Albania, South Africa and our own — are at different points on the same dangerous spectrum. The main feature of that spectrum is a precarious balancing of responsibilities as a citizen, referred to as "patriotism," with journalism's responsibilities to find facts, analyze and disseminate them.

On the same Saturday that many of us were watching that amusing story of a Guinness-breaking sword swallowing Olympics, South Africa was cleaning up the physical and diplomatic rubble from the United Nations world congress on sustainable development. Delegates and demonstrators shouted down the American Secretary of State, Colin Powell. Why? In Macedonia, drive-by shootings and demonstrations punctuated the prelude to supposedly democratic elections in a nation not yet healed from the ethnic civil war supposedly ended by the Lake Ohrid Accords. Why should Americans know and care? Do they want these stories while in the middle of a national healing process? Do they need to understand why affronts to American pride in Johannesburg and possible preludes to increasing the 40,000 some U.S. troops already in the Balkans region in the other two cases are taking place? This paper suggests that they should and that we need to consider making our news values as global as our trade and security interests.

In the aftermath of 9/11 we developed a kind of traumatic amnesia that pretended nothing else was going on in the world. We are not the only nation affected by 9/11, nor are we the only ones involved in a national healing process. Wounds remain open

in Albania and South Africa, for example, with similar pressures for its journalists to be “patriotic.” This is the story of how this phenomenon played out in these two very different nations on two continents different from our own.

Remember that ethnic civil unrest in Macedonia? It involved the ethnic Albanian majority in the west and northwest parts of the nation and the Slavic Macedonians who until 1992 independence were Yugoslavs. Many news reports called it a civil war. Western embassies sent home all non-essential personnel. Much of the world’s news focus was on it in early September 2001. The Holiday Inn and Aleksander Palace Hotels in Skopje were filled with international journalists. On September 12 there were plenty of vacancies.

The journalists who remained to cover the story were primarily ethnic Macedonians or Albanians working for domestic news organizations and a comparatively tiny corps of correspondents for international news organizations, largely stringers. But their editors wanted another type of story. A Reuters correspondent, Benet Koleka, commented: “Yesterday they wanted everything I could send. Today it’s only ‘any connections to Muslim terrorist organizations’.”ⁱ As in so many other areas of the world, Balkan journalists were now sniffing out the footsteps of Osama bin Laden. And they picked up the scent in Albania.

Albania is regarded as a Muslim nation and is listed as a member of the Organization of the Islamic Conference (OIC).ⁱⁱ While recognizing their Muslim heritage, however, today’s urban Albanians generally do not observe such traditions as the Ramadan fast. Mosques dot the nation but the greatest regard for Islamic tradition is generally in the villages. Arguably still the poorest nation in Europe; it was certainly the most isolated during the some 40-year Communist regime of Enver Hoxha.

Since the turning toward democracy began in 1991, Albania has been in world news for conflict: a 1997 government collapse that followed the collapse of pyramid investment schemes, for hosting secret training bases for the National Liberation Army (KLA) and for providing friendly bases for the 1999 NATO bombings of Kosovo and Serbia and for the hordes of UN peacekeepers and NGOs who followed. In the fall of 2001 the Albanian government was denying accusations from its neighbors that it was backing ethnic Albanian guerillas active in neighboring Macedonia. Western diplomats showed every outward evidence of believing these denials.ⁱⁱⁱ

Then came September 11.^{iv} What followed was described in an editorial by one of the Tirana dailies, *Korrieri*, as “a crazy competition”^v to try and prove if and when Osama bin Laden was now or had ever been in Albania. Immediately journalists began to recall such events as the theft of 100,000 Albanian passports during the 1997 chaos, the flight shortly thereafter of the Albanian intelligence chief to Libya^{vi} and the 1998, CIA-assisted deportation of an unspecified number of alleged Islamic terrorists.^{vii} Within days, virtually all of Albania’s daily newspapers had published denunciations of “Islamists” and of terrorism, both inside and outside the nation. Each prominently featured government denials that any such extremists were currently operating in Albania. Even the American ambassador, Joseph Limprecht^{viii} stated: “I want to assure all Albanian citizens that we have no information on any terrorist organization in Albania.”^{ix} The media particularly featured Limprecht’s statements, not only because of America’s power in the region and because of the 9/11 events, but because U.S. intelligence is regarded as having a “free hand to obtain the detention and expulsion of foreigners suspected of planning to use Albania as a springboard for terrorism in Western Europe.”^x But the reassurances would not stick.

During the same period, both the Serbian and

Macedonian press had been publishing regular reports of rumors about “terrorist cells” in Albania. These reports quickly reached the Western media. On September 18 a *Washington Times* article cited unnamed intelligence sources that “Albania might well have served as the springboard for the Washington and New York attacks.”^{xi} *The Times of London* and *The Independent* carried similar stories.^{xii} However, perhaps because of the anonymous sources, perhaps because similar claims and accusations were being made in the media of many nations at the same time, other U.S. and British media either ignored the story or carried only brief articles on the denials.

In Albania, those denials were a firestorm that threatened to suppress any attempts to find the truth. The stories were condemned as “anti-Albanian” and unpatriotic. Rival newspapers backing different parts of the political spectrum lashed out at each other for any articles even hinting at “terrorist sympathies” in Albania.

Typical was the front page editorial of the largest circulation daily, *Shekulli*.^{xiii}

No civilized men can agree with what happened to America on September 11. The Albanian media cannot position itself any better than pro all the victims of this tragedy. However it is unjustifiable the position a part of the media took for commercial reasons or other reasons that we do not know, linking the September 11 events with Albania. This act is irresponsible and anti-patriotic because beside the negative impression that creates in the public opinion it also gives a hand to all anti-Albanian circles that want to damage

Albania. So it happened especially the Balkan press used it for their own purposes, naming the Albanians as the “evil ones of the Balkans.”^{xiv}

That editorial also was responding — although without referring specifically to either — to articles carried by two of its competitors, *Korrieri* and *Gazeta Shqiptare*. The former had quoted a police official investigating the murder of a Roman Catholic priest in the port city of Durres: “Surely this is the work of terrorists!” The latter paper had interviewed a crippled beggar on the streets of Tirana who claimed to have met Bin Laden in 1994.^{xv} None of the other dailies — and there are 12 of them in Tirana — published the beggar’s story. And none of them quoted the Durres police chief on his terrorist theory, instead blaming everyone from devil worshippers to thieves. (The son of the priest’s housekeeper and a neighbor subsequently confessed to the murder. Robbery, not terrorism was their reported motive.)

With these two exceptions the Albanian press concentrated on denying what stories from other nations were saying about terrorism in their nation. In a nation where even the reported facts can differ markedly from one newspaper to another, from one newscast to another, the official language and government sound bites had a remarkable uniformity. The message was clearly that Albania had nothing to do with Bin Laden. If anything, media lectured their audiences about the dangers of appearing “Islamist.” Another front-page editorial in *Shekulli* was typically “on message”:

A foreign European expert in the fight against terrorism has said: “The efforts to infiltrate fundamentalist terrorists in your

society have failed. But you must be very careful with young Albanian boys who come from very poor families or orphanages and have finished suspicious religious schools....It is also not good to show on TV Albanian girls wearing burqas...This has never been a characteristic of the Albanian tradition.”...Terrorist groups try to penetrate into countries with Muslim-heritage population, to hide their anti-Americanism, anti-Western moves under the Islamic philosophy. Albania is one of the countries lined on the side of the countries fighting terrorism....^{xvi}

Efforts to investigate accusations of pro-Bin Laden activities were discouraged in newsrooms. “Everyone knows that no one in government will cooperate with us anyway,” one journalist who declined to be identified, told me. Self-censorship can be more powerful than government edicts in post-Communist journalism.

In the months following 9/11, the only stories alluding to the resulting tensions reported government statements on such items as the Parliament’s unanimously approved anti-terrorism plan (Point Number One: Solidarity with the United States.). There were also the stories about deportations. By mid-October, nearly 250 non-Albanians had been forced to leave the country with the typical explanation that: “they either do not have the documents to legally stay or their deadline has not been renewed.”^{xvii} Many of these individuals had lived in Albania for many years and were associated with Islamic charitable foundations or religious schools, although at least one was a well-known contractor, engaged in building high-rise apartments adjacent to Tirana’s main boulevard.^{xviii}

For post-9/11 journalists in Albania the news agenda was clear: defend your vulnerable nation from its enemies and express solidarity with the powerful major powers, particularly the United States of America. In part, this is a Balkan habit, points out the editor in chief of *Tema*, Mero Baze. Ever since the period prior to World War I, when the powers of Western Europe were redividing the declining Ottoman Empire, Baze says, “our tendency has always been to see what the big boys want to do, then make our policy accordingly.”^{xix} In fact, it is not unusual to see embassy officials in Albanian newsrooms, “advising” on the stories being written.

In part, however, the reaction of Albanian journalists is a legacy of decades of government control; a control that still exists in subtle ways. For example, it is a given that “popular” journalists will be offered jobs as government spokesmen or even asked to stand for a seat in Parliament. In addition, the government is still the major advertiser in Albania, accounting for an estimated 70 percent of newspaper lineage.^{xx}

There is at least one other factor worth noting. In common with the journalists of many transitional countries, Albanians are acutely conscious of the fragility of nationhood and openly loathe doing anything that threatens the rebuilding process. In this state of “professional patriotism” they are vulnerable to those in power and defensive against those who may threaten internal stability. In Albania the memory of the 1997 chaos that saw government and police collapse, massive looting and children firing stolen kalashnikovs in the streets is still far too fresh. Objectivity, investigative reporting and independence are values from the preachment of Western consultants. Values appreciated in theory but difficult to apply in practice.

Nation-building was also a motive in how South African journalists treated the aftermath of the

9/11 attacks. But in that nation, 10-times greater in population than Albania and 50-times its size, the contributing factors were much more complex.

In the flush of victory over apartheid and the first inclusive democratic elections in 1994, both South Africans and reformers of other nations have discovered they underestimated the complexity of making an independent, democratic nation. In addition to its well-known racial tensions, South Africa is a communicator's nightmare, with 13 official languages. Emblematic is its multi-lingual national anthem: first verse in Xhosa, second in Afrikaans, third in English. In some ways the stress on journalists is no less great than in the old days of Boer government control. A journalist for South African Broadcasting (SABC), which remains under government control, must be able to prepare any story in at least two languages, expect it to be translated in several more for both radio and TV dissemination.^{xxi} The government dedication to becoming a "rainbow society" requires a patience and dedication that Americans can only imagine and that the estimated two million people who have left the nation since the election of Nelson Mandela were unwilling to attempt.

In South Africa, the events of September 11 were a big story, but nothing compared to the daily toll from HIV/AIDS that already is causing major cities and small towns alike to build new cemeteries. In addition, the estimated 45 million blacks of the nation have an understandably less empathetic view of the big Western nations than the about 5 million whites and coloreds there. While the South African economic reality includes the inevitability of global trade^{xxii} it also bears the burden of poverty, disease and ethnic warfare in its neighbors. Current South African President Thabo Mbeki has declared that his nation, as leader of the New Partnership for Africa's Development (Nepad) will achieve the "African Renaissance," with or without the help of nations off the continent.^{xxiii}

For these and a constellation of other reasons, South African journalists have not been as focused on "The War on Terror" as their American counterparts.^{xxiv} In fact, media there from the first sought to explain to their audiences how America's "policeman to the world" attitude led to similar reactions as the colonial powers suffered in the past century.

By early summer (winter in the Northern Hemisphere), the search for Bin Laden and the war against the Taliban were relegated mostly to inside pages and the second half of the news broadcasts. By May the September events in New York and Washington had assumed the status of editorial musings. Writing from the United States, a popular columnist for the *Sunday Times*, Justice Malala, told South African readers that the nation and the city of New York seemed incapable of "moving on."^{xxv}

This is because fear and ignorance now define everything that this city and country do. ...It is nearly 300 days since hijackers ploughed two jets into the World Trade Center twin towers....Everywhere, every day, New York and the US are falling inexorably into the grip of a fear of more terrorist attacks.

That fear is made even more dangerous by a caricature of the American that is sadly true: many here — from top government officials to the media to the man and woman on the street — have no clue who the enemy are, how they operate or how to begin to grapple with the problem this country faces...

Information is a key ingredient to combating

terrorism. But the ignorance that seems to exist here about the rest of the world is almost mind-boggling.^{xxvi}

As an example of this media ignorance, Malala quoted an article by an unidentified New York columnist who wrote how film star Angelina Jolie bought 2,000 pizzas for extras in a movie she was shooting in Namibia. “Pizzas? In downtown Namibia?” Malala quoted her, adding: “Now this is a journalist and even she could not be bothered to find out if Namibia was a city or country...”^{xxvii} Naturally the cultural insensitivity implication that Africans might be so primitive as not to have pizza was not lost on the *Sunday Times*’ readers.

“Understand this. We’re not saying this wasn’t a terrible tragedy. We’re not saying there isn’t a threat to world peace,” explained SABC’s Western Cape regional editor, Mzolisi Jeffrey Twala. “We’re saying there are bigger concerns for us here and for the rest of the world. Can we move on?”^{xxviii}

Twala, a former rugby player whose athletic prowess helped him escape from the segregated “homelands” to become one of SABC’s first black reporters, is typical of a new generation of editors elevated from apartheid era obscurity into leadership, directs a “rainbow” newsroom that includes blacks, coloreds and a few white journalists who formerly bossed him. He remembers well the days when he could neither dine nor go to the bathroom within the SABC building and had to stand aside if passing a white colleague in the hallways. The bigger concerns, Twala and other South African journalists focus on an almost daily basis, include: AIDS, poverty, illiteracy, hunger, corruption and racial hatred. More than one journalist pointed out, usually over a beer or two, if 3,000 people had been killed in an African nation — the example most frequently cited being the hundreds of thousands killed in Rwanda — the Western press and their governments would be far less concerned.

In common with the transitional nations of Central and Eastern Europe, freedom of the press and the news values that tend to go with editorial independence are a somewhat distant ideal. “Before you can have freedom of the press you have to have a ‘normal society,’” observed Martiens van Bart, who has been with the Afrikaans-language daily, *Die Burger*, for 25 years.^{xxix} He is among the veteran South African journalists who, while proud of their nation and dedicated to its transition to majority rule, are uncomfortable with the pressures that process brings about. Both government and societal pressures are “very much the same, only coming from a different direction.” This has led to what many older journalists fear has become an emphasis on South African stability and achievement over international tragedy and events, local pride over perspective. Van Bart calls this “populist journalism...ignoring the hard news in favor of the take-aways” (the equivalent of “fast food.”)

Media24, the media conglomerate that ironically includes both *Die Burger* and that symbol of apartheid era resistance, *Drum Magazine*, is developing a “rainbow” newsroom and management team. The process is complicated by the fact that, while most Western Cape colored speak Afrikaans, very few blacks do so. The clash of cultures and backgrounds creates an exciting environment for editorial decisions at *Die Burger* and all of South Africa’s larger newspapers^{xxx} Forced early retirements and the hiring of black and colored journalists in formerly all-white newsrooms have dramatically lowered the median age and experience of South African reporters. This “juniorization” has concerned South African editors and publishers.^{xxxi}

Not just the journalists but also the public are debating the role of South Africa’s press. Asked in a public opinion survey: “What, if anything, does democracy mean to you?” Africans rated freedom of speech highest — but did not usually include freedom of the press in the franchise.^{xxxii} In common

with the peoples of former Communist states, Africans in general and South Africans in particular said they associate democracy with economic improvement, social stability and basic welfare. South Africans remain attached to one-party rule.^{xxxiii} In today's South Africa that is the African National Congress (ANC), which dominates all levels of the Mbeki government and is the party of the nation's first democratically elected president, Nelson Mandela. Even though out of office, Mandela remains the most recognizable man in South Africa and an icon of the new nation. And he is not above criticizing the media of his own nation when it appears to be not pitching-in. At an April international media conference, Reuters reported Mandela as complimenting the French government on suppressing coverage of a string of bank robberies. According to the story, Mandela complained that in their quest for higher circulations and greater audiences, journalists of his nation were "being unpatriotic" (emphasis supplied). Mandela suggested less news about crime, corruption and conspiracies, foreign or domestic, and more about positive approaches to the problems of the African continent.^{xxxiv}

Subsequently, Mandela has been among those world leaders to suggest that the Bush administration devote less focus and funding to the "War on Terror" and more to combating AIDS and other world problems. The message for South African journalists could not be clearer: help us build the nation.

From these two case studies and many that could be provided from other nations in a post-9/11

world, it is clear that journalists are expected to be patriots as well as professionals. We have seen it in the United States, as other speakers at this symposium will describe. But just what is a "patriotic journalist?" Clearly that definition is an elusive one and depends largely on perspective. Nation building or rebuilding complicates the task; history, culture and traditions even more so.

Even in ordinary times, politicians and large segments of the public are always eager to tell journalists what to do. It is part of the normal "game," or the checks-and-balances of our profession. In times of national stress the pressure becomes substantial, especially when an administration asks: "Are you for us, or against us?" Each citizen of such a nation wishes to be thought of as a patriot and not the opposite.

In response to pro-patriotic pressures, journalists need to understand that news values can be put through a prism not accounted for in standard textbooks or basic reporting lectures. Being patriots more than professionals means giving up part of our independence and news judgment. And those who contend that this gift of patriotic partiality is only temporary and can be reclaimed later on should study their colleagues in other cultures. They also should recall the opinion of the 19th century American journalist and commentator, Ambrose Bierce (1842-?) who in his satirical classic, *The Devil's Dictionary*, defined a "patriot" as: "One to whom the interests of a part seem superior to those of the whole. The dupe of statesmen and the tool of conquerors."^{xxxv}

Continues Bierce: "In Mister Johnson's famous dictionary 'patriotism' is defined as the last resort of a scoundrel...I beg to submit that it is the first."^{xxxvi}

ENDNOTES

- i Personal conversation with the author. The Reuters correspondent in question is an Albanian national.
- ii The government of then-Prime Minister Ilir Meta immediately floated stories that linking Albania to the international organization had been the work of the discredited Sali Berisha government (1992-97), that Parliament had never approved membership, and, in any case, the relevant documents had been somehow lost.
- iii Albanian officialdom consistently denies Balkan suspicions of a plan for “Greater Albania,” which would extend the borders of the nation into Kosovo and western Macedonia where the preponderance of residents are ethnic Albanians. These rumors occasionally extend even to northern Greece and southern Montenegro.
- iv The author lived and worked in Albania, September-through-December, 2001. On the fateful day he was working with the editors of a Tirana daily and helped them with their coverage of the events in New York and Washington.
- v *Korrieri*, September 25, 2001.
- vi Bashkim Gazidede was a prominent Islamic intellectual still thought to be living in Libya according to the Institute for War and Peace Reporting, Balkan Crisis Report of September 26, 2001.
- vii Four of these were summarily tried and hung shortly after their return to Egypt.
- viii Tragically, Limpsecht, the son of a Nebraska newspaper editor and a career diplomat, died of a reported heart attack while hiking in northeastern Albania in the spring of 2002. He was 61.
- ix *Albania Daily News*, September 21, 2001.
- x *Bin Laden and the Balkans: The Politics of Anti-Terrorism*, International Crisis Group Balkans Report No. 119, November 9, 2001, page 5.
- xi Institute for War and Peace Reporting, op cit.
- xii Both articles appeared on October 21.
- xiii “Anti-Patriotism,” *Shekulli*, October 14, 2001.
- xiv The author is grateful to his Albanian colleagues, Altin Rraxhimi and Fabiola Hoxhillari for providing the translations to these and all Albanian texts cited.
- xv “A Priest, A Sacrifice of Terrorism,” *Korrieri*, October 10, 2001. “I Met Bin Laden in Elbasan,” *Gazeta Shqiptare*, October 13, 2001.

- xvi "Complex War Against Terrorism," *Shekulli*, October 17, 2001.
- xvii "Albania Asks to Leave 223 Aliens," *Korrieri*, October 16, 2001.
- xviii "The Boss of 'Karavan' a Man of Bin Laden," *Albania*, October 28, 2001.
- xix Personal conversation with the author. Because of its association with the former Berisha regime, *Tema* is the only Tirana daily that is not favored with government advertising.
- xx Albanian Media Institute study, Fall 2001.
- xxi These observations and many of those that follow were gathered by the author in the process of doing "shadow shifts" in SABC's Cape Town bureau as well as daily newspapers in both that city and Johannesburg.
- xxii This spring the already huge South African Brewing Company, headquartered in Johannesburg, purchased America's Miller Brewing, becoming the second largest beer-maker in the world after St. Louis-based Anheuser-Busch.
- xxiii John Battersby, "It's Time for Africans to Stand Tall," *The Johannesburg Star*, May 24, 2002, page 19. An analysis by the senior political editor of the largest circulation newspaper in the nation explains well this campaign, blending nationalism and economic necessity.
- xxiv While not a significant portion of the nation's population, South African Muslims have not been identified with pro-Bin Laden sympathies or actions, instead concentrating on domestic issues and solidarity with Palestine. However, the popular monthly, *Muslim News* was the only paper to carry a revisionist version of 9/11 ("No suicide pilots" said one headline) by freelancer Carol Valentine.
- xxv Justice Malala, "The lingering legacy of September 11," *Sunday Times*, May 26, 2002, page 18.
- xxvi *Ibid.*
- xxvii *Ibid.*
- xxviii Personal conversation with author.
- xxix Personal conversation with author.
- xxx *The Sowetan*, South Africa's only black daily is not generally circulated in the largest cities, but in the still all-black townships surrounding them.
- xxxi See the South African Newspaper Editors Foundation "Skills Audit," released in May 2002.

- xxxii Carolyn Logan and Fabiana Machado, *Afrobarometer Paper Number 1*, March 2002.
- xxxiii Ibid. In the 12-nation survey, only residents of Uganda, Tanzania and South Africa still favored a one-party system.
- xxxiv Reuters dispatch to South African member papers, April 8, 2002.
- xxxv Ambrose Bierce, *The Enlarged Devil's Dictionary*, Penguin Classic Edition, 2002, page 242.
- xxxvi Ibid.

With Liberty and Justice for All: Attorneys General During the Stress of War

by *Betty Houchin Winfield*

National stress such as war exacerbates the usual tensions between individual freedoms and the nation's concerns about survival. In the United States, a wartime society changes drastically from a democratic sovereignty with individual autonomy and deliberative open national debates to an autocratic, military government concerned with unanimity and secrecy for physical security and defense. Such national tension puts the constitutional guarantees of basic American civil liberties under the greatest risk and ultimate stress. The usual democratic individual rights can become and have become an immediate national casualty.¹

The Current Attorney General

Today, we are puzzled by our attorney general's civil liberty infringements in the aftermath of 9/11. The Justice Department under his jurisdiction has tracked down 8,000 young Muslim men in America, detained immigrants, concealed the identities of at least 1200 people picked up after 9/11, held secret immigration hearings and fingerprinted entering foreigners from Iran, Iraq, Syria, Sudan and Libya — despite American Muslim concerns about reli-

gious discrimination. The department is requiring that selected foreign visitors regularly report their whereabouts to the government, overruling immigration judges, secretly deporting hundreds of immigration violators and holding hundreds of others at concealed sites with silence about their defense lawyers' names and then eavesdropping on their attorney-client conversations.² The attorney general has unilaterally declared two American citizens "enemy combatants" and stripped them of due process.

Ashcroft's Justice Department has dramatically increased the government's surveillance, search-and-seizure and wiretapping authority. He proposed that neighborhood watch groups work with the government to identify terrorists and included new funding for such programs. One plan he pushed was TIPS (Terrorist Information and Prevent System) that would recruit and train 1 million volunteers from the postal and utility system in 10 cities to report suspicious terrorist activities. Salon.com reported in August that when dialing TIPS the calls go directly to FOX-owned "America's Most Wanted."³ In addition, he wants a national identification system and is enthusiastically using the Patriot Act to let federal agents spy on Americans in their churches, on the Internet, in

bookstores and libraries.

Now, Ashcroft is in the process of using military courts to try American citizens, rebuffing the House Judiciary Committee's questions, and is bypassing the federal courts to be exempted from constitutional guarantees for at least one American citizen held without charges and without access to an attorney (Yaser Esam Hamdi, born in Louisiana).

The entire Bush administration's policy has been greater secrecy and a lack of access for government proceedings and documents since 9/11. Last October the attorney general's new policy on Freedom of Information requests was that they would be considered under national security in time of war. He directed officials to be mindful of "institutional, commercial, and personal privacy interests" when considering FOIA requests. Unlike the openness adopted by Attorney General Janet Reno who advised officials to release records unless disclosure would result in foreseeable harm, this attorney general gave a broad edict encouraging government officials to find reasons for withholding information and signals that the Justice Department will back them up.⁴

The administration also proposes to allow the new department of Homeland Security to exempt business from the Freedom of Information Act. Businesses would be free from the disclosure requirements of local and state laws and be granted immunity from civil liability for violations of securities, taxes, civil rights, environment, labor, consumer protections, health and safety laws. The label for incriminating information would be "critical infrastructure information" and thus be beyond the scrutiny of the public, the Congress, the courts, the public and the press.

For those critics who question this attorney general's many actions, he claims that civil libertarians aided terrorists and labels them as unpatriotic, and says they were "living in a dream world."⁵

The attorney general's actions affect the climate

of open discussion and an exchange of diverse ideas for gaining knowledge. When Al Jazeera's television images of Osama bin Laden appeared on CNN last fall, there was a public uproar. This past spring when upcoming books were announced, many people expressed fear and disgust over a biography of Osama bin Laden and books filled with his interviews and speeches. The arguments concern whether these public efforts are propaganda or a way to understand the terrorist's thinking and views.⁶

The question for historians is whether the current attorney general's actions are an aberration or are typical of his predecessors during wartime. This study examines attorneys general during wartime stress and the state of civil liberties to understand our current world. By "civil liberties," what is meant are those guarantees of individual freedom found in the Bill of Rights to the U.S. Constitution. In this new war, would the actions of the current attorney general have historical precedent? And what do those historical examples tell us?

The Historical Attorney General

The official role of the attorney general gives the position parameters. In his oath of office, the attorney general solemnly swears or affirms, "to support and defend the Constitution of the United States against all enemies, foreign and domestic...."⁷ The attorney general serves as the country's chief law enforcer, head of the Department of Justice Department, and the de facto legal counsel to the president and the Executive Branch of the government. According to the *200th Anniversary of the Attorney General, 1789-1989*, the attorney general is to enforce the laws, "ever mindful of the purpose and intent of Congress, to interpret and adhere to the rules promulgated in the Supreme Court decisions." Yet, a caution is there, "Nor, may the

Attorney General deviate further than the law requires from the politics of the presidential administration of which they are a part.”⁸ The current Department of Justice web site notes these additional duties, “represents citizens in enforcing the law and plays a key role in protection against criminals; ensuring healthy competition of business; safeguarding the consumer, enforcing drug, immigration and naturalization laws.”⁹

The office is not mentioned in the Constitution, except indirectly in Article VI: “This Constitution and the Laws of the United States which shall be made in pursuance thereof...shall be the Supreme Law of the Land.” Yet, there was nothing in the Constitution on how this was to happen. In fact, the attorneys general served both the Congress and the president. During those early decades, Congress requested legal advice so often that this constituted a large part of the AG’s regular work. Since the attorney general lived only part-time in the capital, this office holder relied on other legal work for 64 years.¹⁰

The position was initiated with the 1789 Judiciary Act which set up the office of attorney general and proved for the appointment of a “person, learned in the law to act as Attorney General for the United States.”¹¹ With a low budget and little power, the AG was a weak part of the executive branch. Congress was reluctant to create a strong legal system and held back funds on purpose. The debates were not just about states’ rights, but also concerned the fear that such a federal office might be used unjustly to deprive citizens of their new hard-won freedoms and rights.¹²

When Washington held his meetings, the first attorney general was not a recognized cabinet member even though he was asked to sit with this inner council to give legal advice. Despite constant pleas for resources, the first AG, Edmund Randolph, had to pay his own rent out of his \$1500 annual salary, as well as his heat and light, plus purchase his own

stamps and stationery. In fact, until 1817, the attorney general had no one to help him or to record the work, not even a secretary. Even when the office staff grew to no more than two or three, all with miserably low salaries, the AG was expected to act as the lawyer for the legislative branch and give opinions on bills and procedures as to the constitutionality.¹³

With the country’s early political thinkers concerned enough about the potential power of President’s chief justice officer to hold back the appropriations, during the early national wars, the attorneys general had little or no impact on what happened during the War of 1812, the Mexican War and the Civil War.

As an example, right after the firing on Fort Sumter, Abraham Lincoln acted under the emergency powers of the Constitution to suspend the *writ of habeas corpus* in the case of rebellion.¹⁴ By April 19, a Baltimore mob blocked the passage of Massachusetts’s troops and burned key railroad bridges, which threatened the nation’s capital. The president asked his attorney general for an opinion on allowing an infraction of the Fifth Amendment to the Constitution, which required grand-jury indictment for a “capital or otherwise heinous crime.” Martial law applied to citizens in times of war was hard to define; Lincoln’s decision would be major action during this crisis. Attorney General Edward Bates and his assistant wrote that previous legal opinions on martial law stated that only Congress could suspend the writ of habeas corpus.¹⁵ Nevertheless, Lincoln did so act on April 26 and suspended the writ of habeas corpus; thousands of citizens were arrested and imprisoned.¹⁶ In 1863 Congress enacted a habeas corpus statute, approving the president’s measure retroactively.¹⁷ Lincoln explained to Congress, “These measures, whether strictly legal or not, were ventured upon, under what appeared to be a popular demand, and a popular necessity, trusting then, as now that Congress

would readily ratify them.”¹⁸ Such a drastic response toward citizens was unusual in the new country; the president as military commander relied upon such a suspension of civil liberties from the capital to New York and to the west in Missouri, scene of widespread popular revolt, guerrilla violence and military campaigns throughout the war.

Only after the fact did Lincoln have his attorney general write a defense.¹⁹ When thousands of citizens were held indefinitely for trial in military tribunals and when some 4,000 were subsequently tried in military tribunals, over half held in Missouri, Attorney General Edward Bates reluctantly went along with the president’s wishes. When Bates hesitated or appeared to disagree, as in the case of the arrest and imprisonment of Rep. Clement Vallandigham (Ohio), who had encouraged desertion and charged the Lincoln administration with tyranny, the president sought other advice and relied upon the military and finally commuted the congressman to banishment to the confederacy.²⁰ Bates, who did not criticize the president, was later quoted as saying, “There seems to be a general and growing deposition of the military ...to engross all power, and to treat civil government with contumely, as if the object were to bring it into contempt.”²¹

The Supreme Court had not questioned in a ruling the suspension of the *writ of habeas corpus* during war or the resulting arrests of civilians without charge. Yet, after the war and Lincoln’s death the court declared as unconstitutional military trials of civilians where civil courts were still able to function (*ex parte Milligan*, 1866).²² In fact, years later during the World War I prosecutions, the trials were held in civilian courts rather than military courts.

There was no precedent for Lincoln’s actions as president. James Madison certainly had just cause during the War of 1812 when leaders in several New England states called a convention to thwart the president’s efforts, Baltimore had been sacked,

and the White House and Capitol burned. Madison did nothing; he said nothing publicly. Yet, during that war general Andrew Jackson did go beyond the bounds of civil law in New Orleans and after suspending civil liberties there, even for a judge: Jackson was fined.²³ Both Madison and his attorney general, William Pinckney, kept silent. Lincoln, on the other hand, was well aware of the Jackson case, as Congress had repaid the general’s fine when Lincoln was in the House of Representatives.²⁴

Following Lincoln, until 9/11 last year, the only wartime presidents along with their attorneys general who made such general arbitrary arrests were Woodrow Wilson and Franklin D. Roosevelt. Roosevelt issued Executive Order 9066 coupled with Congress’s support resolution to move 117,000 West Coast Japanese-Americans, two-thirds of them American citizens, to ten interior relocation camps behind barbed wire. Such drastic actions of massive arrests were not taken until now by wartime presidents following Lincoln, not William McKinley during the Spanish American War, not Harry Truman during the height of the Cold War or the Korean War, not Lyndon Baines Johnson during the Vietnam War, and not even Richard Nixon during the last years of the Vietnam War.²⁵

Attorneys general played more public roles by the twentieth century, which might relate to the enlarged budgets, resources and power as Congress passed another Judiciary Act (1870) to set up the Department of Justice and the new office of Solicitor General to represent the U.S. interests in court. By the twentieth century attorneys general with expanded actions became more of a public figure, more recognizable among the president’s cabinet and official family. Only in the twentieth century do people today remember some of the names of previous 31 attorneys general.

Many previous attorneys general operated as had Bates behind the scenes and did not take any public position. Their reticence, their lack of power and

their low budgets kept those early attorneys general quiet. When the attorneys general disagreed with the president, they either went along or they resigned. Usually, an attorney general served as long as the president was in office. Yet, by the twentieth century and the wartime stresses, some presidents went through several during a term of office; for example, Lyndon Johnson had three during the Vietnam War; Richard Nixon went through four. Too, this cabinet member remained recognizable because of controversy, in particular, scandal. As examples, Warren G. Harding's former Attorney General Harry M. Daugherty was tried for fraud during the Teapot Dome revelations, and Richard Nixon's former Attorney General John Mitchell was convicted for criminal conspiracy to obstruct justice during Watergate.

If an examination could be made of attorneys general during wartime stresses, especially in the twentieth century, several major types emerge. Since the attorney general serves as the nation's chief law enforcer and at the same time promises to uphold and defend the Constitution, they can have a range of legal interpretations about the laws and the Constitution, especially when serving different presidents and their proposed actions while the nation is in crisis.

For a reaction to civil liberties during war, attorneys general appear to react as four major types of officials. One type can be called the *coordinator*, the person who goes along with the president and assists in his wishes during wartime, no matter how questionable the actions from a constitutional viewpoint. Edward Bates from the Lincoln presidency for the most part went along with whatever his president wanted, even when declaring martial law and suspending the writ of habeas corpus. In the twentieth century, Woodrow Wilson also had this type for a wartime attorney general: Thomas Gregory, who coordinated the president's wishes and added his own interpretations to them.

Too, there are those attorneys general who are the *aggressors*. They go beyond public expectations and are extremely forceful during national crisis. Their actions cause extreme changes in the nation, yet usually at behest of an aggressive president. If such attorneys general are public and ambitious on their own in such endeavors, they become the *extreme aggressors*. This type of attorney general serves a president who runs roughshod over civil liberties. Rather than work behind the scenes to carry out the president's wishes, this attorney general publicly carries out the president's orders and can serve as a front for an aggressive president. By fulfilling the demands of this kind of president, the attorney general can then serve as a fall guy for any critics of the administration's actions. Two twentieth century attorneys general actively and publicly infringed upon civil liberties to the extreme during times of national stress. Mitchell Palmer, following World War I, raided labor, communist and socialist organizations. John Mitchell of the Vietnam era went after the president's critics, anti-war demonstrators, and civil rights leaders and advocates. In the case of the former attorney general, Palmer acted beyond what President Wilson had previously done. When the president was incapacitated, Palmer moved even more aggressively with conspicuous motives for parlaying his actions into a presidential campaign.²⁶

Lastly, there is the *leveler*, the adviser who quietly disagrees and tries to balance questionable actions and convince the president to act otherwise. Francis Biddle during World War II would be this type. Biddle and his staff argued for three months against the internment of the Japanese Americans and later informed President Franklin D. Roosevelt in 1944 that there was no longer any need to confine the Japanese-Americans, but the president wanted no change until after the election.²⁷

These four types of attorneys general are fluid and may overlap. Such categories are not rigid and

of course there can be other attorney general types. Not discussed here would be the attorney general who greatly disagrees with the president's wishes and either resigns or is fired, such as Richard Nixon's nemesis Elliott Richardson.

The Coordinator

Woodrow Wilson's Attorney General Thomas Gregory during World War I (1917-1918) found Civil War criminal statutes inadequate and demanded new legislation. The concern was twofold: U.S.-published and uttered opposition to the war and German propaganda. Thus, the administration pressed Congress to pass the Espionage Act (1917), a law to fine and sentence those who might infringe upon the success of the military or enlistment or recruiting. Today, the Espionage Act is still in force.²⁸

By 1918, Attorney General Gregory again was dissatisfied. The Espionage Act, while against deliberate and organized propaganda, did not go far enough with casual and impulsive disloyal statements. Pushed by the Senate Judiciary Committee, the Sedition Act (1918) was to tramp out all utterances of a disloyal nature and punish "attempts to obstruct" the selling of U.S. bonds, cause contempt of the government of the United States, the Constitution, the flag, a military uniform, or any language to incite resistance to the U.S. or its cause. In 1921, the Sedition Amendment ran out.²⁹

With the confidence of the president who rarely intervened with his actions, Gregory coordinated what he saw as Woodrow Wilson's aims. Seldom did Wilson express his disapproval, even when Wilson questioned using homegrown spies, the American Protective League (APL). This officially recognized auxiliary with 250,000 members was under the control of the district attorneys. Yet, Wilson went along with the attorney general who insisted that the auxiliary force was necessary to the Justice Department.

After APL members acted as *agents provocateurs*, indulged in illegal arrests and searches, and often impersonated federal officers, Gregory kept up a bold front. Right after the Armistice, the organization was ordered to disband.³⁰

In the midst of war hysteria over traitors, spies and saboteurs, those government officials who held their ground risked being accused of failing their duty. One scholar points out that Attorney General Gregory remained skeptical about a critical internal threat, despite the subsequent actions of the administration.³¹ Moreover, when local vigilantes attacked pacifists, German-Americans, Socialists and other alleged traitors, the Justice Department under Attorney General Gregory did little; the president said nothing publicly. When a Collinsville, Illinois townsman was accused of being a German spy, dragged into the street, wrapped in a flag and murdered, while the attorney general made a public denunciation, it took the president four months to condemn such vigilante justice.³²

Almost all of the 2,000 prosecutions under the Espionage and Sedition Acts were for expressing opinions about the merit and conduct of the war. At least 1,055 citizens were convicted, among them more than 150 International Workers of the World (I.W.W.), at least one Senate nominee (J.A. Person, Republican, of Minnesota), and presidential candidate Eugene V. Debs who had received almost a million votes for president in 1916. Not one bona fide spy or saboteur was convicted during World War I.³³

The federal courts treated opinions expressed as statements of fact and condemned them as false since they disagreed with the president's speeches and resolutions. Cases concerned even arguing that a referendum should have preceded the declaration of war, that the war was contrary to the teachings of Christ, for criticizing the Red Cross and the YMCA, for discouraging women from knitting socks for the war effort.³⁴

Under the Espionage Act, the postmaster general in concert with the Attorney General suppressed books, economic pamphlets, magazines such as the *Nation* (September 14, 1918), newspapers for publishing Jefferson's opinion that Ireland should be a republic (*Freeman's Journal* and *Catholic Register*), use of the telegraph as with *New York World* to distribute a criticism of the postmaster general.³⁵

In 1919, with the resignation of Thomas Gregory, his replacement, A. Mitchell Palmer, was an even more oppressive attorney general. Palmer enforced the Espionage Act even after the armistice. Here was another type of aggressive attorney general. Palmer operated more on his own while Woodrow Wilson was first trying to get the League of Nations passed by the Senate and when Wilson was later incapacitated. In fact, while the president was ill, scholars generally agree that Attorney General Palmer carried through the greatest executive restrictions of personal liberty in the history of the country, to date.³⁶

In total, during the Wilson administration, the Justice Department through the leadership of Attorney General Gregory and then Attorney General Palmer launched 2,168 prosecutions between 1917-1921 and secured 1,055 convictions. Initially, they had support of Congress and the American people. Between 1918-1920 over 70 peacetime sedition acts had been introduced in Congress.³⁷

The Aggressor

When one thinks of World War I and the suppressive actions of the Wilson administration, the attorney general carried out what the president had advocated. The example used here will be used twice. Mitchell Palmer becomes the identifying name, because he was so aggressive. Woodrow Wilson had advocated stopping critical public com-

ments, alien registration, loyalty oaths, and while he was incapacitated during much of the Palmer actions, he had approved Palmer's early actions. Yet, Palmer appears to have gone beyond the president's previous approval. Thus, Palmer will be put in both of the following categories to be discussed.

Palmer and others prominent in the sedition prosecutions and legislation were targeted for a series of bomb explosions. The most significant and sensational explosion damaged the front of the Attorney General's house. Arrests were made quite freely, especially of known radicals and members of the communist party, but initially no charges were filed. Agitations began for laws to deport all alien radicals, to curb radicals who were citizens and to punish those persons who stirred up dissent. After a number of strikes following the Armistice, Palmer went after labor leaders and even followers, including the International Workers of the World (IWW) members. Guilt by association was justification enough. To assist in this new effort, Palmer initiated an Information Division to serve both as a news distribution center and a secret police force. The AG chose J. Edgar Hoover as the deputy director.³⁸

With subsequent raids, arrests, and deportations, Palmer's name and his actions, "The Palmer Raids" or the "Red Scare," remain identified with infringements of individual civil liberties. Despite the Constitution and laws requiring warrants for arrest, forbidding searches, and allowing counsel to make deportations more difficult, Palmer saw each of these rules as diminishing the efficiency of government to act. Because the laws hindered the result with the speed he wished to accomplish, Palmer disregarded the law.³⁹

So many were arrested without evidence of wrong-doing and deported and the situation became so bad by 1920 that former presidential candidate and Supreme Court Justice Charles Evan Hughes said in an address at Harvard Law School, "we have seen the war powers, which are essential to

the preservation of the nation in time of war, exercised broadly after the military exigency had passed and in conditions for which they were never intended, and we may well wonder in view of the precedents now established whether constitutional government as heretofore maintained in this republic could survive another great war even victoriously waged.”⁴⁰

Law professor Zechariah Chafee wrote that the initial silence of the press was deafening. The immigration hearings were often unfair, the accused often had no counsel, and aliens were deported, no matter how long before 1918 they came to the U.S. Anyone who even associated with the communist or other socialist party or the IWW could be and was deported. Up through 1920 some 3,000 warrants were signed for the arrests of persons alleged by affidavits of the Department of Justice agents to be members of two communist parties.⁴¹

For hindering free expression, Palmer worked in concert with the postmaster general to close down critical newspapers after the war. For example, this attorney general, a year after the armistice, raided and closed the office of a newspaper, the *Seattle Union-Worker*, because of its critical messages about the upcoming election as a way for workers to kick the governing class after the Centralia, Washington shootings of innocent working men.⁴²

In 1920, Attorney General Palmer along with his aide J. Edgar Hoover was the prime mover in raids. The raids were not just in the centers of critical organizations, but also in private homes. The police dragged many men, primarily aliens, out of their homes in the middle of the night. When friends or relatives would visit the jails, the police would arrest and lock up the visitors. It was guilt by association. The property of the aliens and citizens was seized without search warrants.⁴³

At the same time street fighting and labor clashes erupted in major cities and in smaller west coast towns. This led the attorney general to repeat

demands for wider and more severe statutes to meet the “Red menace” with a Sedition Act going after an individual, rather than groups of two or more, and alien acts enforceable during peacetime.

Years later, after Palmer’s death, the Smith Act (1940) and Alien Registration Acts (1940) were passed.⁴⁴ Palmer’s name is forever associated with such extreme measures in 1919 and 1920. As an aggressor, his actions were public; newspapers covered the raids and knew about the deportations. He set up a mechanism to make such actions public. His motives may have been for a public leadership because he desired the presidency. Palmer’s political career was finished after the first primary results in 1920. He never held a political office again.

The Extreme Aggressor

This category was more the public aggressor acting during crises discussed here in the twentieth century. For this latter type of attorney general, if the actions are taken too far, and too publicly, this attorney general can act as a front for an administration or can be the fall guy. In other words, the more publicly active the attorney general, the more he or she is blamed for the loss of civil liberties. Mitchell Palmer again fits this type, only because he so publicly told of his actions, whether for investigations, raids, immigration hearings, or deportations. Later John Mitchell became publicly identified for infringing upon individual rights. These two attorneys general show aggressive actions in two ways. Mitchell Palmer acted in a presidential power vacuum right after World War I. Wilson was first too preoccupied with the passage of the League of Nations treaty to care much about what the attorney general was doing. Then, President Wilson became too ill and weak to notice.

Mitchell, the head of the Nixon justice department from 1969-1972, went after critics to an

extent unknown since World War I. Yet, Mitchell was different from Palmer. Mitchell's actions were more secret with the cooperation of J. Edgar Hoover and the FBI. Too, he acted at the behest of an involved president, who also later received much of the blame for civil liberty infringements of critics and those who sought access to what the administration was doing.⁴⁵

Moreover, Mitchell acted upon the behest of the president to stop the publication of the Pentagon Papers in the *New York Times*, *Washington Post* and numerous other newspapers. Never before had the government so overtly restrained publication for 15 days. Mitchell complied when the president wanted to prosecute Daniel Ellsberg, the man primarily responsible for the leaking of documents.⁴⁶

Mitchell became the fall guy for an aggressive, secretive administration of six years of presidential power uses. The aim was multi-fold: to prevent information, to punish those who found out and criticized the president and his associates, and to investigate and monitor what appeared to be a radical threat from the civil rights and anti-war movements. The Justice Department under Mitchell was to have a domestic surveillance operation.⁴⁷ For example, Richard Nixon was obsessed with the leaks to the press and with the aid of Mitchell and his national security adviser Henry Kissinger he supplied the head of the FBI, J. Edgar Hoover, with the names of all those to investigate and to wiretap.⁴⁸ Nixon had his chief of staff call in each cabinet member and agency head to threaten them if they did not stop leaks. H.R. Haldeman had an assistant study the leaks and set up a monthly reporting system for possible internal action.⁴⁹

The attorney general went after not just leaks of information but sources, and reporters were jailed over subpoenas for notes and outtakes. Even the FBI balked at the administration's proposal to work with the CIA.⁵⁰ The Justice Department of the Nixon era threatened the American Society of

Newspaper Editors. Assistant Attorney General Kevin T. Maroney reminded the editors that the Espionage Act and certain other state and federal laws forbade the receipt of "stolen property."⁵¹

Moreover, this Justice Department under Attorney General Mitchell also went after television networks. Just before he left to run the Committee for the Reelection of the President, Mitchell collaborated with the president to file a major anti-trust suit against the television networks during an election year.

In the meantime, the country was in a state of siege. The Vietnam War dragged on and racial tensions persisted. Campus unrest and protest had intensified, accompanying by violence and bombings. The president saw crises and the country's responses as threats to his authority. The policy was for mass arrests in 1970-71. The president's responses and orders to his staff and the attorney general reinforced a state of emergency. For the most part, John Mitchell loyally went along.⁵²

The Leveler

The twentieth century holds another type of attorney general, a cabinet officer who disagrees, primarily behind the scenes, and in doing so can be a leveler, a check against an administration's civil liberty infringements. Francis Biddle of World War II is this type of attorney general. This cabinet member can either come to an accommodation or if the requests are too great and too public, resign. Elliott Richardson, of the Nixon cabinet, is this example. He would not fire Watergate Special Prosecutor Archibald Cox as the president had requested, so he resigned.

The World War II era attorney general offers an excellent example of a leveler. After Pearl Harbor, one fear was about Japanese spies, especially when one such spy had indeed been arrested in March 1941 and then released to the Japanese. Right after

Pearl Harbor, Japanese submarines attacked American commercial ships off the California coast. By February 1942 a Japanese submarine surfaced off the coast of Santa Barbara and volleyed a few shots. Attorney General Francis Biddle, attorney general for only three months before the war began, could not stop the clamor for immediate action. In late December, he had set up the Alien Enemy Control Unit in an effort not to repeat the worst excesses or summary detention of "alien enemies" that had happened during the Red Scare deportations after World War I. His attempts were aborted as he argued against warrantless searches without cause.

Biddle also tried without success to stop the removal of all Japanese Americans from the West Coast. For six weeks, the Army had not asked for mass evacuation, but capitulated to the political pressures from California. Biddle, the new cabinet member, was not temperamentally or politically capable of withstanding pressures from all sides. He and his staff argued that in Hawaii, site of the Japanese bombing, martial law had been declared immediately upon the outbreak of war and the writ of habeas corpus was suspended; yet, no mass evacuation took place from Hawaii. In retrospect, Biddle said about the West Coast removal, "I thought at the time that the program was ill-advised, unnecessary, and unnecessarily cruel, taking Japanese who were suspect, and Japanese American whose rights were disregarded, from their home and businesses to sit idly in the lonely misery of barracks while the war was being fought in the world beyond."⁵³

Rather it was the War Department, in particular, Secretary of War Henry Stimson, General John DeWitt, and the President who wanted the Japanese Americans removed. They too had the pressure from the West Coast politicians, including Governor Culbert Olson who was up for reelection, the California Attorney General Earl Warren, the California Farm Bureau Federation along with other

farm organizations, as well as the big city press and columnists, ranging from the Hearst newspaper chain and Westbrook Pegler to Walter Lippmann.⁵⁴ Despite the Attorney General's efforts to lessen the harshness and hold back the tremendous infringement upon the civil liberties of Japanese American citizens, the odds were too great. The public pressure along with the military and finally President Franklin Roosevelt wanted the action and the president made the order that the attorney general followed.⁵⁵ By mid-February Biddle ended up surrendering his fight to the president. Yet, Biddle did make clear that it would not be the Justice Department who would carry out the evacuation.

During the first year of the U.S. entry into World War II, of the 12,071 aliens arrested, 10,000 men were either Germans who belonged to pro-Nazi groups, or Italians who were members of fascist organizations. Yet, fewer than half of those arrested were interned after their hearings.⁵⁶ In contrast, for the Japanese aliens arrested, more than two-thirds remained in internment camps during the war.⁵⁷ Biddle himself was the prosecutor for the closed military tribunal trial of German saboteurs who had slipped into the U.S. with explosives. Six were condemned to death and were electrocuted; two were given long prison sentences.⁵⁸

When the first cases began challenging the Executive Order in 1943, the War Department kept reports and documents that showed no danger from the vast number of Japanese Americans from the attorney general's office. Such documents were important, as the Justice Department had to defend the government's actions in the Hirabayashi and Yasui cases, as they went before the Supreme Court.⁵⁹ Biddle, the leveler, tried to lessen the immediate outrage in other ways.

The attorney general convinced the president that it was necessary to remove Italian Americans from the category of enemy aliens and announced the decision in a speech in Carnegie Hall on

Columbus Day, 1942.⁶⁰ He later wrote that when Assistant Secretary of War John McCoy pressed the attorney general to indict a prominent naturalized Italian American, he told Secretary of War Stimson that he would not indict the man; if the Army wanted him, they had the power. Stimson sided with the attorney general on this case and nothing happened.⁶¹ Biddle's best efforts were to avoid the panic and the persecution of aliens and American citizens that had characterized WWI and afterward. As a leveler, he worked to lessen the actions of a wartime president who was not a strong civil libertarian. Roosevelt, who was all for civil liberties in general but easily found exceptions, relayed that he told Biddle that civil liberties were okay for 99 percent of the time but he ought to bear down on the rest.⁶² In his wartime lectures, Biddle said, "The first duty is to win the war. The second duty, that goes hand in hand with it, is to win it greatly and worthily, showing the real quality of our power not only, but the real quality of our purpose and of ourselves...."⁶³

Conclusion

This paper has tried to demonstrate historically, especially within the past century, several types of attorneys general. With different administrations under different types of wartime stress, the attorney general can be the coordinator and cooperate behind-the-scenes to work in concert with the president and follow the president's wishes. The attorney general can also be the aggressor acting as he thinks the president's wishes. Or, the attorney general can be the extreme aggressor by taking actions publicly and thus taking the heat off the president. Lastly, the attorney general can be a type of leveler to lessen the wishes of a president during war.

Lincoln's Attorney General Bates and Wilson's Attorney General Gregory both followed the wishes of the presidents behind the scenes. Gregory worked

in concert with the president to initiate actions: initiating and proposing an Espionage Act and a Sedition Amendment. If the attorney general reluctantly coordinates and does not easily cooperate for aggressive actions, such as Bates and Lincoln's use of martial law and the suspension of the writ of habeas corpus, then the president relies upon other individuals to carry out his wishes. Lincoln's use of the military would be an example of the president going beyond his attorney general to achieve a goal.

As an example of actions coordinated that relate to civil liberties as well as initiated by an attorney general, would be Gregory, at the behest of President Wilson during World War I.

With such coordination, the president becomes in one sense his own attorney general. If he publicly takes actions that may infringe upon the country's liberties and when he speaks publicly about them during the stress of wartime, the president is identified as the aggressor. Thus, because of the president's very public stance either announcing the actions or defending them, the public makes a clear relationship between the actions and the individual responsible for them; those civil liberty infringements are identified with the president. In other words, during great national stress, such as a major war, a president can and does take the heat and the blame, as did Abraham Lincoln, Woodrow Wilson and Franklin Roosevelt. The attorney general becomes an assistant, a lower officer following the Commander-in-Chief's orders.

When the actions taken are quite aggressively and publicly by an attorney general, he is the public figure identified with the changes in the public liberties. This could happen under the direction of the president and as coordination with the president's wishes or it could also happen because the president is preoccupied and does not care or is weak but has a strong attorney general. This attorney general of his justice department publicly announces the actions and defends them if questioned. In the pub-

lic eye, he becomes the aggressor. At the end of World War I, such a public aggressor was Woodrow Wilson's Attorney General Mitchell Palmer, who initially acted aggressively when the president was preoccupied with the push to get the passage of the Treaty for a League of Nations. Then, Palmer set the standard to date of the most aggressive actions of an attorney general. This occurred when President Wilson was incapacitated with a stroke. There was no presidential check on this cabinet member as he moved for midnight raids, mass arrests and deportations. Individual rights became a major national casualty.

John Mitchell, Richard Nixon's attorney general, acted according to the president's wishes and yet he took the heat after the Watergate revelations for wiretapping, IRS audits of critics, break-ins, infiltration of anti-war and civil rights organizations, campaign rallies and political opposition. Because of the extensive secrecy during 1960-1972 and without a Mitchell biography or diary or public notes and easy access to the Justice Department documents, we still do not know to this day the extent of John Mitchell's role as head of the Justice Department during the crises of the Vietnam War, the civil rights and anti-war movements and the many civil liberty infringements under the Nixon administration. My own sense from the many accounts of the Nixon White House years is that Richard Nixon acted as his own attorney general and Mitchell went along as a coordinator as well as an aggressor fulfilling the president's requests for the most part. Mitchell became identified with the extreme actions of the Nixon years because of the Watergate revelations and the later Senate (Church) hearings. The irony is that Mitchell, ever the loyal Nixon supporter, was the official sentenced to prison for "obstruction of justice," in this case for the Watergate break in. By becoming so public, aggressor attorneys general, such as Palmer and Mitchell, each become the national fall guy for an administration's aberration

to liberty.

Franklin D. Roosevelt's Francis Biddle represented the leveler. As a new attorney general when Pearl Harbor happened, Biddle tried to remain true to his own views about civil liberties and the determination not to repeat the excesses of the WWI and the Palmer raids. He plays both the role as a coordinator who acts behind the scenes to lessen the impact and in numerous ways remain reasonable during the initial chaos of an attack.

What about the current attorney general? Is John Ashcroft a loose cannon, acting aggressively and publicly for a weak and preoccupied president? After all, he has had political ambitions for the White House, just as did Francis Biddle. Or, is Ashcroft more of a coordinator, cooperating and carrying out President George W. Bush's aggressive demands? He certainly is not quiet about his and the Justice Department's actions. In fact, Ashcroft appears publicly enthusiastic about using the Patriot Act to wiretap, as had previous presidents from Franklin D. Roosevelt to Richard Nixon. He appears to want to return to the military tribunals of the Lincoln era. The World War II military tribunals were used for the Nazi saboteurs, not American citizens. Moreover, Attorney General Ashcroft publicly acknowledged going into e-mail, listening to conversations between lawyers and clients as well as directing the FBI to check bookstores and library lists. Rather than the American Protective League of World War I, he proposes a TIPS program to feed publicly into a media system. His actions reflect the coordinated efforts during World War I and the attorney general's extreme aggression afterwards. With secrecy as a policy, this attorney general acts when he wants publicity. For example, after the revelations that the Attorney General had been alerted by the FBI about the warnings that Osama bin Laden's followers could be training at flight schools, Ashcroft announced another arrest seemingly to divert the public attention.⁶⁴

Openly arrogant about his actions, much as Mitchell Palmer was, this attorney general is far more secretive. He refuses to allow his Justice Department to tell the House Judiciary Committee how it is using the Patriot Act to check the impact.⁶⁵ Ashcroft's public stance is selective. Is Ashcroft serving as Bush's very public front or acting as a solo aggressor? In other words, the question becomes is he acting just as the Bush administration wishes and taking the heat for the administration? After all, the *200th Anniversary of the Office of Attorney General* (1989) points out that an attorney general "must not deviate further than the law requires from the policies of the Presidential Administration of which they are a part."⁶⁶ Many close watchers think that is happening with this attorney general. Senate Judiciary Committee Chair Patrick Leahy has been quoted as saying that "John Ashcroft has been given his marching orders by the White House and is doing his best to carry them out." Leahy goes on to say that "he is not an independent Attorney General. Every Attorney General has to decide what kind of AG he wants to be, and Ashcroft has decided to be the White House point man."⁶⁷

Whatever this attorney general does, just like Gregory during World War I and even Palmer during the post-World War I upheaval, Ashcroft's actions, even for mass deportations and secret immigration hearings, appear to have the support of the American people. The major difference between Ashcroft's actions and those of Gregory and Palmer is that Ashcroft strives for clandestine operations, reminiscent of the Nixon era. He wants to keep secret the identities of the detainees, the deported immigrants, the sites of immigration hearings, and holding sites.

If openness is a part of free expression and accountability, the American public appear to sup-

port the actions of the current attorney general, just as the public initially supported Mitchell Palmer. Today, the American public would infringe upon free expression during this war. A June (2002) First Amendment Center commissioned survey found that almost half the people thought that the First Amendment goes too far and that the media have been too aggressive in asking the government questions about the war on terror. Such a poll was designed to test the public's willingness to tolerate restrictions on the First Amendment liberties during wartime.⁶⁸ The willingness, sadly for so many historical examples, seems there.

In 1987 Justice William Brennan saw the importance of examining historical instances of civil liberty infringements during times of war crises. For the current attorney general, it might be instructive to read Brennan's quotes. Brennan pointed out the value of using history by quoting from Walter Gellhorn's *American Rights* (1960), "History shows in one example after another how excessive have been the fears of earlier generations, who shuddered at menaces that, with the benefit of hindsight, we now know were mere shadows." Brennan goes on to point out that it is all too easy for a nation and the judiciary to get swept away by irrational passion, and that such actions examined when the nation is not in crisis "would be subjected to the critical examination they deserve." He furthermore points to the dilemma as stated here for all types of attorneys general during war and stress, that the trouble in the United States "has been not so much the refusal to recognize principles of civil liberties during times of war and national crisis but rather the reluctance and inability to question, during the period of panic, asserted wartime dangers with which the judiciary is unfamiliar."⁶⁹

ENDNOTES

- 1 For a discussion of war in democratic societies, see Philip Knightley, *The First Casualty: From the Crimea to Vietnam: The War Correspondent as Hero, Propagandist, and Myth Maker* (New York: A Harvest Book, Harcourt Brace Jovanovich, 2000).
- 2 See Gina Holland, AP, "Bar Association Deplores Secret 9/11 Detentions," *Seattle Post-Intelligencer*, 14 August 2002, A3. See too Susan Sachs, "Government Ready to Fingerprint and Keep Track of Some Foreign Visitors," *New York Times*, 9 September 2002, A16.
- 3 www.salon.com/news/feature/2002/08/06/tips/index_np.html
- 4 See Martin E. Halstuck, "Currents: In Review: The Threat to Freedom of Information," *Columbia Journalism Review*, January/February 2002, 8.
- 5 *New York Times*, 12 June 2002, A 26. See too Katharine Q. Seelye, "War on Terror Makes for Odd Twists in Justice System," *New York Times*, 23 June, 2002, A 16. See too Wendy Kaminer, "Ashcroft's Lies," *The American Prospect*, 15 July 2002, 9.
- 6 David D. Kirkpatrick, "Publishers Joust Over Merit of Terrorist Leader's Words," *New York Times*, 5 November 2001, C8.
- 7 U.S. Code Online, Title 5, Part II, Subpart B, Chapter 33: www.access.gpo.gov This oath has existed since 1966.
- 8 See *200th Anniversary of the Office of Attorney General* (Washington, D.C.: Office of Government Printing, 1989), 3-4.
- 9 The Department of Justice web site: usdoj.gov/ag/index.html
- 10 The practice lasted until 1863 when AG Caleb Cushing abandoned his private practice and devoted full time to the government's business. Prior to that, the AG lived in the capital only part-time. The office grew to where in 1968; there was a Department of Justice annual budget of more than \$400 million and 32,000 employees. See *200th Anniversary of the Attorney General*, 2.
- 11 *200th Anniversary of the Office of Attorney General*, 5.
- 12 *Ibid.*, 7.
- 13 Luther A. Huston, Arthur Selwyn Miller, Samuel Krislow & Robert G. Dixon, Jr., *Roles of the Attorney General of the United States* (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1968), 1.
- 14 The emergency powers act is in Article 1 of the Constitution under the Legislative Branch, Section 9.

- 15 See studies concerning Lincoln's dilemma, Sydney G. Fisher, "The Suspension of Habeas Corpus During the War of Rebellion," *Political Science Quarterly* III:2 (September 1988): 456; Thomas F. Carroll, "Freedom of Speech and of the Press During the Civil War," *Virginia Law Review* 9:7 (May 1923): 529-30; Mark E. Neely, Jr., *The Fate of Liberty, Abraham Lincoln and Civil Liberties* (New York: Oxford University Press, 1991), 10-11, 13.
- 16 Neely, *The Fate of Liberty*, 10-11, 14. Lincoln's Attorney General, Edward Bates, prepared an argument for the president's action and the continued his suspension of the writ.
- 17 Fisher, "The Suspension of Habeas Corpus," *Political Science Quarterly*, 456; Carroll, "Freedom of Speech and of the Press," *Virginia Law Review*, 529-30.
- 18 Carroll, "Freedom of Speech and the Press During the Civil War," *Virginia Law Review*, 529-30; Fisher, "The Suspension of Habeas Corpus," *Political Science Quarterly*, 456.
- 19 Neely, *The Fate of Liberty*, 11, 14.
- 20 Abraham Lincoln to Erastus Corning and others, June 12, 1863, as found in *Lincoln: His Speeches and Writings*, Roy Basler, ed. (New York: A Da Capo paperback, a 1946 reprint), 705, 707.
- 21 Neely, *The Fate of Liberty*, 171. Neely quotes Bates private letter as later found in the *Illinois State Register*, 10 February 1864.
- 22 *Ex parte Milligan*, 4 Wallace 197.
- 23 John William Ward, *Andrew Jackson — Symbol for an Age* (New York: Oxford University Press, 1962), 188-89.
- 24 Neely, *The Fate of Liberty*, 199-200.
- 25 See Betty Houchin Winfield, *Two Commanders-in-Chief: Free Expression's Most Severe Tests* (Cambridge, Mass.: The Joan Shorenstein Barone Center Research Paper R-7, 1992), 8.
- 26 Donald Johnson, "The Political career of A. Mitchell Palmer," *Pennsylvania History* XXV (1958): 347; Richard Powers, *The Life of J. Edgar Hoover, Secrecy and Power* (New York: Free Press, 1987), 122.
- 27 Frank Freidel, *Franklin D. Roosevelt, A Rendezvous with Destiny* (Boston: Little, Brown & Company, 1990), 407.
- 28 See Act of June 15, 1917, c. 20, Title I, 3, now 50 U.S.C.A. (1926), 33. One section established new offices: whoever shall willfully make or convey false reports or false statements with the intent to interfere with the operation or success of the military forces; or whoever shall cause or attempt to cause insubordination, disloyalty, mutiny or refusal of duty in the military or naval forces; or shall willfully obstruct recruiting or enlistment service...shall be punished by a fine of not more than \$10,000. or imprisonment of not more than 20 years, or both.

- 29 See 40 Stat. 553 (1918). For discussion of these acts, see Zechariah Chafee, Jr., *Free Speech in the United States*, 2nd ed. (New York: Atheneum, 1969 edition from Harvard University Press, 1941), 36-42.
- 30 Harry N. Scheiber, *The Wilson Administration and Civil Liberties, 1917-1921* (Ithaca, N.Y.: Cornell University Press, 1960), 49.
- 31 Richard Powers, *Secrecy and Power, the Life of J. Edgar Hoover* (New York: Free Press, 1987), 47.
- 32 *Ibid.*, 50-51.
- 33 *Ibid.*, 19.
- 34 Zechariah Chafee, Jr., *Free Speech in the United States* (New York: Atheneum, 1969, reprint of Harvard University Press, 1941), 51.
- 35 *Ibid.*, 99.
- 36 See Chafee's discussion in *Free Speech in the United States*, 214-15.
- 37 Patrick S. Washburn, "Espionage and Seditious Acts," World War I Attempts to Quiet Criticism and Dissent," *History of Mass Media in the United States*, Margaret Blanchard, Ed. (Chicago: Fitzroy & Dearborn, 1998), 206-7.
- 38 Louis F. Post, *The Deportations Delirium of Nineteen-Twenty* (Chicago: Charles H. Kerr & Co., 1923), 40-41. Congress appropriated \$500,000 for the new bureau. Johnson, "Political Career of A. Mitchell Palmer, 353.
- 39 *Ibid.*, 102.
- 40 *Ibid.*
- 41 *Ibid.*, 209-211.
- 42 *Ibid.*, 104.
- 43 *Ibid.*, 212.
- 44 *Ibid.*, 444-45; 8 U.S.C.A. 137, 155.
- 45 Joseph C. Spear, *Presidents and the Press, the Nixon Legacy* (Cambridge, Mass.: M.I.T. Press, 1984), 111-76.
- 46 *Ibid.*, 126.
- 47 Powers, *Secrecy and Power*, 454.

- 48 Ibid., 446-47.
- 49 Spear, *Presidents and the Press*, 126.
- 50 Powers, *Secrecy and Power*, 456.
- 51 Spear, *Presidents and the Press*, 160-1.
- 52 J. Anthony Lukas, *Nightmare, The Underside of the Nixon Years* (New York: Viking Press, 1973), 10-11.
- 53 Francis Biddle, *In Brief Authority* (Garden City, N.Y.: Doubleday & Co., 1962), 213.
- 54 Peter Irons, *Justice at War, The Story of the Japanese American Internment Cases* (New York: Oxford University Press, 1983), 35, 60-61.
- 55 Ibid., 360-61; Biddle, *In Brief Authority*, 209, 213, 226.
- 56 Ibid., 23-24.
- 57 Ibid., 24.
- 58 Ibid, 324-341.
- 59 Ibid., 211-12. By 1944, the House “Dies” Committee on UnAmerican Activities as well as General DeWitt went after Biddle for delaying for three months any action. See 214, 278-79.
- 60 Biddle, *In Brief Authority*, 229.
- 61 Ibid., 220.
- 62 James MacGregor Burns, *Roosevelt, the Soldier of Freedom, 1940-1945* (New York: Harcourt Brace Jovanovich, Inc., A Harvest Book, 1970), 216-17.
- 63 Francis Biddle, *Democratic Thinking and the War, The William H White Lectures at the University of Virginia [1942-1943]*, (New York: Charles Scribner’s Sons, 1944), 55.
- 64 *New York Times*, 21 May 2002, A1, A16.
- 65 The Patriot Act allows the following: imprison for an indefinite time period without a trial those non-citizens who are not terrorists, but who have violated minor visa laws and whose countries of origin will not allow them to return; give the Attorney General and the Secretary of State the ability to designate with little judicial review any domestic group as a terrorist

organization and deport any non-citizen who belongs to that organization; expand the term “terrorist” to include any crime in which the perpetrator uses a “weapon or dangerous device;” expand “terrorist” activity to include soliciting funds or membership for an organization that’s on the AG’s blacklist; allows “guilt by association;” allows for deportation or imprisonment any non-citizen who associates with any group of two or more that threatens to use force; allows the AG to lock up immigrants on mere suspicions without any hearing. See www.thenation.com/doc.mhtml; www.aclu.org/congress

⁶⁶ *200th Anniversary of the Office of the Attorney General*, 2.

⁶⁷ Edward Klein, “We’re Not Destroying Rights, We’re Protecting Rights,” *Parade Magazine*, 19 May 2002, 6.
See too the column by Helen Thomas, “Bush Acting As Imperial President,” *Seattle Post-Intelligencer*, 13 July 2002, B6.

⁶⁸ AP, “First Amendment Falls Out of Favor,” *Columbia Daily Tribune*, 30 August 2002, 7A.

⁶⁹ William J. Brennan, Jr., “The Quest to Develop a Jurisprudence of Civil Liberties in Times of Security Crises,” Address before the Law School of Hebrew University, Jerusalem, Israel, December 22, 1987. ACLU document.

The Military, the Press and the Public: Is There New Reason for Détente in the Post-9/11 World?

by Brian S. Brooks

SUMMARY

For most of American history, the military and the press have co-existed as essential ingredients in what is arguably the most successful experiment in democracy ever undertaken. Throughout that history, their relationship has been stormy.

Today, however, the War on Terrorism is beginning to cause the most thoughtful representatives of each side to consider a truce, perhaps even détente, with the growing realization that in a modern democracy at war neither can function properly without the assistance of the other.

In the acknowledgements of his best-selling book, *Black Hawk Down*, author Mark Bowden hints at the need for such détente: “I have made several friends for life reporting this story. Since I had no military experience of my own, the last two years have been a crash course in martial terminology, tactics, and ethics. I have learned a great deal from Lieutenant L.H. ‘Bucky’ Burruss, U.S. Army (Ret.), a great soldier and fine writer, who was kind enough to seek me out and act as a first reader and expert adviser.”¹

Bowden is not alone in his lack of military experience. Indeed, such experience is rare in today’s media. While a few grizzled veterans of numerous wars and conflicts exist in the U.S. press corps, for the most part the responsibility of war coverage falls upon those with no military training and little understanding of the complex institution they are covering.

And, while Bowden may have had two years to learn the terminology and something about military tactics, the average war reporter has no such opportunity. Deadlines loom constantly, and there is no opportunity to study the complex structure we know as the U.S. military, much less its tactics.

Bowden knows that reality well. His book began as a series of articles in the *Philadelphia Inquirer*.

For its part, the military seems to have an increasing awareness of the role that public opinion plays in winning any conflict. Simply put, it’s almost impossible for the military to sustain a prolonged military operation, such as the current “War on Terrorism,” without the

support of the public. Such is the nature of a democracy.

Still, not everyone at the Pentagon seems able to take that lesson and apply it. Secretary of Defense Donald Rumsfeld, it would seem at first blush, fully understands the need to manage public opinion and considers the issue important enough to have assumed the role of public spokesman for the military. Yet Rumsfeld also makes it clear that one of his goals is to increase secrecy, and he has said so publicly. The contradiction in those positions illustrates well the fact that the Pentagon is, in fact, still having difficulty coping with the reality that the press can make or break the military on the battlefield of public opinion.

Too much of the discourse on this topic has revolved around he-said, she-said accusations of one side or the other, often with little or no basis in fact. In this paper, that point will be well-illustrated. Inflammatory remarks from one side directed at the other, however, are totally counterproductive in today's world. It is time for the military and the press to recognize that they are dependent upon each other. It is time for *détente*.

Further, it is time for a major effort to educate representatives of each side on the needs and the concerns of the other. The need for such an effort is obvious, and the purpose of this paper is to make a case for just that sort of endeavor.

In an era when few in the media understand the military, and few in the military have a full appreciation of the role of the press, *détente*, a cessation of counterproductive recrimination, is needed, even essential. Once that *détente* is achieved, education on the role of each other in a democracy can become the focus of efforts. Our democracy needs such an effort, and it deserves nothing less.

INTRODUCTION

"The military must never forget that as a public institution, supported by the citizenry, the citizen has every right to know what he's getting for his money."

— Maj. Gen. P.D. Williams, USMC
As quoted in *America's Team: The Odd Couple*, 1995²

"The reality is that among journalists, knowledge of the military and respect for its abilities have declined markedly since the demise of the draft. . . . The public is often ignorant of the military's skills and accomplishments, and so are journalists."

— Peter S. Prichard, President, the Freedom Forum,
Media Studies Journal, Summer, 2001³

The attack on New York's World Trade Center and the Pentagon in suburban Washington on Sept. 11, 2001, launched this nation on what President Bush refers to as a "War on Terrorism." It is unlike any other conflict America has fought in that, to date at least, we are not actively at war with another nation. Yet in one respect it is very much like other wars; it has triggered what many believe to be a knee-jerk reaction by the government to tighten the flow of information to the public.⁴

Much has been said and written about the rather draconian clampdown on information by Attorney General John Ashcroft and others in the government, including even the Congress. And, while that larger issue is a significant one that deserves all the attention it is getting, the focus of

this paper is on a subset of that — the state of military-press relations in the post-9/11 world.

The problem of troubled military-press relations is not a new one. Wars inevitably trigger confrontations between those in the military, who almost instinctively attempt to minimize the flow of information to maximize security, and members of the press, who just as instinctively favor an unfettered flow of information and possess a seemingly insatiable appetite for access to the action.

As journalism historian Dr. Betty Houchin Winfield notes, “The first such American crisis occurred just seven years after the inclusion of the Constitution’s Bill of Rights. The [Federalist] president [John Adams] and his supporters feared an invasion after . . . French raids on American ships and what seemed to be internal vocal support by the anti-Federalist editors, mostly French-born. . . . Adams and the Federalists would stop all critical expression and passed a Sedition Act through Congress. [The act] made it illegal to conspire to oppose various government measures ‘by uttering or publishing any false, scandalous and malicious writing or writings against the Government of the United States or the President of the United States . . .’”⁵

Winfield notes that the Sedition Act was widely viewed as a serious mistake and that no president again attempted to pass such a law until Woodrow Wilson proposed something similar during World War I. Still, other attacks on civil liberties came in different forms between 1798 and 1918. Abraham Lincoln, for example, used the War Between the States as an excuse to suspend the writ of habeas corpus.⁶ War, almost always, was the excuse for such actions.

Military-press relations bottomed out at least twice during the 20th Century — during World War I and Vietnam. In World War I, technology placed the press almost entirely in the hands of the military. There was almost no way to get information from the battlefields of France to the United

States without that information being subject to military censorship. By the time of the Vietnam war, technology had made the press far less dependent on the military to transmit news back home. Perhaps as a result, there was no attempt by the military to impose censorship. Still, military-press relations arguably were even worse.

Some in the military, almost certainly inaccurately, believe the Vietnam war was lost precisely because of “negative” reporting in the American press, and, most notably, on American television.⁷ Many in the press counter that the military’s vigorous attempts to control information throughout much of that war led to public outrage when it was discovered that battlefield successes were far fewer and less significant than military information officers had led the public — and the press — to believe.⁸

The fact that such divergent opinions even exist illustrates quite well the continuing gap between the military and the press. Whatever the truth about the impact of the press on the public’s perception of Vietnam, the uncivil exchange between the two sides gets in the way of finding solutions to a problem that is important to solve — balancing the public’s right to know in a free society with legitimate national security concerns of the battlefield.

Often, balance is lost in the debate. The fact is that while World War I and Vietnam may have been low points in 20th Century military-press relations (there were others, including Grenada and Panama), in both those conflicts there were notable positives. In World War I, American commander Gen. John J. Pershing authorized publication of *The Stars and Stripes*, a military newspaper designed to keep his troops informed and to keep morale high. Pershing took the enlightened view that men and women used to the freedoms they enjoyed in America would function best if kept informed of what was happening both around them and at home. Wrote Pershing in his memoirs, “I do not

believe that any one factor could have done more to sustain the morale of the A.E.F. [American Expeditionary Force] than the *Stars and Stripes*.”⁹ Pershing’s statement was tacit acknowledgement by the nation’s highest military leader, almost a century ago, that those accustomed to democracy deserve accurate and reliable information during wartime. For its part, Vietnam, considered by many the nadir of military-press relations, also was a landmark in a positive way: It was the first American war in which the government imposed no censorship.¹⁰

Between those two wars, Gen. Dwight Eisenhower had the same attitude as Pershing when Ike authorized the World War II version of *The Stars and Stripes*. He made a conscious decision to allow the paper to remain free to publish almost anything, as several of his officers found out when they attempted to crack down on *Stripes* when it printed things they did not like.¹¹

It’s easy to dismiss the actions of Pershing and Eisenhower because they pertained to a military-published newspaper, but the fact that a newspaper with significant First Amendment protections could even exist in wartime military environments is remarkable in itself. *The Stars and Stripes* continues to function that way today, even though operated by the Department of Defense. Occasionally, senior officers try their best to curtail the paper’s freedoms, but DOD regulations protect its right to function almost identically to its civilian counterparts. Today, it has civilian editors, most writers and photographers are civilians, and military influence on content is largely nonexistent, a celebrated recent incident notwithstanding.¹²

That brief history illustrates quite well the contradictions that abound in the complex relationship between the military and the press. The problem, however, goes far beyond unbalanced discourse between those who represent the two sides. Indeed, it is even a mistake to simplify the relationship as a two-sided one. It is not strictly bipolar at all but

rather a complex relationship in which the military rests on one side and the public on the other with the press in between. The press provides the vehicle for communication between the two sides, and communication in both directions is vital to a functioning democracy at war.

Writes Army Maj. Barry E. Venable in *Military Review*: “When considering the ongoing debate with the media, Army leaders often do not account for a third important participant in the debate — the American public. It is the Army’s relationship with the American public that provides the philosophical basis for our relationship with the media. Army leaders who ignore this relationship, and the roles played within it, are simply shirking their duty.”¹³

Those are strong words of support for military cooperation with the press as a means of educating the public, and they represent a thoughtful discourse on this important subject. Indeed, many enlightened military leaders have come to understand that winning public support for what they are doing is critical to success on the battlefield. It is a lesson learned from recent experience, both good and bad.

For their part, thoughtful correspondents who have covered America’s young men and women at war have a healthy respect for them and their leaders. Many have said so publicly.

Despite that, hot-headed, overstated, irrational or unsubstantiated statements appear frequently and get in the way of civil discourse on the subject of military-press relations. Some examples:

“There is a still a sense in the military that ‘media ethics’ is an oxymoron.”

— Maj. Gen. Jerry Bates, USA¹⁴

“It is . . . ironic that the armed services have some of the most dedicated, bravest, hardest working men and women in the world, yet their leaders are often duplicitous, devious, dishonorable and dumb.”

—Patrick Pexton, reporter, *Navy Times*¹⁵

Neither comment, of course, is true except in the rarest of circumstances. The military on rare occasion does encounter a less-than-ethical reporter, and military officers are seldom — not often — “duplicitous, devious, dishonorable and dumb.” That such comments would even be uttered reflects an appalling lack of respect for each other and the military-press relationship that is so important to our democracy, particularly in time of war.

Even the best-educated among us are guilty of such absurd statements. At this year’s August meeting of journalism educators (the Association for Education in Journalism and Mass Communication in Miami, Fla.), organizers titled a panel discussion, “Press Freedom Under Government and Military Censorship.”¹⁶ The title, of course, implies that military censorship is a real problem in the post-9/11 era, completely ignoring the reality that censorship, a loaded word, is a thing of the past. Does government, including the military, attempt to manage the news? Certainly. But it does so in the same way corporate America attempts to influence the news. Corporate America, however, is seldom, if ever, accused of trying to impose “censorship.”

While some on both sides choose to hurl figurative grenades at each other in ways that hurt, not help, the discourse, the goal of this paper is not to find fault. The fact is that there is plenty of fault to be found both in the military and the press corps. Instead, the goal of this paper is to suggest solutions, which can be found if reasonable people are

willing to find them. Only when the press and the military put aside their differences and learn to respect the vital role each plays in a democracy will the public, the third party in all this, be served as it should be.

DISCUSSION

The Lessons of Vietnam

Because the purpose of this paper is to take an objective look at the military-press-public relationship, and what can be done to improve it, it’s useful to discuss the underlying reasons for the military’s skepticism of the press and vice versa. No era highlights the problem more vividly than the Vietnam war.

Few military officers today are old enough to have served in Vietnam, although a few senior generals did so. Nevertheless, the current generation of officers was trained by Vietnam veterans, and the effects of what happened there linger unmistakably. The bitterness that existed in the officer corps toward the press during the latter stages of that war and in its aftermath was extremely deep, and distrust — even hatred — of the press was passed along from the Vietnam generation to the current one. That reality colors all that has happened since in this relationship.

The author of this paper has a unique perspective on that relationship, having been educated at the University of Missouri with bachelor’s and master’s degrees in journalism, having worked in the civilian press and having served in Vietnam. He was commissioned a second lieutenant in the U.S. Army infantry upon graduation from graduate school in 1969 and subsequently served in Germany before heading to the Far East. In Vietnam, he served as information officer for the 3rd Brigade (Separate), 1st Cavalry Division, in Bien Hoa. It was relatively

late in the war (1971-72), and public opinion at home had turned against the long, seemingly endless war.¹⁷

This young officer had been educated as a journalist yet had no training as an Army information officer. Expecting an assignment as an infantry platoon leader or a company first officer, typical jobs for someone with his rank and training in infantry tactics, he nevertheless was asked to serve as deputy information officer upon arrival at 1st Cavalry Division headquarters. No other officer wanted the job; dealing with the press was considered highly undesirable in the officer corps. Further, it was no way to win a combat infantryman's badge, considered essential in those days for those who hoped to make the Army a career. Soon thereafter, when the top information officer left, this first lieutenant found himself in a major's job and a member of the commanding general's staff.

It was a wonderful position from which to observe the military-press relationship. At that juncture in the war, the 1st Cav was one of only two American ground-combat units left in Vietnam. The 173rd Brigade was in the far north of the country, so the 1st Cav was far more accessible to Saigon-based correspondents. Bien Hoa, 1st Cav headquarters, was just minutes away from the South Vietnamese capital. Thus, most of the press coverage in 1971-72 was directed toward that unit. Two to three press corps members a day, sometimes more, headed the 1st Cav's way. The information officer's job, according to U.S. Army regulations, was to help those correspondents get the information they needed. Most wanted access to troops on patrol in the jungle, which the military calls "embedding," and that meant making complicated logistical arrangements – securing a helicopter for transportation into the jungle and getting the consent of the field commander to accommodate the reporter.

The information office had no helicopters of its

own, so meeting most of the reporters' requests depended on getting assistance with transportation, approval for interviews and travel permissions from 1st Cav headquarters. That, in turn, meant a need for approval by the brigade chief of staff. It was a constant battle to get that help. The colonel who was COS had little respect for the press, and he threw up every roadblock he could to make life difficult for war correspondents.

This occurred despite the fact that U.S. Army regulations *required* all reasonable cooperation with the press. When the information officer called that to the attention of the COS, the chief often grudgingly relented.

"Lieutenant, you think like a damned reporter," he shouted on more than one occasion.

"Sir, I'm just following regulations," the information officer regularly replied, much to the chagrin of the chief of staff, a fellow who was, after all, expected to follow those regulations religiously. And so it went.

In the end, most correspondents got the information and help they needed. But the Army, it seemed, went out of its way to make life difficult for the press.¹⁸

What the infantry-trained information officer understood, and the press corps often did not, was that a civilian reporter became the responsibility of the commanding officer of the unit on the ground in that area. No officer wanted a reporter – or anyone for that matter – killed or injured in his area of operations, so providing protection for that untrained individual often became an obsession. A reporter not trained in jungle tactics could spark a disaster by giving away the location of an entire unit on the move at night. Merely by stepping on and snapping a fallen branch on the jungle floor, he or she could tip off the enemy to the unit's location. One such snap could cause an entire unit to be killed. Thus, from the perspective of a commander, having a reporter along on a tactical mission was a

real nuisance and a significant risk. In the typical commander's view, that required assigning one or two men to watch, protect and guide the reporter, distracting those soldiers from what would otherwise be their primary job – finding the enemy. All this was a monumental irritant for ground commanders, and it happened almost daily.

For its part, the press saw a military command that tried to limit access to information at the drop of a hat and seemingly threw up roadblocks to every request. There was, in the view of the press, no real effort to provide access to information.

The difficulty of dealing with this was compounded by the fact that Vietnam was the first war U.S. forces had fought without front lines. In World War II, and even in Korea, the United States had fought conventional wars with clearly delineated front lines. Members of the press corps could get relatively easy access to the front.

But because Vietnam was a guerrilla war, there were no front lines, making press access to the action infinitely more difficult. Troops seeking targets of opportunity were ferried by helicopter from place to place throughout the area of operations. Often, with reporters in tow, they found nothing. This frustrated the military, and it frustrated the press as well. Neither side dealt with the situation well. Military officers experienced real frustration with trying to find small units that were moving targets, all well-concealed by jungle canopy. All the way, the military was questioned in the press about why it couldn't find the enemy. The press, for its part, too often was forced to sit in Saigon and depend on daily briefings, which became known as the "Five O'Clock Follies," in which the military divulged as little information as regulations allowed. Always, the information officers put the best possible spin on what little they did divulge. To say the least, it was a sour relationship.

All this occurred in an environment in which technology had advanced to the point that the mili-

tary knew it was fruitless to attempt to censor or otherwise control the flow of information back to the United States. Satellites and modern telecommunication had changed war reporting forever. The military, though, had not yet adjusted to the reality that it could not control that flow of information. By the end of the war, the military and the press were verbal adversaries of the first order.

Tellingly, Aukofer and Lawrence in their 1995 study, *America's Team: The Odd Couple*, found that 64 percent of military officers surveyed agreed with the statement, "News media coverage of events in Vietnam harmed the war effort."¹⁹

In reflecting on Vietnam in their important work, Aukofer and Lawrence quoted Melvin Laird, who served as secretary of defense from 1968 to 1972, as saying that he had encountered numerous military officers who blamed the press for loss of the Vietnam war by turning public opinion against the war effort. Laird didn't buy their argument:

*" . . . it was Vietnam that did it. That was an unpopular war. I don't blame the press. I blame the way President [Lyndon] Johnson handled it."*²⁰

Aukofer and Lawrence interviewed Gen. John Shalikashvili, chairman of the Joint Chiefs of Staff when their book was published, who said he believed that something had gone badly wrong in the military-press relationship during Vietnam, and in large part he blamed the military:

"I think we keep shooting ourselves in the foot. We still have people, in my generation, who think if they solved the Vietnam problem, whatever the hell it was, then we're okay. But even if we solve Vietnam, today,

the world is different than it was in Vietnam. Technology is different. Reporting of events is a different issue. Access to things that are ongoing is a different issue than it was in Vietnam. Yet some of my generation are still trying to solve that problem. Youngsters are probably doing it, too. I haven't given it much thought, but I would think that they're doing it as kind of a reflection of what they hear from some of their elders. You know, real men don't talk to the press . . ."²¹

That telling comment from a 1995 interview illustrates that the Vietnam legacy continues to sour the military-press relationship, many years after the end of that conflict and even after the United States has re-established diplomatic relations with the tiny Far East nation.

The Post-Vietnam Era

As Aukofer and Lawrence note, for a number of years following Vietnam many military officers viewed the press as a nuisance and took the position that no one but public affairs officers (the new moniker for public information officers of the Vietnam era) should deal with reporters. Commanders showed little interest in dealing with the media.²²

Wrote Aukofer and Lawrence: "The attitude was that, if the media showed interest in covering an operation, the public affairs personnel could handle any arrangements required. Public affairs officers conducted their planning independently from the operators and were rarely familiar with details of the plan for military action."²³

Thus, when the Grenada invasion was staged in 1983, an entire generation of military operations

planners simply did not think about accommodating the media. The press was kept out of Grenada for two days after the operation began, and the media howled loudly and rightly. Public affairs officers were mostly excluded from the planning, and when 600 reporters appeared in Barbados seeking to cover the invasion, the military was simply unprepared.²⁴

That debacle led to a military-press commission that in turn led the creation of the DOD National Media Pool, a means of allowing a supposedly representative sample of the media into an operational area without the military having to deal with a flood of hundreds of reporters. Wrongly, the military thought that would solve the problem and that public affairs officers still could handle things.

When the United States invaded Panama in 1989, the media pool was deployed without involvement of the ground commanders. Again, reporters were able to cover only the latter stages of the operation. The press was outraged, and rightfully so.

Subsequently, Gen. Colin Powell, then chairman of the Joint Chiefs of Staff, issued a directive to military commanders stressing the importance of planning for media coverage of any operation. Things were improved in the Desert Storm operation of the early 1990s, but the press still complained about its inability to access troops as freely as it desired. Media and military representatives subsequently worked to develop the DOD Principles for News Media Coverage of DOD Operations, published in April 1992.²⁵

Aukofer and Lawrence concluded in 1995 that after Desert Storm the military finally recognized a need to include media coverage in operational planning. "The level of military/press cooperation in Somalia and Haiti was unprecedented," they wrote.²⁶

Still, there were problems. They noted that the Pentagon needed as much advance notice as possi-

ble about the number of reporters who would cover an operation. Further, the military is left with no choice but to establish an optimal number of reporters it can accommodate; in Desert Storm, the number far exceeded the military's ability to accommodate reporters in combat units, which turned out to be a major problem.²⁷

To illustrate the problem, fewer than 30 reporters accompanied the entire invasion force at Normandy on June 6, 1944. In comparison, more than 1,700 media representatives covered the initial phases of peacekeeping operations in the American sector of Bosnia in 1996.²⁸ That's a large number to expect the military to accommodate.

What's Next?

One problem facing the military, of course, is that it's difficult to predict what's next in warfare and to anticipate the press demands that will result. As we learned on Sept. 11, 2001, not all wars are alike. For the first time in our nation's history, the United States was attacked not by another nation but by an ill-defined militant group based clandestinely in a distant country and operating worldwide. This in itself presents new challenges for the military-press relationship, as we have learned with the widespread arrest and detention of individuals without charge and the imposition of an unprecedented veil of secrecy over government operations.

Indeed, Secretary of Defense Donald Rumsfeld, who has personally assumed the role of Pentagon spokesman, openly told the press to expect much more secrecy. Further, the Defense Department has instructed all contractors to cut contacts with the press and has made a deal with a mapping company to prevent press and public access to valuable maps for reporting the news.²⁹

This prompted leaders of 11 major media support groups — ranging from the Society of Professional Journalists to the National Newspaper

Association — to write Rumsfeld urging adherence to rules of openness in media-military coverage as hammered out in the past 20 years. They noted that the rules, while not perfect, were essential to permit the media to play their proper role in a democratic society.³⁰ Clearly, in the journalism leaders' view the media are facing perhaps the most serious challenge to information access since Vietnam.

Just months before 9/11, Frank Aukofer, co-author of the 1995 report and retired bureau chief of the *Milwaukee Journal Sentinel*, argued in the Summer 2001 issue of *Media Studies Journal* that the military had embraced the 1995 report and had learned to factor in the presence of reporters in almost any military operation. But the media, he said, had largely ignored it.

Wrote Aukofer, “. . . virtually no response came from news organizations, despite our warnings in ‘America's Team’ that unless editors and news directors planned for the future with their military counterparts, the media-military relationship once again could be dashed against the shoals of mistrust in the next big conflict.”³¹

Rumsfeld's actions since 9/11 would indicate that he, if not his subordinates, has either never read the 1995 report or has chosen to ignore it. As a result, it appears that media-press relations are deteriorating yet again in yet another conflict.

Indeed, each time it seems the military and press move closer to understanding each other, and each other's needs, the parameters change. Nothing illustrates that more vividly than the difficulties of coping with coverage of the fight against terrorism and its hidden enemy leaders. The government seems to have concluded that secrecy is essential, and it has done so with little or no consultation with press leaders.

Then again, given Aukofer's point, it's tempting to respond: “Why *should* the government care? The press never seems to want a dialog until there is a crisis.”

As Aukofer notes, a likely reason for that is the unstructured nature of news organizations, which must deal with a highly structured Pentagon in any dialog. Further, news organizations are highly competitive and not inclined to cooperate with each other.³²

While acknowledging fault on both sides, the Council on Foreign Relations, chaired by USMC Lt. Gen. (Ret.) Bernard E. Trainor, on April 23, 2002, discussed the problem and concluded that the Pentagon should take four actions to fulfill the public's right to know:

- I Provide the press with regular access to senior members of the intelligence community, particularly the Defense Intelligence Agency. Coverage of the Kosovo campaign benefited greatly from similar measures.
- I Allow greater access to allied soldiers, sailors and airmen who have been direct participants in the campaign.
- I Media outcry over the restrictions experienced during each major military operation of the post-Vietnam era has led to a series of commissions and inquiries, each leading to new rules intended to improve press access to the battlefield. These rules, including the Sidle Commission in the aftermath of the Gulf War, should be implemented and strictly adhered to.
- I Improve overall communication of the aims of the war on terrorism.³³

CONCLUSIONS AND RECOMMENDATIONS

If history is any guide, yet another commission will soon be appointed to attempt to hammer out yet another set of military-press guidelines for the current conflict and beyond. That's not necessarily a bad idea because one can argue that the climate has changed with a "different kind of war."

But it also is time to look beyond the obvious solutions. Clearly, written guidelines aren't getting the job done and something more is needed. That something might well be better education of the media in affairs of the military and better education of military leaders in the role and needs of the media.

Kennedy and Thorson note in their survey presented at this conference that only 40 percent of newspaper executives and 21 percent of broadcast executives report having a reporter with military experience on staff. Despite that, editors and news directors give themselves fairly high marks on knowledge of military affairs.³⁴

Anecdotal evidence would suggest otherwise. Even the Associated Press reports from the early stages of the strike in Afghanistan display a lack of knowledge of the most basic military tactics and a complete lack of understanding of what aerial bombing can accomplish. Ask any public affairs officer what he or she thinks of press coverage of the military and the first response is almost certain to be a rolling of the eyes. Ask any reporter the difference in an Army captain and a Navy captain and see if you get a valid response; most don't have a clue. The fact is that, with the exception of a few grizzled veterans of conflict reporting, there is little military expertise in the press corps.³⁵

One obvious reason is that war reporting is done primarily by the young, and few young people have served in the military since the end of the draft. Yet the military is an extremely complicated

structure with lines of responsibility and dependency that cross services and even extend internationally to allied forces. Understanding the complex nature of the military is difficult unless one has served in or covered it for an extended period of time. Parachute reporting by network anchors and usually homebound print hotshots seldom produces anything useful for public consumption. The problem is evident even within the Department of Defense itself. Since the end of the draft, a minority of reporters even at the Defense Department's own newspaper, *The Stars and Stripes*, has military experience.

What is needed to bridge this gap is not merely another commission report but a concerted effort to train reporters in the basics of military operations and tactics. Conversely, military leaders, and perhaps even all officers, should have training in the role of the press in society, the role of the press in communicating with the public, and the information and access needs of the press. In short, what is needed is a greater understanding of each other throughout the ranks of both institutions. The best way to get there, it would appear, is through a concerted effort to educate the principals on both sides.

At present, no journalism school or department is known to teach a course specifically in military coverage. Nor is military reporting normal fare,

even in small bites, in standard reporting courses. And little training in press coverage is done for military personnel other than public affairs officers. A notable exception is a course now offered at the U.S. Naval Academy that uses the 1995 Aukofer and Lawrence report as a text.³⁶

We at the University of Missouri have offered such a model to the Missouri Department of Homeland Security to deal with a similar problem on the state level. We would train police officers, firefighters and National Guard troops to deal with the press. We also would train reporters in disaster coverage and dealing with first responders. Much could be accomplished in a series of parallel weekend seminars that culminated in joint open sessions. The primary problem, of course, is finding money to fund such an initiative.

The same model could be used to train national-level military and media personnel. Whatever model is chosen, some effort should be made by both the military and the media to see that this happens. Funding for such an effort must be found.

The fact is that there is a new reason for détente in the military-press relationship. Both sides are facing new challenges, and both have an ultimate obligation to inform the public of what's happening in the War on Terrorism. Like it or not, they must collaborate.

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Changes in Reporters' Relationships with Sources

by *Wayne Wanta*

SUMMARY

The terrorist attacks of September 11 shook the confidence of many U.S. institutions. News reporters may have felt a similar negative effect on their relationships with sources. Reporters and sources have a mutually beneficial relationship. Sources provide information to the media that they want passed on to the public. Reporters want to gather information for their stories with the least amount of work and effort as possible.

The current study attempts to examine if and how the trust between reporters and sources has been affected. To determine changes in journalists' relationships with sources, a telephone survey, sponsored by Stanton and Crenshaw, a New York-based public relations firm, was conducted by the Center for Advanced Social Research at the University of Missouri. A total of 301 reporters took part in the survey.

Results indicate that both the terrorist attacks of September 11 and the downturn in the U.S. economy have significantly affected reporters' relationships with sources. Reporters felt that sources are now more careful with their information and more guarded with their comments. Respondents also reported that sources

are more thoughtful in interviews and more reluctant with useful information. The differences were more profound for private sources than for public sources.

Reporters also admitted changing their routines of news gathering. They reported using a wider variety of sources and the Internet more than in the past. In addition, reporters said they were more skeptical of information from sources.

Reporters who used mainly public sources also indicated more concerns than reporters who used mainly private sources. These concerns include claims that public sources were more careful with information, more guarded with comments and more reluctant to provide useful information. On the other hand, they also reported that they thought government sources were easier to work with.

Female respondents also encountered more problems with sources than male respondents. They reported that private sources are now more difficult to reach, slower to return phone calls and more aggressive. Female respondents also were more likely to say public sources were more thoughtful during interviews and more aggressive.

INTRODUCTION

Reporters and sources form mutually beneficial relationships. On the one hand, sources want to get their information out to the public through the news media. On the other hand, reporters want to gather information for their stories with the least amount of effort. Thus, sources provide “information subsidies” to reporters, who use these subsidies in their articles.

The relationship between reporters and sources is based on mutual trust. Reporters trust their sources to provide accurate information. Sources trust reporters to use their information accurately.

The events of September 11, however, may have profoundly changed the working relationship between reporters and sources. The terrorist attacks have shaken the confidence of many U.S. institutions, so the possibility exists that reporters and sources could also suffer from a lack of confidence in their dealings with each other.

Sources may be more cautious with the information they provide to the press. Reporters may be more skeptical of the information that sources provide to them. Thus, the mutual trust between reporters and sources may have been negatively impacted by the terrorist attacks.

Three concerns are examined here. First, have reporters noticed any difference in their sources, either in the sources’ attitudes toward the reporters or in the information that they are providing? Second, have reporters noticed any differences in their own news gathering routines, either in their attitudes toward the sources or in the way they use information given to them? Third, are any differences more noticeable with public or private sources?

Data come from a national survey of reporters conducted at the University of Missouri and sponsored by Stanton and Crenshaw, a New York based public relations firm. The telephone survey, con-

ducted in March 2002, interviewed 301 reporters from newspapers across the country.

SOURCE-REPORTER RELATIONSHIPS

The relationship between reporters and sources has been examined under a number of different circumstances. Often, research has noted the competitive nature of these interactions.

Gans, for example, compared the source-reporter relationships to a dance: “Although it takes two to tango, either sources or journalists can lead, but more often than not, sources do the leading.” Gans notes that sources can withhold information from reporters they distrust, which can put these reporters at a disadvantage with competing media that sources find more trustworthy with their information.

Sources representing different interests and different agendas attempt to influence the flow of information through the media. Some sources have a greater understanding of the routines of the media and thus have the ability to provide credible information about a given issue on a timely basis, which leads to the ultimate goal of coverage in the media. Certain sources serve as key newsmakers and thus have an advantage in their relationships with the news media. Governmental sources, for instance, often add credibility to news stories because of their status as members of dominant institutions of society. Paletz and Entman (1981) argue that journalists prefer public sources because they are usually available, have something “official” to say, and understand the routines and pressures of news production. Government sources also create a regular stream of “authoritative information that reporters find efficient compared with more labor-intensive research” (Shoemaker & Reese, 1996, p. 130). These private sources, then, can turn the “watchdog” press into “lapdogs” (Donohue, Tichenor and Olien, 1995).

Nonetheless, it is in the best interest of sources to work closely with the news media. As Shoemaker and Reese (1991: 61) argue: "Both sources and gatekeepers benefit from their mutual relationship, with the source getting access to target audiences through the mass media and gatekeepers getting access to someone who can regularly provide credible information." Sources, then, provide information to reporters about an issue that is easy to use and does not consume unnecessary or unavailable resources.

Gandy (1981) also detailed this mutual relationship between sources and reporters. Sources provide "information subsidies" to the media with the hope that their information will be used with little change by reporters. Reporters actively seek out these information subsidies because they save them work and effort. If reporters find the information subsidies from certain sources to be useful, they will return to these sources for additional information. Thus, sources can influence the news media agenda by providing information that is perceived as useful by reporters.

Research has examined several key newsmakers as potential sources of the news media agenda. Wanta, Stephenson, Turk and McCombs (1989) analyzed the influence of four presidential State of the Union addresses on subsequent media coverage. They found influence varied, with President Nixon leading media coverage and President Carter reacting to media coverage. Two addresses by President Reagan suggested he influenced newspaper coverage but was influenced by television news coverage.

Wanta and Foote (1991) used a time series analysis to track whether President George Bush had any impact on media coverage of 16 issues through his public statements. Results suggest the president had a great deal of influence on issues that were a priority for him — such as flag burning — and on issues for which he was an important source — such as international conflicts. The president had

no clear impact on issues in which he served as only one of many potential important sources — such as the economy or the environment. Overall, presidential priorities do receive significantly higher coverage when the president discusses them publicly.

Fewer studies have examined the influence of private sources on the news agenda. One such study (Chang, 1999) investigated the ability of the big three automakers to frame auto imports as an issue dealing with fair trade rather than free trade. Auto industry executives were very successful in gaining positive media coverage.

Overall, then, research suggests that the relationship between sources and reporters is mutually beneficial if the information exchange is based on the usefulness of the information. If reporters cannot trust the accuracy or the usefulness of the information, the information exchange may not be completed. Therefore, trust should be an important element in the source-reporter relationship. The events of September 11, then, may have cut into the confidence of the trust between reporters and sources.

In addition, since public officials provide the added element of higher credibility than typical private sources, the trust between reporters and private sources may have been impacted more than the trust between reporters and public sources. Previous research has noted that reporters have a tendency to rely heavily on government officials (Sigal, 1973).

ANALYSIS METHODOLOGY

The Center for Advanced Social Research at the University of Missouri completed 301 surveys of newspaper reporters identified from the Bacon's Directory of Journalists. Reporters were contacted at their respective newspapers over the telephone. The survey period was May 10 through June 10, 2002. The surveys asked several questions dealing with the reporters' perceptions regarding changes in their

relationships with sources.

One series of questions asked respondents how much an effect several events had on their relationships with sources: September 11, the economic downturn, the Enron scandals, problems with the dot-com industry, the anthrax discoveries, the Afghan War or the Middle East conflict. Response categories were an extremely significant effect, a somewhat significant effect, a slight effect or no effect at all.

Another set of questions asked reporters if they had noticed any changes with their sources, if they were: more careful with information, more guarded with comments, more thoughtful in interviews, more reluctant to provide useful information, more aggressive, more difficult to reach, slower to return phone calls or easier to work with. Response categories were a great deal more, moderately more, slightly more or no change. These questions were asked about both public (or governmental) sources and private sources.

Respondents were then asked about any changes they have made in their use of sources, whether they used a wider variety of sources, used the Internet more, relied on other media more, relied on old sources more or were more skeptical of information from sources. Responses ranged from a great deal less, somewhat less, no change, somewhat more or a great deal more.

Other questions used for comparison purposes included the reporters' age, years of experience as a reporter, and the percentage of their sources that were public vs. private.

The 301 responses were analyzed through both descriptive statistics and correlations and Analysis of Variance tests utilizing Statistical Package for the Social Sciences (SPSS) software.

DEMOGRAPHICS OF RESPONDENTS

A total of 301 respondents took part in the survey. The survey had a response rate of 71 percent, which is extremely high in comparison to current standards, which average near 50 percent.

The respondents averaged 20.4 years as working journalists, with a high of 53 years and a low of 2. The respondents ranged in age from 23 to 65 years old, with a mean of 43. Males outnumbered females 64 to 36 percent.

Respondents tended to use more private sources than public sources. Respondents reported that on average, 63 percent of their sources were private. Private sources used by respondents ranged from 1 to 100 percent.

OVERALL TRENDS

Several trends are apparent from the survey results.

Effect of news events: Table 1 shows results of the questions dealing with the possible effects of news events on reporters' relationships with sources. Two of the seven news events included in the survey surpassed the 2.0 mean (2 corresponding to "slight effect" and 3 corresponding to "somewhat significant effect"). The two events were "Economic downturn," with a mean of 2.30, and "Sept. 11," with a mean of 2.27. These also were the only two events in which more than half the respondents noted at least some effect on their relationship with sources. More than two-thirds of the respondents (68 percent) reported no effect from the Middle East Conflict.

Table 1. Responses to the question "How much of an effect have the following events had on your working relationship with sources?"

Event	Mean	Percent reporting "Extremely sign. effect"	Percent reporting "No effect"
Economic downturn	2.30	15.6	33.2
Sept. 11	2.27	12.3	32.6
Enron	1.82	3.7	50.8
Dot-Com problems	1.73	5.0	57.5
Anthrax	1.65	4.0	61.5
Afghan War	1.61	3.7	61.8
Mideast Conflict	1.59	2.7	68.0

(Note: 1 = No effect at all; 2 = a slight effect; 3 = somewhat significant effect; 4 = extremely significant effect)

Differences between public and private sources: Overall, respondents reported more difficulties in working with governmental sources than private sources. This finding was consistent across all but one of the questions. The lone exception was that private sources were thought to be more aggressive than government sources. All of the differences are statistically significant, with a probability of less than one in one thousand of the differences occurring due to chance.

Table 2. Responses to the types of changes reporters noticed in their public and private sources.

	Mean for Public Sources	Mean for Private Sources
More careful with info	2.18	1.89
More guarded with comments	2.12	1.72
More thoughtful in interviews	1.98	1.89
More reluctant with useful info	1.69	1.42
More aggressive	1.61	1.75
More difficult to reach	1.51	1.28
Slower returning calls	1.42	1.27
Easier to work with	1.27	1.33

(Note: 1 = no change; 2 = a little more; 3 = moderately more; 4 = a great deal more)

Table 3 shows that more than half the respondents noted at least some change in sources on three of the questions: Public sources are more careful with information, more guarded with comments and more thoughtful in interviews. Half the respondents reported at least a little change in private sources on two items: Private sources are more careful with information and more thoughtful in interviews. A significant number of respondents also noted that private sources were more aggressive than in the past.

Table 3. Percent of respondents who reported no changes in their sources.

	Percent saying No Change for Public Sources	Percent saying No Change for Private Sources
More careful with info	39.1	46.6
More guarded with comments	37.9	54.7
More thoughtful in interviews	45.8	44.6
More reluctant with useful info	61.2	70.3
More aggressive	63.6	59.3
More difficult to reach	71.7	81.8
Slower returning calls	77.5	83.6
Easier to work with	80.7	77.5

Changes in reporters' use of sources: Four questions asked respondents about changes in their use of the Internet, other media, old sources or a wider variety of sources. Respondents generally reported they used a wider variety of sources and the Internet more than in the past, as seen in Table 4. They also were more skeptical of information from sources. All responses were significantly above the 3.0 mean, corresponding to "about the same."

Table 4. Changes in reporters' use of sources.

	Mean
Wider variety of sources	3.81
More skeptical of source info	3.60
More use of Internet	3.59
More reliance on other media	3.21
More reliance on old sources	3.12

(Note: 1 = great deal less; 2 = a little less; 3 = about the same; 4 = a little more; 5 = a great deal more).

Relationships between respondent demographics and other questions

The number of years as a journalist was unrelated to any of the other questions in our survey. In other words, journalists with little experience did not differ from journalists with several years of experience on survey questions. Respondents with all levels of experience answered questions similarly. Though some small differences were found, the differences were not large enough to rule out the possibility that the differences were due to chance.

Whether respondents used private or public sources more often, however, did matter. In general, respondents who used many public sources were more highly concerned with their relationship with government sources, as would be expected.

The more respondents reported using public sources:

- The more they felt government sources were more careful with information;
- The more they felt government sources were more guarded with comments;
- The more they felt government sources were more reluctant to provide useful information;
- The more they felt government sources were easier to work with.

On the other hand, the more respondents reported using private sources:

- The more they felt the dot-com problems affected their relationships with sources;
- The more they reported they used Internet sources more often now than before.

Overall, then, reporters who use a high percentage of public sources demonstrated more concern with government sources. Reporters who use a high percentage of private sources had only a few concerns about private sources.

To more closely examine the differences between years of professional experience and types of sources used, the respondents were split into two groups on the two variables, creating a High Experience Group and a Low Experience Group, and a High Public Source Group and a High Private Source Group.

Experience again showed little impact on the results here, with two exceptions. The High Experience Group was more likely to report that government sources are slower to return phone calls and that changes with public sources are more significant.

Type of source use again showed a strong relationship with several questions.

The High Private Source Group:

- Was more likely to report using public relations representatives and corporate communications specialists.
- Felt the dot-com problems were more significant and reported using Internet sources more now than before.

The High Public Source Group, meanwhile:

- Felt the Afghan War was more significant.
- Government sources were more careful with information, more thoughtful in interviews, more guarded with comments, more reluctant with useful information and easier to work with.

- Felt that private sources were more reluctant with useful information and reported having more reliance on other media than in the past.

Gender differences

Several statistically significant differences were found between responses from male and female reporters.

Here, female reporters:

- Were more likely to use private sources (68 percent to 60 percent for male respondents);
- Felt private sources were more difficult to reach;
- Reported government sources were more thoughtful during interviews;
- Thought private sources were slower to return phone calls;
- And felt BOTH government and private sources have been more aggressive.

CONCLUSIONS

Respondents here reported recent changes in both the perceptions of their relationships with sources and in their news gathering routines. In general, findings from the national telephone survey suggest a less trusting relationship between reporters and their sources.

Reporters felt that both the economic downturn and the terrorist attacks of September 11 had a significant effect on their relationships with sources. It should be noted that the survey period — May 10 through June 10 of 2002 — was during the time

that the economic problems in the U.S. were receiving significant media coverage and thus was fresh in reporters' minds when they were interviewed. The terrorist attacks, on the other hand, had taken place seven months earlier, yet the impact of the attacks was still being felt among reporters.

Most of the changes noted involved sources being more careful and guarded with their information. This was especially true for private sources. Respondents also noted that public sources were more aggressive. Both point to a decrease in trust between reporters and sources. Overall, then, reporters felt sources in general, and government sources in particular, are acting differently than in the past.

The results here also show that reporters have changed in their news gathering routines. They are more likely to use additional sources in their sources than in the past. They also are using the Internet more and admit to being more skeptical of information from sources. Again, these findings suggest that reporters are less trusting of information provided by sources.

Reporters who used public sources more often than private sources also had more concerns. They reported that public sources were more careful with information, more guarded with comments and more reluctant to provide useful information. However, they also reported that they thought government sources were easier to work with. This last finding appears contradictory with the other results. However, this could be due to government officials acting differently under different circumstances. Public sources could be more guarded with information in some cases, while being easier to work with in others.

Reporters using a high percentage of private sources, however, showed only two differences from reporters who used a high percentage of public sources: They felt that the effects of the dot-com industry problems had a larger influence on their

relationships with sources, and they reported using the Internet more than in the past. Since much of the Internet involves public web sites, this could be another indication of reporters using additional sources in their stories.

Finally, several gender differences were found. Female respondents reported more problems with sources than male respondents, including private

sources being more difficult to reach, slower to return phone calls and more aggressive. Female respondents also were more likely to say public sources were more thoughtful during interviews and more aggressive. Overall, the findings suggest that changes in the relationships between reporters and sources were more profound for women than for men.

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