

Safe and Without Sound

Walking the tightrope between national security and freedom of the press has historically led to erring on the side of caution. Whereas the Supreme Court consistently finds in favor of individual liberty in most First Amendment cases, when national security is at stake, freedom loses. Americans need to consider how we can claim to hold paramount individual liberty, and send soldiers to their death to protect freedom, yet stifle that same freedom in the name of national security. The fact is that security without freedom is little more than a prison cell.

In May of 2013 the Justice Department secretly seized two months of phone records from members of the Associated Press by method of subpoenaing the phone company. Department regulations state a subpoena is considered only after “all reasonable attempts” have been made to obtain the information, and it “should be directed at relevant information regarding a limited subject matter and should cover a reasonable limited time period.” It is unknown if the proper legal procedures were followed. According to AP president and CEO Gary Pruitt, “the government sought and obtained information far beyond anything that could be justified by any specific investigation” (Sherman).

Although the government will not disclose the reason for the investigation, it likely stemmed from a May 7, 2012 story involving a “foiled terror plot.” The story, which had been delayed by the government, detailed a CIA investigation that prevented an Al-Qaida plot to “detonate a bomb on an airplane bound for the United States” (Sherman). The standard the government must meet in order to censor the press was

established during the Civil War. It is uncertain if a thwarted terror plot constitutes “a clear and present danger.”

William Miller, spokesperson for U.S. Attorney Ronald Machen, explained that the Justice Department must notify the press unless it would “pose a substantial threat to the integrity of the investigation.” Often the press works with the government to negotiate the scope of the investigation, and allows for them to challenge the subpoena in court. By getting the phone records from a disinterested third party, investigators bypassed protections the legal system has in order to prevent governmental overreaching. “Because we value the freedom of the press,” states Mr. Miller, “we are always careful and deliberative in seeking to strike the right balance between the public interest in the free flow of information and the public interest in the fair and effective administration of our criminal laws” (Savage).

This sort of mass invasion of privacy is not unlike the authoritarian governments that the United States speaks out so adamantly against. Where are the checks and balances? With no one to oversee the lawmakers, there is nothing stopping them from becoming lawbreakers. The press and whistleblowers have long served that important role in our society. The importance of the First Amendment is to allow for the free sharing of ideas so democracy can properly function. Minority viewpoints are most vulnerable to oppression and must be protected for they may hold the truth. The stifling of a free press interferes with our national quest for the truth.

According to Reporters without Borders, U.S. freedom of the press has plunged 13 places, landing at 46 out of 180 countries. The reasons cited for the decline are the AP phone record seizure, the reaction to whistleblower Edward Snowden and the conviction

of Bradley Manning of the WikiLeaks scandal (AP Watchdog). The most damning evidence against Manning is that Bin Laden presumably read some of the leaked documents. One might imagine a higher burden of collateral damage would be required to sentence a former soldier to 35 years of prison. Clearly Manning's conviction was meant to serve as a warning to other would-be press informants (Dishneau).

Manning was an extremely prolific whistleblower, releasing 700,000 documents. In a letter to Obama he attempted to explain his actions: “We elected to hide behind the veil of national security and classified information in order to avoid public accountability” (Dishneau). Perhaps Manning might have earned more credibility had he been more selective in what he chose to release. However, on the flip side, the government should be less secretive and refrain from lying to the American people. “When everything is classified, then nothing is classified...The system becomes one to be disregarded by the cynical or the careless and to be manipulated by those intent on self-protection or self-promotion” (Justice Stewart, *New York Times v. United States*, 1971).

Edward Snowden earned whistleblower notoriety when he leaked documents of a widespread spying on the public by the National Security Administration. He walked away from his family and a good paying job in order to expose NSA practices he found “invasive” and “disturbing.” Snowden weighed his personal risk over the benefit to the public. “I'm willing to sacrifice [my former life] because I can't in good conscience allow the U.S. government to destroy privacy, internet freedom and basic liberties for people around the world with this massive surveillance machine they're secretly building” (Biography).

Snowden now lives out of the country hiding from authorities who want to charge him with violations of the Espionage Act for releasing details concerning phone and internet records obtained from Verizon, for publication in the United Kingdom's the *Guardian*. The specific charges include “theft of government property, unauthorized communication of national defense information, and willful communication of classified intelligence with an unauthorized person.”

From my vantage point, Snowden did not steal this information—he gave it back to its rightful owners: the American people. Why doesn't the government cut out the middle man and take control over the phone and internet providers? Perhaps they should take over the airways and exert complete control over the newspapers. It is fascinating that the government can recognize oppression and governmental overreaching when it occurs on the other side of the world, but turns a blind eye to what is occurring under their nose.

The Espionage Act “had only been used for prosecutorial purposes three times since 1917; Since President Obama took office, it had been invoked seven times as of June 2013” (Biography). The trend in cracking down on persons going against the government interest has not gone unnoticed. Doug Heye, Representative spokesperson for Eric Cantor, compared the AP scandal to another where the IRS targeted members of the Tea Party: “these new revelations suggest a pattern of intimidation by the Obama administration” (Savage).

Sen. Rand Paul, R-Ky., a potential 2016 presidential candidate, apparently disagreed with the handling of the AP investigation: “The Fourth Amendment is not just a protection against unreasonable searches and seizures, it is a fundamental protection for

the First Amendment and all other Constitutional rights. It sets a high bar—a warrant—for the government to take actions that could chill exercise of any of those rights. We must guard it with all the vigor that we guard other constitutional protections" (Sherman). Partisan politics play a huge role in the changing notions of what is considered to be unconstitutional. Government officials are in the business of protecting themselves. Those who are in power, wish to maintain their power, while those who are on the fringe, are critical of the incumbent so that they might be elected into power.

Stories like these make you wonder what other secrets the government has to hide. America has a trust issue. The government apparently does not trust the American people, the press nor the people they employ. The public's faith in our nation has been broken and it cannot be restored without honest disclosure from those in power. Government officials can start by reevaluating how whistleblowers are treated. Being entrusted with confidential information should not make an individual feel like they are burdened with a terrible secret. Since truth is essential for the function of a democracy care must be taken in stifling even shameful truths. The double-edged sword is that these secrets must be revealed before it can be established if they are a secret in need of protecting. The courts act as the voice of reason in times when the balance between competing interests comes to a boiling point.

Our government is occasionally shortsighted and abuses power with unconstitutional legislation or by making unnecessary claims of national security. The Sedition Act of 1798 was passed to stifle legitimate political discussion: "Newspapers were forced to choke back opinions, and individuals had to take precautions before speaking or writing. The effect of the Sedition Act was to drown out all political criticism

of the party in power.” The act was found to be unconstitutional and was allowed to expire in 1801 (History).

The Espionage Act of 1917 and the Sedition Act of 1918 were passed in the name of national security. Any statements that might “encourage disloyalty” or “interfere with drafting of servicemen” would become a criminal offense. In *Schenck v. United States* (1919) the Supreme Court relied on this legislation to uphold the conviction of a man for distributing leaflets encouraging draft dodging. Emotions run high in times of war and individuals are not afforded the same First Amendment freedoms they would otherwise enjoy. The Sedition Act was repealed in 1921 while the majority of the Espionage Act remains law (History).

The courts have the task of reviewing the constitutionality of legislation and applying law to individual cases. In *New York Times Co. vs. United States* (1971) the newspaper obtained and published confidential Vietnam War documents known as the Pentagon Papers. The government sought injunction, claiming that the documents were a threat to national security. The Supreme Court ruled in the favor of the press, finding that prior restraint was a violation of the First Amendment. The documents were found to be largely historical in nature and therefore not a threat to national security. The government withheld this information from the public because it portrayed the war effort in an unflattering light. In the current AP case, the government did not give the court an opportunity to hear both sides of the story so they could determine if the investigation met the standard to prove a threat to national security.

The government’s assurance that they are protecting us is enough for most Americans to accept an invasion of someone else’s privacy. The common rationalization

is that only those with something to hide will take issue with a little governmental intrusion. The incremental stripping of liberty by legislation or actions from federal and state agencies is too slight to be jarring to the conscience of middle-town Americans. Some decision-fatigued citizens might find it more comfortable to allow dear old Uncle Sam to decide what is best for our nation. What people tend to forget is that in the national hierarchy, the people are above the government. They work for us to serve our needs, not the other way around.

The landscape of the nation is changing; with the advent of the internet, information can travel farther and faster than ever before. The fear is that information sharing could get dangerously out of control. There is no absolute way to protect our country from the terrorist threats. This uncertainty is part of the price we must pay for freedom. Our founding fathers may not have been able to fathom the challenges of the modern technical age, but they understood the core principles on which our great nation was built. "Those who surrender freedom for security will not have, nor do they deserve, either one" (Benjamin Franklin).

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