

OpinionJournal

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REVIEW & OUTLOOK

Fit and Unfit to Print

What are the obligations of the press in wartime?

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"Not everything is fit to print. There is to be regard for at least probable factual accuracy, for danger to innocent lives, for human decencies, and even, if cautiously, for nonpartisan considerations of the national interest."

So wrote the great legal scholar, Alexander Bickel, about the duties of the press in his 1975 collection of essays "The Morality of Consent." We like to re-read Bickel to get our Constitutional bearings, and he's been especially useful since the New York Times decided last week to expose a major weapon in the U.S. arsenal against terror financing.

President Bush, among others, has since assailed the press for revealing the program, and the Times has responded by wrapping itself in the First Amendment, the public's right to know and even The Wall Street Journal. We published a story on the same subject on the same day, and the Times has since claimed us as its ideological wingman. So allow us to explain what actually happened, putting this episode within the larger context of a newspaper's obligations during wartime.

We should make clear that the News and Editorial sections of the Journal are separate, with different editors. The Journal story on Treasury's antiterror methods was a product of the News department, and these columns had no say in the decision to publish. We have reported the story ourselves, however, and the facts are that the Times's decision was notably different from the Journal's.

According to Tony Fratto, Treasury's Assistant Secretary for Public Affairs, he first contacted the Times some two months ago. He had heard Times reporters were asking questions about the highly classified program involving Swift, an international banking consortium that has cooperated with the U.S. to follow the money making its way to the likes of al Qaeda or Hezbollah. Mr. Fratto went on to ask the Times not to publish such a story on grounds that it would damage this useful terror-tracking method.

Sometime later, Secretary John Snow invited Times Executive Editor Bill Keller to his Treasury office to deliver the same message. Later still, Mr. Fratto says, Tom Kean and Lee Hamilton, the leaders of the 9/11 Commission, made the same request of Mr. Keller. Democratic Congressman John Murtha and Director of National Intelligence John Negroponte also urged the newspaper not to publish the story.

The Times decided to publish anyway, letting Mr. Fratto know about its decision a week ago Wednesday. The Times agreed to delay publishing by a day to give Mr. Fratto a chance to bring the appropriate Treasury official home from overseas. Based on his own discussions with Times reporters and editors, Mr. Fratto says he believed "they had about 80% of the story, but they had about 30% of it wrong." So the Administration decided that, in the interest of telling a more complete and accurate story, they would declassify a series of talking points about the program. They discussed those with the Times the next day, June 22.

Around the same time, Treasury contacted Journal reporter Glenn Simpson to offer him the same declassified information. Mr. Simpson has been working the terror finance beat for some time, including asking questions about the operations of Swift, and it is a common practice in Washington for government officials to disclose a story that is going to become public anyway to more than one reporter. Our guess is that Treasury also felt Mr. Simpson would write a straighter story than the Times, which was pushing a violation-of-privacy angle; on our reading of the two June 23 stories, he did.

We recount all this because more than a few commentators have tried to link the Journal and Times at the hip. On the left, the motive is to help shield the Times from political criticism. On the right, the goal is to tar everyone in the "mainstream media." But anyone who understands how publishing decisions are made knows that different newspapers make up their minds differently.

Some argue that the Journal should have still declined to run the antiterror story. However, at no point did Treasury officials tell us not to publish the information. And while Journal editors knew the Times was about to publish the story, Treasury officials did not tell our editors they had urged the Times not to publish. What Journal editors did know is that they had senior government officials providing news they didn't mind seeing in print. If this was a "leak," it was entirely authorized.

Would the Journal have published the story had we discovered it as the Times did, and had the Administration asked us not to? Speaking for the editorial columns, our answer is probably not. Mr. Keller's argument that the terrorists surely knew about the Swift monitoring is his own leap of faith. The terror financiers might have known the U.S. could track money from the U.S., but they might not have known the U.S. could follow the money from, say, Saudi Arabia. The first thing an al Qaeda financier would have done when the story broke is check if his bank was part of Swift.

Just as dubious is the defense in a Times editorial this week that "The Swift story bears no resemblance to security breaches, like disclosure of troop locations, that would clearly compromise the immediate safety of specific individuals." In this asymmetric war against terrorists, intelligence and financial tracking are the equivalent of troop movements. They are America's main weapons.

The Times itself said as much in a typically hectoring September 24, 2001, editorial "Finances of Terror": "Much more is needed, including stricter regulations, the recruitment of specialized investigators and greater cooperation with foreign banking authorities." Isn't the latter precisely what the Swift operation is?

Whether the Journal News department would agree with us in this or other cases, we can't say. We do know, however, that Journal editors have withheld stories at the

government's request in the past, notably during the Gulf War when they learned that a European company that had sold defense equipment to Iraq was secretly helping the Pentagon. Readers have to decide for themselves, based on our day-to-day work, whether they think Journal editors are making the correct publishing judgments.

Which brings us back to the New York Times. We suspect that the Times has tried to use the Journal as its political heatshield precisely because it knows our editors have more credibility on these matters.

As Alexander Bickel wrote, the relationship between government and the press in the free society is an inevitable and essential contest. The government needs a certain amount of secrecy to function, especially on national security, and the press in its watchdog role tries to discover what it can. The government can't expect total secrecy, Bickel writes, "but the game similarly calls on the press to consider the responsibilities that its position implies. *Not everything is fit to print.*" The obligation of the press is to take the government seriously when it makes a request not to publish. Is the motive mainly political? How important are the national security concerns? And how do those concerns balance against the public's right to know?

The problem with the Times is that millions of Americans no longer believe that its editors would make those calculations in anything close to good faith. We certainly don't. On issue after issue, it has become clear that the Times believes the U.S. is not really at war, and in any case the Bush Administration lacks the legitimacy to wage it.

So, for example, it promulgates a double standard on "leaks," deploring them in the case of Valerie Plame and demanding a special counsel when the leaker was presumably someone in the White House and the journalist a conservative columnist. But then it hails as heroic and public-spirited the leak to the Times itself that revealed the National Security Agency's al Qaeda wiretaps.

Mr. Keller's open letter explaining his decision to expose the Treasury program all but admits that he did so because he doesn't agree with, or believe, the Bush Administration. "Since September 11, 2001, our government has launched broad and secret anti-terror monitoring programs without seeking authorizing legislation and without fully briefing the Congress," he writes, and "some officials who have been involved in these programs have spoken to the Times about their discomfort over the legality of the government's actions and over the adequacy of oversight." Since the Treasury story broke, as it happens, no one but Congressman Ed Markey and a few cranks have even objected to the program, much less claimed illegality.

Perhaps Mr. Keller has been listening to his boss, Times Publisher Arthur Sulzberger Jr., who in a recent commencement address apologized to the graduates because his generation "had seen the horrors and futility of war and smelled the stench of corruption in government.

"Our children, we vowed, would never know that. So, well, sorry. It wasn't supposed to be this way," the publisher continued. "You weren't supposed to be graduating into an America fighting a misbegotten war in a foreign land. You weren't supposed to be graduating into a world where we are still fighting for fundamental human rights," and so on. Forgive us if we conclude that a newspaper led by someone who

speaks this way to college seniors has as a major goal not winning the war on terror but obstructing it.



In all of this, Mr. Sulzberger and the Times are reminiscent of a publisher from an earlier era, Colonel Robert McCormick of the Chicago Tribune. In the 1930s and into World War II, the Tribune was implacable in its opposition to FDR and his conduct of the war. During the war itself, his newspaper also exposed secrets, including one story after the victory at Midway in 1942 that essentially disclosed that the U.S. had broken Japanese codes. The government considered, but decided against, prosecuting McCormick's paper under the Espionage Act of 1917.

That was a wise decision, and not only because it would have drawn more attention to the Tribune "scoop." Once a government starts indicting reporters for publishing stories, there will be no drawing any lines against such prosecutions, and we will be well down the road to an Official Secrets Act that will let government dictate coverage.

The current political clamor is nonetheless a warning to the press about the path the Times is walking. Already, its partisan demand for a special counsel in the Plame case has led to a reporter going to jail and to defeats in court over protecting sources. Now the politicians are talking about Espionage Act prosecutions. All of which is cause for the rest of us in the media to recognize, heeding Alexander Bickel, that sometimes all the news is not fit to print.