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Secrecy, Security, the President and the Press

By [BYRON CALAME](#)

THE Bush administration's unusually harsh attacks on The New York Times for exposing a secret banking-data surveillance program have turned a glaring spotlight on the paper's decision to publish the article.

President Bush, Vice President Cheney and Republican legislators have singled out The Times in recent days for disclosing the counterterrorism program, even though The Los Angeles Times and The Wall Street Journal published articles the same day. Senator Jim Bunning of Kentucky called on the attorney general to investigate The New York Times for treason.

The flood of reader e-mails reacting to the June 23 article has left hundreds of messages in various newsroom in-boxes at The Times. Roughly 1,000 e-mails have come to me, about 85 percent of them critical of the decision to publish the story and a large fraction venomous. It was time to take a close look at the handling of the article in search of answers.

My close look convinced me that Bill Keller, the executive editor, was correct in deciding that Times readers deserved to read about the banking-data surveillance program. And the growing indications that this and other financial monitoring operations were hardly a secret to the terrorist world minimizes the possibility that the article made America less safe.

The banking-data surveillance program, set up in 2001, is run out of the Central Intelligence Agency and overseen by the Treasury Department. It provided access to records of transactions routed through a Belgian consortium by banks and financial institutions around the world. More than 11 million transactions involving about \$6 trillion are routed daily through the Society for Worldwide Interbank Financial Telecommunication, or Swift.

So what were the most solid reasons to publish the story?

There was a significant question as to how secret the program was after five years. "Hundreds, if not thousands, of people know about this," Mr. Keller said he was told by an official who talked to him on condition of anonymity. The 25 bankers from numerous nations on the Swift board of directors, and their predecessors going back to 2001, knew about the arrangement. So did some consortium executives and staff members — a group that probably expanded during this period. Starting in 2003, Swift

representatives had to be stationed alongside any government intelligence official searching the data.

Further support for the conclusion that the Swift program hasn't remained totally hidden from terrorists, or anyone else, emerged last week. A former State Department official who has served on a United Nations counterterrorism group pointed to a 2002 United Nations report noting that the United States was monitoring international financial transactions. Swift and similar organizations were mentioned in the publicly available report, although there were no details. "The United States has begun to apply new monitoring techniques to spot and verify suspicious transactions," the report noted.

The Times's June 23 article "awoke the general public" to the Swift program and "in that sense, it was truly new news," Victor Comras, the former State Department official, wrote on [The Counterterrorism Blog](#) last week. "But," he added, "the information was fairly well known by terrorism financing experts back in 2002."

The administration has sometimes invited press attention to its effort to track terrorist financing. In September 2003, Treasury Secretary John W. Snow and a team of his aides took reporters from The Times and other papers on a six-day tour on a military aircraft "to show off the department's efforts," Mr. Keller and Dean Baquet, the editor of The Los Angeles Times, noted in a joint Op-Ed commentary that appeared yesterday. The aides "discussed many sensitive details of their monitoring efforts, hoping they would appear in print and demonstrate the administration's relentlessness against the terrorist threat," according to the two editors.

Another reason Times editors were right to proceed with the 3,550-word Swift story was the skimpy Congressional oversight of the program. Secrecy is vital for intelligence and national security programs, but so is oversight by the courts or elected legislators. The Swift program, however, doesn't seem to have any specific Congressional approval or formal authorization. The Treasury Department has not provided a list of who in Congress was informed, or when, The Times has reported.

Eric Lichtblau, one of the two reporters who wrote the Swift story, told me the administration briefed a limited number of Congressional leaders — apparently from both parties, but not the full intelligence or banking committees — toward the beginning of the program. It wasn't until the Treasury Department learned that The Times was working on the story, Mr. Lichtblau said, that the administration apparently briefed all members of the intelligence committees. Whether there are official standards established for the Swift program or not, the weak Congressional oversight over the past five years deserved public scrutiny.

Temporary emergency measures cloaked in government secrecy can too easily become permanent shortcuts. That's why oversight is important. It is also a reason to publish the article. The reservations expressed by some of the 20 current and former government officials and industry executives who were disturbed enough to talk to The Times were based on this concern: "What they viewed as an urgent, temporary measure had become permanent nearly five years later without specific Congressional approval or formal authorization," in the words of the article.

The most fundamental reason for publishing the article, of course, was the obligation of a free press to monitor government and other powerful institutions in our society. "Our default position — our job — is to publish information if we are convinced it is fair and accurate," Mr. Keller wrote in a letter to readers posted online last weekend,

"and our biggest failures have generally been when we failed to dig deep enough or to report fully enough." He added:

"The question we start with as journalists is not 'why publish?' but 'why would we withhold information of significance?' We have sometimes done so, holding stories or editing out details that could serve those hostile to the U.S. But we need a compelling reason to do so."

What about the administration's reasons for demanding that The Times not publish?

Mr. Keller said the "central argument" senior officials gave against publishing the Swift article was that international bankers would stop cooperating. In his weekend letter, he cited two reasons that argument didn't stop him from publishing the story: First, the consortium provides data to comply with administrative subpoenas issued by the Treasury Department — a legal obligation. "Second, if, as the administration says, the program is legal, highly effective, and well protected against invasion of privacy, the bankers should have little trouble defending it." So far, Swift hasn't publicly indicated any intention to stop cooperating.

For me, the most substantial argument against running the story was the acknowledgment that the Swift program was letter-of-the-law legal, had helped catch some terrorists and had a clean record on privacy abuse. But full-bore oversight would have had to be part of that picture to make a convincing case that the program deserved to continue in secrecy, with its access to Swift's mother lode of financial data.

Often obscured in the past week's hot rhetoric over The Times's decision to publish the Swift article were the occasions when the paper's editors have chosen to hold or modify a story when warned by government officials that lives or national security might be endangered. "Few people are aware when we decide to hold an article," noted Mr. Keller and Mr. Baquet in their joint commentary. Apart from The Times's decision to hold the December story about the National Security Agency's warrantless eavesdropping for more than a year, it turns out the paper has decided not to publish stories that "might have jeopardized efforts to protect vulnerable stockpiles of nuclear material," according to the joint commentary. The Times has also held stories about "highly sensitive counterterrorism initiatives that are still in operation," the Op-Ed piece noted.

"There is no magic formula, no neat metric for either the public's interest or the dangers of publishing sensitive information," the two editors concluded. "We make our best judgment."

The best judgment of these two editors served their readers well in the case of the Swift story. In the face of intense administration pressure in a country that's unusually polarized politically, they correctly decided to make sure their readers were informed about the banking-data surveillance.