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The Role of News Media in Intelligence Oversight

CLAUDIA HILLEBRAND*

ABSTRACT This article explores the role of the news media in overseeing intelligence services and their work. As an informal mechanism, how do they fit into the wider landscape of intelligence oversight? By drawing on examples of US counter-terrorism efforts in the post-9/11 era, the article identifies three roles for the news media in intelligence oversight: as an information transmitter and stimulator for formal scrutinizers, as a substitute watchdog and as a legitimizing institution. Yet there is a danger of the news media acting merely as a lapdog. Other limitations include the impact of regulatory frameworks, government secrecy and the media strategies of intelligence services. The article concludes that the news media play an important role in the wider intelligence oversight landscape, but that their ability to scrutinize is uneven and ad hoc and as a result the picture they produce is blurred.

Introduction

In the summer of 2002, a senior advisor to President George W. Bush pointed out that journalists and other governmental observers live in a ‘reality-based community’ in which ‘solutions emerge from [the] judicious study of discernible reality’. Yet, according to this aide, ‘[t]hat’s not the way the world really works anymore. . . . We’re an empire now, and when we act, we create our own reality. And while you’re studying that reality . . . we’ll act again, creating other new realities, which you can study too, and that’s how things will sort out’.¹ What was suggested by the official (thought to be Karl Rove, then Bush’s Deputy Chief of Staff), is that scrutinizing the activities of the United States (US) government is a pointless exercise, given that the scrutinizers will always be at least one step behind the government’s activities. This understanding is in sharp contrast to suggestions that news media coverage of governmental activities is essential for ensuring a democratic society and that, ideally,

the media should be a powerful political institution, a 'fourth estate', in and of itself.²

This article seeks to explore what role the news media have in scrutinizing and overseeing one particularly sensitive area of governmental activities, namely the realm of intelligence. In the post-9/11 era, there is a growing understanding that ‘[i]n every part of society, and in all our social interactions, intelligence has a role to play in conditioning the political and social environments in which we live’.³ Given the impact of intelligence, intelligence oversight and accountability have become important requirements for democracies.

While scholars are increasingly paying attention to aspects of intelligence oversight, accountability and control, one under-explored dimension so far is the role of the media.⁴ Certainly, media coverage is often mentioned, usually with reference to the revelation of intelligence ‘scandals’ and leaked information. Loch Johnson’s ‘shock theory’ of congressional accountability suggests an important role for the media in setting off the ‘alarm’ in case of major intelligence failures.⁵ Other scholars have addressed the topic in the wider context of the democratic governance of the security sector, or with respect to a particular country.⁶ Yet a systematic account of the media’s role is still missing.

This is surprising given the numerous occasions in the post-9/11 era when controversial, and sometimes illegal, dimensions of intelligence have been revealed by the news media. Indeed, the previous decade suggests that the media might have an ever-important role to play in scrutinizing the intelligence services and their work. Many aspects of the US-led War on Terror, for example, such as the detainee abuse at Abu Ghraib, the secret

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²Julianne Schultz, *Reviving the Fourth Estate: Democracy, Accountability and the Media* (Cambridge: Cambridge University Press 2008). The term ‘fourth estate’ is nowadays attributed to the journalistic profession. More generally, the term refers to a societal or political institution which wields some influence in a state’s politics but is not officially recognized.


detention and extraordinary rendition policies, the abuse of powers by the National Security Agency (NSA) and the controversial use of data provided to US authorities by the Society for Worldwide Interbank Financial Telecommunication (SWIFT) would probably be little known among the public if details about these counter-terrorism efforts had not been investigated by media outlets.

Drawing on these examples, this research is concerned with the question of how the news media fit into the conceptual framework of intelligence oversight. The research is informed by insights from literatures on media studies, intelligence oversight and democratic governance. The article begins by briefly discussing the need for intelligence oversight in democracies and explores the main existing mechanisms. The media’s roles in this respect will be analyzed, followed by an exploration of challenges and limitations. Focusing on the post-9/11 era, the article will pay particular attention to the role of the American elite press in the context of intelligence oversight. Overall, the news media play an important role in the wider oversight landscape, but their ability to scrutinize is uneven and ad hoc.

1. The Purpose of Intelligence Oversight

Many definitions of intelligence point to government secrecy as a defining feature, maintaining that ‘[t]he connection between intelligence and secrecy is central to most of what distinguishes intelligence from other intellectual activities’. Given this secretive nature, intelligence services and their work do not fit comfortably into a democratic framework and clash with the basic requirements of openness and participation. Yet despite the purpose and work of intelligence services being in sharp contrast to these requirements, there is a broad consensus that intelligence services are useful, if not necessary or essential, for ensuring safety and security. As a consequence, democratic societies find various ways to square ‘democratic’ values and intelligence, focusing on maximizing ‘the probability that intelligence is both effective and conducted properly’. As part of the state apparatus, and often close to political power, intelligence services ought to be held to account like any other executive body. At the same time, the intelligence sector is typically granted considerable exemptions from regulations, such as freedom of information policies.

Strictly speaking, the term oversight refers to supervisory functions whereby a person or organization oversees the performance or activities of an individual or a group. As Farson and Whitaker maintain, the term oversight is used broadly today, referring to the ‘scrutiny of government
action before, during, and after the fact, dealing with both matters of propriety and efficacy. . . . Oversight is not accountability, but it may . . . lead to it’. 10 Accountability might ‘imply a wide variety of democratic processes from transparency of government to answerability to voters . . . It can, for example, be used to effect control, to provide explanations, to provide assurance, and as a learning experience’.11

Furthermore, the landscape of intelligence oversight comprises four main elements: executive (or internal), legal, judicial and public oversight. While the first three formal oversight forums are addressed in depth in the academic literature, public oversight is usually only marginally mentioned; if at all. However, this fourth category contains a range of institutions and statutory mechanisms that feed into the wider oversight system, such as the news media, think-tanks, civil society activists and Non-Governmental Organizations (NGOs). Scrutiny by those institutions can lead to public accountability, for example through elections, or ‘the public-at-large can hold intelligence accountable’ in the sense that intelligence officials ought to question themselves whether their actions would be justifiable to the wider public.12 So it is surprising that little attention has been paid to the precise role of these actors so far. This research seeks to rectify this shortcoming to some extent by focusing on one feature of public oversight – the news media outlets.

The Media’s Democratic Responsibility

Openness is an important requirement for democratic governance that relies on an informed electorate. This means citizens have to be able to make informed judgments and to participate in the political community. Crucially, this requires the existence of a free media, a high degree of transparency in government and decision-making as well as a general free flow of information within society.13 More precisely:

[j]ournalists provide the information which a society needs to debate current policies, public issues, societal threats, the potential failings of its institutions as well as necessary reforms. In so doing, journalism fulfils a major democratic function, which includes, as a crucial

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responsibility, the duty to make issues transparent and therefore to help citizens to gain information about and exert oversight of the state’s executive bodies.14

From this perspective, the media have an obligation to keep governments in check and investigate their activities. This includes the realm of intelligence. As Simon Chesterman pointed out, ‘[m]eaningful accountability of intelligence services depends on a level of public debate that may be opposed by the actors in question, proscribed by official secrets acts, and constrained by the interests of elected officials’.15

2. Three Roles for the News Media in Intelligence Oversight

If one accepts that the media’s main role is that of a ‘checking force’16 concerning intelligence, then the next step is to analyze the various means by which the media can fulfil this role and to critically examine some major challenges in this context. Three key roles of the media need to be taken into account in this context.

The Media as an Information Transmitter and Stimulator for Formal Scrutinizers

Probably the most common role of the media in this context is to transmit and scrutinize information about governmental activities, including those of the intelligence services, bringing issues onto the agenda for public debate. In the context of intelligence activities, this can mean drawing public as well as political attention to human rights infringements, potential abuse of powers or lack of accountability. The post-9/11 era provides numerous examples of this role. Crucial revelations by American media outlets concerning the CIA’s secret detention policy and extraordinary rendition campaign; the extensive use of warrantless wiretapping by the NSA; the release of pictures showing American soldiers sexually humiliating and physically abusing detainees at Abu Ghraib; and the use of the SWIFT database.

Concerning the Abu Ghraib images, on 28 April 2004 CBS released a selection of the graphic photographs they had received and verified as genuine. The abuse had taken place over four months prior and, in the meantime, the Pentagon had conducted an internal report on prisoner treatment in Iraq. An investigation by the US Army Criminal Investigation Command had also passed almost undetected by the news media.17

14Fritz, Watching the Watchdogs, p.1.
17W. Lance Bennett, Regina Lawrence and Steven Livingston, When the Press Fails: Political Power and the News Media from Iraq to Katrina (Chicago: University of Chicago Press 2007) p.73.
However, while in theory the Army’s investigations ‘pre-dated public knowledge of the abuse in April 2004, . . . it was only after humiliating photographs of detainees were widely disseminated that serious action was taken’.\(^{18}\) The decision by CBS to broadcast the pictures was described by Bennett et al. as ‘an important element of press independence’.\(^{19}\)

On 16 December 2005, the *New York Times* (NYT) broke the story that the NSA had eavesdropped the international phone calls and email correspondence of ‘hundreds, perhaps thousands, of people within the United States without warrant’, based on a secretive presidential order.\(^{20}\) While some information about the classified Terrorist Surveillance Program was known, the journalists challenged the programme’s legal basis. A subsequent article shed light on the extensive collaboration between private telecommunications companies and the NSA.\(^{21}\)

Similarly, although some information was in the public domain about the Central Intelligence Agency’s (CIA) covert activities after the 9/11 attacks, Dana Priest of the *Washington Post* revealed in November 2005 that the Agency was running a ‘covert prison system’ in several countries to hold and interrogate terrorist suspects.\(^{22}\) She questioned the legal and moral dimensions of the campaign and maintained that the CIA and the White House ‘dissuaded Congress from demanding that the agency answer questions in open testimony about the conditions under which captives are held’. Since November 2005, several journalists have persistently investigated these allegations. For example, Kyle Foggo, then CIA station chief in Europe, revealed in a 2009 interview that prisons were located in Bucharest, Morocco and an unnamed East European state.\(^{23}\)

On 23 June 2006, the NYT revealed that, since 9/11, a financial tracking programme, run by the CIA and overseen by the Treasury Department, had examined international bank transfers, using the SWIFT database and raised concerns about the legal authority of the operation.\(^{24}\) At the time, the data was obtained using broad administrative subpoenas for vast amounts of SWIFT records, not case-by-case court warrants, effectively amounting to a carte blanche mandate with little judicial or regulatory oversight.

In the above named cases, substantial amounts of information came into the public domain only after media investigations. Though certain individuals already knew some elements of these, the stories provided

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\(^{18}\)Chesterman, *One Nation*, p.89.

\(^{19}\)Bennett et al., *When the Press Fails*, p.61.


substantial information, put the counter-terrorist measures into the broader context of the War on Terror and challenged the legal and ethical footing of the practices. That they hit a nerve can be seen by the fierce responses by the Bush administration to the revelations. A couple of weeks after CBS released the Abu Ghraib images, Seymour Hersh published two extensive investigative articles in the *New Yorker*, which a Pentagon spokesman angrily dismissed as ‘outlandish’ and ‘conspiratorial’. The *NYT*’s revelations about the NSA’s warrantless eavesdropping were also criticized for having compromised national security and damaging intelligence capabilities. And with respect to its story about the SWIFT database, then Vice President Dick Cheney maintained that the news media just ‘take it upon themselves to disclose vital national security programs pointing to considerable tensions between the press and White House’.26

In fact, critics within government often ignore the fact that media outlets do not normally reveal such sensitive stories immediately, but carefully weigh their potential damage to national security and discuss the material with officials off-the-record. At the request of the Department of Defense, CBS, for example, broadcast the Abu Ghraib images two weeks after they received them. The *NYT* informed the White House in late 2004 that it was about to publish an article revealing the NSA’s surveillance programme. After the White House asked the *NYT* to postpone publication for more than a year, the story finally made it to the *NYT*’s front page only in late 2005.27

Simon Chesterman pointed out that, referring to the cases of torture, extraordinary rendition and eavesdropping, ‘public deliberation on the legality of the practice clearly was never intended by the relevant officials’.28 The respective journalists therefore had to rely on information by insiders, such as soldiers based at Abu Ghraib or intelligence officials involved in the controversial programmes, such as the NSA’s former official Thomas Tamm.

Supporting this line of reasoning, Loch Johnson suggests that law-makers rarely engage in intensive intelligence oversight, unless a major scandal or failure forces them to pay attention to the dark side of government.29 Yet even then it is not always clear under what circumstances formal government oversight bodies decide to investigate a topic in more depth. Only a few of the stories described above led to some form of inquiry by legislators. The revelations about the SWIFT programme, for instance, led to an inquiry into the legal authority of the programme by the Senate Judiciary


28Chesterman, *One Nation*, p.86.

Committee. During the inquiry, Chairman Arlen Specter (R-PA) asked: ‘Why does it take a newspaper investigation to get them to comply with the law? That’s a big, important point’. The NSA’s warrantless wiretapping did not yield major Congressional scrutiny. The press appeared to insufficiently focus on ‘political accountability questions’. However, the NYT coverage had externally initiated an ‘open discussion of the programme and remedies for apparent violation of the law’. With respect to the Abu Ghraib pictures, torture was little discussed in the American media until then. However, the news media still framed the incidence as a case of low-level abuse rather than torture or systemic institutional failure. The revelations about the extent of the CIA’s web of secret detention centres, finally, led to a much lesser extent to major inquiries in the US (see the following section) than in Europe where a few investigations by formal inquiry bodies were initiated.

Though certainly focusing on (alleged) wrongdoings, media scrutiny can also contribute, or trigger, a public debate on the content, objectives and limits of intelligence work more broadly. A recent example in this context refers to the increased use of Unmanned Aerial Vehicles abroad by the CIA and the covert policy of targeted killing. Journalists addressed the topic early in the War on Terror and, from January 2009 onwards, closely observed how the Obama administration increasingly embraced the use of drones as a counter-terrorism tool. It is through media coverage, rather than formal intelligence oversight mechanisms, that the public got at least some sense of the scope of the CIA’s paramilitary activities in this context. Journalists examined, for example, whether the extensive use of drones might set a negative precedent worldwide, given that their extensive use could foster conflicts, and so on. More recently, the NYT questioned on its front page the legal basis of the use of drones for the targeted killing of Anwar Al-Awlaki, a Muslim cleric and the first American citizen to be put on the list of terror suspects the CIA is to kill. Al-Awlaki, a senior figure of al-Qaeda in the Arabian Peninsula, allegedly inspired the 9/11 hijacker, Umar Farouk Mutallab, who attempted to bomb a Detroit-bound airliner in December

30Stolberg and Lichtblau, ‘Cheney Assails Press’.
31Bennett et al., When the Press Fails, pp.46–7.
32Chesterman, One Nation, p.86.
33Bennett et al., When the Press Fails, pp.84ff.
2009, and the Fort Hood shooter Nidal Hasan through his writings and preachings.

Hence, news media might break stories that might have previously not been an issue of public discourse or they might bring new insights to a story. Crucially, the media tend to be less restrained in looking for stories on intelligence than, for example, constitutional oversight bodies. By revealing such cases, the media can potentially trigger a public debate on the content, objectives and limits of intelligence activities.

The Media as a Substitute Watchdog

If formal oversight bodies are unwilling, or incapable, of conducting scrutiny, the media might be able to fill this gap. After Jane Mayer published her influential article in The New Yorker on ‘Outsourcing Torture’ in the context of extraordinary renditions in February 2005, Senator John Rockefeller IV (D-WV) called for a probe into allegations of detainee abuse and rendition claims to be conducted by the Senate Intelligence Committee. He maintained that ‘Congress has largely ignored the issue’ so far and, ‘[m]ore disturbingly, the Senate intelligence committee ... is sitting on the sidelines and effectively abdicating its oversight responsibility to media investigative reporters’. Recently released documents by the Office of the Director of National Intelligence suggest that members of the Congress have been briefed several times on ‘enhanced interrogation techniques’ since April 2002, but they appear to have investigated the matter very little. It was largely the news media that continued to reveal information about these counter-terrorist efforts. The coverage, including Priest’s article on the CIA’s secret prisons, led to inquiries in Europe but not in the US. Some have suggested, however, that the ‘numerous news reports’ on the CIA’s programme led Bush to speak publicly about secret detention in September 2006, hoping ‘to build support for it on Capitol Hill, and in the public’. Only in March 2009 did the Senate Intelligence Committee announce that it would enquire about the CIA’s secret detention and interrogation programme and explore whether lessons could be learned. Yet, the review is still

See also Caparini, ‘Media and Security Sector’, p.39.
42 See, for example, the comments of David Rivkin, former White House counsel’s office staff, in Sheryl Stolberg, ‘President Moves 14 Held in Secret to Guantánamo’, New York Times, 7 September 2006.
ongoing. Similarly, an (originally broad) investigation by the US Attorney-General into whether the interrogation of detainees overseas violated US law, initiated in 2009, was curtailed in June 2011. While it resulted in a criminal investigation into the death of two men in US custody, other cases will not be considered further.

Media outlets can provide a channel for leaking information that might not have been taken into account by formal oversight bodies, or when individuals felt unable to approach formal oversight bodies and instead approached journalists. A famous example of this is the public disclosure of the ‘Pentagon Papers’ concerning the conduct of the Vietnam War – whistleblower Daniel Ellsberg turned to the newspapers after the Senate ignored an initial approach. Thomas Drake, a former NSA employee, allegedly expressed his concerns about the waste of taxpayers’ money concerning the NSA’s data-mining Trailblazer programme ‘to his bosses, to the agency’s inspector general, to the Defense Department’s inspector general and to the Congressional intelligence committees. But he felt his message was not getting through’ and he decided to share unclassified information with a reporter. The Trailblazer programme, which cost the NSA more than US$1 billion, has since been closed down as a failure. Examples of internal reports leaked during the War on Terror include the strictly confidential Red Cross report on detainees at Guantánamo Bay and the classified Taguba report on Abu Ghraib.

Media channels might also be used by opposition politicians to stimulate public interest in a particular topic or to point to flaws and misconduct by government officials. The immediate danger, of course, lies in the fact that the media can be used or abused for political purposes, for example by causing political embarrassment, as further discussed in the section on the media as a lapdog below.

Finally, reports of formal inquiry bodies are not always very illuminating for the wider public and often written in a bureaucratic, ossified and legalistic manner. Moreover, the release of official reports often goes unnoticed by the wider public. In contrast, media outlets might provide more detailed information, and present them in a sharper, more accessible way than official reports. While there is a danger of sensationalism, the media’s oversight process, by its very nature, is more directed at the wider public.

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The Media as a Legitimizing Institution

A third key role for the media in the context of intelligence refers to its role as a reassuring and legitimizing tool. By informing the public about the work of intelligence services and related policies, they help legitimize the intelligence services. While this is beyond their formal role, the media can help in building and fostering faith in these public institutions through demonstrating that intelligence performance is overseen, to at least some extent, independently. Enhancing confidence in the work of intelligence services can be essential in situations when they have to rely on public support or cooperation for their activities. Broad public acceptance of their mandate and work is also important for the services when it comes to negotiations about budgets or expanded powers in Congress, for example.

No other oversight body is in a better position to build a bridge between the agencies and the public. In this context, reporting of successful operations of intelligence is an important feature, such as when the public learnt about the operation that led to the killing of Osama bin Laden in 2011. Another example of the promotion of success was the coverage of the uncovering of a Russian spy ring in the US in summer 2010. Moreover, it is important to point out reform processes in order to demonstrate to the wider public that learning takes place. By taking their role as overseers seriously and scrutinizing the services’ work properly, the media suggest to the public that the services are trustworthy and that they conduct their work within the remits outlined in their mandate.

3. Limitations

While the article has so far focused on the potential of the media regarding intelligence oversight, this section will discuss the limitations and challenges that news media face when covering intelligence-related issues and which frame their role in scrutinizing this sector.

The Media as a Lapdog

The term ‘lapdog’ refers to situations in which journalists fail to sufficiently question government policies or simply transmit unsubstantiated claims by government officials. In these cases, it becomes clear that the media act ‘within the existing institutional parameters that create specific opportunities and constraints and shape actors’ preferences and strategic choices’.

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instance, the American elite press has been heavily criticized for insufficiently challenging the official line in its pre-war reporting on Iraq and not providing alternative views. In this period the US press arguably grew ‘too close to the sources of power ... making it largely the communication mechanism of the government, not the people’.

Moreover, the media were manipulated for propaganda purposes by the Bush government. For example, the government would feed cooperative journalists with certain information, only to later refer to that publication to legitimize its actions. The work of Judith Miller, a now retired NYT journalist, was particularly criticized in this respect. Her defence revealed a particular ‘objective’ professional attitude: ‘My job isn’t to assess the government’s information and be an independent intelligence analyst myself. My job is to tell readers of the New York Times what the government thought about Iraq’s arsenal’.

A particularly sensitive case where government officials misused media channels to pursue a particular aim concerned CIA officer Valerie Wilson. Journalist Robert Novak published a column on 14 July 2003, in which he identified Wilson by her maiden name Valerie Plame. It was later discovered that Dick Cheney’s Chief of Staff had disclosed her identity in retaliation for her husband criticizing the administration’s Iraq policy.

**Regulatory Frameworks**

Having identified three major roles of the media in intelligence oversight, the following section focuses on limitations. Crucially, the work of the news media is regulated through several frameworks. The major premise, based on the importance of openness for democratic societies, is the right of freedom of the press. While this right guarantees, in principle, the absence of interference in the work of media outlets from the state and embraces the freedom of expression and communication, it is restricted – by legislation and litigation – for reasons of national security. Secrecy laws govern the protection of government secrets in most states (e.g., some components of the Espionage Act in the US; the Official Secrets Act in the UK). Related to this, states have an information classification policy to regulate which documents are classified, the levels of classification and the eventual public release of classified material. In some states, the intelligence realm is subject to freedom of information laws regulating the public disclosure of official documents, but more often it is exempted from them. Finally, the US

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53Bennett et al., When the Press Fails, p.1.
56Valerie Plame Wilson, Fair Game: How a Top CIA Agent was Betrayed by her Own Government (NY: Simon & Schuster 2010).
government sometimes provides specific formal regulations, such as the extensive Media Ground Rules for Guantánamo Bay concerning reporting by civilian news media deployed at Guantánamo.57

In addition, media outlets in several states undergo some form of self-regulation. Self-censorship for national security reasons is a common phenomenon.58 A formalized and unique procedure is the British Defence Advisory (DA)-Notice System (formerly D-Notice System), which regulates the media’s release of British national security secrets.59 No such formal procedure exists in the US, but informal consultations and individual interactions between editors and government officials concerning the release of sensitive information frequently takes place as indicated above. Moreover, at the beginning of the twenty-first century, ‘a group of about 20 (US) journalists and officials met quarterly for dinner to discuss how a free press should cover secret agencies’.60 The extent of such informal contact in the US remains unclear.

**Government Secrecy**

As the overview of regulatory frameworks indicated, the high level of secrecy concerning matters of national security restricts any role for the news media in intelligence oversight. In general, more secrecy means less transparency. It is therefore inherently problematic concerning the democratic requirement of openness. Nevertheless, some level of secrecy is understood to be indispensable for achieving certain policy objectives, in particular with respect to the defence and intelligence sectors.61

Government secrecy can also have harmful effects on the relationship between citizens and their government.62 It can be used as a blanket to conceal abuse, corruption or incompetence. A high level of secrecy shuts out dissenting perspectives. Overall then, secrecy prevents citizens’ engagement in informed debates. If applied excessively, government secrecy can create a ‘parallel regulatory regime’.63 Yet by creating a culture of secrecy in the War on Terror, the US government arguably diminished its accountability to citizens as well as its overall democratic legitimacy.

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60 Shane, ‘A History of Publishing’.
61 Schoenfeld, *Necessary Secrets*.
Moreover, governments can understand secrecy as ‘a source of power and an efficient way of covering up the embarrassments, blunders, follies and crimes of the ruling regime’.64 One of the most secretive and sensitive areas of intelligence work is that of international cooperation. Concerning the CIA’s in-house Public Relations Board, which aims at preventing the public disclosure of classified information in order to avoid injuring national security, the Board’s former chairman John Hedley maintained: ‘We always have to be aware of material that discusses joint activities – something that we might have done with the British for example. Liaison is something we get really anxious about. The line we take is invariably: “We can’t talk about this”’.65

To sum up, while the operational reasons for secrecy in a particular context are clear, it always poses a challenge from the perspective of democratic governance. The democratic process cannot be (fully) operable under such circumstances. The American policy discourse on the War on Terror has an impact on this debate. As Arkin stated, ‘(w)artime analogies lend seeming legitimacy to the enforcement of secrecy’.66 Both the administrations of Bush and Obama have demonstrated a tendency towards increased government secrecy. A crucial example of the disregard for transparency by governmental officials being the destruction of 92 videotapes covering interrogation sessions with two detainees by CIA officials between April and December 2002. It is now known that at least 12 of the tapes showed the use of ‘enhanced interrogation techniques’, such as water-boarding. In a lawsuit, the American Civil Liberties Union (ACLU) requested the release of certain information from the CIA, which would have included the videotapes. Despite the judge’s order to ‘produce or identify all responsive documents’ by 15 October 2004, followed by repeated demands, the CIA did not even reveal the existence of the tapes.67 Rather, it destroyed the videotapes in November 2005 and only publicly acknowledged this in December 2007.68

Moreover, both administrations have demonstrated a tough stance towards ‘leaks’ and journalists who claim their right to protect confidential sources. The Bush administration used FBI probes to investigate several journalists and polygraphing inside the CIA to identify alleged

67‘Opinion and Order Denying Motion to Hold Defendant Central Intelligence Agency in Civil Contempt’, United States District Court Southern District of New York, Doc. 04 Civ. 4151 (AKH), Filed on 5 October 2011.
68Hayden Statement to CIA Employees, 6 December 2007. See also Eric Lichtblau, ‘More E-mail Files on Torture are Missing’, New York Times, 27 February 2010.
whistleblowers. More surprisingly, the Obama Administration has pursued leak prosecutions with a surprising relentlessness. . . [I]t has been using the Espionage Act to press criminal charges in five alleged instances of national-security leaks – more such prosecutions than have occurred in all previous Administrations combined. Only two of the five cases were carried over by Obama’s Justice Department from the Bush years, one of which concerns the NYT journalist James Risen. In his 2006 book State of War, Risen discussed an alleged botched CIA programme which was aimed at harming Iran’s nuclear ambitions. Prosecutors allege that a former CIA employee, Jeffrey Sterling, provided Risen with top-secret information about the programme. Sterling was fired in January 2002 and is, in an ongoing court case, indicted on ten counts related to leaking classified information.

Before Congress, Acting Under Secretary of Defense for Intelligence Michael Vickers identified the unauthorized disclosure of classified information as a crucial challenge for US Defense Intelligence in 2011. Given these extensive limitations, reporting on intelligence services and their work is a challenging task. In principle, many aspects of intelligence are easy to ‘sell’. Yet, due to the overall secrecy regarding matters of national security, few journalists have sufficient knowledge of intelligence. Media scrutiny therefore relies to a great extent on such specialized, investigative journalists. Moreover, any journalist working on intelligence-related topics depends to a considerable extent on information provided by governmental authorities. This makes the verification of the provided information difficult. Given these restrictions, journalists are highly dependent on information provided by informants.

The Intelligence Services’ Own Agenda

What further complicates the role of the news media in oversight is that intelligence services, and governments as a whole, have their own media strategies. Intelligence services use media channels to communicate with

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the wider public.\textsuperscript{75} In the post-Cold War era, many Western intelligence services have opened up to an unprecedented level. In the UK, for example, a former head of GCHQ, Sir David Pepper, said in a BBC2 television programme that he thought ‘it’s actually a healthy thing to do [an interview]. I think it’s very healthy in a society that people do understand what agencies there are to protect them, what the powers are they have and what the controls are.’\textsuperscript{76}

A general concern for the agencies is that they can rarely publish success stories without jeopardizing sources, methods or operations. Referring to the CIA, in 1959 President Dwight D. Eisenhower emphasized that ‘[s]uccess cannot be advertised; failure cannot be explained’.\textsuperscript{77} As a consequence, intelligence practitioners find themselves in a difficult position when media outlets report on operational activities. As General Michael Hayden, CIA Director between 2006 and 2009, later put it: ‘[W]hen the media claims an oversight role on our clandestine operations, it does so in an arena where we cannot clarify, explain, or defend our actions without doing further damage to our sources and methods’.\textsuperscript{78} Indeed, despite numerous allegations in American as well as European news media concerning the US secret detention policy and the extraordinary rendition programme, for example, the American intelligence community did not publicly respond to such claims. A rather rare exception occurred in May 2011 concerning the operation that led to the killing of Osama bin Laden in Pakistan.

While intelligence officials tend to point out such challenges, Richard Aldrich suggests that intelligence services have been very much concerned to shape public perceptions in recent decades. In fact, ‘much of what we know about modern intelligence agencies has in fact been placed in the public domain deliberately by the agencies themselves . . . often using the medium of the press’.\textsuperscript{79} From the media’s perspective, the immediate danger is that they have to rely on the selected information provided. Intelligence services, however, are likely to have good reasons for the release of a particular piece of information at a particular point in time and under particular circumstances.

Conclusion

The news media play an important role in the political life of contemporary democratic societies. This article has shed light on those parts of the media

\textsuperscript{76}Sir David Pepper, BBC2 ‘Who’s Watching You?’, 1 July 2009.
\textsuperscript{78}Hayden Statement to CIA Employees, 6 December 2007.
\textsuperscript{79}Richard Aldrich, ‘Regulation by Revelation? Intelligence, Transparency and the Media’ in Dover and Goodman, \textit{Spinning Intelligence} pp.13–36 (p.18).
which refer to aspects of accountability and oversight of the intelligence realm. Exploring American media coverage of counter-terrorist efforts in the post-9/11 era, three key roles for news media have been identified. Firstly, a crucial purpose refers to the transmission of information about governmental activities to the public domain and by revealing information. By doing so, media coverage can also perform as a stimulator for formal scrutinizers. In several cases discussed in this article, journalists have effectively woken up lethargic formal oversight bodies to questionable intelligence activities.

The second role identified is that of a substitute watchdog. The illustrative examples in this article suggest that, in some cases where formal scrutinizers appear to be inept or unwilling to investigate a matter, the news media are capable of critically examining the abuse of powers or human rights by intelligence agencies. Maybe more so than formal intelligence oversight forums, they cover both domestic (e.g. with respect to the NSA’s wiretapping) and transnational activities (e.g. the complex web of the CIA’s extraordinary rendition programme). Due to rapid global communications, major news media outlets can draw on an increasingly wide range of sources and information in near real-time. Given the increase of global intelligence efforts, this is an important capability. Many formal oversight bodies are restricted in their work by an explicit mandate to focus on domestic issues.

Finally, the role of the media as a legitimizing institution was identified. In a rather indirect and informal way, media coverage can contribute to the legitimization of intelligence services and the related policies and activities. Though this is a less obvious function of intelligence oversight, the general idea of establishing scrutiny systems for the field of intelligence and national security incorporates the aim of fostering citizens’ trust into their intelligence services.

Overall, the research has shown that the media’s scrutiny functions are practised in an infrequent, ad hoc and informal manner. The media, thus, provide an uneven quality of intelligence oversight and, while contributing to the scrutiny of intelligence, do not easily fit into existing conceptual frameworks of intelligence oversight. This is partly the case due to external factors, such as government secrecy and the intelligence services’ own media strategies, which severely restrict the work of journalists covering intelligence topics. Yet the pre-war coverage by American media outlets concerning Iraq also showed that the media can easily turn into a ‘lapdog’ which insufficiently challenges official policies and information. Future research will have to further re-evaluate the complex relationship between citizens, the media, the intelligence services, policy-makers and formal scrutinizers in the post-9/11 era.

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