ETHICS IN MILITARY MEDIA RELATIONS

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ABSTRACT

This paper examines “Ethics in Military Media Relations”—specifically the ethical concepts and principles at work in press operations supporting Department of Defense policy to make timely and accurate information about national security and defense strategy available to the public through news media. The focus is on the clash of professional ethics from the military and journalistic viewpoints, and the application of media ground rules to reach ethical outcomes while protecting national security interests.

The analysis is based on the framework developed by Lawrence Lessig to describe forces that regulate behavior in cyberspace and in the real world: Laws, Norms, Market and Architecture. The model was found to be readily adapted to military media relations because much of the output of multi-media today is web based, yet still dependent upon traditional forms of media. This framework is also used as the template to examine behavioral forces real-world media relations, specifically: (a) Laws that protect sensitive information; (b) Norms derived from professional codes of ethics for both media and military communicators shape expectations how things should be; (c) Market forces influence conversation where ideas, news and information is exchanged;
(d) Architecture of institutionalized rules and standard operating procedures within the military that form a culture of rational calculation and control within DoD.

Three cases provide the real-world context for understanding split duties and loyalties between military public affairs and media professionals, and to amplify our understanding of key issues and ethical dilemmas: 1) The *Rolling Stone* interview with General McChrystal, 2) Media coverage of military hearings on detainees held at Guantanamo Bay, 3) *WikiLeaks* posting of classified military documents and diplomatic cables. The cases were chosen because the circumstances surrounding them are well documented. They are also vivid examples where professional ethics from the military and journalistic viewpoints “clashed” and where the consequences are easy to appreciate.

Among key findings, it appears members of the military and media are genuinely sensitive and respectful of Laws, Norms and Architecture established to protect sensitive information. When conflict arises in the media, the Market (media market) serves as a clearinghouse for public conversation to vet conflict, until the central ethical issues surrounding conflict are resolved to the satisfaction of the reporting community. This suggests that despite laws and policies in force to protect sensitive information, that “whole of community” perceptions of “how things should be” ultimately set the boundaries for acceptable ethical media coverage.
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# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABSTRACT</td>
<td>ii</td>
</tr>
<tr>
<td>ACKNOWLEDGMENTS</td>
<td>iv</td>
</tr>
<tr>
<td>CHAPTER I</td>
<td>1</td>
</tr>
<tr>
<td>INTRODUCTION</td>
<td></td>
</tr>
<tr>
<td>CHAPTER II</td>
<td>3</td>
</tr>
<tr>
<td>FRAMEWORK</td>
<td></td>
</tr>
<tr>
<td>CHAPTER III</td>
<td>27</td>
</tr>
<tr>
<td>CASE STUDIES</td>
<td></td>
</tr>
<tr>
<td>CHAPTER IV</td>
<td>71</td>
</tr>
<tr>
<td>DISCUSSION</td>
<td></td>
</tr>
<tr>
<td>CHAPTER V</td>
<td>79</td>
</tr>
<tr>
<td>CONCLUSION</td>
<td></td>
</tr>
<tr>
<td>BIBLIOGRAPHY</td>
<td>82</td>
</tr>
</tbody>
</table>
CHAPTER I

INTRODUCTION

On fundamental ethical principles in journalism and on reporting, both the Department of Defense (DoD) and the media place very high weight on the accuracy, integrity and public accountability on their work. On fundamental ethical principles concerning the withholding of information, the DoD and media also place high weight on respect for decency, acceptability and personal privacy. While there is marked consistency and agreement on high ethical principles of accuracy and decency in journalism, situations involving sensitive information are problematic, because the military has a duty to protect some information and journalists can no longer act independently to verify facts.

The relationship between the military and the media becomes tenuous in situations involving sensitive information because the immediate duties clash. Restricted access, enforced by military’s duty is to protect information, prevents journalists from fulfilling their duties to independently verify facts. When this happens, trust becomes a significant issue and the military is often suspected of “hiding the truth.” The problem is compounded when the issues involve politics.

Media ground rules are an enormously helpful tool to deal with situations involving sensitive information. However sometimes, ground rules are insufficient to overcome split duties and loyalties of Public Affairs and Media professionals.

The thesis, will build upon an approach by Larry Lessig on the question of regulation, to examine constraints outside the effects of law that regulate behavior in
media relations, and call attention to the role of ethical values as an ultimate constraining force, in the “media landscape.” Using real-world case studies to exercise Lessig’s model, the thesis will validate an enhanced version of Lessig’s model proposed by Richard Spinello, holding that ethical considerations provide the ultimate regulation on behavior.

The principle hypothesis of this thesis is to defend the validity of Spinello’s model in media relations, that eudemonia (human flourishing) is the ultimate regulator in media relations, and that despite laws and policies in force to protect sensitive information, ethical judgments that ultimately define the boundaries for acceptable ethical media coverage.
CHAPTER II
FRAMEWORK

Actors

The primary actors in military media relations are members of either of two separate and distinct communications professions (or vocations); Military Public Affairs and Civilian Journalists. For this paper Military Public Affairs and Civilian Journalists represent the “whole-of-community” at work to communicate information about the military to the public. The focus of this paper is on the relationship between these principal actors, and the ethical considerations, including moral obligations and responsibilities, that come into play when these groups undertake to inform the public.

Military public affairs, as a subset of the military community, includes the full spectrum of professional communicators; uniformed, civilian and contract communicators who fulfill a specialized role in the military, communicating information about the military to the public, in accordance with DoD policy.

Civilian journalists as a community, particularly those who cover military affairs, include the array of professional (and vocational) communicators in the marketplace of mainstream television, print and internet, as well as citizen and aspiring communicators. They serve independently and collectively to communicate information about the military to the public, in accordance with policies, codes and conventions of their respective communities.

Military communicators are distinguished from civilian communicators primarily by their relation and access to military information. Communicators within
the military community are considered “internal” communicators. Communicators outside the military community are considered “external” communicators. While some “internal” communicators provide information to external audiences, they are considered internal, because they are members of the military public affairs community.

Individual actors within either group can be further distinguished by their role in handling information as a commodity – such activities include storage, processing, transfer, or release and delivery of information. In the military, public affairs personnel assist the department by collecting and processing information internally for release, and by regulating the transfer and delivery of information to public. Similarly, and especially within large news organizations, reporters, producers and editors work together to collect, process and deliver information to the public.

*Actors as Members of Professions with Codes of Ethics*

Both military public affairs and civilian journalism communities as a whole reflect three characteristics of professionals described by Samuel Harrington\(^1\). These characteristics include: 1. Expertise, only acquired through education and experience, 2. Responsibility, specifically social responsibility, recognizing the client, is society, and, 3. Unity (or “corporateness”), that comes with the combination of expertise and social responsibility assumed by members, that separates them from laymen.

Expertise in military public affairs community is established through a combination of prescribed entry-level training and on-the-job experience. Uniformed

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members of the military public affairs community start off their careers in basic training. Basic training is an intense physical, mental and emotional training program tailored to provide new recruits with basic discipline, teamwork and foundational knowledge. It is usually followed by advanced individual training or officer training that is technical in nature, to instill competency in a specific career field. Overall, the effect of initial training is a life-changing experience, where recruits from different levels of cultural and society are instilled with “corporate” values that are essential for the esprit de corps and cohesion for battlefield conditions.

Harrington argued that military officers who mastered the technical or professional support area of military activity were not technically members of the “military” profession, because their expertise was split between the management of violence and technical or job-related knowledge, the latter of which (ie. public affairs communications as presented here) is not unique to the military.² In practice, each service has a unique cultural approach to Public Affairs training. The Army for example, places a particularly high value on “being”³ an American Soldier, and requires officers to be branch qualified in an Army vocation (ie. trained and experienced in traditional Combat, Combat Support or Service Support role) before receiving specialized training in Public Affairs.⁴ Generally speaking this philosophy is reflected

² Ibid.
throughout the military community that believes there is no-one more credible to tell the military story, than a Soldier, Sailor, Airman or Marine.

Unlike the military or many other professions, civilian journalists do not need any special training to practice their craft, even though professional skills in journalism are probably the most-recognized measure of media quality. Most entry-level professional journalists come out of university-based journalism programs, making university education, an important factor in journalism as a profession.

Both the military and civilian journalist communities generally support or encourage their members to participate in professional organizations aimed at furthering their professions, the interests of individuals engaged in that profession, and the public interest. Professional organizations aimed at improving and protecting journalism, such as the Society of Professional Journalism offer a broad range of professional development opportunities. Professional development efforts take on many forms, including limited scope workshops, and long-term courses, videos, online research tools and distance learning.

As with professional societies in journalism, the military as an organization places high value on ethics and its corporate “codes of ethics.” Internally, policy experts and editorial staff members review information prior to release to the public. Externally, professional societies such as the Society of Professional Journalists, and members of

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the public police what they see, either by accepting or pushing-back on editors, based upon their expectations and perceived acceptability for what is “right.”

*Regulating the Release of Information*

Superficially all military information that is communicated to the public is treated as military “property” in all its forms. As property, military information must be released to the public, by an authorized representative of the military, through journalists or directly to the public, in accordance with special rules and procedures designed to safeguard the military, its members and national security interests.

Public Affairs policy recognizes the role media and communications plays as a vehicle of an open society to building vibrant and tolerant democracies, whose governments are accountable to their citizens. Facts and figures, while important to a good story, are generally not sufficient alone to explain complex operations and the context of military decisions. The ultimate strategy for success in bringing peace, security and commitment to democratic ideals, places emphasis on making sure the factual story is told, good and bad, before others seed media with disinformation and distortion.\(^7\) This openness has the consequence of providing media access to non-public affairs military personnel, who may have very little experience dealing with media, increasing potential risk for sensitive information to be passed and reported unchecked.

Overall behavior in media landscape is regulated along the invisible framework that recognizes education and experience, places a premium on professionalism, social

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responsibility, and alignment with corporate code. Members share duties to protect information, and responsibilities to regulate the flow of information presented to the public, in accordance with this code. Generally speaking, the relationship between actors functions smoothly, in the spirit of cooperation. It is not until access to information is withheld, that conflict arises and professional interests diverge, and the spirit of cooperation breaks down.

Kant and Hegel helped us to see that every individual, group, organization or other unit in society represents a force whose actions stimulates many counter forces. When force meets counterforce, either cooperation or conflict can result, depending on many factors.\(^8\) This paper takes only an introductory view of conflict, looking at only immediate sources of conflict resulting from control of information, while recognizing there are numerous other abstract and formal ways to evaluate and understand conflict.

Lawrence Lessig, the director of the Edmond J. Safra Center for Ethics, and a Professor of Law at Harvard Law School, developed a model to examine constraints that regulate behavior. His model is a useful tool to examine military media relations as well, and to understand ethical components of behavior between Public Affairs and professional media. The model identifies four distinct modalities that regulate behavior together (Laws, Norms, Market and Architecture). The “net regulation” is the sum of the regulatory effects of the four modalities together.\(^9\)

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According to Lessig, laws (in at least one of its aspects) orders people to behave in certain ways, and offer punishment if not followed a certain way. Norms do as well, but unlike law, norms are expectations about how things should be and are enforced socially (if at all) by a community, not by a government. Market includes net forces of supply and demand, that influence price, range of opportunities and motivation. The fourth constraint is architecture, which refers to physical limits, either how we find it, or how it is made. Architecture is “code” embedded in the rules, instructions and protocols for exchanging data and information.

*The Lessig Model: Modalities of Regulation*

Laws: Freedom of Press and Protection for Sensitive and Classified Information

Numerous executive, judicial and legislative protections that support Constitutional right to freedom of press provide a legal framework for the publishing of military information. They also provide special protections for the safeguarding of sensitive information, where unauthorized disclosure could be harmful to national security. Freedom of press is held in such deference, there are even special protections afforded to journalists, against having to reveal sources of information.

The First Amendment of the United States Constitution protects the right to freedom of religion and freedom of expression from government interference. Freedom of expression consists of the rights to freedom of speech, press, assembly and to petition the government for a redress of grievances, and the implied rights of association and

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10 Ibid.
belief. The Supreme Court interprets the extent of the protection afforded to these rights.\textsuperscript{11}

The most basic component of freedom of expression is the right of freedom of speech, or of the press. The right to freedom of speech allows individuals to express themselves without interference or constraint by the government. It allows an individual to express themselves through publication and dissemination. It is part of the constitutional protection of freedom of expression. It does not afford members of the media any special rights or privileges not afforded to citizens in general.\textsuperscript{12}

Information that is considered vital to our national defense is protected by the Espionage Act of 1917. At its inception, the act was contested and the Supreme Court had upheld the Act having found that is serious matters of national defense the act was constitutional and was not in conflict with the First Amendment.

The Espionage Act is codified in 18 USC, Part I, Chapter 37, Section 793 Gathering, transmitting or losing defense information, Section 794 Gathering or delivering defense information to aid foreign government, and Section 798 Disclosure of classified information.\textsuperscript{13} The statutes are very specific with respect to the intent by persons to do harm or to injure the US, and apply fundamentally to those who conspire

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\textsuperscript{12} Ibid.
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\textsuperscript{13} Legal Information Institute, “Chapter 37 – Espionage and Censorship,”\textit{ Cornell University Law School}, \url{http://www.law.cornell.edu/uscode/18/usc_sup_01_18_10_1_20_37.html} (accessed February 9, 2011).
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to transmit information. Knowingly violating these statutes is punishable for up to ten years.

Other statutes provide protection against those with malicious intent taking information; 18 US Code, Part I, Chapter 47, Section 1030 Fraud and related activity in connection with computers, and, Part I, Chapter 31, Section 641 Public money, have been used to prosecute “leakers\textsuperscript{14}” by prohibiting the use of computers in connection with the leak, and by prohibiting the willful taking, and conversion of “anything of value” from its appropriated use to his own or that of another, without proper authority.

Within the federal government, Executive Order 12731 of October 17, 1990, and codified in 5 C.F.R. part 2635, establishes fair and exacting standards of ethical conduct for all executive branch government officers and employees. The order requires federal employees to place loyalty to the Constitution, the laws, and ethical principles above private gain, to ensure that every citizen can have complete confidence in the integrity of the Federal Government. Specific principles include but are not limited to put forth honest effort in the performance of their duties, protection of Federal property (\textit{precipue}, information) for authorized use, and to avoid any actions creating the appearance that they are violating the law or the ethical standards.\textsuperscript{15}

Within the military, there are strict rules and procedures meant to protect information, and military personnel have duty to protect it. Military personnel, having


taken an oath to uphold and defend the constitution, have a duty to protect our national
defense, and thus held to higher ethical standard. The Uniform Code of Military Justice
is the primary legal enforcement tool of the armed services. It is similar to, but separate
from, the civilian criminal justice system. There are also Department of Defense and
Service-specific regulations and instructions, such as DoD Joint Ethics Regulation,
Army Regulations and/or Air Force Directives which provide specific guidance and
instructions for its members.

Many states have Shield Laws, or reporter privileges, which provides news reporter with the right to refuse to testify as to information and/or sources of
information obtained during the news gathering and dissemination process. Some states
offer absolute privilege concerning confidential sources, and those where the privilege
is either qualified (a balancing test applies) or where there are exceptions that allow the
privilege to be overcome.A few states protections extend to public officials, not be
compelled to disclose the source of information procured or obtained while acting in the
course of official duties.\footnote{The Reporters Committee for Freedom of the Press, "Shield Laws and Protections of Sources

The Shield Laws provide definitions that are helpful in distinguishing journalists
as members of a distinct group or trade, such as; “Reporters” (any person regularly
engaged in the business of collecting, writing or editing news for publication through a
news medium on a full-time or part-time basis; and includes any person who was a
reporter at the time the information sought was procured or obtained\footnote{\textit{Illinois Code of Civil Procedure}, 735 ILCS 5/8-902.}), “Information”
(any oral, written or pictorial material and includes, but is not limited to, documents, electronic impulses, expressions of opinion, films, photographs, sound records, and statistical data,\(^{18}\)); “News Medium” (any newspaper or other periodical issued at regular intervals whether in print or electronic format and having a general circulation; a news service whether in print or electronic format; a radio station; a television station; a television network; a community antenna television service; and any person or corporation engaged in the making of news reels or other motion picture news for public showing.\(^{19}\)).

While Shield Laws do not exist in federal law, both the House and Senate have voted in recent years on bills that would have incorporated language that would exclude amateur journalists, student journalists as well as bloggers with a day job, from protection. Under the current proposed Free Flow of Information Act, the federal government must prove to a judge that the information sought outweighs the journalist’s need to keep confidential information. The Society of Professional Journalists, with other news organizations and press advocates, strongly encourages the passage of this law and will continue to push for its approval.\(^{20}\)


Norms: Social Acceptability across the Professions

On fundamental ethics principles in journalism, the department of defense public affairs professionals and civilian journalists place very high weight on the accuracy, integrity and public accountability on their work. This is reflected in the similarities between DoD Principles of information and all the prominent professional journalism society codes of ethics.

DoD’s first principle of information, “to make available timely and accurate information to the public”21 is equivalent to three of the news industry's widely accepted standards of journalism; the Society of Professional Journalists code of ethics preamble, to “seek truth and report it,”22 the Associated Press Statement of News Values and Principle--“to ensure that the news was reported quickly, accurately and honestly”23 and the New York Times Core Values, “content of the highest quality and integrity—the means by which we fulfill public trust.”24

On ethical principles concerning the withholding of information, the DoD and accredited media also place high weight on respect for decency, acceptability and personal privacy. Among DoD guidelines for the release of information press officers apply and uphold the rules of “Security, Accuracy, Policy and Propriety” (SAPP) and

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the Privacy Act. 25 These principles are reflected likewise in the news industry’s widely accepted standards; the American Society of Newspaper Editors set forth their “Statement of Principles” encouraging highest ethical and professional performance including “respect rights of people involved in the news, observe the common standards of decency”26, SPJ code of Ethics “Minimize Harm – Journalist should recognize that gathering and reporting information may cause harm, recognize privacy, show good taste, avoid lurid curiosity”27, and APME Statement of Ethical Principles “Responsibility – The good newspaper is decent and respects the individual right to privacy.”28

At the Pentagon, the experience and education levels among defense press staff is comparable to members of the press corps. On the whole, experience, education, and training reflects the demands, intellectual requirements, and importance of communicating timely and accurate information about national security and defense strategy to the public. It also reflects the value placed on professionalism and the premium on ethical principles of their profession.

Most members of the Press Corps staff have at least ten years covering defense matters. Senior correspondents have usually between 15 to 20 years, and the most


senior correspondents have as much as 40 years in the trade. It is typical for press
officers to also have between fifteen to twenty years of experience in the public affairs
field as well. These years of trade experience in public affairs training, military press
officers and enlisted personnel receive service-specific training as part of their military
indoctrination that reflects time honored traditions and values of their service.

By virtue of time and experience in journalism, members of the press corps are
similarly well-indoctrinated in their profession and exhibit a personal and professional
system of ethics that is consistent, deeply aligned and reflected in their work.

Although experience and educations levels are comparably high at the pentagon,
it should be noted that the experience and expertise of military public affairs
practitioners and the media outside the pentagon is less consistent in the field. It is fairly
common for unit level public affairs officers to have less experience both in the military
and in public affairs than do reporters in their respective field.

In general, media outside the Pentagon, like members of the general public, are
less informed about and less familiar with the military. As a result the combination of
less experienced press officers and unfamiliar, inexperienced media increases the risk
for mistakes and potential for inaccurate reporting outside the Pentagon, and the
importance placed by the department of defense on maintaining strict protocols for the
release of information.

Market: The Media Landscape

According to Lessig, the market includes net forces of supply and demand, that
influence price, range of opportunities and motivation. An advocate for protecting open-
source, Lessig’s believes the market requires a legal framework to counter private action that that threatens negative public consequences. He underscores the requisite for transparency for markets work, so that the market reflects an aggregate of public preferences, rather than what corporations or government decides what should be made available. 29

The media market is extremely dynamic and competitive and the way people keep in touch has changed dramatically over time and expand as new forms of media sources are developed. 30 The ways we receive news has evolved by the combination of technology developments in the private sector, cooperation among news outlets and government regulation designed to protect the public. These conditions have had a real impact on military media relations including greater expectation for access to information and real-time delivery to the public. An example of this has been the recent growth and accepted use of social media within the Department of Defense. 31

In the 1800’s, the only way to interact with other people was to go out and meet them. Communication was face-to-face and the only way to get information - or to give information back - was to be at the right place at the right time. The telegraph was the first instrument used to send information over long distances linked large cities.

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Newspapers and magazines used the telegraph to get information needed to tell readers what was happening in the world.\textsuperscript{32}

The first news cooperative was organized by Moses Yale Beach, publisher of The New York Sun, who established a pony express to deliver news of the Mexican War in 1846. His express sped dispatches ahead of the Great Southern Mail from Mobile to Montgomery, Alabama, where the mail coaches carried them to the nearest telegraph point near Richmond, Virginia. Offering equal interest in the express venture to the major New York City daily papers (four of whom accepted) Beach organized what soon became known as The Associated Press.\textsuperscript{33}

By the year 1900, news and ideas traveled to us from places we had never been and by people we had never met. It was the first real revolution of information.\textsuperscript{34} The invention of the wireless telegraph followed by the first radio broadcast in 1906 paved the way for licensed radio broadcasting that developed in the 1920’s and 1930’s. Radio changed the way people received information most importantly by transmitting news and information live. Within a short span of time, attention shifted from newspapers to radio, and news could be heard anywhere a radio broadcast could reach.

In 1927, the Federal Radio Commission was formed and the Radio Act of 1927 was passed which re-assigned stations to clearer frequencies, and for the first time made

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radio stations operate in the public interest, convenience and necessity.\textsuperscript{35} In 1933, newspapers fearing that the immediacy of radio news will drive them out of business, leveraged their cooperatives such as the Associated Press and United Press, and refused to let radio stations read from their pages until after the papers hit the streets.\textsuperscript{36} Radio news departments were formed and cooperative members were automatically granted permission to distribute cooperative news reports.\textsuperscript{37}

During the next 40 years, television was introduced and quickly surpassed newspapers, magazines and radio as a means for communicating news and information. Large companies called networks were formed to produce television programs. Networks include many television stations linked together that could broadcast the same program at the same time.\textsuperscript{38} The Communications Act of 1934 combined and organized federal regulation of telephone, telegraph, and radio communications. The Act created the Federal Communications Commission to oversee and regulate these industries. As new communications technologies have been created, such as broadcast, cable, and


\textsuperscript{36} Ibid.


satellite television, new provisions governing these communications have been added to the Act.\textsuperscript{39}

The Internet has revolutionized the communications landscape like nothing before. The idea of the Internet came in the early 1960s with the development of computers and by those who saw great potential value in allowing computers to share information on research and development in scientific and military fields. The first recorded description of the social interactions that could be enabled through networking was a series of memos written by J.C.R. Licklider of MIT in August 1962 discussing his "Galactic Network" concept. He envisioned a globally interconnected set of computers through which everyone could quickly access data and programs from any site.\textsuperscript{40}

Commercialization of the internet evolved from commercial efforts to provide access and connectivity to increasingly sophisticated information services, such as easy access to information linked throughout the globe. One of the most significant recent developments with the internet came when people discovered, beyond spectator use as a source of information, the use of internet experience to join in conversation.\textsuperscript{41}

Today news is not only being reported by journalists, but by members of the general public who use web-based and mobile technologies to turn communication into


an interactive dialogue. This form of consumer generated media, known as social media, is distinct from traditional forms of media such as newspaper and television and takes on many forms, including collaborative projects, blogs, content communities, social networking, virtual game worlds and virtual social worlds.\(^{42}\)

One characteristic that is similar between online and traditional media is its ability to reach small and large audiences. In the newspaper market, many traditional papers have launched online editions to extend the reach of their brands that co-exist with paper editions. Scholarly research on the use of the online editions has found that the use of online editions lags behind traditional print editions. In most cases, news cites (portal cites, national news cites, etc.) other than the online editions, remain the leading news source for the local online news audience. According to a Pew Research Center survey, among regular online news users, the most frequently visited news sites are MSNBC (31 percent), Yahoo! (23 percent), CNN.com (23 percent), Google (9 percent), AOL (8 percent) and FoxNews.com (8 percent)—none of which is affiliated with a newspaper.\(^{43}\)

While the US newspaper industry is characterized by localism, television and radio markets are regional and usually identified by largest city where the population can receive the same television and radio programming. The top ten television and radio markets, including New York City, Los Angeles, Chicago, Philadelphia, Dallas-Fort...


Worth, San Francisco Bay Area, Boston, Atlanta, Washington DC, Houston, Detroit and Phoenix reach more than 34 million homes (about 10% of USA population).

Although television, radio and internet have tremendous reach, according to the Newspaper Association of America, research by Scarborough Research the Readership Institute at Northwestern University shows that 73% of adults read newspapers or visit a newspaper website in a week and 46% say newspapers are their preferred medium to receive information. This research also showed that newspaper audience increases with household income and with job responsibility.

Media access to the military is offered at a premium, by way of accreditation, to journalists, correspondents and outlets that are listed in major news directories and belonging to national professional associations, and press rooms. Accreditation certifies competency and proper authority to cover military activities which is specialized and has potential to be very dangerous.

What distinguishes accredited journalist from non-accredited media is either or both of two things; either the journalist has earned certain credibility, or reputation for adhering to professional ethics in journalism, and/or the reporter is employed by accredited agency meeting prescribed professional standards in journalism.

A hallmark of accredited reporter is that he or she is recognized inside and outside of their trade, to promote excellence in their field, through their support of professional associations. For example, the Associated Press fosters excellence in

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journalism through the Associated Press Managing Editors for the advancement of newspaper journalism.\textsuperscript{45}

**Architecture: Rules, Instructions and Protocols in Military Media Relations**

DoD Principles of Information constitute the underlying philosophy on journalism and reporting for the department.\textsuperscript{46} They form the foundation of public affairs policy and doctrine, as well as the guiding principles for ethical professional conduct within defense press operations. These principles form the basic protocols or “architecture” of military media relations, according to the Lessig model.

Defense Press Operations (DPO) is the activity within the Department of Defense whose mission is to work and interact with media in accordance with DoD Principles of Information for the purpose of informing the public about the military. The DPO is staffed by trained public affairs officers and enlisted personnel, civilian and contract professionals, who have specialized expertise in military public affairs policy and doctrine. The Pentagon Press Corps is the group of accredited journalists stationed at the Pentagon to cover the DoD events and news briefings. They are highly seasoned reporters on military and national security issues.

While there is marked consistency and agreement on high ethical principles of accuracy and decency in journalism, situations involving sensitive information are problematic, and professional interests of the military and the media clash, because the


military has a duty to protect some information and journalists can no longer act independently to verify facts. This creates significant tension between military press officers and journalists, and puts the professions at odds.

When this happens, trust becomes a significant issue and the military is often suspected of “hiding the truth”. CNN's former senior Pentagon correspondent Jamie McIntyre characterized this aspect of the relationship between military and reporters, as “frenemies”-- a cross between friends and enemies--because military officers cannot tell reporters what (everything) they’re thinking, without being in peril of losing their jobs. (This explains why many members of the military who seldom deal with the media, are often averse and even afraid to deal with the media.)

Media ground rules are an enormously helpful tool to deal with situations involving sensitive information. The rules are up-front agreements on topics and levels of detail that can be discussed and reported. The ground-rules provide an understanding, and framework to share information, to the greatest extent possible, without compromising national security.

The rules leverage agreement where trust cannot be taken for granted. Although ground rules do not provide a 100% solution for journalists, the framework does produce a constructive middle-ground for press officers and media practitioners to


apply mutually accepted individual and professional ethical principles. Ground rules form a contract, between the military and media on the acceptable terms, tactics and conditions they will achieve a mutually acceptable and ethical objectives, despite limited transparency for purposes of national security.

Ground rules range from the very simple verbal agreements to very complex written contracts. The “simplest” ground rule can be a verbal agreement before an interview on the subject of the interview. The simple rule may be expanded depending on the situation, to further limit the range or level detail that questions will be taken about a particularly sensitive topic.

Media ground rules can also be very complex legal documents. For example, the current DoD Media Ground Rules with respect to media visits to Naval Station Guantanamo Bay, Cuba, (GTMO) and the media coverage of military commission proceedings is a thirteen page contract. Media representatives must agree to and sign the contract prior to being allowed access to the installation. Failure to follow the ground rules can result in removal and revocation of press credentials. 49

Members of the media are always at liberty to accept or refuse to provide coverage subject to these terms. By addressing these concerns up-front, the parties avoid post-reporting censure. At no time is any member of the media under pressure by the military to accept the ground rules except as a condition for granting access.

In most cases, the ground rules work as intended, and provide a practical framework to navigate trust issues so that the military and media can fulfill their

complimentary ethical and professional responsibilities. However sometimes, ground rules are insufficient to overcome split duties and loyalties of Public Affairs and Media professionals. It is helpful to look at cases things do not work out as planned or anticipated, so that we might incorporate lessons learned to be better prepared for future media engagements. The next section examines three “real-world” cases in which the relationship between military and media is stressed by a heightened state of distrust and, and ground rules alone fail to overcome a prevailing conflict between Public Affairs and Media professionals.
CHAPTER III

CASE STUDIES

The following real-world cases may be familiar to readers. The cases are recent and have played out in public eye drawing considerable regional, national and international media attention. They were chosen because the circumstances surrounding them are well documented by the media. They are also vivid examples where professional ethics from the military and journalistic viewpoints “clashed” and where the consequences are easy to appreciate.

In this chapter we examine the actions of primary actors and the circumstances in which they come together, leading up to the problem that sensitive or classified information was released to the public. The goal is this chapter is to exercise the Lessig model to examine regulation of ethical behavior in military media relations, and isolate the key ethical issues by modalities that Lessig refers to regulate behavior.

After brief introduction of each case, the key elements of each case are split into four modalities of the model (Laws, Norms, Market and Architecture). Through the Lessig lens, elements of potential conflict are suggested to explain actors apparent decisions (such as competing interests, tension, conflicting moral obligations, or circumstances that could have challenged personal and/or professional values and principles) leading to a tipping point or failure to cooperate, between Public Affairs and professional media. In Chapter IV, we will continue the discussion, to draw conclusions about media relations against backdrop of Laws, Norms, Market and Architecture, and define boundaries for acceptable ethical media coverage.
Case #1: “Split Loyalties” (General Chrystal and Rolling Stone)

Profile


Media Outlet: Rolling Stone magazine - known for its political coverage beginning in the 1970’s, devoted to music, liberal politics, and popular culture.

Problem: Public release on June 22, 2010 of private conversations between General McChystal and members of his inner circle, quoting criticism of General McChrystal, about Vice President Joe Biden and other senior members of the White House Administration.

Background

This was not the first time General McChrystal had expressed criticism toward the White House administration handling of the war in Afghanistan. The stage for this conflict was set early in the administration when the President had not yet decided on a policy for Afghanistan. In October 2009, the relationship between President Barack Obama and the commander of NATO forces in Afghanistan was put under severe strain by Gen Stanley McChrystal's when he said he could not support the Vice President’s plan to rely more on electronic surveillance and drone attacks. According to Jonathan Alter, Senior Editor of Newsweek and author of “The Promise: President Obama, Year One,” the president was livid, pushed back hard, to assert civilian control over the military, and ultimately decided McChrystal was naïve and keep him running the war in Afghanistan.
But when the *Rolling Stone* article broke six months later, it showed how deeply divided the administration still was about the war strategy, and how much the diplomatic and military sides do not see eye-to-eye. The President immediately recalled General McChrystal from the battlefield to Washington to accept his resignation face to face. “The Runaway General,” written by freelance reporter Michael Hastings, portrayed the top U.S. commander in Afghanistan and some of his aides as mocking toward Obama administration officials. Most of the offending material came out of a two-day stint with Gen. Stanley McChrystal in Paris that turned into nearly a month-long “embed,” according to Hastings.1

It is not clear why General McChrystal had agreed to interview with freelance reporter Michael Hastings for *Rolling Stone* Magazine. When the story broke, it caught McChrystal and his aides by surprise; on the day the story came out, McChrystal called the Vice President, Secretary of Defense, Chairman of the Joint Chiefs and other senior administration officials and offered his apology. Reactions by many who knew him ranged from shock to dismay to sadness to think-I’m-gonna-puke.2

ABC News reported that a senior military official told them that what happened was that *Rolling Stone* broke journalistic ground rules, reporting on private


conversations. But a spokesman for *Rolling Stone* magazine denied the allegation and said they were followed (the rules) "to the letter." According to Hastings’ editor Eric Bates, the Executive Director of *Rolling Stone*, in a June 22 appearance on MSNBC’s “Morning Joe,” all the quotes that got McChrystal in trouble were spoken when the speakers (McChrystal and his inner core) knew they were on the record.

During the immediate fallout and resignations of Duncan Boothby and McChrystal, neither offered a defense, discussed the details nor offered any explanation for the decision. This left many journalists questioning the judgment of McChrystal’s public affairs team.

Regardless, the episode seems in hindsight to have been easily avoided. Other presidents have experienced difficulties with their generals, but few have been played out in the media. This case caused a shakeup in military public affairs, and put into the spotlight, ethical issues surrounding military media relations.

**Discussion: Applying Lessig Model**

*Law: Focus on McChrystal*

On the face, it does not appear that Hastings did anything illegal by releasing details of McChrystal’s private conversations in Paris, or that Boothsby did anything illegal either by act or omission, in helping Hastings release that information. The legal implications, surrounding the release of “sensitive information” and associated

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4 Ibid.
behavior, rest entirely on the statements made by McChrystal and his inner circle, as reported in Hastings article “The Runaway General.”

The United States Constitution made the President the military commander in chief. Accordingly, military and service regulations provide policy protections for the presidency, and his administration, prohibiting all forms of insubordination including contemptuous speech. Any commissioned officer who uses contemptuous words, either in themselves or by virtue of the circumstances under which they were used, against the President, the Vice President, Congress, the Secretary of Defense, the Secretary of a military department, the Secretary of Transportation, or the Governor or legislature of any State, Territory, Commonwealth, or possession in which he is on duty or present, may be punished by a court-martial.5

General McChrystal’s remarks, as reported by Hastings, whether spoken by him or his staff, criticizing the administration (on or off the record), violated the Uniformed Military Code of Justice Articles 88 and 89 that prohibit contemptuous speech. The remarks suggest McChrystal faced a personal moral dilemma, one in which his personal and professional views may have been in conflict. It is unlikely given McChrystal’s polished and distinguished career, that he was unfamiliar with UCMJ or dismissive of leadership principles or Army core values to uphold and defend them. And yet it would appear at least in the article, that his need to express his criticisms outweighed his sense of military duty and good discipline.

Although McChrystal had never denied the statements in the article, a number of his former aides, who remain fiercely loyal to him, feel he was done in by his inner circle or by an adversarial reporter, and suggest fatigue over the strains of seven years of near-constant war might be to blame.\textsuperscript{6} We may never know the details of what happened or the motivations that inspired them. Other than what was reported in the \textit{Rolling Stone}, there is no other record or transcript of what was actually said.

A week after McChrystal’s resignation, the Vice Chief of Staff for the Army directed the Army Inspector General to determine the facts and circumstances surrounding the conduct and comments of members of the U.S. Army during their service as staff to, or in support of McChrystal, as reported in the \textit{Rolling Stone} magazine article, “The Runaway General.” After reviewing the initial IG report, the Acting Deputy Inspector General determined additional investigative work was required, and reviewed the article in question, where 10 sections of the article described conduct which might have violated DoD standards.\textsuperscript{7} The following standards are thought to apply:

1. Title 10, US Code, Section 3583, “Requirement of exemplary conduct”
2. Uniform Code of Military Justice (UCMJ), Article 88, “Contempt toward officials”
3. USMJ, Article 133, “Conduct unbecoming an officer and a gentleman”
4. DoD 500.7-R, Joint Ethics Regulation
5. Army Regulation (AR) 600-20, Army Command Policy, dated March 18, 2008
6. AR 600-100, Army Leadership, dated March 27, 2007


The Inspector General having reviewed the investigation report, reached two overarching conclusions based on the evidence they considered; 1. The evidence was insufficient to substantiate a violation of the applicable standards with respect to any of the incidents in question; and 2. Not all of the events at issue occurred as reported in the article (raising doubts on the accuracy of the article).

_Norms: Subject to Circumstances_

Access provided _Rolling Stone_ was loose by conventional military public affairs standards, but it was largely circumstantial; what was only supposed to be a two-day controlled exposure during a quick-turn trip to Paris, because of flight restrictions, morphed into an media embed lasting weeks, providing the reporter relatively free access to McChrystal. What was supposed to be a two-day controlled exposure, morphed into a month-long media “embed” when no-flight restrictions stemming from volcanic eruption forced Hastings to stay with McChrystal’s traveling party.

Normally interviews with senior defense officials like McChrystal are conducted in very controlled conditions and with very specific purposes and outcomes in mind. This situation was not controlled; MSNBC White House Correspondent Savanna Guthrie echoed a senior defense official’s comment that this was a “stunning lack of judgment and very amateurish, whoever green-lighted letting some reporter from _Rolling Stone_ come and talk with McChrystal on the record, and his inner circle.”

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According to Washington Post, Duncan Boothby, McChrystal’s senior media advisor, was heavily involved in arranging access for journalist Michael Hastings to McChrystal and his staff for this article. Boothby, although not a military officer or DoD press officer, was appointed to “supplement” McChrystal’s relative inexperience with media. He was one of a growing number of civilians hired as press aides for senior military brass as the wars in Iraq and Afghanistan continue to generate considerable public interest and controversy.

Boothby’s appointment, while it may reflect a growing trend, raises serious policy questions whether it is was appropriate, or in the best interest of the military, to contract military advisor for a senior military leader, especially one in a significantly sensitive national security position. Given McChrystal’s position and sensitivity, press advice may have been an inherently military function, and necessary quality to be sensitive and factor what is at stake when a journalist embeds with the military.

It is possible that Boothby misjudged Hastings; that he was too trusting, took too much for granted, and exposed McChrystal to far greater risk than was socially acceptable, under normal circumstances. If we assume Boothby was technically competent and knew what he was doing, we would expect he should have recognized the inherent risks of embedding a freelance journalist, and done his homework to know the journalist’s reputation for hit and run pieces posed risk, he should have advised to avoid the risk.


10 Ibid.
Market: Reporter Scores a Lucky Break

Three things were immediately apparent about the *Rolling Stone* article when it broke in the media. The first was that it was big - a blockbuster story. Second, although the article was primarily a print story, the internet would play an integral role in maximizing exposure and news would travel fast. Third, the media would play a roll in vetting the story.

According to *Rolling Stone*, Hastings had approached McChrystal's camp months in advance with the proposition of doing a profile for the magazine -- a "broad piece," in which he would cover a wide scope of the general's military history, talk to those who knew him on a personal level, and spend time with him in Afghanistan. In an interview with Joe Scarborough, the *Rolling Stone* editor Eric Bates, explained he was not surprised that McChrystal’s camp agreed to the request because the magazine’s audience is younger readers, people the Army is interested in reaching. What surprised them was that McChrystal’s team was not more “guarded.”

Both the reporter and editor knew they were sitting on something deeply newsworthy months before the article was published. In a Huffington post article, *Rolling Stone* editor Eric Bates said, “you can't read this story and not know from the first sentence that the comments in there are really explosive.” Even before that, Hastings had been in touch with him from the beginning when it became clear Hastings was getting “amazing access,” Bates said.
This was not the first time Hastings had been on a long-term, “super-sensitive” project. In 2008, he did a “behind-the-scenes” story for Newsweek, covering 2008 presidential elections. In an article Hastings wrote for GQ about that assignment, “Hack: Confessions of a Presidential Campaign Reporter,” Hastings described his job as basically, “to ride the buses and planes with the candidates, have big lunches and dinners on the expense account, get sources drunk and singing, then report back the story.”  

It is ironic that volcanoes erupting over Iceland would require Hastings to travel with McChrystal to Berlin by bus, during which he and his aides were drinking on the road trip "the whole way," according to Hastings.

From the standpoint of the media, everyone recognized the significance of the Rolling Stone story. Even MSNBC's influence with 'Morning Joe' had grown with McChrystal story; According to Nielson Company who tracks viewer ratings, during the hour he appeared, the "Morning Joe" audience of nearly 600,000 viewers far outpaced the season average of 377,000. The significance of increased ratings, as with hot stories in magazines at the newsstand, an increase in audience translates to increased advertising revenue. Bottom line, Hastings scored an unusual and profoundly lucky break and other media outlets who jumped in early to cover the story benefited as well.

Architecture: Media Embed Policy, Ground Rules and Enforcement

The Department of Defense had in place policy regulating access to media in Central Command Area of Responsibility at the time of the Rolling Stone interview, but

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it is not clear whether the policy or applicable protocols were followed. Although a number of short “on-record” interviews were conducted with a CENTCOM general during the trip to Paris and later in Afghanistan, many of the private conversations reported on in the article took place in Paris and in-route to Berlin, outside the CENTCOM area of responsibility. Second, while it appears the initial encounter was intended to be controlled and limited, once the circumstances changed, it does not appear anything was done to bring the policies in line with the new circumstances.

The Department of Defense policy document that provides guidance, policies and procedures on media coverage and embedding news media during operations / deployments in Afghanistan (CENTCOM area of responsibility) was and continues to be Public Affairs Guidance on embedding media, dated February 10, 2003.¹²

Stipulated in this public affairs guidance, is that in exchange for support and access to service members, information and other previously-stated privileges, media agree to abide by CENTCOM and Department of Defense Office of Public Affairs ground rules. Media ground rules are up-front agreements on topics and levels of detail that can be discussed and reported. The ground-rules provide an understanding and framework to share information, and are enormously helpful tool to deal with situations involving sensitive information. A media embed is defined as a media representative remaining with a unit on an extended basis - perhaps a period of weeks or even months.

Any violation of the ground rules could result in termination of that media's embed opportunity.

Sources familiar with the trip to Paris that Hastings reported on, said that the quotes that appeared in the *Rolling Stone* article that got McChrystal in trouble were made in “off-the-record” settings. As an example of Hastings breaking ground rules, a source who was on the Paris trip cited an invitation by Boothsby to Hastings, to dine with McChrystal, his wife and the rest of the team in an Irish pub on the night of the McChrystal’s wedding anniversary. The invitation was contingent, the source said, on Hastings treating “everything” that night as “off the record,” to which Hastings agreed.13

In an interview on CNN’s “Reliable Sources” show, Hastings said there were “no ground rules laid down,” during the trip with McChrystal, which allowed him to quote what he heard freely.14 In a conflicting report, Eric Bates, Executive Director of *Rolling Stone* acknowledged there were ground rules, but denied that Hastings violated any of the rules when he wrote about the four weeks he spent, on and off, with McChrystal and his team. "A lot of things were said off the record that we didn't use," Bates said in an interview. "We abided by all the ground rules in every instance."15

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14 Ibid.

Whether there were any ground rules has never been definitively established. The Department of Defense IG report focused exclusively on comments and conduct reported in Hastings article, and in consideration of laws, codes and regulations which might apply to the comments and conduct in question. In this respect, whether there were ground rules established to protect private conversations or other sensitive information is irrelevant; as a practical matter, once the information was made public that becomes new reality, and it does not really matter what physical limits -- rules, instructions and protocols for exchanging data and information existed between the military and media. All parties, including the military, media and even the White House ended up dealing with the reality of that the information was made public, and its consequences.

For his part, Hastings has been both criticized and applauded by fellow journalists for writing the story and not letting McChrystal’s comments slide. When Jamie McIntyre, a former Pentagon Press Corps reporter from CNN was asked if he would have reported on McChrystal’s remarks, he said, “If I witnessed a military officer violating the military law on this subject, I think I would be bound to report that.”

While it is plausible there were ground rules and that Michael Hastings may have chosen to violate them, McIntyre’s explanation of a journalistic sense of duty to

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report certain information, especially a violation of law, suggests that Hastings may have faced an ethical dilemma; a choice whether to strictly abide media ground rules (if ground rules existed, and if Hastings agreed to them as sources close to McChrystal say they did), or apply them selectively in order to adhere to a his duty and responsibility as a professional journalist, and report accurately what he heard and saw.
Case #2: “Ground Rules Under Fire” (Media Relations at Guantanamo Bay)

Profile


Outlets: The Toronto Star, CanWest News Service, the Globe and Mail and the Miami Herald.

Problem: Reporters published the name of a witness who testified to the military commissions under the name “Interrogator #1” violating an established and agreed-upon ground rules governing reporting on Military Commissions proceedings at Guantanamo Bay, Cuba.

Background

Joint Task Force Guantanamo Bay (JTF-GTMO), detainee operations at Naval Base Guantanamo Bay, Cuba, is the Department of Defense’s premier strategic intelligence gathering and detention facility in the global war on terror.18 Although the U.S. has operated the base for more than a century, it was not until 2002 that the detention facilities at GTMO were used to house alleged enemy combatants from Afghanistan and Iraq.

The military’s public affairs approach to media coverage of detainee operations at JTF-GTMO is “active” which means the department encourages and supports news media coverage. As part of US overarching communications strategy in the war on terror, journalists have been permitted to cover detainee operations at JTF-GTMO since

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the arrival of the first detainees from Afghanistan in January 2002.\textsuperscript{19} The department’s approach recognizes the need for media to have access to tell the whole factual story – good or bad – before others seed the media with disinformation and distortions. Although access encouraged and supported, it is also very controlled to protect sensitive information, and media who wish to cover detainee operations must agree to rules in writing, forming a binding agreement on acceptable media coverage.

In January 2007, the Department of Defense announced procedures for trials to be held by military commissions at GTMO under the Military Commissions Act. Under the new procedures, the proceedings were made open to the public and media except to the extent the Appointing Authority (military judge) closes proceedings to protect classified information.\textsuperscript{20} Media ground rules were tailored accordingly, to be in compliance with the commission procedures and keep classified information from unauthorized disclosure by the media.

In April 2010, four reporters (Michelle Shephard of the \textit{Toronto Star}, Steven Edwards of \textit{CanWest News Service}, Paul Koring of the \textit{Globe & Mail} and Carol Rosenberg of the \textit{Miami Herald}) who had been covering United States vs. Omar Ahmed Khadr, a high-profile case of a Canadian-born teenager Omar Khadr arrested in Afghanistan in 2002, released articles in which they publishing the name of an


\textsuperscript{20} Military Commission Orders No. 1 § 6(D)(5).
The interrogator who had testified under the name “Interrogator #1”\textsuperscript{21} The release violated a protection order not to release the identities of any witnesses, and violated media ground rules that had been given to the journalists covering the Khadr trial proceedings, advising them they could face penalties, such as permanent expulsion from the proceedings, if they published the identities of witnesses.

Arguing the reporters violated the ground rules, DoD Public Affairs barred the four journalists from returning to cover future Military Commissions proceedings, and warned future violations of the ground rules and/or military judge’s protection orders will result in your news organization losing the ability to send reporters to Guantanamo Bay. The reporters pushed back that the blanket order did not apply in this case because “Interrogator Number 1” identity (his name) was already in the public domain. The interrogator in question, they said, had already given on-the-record interviews, in which he said during the interview was that he looked forward to testifying, to clear his name.\textsuperscript{22}

The American Civil Liberties Union took sides and urged DoD to reconsider its decision, saying that it was absurd to punish the reporters for disclosing information that has been publicly available for years.\textsuperscript{23} Editors filed letters of protest claiming ground

\textsuperscript{21} Spenser Ackerman, “Pentagon Bans Four Journalists from Guantanamo Bay for Reporting Interrogator 1’s Name,” \textit{Washington Independent} \url{http://washingtonindependent.com/84200/pentagon-bans-four-journalists-from-guantanamo-bay-for-reporting-interrogator-1s-name} (accessed December 7, 2010).

\textsuperscript{22} Michelle Shephard, “Pentagon Bars Four Reporters from Guantánamo,” \textit{Democracy Now} \url{http://www.democracynow.org/2010/6/8/pentagon_bars_four_reporters_from_guantanamo} (accessed September 26, 2011).

\textsuperscript{23} American Civil Liberties Union, Press Room, \textit{ACLU Condemns Banning of Four Reporters from Guantánamo Military Commissions}, ACLU, May 6, 2010 \url{http://www.aclu.org/national-}
rules constituted illegal and unconstitutional prior restraint. An attorney appealing for the newspapers, wrote, "The order is mistaken, the remedy is too severe, and the expulsion should be rescinded." 24 Although the Pentagon said the papers could continue covering the military commissions by sending other reporters, the papers argued that would interfere with their reporting, not being able to send their best reporters.

In July 2010, attorneys representing the four reporters (Michelle Shephard of the *Toronto Star*, Steven Edwards of *CanWest News Service*, Paul Koring of the *Globe & Mail* and Carol Rosenberg of the *Miami Herald*) filed objections to the media policy and ground rules for the Naval Station Guantanamo Bay. 25 The letter charged among other things that the rules were illegal, procedurally defective and urgently need revision in order to protect Constitutional rights of the reporters, and be consistent with the Regulation for Trial by Military Commissions and Rules for Military Commissions. 26

After careful consideration, the assistant secretary of defense for public affairs traveled to Guantanamo to review conditions for journalists and met over several weeks with newspaper editors and bureau chiefs to discuss potential changes to media ground rules. In August 2010, representatives from the media were invited to a round-table discussion to air all sides and come to better understanding of the issues and concerns.


26 Ibid.
Following the meeting, the DOD released revised “Media Ground Rules for Guantanamo Bay, earning praise from news organizations”\textsuperscript{27} and the reporters were allowed back to Guantanamo.

Discussion: Applying Lessig

\textit{Law: Military Jurisdiction and Media Access}

It is important to recognize that in order to bring “post 9-11” enemies to justice, that existing laws needed to be amended and new provisions of law had to be enacted to authorize military commissions specially tailored for that purpose. The process took time, and only came together through the combined efforts of all the branches of government (Executive, Legislative and Judicial branches). The result was a comprehensive legal framework for the prosecution of a new type of “unlawful” enemy, individuals who are not soldiers in the service of a foreign government, but nevertheless engaged in "hostilities" against the United States.

The terrorist attacks on the United States on September 11, 2001, also prompted the U.S. to deploy its military, along with intelligence and law enforcement agents to Guantanamo Bay, to carry out the legal framework for the prosecution of this new type of enemy. President George W. Bush issued a Military Order directing the Secretary of Defense to establish military commissions at GTMO. The Order provided basic

guidelines for the detention, treatment and trial of these enemies there, identified as “certain non-citizens” identified as international terrorists.\textsuperscript{28}

Historically, military commissions have applied the same set of procedural rules of law used in courts martial. The Military Commissions Act of 2006, adapted the rules of law to deal with “alien” and “unlawful” characteristics of these combatants, and established procedures to try “alien unlawful enemy combatants” (combatants more broadly defined) including suspension of writ of habeas corpus. The Manual for Military Commissions implements the Military Commissions Act of 2006, established the legal framework -- the rules to try these enemies by military commission. Among rules that concern media most (what media can report on) military judges serve as the presiding officials – to rule on the release of sensitive information or substitutes for classified evidence before the court.\textsuperscript{29}

Although the media have a right to cover the trials, the military is not obligated to provide access to them. The First Amendment bars government interference with the free press, but as the Supreme Court decided in Pell v. Procunier (1974), does not impose a duty on the government to provide special access to information no shared by the public generally. The legal framework of the military commissions recognizes reporters’ right to gather information. In coordination with military public affairs, trials


are conducted openly, and media are provided access with the proviso of a written agreement to adhere to media ground rules. Procedures established allow the exclusion of the press and public, at the discretion of the military judge depending on the specifics of the case at trial.

*Norms: Tension and Uneasy Coexistence at Guantanamo Bay*

Norms are expectations about how things should be -- implicit or explicit; these prospects regulate behavior that is expected, required, or acceptable. For most people, including military, military dependents, civilians, contractors and media, what is normal at Naval Station Guantanamo Bay (GTMO) is very different from other military locations. It is unique among US military bases; GTMO is the oldest base on foreign soil, the only one in a Communist country (Cuba), and the only one in a country with which the United States does not maintain diplomatic relations.

By necessity, compared to other military locations travel to and from GTMO is very controlled. There are general entry restrictions on travel, usually limited to official business. Anyone interested in visiting GTMO must obtain a country clearance. And because it is a closed military installation (not open to the general public) visitors must be sponsored. Only people, who are sponsored by base residents, can take leave on the base and nobody can go off base into Cuba.

Journalists wanting to report on detainee operations and commission proceedings must coordinate their visit request with the USSOUTHCOM Office of Public Affairs and generally face tighter limits. When detainee operations began in 2002, media were originally housed in on the leeward side of the base, cut off from
regular contact with the detainees and detainee base operations at the remote and isolated area of the base which was only accessible by ferry. Later, once the military commissions began, media were moved closer to the trial offices, and for practical reasons housed at a tent city near the detainee operations. For security reasons, journalists housed at the tent city, require public affairs escort at all times.

Critics argue that detainee operations and military commissions violate the rights of the accused under the Constitution as well as international law, potentially challenging the legitimacy of commission verdicts. In an effort to ensure transparency the Department of Defense established procedures to facilitate regular media visits to GTMO, and established media ground rules to provide reasonable media access while simultaneously safeguarding operational and national security, and comply with international treaty obligations. Despite these efforts, tensions between military public affairs and the media covering GTMO have mounted over time. The expulsion of the four reporters, and editorial protests, merely underscored the strained relationship between military and journalistic viewpoints.

One reason tension developed between the military and media is that some rules are by nature very subjective -- for example, while the taking of photos is permitted under certain conditions, the release of photos is controlled and subject to review by security and public affairs personnel. As a practice, content review is inherently subjective and varied interpretations have led to perceptions that the rules with respect to release of photos and drawings, is somewhat arbitrary. A prime example of this occurred in January 2002, when the media reported that the military allowed media
photographers and camera crews to take pictures of 20 prisoners in Kandahar as they boarded a C-17 cargo plane to Guantanamo Bay, Cuba. But after the plane took off, officials ordered the journalists not to transmit (release) the images.\(^{30}\)

A second reason that tension has developed between the military and media is that the experience levels between military public affairs and civilian journalists covering GTMO has become increasingly divergent. Generally speaking, the average military public affairs personnel (primarily National Guard or Reserve citizen-soldiers) will rotate in and out of GTMO every six months. That compares dramatically to regular reporters such as Carol Rosenberg, who has been the consistent presence covering the commissions, more than any journalist, soldier, interrogator, and lawyer at GTMO.\(^{31}\)

The effect of relatively high turnover of military public affairs personnel, is a significant differential of “GTMO” experience between increasingly new and inexperienced public affairs staff, who are in charge of enforcing a complex set of ground rules, relative to highly experienced reporters who have covered military commissions for nearly a decade, and are subject to public affairs interpretations of said ground rules.

Media reports of eye witness accounts suggesting that military and media have long clashed at GTMO, forming a culture of hostility toward the military. In a letter to the editor of the *Miami Herald* in 2009, Navy Commander Jeffrey Gordon accused the

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Miami Herald reporter Carol Rosenberg of "multiple incidents of abusive and degrading comments of an explicitly sexual nature." Many of Carol Rosenberg's fellow journalists have come to her defense, suggesting that the letter was an attempt to discredit a reporter who has written critically of the prison at Guantanamo.  

In July 2010, after being barred from covering the commissions at GTMO, Carol Rosenberg wrote a commentary, “For reporters, the rules at Guantanamo change daily,” adapted from a speech she had given to the National Press Club in Washington. In the article she provided several examples of “ad hoc” rules she characterized as petty, too fast, without rhyme or reason -- obstructive to journalism -- a new expansive interpretation of military censorship authority. She also cited bewildering treatment -- instances media were not allowed to go out and eat, where escorts are required to go to the bathroom, and maps for the base given to them at guest quarters were later confiscated.

Bottom line, what is normal at GTMO, is closed, restrictive and very different from most places. The combination of controlled and isolated life support conditions, limited social conditions, combined with controlled and limited work conditions, has resulted in tension and culture of hostility toward the military that is not the norm elsewhere. The running risk, is that the media loses confidence…and that their stories continue to fuel sentiments that something is not right, either with the commissions, or with what the department was doing there…which works against the department’s

32 Mark Whittington, “Carol Rosenberg, Miami Herald Reporter, Accused of Sexual Harassment by Navy Commander,” Yahoo Voices, July 25, 2009
strategic communications goals and objectives to promote a sense of fairness and transparency.

*Market: Media Interest Focused on Key Issues*

Media access to the military is offered at a premium by way of accreditation. At GTMO accreditation is a requisite for entry, but once “inside” the wire fence, media are controlled by additional limits (negative externalities) including additional security, remoteness of the location, high degrees of control exercised by public affairs personnel and extraordinary length of time it takes for the military commission process to reach decisions that make news. The effect of these “costs” to doing business makes the job of being a journalist more difficult to get material out, reducing (over time) the available pool of media who can offset the costs, in order to cover the story.

Although hundreds of national and international media have visited GTMO to cover specific cases and ongoing military commissions, few make return trips. The vast majority are print reporters from larger news organizations who can afford to send their reporters on extended trips. Those who have covered detainee operations for any significant period of time are today’s subject matter experts. The banned reporters (Michelle Shephard of the *Toronto Star*, Steven Edwards of *CanWest News Service*, Paul Koring of the *Globe & Mail* and Carol Rosenberg of the *Miami Herald*), were among the most seasoned on military tribunals and the Khadr case. Rosenberg is still the longest-serving reporter at the American detention center and has covered every hearing of a military commission, with the exception of one week, since the
proceedings began in 2004. Shephard published a book about the Khadr case. Koring and Edwards have consistently followed Khadr’s case for their news organizations. 33

The news cycle at GTMO is generally off-beat. Significant periods of time pass between cases with minimal court activity and with no significant “news” to report. The lack of news during the off-between periods has detracted daily news reporters. Conversely, the off-tempo does attract investigative reporters, who write “in-depth” stories. These reporters are better suited for the nature of these trials, requiring greater “front-end” work to gather deep background on complex issues, including, but not limited to, laws, human rights and international affairs that surround detainee affairs (specifically the detention, treatment, and trial of certain non-citizens in the war against terrorism).

There have also been extraordinarily significant periods of high media interest including the arrival and transfer of detainees, and certain high-profile cases including the youngest Omar Khadr, whose case was being covered by reporters in this study, until they were barred for releasing the name of one of the witnesses. Living conditions on Guantanamo, including diets, recreation, religious accommodation and unexpected deaths have been widely covered. Complex issues including the Uighurs (Chinese Ethnic Group) could not return to China because there they are oppressed, also gained considerable international attention. Events elsewhere, including the discovery of torture and prisoner abuses at Abu Ghraib in Iraq, and extensive campaigning on the

war during the US Presidential election, drew attention to waterboarding and interrogation techniques, at GTMO.

Overall, media interest remains high and focused on the issues that have political interest. As the war in Iraq draws down and current administration moves to fulfill campaign promise to end the war in Afghanistan and close GTMO, continued media interest is anticipated and military public affairs policy will be provide greatest access possible, to promote transparency, while protecting classified information and information protected by law from unauthorized disclosure, as well as the physical safety of participants, intelligence or law enforcement sources and methods, other national security interests.

Architecture: Rules Under Fire

Architecture according to Lessig refers to “physical” limits, either how we find it, or how it is made. It also refers to “code” embedded in the rules and protocols that regulate travel, security, life support and the exchange of information. Code is the series of instructions embedded in rules and regulations that define what is possible. In media relations, depending upon how the code is written, the design can either impede or enable the media’s ability make best use of available information, to tell the story.

The physical limits of GTMO are formidable and nearly guarantee the military against the arrival of uninvited guests. The base is isolated and remote, on the southeast end of Cuba, the opposite side of the island from Havana. It is 520 miles south of Miami. Jamaica is 90 miles to the south, and Port-au-Prince, Haiti, is 180 miles
southeast. The base is surrounded either by water, or by 17.4 miles of double fence line, barbed wire, land mines, sensors, video surveillance and patrolling armed guards.

The detainee area is separated physically and visually from the rest of the base by rugged mountains and a gate secured by Joint Task Force personnel. It is a collection of several different camps, each with different characteristics and security levels. The compound is surrounded by double line of high chain-link fences and coils of razor wire, designed to keep America safe by preventing captured Al Qaeda fighters and supporters from returning to the battlefield.

A combination of military and State Department rules regulate travel to GTMO. In order for anyone to travel to GTMO, they must be invited or have a sponsor at GTMO. The Office of the Assistant Secretary of Defense for Public Affairs (OASD PA) is the sole approval authority for visits by media personnel in conjunction with military commission proceedings. Media who wish to travel to GTMO must coordinate their travel through OASD PA. From the moment media embark on a plane, public affairs ground rules regulate all activities of the media.

Media representatives must agree to and sign Media Ground Rules prior to leaving for GTMO. The paperwork is usually handed out and collected at a departure terminal prior to getting on a plane. Failure to follow the ground rules and instructions may result in restricted access on GTMO, removal from the installation and revocation of press credentials.

Traditionally, the main issue with media ground rules is that they pose restrictions on media access. Adding fuel to natural tension, the rules at GTMO, from
time to time, have had to be updated, imposing greater restrictions and increased tension. Finally, because the ground rules are provided as “guidance” they are subject to interpretation, both by the media and military, who are subjected and must enforce them respectively. The impact is three-fold; first there are possibilities of varying interpretations of the rules by public affairs personnel, second there exist possibilities of varying interpretations of the rules by military judges, third there exist possibilities of varying interpretations of the rules by the media. When communication is open and spirit of cooperation is optimal, tension is at health levels. But when communication has been challenged, tensions have become unmanageable and explosive.

In July 2010, attorneys representing the four reporters (Michelle Shephard of the Toronto Star, Steven Edwards of CanWest News Service, Paul Koring of the Globe & Mail and Carol Rosenberg of the Miami Herald) filed objections to the media policy and ground rules for the Naval Station Guantanamo Bay.\[^{34}\] The letter charged among other things that the rules were illegal, procedurally defective and urgently need revision in order to protect Constitutional rights of the reporters, and be consistent with the Regulation for Trial by Military Commissions and Rules for Military Commissions.\[^{35}\]

The ethical dilemma weighing on DoD centered on whether to change the ground rules and if so, how changed, to have the effect of making the four journalists actions retroactively acceptable. If the department chose to do nothing, they would

\[^{34}\] Levine Sullivan Koch & Schultz, LLP. July 1, 2010.

\[^{35}\] Ibid.
stand on the principle that media broke rules. However doing so, they would be open to greater public criticism, by media and civil liberties organizations, and possibly have to face off in court. After careful consideration, following a meeting with DoD General Counsel and members of the media, DoD issued revised media ground rules and withdrew the ban on the four reporters. On September 10, 2010, the Office of the Assistant Secretary of Defense for Public Affairs issued new ground rules.
Case #3: “Media Insurgency” (WikiLeaks.com)

Profile

Actors: Department of Defense, Julian Assange (dba WikiLeaks.com), Pentagon Press Corps


Problem: Illegally obtained classified information is released to three newspapers then is posted on public website posing potential national security threat to the US.

Background

This case is about the largest military intelligence leak in US history, and the ethical issues surrounding media reporting on that illegally obtained classified information. The case study poses a challenge to the Lessig model because it introduces a variation on the traditional military media relationship, where the military no longer controls the release of information.

The protagonist(s) in this case are Private Manning, a member of the military being investigated for illegal release of secret documents, and Julian Assange (dba WikiLeaks.com), representing a secretive non-profit whistle-blowing website, to which Manning is believed to have provided raw classified documents.

Although Assange claims to have leveled a new media standard he refers to as “scientific journalism” (where readers can verify what they are being told, by seeing original documents that news stories are based on) the website is almost universally referred to by traditional media as merely a “source,” and not “journalism,” in the traditional sense.
The story is centered on WikiLeaks, first launched in 2007, that published hundreds of thousands of secret and confidential materials since it first came online (leaks of governmental, corporate, organizational or religious documents, including Sarah Palin’s private email.)\(^36\) Julian Assange, The website went fairly unnoticed by the military, until April 2010 when the site released "Collateral Murder," a package of documents and videos, including a video depicting the July 2007 killing of two Reuter’s journalists and other individuals in Iraq by Apache helicopter gunship. An anonymous leaker, credited only as "our courageous source," was said to have furnished the materials.

Although the department’s policy was not to comment on the authenticity of the video, on July 7, 2010, the Army announced it had charged Private Bradley Manning, a military intelligence analyst, with allegedly transferring classified military information to his personal computer and “delivering national defense information to an unauthorized source.”\(^37\) A few weeks later, WikiLeaks posted about 76,000 classified military reports from the war in Afghanistan, revealing unreported incidents of the killing of Afghan civilians and covert operations against Taliban, by NATO forces.

In a press conference, Secretary of Defense Robert Gates and Admiral Mike Mullen, chairman of the Joint Chiefs of Staff, condemned Assange, for moral


culpability, for posting information without any regard for the consequences. Admiral Mullen said Assange may well have “blood on his hands.” As for legal responsibility, Gates said that is up to the Justice Department and courts to decide, and vowed to crack down on anyone involved in making the classified documents public.

The Pentagon demanded WikiLeaks hand over all the classified documents to prevent their publication. But in response to Pentagon’s threats, Assange turned over copies of the documents to five major US and international newspapers, referring to them as “media partners” (The Guardian, The New York Times, Der Spiegel - German, El Pais - Spanish, and Le Monde - French) to “maximize the impact” of the material. Assange explained his intent in an interview with the Economist Magazine, that these partnerships provided more impact than if that information were simply posted online and expected people to seek it out.

Amidst tremendous pressure and media attention, Assange continued to defend his work, claiming to have “revealed some hard truths about war.” He announced he was holding back 15,000 more reports until names mentioned in them could be redacted and that his group had gone through 7,000 of the 15,000 documents the group had withheld from publishing until it had time to review them to block out the names of sources. But by October, his relationships with said “media partners” was breaking down and WikiLeaks itself was in turmoil. The website released a large cache of raw

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U.S. military documents sensitive diplomatic cables. Former “media partners” issued a joint statement, condemning WikiLeaks for releasing unedited versions of diplomatic cables, and for failing to remove potentially harmful information that could endanger people's lives.

The WikiLeaks phenomenon (as a brand of hacked or leaked information), has prompted ethical, concerning a wide variety of subjects ranging from whistle-blowing (exposing corruption), versus the release of potentially embarrassing information, versus the release of classified military documents that could be life threatening or risk national security. For the purpose of this case study, the focus is on the tangential relationship, the relationship between the Department of Defense and the Pentagon Press Corps--providing traditional media coverage of the impact of WikiLeaks on the Pentagon, what the department has done/is doing to mitigate damage, how the leaks might impact military operations, national security, and what progress has made on the investigation of persons responsible for leaking the information.

Since the initial WikiLeaks release, the Defense Department has commissioned two internal DoD studies, formed an Information Review Task Force and. taken steps to prevent such compromises from happening again. The first internal study directed a review of DoD information security policy. The second focused on procedures for handling classified information in forward deployed areas. The investigation of Private Manning has been ongoing. His pre-trial (Article 32 hearing) has not yet been definitively scheduled.
Discussion: Applying Lessig

Law: Release of Illegally Obtained Classified Information

Current statutes are limited with respect to containing sensitive and classified information once it is publically available on the internet. This underscores the reliance of security at the source and hope that penalties offer an effective deterrent against the unauthorized disclosure of sensitive or classified information. Once information is out in the open, it is essentially public, and reporting by media is not only protected by the First Amendment right to free speech, but when dealing with international and citizen media, virtually impossible to turn it off. Ultimately the outcome is dependent upon the degree to which media adhere to ethical principles and demonstrate sensitivity when dealing with sensitive information.

While there is no single statute protecting against the unauthorized disclosure of sensitive or classified information, there are a number of existing US laws, including military laws, may be applicable to “leakers” who transmit classified information to WikiLeaks. Within the military, there are strict rules and procedures meant to protect information, and military personnel have duty to protect it. Military personnel, having taken an oath to uphold and defend the constitution, have a duty to protect our national defense, and thus held to higher ethical standard. The UCMJ is the primary legal enforcement tool of the armed services.

Private Manning, who is accused of leaking classified information believed to have ended up on WikiLeaks, has been charged with violations of the UCMJ Article 92 Failure to obey orders or regulation (includes dereliction in the performance of duties),
and UCMJ Article 134 General article (all disorders and neglects to the prejudice of
good order and discipline in the armed forces, all conduct of a nature to bring discredit
upon the armed forces). These articles are among those in UCMJ known as "punitive
articles," -- that is, specific offenses which, if violated, can result in punishment by
court-martial. His case is still under investigation. Although Manning is not specifically
charged with leaking information to WikiLeaks, it has been estimated that he could face
up to 52 years confinement if found guilty on all counts, under maximum penalty.  

The US is still investigating whether WikiLeaks and/or Assange has violated the
Espionage Act. One of the problems prosecutors face applying the Espionage Act to
WikiLeaks is that the “receiver” must be shown to have conspired to receive. Since
Assange has taken extraordinary measures to protect the identity of his sources by
receiving leaked data anonymously, the US is having difficulty connecting Assange
with Private Manning, making it hard if not impossible to prove collaboration.  

At this point no charges have been filed against WikiLeaks or Assange. It remains to be seen
whether the ongoing investigation reveals Assange had a more active role in receiving
the classified documents.

Media have some (not absolute) First Amendment protection to report on the
documents that WikiLeaks made public. This is based on a 1971 US Supreme Court

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40 Lucy Kennedy, “Wikileaks - 5 Things You Need to Know About,” Public Broadcasting

41 Jason Linkins, “The Government's Case Against Julian Assange Is Falling Apart,” Huffington
ruling on New York Times v. U.S. the First Amendment which barred the Nixon administration from keeping the New York Times and Washington Post from publishing classified information related to the Vietnam War. The decision put a very high burden of proof on the government, to show justification for censoring media on the basis of national security. 42

Classified documents remain classified even when they are leaked on to an unclassified system. As a result, the Department of Defense has prohibited its employees from accessing WikiLeaks at work or at home, because exposure to classified documents on non-classified systems (also known as Non-classified Internet Protocol Router Network (NIPRNET)) would constitute a security violation.

As for the state department cables posted on WikiLeaks, 18 US Code, Title 18, and Section 952 Diplomatic codes and correspondence, only prohibits an employee from willfully publishing or furnishing to another any such code or matter obtained in the process of that mission. Since it is only applicable to employees of the United States and has no apparent impact on WikiLeaks website or to Assange.

Norms: Mixed Views across Professions

WikiLeaks most intense criticism is fueled over its disclosure of hundreds of thousands of raw US classified and confidential documents and material, and for failing to remove potentially harmful information that could endanger people's lives. The

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Department of Defense condemned WikiLeaks as irresponsible and dangerous.\textsuperscript{43} The White House also condemned in the strongest terms the unauthorized disclosure of classified documents and sensitive national security information, for putting at risk not only the cause of human rights but also the lives and work of those individuals.\textsuperscript{44}

What makes WikiLeaks an interesting case study with respect to ethics in journalism is that opinion varies depending upon perspective. While military and diplomatic communities are strongly opposed to WikiLeaks actions, the media and professional journalism society reactions has been generally neutral and less accusing. Particularly interesting from ethics standpoint, is that WikiLeaks appears to operate completely independent of the rule-of-law and without any regard to ground rules or conventional norms that accredited media follow with respect to classified information. This raises a wide range of ethical and moral consideration about lying, stealing, cheating and breaking laws; the response surprisingly has been equally mixed.

The Society of Professional Journalists, often touted as the “gold-standard” on ethical journalism, has weighed in on the issues raised by the WikiLeaks. They have stayed away from defining whether WikiLeaks is journalism, taking the position that it is not theirs to defend or denounce WikiLeaks actions. Instead, SPJ they have focused


on how news outlets and journalists are reporting on the records made open to
inspection by WikiLeaks.\textsuperscript{45}

If we accept the idea that WikiLeaks is media, it is difficult to overlook or
reconcile its inability to distinguish important information from embarrassing
information; independent of customary rules that conventional media follows with
respect to the care, custody and control, and the release of classified information. Alan
Rusbridger, editor of the Guardian, said that he agreed with Assange about the
(desirable) trend for journalism that gives sources where possible, although he says
there is a limit.\textsuperscript{46}

WikiLeaks is probably better characterized, what Stewart Brand describes a
“hacktivist” movement, which espouses a particular political anarchist view of
information, seeking to liberate information from that is contained within an ideological
structure. The hacktivist view is distinguished from those who seek to make
information accessible, widely distributed and free to copy or adapt to one’s own uses.
Both views, having different objectives for “liberating” information, are vastly different
from professional journalism that seeks to report information.

Even if Assange remains insulated from US and international laws that prohibit
unauthorized release of potentially dangerous classified information, his release of

\textsuperscript{45} Jim Romenesko, “SPJ: ‘Ethical Journalism Prevailed’ in Reporting of Latest WikiLeaks

\textsuperscript{46} Alan Rusbridger, "Editor of the 'Guardian' on the Cables," \textit{Huffington Post}, December 7,
December 7, 2010).
potentially harmful classified documents raises a range of ethical and moral
considerations about appropriate care for it while in one’s custody, and responsible
information reporting. As Harvard law professor Lawrence Lessig points out, "there's a
difference between what you can legally do, what you can technically do, and what you
ought to do."47

*Market: Taking the Moral High Ground*

Detailed media reporting on WikiLeaks was anticipated, by the Pentagon, when
Assange announced his coordinated release with several media outlets, including the
New York Times, The Guardian and Der Spiegel. Several outlets reported in advance of
WikiLeaks release, based on speculated content. The Department of Defense responded
immediately by holding a press conference, and making public statements to the media.

In their statements, primarily by Press Secretary Geoff Morrell, the department
condemned the unauthorized disclosures calling the release shameful, deplorable and an
extraordinary disservice to America’s men and women in uniform. The department also
criticized WikiLeaks for inducing individuals to break the law, and because it would
give our enemies the wherewithal to look for vulnerabilities in how we operate and to
exploit those opportunities and potentially kill our forces.48 The department demanded
the documents be returned, websites cleaned, because it was the “right thing to do.”

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For their part, WikiLeaks “media partners” distanced themselves from WikiLeaks agenda, universally referring to WikiLeaks as a “source” rather than a partner. The Society of Professional Journalists (often touted as the “gold-standard” in ethical journalism) weighed in on the coverage by WikiLeaks’ “media partners”. According to SPJ, The New York Times and The Guardian, among others, appear to have done their journalistic purpose: verify the information, act responsibly, minimize harm by redacting certain information, and inform the affected parties of the impending publication.”

Following WikiLeaks release of raw military documents and state department cables, former WikiLeaks “partners” issued a joint statement, deploring the decision of WikiLeaks to publish un-redacted materials which may put people (sources) at risk. They also defended their previous collaborative publishing endeavor, as a “joint editing and clearance process.”

Foreign media outlets around the world reported revelations related to their respective regions, and accused WikiLeaks of endangering lives. Australia’s Sydney Morning Herald and Austria’s Kurrier reported that the release of unedited documents could put at risk hundreds of people who cooperated with the US around the world,

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particularly in the Middle East. Germany’s *Frankfurter Allgemeine Zeitung*, wrote the real extent of Assange’s delusion is, “a matter of life and death.” UAE’s the *National* argued that WikiLeaks had been “neither responsible nor competent in handling the secrets on which people’s lives depend.

*Architecture: Policies, Procedures and Technical Shortfalls*

Many of the physical limits used to protect classified information are visible, such as utilization of marked restricted space, safes, and networks to store and access classified information. Other limits are less visible, such as the use of background investigations, security clearances, and passwords to limit computer access. Even less apparent, are press conference protocols and inter-personal relationships that take place during press conferences that are part of the normal operating environment in defense press operations inside the Pentagon. These are subtle limits that put a premium on their accreditation (or privilege) and interpersonal relationships inside the Pentagon.

Trust and ethical judgment ultimately plays an enormous role in “doing the right thing” with classified information, because on a practical level opportunities exist to override physical barriers. The use of background checks, limiting access to highly sensitive information, and physical security measures, while they help mitigate risks, cannot ensure infallibility that is possible involving people who are imperfect. From the department’s perspective, there is a bias to make information available and accessible,

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52 Ibid.
53 Ibid.
54 Ibid.
recognizing especially that our war fighters need it. The challenge is mitigating the risk of misuse, without denying those who legitimately need information.\textsuperscript{55}

Following Manning’s arrest, the defense department launched internal security reviews and vulnerability assessments. The reviews identified vulnerability issues that forward deployed units maintained an over-reliance on removable electronic storage media and that limited capability existed to detect and monitor irregular behavior on classified computer networks. As a result the department announced it was taking “every step” to prevent future security breaches. By the end of November 2010, several actions had been taken including disabling the use of removable storage devices on classified systems, enhanced procedures to monitor suspicious or unusual behavior, and increased inspections and assessments of classified networks.\textsuperscript{56}

Given the nature of business inside the Pentagon reporters follow additional rules and procedures to protect national security interests. Generally speaking, members of the Pentagon Press Corps, given their years of experience and expertise covering defense issues recognize matters of national security. In the course of routine reporting, they may be exposed to sensitive and unclassified information that when combined with other information, has potential for national security implications. These are situations their judgment is relied upon, to report what is appropriate given the situation. Any information or material has potential, when combined with other information to be


sensitive, and require protection against unauthorized disclosure, and cause to be safeguarded to prevent loss or compromise and unauthorized disclosure, dissemination, or duplication.

Depending on the situation, especially those considered extremely serious, the Pentagon press office is less subtle in drawing limits. A poignant example in this case occurred during a press conference, on January 26, 2011. Without going into specifics, Pentagon Spokesperson Geoff Morrell “availed the opportunity to admonish” the Pentagon Press Corps, warning them to be “extraordinarily careful” on how they report on the ongoing investigation on Private Manning.\(^\text{57}\) This was because both the Department of Defense and Department of Justice were still building their cases. Morrell urged everybody to proceed with caution on the investigation, and most stories on WikiLeaks.

CHAPTER IV
DISCUSSION

Observations from Case Studies

This chapter continues the discussion of the cases, to draw initial conclusions about media relations against backdrop of laws, norms, market and architecture. In discussing lessons learned, we will call attention to perceptions among the actors of what is “right” and how things “should be.” For the purpose of discussion, conflict resolution represents a point of equilibrium where media is no longer critical of the military, indicating the relationship is as it “should be” (cooperative and non-adversarial).

Laws

The cases demonstrate that laws are necessary and provide an authoritative framework to protect sensitive information, freedom of speech and hold people accountable. The legal framework also provides a measure for people to gauge what is “right,” and what “should be” with respect to outcomes, even when cases don’t play out in court of law, or when actual circumstances cloud the details about the release of sensitive information.

The McChrystal case was unusual because the “sensitive information” was a series of private conversations that was made public caused tremendous embarrassment, and created the perception that the military general was overtly disrespecting the Presidency. This perception became the central issue. Although the Army’s Inspector General found no sufficient evidence to substantiate a violation of applicable legal
standards, perceptions by media covering the story was that the *Rolling Stone* not only got the story right, but “did the right thing” by reporting it. The characterization by *Rolling Stone*, of McChrystal as a “Runaway General” was also more or less validated by McChrystal’s immediate calls of apology and offer of resignation. While people close to McChrystal expressed disbelief, the President’s acceptance of McChrystal’s resignation was climactic, and media attention ended quickly after McChrystal was replaced.

Interpretations of Constitutional law also played a significant role in resolving the dispute between the barred journalists and the Department of Defense. While the military felt justified in barring the journalists for violating ground rules, the journalist’s argued that their constitutional rights had been violated. Media coverage following the military’s decision to bar the journalists was overwhelmingly critical of the department and characterized as draconian and unconstitutional. The department’s quick reversal after receiving the petition from journalists’ lawyers was largely received as positive and the “right thing to do.” The reinstatement was climactic, ended the dispute, and eased tensions between the military and the media.

Finally, traditional media coverage on WikiLeaks, the investigation on Private Manning and Julian Assange, and content reporting on the leaked documents has been viewed not only as constitutionally protected, but also subject to a high standard of judicial review since *New York Times* vs. U.S. (1971) decision. Media coverage was largely credited as fair, balanced and objective by both the Society of Professional Journalism and the military. The department of defense has held traditional media
harmless, in recognition of their constitutional right to report on the story, but issued
warning to be careful in their reporting in order not to interfere with the ongoing
investigation.

The main takeaway from the case studies, with respect to behavior and the law
is that the observations indicate that both the military and media are sensitive to the law,
and that their sensitivity shapes their perception about how things “should be.” These
notions about how things “should be” extend beyond self-interests, and reflect a desire
for justice.

Norms

The case studies offer evidence that military and media have similar values and
similarly recognize security, accuracy, privacy and propriety, or in other words, an
overall desire for acceptable and appropriate outcomes.

In the McChrystal case, while most everyone seemed surprised by the article,
few people were very surprised by McChrystal’s resignation in the wake of the article.
If anything, people may have been surprised how quickly it exploded and was over.
From the time news broke about the article, to the time the President announced
McChrystal’s resignation, was only about 24 hours. During that time, while there was
speculation on both sides what the President might do, there was universal voicing by
the media, Secretary of Defense and Chairman of the Joint Chiefs that McChrystal had
crossed the line and the “right thing to do” was hold McChrystal accountable.

The GTMO cased demonstrated that norms can be challenged. While it was
universally recognized and accepted that the norm at Guantanamo was/remains different
from the norm at other places, the fact that it is different is not sufficient justification to explain “how things should be.” More importantly, when conflict arises over rules once accepted as the norm, perhaps is a good time to question the rules, or whether they make sense under current situation.

An interesting development during the past year has been the growing criticism of Julian Assange’s decision to release raw and potentially harmful classified documents. Initially traditional media was less accusatory, especially when Assange had reached out to them as “media partners” to redact potentially harmful information from the documents before being posted on WikiLeaks. However the partnerships turned sour when Assange grew unhappy with media coverage that seemed focused on him rather than the documents, causing him to release the raw documents. This resulted in a shift in opinions last year ranging from neutral and condemning source of material, to general consensus today condemning Assange for his lack of discretion.

A key observation made of the WikiLeaks case is that attitudes changed over time as more information became available. This suggests attitudes surrounding social norms are more flexible and elastic than attitudes concerning law. As such, there is greater potential to see shifting and movement of attitudes related to social norms as circumstances change, and as understanding of issues matures.

**Market**

There were several important observations about the market that the case studies helped to contextualize. In all three cases, we observed that the market serves as a forum for public discussion, presenting facts, opinions and the exchange of ideas. We
also saw that the market is an effective source of information when complimentary multimedia (the combination of print, video, audio, television and internet) work together to tell stories in a very compelling and informative way. We also saw evidence that policy makers pay attention to the market, and look to the market for signals and other guidance to make “right” (ethical) decisions. These observations validate the values the military and media share making available timely and accurate information to the public about the military, and the underlying ethics to bring that information to market.

The McChrystal case was example of a breaking news story where news media took full advantage of the power of multimedia coverage. While the print story served as the catalyst, NBC’s “Morning Joe” called attention to the President and what he might do, the story defined the news agenda of the day. The show facilitated a very rapid review of all public statements that McChrystal had made, with commentary by experts who examined comments and responses over time, providing evidence of a pattern of criticism and hostility toward the administration. Expert opinions, interpretations, points and counterpoints of the significance of those comments, superimposed against the comments captured in the *Rolling Stone* story, provided the story-line in real time. By the time the President announced he had accepted McChrystal’s resignation, media and experts had already concluded a resignation was the “right thing to do” in order to protect the Presidency.

The dispute between the military and media at Guantanamo, though less dramatic, provides additional evidence that policy makers are sensitive to media
coverage. Print media played a predominant role in presenting the issues. The internet dramatically increased the reach of print coverage and opened the dialogue to citizen journalists, who voiced their opinions. By and large editorial comments opined the reporters as victims and the military’s policy unconstitutional and created pressure on decision makers to reinstate the reporters’ access privileges (the “right thing” to do).

The internet also played a major role facilitating cross-cultural discussion about the ethical issues surrounding WikiLeaks. This is important observation because the leaks were not only of concern to US military and state department interests, but were also of interest to other countries. The observation helped bring to light the functionality of the internet in socializing ideas and opinions about news, across cultures and political boundaries, beyond the news itself and significantly more focused on its consequences.

The most significant observation made of the market in the case studies is that it is comprised of independent actors who adhere to high principles in journalism. This was most evident when WikiLeaks “media partners” independently focused more on the ethical issues surrounding WikiLeaks and of criticism about Assange’s decision to release of classified and confidential information on the internet, than on the content in the leaked documents. Their independence and solidarity in issuing a joint statement condemning Assange, has even laid the groundwork for an emerging what some are calling a “whistleblower code of ethics.”

Architecture

While ground rules are intended to provide a practical framework between the military and media to navigate trust issues, the case studies demonstrated potential for
severe consequences if ground rules are not clearly understood up front. Even when ground rules are formalized in writing, there still remains room for disagreement, so it needs to be recognized that ground rules are merely guidelines, and not a substitute for human interaction aimed at achieving understanding.

From a public affairs perspective, the media embed with McChrystal posed a significant risk that could have easily been avoided. However there is no evidence that any steps were taken to mitigate the risk, or spell out the ground rules. The looseness calls attention to the competence and professionalism of the public affairs staff, whether anyone was paying attention, or whether they simply misjudged the situation, or as Hastings article suggested that McChrystal’s team was really just out of control. Regardless those responsible for the interview had a duty to look out for the equities of the position that McChrystal occupied. It also calls to question, whether putting a contractor in charge of senior military official’s media relations makes sense, or if that “should be” made a purely governmental function.

The GTMO case underscored the importance of ground rules, and in particular the importance of consistency in setting and enforcing rules in military media relations. The case also suggests potential benefits if policy makers remain open to discussing differences and provide processes to arbitrate grievances. Simply having this outlet could help reduce natural tension that can arise in stressful situations, and avoid situations that leave media sensing the only way to call attention to their issue is by taking the issue public.
WikiLeaks presented a very different architectural problem for the military because classified information was already out in public, so all that could be done was to mitigate the damage and take steps to prevent future leaks. And because at the point of discovery, it was not known the extent of people involved, a second architectural problem was to safeguard information related to the investigation to prevent the possibility of jeopardizing the case. The approach taken by the Pentagon to admonish the Pentagon Press Corps, and warn them each to take exceptional care in how they reported, was a complex architectural limit because it not only leveraged individual relationships but also put pressure on the group of reporters, to “do the right thing.”
CHAPTER V
CONCLUSION

The Lessig model provided a very useful framework to systematically examine complex behavior and ethical issues surrounding military media relations. The model was also a helpful tool to compare various facts in the case studies, voices and perspectives of the actors, groups of actors and the interaction between them. This enabled a better understanding of the nature of conflict in military media relations, especially surrounding the release of sensitive information in real-life situations.

One of the strengths of the model was its simplicity outlining four distinct modes of behavior (Law, Norms, Market & Architecture) explaining how they work together toward an equilibrium that is nominally positive or negative (good or bad from military public affairs perspective). A positive equilibrium represented a healthy working relationship between the military and civilian journalists working together in a cooperative spirit to inform the public about the military. Conversely, a negative equilibrium represented a dysfunctional relationship, where excessive friction resulted in lack of cooperation and distraction from overall positive news coverage of the military.

Another one of the model’s strengths is helping to sort details to separate from key ethical issues and sources of conflict. For example in the GTMO case, the apparent conflict was the media’s failure to follow their contractual duties in the ground rules and public reaction to the military's decision to bar the media. Tangential media coverage focused primarily on the media’s views on unacceptability of the working conditions at
GTMO. But ultimately, the model revealed that the legitimate source of conflict between military and media was the constitutionality of the media ground rules (Law v. Architecture).

When applied to the case studies, the model revealed relationships between the modes of behavior and the specialized function of the Market. It showed that the media market served as a clearinghouse for public conversation to resolve conflict concerning Laws, Norms and Architecture, and helped to build consensus on ethical issues. In the McChrystal case, conversations in the media market were focused on a combination of the legal issues and appropriateness (Laws and Norms) surrounding the release of McChrystal’s private conversations. Similarly, in the Guantanamo case, discussion in the media market was focused on the legality of the ground rules (Laws vs. Architecture).

The cases also demonstrated a prevalence and prominence in discussions on legal and social values, and tendency for coverage in the media market to continue until the central ethical issues surrounding conflict were resolved to the satisfaction of the reporting community. This observation suggests modern consequentialism – the philosophy that morality requires promoting the good of all -- as the guiding philosophy for determining ethical outcomes in military media relations.

While tension between the military and media is considered normal, and a healthy aspect of a cooperative professional relationship, when viewpoints clash to the point conflict is no longer cooperative, the model demonstrates ethical outcomes may still be achieved through this “adjudicating” process in the media market. Although the
process of setting differences in public is potentially embarrassing, the process appears to take into consideration the Laws, Norms and Architectural limits to protect sensitive information. Ultimately the model indicates these forces work to build consensus that holds individuals accountable and reflects values that promote the good of all -- human flourishing.
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