

ANNOUNCEMENT

This is just a quick announcement that I have ended my affiliation with First Look/The Intercept. My departure was voluntary and amicable.

To anticipate questions some may ask, my departure from The Intercept doesn't relate to anything I wrote or didn't write about Ukraine. It did not relate to the downtime The Intercept just took (and seems to be coming out of). The reasons for my departure predate both of those things, to January.

I'll have more to say—not about The Intercept, per se, but about things I've learned about my own journalism over the last 7 months, as the Edward Snowden story played out and the Intercept discussed hiring me—at some later point, after some reflection.

Things here will remain the same.

We will, however, be doing a fundraising campaign next week (or you can beat the rush by donating today!). Until such time as a billionaire wants to support the work we do here, we will rely on readers to pay the bills.

Thanks, as always, for making all that possible!

A 2ND AMENDMENT RIGHT TO BEAR DRONES

The FAA is cranky that a journalist took footage of the tornado in Arkansas the other day with a drone.

That footage, taken by storm chaser and photographer Brian Emfinger on Sunday, is now being investigated by federal aviation officials, after a local TV

news channel used it as part of its disaster coverage. Mr. Emfinger, a Little Rock-based photojournalist, could be fined \$10,000 if the government decides to pursue him for illegal drone-flying.

The Federal Aviation Administration (FAA) insists that such “drone journalism” isn’t legal because it breaks rules against commercial use of unmanned aircraft. Nonetheless, some drone experts say the footage of post-tornado Mayflower heralds “the dawn of the drone journalism age” – a potentially vexing frontier that pits curious citizens against a government with qualms about the spying potential of drones.

CSM uses it to lay out the tensions currently surrounding the FAA’s role, as if this is just a question of FAA’s efforts to slowly develop a legal regime for drones.

But it’s not just that. One of the examples CSM cites deals with a dispute with local cops, who thought locally controlled drone photos of an accident site might affect the site.

And while the article treats a commercial missing persons use of drones, it doesn’t consider other uses, like non-commercial monitoring of environmental sites like industrial farm CAFOs (the latter of which finally got Chuck Grassley opposed to drones because it threatens his big Ag constituents). It also doesn’t mention earlier efforts to obtain independent (whether commercial or not) surveillance of big disasters, things like the BP catastrophe.

Some of what we’re seeing is FAA’s efforts to deal with real safety and privacy and overall legal regime concerns.

But it’s also a question of who gets to wield a certain kind of vision, one currently

monopolized by the state.

I'm not a fan of the proliferation of drones generally, because I think that kind of vision should be very limited. But there are also many data points out there to suggest that drones will end up being a sharply circumscribed privilege, limited to only those the state thinks should have a certain kind of vision on society.

ISI GOES AFTER GEO'S BROADCAST LICENSE IN RESPONSE TO ACCUSATIONS ON MIR'S SHOOTING

On Saturday, Hamid Mir, the most popular news anchor on Geo, Pakistan's largest television news outlet, survived an assassination attempt. He remains hospitalized with at least six bullet wounds. Controversy has swirled since the attack, with Mir's brother Amir Mir, also a journalist, accusing Pakistan's ISI of being behind the attack. ISI has responded by approaching the broadcast regulatory authority in Pakistan, demanding that Geo's license be revoked.

The Committee to Protect Journalists has denounced the move by the ISI:

The Committee to Protect Journalists is greatly concerned by actions brought by Pakistan's Inter Services Intelligence Directorate (ISI) against Geo Television today. In its **complaint** to the Pakistan Electronic Media Regulatory Authority, the ISI accused Geo's parent company, the Independent Media Corporation, of

conducting a “false and scandalous campaign undermining the integrity and tarnishing the image of state institution (ISI) and its officers.”

The media regulator has the authority to shut down broadcasters based on such complaints, and has done so under previous administrations of Pakistan.

“We call on the Pakistan Electronic Media Regulatory Authority not to act on this spurious complaint, and we call on Pakistan’s security services to recognize the critical role of the media and exercise tolerance and maturity,” said Bob Dietz, CPJ’s Asia program coordinator. “The ISI is free to rebut allegations in the media but should not try to censor coverage.”

Declan Walsh covered the move by the ISI in the New York Times on Tuesday:

Mr. Mir [survived the attack](#) and is being treated for gunshot wounds to the chest and shoulder. But as he was still receiving emergency treatment, Geo prominently broadcast heated accusations from Mr. Mir’s brother, the journalist Amir Mir, who accused the ISI of being responsible for the attack.

During extended commentary, Geo also repeatedly broadcast a photograph of the ISI chief, Lt. Gen. Zahir ul-Islam, while a senior journalist employed by the station called for the general to resign.

Hamid Mir, whose pugnacious style has frequently stirred up controversy, has been a fierce critic of the military, and in February he privately told station managers that he had received a threat from ISI operatives about his work, according to the station. In November 2012, a bomb was found strapped

to the underside of his car outside his home in Islamabad.

/snip/

On Tuesday, evidently, the generals decided they had had enough criticism.

In a four-page letter to the state-run Pakistan Electronic Media Regulatory Authority, the Defense Ministry not only asked for Geo's broadcasting license to be revoked, but called for the body to initiate criminal proceedings against Geo editors and management.

This had to be a difficult story for Walsh to cover, considering that he was mysteriously kicked out of Pakistan last May, just as elections were taking place. Walsh also this morning tweeted a link to an article in the Guardian that contains an explosive quote from the president of Geo News:

Geo's president – a former newspaper editor named [Imran Aslam](#) – became wistful when defending his channel's coverage after the assassination attempt on Mir. "There was a time that if they didn't like what you wrote they censored you. They cut out a word or a line. If they got really angry they got your editor fired. Now they just shoot you." A bullet in the head is the new form of censorship in Pakistan.

Interestingly, just after the bomb was defused on Mir's car in November of 2012, coverage suggested that it may have been planted by the TTP, especially since Mir had been covering the TTP's shooting of Malala Yousafzai. In an AP story carried in the Washington Post, we have this on Mir's more recent reporting:

In recent weeks, Mir's show gave prominent coverage to a group campaigning against the disappearances

and torture of insurgents and their supporters in southwestern Baluchistan province – allegedly at the hands of ISI.

Geo is reporting that Hamid Mir is expected to make a public statement later today. I will keep an eye out for it.

Update: The Express Tribune just posted on Mir's statement:

In a statement read out by his brother on Thursday, senior journalist Hamid Mir said that he faced threats from both state and non-state actors, Geo News reported.

On Saturday, April 21, unknown assailants [shot at Mir](#) in Karachi, critically injuring him.

Through his first official statement since the attack, Mir claimed that he had recently been approached by intelligence officers who informed him that he was on a hit-list.

He said he is making this statement despite the pressure he is facing from various quarters.

The ISI was upset with me for my coverage of Mama Qadir's Long March, he added.

I forwarded the numbers from which I received death threats to the police, the statements reads, but the police did not do anything about it.

DOJ WILL CONTINUE TO USE NSLS TO GET JOURNALIST CONTACTS

For years, I have been harping on the language in FBI's Domestic Investigations and Operations Guide that permits DOJ to get journalists' contact information using NSLS because – given that they are not warrants – they need no Attorney General review.

A heavily-redacted section (PDF 166) suggests that in investigations with a national security nexus (so international terrorism or espionage, as many leak cases have been treated) DOJ need not comply with **existing restrictions** requiring Attorney General approval before getting the phone records of a journalist. The reason? Because NSLS aren't subpoenas, and that restriction only applies to subpoenas.

Department of Justice policy with regard to the issuances of subpoenas for telephone toll records of members of the news media is found at 28 C.F.R. § 50.10. **The regulation concerns only grand jury subpoenas, not National Security Letters (NSLS) or administrative subpoenas.**

(The regulation requires Attorney General approval prior to the issuance of a grand jury subpoena for telephone toll records of a member of the news media, and when such a subpoena is issued, notice must be given to the news media either before or soon after such records are obtained.) The following approval requirements and specific procedures apply for the issuance of an NSL for

telephone toll records of members of the news media or news organizations. [my emphasis]

So DOJ can use NSLs—with no court oversight—to get journalists' call (and email) records rather than actually getting a subpoena.

The section includes four different approval requirement scenarios for issuing such NSLs, almost all of which are redacted. Though one only partly redacted passage makes it clear there are some circumstances where the approval process is the same as for anyone else DOJ wants to get an NSL on:

If the NSL is seeking telephone toll records of an individual who is a member of the news media or news organization [2 lines redacted] there are no additional approval requirements other than those set out in DIOG Section 18.6.6.1.3 [half line redacted]

And the section on NSL use (see PDF 100) makes it clear that a long list of people can approve such NSLs:

- *Deputy Director*
- *Executive Assistant Director*
- *Associate EAD for the National Security Branch*
- *Assistant Directors and all DADs for CT/CD/Cyber*
- *General Counsel*
- *Deputy General Counsel*

- for the National Security Law Branch*
- *Assistant Directors in Charge in NY, Washington Field Office, and LA*
- *All Special Agents in Charge*

In other words, while DOJ does seem to offer members of the news media—which is itself a somewhat limited group—some protection from subpoena, it also seems to include loopholes for precisely the kinds of cases, like leaks, where source protection is so important.

See also this post, where I tried to write it really plainly.

Then, last year, after it got caught obtaining the call records of some Pulitzer Prize winners, DOJ pretended to roll out new protections for journalists.

Charlie Savage reports that DOJ has just rolled out the final version of those great new protections.

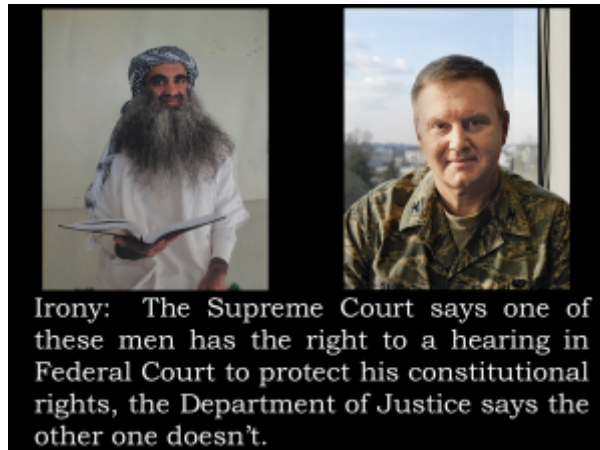
Here's the last paragraph of his report on the "new guidelines."

The rules cover grand jury subpoenas used in criminal investigations. They exempt wiretap and search warrants obtained under the Foreign Intelligence Surveillance Act and "national security letters," a kind of administrative subpoena used to obtain records about communications in terrorism and counterespionage investigations.

Which makes these "new guidelines" worth approximately shit in any leak — that is, counterintelligence — investigation.

1ST AMENDMENT JUSTICE DELAYED IS JUSTICE DENIED FOR COL. MORRIS DAVIS

Col.
Morris
Davis
is, at
least
for my
money,
an
Americ
an
hero.



He

served and fought not only for his country, but for the Constitution he swore to protect. The subject of what happened to him at the hands of the very government he defended deserves a much longer, and deeper, dive than I have time for in this post. We will likely come back for that at a later date as it seems as if the legal case Col. Davis brought to correct the wrongs done to him will likely go on forever.

And the going on forever part is the subject of this post. Col. Davis was scheduled to have a hearing in United States District Court in Washington DC tomorrow in front of Judge Reggie Walton. But the hearing was postponed. And that is the problem, this is the FOURTEENTH (14th) TIME hearing on Col. Davis' case has been delayed. One delay was due to a conflict on Judge Walton's part, and one because the offices of Davis' attorneys at the ACLU in New York were substantially damaged by Hurricane Sandy. Other than that, the delay has been at the hands of an intransigent and obstreperous DOJ. If the actions of the DOJ in relation to Col. Davis are

not “bad faith”, it is hard to imagine what the term stands for.

Now, to be fair, it appears the latest delay was at the unilateral hand of the court, as yesterday’s minute entry order reads:

In light of the fact that potentially dispositive motions remain pending, it is hereby ORDERED that the status hearing currently scheduled for Friday, February 21, at 9:15 a.m. is CONTINUED to a date and time to be determined by the Clerk.

The problem with that is that the “dispositive motions” the court speaks of as being “pending” have been “pending” for a VERY long time, since July of last year. And the case itself has been going on since the complaint was filed on January 8, 2010.

Why is it taking so long you ask? Because of the aforementioned bad faith and obstreperousness of the Department of Justice, that’s why. To get an idea of just what is going on here, a little background is in order. Peter Van Buren gives a good, and relatively brief synopsis:

Morris Davis is not some dour civil servant, and for most of his career, unlikely to have been a guest at the Playboy Mansion. Prior to joining the Library of Congress, he spent more than 25 years as an Air Force colonel. He was, in fact, the chief military prosecutor at Guantánamo and showed enormous courage in October 2007 when he resigned from that position and left the Air Force. Davis stated he would not use evidence obtained through torture. When a torture advocate was named his boss, Davis quit rather than face the inevitable order to reverse his position.

Morris Davis then got fired from his research job at the Library of Congress

for writing an article in the Wall Street Journal about the evils of justice perverted at Guantanamo, and a similar letter to the editor of the Washington Post. (The irony of being fired for exercising free speech while employed at Thomas Jefferson's library evidently escaped his bosses.) With the help of the ACLU, Davis demanded his job back. On January 8, 2010, the ACLU filed a lawsuit against the Library of Congress on his behalf. In March 2011 a federal court ruled against the Obama Administration's objections that the suit could go forward (You can read more about Davis' struggle.)

Moving "forward" is however a somewhat awkward term to use in regards to this case. In the past two years, forward has meant very little in terms of actual justice done.

Yes, you read that right. Col. Davis was fired from the job he truly loved at the Congressional Research Service because he, on his own time as a private citizen, exercised his First Amendment right to speak. As one of Davis' pleadings puts it:

Col. Davis was unconstitutionally removed from his position at the Library of Congress' Congressional Research Service for writing opinion pieces in the Wall Street Journal and the Washington Post expressing his nonpartisan, personal views on the failures of the American military commissions established to try detainees at Guantánamo Bay, Cuba. His speech lies at the very core of the First Amendment and exemplifies the kind of speech that federal courts have been most vigilant in protecting from government retaliation.

The full pleading that quote came from, Col. Davis' response to the government's motion for summary judgment (one of the "pending dispositive motions") can be found here and is a good read if you are interested in more background.

That is exactly what happened and what is at stake. And you do not have to take my word for it, Judge Walton thinks it is a solid and valid claim too. Here is language from Judge Walton in an order in late January 2010, not long after the case was filed:

The Court is satisfied that the plaintiff has established, at least based on the record before the Court at this time, that the likelihood of success on the merits and public policy prongs of the preliminary injunction standard weigh in his favor. Essentially, the record before the Court suggests that the plaintiff was terminated immediately after two specific opinion editorials he authored were published in national newspapers. Regardless of the defendants' contention to the contrary, it appears that the content of the plaintiff's published opinions was one of the reasons, if not the primary reason, he was fired, i.e., because the plaintiff took a position on the prosecution of detainees being housed at the United States military's Guantánamo Bay facility which the Congressional Research Service felt would call into question its impartiality as to any policy recommendation it would make and any research it would conduct on that issue. This conclusion is supported by the fact that the opinion articles were specifically referenced in the plaintiff's termination letter, and also the timing of the letter, which was issued only several days after his writings were published. The plaintiff's likelihood of success position therefore

is well-founded, at least with respect to the record the Court now has before it. And as to the public interest prong, it cannot be questioned that government employees retain First Amendment rights. (citations omitted)

So, there is really no question but that protected First amendment rights were involved, and that Col. Davis was wrongfully fired for exercising them. Makes you wonder why the DOJ would string him out and fight so hard in a case that is only about the rights and not even about the money damages he suffered as a result (that would have to be litigated in a separate action).

As the graphic at the top questions, why is the DOJ willing to give free speech rights to a terrorist at Guantanamo and not to Col. Morris Davis? Bad faith is the answer. Complete, scandalous, bad faith.

FORMER PROFESSIONAL JOURNALIST SUGGESTS NYT SHOULDN'T PAY ITS JOURNALISTS

I'm working on a more substantive response to this Ben Wittes post claiming that the NYT's latest Snowden story doesn't mean the NSA spies on lawyers.

But I wanted to note how it begins.

Unless the public is really tiring of matters Snowden, the *New York Times's* latest is going to stir up the hornet's nest. "Spying by N.S.A. Ally Entangled U.S. Law Firm," blares the headline of

the story by reporter James Risen and freelancer Laura Poitras—from whom the Times (which insists it never pays for information) sometimes procures Snowden-leaked documents and to whom it gives a byline when it does so. [my emphasis]

The apparent subtext here is that the NYT is paying Laura Poitras not to do journalism on a story she has covered in depth for the last 8 months, but instead for access to documents in her possession (or to use Mike Rogers' formulation, Poitras is fencing stolen property).

The comment is odd not just because Wittes has not (as far as I know) complained that the NYT also got (or may have in this case – I frankly don't claim to know these arrangements) Snowden documents directly from the Guardian in a necessary attempt to bypass the UK's crackdown on press freedom.

Odder still, according to Wittes' Brookings bio, he worked as a professional journalist for at least a decade, both as a WaPo staffer and as an independent contributor.

Between 1997 and 2006, he served as an editorial writer for *The Washington Post* specializing in legal affairs. Before joining the editorial page staff of *The Washington Post*, Wittes covered the Justice Department and federal regulatory agencies as a reporter and news editor at *Legal Times*. His writing has also appeared in a wide range of journals and magazines including *The Atlantic*, *Slate*, *The New Republic*, *The Wilson Quarterly*, *The Weekly Standard*, *Policy Review*, and *First Things*.

Therefore I assume he is familiar with the tradition in journalism that when someone reports – even (especially) for a major newspaper as a freelancer – one gets paid.

Except he seems to want to make an exception **just in this one case** so as to insinuate certain things about Poitras' reporting.

I do hope all of Wittes' reporter friends remind him that their profession is still ... a profession, and that equating professional journalism with crime sort of puts a damper on the whole freedom of the press thing, not to mention their claim that they should be compensated for their labor.

Disclosure: Obviously, with my affiliation with First Look Media, I do have a tie with Poitras (though not with this story). As an EW post, however, this post has no tie to First Look, and I have talked to neither Poitras nor anyone else at First Look before writing it.

Update: Wittes explains himself at length here (though the *@^\$&*# hackers have brought Lawfare down again). It seems Wittes is nostalgic for the time when newspapers and the government had such a cozy relationship the NYT could lie us into catastrophic war in the service of the government.

I confess that I'm troubled by the power dynamics at work—for reasons that I'm sure will not endear me to my Twitter critics: I believe in institutional media. I believe in editors. And while I also deeply believe in the proliferation of voices that new media has enabled, I don't like it that Greenwald, Gellman, and Poitras have such enormous leverage against big media organizations which I expect to make responsible publishing decisions. Put simply, I am uncomfortable with the unaccountable power that this arrangement gives people like Poitras over organizations like the *New York Times*.

FRIDAY NEWS DUMP NOT DEAD YET: STEPHEN KIM GUILTY PLEA

Just when Kevin Drum declared the “Friday News Dump” dead, comes proof news of said death was greatly exaggerated.

As Josh Gerstein and others have reported, the plea will be entered this afternoon:

Under the terms of the agreement, Kim will plead guilty to a single felony count of disclosing classified information to Rosen in June 2009, and serve a 13-month prison sentence. Judge Colleen Kollar-Kotelly would have to accept the sentence or reject it outright?, in which case Kim could withdraw his plea. Kim would also be on supervised release for a year, but would pay no fine.

Judge Kollar-Kotelly is expected to accept the guilty plea at today’s hearing, but will not impose a sentence until sometime later.

Well, that is kind of a big deal dropped out of nowhere on a Friday afternoon.

As you may recall, this is the infamous case where the Obama/Holder DOJ was caught classifying a journalist, James Rosen of Fox News, as an “aider and abettor” of espionage. As the Washington Post reported, the scurrilous allegation was clear as day in a formal warrant application filed as an official court document:

“I believe there is probable cause to conclude that the contents of the wire

and electronic communications pertaining to the SUBJECT ACCOUNT [the gmail account of Mr. Rosen] are evidence, fruits and instrumentalities of criminal violations of 18 U.S.C. 793 (Unauthorized Disclosure of National Defense Information), and that there is probable cause to believe that the Reporter has committed or is committing a violation of section 793(d), as an aider and abettor and/or co-conspirator, to which the materials relate," wrote FBI agent Reginald B. Reyes in a May 28, 2010 application for a search warrant.

The search warrant was issued in the course of an investigation into a suspected leak of classified information allegedly committed by Stephen Jin-Woo Kim, a former State Department contractor, who was indicted in August 2010.

The Reyes affidavit all but eliminates the traditional distinction in classified leak investigations between sources, who are bound by a non-disclosure agreement, and reporters, who are protected by the First Amendment as long as they do not commit a crime.

[snip]

As evidence of Mr. Rosen's purported culpability, the Reyes affidavit notes that Rosen and Kim used aliases in their communications (Kim was "Leo" and Rosen was "Alex") and in other ways sought to maintain confidentiality.

"From the beginning of their relationship, the Reporter asked, solicited and encouraged Mr. Kim to disclose sensitive United States internal documents and intelligence information.... The Reporter did so by employing flattery and playing to Mr. Kim's vanity and ego."

“Much like an intelligence officer would run an [sic] clandestine intelligence source, the Reporter instructed Mr. Kim on a covert communications plan... to facilitate communication with Mr. Kim and perhaps other sources of information.”

Of course, the fully justifiable uproar over the Rosen treatment by DOJ eventually led to “new guidelines”, being issued by the DOJ. The new guidelines are certainly a half step in the right direction, but wholly unsatisfactory for the breadth and scope of the current Administration’s attack on the American free press.

But now the case undergirding the discussion in the Stephen Kim case will be shut down, and the questions that could play out in an actual trial quashed. All nice and tidy!

Frankly, I have mixed emotions about the reported Kim plea itself. It is, all in all, a pretty good deal for Kim and his attorney, the great Abbe Lowell. The case is done, bad precedent does not get etched into a jury verdict and appeal, and the nightmare has an end in sight for the defendant, Stephen Kim. All things considered, given the seriousness of the espionage and false statement charges in the indictment, 13 months is a good outcome. And it is not a horrible sentence to have as a yardstick for other leakers (were I Ed Snowden and Ben Wizner, I would like this result). By the same token, the damage done by the ridiculous antics and conduct of the DOJ in getting to this point is palpable. It will leave a stain that won’t, and shouldn’t, go away.

That still leaves the matter of Jeffrey Sterling, and reporter James Risen, though. Whither DOJ on that? And it is an important question since the much ballyhooed and vaunted “New Media Policies” announced by DOJ left wide open the ability to force Risen (and others that may some day be similarly situated) to testify

about his sources of face jail for contempt.

MIKE ROGERS AIMS TO CRIMINALIZE ONE OF THE MAIN THINGS THAT AFFORDS JOURNALISTS PROTECTIONS: GETTING PAID

Remember DOJ's efforts to placate journalists (rather stunningly, in retrospect, rolled out a month **after** the first Edward Snowden leaks)?

As I noted at the time, DOJ's new protections for the press applied not to the act of journalism, but rather to members of the news media. DOJ's own Domestic Investigations and Operations Guide requires institutional affiliation before they'll treat someone as a journalist.

"News media" includes persons and organizations that gather, report or publish news, whether through traditional means (e.g., newspapers, radio, magazines, news service) or the on-line or wireless equivalent. A "member of the media" is a person who gathers, reports, or publishes news through the news media.

[snip]

As the term is used in the DIOG, "news media" is not intended to include persons and entities that simply make information available. Instead, it is intended to apply to a person or entity that gathers information of potential

interest to a segment of the general public, uses editorial skills to turn raw materials into a distinct work, and distributes that work to an audience, as **a journalism professional**. [my emphasis]

According to the DOJ, then, you have to get paid (preferably by an institution recognized to be a press) to be afforded heightened First Amendment protection as a journalist.

Except now House Intelligence Chair Mike Rogers wants to criminalize that – one of the main things that warrants you protection by DOJ as a journalist, getting paid – by calling it “fencing stolen material.”

REP. ROGERS: You – there have been discussions about selling of access to this material to both newspaper outlets and other places. Mr. Comey, to the best of your knowledge, is fencing stolen material – is that a crime?

DIRECTOR JAMES COMEY: Yes, it is.

REP. ROGERS: And would be selling the access of classified material that is stolen from the United States government – would that be a crime?

DIR. COMEY: It would be. It’s an issue that can be complicated if it involves a news-gathering and news promulgation function, but in general, fencing or selling stolen property is a crime.

REP. ROGERS: So if I’m a newspaper reporter for – fill in the blank – and I sell stolen material, is that legal because I’m a newspaper reporter?

[snip]

REP. ROGERS: And if I’m hocking stolen classified material that I’m not legally in possession of for personal gain and profit, is that not a crime?

DIR. COMEY: I think that's a harder question because it involves a news-gathering functions – could have First Amendment implications. It's something that probably would be better answered by the Department of Justice.

REP. ROGERS: So entering into a commercial enterprise to sell stolen material is acceptable to a legitimate news organization?

DIR. COMEY: I'm not sure I'm able to answer that question in the abstract.

REP. ROGERS: It's something we ought to think about, is it not?

DIR. COMEY: Certainly.

So you're not a journalist (and get no protections) if you don't get paid. But if you do get paid, you're fencing stolen property.

I do hope the traditional press recognizes the danger in this stance.

CHINA'S MEDIA PROTECTIONISM

The other day, NYT's great ombud Margaret Sullivan wrote a post on the difficulties it and other media outlets are having with China.

- Last year, The Times published a story by David Barboza about the enormous wealth of China's ruling family. The article won a Pulitzer Prize – and caused the Chinese government to shut down The Times's website in China, an important part of its growth as a global business, at a cost of about \$3 million in lost revenue to The Times so far.

[Click through for Sullivan's account of the dispute between NYT and Bloomberg over whether the latter killed a story critical of China's ruling elite.]

- Fortune magazine reported last week that Chinese authorities barged into Bloomberg News offices in Shanghai and Beijing to conduct inspections shortly after The Times wrote about the disputed and still unpublished article. Chinese officials also demanded an apology from Mr. Winkler, Fortune reported. Mr. Winkler has built Bloomberg News into a top-flight news organization, one that has clearly done some of the best reporting from China. Publicly, Bloomberg has continued to say that its article was held back for more reporting, not permanently killed. One of the reporters of that article, Michael Forsythe, was suspended from Bloomberg; he later left the company. It would not be surprising if Mr. Forsythe soon joined the reporting staff of The Times.

- American reporters in China are having problems getting their residency visas renewed and soon may be forced to leave the country. What once was "an annual nonevent" has become "a very big worry," said Jill Abramson, the executive editor at The Times. "I'm concerned that we won't be able to do the unfettered coverage we need to do for our readers."

The Times has a dozen people reporting on China who have New York Times accreditations from the Chinese government, including a photographer and a videographer. All are in Beijing except Mr. Barboza, who is based in Shanghai. The Times also has several correspondents and an editing operation in Hong Kong.

- The websites of The Wall Street

Journal and Reuters were both recently blocked, and Bloomberg's has been blocked for many months. And after officials ordered some companies to stop paying for Bloomberg's data terminals – central to the company's distinctive business model – the growth in sales slowed in China, a major potential market.

These are two different types of activity (or maybe three). There's the refusal to let reporters report freely in China, which has the effect of making it harder to document elite corruption. There's the refusal to let media outlets distribute their works in China, which has both a censorship and a business effect (which adds up to millions in revenue, according to Sullivan). And then there's China discouraging companies from paying for Bloomberg terminals, which is much closer to withholding a "hard" market than a "soft" one. (Chinese traders can still get the same data, just not in that convenient form.) This last category is very likely the most costly one for Bloomberg (indeed, it may explain why it is gutting its investigative journalism) though I have yet to see hard data on how costly it is.

These are not new problems.

Google already faced the choice of abiding by China's censorship and spying requirements or losing access to the market (it's worth noting that China found Google access more threatening to its power than real press coverage, at least up until now).

And a range of manufacturing and content companies have had to choose between entering the lucrative and growing Chinese market and abiding by certain rules. Of the media companies, only Google has likely been exposed to the kind of intellectual property risks implicit in – but not explicitly admitted – in doing business in China.

That is, for decades, American companies have faced the choice of doing business in China with real limits or forgoing one of the fastest growing markets.

And, as happened before with digital technology, the media outlets are now being exposed to the same difficult demands – largely that they either not report critically or lose access to the market – that manufacturing and other industries faced years before.

That doesn't make it right.

But I do hope media companies realize that the Chinese conditions on entering its market are not new at all. Because for years, the media has largely been ignoring or downplaying the costs that manufacturing companies have paid for entering the Chinese market, which has had a huge impact on US competitiveness, both in terms of lost IP and in terms of diminished exports.

China's mercantilism has been forcing this kind of choice for decades. Maybe as newspapers recognize the costs of it, they'll do more reporting on it.

Update: And the parallel continues as journalists consider whether to call for visa retaliation.

It's not clear if the U.S., a country that prides itself on having a free press, would resort to blocking Chinese journalists. But some journalists and China-watchers suggest that such a measure should be considered if the Chinese government prevents American news organizations from covering the country, a problem compounded by U.S. newspaper sites getting blocked and journalists self-censoring coverage of the Chinese government for fear of reprisal.

On Monday, The Washington Post editorial board called for a U.S. response to China's "strong-arm tactics" with the

media.

“Chinese journalists get an open door to the United States,” the Post editors wrote. “This reflects U.S. values and is fundamentally correct. But perhaps, if China continues to exclude and threaten American journalists, the United States should inject a little more symmetry into its visa policy.”

BBC’S ADAM CURTIS’ FLUCK UP

Every once in a while there’s an opinion piece so grossly naive, horribly uninformed, or passively apologetic that it deserves pushback.

BBC’s Adam Curtis’ blog post, WHAT THE FLUCK [sic], is such a piece. Read it for yourself. I’m still scratching my head about this overlong, winding post that ultimately says,

“...Maybe today we are being farmed by the new system of power. But we can’t see quite how it is happening – and we need a new journalism to explain what is really going on. ...”

No. We have the right journalism, even if it is not perfect or dispersed evenly, even if we could use more of it. The Guardian’s work on the Snowden story is just one example; if I may say so, Emptywheel sets another fine example as citizen journalism.

What we need is a public willing to invest time and energy in reading the material reported, discuss it openly after careful analysis, willing to demand and support more good journalism by way of subscription, donation, or

advertising revenues as a last resort.

What we don't need are naive or uninformed opinion leaders who tell us we don't have journalism reporting about the size, scale, and nature of the corruption we face.

What we don't need are apologias masquerading as demands for more and better journalism.

Curtis' piece in particular does several things to muddy the public's perception about journalism today:

- He throws us a narrative about poor little rich girl Tamara Yeardye Mellon and her father that is not unlike reading about poor little Paris Hilton, or poor little Kardashian Annoying-Sister-Of-The-Day. The narrative utterly misses a critical point, derailing its own effort, yet he feels the public need more backstory narrative in order to really understand today's challenges..
- Rupert Murdoch is treated as if he was handed a bag of flaming dog poo by his editorial predecessor, dealing with the mess in the best manner he could – as if cellphone hacking by Murdoch's employees was mere fallout inherited immaculately by Murdoch.
- Curtis ignores his own role, using his bully pulpit to complain about an absence of reporting he is capable of providing instead of this meandering whinge.

With regard to Tamara Mellon's allegedly lost control over of her luxe shoe business Jimmy Choo Limited to Phoenix Private Equity, Curtis failed to note that not even a Mellon family member is safe from predation. *Even a Mellon can be made into a corporate vulture's bitch.*

What does this tell us about the nature of the beast?

- The One Percent as we used to know them are no more; something more powerful is at

work, eating the lunch of the past's oligarchs. We know this, though; we still haven't seen any frogmarched executives after the economic crisis of 2008.

- Whatever the beast is, it's hidden from the reading public's view, and folks like Curtis don't follow up in spite of their resources. Why didn't he ask who or what Phoenix Private Equity is?
- Why does Curtis blindly accept Tamara Mellon's perspective? She's an unreliable narrator as Matthew Mellon's wife. He never appears to question the possibility that the couple were both set up, or were agents for GCHQ.

What does the Tamara Mellon story tell us about the real problem?

Curtis demonstrates the true barrier to understanding the truth: an inability to be sufficiently curious, a lack of critical thinking, or a tendency to sweep important details under the rug for reasons that are not clear. The thread is right there in front of him; he fails to grab it and follow it, asking instead for someone else to do it, *in spite of the fact Curtis has a bloody blog hosted at the BBC's website.*

With regard to Rupert Murdoch, the pass Curtis offers the news magnate is ridiculous. Murdoch is characterized as having ethical limits demonstrated in his firing of News of the World senior editor Stafford Somerfield. Curtis credulously accepts Murdoch's excuse:

"I sacked the best editor of the News of the World. He was too nasty even for me."

Right; the same guy who made News of the World a profitable, expanding outlet is sacked a year after the paper's acquisition for doing what made the newspaper successful. What would you do in Murdoch's shoes to a cash cow who might usurp

your internal power structure given said cash cow's 25 years seniority in the business?

Murdoch is the same man who, as chair and CEO of News Corporation, owned over 800 companies located globally, constituting a news empire worth more than \$5 billion as of 2000. This fortune was made by continuing the nasty tabloid approach Stafford Somerfield began at News of the World, spread now around the world.

This is the same Murdoch who built Fox News, which could not do enough panty-sniffing when it came to President Bill Clinton's intern scandal in the 1990s. The same Fox News that set the agenda for the Bush-Cheney White House through daily talking points sent the president's offices, utterly complicit with and not separate from the halls of political power.

And of course, the cellphone hacking scandal. That's all on Murdoch and his organization, nearly 40 years after Somerfield was sacked.

What Curtis' post reveals is not a lack of "new journalism" necessary to improve the public's understanding.

Curtis' threadbare grasp of journalistic ethics is instead disclosed. This cannot be fixed by building a new approach to reporting. It can only be fixed by pointing out the failure to apply an ethical standard uniformly to contemporary journalism as well as noting culpability in the lapse of understanding (ex. Why does Curtis let Murdoch off the hook, in spite of his blog's perch at BBC?).

If there's anything else missing it is Curtis' self-empowerment to be the necessary change using the tools he has within his grasp. There's only one person who can supply that.