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THE RISE OF TRANSPARENCY AND THE DECLINE OF SECRECY IN THE AGE OF GLOBAL AND SOCIAL MEDIA

*P.J. Crowley**

Secrets aren't what they used to be.

Given news reporting of a wide range of sensitive U.S. government policies, operations and internal deliberations in recent years—the National Security Agency terrorist surveillance program and Central Intelligence Agency black sites during the Bush administration, the release of thousands of diplomatic cables and war-related documents by WikiLeaks, the "Olympic Games"[1] cyber attack on Iran's nuclear sites and details of the raid that killed Osama bin Laden during the Obama administration and other counterterrorism operations—there is understandable concern that these revelations and many more are seriously compromising U.S. national security.

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[1] DAVID E. SANGER, CONFRONT AND CONCEAL: OBAMA'S SECRET WARS AND SURPRISING USE OF AMERICAN POWER 190 (2012).

These concerns are real, although each case varies in circumstance and impact. The government has launched an unprecedented number of investigations and prosecutions.[2] Congress is considering additional legislation to try to plug such leaks.

The government needs a wider range of tools to deal with the unauthorized disclosure of secret and sensitive information. The Espionage Act, codified at 18 U.S.C. §§ 793-98, was passed in a different era to address a different problem and may be ill suited to deal with the present-day dynamic. Legal action, both criminal and civil, can have a deterrent effect, but this challenge cannot be legislated and prosecuted away. Realistic expectations are required.

A critical element in the public disclosure of classified information today is simply that the world has become more connected, better informed and increasingly transparent. The 2011 bin Laden raid in Abbottabad, Pakistan demonstrates the point.

The discovery of the Al Qaeda leader was one of the most closely held secrets within the United States government. For months, only a small circle of government leaders, intelligence operatives and analysts and eventually special operations forces were involved in the assessment of available information and the planning and execution of the operation against "Geronimo."[3]

By every indication, the Navy SEALs arrived on the outskirts of Abbottabad without detection. But while the raid was highly classified in its planning, it was quite visible in its ultimate execution. The cloak of secrecy dissolved the moment the SEAL team reached the compound.

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[2] Jane Mayer, *The Secret Sharer: Is Thomas Drake an Enemy of the State?*, NEW YORKER, May 23, 2011, http://www.newyorker.com/reporting/2011/05/23/110523fa_fact_mayer.

[3] MARK OWEN WITH KEVIN MAURER, NO EASY DAY: THE AUTOBIOGRAPHY OF A NAVY SEAL: THE FIRSTHAND ACCOUNT OF THE MISSION THAT KILLED OSAMA BIN LADEN 168 (2012).

The military plan anticipated dealing with onlookers at the scene.[4] But observers soon lit up on Twitter, conversing about the unusual late night activity in real time as the mission unfolded.[5] The news of bin Laden's demise was revealed publicly on Twitter by a Congressional aide even before the President could get to a White House podium to announce the news.[6]

Now the operation is the subject of countless news articles, movies and books, even one by a former SEAL who participated in the raid and ostensibly wrote it to "set the record straight."[7] So many sensitive (although not necessarily classified) details emerged about the raid in the immediate aftermath, some authorized and others not, that former Secretary of Defense Robert Gates offered some strategic communications advice to the White House. Articulated in more colorful terms, his message: shut up.[8]

As satisfying as that might be, it is also impractical. In the 21st century global digital media environment, there is more information in the hands of more people, now with the ability to communicate anything from anywhere with the touch of a button. The ability of any government to control this flow of information, even within its ranks, in a world with five billion cellphones is greatly diminished.[9] President Obama, addressing the United Nations General Assembly, termed the model of government control of information "obsolete."[10]

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[4] *Id.* at 167.

[5] *See* SANGER, *supra* note 1, at 101.

[6] Brian Stelter, *How the Bin Laden Announcement Leaked Out*, N.Y. TIMES MEDIA DECODER BLOG (May 1, 2012, 11:28 PM), http://mediadecoder.blogs.nytimes.com/2011/05/01/how-the-osama-announcement-leaked-out/.

[7] OWEN, *supra* note 3, at 297.

[8] *See* SANGER, *supra* note 1, at 107.

[9] PHILIP SEIB, REAL-TIME DIPLOMACY: POLITICS AND POLICY IN THE SOCIAL MEDIA ERA 9 (2012).

[10] Barack Obama, President of the United States, Remarks by the President to the U.N. General Assembly (Sept. 25, 2012) (transcript available at http://www.whitehouse.gov/the-press-office/2012/09/25/remarks-president-un-general-assembly).

In a world increasingly animated by the Internet, Facebook, Twitter and cellphone cameras—as politicians are discovering—what might be considered secret or privileged is visible to more people. People are sharing what they see and hear and think with a wider audience, and acting and reacting in real time. The recent protests throughout the Islamic world over an obscure American film trailer criticizing the Prophet Mohammed is the latest example.

The divide between what is domestic and what is international has disappeared.

INTERCONNECTED WORLD

This is, as Tom Friedman and Michael Mandelbaum have termed it, a "hyper-connecting" world, the consequence of globalization and one or more information revolutions that continue to reshape the nature of power, international relations and global politics.[11]

Some presidential candidates keep talking about building fences around America, but the connections and the flow of information and knowledge are ever expanding. Moore's Law, the exponential advance of computing power, has an information corollary, the dramatic expansion in the volume and quality of available information and the speed with which it can be transmitted.

Given the expanding reach of media, both traditional and now social media, public opinion has, as we have seen most recently with the on-going Arab transitions, become increasingly important in the conduct of foreign policy.[12]

In a world that is becoming increasingly interactive, the centers of gravity are civilian populations—protecting them, engaging them, understanding their history, their culture, their structure and

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[11] THOMAS L. FRIEDMAN & MICHAEL MANDELBAUM, THAT USED TO BE US: HOW AMERICA FELL BEHIND IN THE WORLD IT INVENTED AND HOW WE CAN COME BACK 65 (2011).

[12] MARC LYNCH, THE ARAB UPRISING: THE UNFINISHED REVOLUTIONS OF THE NEW MIDDLE EAST 199 (2012).

their politics; what worries them, what inspires them, what they want and what they need; what they think, and what they do; how they perceive the United States and what they like and don't like about its policies.

Modern conflict, as General Rupert Smith suggests, is now "war amongst the people."[13] If true, it is also "about" the people, a competition about hearts, minds and ideas. Our ability to pursue our national interests will increasingly require not only domestic support, but also international cooperation and understanding. As Joseph Nye wrote in *The Future of Power*, it is "the state (or non-states) with the best story that wins."[14]

Public opinion polls have stabilized in recent years, but international concerns about U.S. policies remain.[15] There is a fairly substantial gap between what the United States tries to do, and how others view its actions. The United States may be the world's only remaining superpower, but it faces competition for global influence on an increasingly crowded global stage.

This environment includes an array of rising powers, non-state actors and niche players—call them micro-actors. For the past two years, WikiLeaks has been one of them.

LEAKS AND WIKILEAKS

Governments leak. They always have and always will. The digitization of information can make the disclosure of sensitive and classified information easier, although it also gives law enforcement

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[13] RUPERT SMITH, THE UTILITY OF FORCE: THE ART OF WAR IN THE MODERN WORLD xiii (2007).

[14] JOSEPH S. NYE, JR., THE FUTURE OF POWER xiii (2011).

[15] *See* Pew Global Attitudes Project, *Pakistani Public Opinion Ever More Critical of U.S.*, PEW RESEARCH CENTER, June 27, 2012, http://www.pewglobal.org/2012/06/27/pakistani-public-opinion-ever-more-critical-of-u-s/.

virtual fingerprints that can help identify the perpetrator.[16] Transparency cuts both ways.

What WikiLeaks accomplished in 2010 was unprecedented in its size and scope: the public release of almost 750,000 documents, the entire contents of a State Department archive known as the Net Centric Database, or NCD.[17] Many documents were classified or highly sensitive, involving two active military campaigns and just about every bilateral relationship the United States has around the world.

The U.S. government charged Army Private First Class Bradley Manning with providing the vast trove to Julian Assange while serving in Iraq. As of late 2012, the military prosecution is ongoing. If convicted, Manning could serve a lengthy prison term, perhaps even a life sentence. Assange for his part remains under investigation by the Department of Justice. Claiming a "war on whistleblowers," Assange sought and received asylum from Ecuador to prevent extradition from Britain to either the United States, or Sweden where he faces unrelated sexual assault charges.[18]

Regarding the roughly 251,000 diplomatic cables released beginning in November 2010, the State Department had three broad categories of concern.

The first was the potential impact on critical relationships between the United States and other countries. The release of the documents undermined that sense of trust that is the bedrock of effective relationships.

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[16] Kevin Poulsen & Kim Zetter, *'I Can't Believe What I'm Confessing to You': The WikiLeaks Chats*, WIRED, June 10, 2010, http://www.wired.com/threatlevel/2010/06/wikileaks-chat/.

[17] DAVID LEIGH & LUKE HARDING, WIKILEAKS: INSIDE JULIAN ASSANGE'S WAR ON SECRECY 74 (2011).

[18] *Full Transcript of Julian Assange's Speech Outside Ecuador's London Embassy*, INDEP. (U.K.), Aug. 19, 2012, http://www.independent.co.uk/news/_uk/home-news/full-transcript-of-julian-assanges-speech-outside-ecuadors-london-embassy-8061466.html [hereinafter Assange Speech].

The second was the lives and livelihoods of people—other government officials, activists, academics, citizens, even an occasional journalist—who had talked to a U.S. diplomat sometime in the past. Lives and careers were placed in jeopardy.

The third was the impact on future statecraft. The NCD existed specifically to share information more broadly across the government in the aftermath of 9/11. But government agencies will only share information when they have confidence it will be protected.

Now approaching three years since the initial WikiLeaks revelations, what has been the impact?

It is hard to isolate what happened with WikiLeaks from other sources of tension that are inherent in many, if not most, bilateral relationships. Has an activist been jailed because she talked to an American diplomat or because she was exposing corruption within an autocratic government? The answer is unknowable, but could easily be one or both. The WikiLeaks disclosures will remain part of the background noise of international diplomacy for the foreseeable future.

While it has undoubtedly produced stresses and strains in strategic relationships, the sky did not fall.[19] There is little evidence it has handicapped the conduct of U.S. global diplomacy. Some of this is attributable to hard work by the Obama administration to mitigate any long-term impact. Over time, the common interests that drive international relations rose above political pique, although a handful of ambassadors were replaced due to the candor of their diplomatic reporting.[20]

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[19] *See, e.g.*, MICAH L. SIFRY, WIKILEAKS AND THE AGE OF TRANSPARENCY 154 (2011) (stating Former Secretary of Defense Robert Gates termed the impact as "fairly modest").

[20] *See* Paul Harris, *Wikileaks Has Caused Little Lasting Damage, Says US State Department*, GUARDIAN, Jan. 18, 2011, http://www.guardian.co.uk/media/2011/jan/19/wikileaks-white-house-state-department; *see also U.S. Envoy to Libya Ensnared in Wikileaks Uproar*, REUTERS, Jan. 5, 2011, http://www.reuters.com/article/2011/01/05/us-libya-usa-idUSTRE7045YX20110105.

The United States has assisted various individuals in relocating within autocratic societies to safer ground as a result of compromised cables. Have people cited in these cables been physically harmed for what they are doing, including their interactions with U.S. diplomats? The answer is yes. The government continues to monitor a large number of cases and has interceded repeatedly when individuals cited in cables have been threatened and detained.[21]

There remains a risk that information will be pushed back into agency silos, either through reduced circulation of cable traffic—the State Department unplugged the NCD from one classified network after the compromise—or the use of other narrower reporting channels. Over the past couple of years, any foreign diplomat who engages his or her American counterpart has likely thought of WikiLeaks during the course of the conversation.

Did WikiLeaks raise legitimate questions about the conduct of U.S. policy in specific locations? Yes. For example, one cable revealed the willingness of the former leader of Yemen to deceive his own people about the nature of joint counter-terrorism operations, with at least the tacit agreement of U.S. officials, and raised the risk of deceiving the American people in the process.[22]

Did it change history? Not really. For example, the dramatic transitions in the Middle East and North Africa are not Wiki revolutions although revelations undoubtedly validated popular grievances that were widely shared prior to 2010. The release of cables in Tunisia through TuniLeaks gave demonstrations added momentum.[23] Interestingly, WikiLeaks has had minimal impact in authoritarian societies lacking a significant global media presence. State-controlled media largely ignored the story.

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[21] *See* THE NEW YORK TIMES STAFF, OPEN SECRETS: WIKILEAKS, WAR, AND AMERICAN DIPLOMACY 241 (Alexander Star ed., 2011).

[22] *See id.* at 81-82.

[23] *See id.* at 19.

How WikiLeaks is viewed as a phenomenon depends on the lens through which it is viewed, whether a case of freedom of the press, whistleblowing, secrecy or transparency.

FREEDOM OF THE PRESS

Standing on a balcony of the Ecuadorian embassy in London in August 2012, Julian Assange criticized the ongoing Justice Department investigation of WikiLeaks as a witch-hunt against "journalists for shining a light on the secret crimes of the powerful."[24]

Notwithstanding Assange's efforts to portray WikiLeaks in terms of freedom of the press—governments are not the only entities adept at "spin"—the frame is not really valid.

The United States government never questioned the right of the media, such as *The New York Times* and other mainstream outlets, to publish stories based on classified and sensitive documents in their possession.[25] Unlike the Pentagon Papers case,[26] which also involved *The New York Times* and was ultimately settled by the Supreme Court, the government did not seek an injunction to preempt publication.

The approach to WikiLeaks was different. The State Department Legal Advisor, Harold Koh, sent a letter to its legal representative requesting that WikiLeaks destroy rather than post on the Internet the diplomatic cables it had acquired.[27] The U.S. government viewed Assange (and WikiLeaks) as a political actor, not a journalist. Ironically, so did some within WikiLeaks itself.[28]

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[24] Assange Speech, *supra* note 18.

[25] *See generally* THE NEW YORK TIMES STAFF, *supra* note 21 at 15, 241-243 (providing insight into the U.S. government's reaction to potential publication of classified information).

[26] *See generally* New York Times Co. v. United States, 403 U.S. 713 (1971) (denying the government an injunction against *The New York Times*, which was permitted to publish classified Pentagon papers).

[27] *See* LEIGH & HARDING, *supra* note 17, at 192-193.

[28] DANIEL DOMSCHEIT-BERG, INSIDE WIKILEAKS: MY TIME WITH JULIAN ASSANGE AT THE WORLD'S MOST DANGEROUS WEBSITE 162 (2011).

Interestingly, so did the mainstream media. Bill Keller, *The New York Times*' editor at the time, considered Assange "a source."[29] His counterpart at *The Guardian*, Davis Leigh, termed him a "publisher-intermediary."[30]

This distinction was also evident in the respective approaches of the mainstream media and WikiLeaks to the release of documents. WikiLeaks eventually posted the entire archive on the Internet without context and with little effort to protect the safety of civilians identified in the cables.[31] On the other hand, the mainstream media recognized both the potential danger to individual sources and to some extent to national security interests. Media outlets withheld some information, mostly civilian names but some intelligence information as well, while reporting carefully and credibly on the material, attempting to put issues in broader context.[32]

Notwithstanding these contrasting approaches—the complete transparency advocated by WikiLeaks vs. selective disclosure by the mainstream media—it is virtually impossible to separate Julian Assange's actions from those of the journalists and news outlets with which he partnered. While existing law could support a credible legal case against not just the perpetrator of a leak but a recipient and co-conspirator as well, the costs of such a prosecution potentially outweigh the benefits. It would undoubtedly compromise the credibility of the United States as a key advocate for freedom of the press in authoritarian societies around the world.

What helped WikiLeaks achieve global impact was not just the breadth of the diplomatic documents it acquired, but the global media partnership it built with *The New York Times*, *The Guardian*, *Le Monde, Der Spiegel* and *El Pais,* adding other major news outlets around the world including *Al Jazeera* over time.[33] This is "networked journalism," bringing together a broad array of mainstream media, non-governmental organizations and citizen journalists, employing

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[29] THE NEW YORK TIMES STAFF, *supra* note 21, at 20.
[30] LEIGH & HARDING, *supra* note 17, at 7.
[31] *See* DOMSCHEIT-BERG, *supra* note 28, at 183.
[32] THE NEW YORK TIMES STAFF, *supra* note 21, at 14.
[33] *See*, *e.g.*, LEIGH & HARDING, *supra* note 17, at 10.

the latest information and connective technologies (including high speech search capabilities to make huge volumes of information intelligible), sharing information and reporting deliberately over months rather than days. For reasons both technological and economic, this global media model is certain to be repeated in the future.

Similar synergies were evident during the Arab Awakening, where governments from Tunisia and Libya to Egypt and Syria were unable to block the exchange of information through the Internet and social media that empowered civilian populations to overturn the status quo. Global media, including satellite television, documented unfolding events; showing state-sponsored violence against protesters, and generating international support.[34] Egypt literally tried to disconnect itself from the outside world, but the networks and infrastructure were too robust and resilient.[35]

WHISTLEBLOWING

Is Bradley Manning a whistleblower? Many believe he is, and that he is entitled to protection rather than prosecution. On the other hand, the sheer volume of the documents Manning is alleged to have passed to Assange—far more than any individual could absorb—tends to undercut that claim.

Central to the concept of whistleblowing is both expertise in the subject matter and the ability to judge that, in releasing certain information to expose wrongdoing or generate public debate about specific policies, the benefits outweigh risks associated with the leak.

Daniel Ellsberg, arguably the best modern day manifestation of a whistleblower for his role in *The Pentagon Papers*, worked directly on the analysis that detailed a flawed strategy in Vietnam. He attempted to work within the system but in the end, he felt he had no choice but to expose the report that he earnestly felt could result in a change of policy.

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[34] *See* LYNCH, *supra* note 12, at 68-69.

[35] *See* SEIB, *supra* note 9, at 41-44.

Using the available technology in the late '60s, Ellsberg photocopied volumes of material and made them available to *The New York Times*.[36] On the other hand, while serving in a war zone, Manning is alleged to have downloaded a digital file onto a Lady Gaga CD (the computer drives that enabled this to occur were supposed to be disabled but were not) and with a few strokes of the keyboard forwarded it to Assange.[37]

Whether WikiLeaks is the wave of the future or a one-hit wonder remains to be seen. But technology enables journalists and public advocates to establish connections deep within government bureaucracies, making the leak of a large file or small detail easier to accomplish.

Leaks can occur, as with WikiLeaks, because someone perceives wrongdoing or wants to set information free. They can also involve bureaucratic rivalries, a desire to advance a policy or set the record straight. They are likely to happen with growing frequency for multiple reasons.

The media reporting on national security issues today are for the most part more experienced, professional and connected. Their rolodexes are extensive and include relationships not just with U.S. officials but with foreign leaders as well. Journalists, civilian politicians and policymakers have been on campaigns together. Journalists, junior and senior military officials and even intelligence analysts have been in war zones together. Given the evolution of the non-stop 24/7-news cycle and its intensive focus on Washington, government officials pay attention, take journalists' calls and respond to their emails and text messages.

Far more often, so-called leaks result not because of hidden agendas but through extensive reporting using this robust network of sources, which provides access to both operational and strategic-level information.

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[36] DANIEL ELLSBERG, SECRETS: A MEMOIR OF VIETNAM AND THE PENTAGON PAPERS 372 (2002).

[37] *See* LEIGH & HARDING, *supra* note 17, at 22.

SECRECY

Max Frankel, the Washington bureau chief for *The New York Times*, said in a deposition regarding the Pentagon Papers, "when the government loses a secret or two, it simply adjusts to a new reality."[38]

But WikiLeaks involved much more than a "secret or two." Are there too many secrets? The answer is probably yes, but in many ways, this is the wrong question.

Take one of the cables that received more attention than most.

A number of stories quoted an exchange between a Gulf monarch and a high level U.S. government official.[39] It is well known that the Gulf monarchies are greatly concerned about a more ambitious and assertive Iran, one that has an active nuclear program. The king's view was clear: military action will be required, and the sooner the better.[40]

Should conversations like that be confidential? Most would answer, yes. The fact is, more of these diplomatic conversations are happening than ever before.

In today's world, more countries are taking active roles on the international stage—the United Nations added its 193rd member this year, South Sudan. With the end of the Cold War and advent of globalization, the United States is literally doing business with almost all of them. And more issues, from economics and energy to global health and climate change, fit under the rubric of national security. At the State Department alone, diplomats around the world now

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[38] THE NEW YORK TIMES STAFF, *supra* note 21, at 18.

[39] *See generally* Tally Helfont, *E-Notes: WikiLeaks in the Arab Press*, FOREIGN POLICY RESEARCH INSTITUTE, Feb. 2011, http://www.fpri.org/enotes/201102.helfont.wikileaks.html.

[40] THE NEW YORK TIMES STAFF, *supra* note 21, at 474.

generate more than one million cables and two billion emails each year, many of them confidential.[41]

Some suggest there should be fewer secrets. This is unrealistic.

Businesses have proprietary information—Coca Cola has its secret formula and Google its secret algorithm. These secrets are crucial to maintaining a competitive advantage. Governments are no different, up to a point.

In the national security world, broad categories of activity should be properly restricted—most advocates of more transparent government recognize this—military operations, weapon capabilities, intelligence operations, diplomatic communications, and critical infrastructure would be good examples.

A democracy with no secrets is a society that will rapidly cease to function. Naked transparency, as Lawrence Lessig wrote not long ago in *The New Republic*, would push our political system over the cliff.[42]

There must be a balance. But government can do better.

TRANSPARENCY

If there needs to be a zone of confidentiality, one that rightly pertains to national security where governments should be given latitude to conduct diplomacy, and plan and execute military operations, then there must be a corresponding zone of accountability that ensures citizens are properly informed about the actions of government and that subjects government to genuine oversight.

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[41] William McAllister, *The Documentary Big Bang, the Digital Records Revolution, and the Future of the Historical Profession*, 41 PASSPORT 12 (2010).

[42] Lawrence Lessig, *Against Transparency: The Perils of Openness in Government*, NEW REPUBLIC, Oct. 9, 2009, http://www.tnr.com/article/books-and-arts/against-transparency.

At a certain level, the United States is transparent. There is now an intensive 24/7 media climate that surrounds government. Government hearings and floor debates are televised, although a case can be made that television may actually be a contributing factor in the growing ineffectiveness of government institutions.

Yet, since 9/11, there has been a discernible push towards less government transparency and less public debate about critical security issues. Information has been removed from public websites based on a concern, legitimate up to a point, that potential adversaries can exploit it. Critical infrastructure is a good example—a cable analyzing global critical infrastructure was one of the most sensitive documents released by WikiLeaks.[43]

There are institutional ways in which government can encourage proper accountability while protecting those details that are truly the most sensitive—strengthening the role of oversight bodies within government, declassifying information more rapidly, and improving its responsiveness to freedom of information requests.

Another is simply recognizing that, in a more transparent world and where public opinion can be more strategic, there is a need to communicate more, to engage global publics more aggressively and forthrightly. A good example regards counter-terrorism operations, specifically the use of drones.

According to published accounts, drone strikes in 2011 killed three American citizens, Anwar al-Awlaki, a rising leader within Al Qaeda in the Arabian Peninsula (AQAP); Samir Kahn, an Al Qaeda in the Islamic Maghreb (AQIM) propagandist and editor of the online magazine Inspire; and Awlaki's 16-year old son, Abdulrahman.

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[43] Mark Clayton, *WikiLeaks List of 'Critical' Sites: Is it a 'Menu for Terrorists'?*, CHRISTIAN SCI. MONITOR, Dec. 6, 2010, http://www.csmonitor.com/USA/Foreign-Policy/2010/1206/WikiLeaks-list-of-critical-sites-Is-it-a-menu-for-terrorists.

In the case of Anwar al-Awlaki, U.S. President Obama confirmed the airstrike that killed him.[44] While the administration has publicly discussed the legal foundations for ongoing counter-terrorism operations in a series of speeches by senior officials, it has not released its legal analysis justifying the action outside a court of law and without due process.[45]

Awlaki's leadership role in AQAP and participation in AQAP operational planning, not to mention his encouragement of further attacks against the United States, are a strong basis to conclude he was a clear threat to the United States and a legitimate target. And there are ample legal authorities to justify the action, particularly the 2001 Authorization for the Use of Military Force (AUMF).[46]

But expressly because this involved an American citizen outside a declared war zone and without due process, the government is obligated to come forward with sufficient information to give the American people confidence that the action was consistent with the laws of war and existing authorities.

Another example involves Pakistan. Secretary of Defense Leon Panetta, in a speech in New Delhi acknowledged that "We are fighting a war in the FATA," referring to Pakistan's federally administered tribal areas where core al Qaeda's remaining leaders and key allies are located.[47]

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[44] Barack Obama, President of the United States, Remarks by the President at the "Change of Office" Chairman of the Joint Chiefs of Staff Ceremony (Sept. 30, 2011) (transcript available at http://www.whitehouse.gov/the-press-office/2011/09/30/remarks-president-change-office-chairman-joint-chiefs-staff-ceremony).

[45] *See, e.g.*, John O. Brennan, Chief Counterterrorism Advisor, Speech at the Wilson Center: The Ethics and Efficacy of the President's Counterterrorism Strategy (Apr. 30, 2012) (transcript available at http://www.wilsoncenter.org/event/the-efficacy-and-ethics-us-counterterrorism-strategy).

[46] *See* DANIEL KLAIDMAN, KILL OR CAPTURE: THE WAR ON TERROR AND THE SOUL OF THE OBAMA PRESIDENCY 265 (2012).

[47] Leon Panetta, Secretary of Defense, Remarks by Secretary Panetta at the Institute for Defence Studies and Analyses in New Delhi, India (June 6, 2012) (transcript available at http://www.defense.gov/transcripts/transcript.aspx?transcriptid=5054).

The U.S. government considers the details of individual drone strikes as classified, even though the results of these drone operations are well known to the Pakistani public, reported by Pakistani media and catalogued by various web sites.[48]

While Pakistan's military and intelligence services know more about the drone strikes than is publicly acknowledged, its civilian government has publicly called for drone strikes to end.[49] The United States has ignored these demands, despite the fact that strengthening civilian governance in Pakistan is considered crucial to defeating the extremist threat in that country.[50]

What was once a shared struggle against Al Qaeda now is viewed as "America's war" within and even against Pakistan. According to the latest Pew Global Attitudes Project poll, the U.S. approval rating within the Pakistani public is only 11 percent, *lower* than perceptions of al Qaeda.[51] Seven in ten Pakistanis now view the United States as an enemy.[52]

To the United States, the drone program, which the Obama administration only recently acknowledged publicly, is seen as an essential counterterrorism tool.[53] But in a recent Pew poll, only two

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[48] A number of web sites track drone operations. One example is the "Year of the Drone" analysis done by the New America Foundation through its Counterterrorism Strategy Initiative, http://counterterrorism.newamerica.net/drones.

[49] *See generally* James Cavallaro et al., *Living Under Drones: Death, Injury and Trauma to Civilians from U.S. Drone Practices in Pakistan*, Sept. 2012, http://livingunderdrones.org/download-report/. *See also* Conor Friedersdorf, *'Every Person is Afraid of the Drones': The Strikes' Effect on Life In Pakistan*, ATLANTIC, Sept. 25, 2012, http://www.theatlantic.com/international/archive/2012/09/every-person-is-afraid-of-the-drones-the-strikes-effect-on-life-in-pakistan/262814/.

[50] *See, e.g.,* SANGER, *supra* note 1, at 88.

[51] *See* Pew Global Attitudes Project, *supra* note 51.

[52] *Id.*

[53] *See generally* Greg Miller, *Brennan Speech is First Obama Acknowledgment of Use of Armed Drones*, WASH. POST, Apr. 30, 2012, http://www.washingtonpost.com/world/national-security/brennan-speech-is-first-obama-acknowledgement-of-use-of-armed-drones/2012/04/30/gIQAq7B4rT_story.html.

countries surveyed—the United States and India—had positive attitudes towards the use of drones. Eighteen countries were opposed, many by significant margins.[54]

The United States has a right of self-defense, but the secrecy is counterproductive. It prevents the U.S. government from explaining the justification for the action, who the target was and why. This inhibits the ability of the United States to develop the public support needed to sustain its counterterrorism policies and actions over time. The resulting void provides propaganda opportunities for adversaries that they have exploited, particularly regarding alleged civilian casualties due to drone operations. Such excessive secrecy imposes significant strategic costs on these operations.

MORE COMMUNICATION, NOT LESS

America commands the global stage, but technology has largely removed the costs and barriers of entry into what is now a global conversation. As the United States seeks to act, to be heard and to be understood, there are many more voices with competing narratives that will influence global perceptions of the United States, its policies and its actions.

In this real-time, complex and unpredictable environment, the temptation within government is to communicate less. In fact, it needs to communicate more.

Some in government believe the current struggle to be understood as a matter of better messaging. That's too simplistic. Communicating is about more than policy pronouncements. It is about the policies themselves—what the United States does or doesn't do; whether its actions match its words; and whether or not it can achieve common cause with others.

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[54] Pew Global Attitudes Project, *Global Opinion of Obama Slips, International Policies Faulted*, PEW RESEARCH CENTER, June 13, 2012, http://www.pewglobal.org/2012/06/13/global-opinion-of-obama-slips-international-policies-faulted/.

Going forward, the United States will never act alone. Whatever it does, billions will be watching, and reacting, in real time. If the United States fails to keep pace, it will struggle to gain the international understanding and support required to succeed.

Global public opinion is becoming more strategic. The United States cannot afford to lead from behind.