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Secrets and Leaks: The Costs and Consequences for National Security

The Honorable Pete Hoekstra

The issue of leaks has been front and center in the news, in case some of you hadn't noticed. However, I'm not just talking about Valerie Plame. Although much has been made of the revelation of her name, it is not my intention to rehash or debate the particulars of that case today. In due time, the Independent Counsel will release his report, and all the facts of the situation will be made clear.

If you cut through all the partisan rhetoric surrounding this case, it does help to bring the issue of leaks to the forefront. At this moment we are debating in ways we never have before issues surrounding the revelation of classified information. There is a bill before the Senate to create a media shield law; there are discussions on the classification process and whether too much information is being classified; and most importantly, we are debating the public's right to know more about the activities of their government.

At the outset, I want to make it clear that I am a firm believer in representative government and the people's right to know. As such, I am committed to doing more of the Intelligence Committee's hearings in public and to reviewing the issue of how much the government classifies.

Categories of Leaks

Yet today my scope is more narrowly focused on the issue of leaks of classified information, which I break into three different categories: accidental, deliberate and espionage-related.

Talking Points

- It has become all too common—almost second nature—for people in Washington to leak information. These leaks put our operational capabilities at risk and allow our enemies to manipulate the information for possible use against us.
- When it comes to deliberate disclosures of classified information, we must create a culture within the intelligence community where zero tolerance is the norm.
- The fact that leaks continue is evidence that people in the intelligence community are not being properly educated on the importance of protecting our secrets.
- We need to give the Department of Justice all the tools it needs to identify and prosecute individuals who deliberately share classified intelligence.

This paper, in its entirety, can be found at:
www.heritage.org/research/nationalsecurity/hl897.cfm

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It has become all too common—almost second nature—for people in Washington to leak information. Policymakers may leak for any number of reasons, such as to bring attention to a good news story or to discredit a bad story. They may also leak information to gauge public interest on a new policy or issue. But some seemingly leak just because they can.

These are the people—especially those that have access to classified information—that we need to worry about.

The Ghosts of Leaks Past

On the walls of the Intelligence Committee are framed posters from World War II that remind of the dangers of leaks. “Loose Lips Sink Ships,” says one poster that was originally sponsored by the House of Seagram’s. Another poster shows a ship in flames, its crew bobbing in the water and on lifeboats with the statement, “A Careless Word ... A Needless Sinking.” The ghosts of leaks past serve as potent reminders for us of the dangers of leaks today.

Each year, countless unauthorized leaks cause severe damage to our intelligence activities and expose our capabilities. The fact of the matter is that some of the worst damage done to our intelligence community has come not from penetration by spies, but from unauthorized leaks by those with access to classified information.

Were it not for a leak, there is a chance we could have brought Osama bin Laden to justice by now and have a better understanding of al-Qaeda operations. Several years ago, highly sensitive information was disclosed regarding the intelligence communities’ ability to collect information on bin Laden. Reportedly as a result, bin Laden changed his methods of operation, and we lost a valuable means of understanding al-Qaeda’s movements and future plans.

I realize there may be times when a person entrusted with classified information makes an unintentional disclosure. However, the intelligence community must be prepared to deal with these instances because all classified leaks can be dangerous.

Deliberate Disclosure

When it comes to deliberate disclosures of classified information, we must create a culture within the intelligence community where zero tolerance is the norm. People entrusted with a security clearance must realize their clearance is not a right: It is a privilege, and it must be treated as such. Just because a person has a security clearance does not give that person the authority to exercise leadership in determining what should and should not be classified.

Earlier this year, for example, the Department of Justice arrested Lawrence Franklin, a Pentagon defense analyst, for removing 83 documents from the Pentagon. Amazingly, this is not the first time Mr. Franklin was accused of compromising classified information, but his clearances were never suspended or revoked. We have to ask if the previous leniency shown to Mr. Franklin contributed to his decision to go even further in revealing classified information. Then we should be outraged. It is painfully obvious we must change the culture within the intelligence community.

The inability to protect our sources and methods from intentional leaks causes substantial damage to our intelligence services and national security.

Giving Ammunition to Our Enemies

After September 11, the intelligence community was blamed for not sharing information or translating pieces of intelligence in a timely manner to prevent the attacks from occurring. People should be equally upset that there are individuals who deliberately leak classified information. If that information gets into the hands of our enemies, it can help them plan future attacks.

We know the enemy pays very close attention to open-source materials—such as U.S. newspapers and the Internet—in order to gain a better understanding of our objectives and capabilities.

A June 2002 memo from the CIA discusses the damage caused when classified information is reported in the media. It reads in part:

Information obtained from captured detainees has revealed that al-Qaida operatives are extremely security-conscious and have altered their practices in response to what

they have learned from the press about our capabilities. A growing body of reporting indicates that al-Qaida planners have learned much about our counter-terrorist capabilities from U.S. and foreign media.

By combining traditional open-source materials with leaked classified materials, our opponents have gained powerful insights into our plans, capabilities, and intentions.

Leaks and Transnational Relations

We also know that unauthorized leaks put strains on our relationships with foreign intelligence services. Despite being the best at what we do, it is impossible to collect every piece of intelligence in every corner of the world. As a result, we count on foreign intelligence services to help fill in the gaps.

Unauthorized leaks could have a significant impact on whether foreign governments continue to share critical information with our intelligence agencies. Quite frankly, I cannot blame them.

The reality is, many foreign leaders and their governments provide us with valuable help in the war on terrorism, but they do so at tremendous political peril. If the United States cannot promise to protect classified information and its sources, why should we expect these leaders—or even our overt allies—to be willing to share their information?

Information sharing with foreign intelligence services will play a significant role in our intelligence collection capabilities in the future. The loss of foreign partners would undoubtedly create overwhelming gaps in our ability to collect good intelligence around the globe.

Some of you may have seen an article from a few weeks ago that discussed possible coordination between the U.S., France, and other governments in the war on terrorism. While I understand the public has a certain interest in knowing what the government is doing to protect them, we have to ask: Where is the balance? What was the benefit of publishing that story?

Reports that discuss sensitive partnerships, whether accurate or not, hinder our abilities to work with our friends on intelligence activities. Some foreign nations work with our agencies because it is not widely known that they are doing it. That secrecy is important for future operations.

The Commission on the Intelligence Capabilities of the United States Regarding Weapons of Mass Destruction (Silberman–Robb Commission) reports that the intelligence community seriously misjudged the status of Iraq's biological weapons program in the 2002 National Intelligence Estimate and other pre-war intelligence products.¹ The primary reason for this misjudgment was the intelligence community's heavy reliance on a source—code-named “Curveball”—whose information later proved to be unreliable.

This misjudgment could have been avoided if we were able to receive key information from our allies. The decision by a foreign intelligence service not to share a critical source seriously undermined our ability to assess his credibility. Despite numerous requests by the CIA, the foreign government refused to provide us direct access to Curveball because of past leaks from within our government.

The classified annex to the Silberman–Robb Report on Weapons of Mass Destruction discusses numerous cases over the past several years that have cost American taxpayers plenty, not to mention the harm caused by the exposure of our assets, methods, and capabilities. Because it is classified, I cannot elaborate further, but you do not need to read a classified annex to get a sense of the frequency with which leaks occur and the damage they cause. I am confident the terrorists are not reading the classified annex to get their information.

Leaking sensitive information is like giving the enemy our playbook. In 2002 a newspaper obtained classified information about top-secret war plans leading up to the invasion in Iraq. Last week, there were wire service stories on possible American and British plans to bring troops home

1. The commission's report can be found at www.wmd.gov/.

by the end of the year. Whether accurate or not, these types of stories put our operational capabilities at risk and allow the enemy to manipulate the information for possible use against our brave men and women in uniform.

How much damage has to be done before people finally say enough is enough? We must get serious about re-evaluating leaks and our response to them.

The primary question is how do we do that?

Leaks and Our Response to Them

If you talk to the different agencies, especially the Justice Department, they will tell you that leaks occur so frequently because it is extremely difficult to identify who leaked the information and then obtain a successful prosecution.

This is a problem I expect to get worse, not better, as we continue to press for increased information sharing community-wide. Agencies do not have the resources to spend months investigating a case when there is no way to narrow down the list of people who had access to the information. Simply put, more people have access to more information than ever before, and while it is necessary, it makes investigating leaks that much more difficult.

We also have to contend with the fact that there is no comprehensive statute that provides criminal penalties for the unauthorized disclosure of classified information—regardless of the type of information or the recipient involved.

As a result, the Department of Justice is left with a “patchwork” of statutes to go after those who leak. Subsequently, there has only been one prosecution for non-espionage disclosure of classified information in the last 50 years. In the case of *United States v. Morison*, the courts found the defendant guilty of providing classified information to *Jane’s Defense Weekly*.

And President Clinton pardoned Morison before he left office.

We need to bring new energy to this debate. The threat leaks pose to our national security is alarming, and it is imperative we do more to protect our national secrets.

Whether people deliberately leak information or they don’t realize the information they are discussing is classified, the fact that leaks continue is evidence that people in the intelligence community are not being properly educated on the importance of protecting our secrets.

Recommendations

The community, upon direction from the Director of National Intelligence, should implement a community-wide campaign to educate individuals about their legal obligations and possible penalties for failing to safeguard intelligence information.

In addition, we need to give the Department of Justice all the tools it needs to identify and prosecute individuals who deliberately share classified intelligence. The time has come for a comprehensive law that will make it easier for the government to prosecute wrongdoers and increase the penalties, which hopefully will act as a deterrent for people thinking about disclosing information.

In the coming months, I intend to hold a round of hearings on this issue and invite key officials from Justice, CIA, and the Defense Department, among others, to testify on ways the intelligence community can do more to prevent leaks.

If they agree to attend, I would also like to invite members of the press to testify before the committee. Journalists provide an important service to the American people, but they can also play a key role in preserving our national security.

The recent interest in leaks has inspired some Members of Congress to introduce a Media Shield Law, which would protect journalists from disclosing their sources. Although I believe this may be permissible in most cases, this bill could have serious implications if passed without exceptions for those occasions when our national security is at risk. There needs to be a balance between protecting journalists and protecting national security. I believe we can find that balance.

The Silberman–Robb Commission recognized “the enormous difficulty of this seemingly intractable problem” and concluded that “the long-standing defeatism that has paralyzed action on the topic of leaks is understandable but unwarranted.”

I, too, share that assessment, and I look forward to a full and vigorous debate on this issue.

The Honorable Pete Hoekstra (R-MI) is Chairman of the House Permanent Select Committee on Intelli-

gence. He delivered the keynote address at the Heritage Foundation program "Secrets and Leaks: The Costs and Consequences for National Security" on July 25, 2005.