

Should We Ever Punish Journalists for Publishing Secret Information?

☒ Let's say you break into somebody's house and steal a TV set. Then you call a friend and ask if he wants it – for free. You make him aware of how you got the TV and he says, "Sure, I'll take it." If the authorities find you, you and your friend are both guilty of a crime. Never mind that he didn't break into anyone's house. He's still guilty for knowingly accepting the stolen property.

Now let's go to a different scenario. Let's say you work for the United States government and have top-secret clearance. Your agency collects data – phone numbers, e-mails, and who knows what else – on just about everybody who lives in the United States. It's being done, you're told, to catch terrorists.

Let's say you think the government has gone too far. You think this is a violation of the United States Constitution. You are enraged because you think the U.S. government is way too nosy and you want the public to know what's going on in secret. So you get your hands on the material, transfer it to a flash drive and offer it to a journalist who shares your opinion about the government over-reach.

In this case only the person who pilfered secret material will be prosecuted. The government has made clear that it will not prosecute journalists for publishing stolen information. Here's how Attorney General Eric Holder put it to a Senate committee: "The Department has not prosecuted, and as long as I'm attorney general, will not prosecute any reporter for doing his or her job."

Let's get the obvious out of the way: Burglars don't have

First Amendment protection and journalists do. So this is not a prelude to an argument about punishing journalists who publish information the government wants to keep secret.

In fact, if the decision were mine, I would not prosecute Glenn Greenwald, the journalist who published the National Security Agency information about “data-mining” – secret information that was leaked to him by Edward Snowden. Nor would I attempt to punish James Rosen of Fox News who reported secret information about North Korea presumably leaked to him by a federal employee. And I would not punish the New York Times journalists, either, for publishing secret information that might have helped terrorists during the George W. Bush administration.

I think, as does just about every other journalist, that even if reporters wind up giving the bad guys a heads up about what the U.S. government is doing to catch them, we have to give the press a lot of leeway. In the long run, we figure, we’ll all be better off if the news media can keep the public informed, even if the government wants to keep us in the dark. Supreme Court Justice Felix Frankfurter put it this way: “Freedom of the press is not an end in itself but a means to an end of achieving a free society.” Dictatorships and other authoritarian regimes, after all, are the ones who jail reporters for exposing government secrets.

But let’s go to one more scenario. What happens if the next government employee with top-secret clearance learns that the CIA, under orders from the President of the United States, is on the ground, in secret of course, trying to destabilize a country whose government we don’t like?

And what happens if that U.S. government employee thinks this is wrong and wants the world to know? What happens if he leaks his information to a friendly journalist?

If it gets out that CIA agents are on the ground in this

unfriendly country they may very well be killed. Most responsible journalists, I think, would not publish the information – even if they thought the underlying story was newsworthy. Most journalists would not put American agents in mortal danger for a scoop. (I know that some on the hard right think this is naïve. Let's just say reasonable people may disagree.)

But in a world of mass information, of a million Web sites and blogs, there's a good chance that *someone* would publish the secrets and possibly cause the deaths of those American undercover agents.

So what do we do then? The leaker, of course, would be prosecuted – but what about the journalist? Remember, the attorney general said he would not prosecute a journalist “for doing his or her job.”

Okay, I grant you this is not only a hypothetical, but perhaps it's a wild one at that. But journalists take it as an attack on nothing less than the Constitution of the United States, motherhood and apple pie, if someone so much as brings up a question about the role of the press in the matter of publishing secret information – except to say freedom of the press guarantees their independence.

So if the next Edward Snowden happens to be the one who leaks secrets about CIA agents we'll then find out what the American people think about the independence of journalists – and about the limits of the First Amendment.

After all, if the leaker has caused serious harm to our country by single-handedly de-classifying secret information, why aren't journalists also causing serious harm by disseminating that information? And if they are, what should the country do about it?

How To Make Americans Care About All of These Scandals: Find a Hot Chick

☒ Over the past few weeks, we've been listening to conservative pundits predicting that the multitude of significant government scandals catching momentum in some quarters of the media will ultimately bring down the Obama administration.

Former presidential candidate Mike Huckabee was one of the first to weigh in back in early May, stating his belief that the president wouldn't even be able to complete his second term in office due to the Benghazi cover-up. Others have since made similar forecasts.

Yet, even as more and more damning evidence of breathtaking corruption has been unearthed in recent weeks, we haven't seen the president take much of a hit in the national public opinion polls.

And really, why should we?

Practically every branch of the media spent President Obama's entire first term in office defining the man as a largely infallible figure. To the media, and thus to a good portion of the public, he's been worthy of strong accolades for generating results so poor that had he been a Republican, the narrative would have been about whether or not the president should have even *bothered* running for re-election.

But because of who Barack Obama is (the ultimate symbol of the liberal media's progressive hopes and dreams), they acted as

unofficial surrogates for the president's perpetual campaign, framing his *official* campaign's narratives as benchmarks for public debates.

Obviously, it worked. Enough Americans were convinced that none of the country's problems were Obama's fault, he deserved 100% credit for what little good news there was, and no one could have possibly done any better given the circumstances.

When the baseline is held as low as it was for this president, it's almost impossible not to meet the public's expectations – especially with a public as unengaged as this generation of Americans.

So now that the election is over, and even fewer people are paying attention to what's going on now than back then, a relatively small number of journalists finally deciding to take their jobs seriously by scrutinizing the actions of our federal government isn't going to draw a lot of attention. It's *certainly* not going to draw the kind of attention such stories deserve and would have received if George W. Bush was still in office.

Thus, where we stand now is that most of the country is more likely to think "Benghazi" is the name of a zany board game played at adult parties, than it is the location where four American patriots were murdered under circumstances the administration lied about. The name "James Rosen" will more likely be mistaken for a player on a professional sports team than it will be identified with a reporter who the U.S. government tracked and labeled a criminal and flight-risk for merely doing his job.

Thanks to four years of media advocacy, a significant portion of the country has been conditioned to let criticism of President Obama fall on deaf ears. At this point, anything short of the president having a Martin Lawrence-like nervous breakdown, and running across the White House lawn naked while

screaming at tourists, isn't going to force these people to question his integrity and competency.

This doesn't bode well for Republicans hoping to gain political momentum from all of these scandals for the 2014 election. Sure, these scandals are very real, very disturbing, and they *should* transcend politics. After all, we're talking about deliberate, corrupt actions that multiple federal agencies took part in. But it would be disingenuous to state that Republicans don't want to capitalize politically off of those actions. Of course they do.

But how can they make Americans care about these scandals, when the sobering reports on these stories haven't been enough?

Well, if I was someone who had grown incredibly cynical when it comes to America's capacity to realize when something is truly important, I would suggest that Republicans adhere to a proven formula that *always* draws massive public attention to news stories: Find a hot chick.

Americans (both men and women) always care far more about a story when a hot chick is involved in it. It's part of our inner-adolescence.

Murder trials generally don't receive a lot of national attention. But if you add a hot chick like Jodi Arias, Casey Anthony, or Amanda Knox to the mix, you can run headline stories on it for months because the public will suddenly *care*.

If a woman goes missing under suspicious circumstances, her family had better hope she's hot. If she is, the story will receive lots of helpful media attention and public interest for months. If she's not, their only hope is law enforcement, because the public just won't care enough to warrant extra media attention.

And I'm the first to admit, even though I was too young at the time to understand the Iran-Contra hearings, I've never forgotten the name Fawn Hall. Hall was Oliver North's attractive secretary who testified before congress and garnished a lot of public interest because of her looks.

So if the Republicans want to get the American public to finally care about all of the corrupt things their government is doing, why not find a hot chick? All they have to do is seek out the hottest-looking, female government employees they can find, who are even remotely associated with each of these scandals (or merely the departments tied to these scandals), and subpoena them. Have them testify before congress. If they're low-level employees with no real relevance, so what? Bring them forward, place them in front of the cameras, ask them lots of questions to keep them on the stand for as long as possible, and then – only then – will the *low-information* Americans begin to care.

Sure, I'm being facetious. But does anyone reading this honestly believe I'm wrong?