

Government Information Handling

The Ethics of Information Sharing Between the FBI and CIA

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Introduction

Prior to the 9/11 attacks, the CIA was aware of the presence of two of the hijackers in the United States; for approximately 21 months, they had been identified as terrorists and confirmed to be living in the US. However, the FBI was unaware that they were supposed to be searching for these men. When an all points bulletin was issued on August 23, 2001 it was too late to effectively track them down. It has been speculated that had they been tracked sooner while they were inside the US, that their meetings with other hijackers could have easily lead their apprehension and potentially the thwarting of the 9/11 attacks. The process of sharing info between the agencies lead to the delay in pertinent knowledge, and indirectly contributed to the attacks ("Hijackers Trailed by CIA Before Attacks").

There are several agencies that focus on foreign threats to the USA, the foremost of which is the CIA, and of the several intelligence agencies that focus on domestic threats, the FBI is the foremost. Because of the difference in the nature of the mission of the several US intelligence agencies, a problem of intelligence oversight exists and restricts the flow of information to where it is most needed. Additionally, the changing patterns of international and domestic crime and terrorism play a large role in the issues of integration of information because it is increasingly more difficult to distinguish between the foreign and domestic threats. These factors suggest the US is up against an enemy which requires adaptation in the form of increased integration between foreign and domestic intelligence agencies if the US is to effectively combat these new threats.

This adaptation implies that American citizens must give up privacy for an increase in security in return, which presents an ethical dilemma and forces policymakers and US citizens to determine whether privacy or security is valued higher. This paper will argue that the trade of privacy in return for security is an acceptable bargain, implying that the US government should facilitate further integration between its intelligence agencies to prevent future terrorist attacks and combat international crime, because the result contributes to the common welfare of the nation, and in particular its safety. The ethical framework that will be used for analysis is the Common Good Approach which dictates that in order for anything to be ethical, it must promote the common good of the community.

FBI and CIA: Legal Barriers to Sharing Information

The CIA and FBI are two agencies which were initially created with specific and separate missions. This separation is to prevent a scenario of an all-powerful government agency which would have the powers of both domestic and foreign intelligence agencies. The intention was for the CIA to focus on gathering information on foreign countries, having no jurisdictional authority over citizens in the US or power to collect information on US citizens. The FBI was created to address crime and terrorism within the US, but also to protect US from those trying to do harm to the US by addressing counter-espionage and counter terrorism efforts. If the FBI is to collect information on US citizens, it must be done within the framework of the US law.

There is a clear separation in the abilities and the obligations of the two agencies. The CIA has an array of intelligence gathering techniques such as satellite imagery capabilities and other methods of detecting information. The FBI or any other US law enforcement agency may not use satellites or any other detection devices on US citizens. The only way they may detect information on US citizens is to obtain the authority from US courts and then go about collecting the information in ways that comply with US law.

The events that occurred on September 11, 2001, in a large part might have been prevented by increased information sharing between the CIA and the FBI. It is of course impossible to know for sure if the 9/11 attacks were preventable, but it is still important

to analyze the failures and weaknesses in the intelligence and law enforcement system which allowed the attacks to occur. The 9/11 Commission Report, published in 2004, details the failure of the communication between the CIA and FBI. It is clear that both the FBI and the CIA had partial information on the activities of terrorist suspects as they entered and left the United States and other countries. It was also argued that there were legal barriers that had prevented this knowledge from being shared. This was known as “the wall” by government agencies and was in place to prevent criminal investigations from using intelligence sources to gain warrants. The intent was to keep the spheres of power separate but this wall unintentionally went against the common good of those who were supposed to be protected by these two agencies.

The laws have been retracted to some extent after the 9/11 attacks and there was discourse on whether the laws had been interpreted properly since their inception. There was a disjunction in intelligence where there were no laws for the official protocol requiring sharing of information.

Recently, the mission of each respective agency has caused it to venture into the other's territory; however, despite this overlap, there has been an absence in information sharing between the two agencies. In order for the FBI to uphold the law and defend the Constitution, it must gather information on those suspected to be breaking the law. The CIA's mission is to "provide knowledge and take action to ensure the national security of the United States and the preservation of American life and ideals ("CIA Vision, Mission, and Values")." "To protect the United States from foreign intelligence and terrorist activities ("Hijackers Trailed Before Attacks")" which is part of the FBI mission statement, is very similar to the CIA's when we consider that the target of terrorists is the destruction of the American way of life and ideals.

The FBI's investigations have led them to have an ever increasing global presence. This presence is required to help the war on terrorism which has become a central focus of the FBI's investigations. Although the FBI is still the lead agency for dealing with intelligence activities on American soil, they are working with a vast international campaign dedicated to defeating terrorism ("What we investigate"). This campaign is not the limit of the FBI's international presence and they currently have over fifty legal attaché offices, called ‘legats’, around the world ("Major Executive

Speeches"). These are vital to the FBI's counter-terrorism efforts since they facilitate the flow of information between international law enforcement agencies. The FBI has also trained tens of thousands of operatives who work for other countries including Russia, Australia, and Saudi Arabia. These operatives have obtained information on more than ten thousand suspected terrorists from over a dozen countries ("What We Investigate"). The FBI also focuses on investigating the flow of money that funds terrorist groups. The Bureau's Terrorism Financing Operations Section conducts this task which traces the lifeblood of their organizations (About Us- Quick Facts).

The CIA's original and current roles are collecting intelligence abroad, providing analysis, and conducting covert actions. The CIA was created for gathering intelligence and was intended to have no enforcement capabilities due to a fear that the agency's actions would be illegal to use against American citizens per constitutional protections. Today the CIA works closely with many other national and international intelligence and enforcement agencies. This could be considered indirect enforcement power. This is not to say that the CIA has any legal power in the U.S., which was greatly feared, but they do influence the international community.

Created in 1947, the CIA is lead by the Director of Central Intelligence (DCI). The Director of Central Intelligence's job is to be the president's advisor on national security matters. The function of the rest of the CIA is to assist the Director in this duty. It is that close relationship with the executive branch and its de facto enforcement capabilities that could lead the CIA to becoming too powerful of an agency. Additionally, with the ability to gather information that would benefit international FBI investigations, it makes sense to better facilitate communication of vital information. It is essential to rethink the structure of two of America's leading intelligence agencies to assure that they uphold the common good for the greatest number of citizens for which they are intended to protect.

Recently, the FBI and CIA information sharing issues have reached a breaking point. With the current information sharing system, Counterintelligence-21, out of date, there is high demand for improved technology (CIA FBI Developing Super Computer). This flawed system does not share raw data; rather it allows interpretations of information to be transferred. Even e-mails cannot be forwarded securely between

agencies. Operatives must print a paper version and provide this to the counterpart who needs it (“Justice Department Fails to Address 9/11”).

Some steps have been taken to remedy this situation including various cooperation programs designed to elevate communication between the two agencies. For example, after the USA PATRIOT act came into action, an initiative was laid out to get information flowing. This included the requirement of the Attorney General to turn over all foreign intelligence information obtained in any criminal investigation to the Director of the CIA, including the most sensitive grand jury information and wiretap intercepts (“Justice Department Fails to Address 9/11”). Furthermore, it comes as no surprise that “after months of criticism that they do not work well together, the CIA and FBI have begun jointly developing a new supercomputer system designed to improve their ability to both pull and share information (“About Us- Quick Facts”)”. This multimillion dollar project would entail a data-mining system that could be used to pool resources and information from both agencies in an effort to not be caught in the dark again. When completed, it will be imperative that this super system of the CIA and FBI’s highly classified data be kept completely safeguarded from hackers, spies, leaks, and the like. If this indeed proves to be plausible, then our government agencies will be infinitely more effective in their capabilities to serve and protect this nation.

The bottom line on the legality of sharing information is that what was once was discouraged and feared has become more and more legal over time. There were once laws and beaurucratic difficulties, but now this has become less of a factor. Still problems of the lack of information sharing between the CIA and the FBI persist, which many critiques have attributed to the cultural barriers between the two agencies.

"The Wall": Cultural Barriers to Sharing Information

The current conditions of international crime dictate that two agencies with the scopes that the FBI and CIA possess will invariably overlap intelligence gathering in their individual investigations. The overlap is a problem because there is a "wall" that exists between the two agencies. The "wall" refers to the cultural biases within each organization as well as the limited legally approved methods of data transfer between them and creates a de fact barrier to information sharing because it takes to much time

and effort to share information. The agencies are not able to or are unwilling to share crucial information that could greatly help one another. In either case, this failure to communicate is unacceptable and does not represent the greatest good for the greatest number.

Over the past few years this wall has gotten worse (“Justice Department Fails to Address 9/11”). Therefore, it is extremely difficult to coordinate agencies if they have different agendas and are not used to working together. In fact, the CIA and FBI are notorious for having a reluctance to share information. This is partly due to an efficacy issue where both sides want to be the responsible party for saving the day.

Indeed there are other possible solutions to solving this qualm. For instance, “The poster child of intelligence reform is a new agency called the National Counterterrorism Center, where officials from different agencies sit in the same room and draft collective reports. The center has even developed a classified website that provides synthesized terrorism intelligence for government officials (Zegart)”.

If the CIA and FBI developed a relationship similar to this, then information swapping could be drastically accelerated and could potentially create a new standard for our country. In this sense, agents could operate collectively in person as well as post relevant news on the secure website for others to view. This cooperation would lead to an increase in safety for a greater number of Americans, at a very small cost. Further, it is important to reduce the barriers, because they slow down the agencies and make them less capable of reacting to the new threats and environment of international crime and terrorism.

The New Threat

When the CIA and the FBI were first set up in the US government, they faced a far different enemy than they face in today’s world. In the 1960’s and the 1970’s there was a strong division between domestic and international threats to security considering the enemies were foreign countries. In this set up, the CIA and the FBI had clear scopes in which to focus their actions. Further, a high level of coordination would not be able to achieve substantial results, even if there was some minimal need of coordination. At the

time these agencies were created, separation was the best way to uphold the greatest good for the greatest number of Americans.

An emerging trend that is presented in recent discourse of international relations is the hypothesis that international war as we have seen in the past is no longer a threat in today's world (Muller). The argument is that countries have far more common good to gain by participating in the economic integration of the world than in creating war. Of course, there are rogue nations such as Iran and North Korea that present a threat in the traditional senses, but the academics in this field would classify their leaders as mere criminals who have an illegitimate hold of power in their respective countries.

This further supports the claim that the only conflict that exists in the world is criminals acting to further their gains whether it be through illicit trade, terrorism, etc. The implications of this argument has on information sharing between the government agencies is that the traditional threats the counter-espionage and espionage missions were created for no longer exist in the ways in which they did before. In addition to this new threat that has emerged and rendered the agencies less effect, a new environment has emerged which equally calls into question the aptitude of the current practices between the agencies to deal with international and domestic threats.

A New Environment

Recently, the world is changing at an ever accelerated pace because of globalization and the increases in technology. It is obvious that nation-states are highly integrated and the exchange of information is occurring at ever-increasing speeds. What is true for licit international dealings is closely reflected in illicit international dealing as well, including terrorism and crime. It is far easier today for terrorist and other groups to operate trans-nationally, not recognizing the borders that were once in place, because of trends in the ease and speed of the travel of information information.

Given these trends in the state of transnational terrorism, it is clear that the agencies trying to protect US national security are at a disadvantage when trying to fight groups that recognize no borders because the agencies' control and influence begin and end at international boundaries. Due to the changing world, these agencies must change in order to continue to promote the common good for those they are trying to protect.

An example to demonstrate this would be to compare the old threats to the new threats. The old threat would be characterized by a Soviet secret agent who takes pictures of secret US documents and then physically carries them back to his homeland. Compare this to the threat of today. A man who holds US citizenship and is involved in Al Qaeda cells overseas uses his Blackberry to transmit schematics of relevant infrastructure designs to terrorist planners in foreign countries to be used in bombing attacks. The US intelligence agency abroad attempts to trace the terrorist cells and their leadership back to members, many of which reside in the US. Obviously, the threat to US national security is far different than when the agencies were established and it is only common sense that there should be commensurate change to equip the agencies to deal with the threat. The way to do this is to do everything possible to facilitate information sharing between the CIA and FBI.

Ethical Implications

Because of the above discussion, it is clear that there needs to be increased integration between the FBI and CIA. But, because a large degree of the separation that exists between the two agencies is cultural in addition to legal, it implies that the magnitude of the integration must be greater than just sending over information. The two agencies must cooperate together and integrate in a way that counters the cultural barriers and makes their goals common between them. Creating this further integration would also crumble the divisions that were originally part of the structure of the separation of the agencies. Some may argue that it is a slippery slope and by further integrating the agencies, it is creating an agency which is too powerful, thus detracting the personal privacy from the government provided in the constitution.

Because of the several trends in the above discussion, it is ethical give up the privacy protected in the past provided by the separation of the FBI and CIA in order to provide increased security. Because the type of threat the agencies combat and the environment in which the threats are being perpetrated have both changed since the inception of these agencies, it would provide for the common welfare of the US to further integrate the CIA and FBI.

According to Santa Clara University's Applied Ethics Department, "the Greek philosophers have contributed the notion that life in community is a good in itself and our actions should contribute to that life...this approach also calls attention to the common conditions that are important to the welfare of everyone (A Framework For Ethical Thinking)." "The common good, then, consists primarily of having the social systems, institutions, and environments on which we all depend work in a manner that benefits all people". Using the common good approach, something must contribute to the common welfare of the community to be ethical. This makes it apparent that one ethical solution to the security threat is to better facilitate the distribution of gathered data between the agencies.

With a shift in the intelligence community's focus and mission, this ethical framework implies that it is essential to improve the common good as well as to further the safety of the American populous. Since we are no longer defending against other countries, but rather groups of individual agents, some of whom are operating domestically, the common good dictates a better link between intelligence abroad and intelligence at home. The key point that must be emphasized: better security means nothing without the preservation of the American way of life. Ideally, any compromises should be considered for the overall effect as well as how different from the status quo it will be. Further, because the inherent separation between our intelligence agencies was created to prevent abuse, steps must be taken to ensure that abuse remains at a minimum.

Increased information isn't a danger, but abuse of that information is. Ethically, we can only say that the increase of information is the right thing to have if there is a significant protection against abuses. Therefore there should be a system of checks and balances put in place to assure the rights of American citizens and prevent the abusive use of intelligence information. Perhaps by creating a new organization, it would be possible to have the integration of the two agencies without the possibility of the abuse of power.

Solution: A New Organization

The best option is a new intermediary organization that receives and distributes data to the various intelligence agencies. Ideally all information would be analyzed and

categorized to determine who could best (or legally) utilize data that was gathered.

This intermediary organization could have several channels of transmission based on expediency or urgency of the material. Things that were not deemed highly time-sensitive could go through the normal bureaucratic channels, and things that were deemed crucial to national security could be pushed through before review. By allowing the information to flow freely, time-sensitive intelligence can be utilized to its full potential and the efficiency of the system can increase. In order for there to be near free-flow of information, there is need for oversight and review. We propose an oversight board that would directly report to congress but that also works heavily with the American Civil Liberties Union. We believe that this combination would provide an appropriate level of accountability for the American people.

With an oversight group observing all data transfers, it can be determined whether or not another user truly needs the data they were given, and further, whether or not a transfer was legal. By doing this, the truly important bits of data can rapidly be sent, and can minimize the time spent in bureaucracy increasing the greatest good for the greatest number. Obviously, there also needs to be a provision for “teeth” in the oversight group’s abilities, to lay punitive actions onto any abusers by way of the department of justice. This manner of data sharing would increase the nation’s security by allowing its FBI conduct its mission while receiving greatly needed assistance from the vast external intelligence gathering capability of the CIA. The ability to regulate and punish those who would abuse the process allows the cumulative good of this measure to stand up within the ethical framework.

However, a consideration not to be overlooked here is that the CIA and FBI will be joining forces to an extent which could create the threat of a new superpower being born. Thus, due to the high risk involved with creating such a powerful information sharing system, questions of ethics come into play. The two agencies at hand were obviously created separately for a specific reason. Then again, with changing times and new threats to the public, intense collaboration of information is imperative in order to keep up with the information age that we live in. There definitely is a thin line to be crossed in this situation, yet if successful, this would be exactly what our country needs to better equip and protect itself for the future.

Another possible solution would be to create a new agency tasked with the specific purpose of facilitating information flow between the CIA and FBI. This third agency would have no authority to use or act on the information, rather it would be charged with distributing necessary information to each agency. Thus, the new agency would act as the database for each, delegating information on a need to know basis, and bridging the gap between the CIA and FBI.

Any way you look at it, the CIA and FBI are currently struggling to protect our nation in an effective way. Without a doubt, they must work more closely together and pool resources to continue protecting American citizens. With an ever-changing enemy and mountains of information on them, it is imperative that we allow the proper agencies to obtain the necessary materials to efficiently prevent national disasters and promote the common good.

Conclusion

Given the current nature of threats to our country, and that the methods of protection have become dated, it is imperative that the CIA and FBI evolve to ensure the safety of our people. Because the recent trend of lessening the regulation between the two agencies, and the persistence of the barrier between them brought about by the cultural patters, it is essential to take large steps toward the direction of further integrating the agencies. Additionally, the threat the two agencies are up against and the environment they are fighting in is different from the time of the inception of the agencies, further implying the need for further integration. Ethically speaking, it is the right thing to do because it offers the greatest benefit for the greatest number of citizens because the increased security is beneficial because it allows Americans to live as they desire. It is true that the privacy of American citizens will be to some extent sacrificed, but it is for the common good of the community. Increased integration offers a way to get vital information to those who need it, and can better ensure that what happened on 9/11, or something worse, will never happen again. If integration is done properly, with oversight and review, it can be done with an emphasis on preserving the rights of American citizens. This must be done, as our rights are our way of life and our way of life is what terrorists would like to destroy.

Works Cited

- “A Framework For Ethically Thinking.” Markkula Center For Applied Ethics 10 Feb. 2004. 2 Oct. 2006
<<http://www.scu.edu/ethics/practicing/decision/framework.html>>.
- “About Us--Quick Facts.” Federal Bureau Of Investigation 6 Mar. 2005. 4 Oct. 2006
<<http://www.fbigov/quickfacts.htm>>.
- “CIA, FBI Developing Intelligence Supercomputer.” Global Security Newswire 12 Feb. 2002. 22 Sept. 2006 <<http://www.govexec.com/dailyfed/0202/021202gsn1.htm>>.
- “CIA Vision, Mission, And Values.” Central Intelligence Agency 27 Jul. 2006. 5 Oct. 2006 <<http://www.cia.gov/cia/information/mission.html>>.
- “Hijackers’ Trailed By CIA Before Attacks.” Guardian Unlimited Special Reports 3 Jun. 2002. 2 Oct. 2006
<http://propagandamatrix.com/Hijackers_trailed_by_CIA_before_attacks.htm>.
- “Justice Department Fails to Address 9/11 Intelligence Failures.” Center for National Security Studies 19 Apr. 2004. 22 Sept. 2006
<<http://www.watchingjustice.org/reports/article.php?docId=207>>.
- “Major Executive Speeches John E. Lewis.” Federal Bureau Of Investigation 14 Mar. 2005. 5 Oct. 2006 <<http://www.fbi.gov/pressrel/speeches/lewis031405>>.
- Mueller, John. *The Remnants of War*. Cornell University Press: 2004.
- “What We Investigate.” Federal Bureau Of Investigation 4 Oct. 2005. 25 Sept. 2006
<<http://www.fbi.gov/hq.htm>>.
- Zegart, Amy. “American Intelligence--Still Stupid.” Los Angeles Times Online 17 Sept. 2006. 9 Oct. 2006
<<http://www.latimes.com/news/opinion/sunday/commentary/la-op-zega.htm>>.

The New “Terrorism”

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Introduction

Premise

In the wake of the horrific events that took place on the morning of September 11, 2001, and continually for the past five years, Americans have been searched more carefully, monitored more closely, and accused more quickly. Such events continue to occur daily, as an increased sense of national security has taken precedence over personal privacy. In response to the perpetration of terrorist acts against the United States, the current Administration has taken a variety of incremental steps and passed numerous laws and regulations in hopes of counteracting terrorism and preempting potential attacks in the future. While it can be assumed that new policies have been implemented with the sole intention of increasing national security, such measures have been received by the public with differing opinions and emotions.

Though new security efforts may seem to have made the country safer from terrorism, the flip side of the issue is that it has also become easier for authorities to place activities, organizations, and individuals under the widening terrorism “umbrella.” Much of this has been the result of the current Administration’s intentional use of negative labeling to create new categories of terrorists to include even American citizens who would have previously been classified simply as criminals or delinquents (Toppo, 2006; Bohn, et al, 2006). Increasing amounts of innocent civilians have been detained for allegedly being connected with terrorist organizations (Cole, 2003). Others are being racially profiled at a growing rate (Hagopian, 2004). Still others are being arrested and detained for their involvement with organizations or individuals that have been linked to terrorist activity (“Justice”, 2006). In the most extreme cases, citizens have even been killed (Han, 2006).

Furthermore, the Administration has used this War on Terror to create a fearful public in order to promote a political agenda. In August of 2006, Vice President Cheney commented publicly that voting for a political party other than that of the current administration in the coming U.S. Midterm Elections “would only encourage ‘Al Qaeda types’” (“Five”, 2006). This abusive categorization has created a new America that has witnessed its citizens being unnecessarily harassed, arrested, and even killed. It is logical to presume that retaliatory actions against “Arab Americans” and the adverse affects to innocent civilians were unintentional effects, but some of the events currently taking place are frighteningly similar to those witnessed in the 1940’s and 50’s during the period of Communist suspicion spearheaded by Senator Joseph McCarthy.

The period of time often referred to as the “Red Scare,” or “McCarthyism,” exhibited many of the social and cultural issues that America is experiencing today. When Americans are presented with a threat that changes the normally accepted way of life as a U.S. citizen, the government responds with policy changes, labeling and categorizing of specific groups of people, and the installation and proliferation of fear to ensure widespread acceptance and support of a political agenda; they often do this with limited regard for legal and ethical restrictions.

Issue

The current War on Terror has grown into a governmental obsession that, at best, has had mixed effects on the country and its citizens. Is a government justified in behaving in such a way that allows otherwise innocent people to be harmed, detained, and imprisoned? There is surely a case to be made that certain tactics being used with increased frequency are in fact ethically unjust, despite the perceived benefits they may provide.

With much contemporary focus on the legality and ethics of current information issues such as wire-tapping, data collection, and surveillance with the intent of locating and neutralizing terrorist activity, it is a fundamental necessity to examine and contrast current definitions of terrorists and terrorism and how such definitions are being used by the government to continually develop a framework for new national security policy. This chapter will draw on historical precedents as well as recent events to support an

argument that these broadened definitions of terrorists and terrorism, particularly as they are applied by the Federal Administration in information based policy making, are in fact ethically unjust.

Communism in America

Similar to the fear of terrorism today, the U.S. experienced widespread fear of a Communist takeover during the mid-20th century. This period of time came to be known as the “McCarthyist Period,” or “The Red Scare.” This chapter will refer to “McCarthyism” as the government practice of making weakly substantiated or, in some cases, false accusations of disloyalty to the United States Government through engagement in pro-Communist activities or affiliations.

This fear of Communism began soon after the end of WWII and was largely rooted in the U.S. perspective of the global power struggle between the Soviet Union and the U.S. that the proliferation of Communism in America would translate into Soviet victory in what was known as the Cold War. The Truman Administration was able to benefit from such fear knowing that people would believe much of what was said about Communism, and perhaps more importantly, what was required to be classified as a Communist supporter. The Soviet Union was viewed as a powerful threat that only the U.S. could stop, and one fundamental way to do this was to eliminate Communism within American borders in order to limit domestic political disruption.

This government sponsored effort created a sense of urgency to locate all Communists and ensure they were punished (Schrecker, 1994). By taking advantage of the national fear of Communism, the Truman Administration was able to broaden the category of a “Communist” to include a greater range of people, many of whom were innocent and had no connection with the threat of Communism.

Broadened Categorization

Most people did not know much about Communism and had no direct contact with any Communist party members, making it relatively simple for the public to be swayed by misinformation about Communism plausible enough for citizens to accept. The term “Communist,” as it was used, helped to dehumanize American Communists and

made them appear to justifiably deserve whatever punishment was issued to them. They were believed to be a part of a secret conspiracy charged to do Stalin's bidding. However, it has been shown that most members of the Communist party in the U.S. had little or no contact with the Soviet Union, were not secret spies as the U.S. government portrayed them to be, and were not locked into the party against their will. In fact, by 1950, most of the people who had been previously affiliated with the Communist party had changed their political views, never having been punished by the Soviet Union (Schrecker, 1994). The only actual threat Communism posed within the U.S. was that of Communist spies, of which there were few to be found who were known to be dangerous (Schrecker, 1994).

The definition of a Communist who was considered a threat at the time was expanded to include Fifth Amendment Communists, ex-Communists, and anybody associated with Communists (Schrecker, 1994). These people were being unfairly targeted and were often assumed to be guilty until proven innocent (highly unethical in a country whose judicial system is based upon the opposite). With all of these emerging accusations, new laws were easily passed to prevent Communists from doing harm while serving them their due punishment.

Government Political Agenda

FBI Director J. Edgar Hoover and Senator Joseph McCarthy used this scare to pursue a political agenda, passing several laws to discourage the proliferation of Communist thought. The Alien Registration Act was passed by Congress on June 26, 1940, making it illegal for anyone in the US to aid, abet, teach, or advocate the desirability of overthrowing the government. The law also required that all alien residents in the U.S. over 14 years of age file a comprehensive statement of their personal and occupational status as well as a record of their political beliefs (McCarthyism, 2006).

The ulterior objective of the Alien Registration Act was to undermine the American Communist Party and other left-wing political groups in the country (McCarthyism, 2006). What initially started as a law making it legal to ferret out Communist spies, eventually came to harm the lives of innocent people with differing political views to those in power.

By enacting these laws, the government made it seem as if they were helping to protect Americans by alluding falsely to the notion that there were many Communist revolutionaries who were currently being found and punished. While some people were indeed found to be Communists, they were not threats to national security. This violation of basic constitutional rights leads to the conclusion that these new laws were put in place as devices to manufacture a fearful public in order to achieve political stability.

Consequences of “McCarthyism”

Many penalties existed for someone categorized as a Communist. People in this category had a high likelihood of losing their jobs, as Communists were seen as being unfit for any job. This was most prevalent in the entertainment industry, where blacklists were common. A book called *Red Channels* was published that listed 151 alleged Communist affiliates in the entertainment industry. Certain professors who lectured about aspects of Communism were sometimes viewed as having surrendered their intellectual independence by associating with Communism, thus qualifying them as unfit to teach. As it was illegal to fire employees for being indirectly or directly affiliated with Communism, employers were able to creatively disguise the release of employees in relation to Communist affiliation allegations by citing other reasons, however substantiated or unsubstantiated (Schrecker, 1994).

Although employment effects caused the largest impact, even worse consequences were imposed upon people who were publicly labeled a Communist or a Communist sympathizer. Two women were put to death and 150 people went to prison because of the effects of McCarthyism (Schrecker, 1994).

An example case is that of Owen Lattimore. Born in America but raised in Shanghai, Lattimore became the U.S. Government Liaison to Chiang Kai-Shek before the Nationalist's 1949 defeat in the Chinese civil war. Lattimore's outspokenness, liberal views, and acquaintance with Chiang Kai-Shek made him an easy target for Senator McCarthy's anti-Communist campaigns. In 1950, McCarthy accused Lattimore of being a top Soviet spy. After twelve days of intense questioning by McCarthy and his committee, Lattimore was charged with seven counts of perjury. Despite the charges

being dropped three years later due to lack of evidence, Lattimore's reputation and credibility among his peers was effectively destroyed (Victims, 2006).

Déjà Vu?

Even after the communist scare and the recognition that the corresponding events were unethical, policy makers do not seem to have learned the lesson. Slowly and effectively, the same mistakes made in the 1940's and 50's are being repeated in the current War on Terror. As it was during the "Red Scare," freedom of speech, a fundamental right of American citizenship, is being challenged. With people today being monitored, accused, and profiled as being "terrorists" for saying certain things or attending certain events that contradict the government, this shows a direct parallel to the Communist scare of the 1940's and '50s. In a country that places such high importance on individual freedom, the fact that these freedoms are being infringed upon in an impartial manner is an ethical dilemma that demands attention.

Changing Definitions

The term "terrorist" has branched significantly from its initial meaning of a person or group with political affiliations that invokes fear/terror in others: "There are four individually necessary and jointly sufficient conditions for an act to be appropriately called 'terrorist': (1) it is committed by an individual or a group of individuals privately, i.e. without legitimate political authority of a recognized state; (2) it is directed indiscriminately against non-combatants; (3) the goal is to achieve something politically relevant; (4) this goal is pursued by means of fear-provoking violence" (Novytny, 2006).

Although there are certain criteria that must be met to be considered a terrorist, this label is steadily being imposed onto other groups that may not meet the criteria or do so only loosely. Take, for example, the fact that some schools are cracking down on students who plot violent attacks against classmates and educators and are increasingly turning to a new form of prosecution: charging them as terrorists (Toppo, 2006). It is unlikely that the would-be shooters have a political agenda behind their plot; so why are they being classified as "terrorists?" Similarly, the Earth Liberation Front (ELF) has come under fire lately for various actions such as burning SUV's in Southern California

car dealership lots, or setting fire to buildings in posh mountain areas (Bohn, et al., 2006). Though no one has been injured in any of these events, the perpetrators are being labeled as “eco-terrorists.” This represents a bold departure from the “original” concept of terrorism which has historically been associated with mass destruction and killing of innocent people. While these high school students and organizations such as ELF are certainly committing terrible acts, labeling them as “terrorists” is an unjust classification, as it allows them to be legally punished much more severely and with fewer rights than other criminals.

Getting Tough with Terrorist Supporters

Following September 11, 2001, the Bush administration took many steps in an effort to prevent terrorist attacks from recurring on U.S. soil. They have ordered the reclassification of “sensitive” documents to help strengthen the infrastructure of the nation, redefined who are considered to be terrorists and how to deal with them, and enacted the U.S.A. Patriot Act to expand the means to fight terrorism. While these measures may seem progressive, it is the way in which they are used that is troubling.

Before September 11, a terrorist was a person or group, independent from their government, using violence or threat of force to achieve a change in a political system. Falling under this definition are such well known terrorists as Osama Bin Laden and Al-Nasser, who have undeniably murdered innocent people as a means to their end. With the War on Terror in full force, the definition of a terrorist has been expanded to include anyone who provides *material support* to any person or organization that engages in terrorist activities. Material support not only includes tangibles like money, gifts, and goods, but also includes intangibles like professional advice, training, and assistance. The material support provision of the law aims to prevent people from providing terrorist organizations with money, weapons, or training.

With this broadened definition comes a broadened spectrum of people who now fall under this definition. 68 year-old Lynne Stewart, an American civil rights and criminal defense lawyer, faces up to thirty years in jail for providing material support to

her client, Sheik Omar Abdel Rahman, a man convicted of conspiracy to commit terrorist acts. Her material support to her client includes “releasing a [press] statement by the Sheik withdrawing his support for the Islamic Group's self-proclaimed cease-fire on attacks against, and criticism of, the government of Egypt” (“Justice,” 2006). For this reason Lynne is being tried as a terrorist and could potentially spend the rest of her life in jail, though she is neither a terrorist nor does she affiliate herself with or support terrorist organizations.

The material support provision is so broad that it also encompasses denying asylum for refugees from authoritarian and oppressive states. “In individual asylum cases, the Department of Homeland Security and the Department of Justice have taken the position that refugees are barred from asylum even if they were forced to provide the “material support” under duress” (Acer, 2006). For this reason, a nurse in Columbia who was kidnapped and forced to provide medical treatment to terrorists has been denied asylum in the U.S. Similarly, “an elementary school teacher from Burma who helped feed and house pro-democracy speakers affiliated with an armed group that opposes the Burmese military regime” was also denied asylum in the U.S. (Acer, 2006). Whether individuals are working for political change within an oppressive nation or they are forced to provide material support to a terrorist organization, no sympathy is being shown for their situation and only their actions are being held accountable.

Within seven weeks after the September 11 attacks, 1,182 foreign nationals were detained at Guantanamo Bay under the suspicion of terrorist activity. To date, these individuals have not been told what they have been detained for, if they are being charged with anything, or when they might be released. These people are being held against their will and forced to suffer living in poor conditions (rumors of torture, sexual assaults, and other degrading treatments). By the beginning of 2003, of the estimated 2000 individuals being detained at Guantanamo, only four were charged with any crime related to terrorism (Cole, 2003).

Khaled al-Masri, a German citizen, was mistakenly identified as an associate of a terrorist involved in September 11 and was held at a secret CIA prison nicknamed “the

salt pit” for over five months. Al-Masri states “he was shackled, beaten and injected with drugs” (Lewis, 2006). These examples illustrate that many innocent people are being stripped of their rights and detained without evidence of criminal or terrorist activity.

Innocent Victims of a War on Terror

The United States was founded on the ideals of freedom, liberty, and the pursuit of justice. While the country has certainly changed, many Americans still hold freedom most sacred. The attacks of September 11 mark the starting point for the War on Terror, and President Bush has proclaimed that America’s freedom is at stake in this war. But if this is true, through what means and to what lengths are the country as a whole prepared to go to in order to preserve freedom? Are Americans willing to let people be murdered unjustly in the name of personal freedom? If so, will winning the War on Terror actually even preserve personal freedom? Is the government’s reaction to and bias towards terrorism triggering public reaction and bias as well?

On October 4, 2001, Patel, a 49 year-old Indian American man, was killed while working at his gas station convenience store in Mesquite, Texas. Mark Stroman, who was tried and convicted for Patel’s murder, said in an interview that he wanted “to retaliate on local Arab Americans, or whatever you want to call them. (Han, 2006). Patel was not even from Afghanistan, where the September 11 terrorists were allegedly from, but because of his darker complexion he was profiled as a terrorist.

Portions of the American public are not always aware of the wide variety of different cultures and nationalities that exist in the Middle East, and as a result, some Americans falsely associate them all with terrorism. The South Asian American Leaders for Tomorrow (SAALT) documented 81 bias-motivated incidents against South Asians during the first week after September 11. “The National Asian Pacific American Legal Consortium (NAPALC) documented nearly 250 bias-motivated incidents against Asian Americans in the three-month period following September 11, 96 percent of which involved victims of South Asian decent” (Han, 2006).

Discussion

What happened on September 11th was a vulgar and disturbing display of what terrorists are willing to do and what they are capable of. America cannot stand idle and wait for another attack to occur, and thus some level of security measures must be implemented to protect the nation from another attack. For this very reason President Bush initiated the War on Terror. While this endeavor has largely been well intended, it is the utilitarian manner in which it is being carried out that is of concern.

A utilitarian approach suggests doing the greatest good for the greatest number of people and stresses the promotion of happiness and utility for the majority. The main disadvantage to this approach is that it ignores the concerns of justice for the minority population. Most people today would agree that slavery is both immoral and unethical, though it is justified by utilitarian thought as it benefits the majority population. This chapter has paralleled the many similarities of the “McCarthy Era” and the War on Terror to illustrate how many innocent people can be hurt when a government uses utilitarian methods for identifying potential enemies of the state.

Many political speeches addressing the War on Terror depict terrorists as inhuman, vile, and evil creatures which must be stopped at all costs. While this portrait of a terrorist is certainly arguable, it does not justify the practice of treating suspects as terrorists and depriving them of due process. The U.S. judicial system is based on the concept of innocent until proven guilty, but recent legislation has allowed the Bush administration to reverse that model, permitting them to treat anyone they suspect of terrorist acts as guilty until proven innocent. A government simply cannot use subjective labeling to bypass its own system of justice.

The government should be proactive in their search for terrorists, but they must do so from a deontological perspective. This means that they have a duty to treat all people with respect and humility, which are foundations for morality. This approach would help foster an impartial and more justly-balanced system, reducing the number of innocent victims hurt in the search for terrorists. A deontological approach would be more impartial as it would require the government to treat all people equally with the same

dignity and respect. The system would be implicitly more just because terrorist suspects would be treated as people, rather than as terrorists. If this approach had been taken at the beginning of the War on Terror, Khaled al-Masri, Lynne Stewart, and many of the thousands of foreign nationals detained at Guantanamo Bay would not have had their lives forever changed by being unjustly imprisoned due to loosely substantiated or false government suspicions.

Conclusion

With so much attention and emphasis on the War on Terror, it's easy to get caught up in the media coverage and bipartisan banter that comes along with nearly every new federal law or policy. Of particular importance is the manner in which the justifications for new security measures are delivered. All too often the only aspect of the law that receives any attention is how it will be instrumental in improving the government's ability to combat terrorism. Rarely does Congress present new legislation along with the relative pros *and* cons. For example, this would have meant passing the U.S.A. Patriot Act and wording it to the public in a way that outlined the fact that it gives the Federal Government unrestricted access to any and all private records so long as the stated purpose is to locate potential terrorist activity. If the U.S.A. Patriot Act had been more aptly named and clearly mentioned the fact that it infringes upon a fundamental and Constitutional right (Fifth Amendment), it may not have passed as quickly as it did, if at all.

Though some citizens will say that America is a much safer place than it was before September 11, 2001, there is no reliable proof of the validity of such a statement. But one thing can be certain – U.S. citizens are slowly losing privacy, freedom, and certain basic rights that have come to define American identity. Citizens need to recognize and embrace their responsibility to look beyond the surface level justifications and supporting arguments from proponents of new legislation and anticipate potential threats to the public. It is too easy to say, "I'm not a terrorist, so I won't be affected." The problem exists in the gray area between the black and white lines that discern the common citizen from a terrorist.

If the government is charged with the duty to protect its citizens and uphold the basic rights outlined in the Constitution, it should at the very least recognize the adverse effects certain security measures have on the small portion of the public that is impacted the most by new legislation and public opinion about who the “enemy” really is. The approach that the government should take is not necessarily to stop using these terms and definitions relating to terrorism, but rather to critically examine how these words have changed, whether or not they are being applied equally and impartially, and the subsequent effects of failing to do so. The U.S. Government must learn from its past mistakes and reflect such an evolved attitude in the creation of new public and foreign policy that respects the Constitution and American Civil liberties.

Works Cited

- Acer, Eleanor, et al. "Abandoning the Persecuted: Victims of Terrorism and Oppression Barred from Asylum". HumanRightsFirst.org, 2006
<<http://www.humanrightsfirst.info/pdf/06925-asy-abandon-persecuted.pdf>>.
- Bohn, Kevin, et al. "11 Indicted on Ecoterror Charges." CNN.com. January 20 2006. 29 November 2007
<<http://www.cnn.com/2006/LAW/01/20/ecoterror.indictments/index.html>>.
- Cole, David. "The New McCarthyism." Harvard Civil Rights-Civil Liberties Law Review 38. 2003.
"Five Years of Terror." Newsweek. 21 Aug. 2006: 45-46.
- Hagopian, Elaine C. Civil Rights in Peril: The Targeting of Arabs and Muslims. New York: Pluto Press, 2004.
- Han, June. "We Are Americans Too: A Comparative Study of the Effects of 9/11 on South Asian Communities." 2006. Harvard University. 20 Sep. 2006
<<http://www.DNSI.org>>.
- "Justice for Lynne Stewart." 6 Nov. 2006. The Lynne Stewart Defense Committee. 7 Nov. 2006 <<http://www.LynneStewart.org>>.
- Lewis, Neil A. "Man Mistakenly Abducted by C.I.A. Seeks Redress". NYTimes.com Nov. 29, 2006
< <http://www.nytimes.com/2006/11/29/washington/29rendition.html?ref=world>>.
- McCarthyism. July 2006. Spartacus Educational. 29 September 2006
< <http://www.spartacus.schoolnet.co.uk/USAmccarthyism.htm>>.
- Novotny, Daniel. What is Terrorism? 2005 Purdue Univ. 29 Sept. 2006
<<http://www.cla.purdue.edu/academic/engl/conferences/covar/Program/novotny>>.
- Toppo, Greg. "Teenagers Who Plot Violence Being Charged as Terrorists." USA Today. 4 June 2006. 11 Oct. 2006 < http://www.usatoday.com/news/education/2006-06-04-terror-kids_x.htm?POE=click-refer>.
- Schrecker, Ellen. The Age of McCarthyism: A Brief History with Documents. Boston: St. Martin's Press, 1994.
- Victims of McCarthyism. 4 May 2006. Mount Holyoke College. 29 Sept. 2006
< <http://www.mtholyoke.edu/~lillsie/McCarthyism/Victims.html>>.

Government Restrictions of Information in the Post 9/11 Era

Nicholas Batliner, Dustin Taylor

Post 9/11 Secrecy

Since the terrorist attacks of September 11th, 2001 (9/11), the government of the United States of America has increased secrecy and classification of information and has put restrictions on research at the citizen's expense to enhance national security. Much of the information the U.S. government has classified and reclassified since 9/11 is apparently unrelated to enhancing national security. Therefore this action seems unnecessary. The U.S. government has classified too much information and has placed too many restrictions on the flow of information in to the effort to increase national security due to the threat of terrorism. However, this has done a lot of harm in the process. The claim is that these actions have been put into place for the safety of the U.S. citizens. However, these post-9/11 restrictions have done more harm than good. The government needs to find a common ground between safety and the restriction of information in order to keep national security at its best while making certain information available to all.

History of Information Classification

There have been many changes made by the government in the five years since 9/11. Some evident changes are the large increase in spending to secure classification of information and the decrease in the number of documents declassified each year. In 1997, the US federal government spent \$3.4 billion to secure the classification status of information. In addition, in the year 1997 the government declassified 204 million pages

of information. In contrast, in 2005 the government spent \$7.7 billion to secure classified information and only declassified 29.6 million pages of information. (Broach and McCullagh) This works out to be a 126% increase in dollars spent for the classification of information and a 589% decrease in the amount of pages declassified.

Another significant change that was made regarding the classification of information post-9/11 was the Executive Order 13292 that was amended in March of 2003. This order amended Executive Order 12958 which was enacted by the Clinton administration in 1995. The Executive Order 12958 was passed to limit the powers of the government in the classification of information and encouraged the declassification of information. In the six years directly following the introduction of Executive Order 12958 the number of records declassified each year increased ten times. The executive order 13292 made it much easier to classify information and for longer periods of time. Unlike the Executive order 12958, Executive Order 13292 now removed the time limit that a document will be initially be classified for. Executive Order 13292 also removed the clause stating that information that is older than 25 years old that has historical value should be declassified. It now stated this information could be declassified. The Executive Order 13292 made huge efforts to make it easier to classify information and for longer periods of time along with not declassifying information that no longer needs to be declassified. (Bushsecrecy.org).

The Information Security Oversight Office (ISOO) is in charge of overseeing the security classification programs for both the government and the private sector, and it reports to the president annually. The ISOO became part of the National Archives and Records Administration on November 17, 1995. The goal of the ISOO is to provide for an informed American public by ensuring that the minimum information necessary to the interest of national security is classified and that information is declassified as soon as it no longer requires protection ([http://www.archives.gov/isoo/public/.](http://www.archives.gov/isoo/public/))

Post 9/11 Policy Issues

The government has been classifying large amounts of information since 9/11 as stated above. Is it possible they have been over-classifying information? The Bush Administration has given new agencies the authority to classify information that had not

previously had the authority to do so. The government has also classified much contact information for over 200 government positions. A new law was passed to make new patents secret through a “secrecy order” under federal law. (Secrecy Report) This limits other inventors and the public access to what is supposed to be public information.

The government has also put up many restrictions on individuals, publications, technology, and materials necessary for basic scientific research. They have increased monitoring of research, excluded foreign scholars from participating on research projects, and restricted them from entry or re-entry into the U.S. for study. There are many restrictions put upon foreign scholars and researchers which include the Student and Exchange Visitor Information System (SEVIS), Visa Condor Program, Technology Alert List, Visa Mantis, National Security Entry-Exit Registration System (NSEERS), and the USA Patriot Act. The combined effect of these new policies makes it much more difficult for foreign scholars to obtain the proper visas and to gain prompt entry or re-entry into the U.S. The purpose of these restrictions is to limit the access foreigners have to sensitive or classified material. The Office of Foreign Assets Control (OFAC) in 2003 made it illegal for American publishers to edit works from authors of nations with which the government has trade embargos. In 2004, the OFAC pulled back from their initial ruling and granted all U.S. persons a general license to engage in transactions necessary in the marketing as well as publishing of written materials. The government also put the Centers for Disease Control in charge of registering scientists to transfer materials that are “select agents” and monitor the facilities involved. Many of these products exist in nature, have everyday uses, and are used frequently in research projects. (Science Under Siege)

In 2002 the U.S. Congress passed the Public Health Security and Bioterrorism Preparedness and Response Act. The purpose of this act was “To improve the ability of the United States to prevent, prepare for, and respond to bioterrorism and other public health emergencies”. (U.S. Congress, To Improve the Ability of the United States to Prevent, Prepare for, and Respond to Bioterrorism and Other Public Health Emergencies) The Public Health Security and Bioterrorism Preparedness and Response Act defined over 40 “select agents” that are considered to pose a threat to human health. These select agents include bacteria, viruses, and fungi. (U.S. Congress, To Improve the Ability of the

United States to Prevent, Prepare for, and Respond to Bioterrorism and Other Public Health Emergencies)

Persons that will be working in a facility that contains any of these select agents or those who will even enter these facilities must pass background checks given by the U.S. Department of Justice. Individuals originating from a country on the Department of Justice's list of countries of interest will not pass the background check. (<http://rac.berkeley.edu/compliancebook/post911.html>)

Implications of Post 9/11 Policies

Secrecy has many implications against what our constitution stands for. Our government is based on openness to the public, including openness of information. The government needs to be responsible and accountable for its actions. It must be able to show the public how it is running our government and what they are doing. For our country to have a balanced view on what challenges we face, there must be an open flow of knowledge and information between the government and the people. How can the government be accountable if the public cannot find a way to contact the people in charge because their contact information has been classified? It is hard to trust a government that is keeping secrets from its people, an action which goes against our democratic principles. Openness prevents the abuse of power and poor decisions that could put people lives at risk, which in turn would not help national security. It is hard to inform the public of potential dangers if information is being controlled and restricted. In turn, the public needs information and openness to make informed decisions on who should represent them in the national government. (Openthegov.org)

Putting restrictions on foreign scholars has many negative implications for the country. First, foreign scholars help our economy with over 580,000 students attending universities and colleges in the United States. They contributed around \$13 billion to the economy in 2002. Second, the restrictions will hinder many of the top scholars and leaders in our country and in the world, which in turn will make the United States fall behind in many areas of study where our scholars are usually very strong. Nearly half of the students enrolled in science and engineering programs are foreign scholars. Approximately 40% of graduate students in engineering, math, and computer science in

the United States are foreign scholars. More than a third of U.S. Nobel laureates are of foreign origin. Third, foreign scholars are a large part of the workforce, constituting nearly 50% of scientific and medical professionals at National Institutes of Health. Close to 38% of engineers in the work force are also foreign (Science Under Siege).

The actions of the U.S. government regarding the increase in classification of information since 9/11 have potential negative implications. One major implication is the financial burden it puts on the U.S. tax payers. As mentioned above, the amount of money allocated only for classifying information has more than doubled between 1997 and 2005. Other major implications include the secrecy and restrictions of information and research that has no bearing on the intent of these policies, to increase and maintain national security.

Recommendations

How can the U.S. continue to be one of the world's leaders in scientific research and engineering if they are restricting a large majority of the people involved in said research? To remain a leader, the government must let foreign scholars into the country and allow them to do research with our native scholars, so our country and the world can continue to collaborate for the advancement of knowledge worldwide. Yet, the government should regulate the foreign scholars who are coming in and out the U.S. Obviously, every country should keep records of foreigners coming in and out of their country. We must also ensure that enough academic positions remain available to U.S. scholars. However, we should continue to encourage foreign scholars to come to the U.S. for research. We must regulate their presence here, but encourage international research operations to increase the knowledge of everyone.

To make classification more consistent and still serve the purpose of protecting national security, the ISOO should make changes to Title 32 of the Code of Federal Regulations. First, ISOO should make it mandatory for the original classifier to document what damage would be caused by the information to national security at the time it is deemed classified. The justification for classification should not be delayed until it is challenged, as is the current situation. Secondly, the ISOO should make a

standardized set of classification guidelines for all agencies instead of encouraging originators of classification guides to communicate for uniformity.

Another very important component of current classification practices that must not be tolerated is how foreign students will not pass the government's required background check to work on certain research projects just because they originate from specific countries. This policy must certainly be removed. This policy is no different from racist or sexist policies of the past that were not tolerated and have since been outlawed. Why is this now tolerated in the name of national security when it has no apparent effect on national security? It merely stereotypes people from certain countries because of a perceived threat of terrorism from those countries.

The government document 32 CFR parts 2001 and 2004 RIN 3095-AB18 which is a directive as a final rule and pursuant to Section 5.1(a) and (b) of Executive Order 12958, as amended, which relates to classified national security information.

(ISOO) According to this document, the agency and the person responsible for the original classifications must be able to identify or describe the damage to national security, but there is no current requirement for a written description at the time of classification. They must only provide written explanation if the classification is challenged. In the same document, classification guides are described for different government agencies. There are no set guidelines between the agencies to make a standard for developing classification guidelines. The document states that "when possible, originators of classification guides are encouraged to communicate within their agency and with other agencies that are developing guidelines for similar activities to ensure the consistency and uniformity of classification decisions."(ISOO For the Public)

Bringing It All Together

Since the terrorist attacks of September 11th occurred, the U.S. government has taken drastic actions to secure the classification and secrecy of information. They have reclassified information that had previously been declassified, they have increased the number of documents classified, and they have also placed huge restrictions on research information in an attempt to prevent further terrorist attacks. However, these actions are

doing much more harm than good for the country. In fact, a lot of the information subject to restriction has no ties to terrorism or national security, and the restrictions of such information would not prevent a large-scale terrorist attack on U.S. soil like that of 9/11. Everyone agrees that certain information should remain classified, but the end result of the classification of information unrelated to national security is counterproductive because it ends up doing more harm than good. The government should not be permitted to overstep its boundaries as such.

Works Cited

Analysis of Executive order 13292. BushSecrecy.org. 2006.

<<http://bushsecrecy.org/page.cfm?PagesID=31&ParentID=2&CategoryID=2>>.

Broache, Anne and Declan McCullagh. "Post-9/11 privacy and secrecy: A Report Card."

Cnetnew.com. 8 September, 2006

<http://news.com.com/Post911+privacy+and+secrecy+A+report+card/2100-1028_3-6113518.html>.

ISOO for the public. Archives.gov. <<http://www.archives.gov/isoo/public/>>.

Simoncelli, Tania and Jay Stanley. "Science Under Siege: The Bush Administration's Assault on Academic Freedom and Scientific Inquiry" *The American Civil Liberties Union* (2005): 12-16

United States. Cong. To Improve the Ability of the United States to Prevent, Prepare for, and Respond to Bioterrorism and Other Public Health Emergencies. 107 Cong., 2nd sess. H. R. 3448. 23 Jan. 2003. 10 Oct. 2006

<http://grants.nih.gov/grants/policy/select_agent/HR3448_Public_Health.pdf>.

United States. Information Security Oversight Office. National Archives and Administration Records. Classified National Security Information Directive No. 1. 22 Sept. 2003. 16 Oct. 2006 <<http://www.archives.gov/isoo/policy-documents/eo-12958-implementing-directive.html#2001.15>>.

Corporate Information Handling

Corporate Misinformation

Jordan Fettman, Vicki Riggs, Megan Touchton

Introduction

Overview

In the age of information, it is necessary to critically analyze how information is summarized and presented to stakeholders. Every public company has a duty to portray its financial position as accurately as possible to its stakeholders. According to industry standard practices, companies have to pare down their financial information in order to make it manageable to external users. The information that is included or excluded is regulated by government and private bodies, but there are also many gray areas for companies to misrepresent themselves, as portrayed by recent financial scandals. Omission of numerous financial details is necessary for simplicity and understandability; however, if used the wrong way, it can result in corporate lying and subsequent harm to stakeholders. A company that misrepresents its financial position violates the trust and jeopardizes the well-being of its stakeholders.

Definitions

A *stakeholder* is defined, for purposes of these cases, as employees, management, owners and creditors. *Financial misrepresentation* is defined as not giving an accurate portrait of the financial position of a company, whether the intent to mislead is present or not. In contrast, corporate *lying* is the intentional deception of stakeholders, usually to make a company's financial position appear more favorable. *Accurate information* is both free from the intentional manipulation by corporate motives and objective for external stakeholders. How a company treats its financial statements is indicative of its

degree of ethical responsibility. *Ethics* is not only conforming to accepted professional standards of conduct, but also involving moral approval or disapproval.

Corporate Culture

Every company has a different corporate culture with diverse values and ethics. Since accurate representation to stockholders is an important value, it is necessary to understand the inner workings of a company's corporate culture and how it relates to its external representation. This chapter will analyze how a company's corporate culture affects its degree of transparency in its financial statements and how it affects the company's stakeholders.

Assumptions

All primary stakeholders in businesses have a right to know companies' financial information as it pertains to them. Therefore, all corporations have a duty to supply accurate financial information to their stakeholders. The assumptions guiding this duty-based ethical framework are supported by the belief that businesses have a duty to respect their stakeholders by supplying honest and accurate information. While this framework underestimates the importance of happiness and social utility, business' primary duty is to add value to the company for the benefit of stakeholders. Therefore, actions in businesses must be assessed relative to the impact they have on those with a vested interest in daily operations. The implication of this framework, then, is the proverbial "actions speak louder than words"; businesses should operate in consideration of the ways in which their actions help them maintain their duty with respect to their stakeholders.

Values

In conjunction with the stakeholders' right to know and the companies' duty to tell, some important values are financial transparency, honesty, and loyalty to stakeholders. In order to ensure these values and ethical duties are upheld, companies should show everything they possibly can without compromising their internal integrity.

Reasonable disclosure is necessary to portray an accurate picture of the company's financial position.

Background

Stakeholders rely heavily on information provided in financial statements by companies, so full financial disclosure may be the solution to deliberate misinformation, or corporate lying. There are numerous reasons, that not all information should be published. First, furnishing all financial information to the public means that a company is also releasing this information to its direct competitors. If competitors use this information for an unfair advantage, the detrimental effects the company suffers will trickle down to the stakeholders, namely the owners who lose money and the employees who lose jobs. Second, the cost of publishing all financial information, down to every transaction, is exponentially higher than the benefit of furnishing such information to the stakeholders. There would be so much information that stakeholders may be overwhelmed and lose sight of the overall picture. Finally, there are too many variables in the business climate that may have an effect on financial information. For instance, coupons that have not been redeemed, lawsuits not yet resolved, and potential mergers/acquisitions are uncertain events that can all have a substantial effect on a company's financials. Even if all numbers were published, they still may not paint an accurate picture of a company's financials.

Company generated forecasting within the financials is another piece of the information affecting stakeholders. Based on prior financial statements and the current business climate, upper management issues its predictions for the upcoming quarter or year. From these predictions, financial analysts make forecasts about the industry as well as each company within that industry. How a company performs relative to the forecasts has a direct correlation to its stock price, which is typically one of the main success measures of a company. Upper management feels substantial pressure to predict that the company will be at least as successful, if not more, than the prior period, and then to live up to that expectation. There are numerous factors influencing the accuracy of forecasts. Buyers' behavior is unpredictable, as are competitor's tactics, which may or may not be successful. External events such as war, politics, culture, and globalization can all have

significant influence. Due to the unpredictable nature of future events, and the high pressure on upper level management to perform to expectations, the likelihood of intentional financial misrepresentation is ever increasing.

A good company should have an internal structure that assures proper execution of ethical standards, substantial oversight of practices, and a company culture supportive of personal responsibility for the whole is fostered. In order to develop a strategy for an ethical company profile, it is important to reflect on some problems that companies had with misinformation in the past. Through discussion of Fannie Mae and WorldCom, Inc. this chapter will present a framework for developing and sustaining an ethically responsible company.

Fannie Mae

Prior to 2004, Fannie Mae was one of the most respected companies in the United States. They had a AAA credit rating, were often thought of as a “low-risk and best in class institution,” and were sponsored by the US government. This firm primarily securitized home mortgages and sold them on the open market, making itself a key component of the US housing industry. However, in October of 2004, the OFHEO (The Office of Federal Housing Enterprise Oversight) began to investigate Fannie Mae’s accounting practices. Fannie Mae had been growing at an incredible rate each year, and had been reporting curiously smooth earnings growth which just happened to meet expectations quarter-after-quarter. The OFHEO found out that the company had actually been manipulating its accounting numbers in order to meet these estimates.

Fannie Mae is an example of a company that perpetuated intentional information manipulation and financial misrepresentation. Among other practices that are deemed illegal according to GAAP (Generally Accepted Accounting Principles), Fannie Mae downplayed their losses by classifying numerous investments as hedges when they were not eligible to be counted as such, which will be explained shortly. In addition, “they did not invest the proper time or money into their accounting systems, computer systems, other infrastructure and staffing needed to support a sound internal control system, proper accounting and GAAP-consistent financial reporting” (OFHEO Report). All of this

resulted in Fannie Mae over-estimating earnings by about 10.6 billion dollars from 1998-2004.

Fannie Mae's Corporate Culture

The massive misrepresentations perpetrated by Fannie Mae and World Com are not the result of accounting errors. The misrepresentations are affected by policy decisions made by senior management to mislead stakeholders for their own advantage. As the leaders of a company, upper management establishes the norms and values of that company. Therefore, a corporate culture that condones questionable business practices starts with upper management. These flexible morals are one reason that company scandals are often attributed to internal corporate culture. Relative to the scandals previously discussed, each company's corporate culture is viewed in consideration of its causal relationship with ethical practices. Fannie Mae's culture was mostly influenced by Franklin Raines, who called for doubling Fannie Mae's earnings per share in five years. Raines changed the enterprise's compensation program to make incentives higher to achieve that goal; he also gave financial executives extraordinary power and authority. (OFHEO 53)

The OFHEO, in charge of ensuring financial safety of government sponsored enterprises like Fannie Mae, says that the Board of Directors failed in its duty:

The Board refrained from demanding accountability from the Chairman and other senior executives in numerous ways. Specifically, the Board abandoned its checks-and-balances oversight responsibilities; acquiesced in allowing management unbridled authority over its agenda, materials, and minutes; did not adopt and impose policies requiring that all critical accounting policies and major transactions be vetted before it or its designated committee; and acquiesced in allowing the Chairman to concentrate power in the Chief Financial Officer and then to seat him on the Board, which enhanced the power and influence of executive Board members. In fact, the Board allowed management to determine with little opposition the information it received and missed many opportunities for meaningful oversight. (OFHEO 281)

According to OFHEO, the executive compensation system itself drove the wrongdoing. "Fannie Mae tied major portions of executive compensation to EPS [earnings per common share], a metric easily manipulated by management."(OFHEO 55) The way the compensation program worked created an environment where it was best to "smooth" its earnings -- to ensure that it met its targets but did not exceed them so executives could maximize their compensation. Raines also extended the EPS compensation to managers of the internal audit group and the accounting department, encouraging them in this deception of stakeholders.

In an internal letter from the Office of Corporate compliance: "Barnes expressed concern that he had been asked to make manual changes related to the amortization process without an explanation as to why he should do so and without appropriate documentation. Barnes alleged that these changes seemed designed to achieve predetermined results. ... That the environment in the Controllers office was such that it discouraged raising accounting concerns or issues to management and those that did were treated as "not members of the team" (OFHEO Appendix F). Forty-eight out of sixty employees working for Fannie Mae in accounting and internal audit reported discrepancies in how Fannie Mae kept their books and discouragement of anyone who questioned Fannie Mae's practices.

When OFHEO and the independent investigators found that the allegations that Barnes and others had made about manual changes were true, (1202) they recommended Fannie Mae to change how its independent audit was documented to address the conflict of interest issues raised by employees.

Barnes' reports verify that executives and directors structured the operations of the corporation in pursuit of manipulated outcomes. That is, they knowingly and intentionally engaged in an ongoing pattern of manipulation and wrongdoing, and did so in such a way as to advance their own interests and earnings. When a culture of faithful representation is not supported by ethical behavior from senior management, it's not surprising that compliance to ethical standards can be overshadowed by the desire for personal gain. People model and follow what leaders do, even contradicting personal

morals to do so. This conflict of interest provides a fertile environment for improper activity to take place, as it did at Fannie Mae.

Fannie Mae Financial

The OFHEO found that Franklin Raines (CEO of Fannie Mae) would inform the accounting department of what numbers the company had to meet for the upcoming quarter, and the department would then “make it happen.” There were several specific and complicated gimmicks the accountants used to create these illusions.

Fannie Mae held many interest rate swaps during the time period in question in order to mitigate interest rate risk. When companies hold derivatives or other securities in order to protect themselves from future risk, it is called a “hedge.” Although this is a very simple definition, in order to use “hedge accounting” a company’s hedging instruments must qualify for specific standard criteria established by the Financial Accounting Standards Board (FASB) in which Fannie Mae’s did not. Despite Fannie Mae’s derivatives not being qualified for hedge accounting, they decided to use hedge accounting anyway. Using hedge accounting involves not recognizing losses immediately, therefore giving an illusion of inflated earnings.

Most other violations performed by Fannie Mae relate to the “Revenue Recognition” or “Matching” Principles of accounting. These rules state that every company should report revenue when it is earned, not necessarily when money is received, and match the expenses associated with these revenues when the revenues are reported. In order to show smooth financial growth, Fannie Mae booked both revenues and expenses during periods in which they were not permitted to so. While this may sound complicated to the non-accountant, these are two of the most fundamental rules in all of accounting. The firm’s CPAs who performed these actions knew without a doubt they were violating GAAP.

When these serial violations were uncovered, not only did the stock price plummet to reflect the loss of 10.6 billion dollars in revenue, but it went down even further due to the new lack of trust associated with Fannie Mae company. The end result was that stakeholders lost a great deal of money due to Fannie Mae’s deceptive behavior.

By violating its duty to supply representative accurate information to its stakeholders, Fannie Mae violated its duty to stakeholders as well as the accounting profession.

Fannie Mae Culture Influence on Financials

Prior to the revelation of the Fannie Mae accounting scandals, the company was thought of as trustworthy and reliable. Without such trust, they would not have been rewarded with such a high stock price and a AAA credit rating. However, much about the firm's corporate culture was uncovered with the investigation into this scandal.

The culture created by upper management is self-reinforcing. Upper management that intentionally directs others to mismanage financial statements in order to trigger its own bonuses is inherently unethical. But why did lower management and employees cooperate with these violations for so long? It appears that most of the workers who "overlooked" such wrongdoings did so because they trusted their CEO and other upper managers, at least at first. They were pressured into a certain fiscal performance by upper management, and it took awhile for information regarding their unethical behavior to leak.

After much investigation, the OFHEO remarked that Fannie Mae was an "aggressive and unethical company..." (Roberts). Most strikingly, they reported that "...Fannie Mae used its tremendous power in Washington to lobby Congress with the aim of interfering with the OFHEO's investigation." It appears that in a futile attempt to cover up any wrong-doing, Fannie Mae tried to get the OFHEO in trouble with Congress during their investigation. Obviously the ploy didn't work; it only made the corporate culture of Fannie Mae appear even more corrupt.

WorldCom

Another company that misrepresented itself was WorldCom, Inc. After growing from a small startup company in 1983 into a multi-billion dollar corporation by 2002, the executives at WorldCom began to believe they could manipulate earnings and not get caught. When it became apparent that actual performance would not match the forecasts, upper management manipulated financial data, hoping to make up for the misstatements in upcoming periods during the forecasted internet boom with corresponding demand for

WorldCom services. After the second period of misstatements, these manipulations lost their efficacy. Realizing this boom was not forthcoming, upper management ordered that the classification of specific leases should be changed. The new classification would result in an increase of net income as well as an increase in the value of capital assets on the company's books. These misclassifications ultimately resulted in 11 billion dollars of inflated earnings over less than a year and a half (USA v. Sullivan and Yates).

WorldCom's Corporate Culture

The theory that upper management affects both company culture and employee behaviors is further supported by the concept of "group think." Group think is defined as a "mode of thinking that people engage in when they are deeply involved in a cohesive in-group, when the members' strivings for unanimity override their motivation to realistically appraise alternative courses of action" (Janis. 9). Group think played a primary role in perpetuating the fraudulent environment at WorldCom. For example, Scharff described WorldCom's cultural environment as one in which "employees felt that they risked losing their jobs by disagreeing with executives or policies that were implemented" (109-119). Additionally, Morgan equated the type of behavior at WorldCom to the metaphor of employees being held in a prison of the mind. He associated this prison to "Plato's cave whereby individuals could only see the shadows, or illusions of reality, on the wall in front of them. Plato's cave dwellers, even when faced with a truth that their reality was flawed and only revealed the shadow of reality, would reject that paradigm change to the point of ostracizing the individual attempting to change their reality" (109-119).

Morgan explains that in a "group think" culture, any attempt to change organizational norms often creates "all kinds of opposition as individuals and groups defend the status quo in an attempt to defend their very selves" (245). The dangers of group think became reality at WorldCom, where unquestioned compliance to the norms of the group ultimately led to the downfall of the company. According to Janis, group think simultaneously has dangerous effects on morality. For example, Janis observed that "highly cohesive groups might rely unquestionably in the morality and self-righteousness of their group" (109-119). As a result, members consider loyalty to the group the highest

form of morality" (Janis 11). If the company's goals are of greatest importance to a business, personal values and societal norms could be ignored in favor of the company's objectives, no matter how unethical the behavior is. Proposing that stakeholders have a right to know accurate information, a duty-based framework dictates that companies have a duty to give accurate information to stakeholders. This system works when management is accurately representing stakeholders' desire for accurate information. Creating this type of system that connects the wishes of stakeholders and upper management would require consistent goals as well as communication of those goals. Where problems occur is when upper management loses sight of its purpose and instead focuses on personal aspiration. WorldCom "lost its internal compass" (Scharff 109). Executives controlled everything from the top, and group think minimized dissent. WorldCom experienced difficulties because it was "running on a financial survival mentality" (Scharff 111). and did not have stakeholders' best interests in mind. The infiltration of group think into WorldCom's company culture and the perpetration of a solid yet unethical status quo created and managed by a select few was primarily responsible for its ethical decline.

WorldCom Financial

WorldCom was such a large player in the telecommunications industry by 1999 that there was a substantial amount of pressure to perform sequentially better each quarter. WorldCom provided service to its customers through its own vast networks and facilities; they had developed an extensive network in order to provide these services. Where WorldCom did not own the network, it either leased equipment or facilities from other telecommunications companies or paid a fee to use them. These costs, according to GAAP, should be considered operating expenses. That is, they should be counted as costs that will not render any future benefit to the company. The only time that leases should not be expensed is when a substantial portion of the benefits and risks of ownership are transferred to the company doing the leasing, in this case, WorldCom (Kieso 1089).

When ownership is transferred, the lease is capitalized, the costs remain the same, but the company is increasing its assets. With an operating lease, the money for lease

payments is gone once it is paid; with a capital lease, the money for lease payments is counted towards acquiring the asset. If a lease is classified as a capital lease rather than an operating lease, the company's operating expenses will be lower, which increases net income, and the capital assets are higher (USA V Sullivan and Yates). Due to the potential to manipulate the financials simply by reclassification, the Financial Accounting Standard Board (FASB) has very specific guidelines for what leases qualify as capital leases and which qualify for operating leases. Since none of World Com's leases qualified to meet the requirements for capital leases, payments should all have been expensed as they were made.

From its founding in 1983 to 2000, WorldCom did not classify its leases as capital leases. Costs to lease equipment from third parties were counted as expenses. In 1999, WorldCom entered into numerous long term leases in anticipation of an internet boom and subsequent rise in demand for WorldCom services (USA V Sullivan and Yates). Since these leases required payment regardless of the amount of usage, "WorldCom's expenses as a percentage of its total revenues began to increase" (USA V Sullivan and Yates). This rise led to a slower rate of growth in WorldCom's earnings, which would in turn substantially lower the value of WorldCom's stock. For the third quarter of 2000, when the upper management realized the certainty of this situation, they moved money between various accounts and inflated reserves to make the costs of the leases appear less detrimental to WorldCom's financials. For the fourth quarter of 2000, they used the falsified balance in their reserves to pay for the leases. By the first quarter of 2001, when it was apparent that the high costs of leasing could no longer be hidden, they decided to change the classification of their leases from operating to capital. They continued to lie to their stakeholders until June 25, 2002, when they were forced to admit that they had falsified their financial position for 2 years. In the end, they had inflated their earnings by 3.8 billion dollars.

WorldCom Cultural Influence on Financials

Scharff, an author featured in the Journal of Leadership & Organizational Studies, attests that WorldCom's organizational structure, group processes, and culture contributed to both its fraudulent financial reporting and the length of time over which it occurred.

Since WorldCom's upper management created a company culture that emphasized values such as bonuses for upper management and cutting costs in every possible way, employees were pressured to manipulate financial outcomes to meet these internal company values. An SEC filing implicates Bernie Ebbers, WorldCom's then CEO, as the initiator behind the culture and pressure that allowed the fraudulent reporting of financial outcomes to transpire. This pressure Ebbers created heavily influenced employees to concede to group think and to leave upper management's status quo unquestioned.

The "Good" Company

Companies that honor their duty to provide accurate information to stakeholders should anticipate fluctuations in earnings and faithfully report those to stakeholders. They need to acknowledge the possibility of such fluctuations and report in full these setbacks as they occur. This disclosure enables stakeholders to make informed decisions and minimize their losses. Good companies should also value honesty, loyalty and trust between the company and its stakeholders more than executive job security, career interest and bonuses.

Information should be fully disclosed with a few exceptions. Such exceptions may include information that would be financially harmful if known by competitors, if the information is immaterial compared to the totality of information being provided, or if the cost of disclosure precludes the feasibility of such an undertaking. In addition, good companies will avoid dependency on forecasts, which are by nature uncertain. Relying on these forecasts makes stakeholders rely on information which may or may not be substantiated, and gives upper management substantial pressure to perform to those standards, even at the cost of ethics. A good company with its stakeholders' interests in mind must make a concerted effort to create a corporate culture that fosters and encourages honesty, loyalty and trust. This, in turn, translates into accurate financial information being provided to stakeholders.

Conclusions

How does corporate culture influence the degree of truthfulness in financial representation? Representational faithfulness, that is, the degree to which financial

statements accurately portray the company's financial situation, is dependent on corporate culture; therefore some sort of framework is necessary to ensure the integrity of financial information being provided by the company.

Recommendations

Due to the close connection between a company's corporate culture and its degree of financial accuracy, it becomes necessary to build a framework for businesses to encourage the ethical responsibility of employees. According to Falkenberg and Herremans "Organizations can influence the ethical behavior of members through both formal and informal systems" (415). Formal systems, as discussed by Ross & Robertson, include a corporate code of ethics and serve the purpose of directing employee behaviors. "Formal ethical codes may be considered essential by many to aid employees in ethical decision making within the organization (Sims), but they are not sufficient to guide behavior if supervisor expectations contradict these written guidelines (Sims).

WorldCom and Fannie Mae had corporate codes of ethics, but these codes were overshadowed by supervisory direction. Therefore, it is necessary to implant executives with high personal ethical standards who will add to the informal systems. . Due to upper management's large influence on both company culture and employee behavior, it is important for executives to facilitate ethical and effective management. Liebowitz describes effective management as a process that "involves continually soliciting feedback from employees, customers, and suppliers regarding how they view the firm and its practices, and then acting on that feedback to improve the organization and its culture" (p. 101). Possible solutions could include opening access to information, requiring numerous people to make important decisions, and implementing non-critical methods of communication.

The representational faithfulness of financial statements matter. When considering management and its dual effect on company culture and ethics, actions speak louder than words. No matter what type of motto or code of ethics management puts in place, employee behaviors will not correspond without a foundation of observable ethical behaviors from management itself. The idea of transparency in financial records has a multi-dimensional definition. Literally, it allows stakeholders the ability to see

information that directly pertains to them. Theoretically, it allows stakeholders to assess the ethical integrity of a company's cultural framework. Financial statements speak volumes about the moral clarity of upper management, starting with the CEO.

Works Cited

- Arya, Anil, Jonathan C. Glover, and Shyam Sunder. "Are Unmanaged Earnings Always Better for Shareholders?" Accounting Horizons 17 (2003): 111-116. Business Source Premier. 1 Oct. 2006.
- Castellano, Joseph F., Kenneth Rosenzweig, and Harper A. Roehm. "How Corporate Culture Impacts Unethical Distortion of Financial Numbers." Management Accounting 5 (2004): 37-42. Business Source Premier. 1 Oct. 2006.
- Falkenberg, Loren and Irene Herremans "Ethical behaviours in organizations: Directed by the formal or informal systems?" Journal of Business Ethics. 2nd ser 14. February 1995:133-143. Springer Netherlands
- Fannie Under Fire From OFHEO. www.risk.net. 1 Oct. 2006.
- Goldstein, Matthew. Feds Fine 'Arrogant and Unethical' Fannie Mae. TheStreet.com. 2006. 1 Oct. 2006 <<http://www.thestreet.com/markets/realestate/10287502.html>>.
- Kieso, Weygandt, Warfield. Intermediate Accounting 11th ed. JohnWiley & Sons, Inc. 2005.
- Liebowitz, Bernard. "What's wrong with being "borderline ethical"? Everyone would agree that lying, cheating, stealing, or creating dangerous working conditions just to increase profits are unethical business practices-Leadership and Management." Healthcare Financial Management. 9 Sept 2003: 57
- Mensah, Michael O., Hong V. Nguyen, and Satya N. Prattipati. "Transparecy in Financial Statements: a Conceptual Framework From a User Perspective." Journal of American Academy of Business, Cambridge 9 (2006): 47-51. Business Source Premier. 1 Oct. 2006.
- Office of Federal Housing Enterprise Oversight (OFHEO), "Report of the Special Examination of Fannie Mae," May 2006.

- "OFHEO REPORT: FANNIE MAE FACADE." The Wall Street Journal 23 May 2006. 1 Oct. 2006 <<http://wsj.com>>.
- Paul, Weiss, Rifkind, Wharton, & Garrison LLC and Huron Consulting Group. A Report to the Special Review Committee of the Board of Directors of Fannie Mae. February 2006.
- Roberts, Kristin. Tough Fannie Report Could Push Bill in Congress. Reuters. 2006. 1 Oct. 2006 <www.reuters.com>.
- Ross , William T. and Diana C. Robertson. "A typology of situational factors: impact on salesperson decision-making about ethical issues", Journal of Business Ethics, Vol. 46.3. Sept. 2003:213-34.
- Scharff, M.M.. Understanding WorldCom's Accounting Fraud: Did Group think play a Role? Journal of Leadership & Organizational Studies, 11(2005)., 109-119.
- . Sims, Randi L. "When formal ethics policies differ from informal expectations:a test of managers' attitudes." Leadership & Organization Development Journal. ns19.7 (1998): 386-391.
- United States of America v. Sullivan and Yates. No. 02CR. District Court Southern District of New York. 16 May 2003.
- Xiong, Yan. "Earnings Management and Its Measurement: a Theoretical Perspective." Journal of American Academy of Business, Cambridge 9 (2006): 214-219. Business Source Premier. 1 Oct. 2006.

THIS PAPER NEEDS A TITLE!!!!!!

PUT NAMES ON HERE!!!!, Txue Pa Yang

Introduction

Consumers are both knowingly and unknowingly sharing their personal information with others every day. There are many different ways of sharing personal information. It may consist of, but not exclusive to, writing a check to make a payment, using a credit card to buy an online product, mailing in tax returns, calling home on a cell phone, scheduling a doctor's appointment or applying for a credit card; each of those transactions requires you to share personal information, such as your bank and credit card account numbers, your income, your Social Security number (SSN), or your name, address and phone numbers (Federal Trade Commission). For the most part, consumers commonly share their personal information on an ongoing basis without being aware if it. In the case that they are asked to “verify” their personal information by creditors, most consumers tend to not realize that they are also “giving away” their personal information, as well as verifying their personal information for “verification purposes only”. Furthermore, most consumers may not even realize how important the privacy of their personal information is to their own well-being. Such personal information, if misinterpreted or put in the wrong hands, may ruin lives or destroy one’s financial standing. The misuse of this information can do more harm to the individual than he or she may even know or can imagine.

When sharing personal information, consumers are usually not aware of how their own information is being used. In most cases, personal information of consumers are collected and distributed by companies to be compiled and/or used, and eventually sold and bought by other companies. With the constant collecting and distributing of personal consumer information by companies, the Federal Trade Commission (FTC) enforces the

Fair Credit Reporting Act (FCRA) to promote the accuracy of consumer reports, as well as to ensure the privacy of the information in those reports (Federal Trade Commission). Though there are laws governing the use of consumer information and the privacy rights of consumers, such practices of violating those laws frequently occur because companies carelessly take into account their wrongful actions when it comes to making a profit. According to the *The Rights Approach* from the Five Sources of Ethical Standards, it is suggested “that the ethical action is the one that best protects and respects the moral rights of those affected” (Markkula Center for Applied Ethics). Basically, it is one’s right to have their own privacy secured from invasion; therefore, ethically, these acts of carelessness by companies may lead to the consumer’s privacy being invaded.

Invasion of Privacy

With regard to consumers’ privacy when dealing with personal information, it is important to note that there are many ways of invading one’s privacy. Privacy, in the sense of personal information, is defined by the Privacy Rights Clearinghouse as “the ability to control what is done with one’s information” (Insurance Journal). One way would be web browsers who are unaware of the uncontrollable flow of their information and, as a result, having their privacy invaded. In 2000, when United States (US) Representative Edward J. Markey noticed this invasion of privacy in which websites do not notify the consumers of their data being collected, he introduced H.R.3321 to the House which would require all sights to visibly notify a person if the site intends to share, reuse, or sell the information, and provide consumer control over the flow of this data (Insurance Journal). Even Bill Clinton has publicly spoken on the invasion of people’s privacy in a commencement address at Eastern Michigan University. Clinton said, “In this age of information we cannot let new opportunities erode old, fundamental rights. We cannot let breakthroughs in technology break down the walls of privacy” (Insurance Journal).

While web browsing, whenever an icon is clicked on, an advertisement selected or a story read, each move is recorded into a database to be streamlined and investigated for patterns if the powers-that-be desire. This method is an extremely useful and an inexpensive way to gather information that is utilized almost universally today. In a

survey conducted by Mary J. Culnan of Georgetown University, statistics revealed that of the 361 commercial websites 92.8 percent collected personal identifying data; 56.8 percent collected demographic data; 6.6 percent collected no personal data; and less than 1 percent collected only demographic data (Privacy Rights Clearinghouse). This has tremendous implications for your every day consumer. The statistics are even more frightening if we consider the fact that banks, brokers, and financial institutions are beginning to go on-line at an ever-accelerating pace, meaning that all of your financial history and transactions will also be available and collected.

Visible and Invisible Methods of Collecting Personal Data

In terms of collecting personal information, there are two different methods of collecting personal information; visible and invisible. Visible collection occurs when the consumer knowingly and willingly gives out their information, but has no idea what the information will be used for. The other method corporations use to gather information is the invisible method. When this approach of data collecting occurs the consumer is not aware that he or she is giving out information and it is being done without their direct consent.

Two widespread visible data collections are the *National Consumer Survey* and *Consumer Product Survey of America*, where both surveys consist of the promise of a free entry into a sweepstakes if the person fills out the survey and sends it back by mail. One other example of collecting personal data visibly is *Product Registration Forms*, which occurs whenever a person gives out information to register any product that the customer has recently bought, such as a computer. There are many different invisible methods of collecting data, such as Reverse Appending and Automatic Number Identification (ANI). Reverse Appending is the process in which consumers use their credit card for purchases and then records of the account number with the mailing address attached are transmitted to a credit reporting agency by the merchant (Privacy Rights Clearinghouse). Automatic Number Identification is “when individuals place telephone calls to a toll-free number or to a 900 number, their telephone numbers are transmitted to the call recipient. If the recipient subscribes to an ANI service, it can capture the incoming phone numbers” (Privacy Rights Clearinghouse). This process is similar to

reverse appending where “additional data can then be appended to the telephone numbers, thereby enabling the company to obtain names, addresses and demographic data of those who place telephone calls to that company” (Privacy Rights Clearinghouse). “While ‘customer relationship management’ is a prominent buzz-word used in business today, invisible data capture via ANI is an unethical means to build a company's data base” (Privacy Rights Clearinghouse). But far, the most dangerous way that is currently being investigated by the FTC is gathering data on the internet.

Collectors and Distributors of Personal Information

There are over 100 companies in the US gathering data about millions of households and citizens in the country. The largest of these companies are Experian Information Solutions, Inc., (Experian), “a global leader in providing value-added information solutions to organizations and consumers”, and Acxiom Corporation (Acxiom), a company that creates and delivers “customer and information management solutions that enable many of the largest, most respected companies in the world to build great relationships with their customers” (Experian; Acxiom). Each company holds information on over 100 million households and 165 million individuals, and the numerous smaller companies such as Unisys, ChoicePoint, and HotData hold only slightly less amounts of personal information (Privacy Rights Clearinghouse). These companies hold databases with extensive and detailed information on citizens, enabling the companies to have the ability to paint a surprisingly vivid portrait of any individual’s daily life activities.

The companies, such as Consumer Reporting Agencies (CRAs), collect and sell information about the creditworthiness of individuals (Investorwords). The credit bureau is the most common type of CRA (Federal Trade Commission). Credit bureaus possess a wide range of consumer information, not only consisting of the common personal information: names, addresses, phone numbers, SSNs, bank and credit card account numbers, etc., but even medical information and religious or political affiliations. CRAs have the right to sell information about consumers to creditors, employers, insurers, and other businesses in the form of a consumer report (Federal Trade Commission).

Concerns of Consumer Information Being Collected and Distributed

In a FTC Workshop held on March 13, 2001, the director of the Privacy Rights Clearinghouse, Beth Givens, commented that she had long observed that the “compilation and exchange of data captured from consumers when they participate in the marketplace” were of a key concern to consumers (Privacy Rights Clearinghouse). With the FTC enforcing laws helping to prevent and end violations and abuse of consumer information by CRAs, it has also helped reduce the number of credit bureaus from such committing wrongful acts. Unfortunately, most consumers are still at risk because of the vast amounts of data warehouses containing their personal information. “Privacy experts estimate that the average American is profiled in at least twenty-five, perhaps as many as one hundred, databases” (Economics of Personal Information Exchange).

Process of Data Mining Consumer Information

Most commonly, consumer information being collected by companies are put into extensive databases, and most of the time, information is taken from the consumer without them being aware of how it is being used. Once this information is collected, the majority of consumers have no idea where it is stored or who has access to it. If only consumers were informed about how their personal information was going to be used, exactly whom their personal information is given to, and for what purposes they are relinquishing their personal information to, they may be more or less inclined to reveal certain details about themselves.

An extension to privacy being affected by data warehouses is where, when, what and how the information is being collected, as well as who is using the information. Personal information databases not only contain large amounts of consumer’s personal data, but included in those databases are information on the whereabouts of purchases a consumer makes, and how and when it is being made. This is critical to make note of because it can lead to very serious outcomes. All of a consumer’s purchasing information can be compiled and organized together to allow any person obtaining this information to essentially follow and stalk every movement the consumer would make. A person’s purchasing information combined with their personal information, i.e. address, phone number, etc., provides an adequate amount of information to locate a

person at their place of residence and/or workplace, or any other trips being made routinely by that person. If such databases make it possible for an individual's movements and daily habits to be tracked, then the only right to privacy the individual has anymore is the right to whom this information is available to.

Risks Involved When Sharing Personal Information

Consumers who were aware of their privacy being violated or abused have already registered their complaints about privacy abuses and have sought information on how to safeguard their privacy (Federal Trade Commission). As for those consumers who are unaware of their privacy being violated or abused, they are also not aware of the risks involved when sharing their personal information. Especially when corporations are constantly collecting, distributing, buying and selling consumer information to make a profit, not only are the consumers at risk but the corporations are at risk as well.

Within the personal information privacy issue, the consumers and corporations are the ones at risk. Consumer personal information is being collected, distributed, bought, and sold by corporations everyday. The corporations who are the ones committing this abuse of privacy on consumers and can basically be broken down into three main groups: companies collecting and distributing personal data, companies who sell and re-sell those personal data, and companies buying and using the data resources. Because of the two very different stakeholders at risk, there arises different exposures to risk and various issues arise as well. As for privacy issues concerning the consumers at risk, the issues include identity theft, credit scams, denial of loans and jobs, in which all these may lead to lawsuits. For corporations, it is their duty under the FTC Act to “keep the promises they make to consumers about privacy and, in particular, the precautions they take to secure consumers' personal information” and not misuse consumer information in any way (Federal Trade Commission – Privacy Initiatives).

Risks of Collecting and Distributing of Personal Data

Releasing personal data is often a requirement in today's society, but it carries with it many different exposures to risk. Companies that collect and distribute personal data can cause problems because they tend to not take the right precautions when

collecting and distributing personal data of consumers. One example of a company who did not take the necessary precautions to prevent violating consumer's privacy rights is ChoicePoint. With a market capitalization of \$3.03 billion, ChoicePoint is currently the leader of the identification and credential verification services industry (Federal Trade Commission). ChoicePoint is a publicly traded company that obtains and sells the personal information of consumers to upwards of 50,000 businesses (Federal Trade Commission). Last year, ChoicePoint "acknowledged that the personal financial records of more than 163,000 consumers in its database had been compromised, and will pay \$10 million in civil penalties and \$5 million in consumer redress to settle Federal Trade Commission charges that its security and record-handling procedures violated consumers' privacy rights and federal laws" (Federal Trade Commission).

Companies buy personal information of consumers to use for many different purposes including pre-employment screening, credit risk analysis, marketing analysis, and so forth. When operating a business in the identification and credential verification services industry the main concern and risk for the organization should be the strict adherence to security issues, regulations, and data accuracy in order to protect the well-being of the consumer. Clearly, the information collected by firms, like ChoicePoint, is still at risk and isn't safeguarded as much as individuals would assume it to be.

The Effects of Consumers at Risk

Consumers, who are mainly at risk concerning the collection and distribution of personal information, are the millions who have given out bits and pieces of their information, both voluntarily and involuntarily. Whether it is applying for a credit card, getting a driver's license, or opening a bank account, every consumer gives out information about themselves on a regular basis to partake in a modern lifestyle. But what many consumers do not know is that their information is available to just about anyone who is willing to pay the price. There have been recent situations in which valuable personal information has made its way into the wrong hands due to minimal, and sometimes, unlawful security regulations or even foul play. For example, on January 26, 2006, "the FTC charged that ChoicePoint violated the Fair Credit Reporting Act by furnishing consumer reports and credit histories to subscribers who did not have a

permissible purpose to obtain them, and by failing to maintain reasonable procedures to verify both their identities and how they intended to use the information” (Federal Trade Commission). In fact, ChoicePoint was also charged with “violating the FTC ACT by making false and misleading statements about its privacy policies,” in order to create a sense of security (Federal Trade Commission).

The other consumers at risk regarding personal information privacy are the companies that purchased data from firms in the identification and credential verification services industry. The major risk for these consumers is the accuracy of the information and its effects on the operations of their business, and the possible repercussions from wronged individuals and the law. Earlier this year an accuracy issue occurred within a consumer reporting agency. Far West Credit, Inc. will be paying a \$120,000 fine to settle Federal Trade Commission charges (Federal Trade Commission). A home lender, Keystone Mortgage and Investment Company, Inc., was provided inaccurate consumer reports by Far West. This led to defaults in mortgages that were insured by the Fair Housing Administration of the U.S. Department of Housing and Urban Development, “resulting in losses to the FHA program” (Federal Trade Commission).

Values of the Consumers Being Violated

In allowing corporations to continuously gather and sort information about individuals, the individual is surrendering much of his/her right to privacy. The individual relinquishes his/her ability to keep personal information private. ChoicePoint has databases with information on millions of consumers. In these databases are records of consumer’s SSN, bank information and financial records, religious or political affiliations, and medical records. All of this personal information can be misused or misinterpreted causing serious harm to an individual’s way of life.

Causes and Effects of Political and Religious Status Revealed

An area of interest in relation to one’s personal information is one’s religious or political affiliation. Personal information regarding a person’s background such as race, ethnicity, gender, and political status are also common data being collected and organized. Political and religious affiliation recorded in these databases could be used by

parties to influence an individual or a group, or to profile an individual based on this information. This concept of profiling can be especially important during this time of “War on Terror”. There is a big movement by the United States government to secure its borders and keep America safe from what they deem as “terrorists.” Looking back through American history, one can notice that there have been multiple occurrences of discrimination and profiling. For instance, during the McCarthy era many US citizens were discriminated against based on their supposed support for communism or for having ties to the USSR. This led to many people losing their jobs and being jailed despite having never committed a crime or speaking out against the government. During World War II, many Japanese were imprisoned just because of their skin color and nationality. Because of occurrences like these mentioned it is vital that one’s political and religious views are able to be kept private. Misuse of this information can lead to people’s civil rights being abused or removed.

Personal Information Being Used and Abused

Data warehouses also contain extensive information about a one’s financial situation. Checking and savings account details, debit and credit card numbers, credit ratings are only some examples of information contained in data warehouses. Crimes, such as identity theft, rely on obtaining personal information to access financial data in order to steal from people or smear the images of those identities they embezzle.

Beyond personal and financial information, data warehouses also store wide-ranging information about a person’s health and medical history. While this enables researchers, doctors, and healthcare providers to monitor and prescribe their patients more effectively, it also allows for profiling and discrimination to take place. Release of a person’s medical information can lead to several forms of discrimination. One example is the recent efforts by corporations attempting to cut healthcare costs by pre-screening potential employees. Therefore, by opening up medical records to public corporations it becomes possible for employers to engage in practices of hiring based on health status and not qualifications. Due to these actions, the release of medical information can also impede a person from getting medical attention.

A major issue that makes the implications of internet data mining even worse is Inference, which is defined as the process of users posing queries and deducing unauthorized information from the legitimate responses they receive (Privacy Rights Clearinghouse). For example, names and salaries taken together may be private but individually are public, the same for healthcare information, and even more for name, medical, wage, age, education and so forth all taken together are private but may easily be formed with proper research. The problem with Inference is the possibility of learning almost any private information about a consumer from internet data, even though the problem has been investigated by the National Science Foundation, as it has implications for National Security, there has been no complete solution found.

The first result, after the data is taken, gathered, and sold by any number of the companies practicing selling data for a profit, including Acxiom or ChoicePoint, is an invasion of people's privacy by marketing solicitations. There are the options of the Mail Preference Service and Telephone Preference Service, but these are not widely known of and expire after five years. If a consumer isn't aware of these options, solicitors and spammers are notoriously difficult to turn off. In fact, the Privacy Rights Clearinghouse gets hundreds of calls about this from upset citizens that have tried to get off solicitors call/mail list to no avail and now wish to sue, but are typically told they can't if it was solicited by mail.

People will face much more challenging and bothersome effects of the abuse off of their personal information. The sellers and gatherers of this information claim it is only used for marketing purposes, and is also only sold in bulk but there are no legal regulations guaranteeing this. Therefore, an insurance company could get medical reports to screen for problems, car agencies could get leisure habit lists, and loan agencies can get complete financial history. Acxiom's InfoBase Ethnicity System is described as a breakdown of ethnic, religious, and minority classification that can instantly match a name to a wide range of demographic data (Acxiom). This system is already sold and being utilized by many companies including Conseco Insurance Company, who claims that the information only helps them better understand and service their existing customers. A statement from a HotData spokesperson of the data said that, "those may or may not be the traits of individuals you want to insure" suggests they the insurance

companies are using this information to screen potential clients (Insurance Journal). Loan agencies and automotive dealerships will also get this information, denying people mortgages, loans, and cars, on top of any insurance policies. Government agencies like the FBI and IRS have turned to this data as well, buying “credit header” information that tells almost everything you want to know about a person from Experian, Equifax, and TransUnion. Actually the FBI and IRS are ChoicePoint’s largest customers with contracts above eight million dollars from each per year. Another example examined in a Washington Post article in 1998, involves misuses of data from supermarkets. It involves the DEA buying data from Smith’s Foods in the Southwest in an effort to find possible Methamphetamine makers. Although they were not looking for over-purchase of Sudafed or Heet, they were investigating purchases of sandwich bags, which could falsely implicate anyone I know. A third example is the case of *Beverly Davis v. Metromail*. In this case Miss Davis was sent a letter from a prison inmate with detailed knowledge of her saying he was getting out soon and was coming to molest her. The inmate obtained this information because Metromail (now known as Experian) contracted a third party who contracted with a prison to enter customer data into spreadsheets.

Conclusions

With the constant process of consumers sharing their personal information, as well as companies continually gathering such information, it will be difficult to end this on-going practice. The regulations imposed by the FTC are only boundaries waiting to be crossed. Though it helps to somewhat regulate the flow and use of consumers’ personal information, their privacy will always be violated due to the fact that companies are still making the mistake of wrongfully distributing personal information. In terms of ethics, only companies can prevent themselves from committing illegal acts of collecting, distributing, selling and buying consumer information. By invading one’s right to privacy, it is also violating the code of ethics in relation to the *The Right Approach*.

Resolutions

With the growing number of companies taking their businesses on-line providing new data and the other companies depending on the data compiled, instances like these

will become more common and spread into every part of our personal lives. For this reason, there must be much stricter regulations imposed on the companies in gathering of consumer information and the use of it in order to protect the value of consumer privacy. Also, by implementing stricter policies, this will regulate the flow of personal information as well as limiting it. Open disclosure to consumers giving out their personal information, instead of the small fine prints at the bottom of the page, is another way to help and reduce consumers from not to sharing their information with others. All in all, it really depends on the companies who choose to do what they do as well as the consumers who should be more aware of knowing not to share too much or any of their personal information.

REFERENCES NEEDED!!!

Ethics of Stock Option Backdating

Charles Geam, Matthew Rider, Marin Rutherford, Leah Semann

Introduction

Executives backdating stock option grants led to a loss of approximately \$500 million per firm in returns to investors from 1995 to 2002. With over a 100 companies being investigated for backdating, an ethical dilemma arises concerning the practice itself. The ethics of backdating are examined using a contract-based ethical framework, and the breakdown of ethics by the overwhelming number of participants is examined using moral disengagement. Through this analysis, the backdating of options is shown to be unethical, leading to the question of what should be done about it. Recommendations are presented addressing the major weaknesses in backdating prevention. Through an acceptance of the unethical nature of backdating, and implementation of the forthcoming recommendations, investor confidence can be regained to rebuild the efficiency of the current investor environment.

Background on stock option grants and the advent of backdating

Stock option grants, and other forms of performance-based compensation, are a means of avoiding agency problems by tying executive compensation to company performance. Agency problems are defined as managers not acting in the best interest of shareholders. As a manager of any firm, the most important goal is to maximize returns to shareholders through growth and profit producing activities. Stock option grants are meant to align the incentives of executives with those of the shareholders. If a large portion of an executive's compensation is in the form of stock options, there is a greater incentive to increase share price through value-adding activities. A raise in stock price increases both the value of the stock options as well as shareholder returns.

This form of performance-based compensation became increasingly favored over conventional salary compensation during the 1990's. One reason was the boom of the technology industry, which used stock options to lure talented managers to their start-up firms. Lacking the on-hand capital to pay large salaries to executives, stock options were offered instead. This method of compensation was incredibly attractive in the tech industry as booming growth dramatically raised stock prices, equating to huge gains for executives who exercised their options at the peak of industry performance. Another factor contributing to the popularity of stock option grants was the passing of Section 162(m) of the federal tax laws in 1993, which placed a \$1 million cap on compensation that could be tax deductible on corporate tax returns (SEC, 2006). However, this change in tax law only placed a cap on executive salary and not on performance-based forms of compensation.

Stock option grants come in the form of call options, which allows the owner of the option to buy the firm's stock at some given time in the future for a set price. Stock options are granted "*at the money*," meaning that the exercise price is set at the current market price, otherwise known as the "*strike price*," of the stock at the time the option is granted. However, in some cases the option might be granted "*in the money*," being set at a price lower than the current market price, and thus creating instant paper gains. Normally, stock option grants come with a vesting period, in which the recipient cannot exercise the options. At the end of the vesting period, when the options are exercised, an executive compensated in this manner stands to make a huge sum of money if the stock price has indeed appreciated since the date of issuance. A failure to increase the firm's value essentially makes the options worthless.

The Backdating Scandal

The recently publicized backdating scandal sheds light on managers retroactively changing the date an option was granted. Changing the grant date to a period when the stock price was lower than the original exercise price creates instant paper gains. While backdating stock options is not illegal, the improper disclosure of information in financial statements is. The way a stock option grant is reported has tax liability implications, and when a backdated stock option is improperly reported as having been granted "*at the*

money” the corporation illegally avoids these tax liabilities. Options granted “*in the money*” are not classified as performance-based compensation, and do not qualify for the tax benefits of Section 162(m). Misleading disclosure reduces corporate transparency and could possibly violate shareholder-approval requirements set by the New York Stock Exchange and NASDAQ (ISS, 2006). Before the creation of the Sarbanes-Oxley Act of 2002, a company did not have to report stock option grants until 45 days after the end of the fiscal year they were granted (ISS, 2006). This lengthy window of opportunity allowed many executives to reset their grant dates to coincide with days where the stock was trading at its lowest. The Sarbanes-Oxley Act attempts to rectify this problem and minimize the opportunity to backdate by requiring companies to report an option grant within two business days.

In a March 18, 2006 Wall Street Journal article, Erik Lie, an associate professor of finance at the University of Iowa, examined the stock option grants of several companies during the period from 1995 to mid-2002. The research showed that many executives were granted options immediately before large gains on the stock price. Mr. Lie made the observation that the sharp increase in stock price after option grant dates was indicative of option backdating. To eliminate the possibility of coincidence, a single executive’s grant dates were analyzed. Affiliated Computer Services Inc.’s then president, Jeffery Rich, was the focus of the analysis, taking a look at his option grants in 1998. ACS stock price rose 60.2% during the 20-day period immediately following his stock option grant. This huge gain was the best 20-trading-day period all year for ACS (WSJ, 2006). This sort of “perfectly-timed” grant date was not isolated to ASC and Jeffery Rich, but to many senior executives at numerous firms. A look at probabilities would show that any stock option grant should be followed by mixed performance, with some stock prices going up and some going down. In some instances the options were “spring-loaded,” being granted immediately before the release of good news that was expected to increase stock price.

The Ethics of Backdating

The ethical issue of stock option backdating has to do with the deception of shareholders by firm managers. Since managers are charged with increasing shareholder

value, an ethical dilemma arises when executives alter stock option grant dates to increase their own compensation, effectively reducing returns to shareholders. Ethics also come into consideration when managers provide misleading information to the shareholders, by way of financial statements, as to the amount of compensation they are receiving for the services they render. Reducing corporate transparency leads to a loss of shareholder confidence, and violates the social and legal contract executives entered into with the shareholders when they accepted a position at the company. Misleading and deceptive information is unethical when there is a contractual obligation to provide honest and accurate information.

Backdating violates the ethics of the manager/shareholder contract-based framework. An implicit agreement is said to exist between individuals and the groups they belong to. This agreement dictates the rights and responsibilities of the individuals within the group. This framework applies to executives, in that they work at a firm on a voluntary basis, and this choice is what obligates them to act ethically. In the case of most executives, the agreement is more than an implicit one, since they are explicitly defined by actual, legal contracts of employment as well as by the laws and regulations of the society in which they operate. Some might argue that the social contract theory does not hold in the case of government regulation, in this case taxation, because the agreement is not entered voluntarily but rather through government force. However, the unethical behavior is not reliant on the tax evasion property of backdating, but on the detriment caused to the shareholders that the executives work for. Backdating directly reduces returns that the shareholders would have otherwise realized. According to a contract-based ethical framework, the act of backdating and misrepresentation of compensation practices is unethical.

Moral Disengagement

It can be argued that only a few managers at a few firms might take advantage of loopholes to increase their compensation. This counterargument is the basis for the belief that backdating was not a product of a widespread breakdown of ethics, but in actuality the wrongdoings of a few individuals with each situation being detached from the rest. However, a recent joint investigation by the Securities and Exchange Commission and

Justice Department has found potentially fraudulent behavior with executive stock option grants at more than 120 companies. The question is then, how did so many executives, all at different companies, come to take part in this unethical act? The answer is moral disengagement. Moral disengagement occurs when an unethical behavior is justified or euphemistically labeled. In this case, executives referring to the act of theft as “backdating an option” make the act much more palatable. In a survey conducted by a corporate governance research firm, The Corporate Library, 51 of the 120 companies being investigated for backdating had directors that sat on multiple boards within the group of companies being probed (CNNMoney.com, 2006). As an increasing number of managers took part in backdating options, a diffusion of responsibility occurred. The idea that, “Everyone else is benefiting from this, why shouldn’t I?” takes hold and allows the manager to minimize, ignore, or misconstrue the consequences of their unethical behavior. Dehumanizing the victim also facilitates moral disengagement, by viewing the shareholders as a large faceless entity the unethical behavior is allowed to continue without recourse.

Recommendations

There are ways to reduce the occurrence of backdating while still providing the benefits of a performance-based form of compensation. Recommendations have been made by many organizations that deal with corporate governance. To address the existing problems in the option granting process, a number of possible remedies have been researched and are presented here.

Access to Non-Public, Potentially Market-Moving Information

Rules already exist for stock purchases and sales by insiders because the information they possess is not available to the public. The existence of potentially market-moving information reduces investor confidence, which negatively effects the operation of an efficient market. If investors believe that the market is not fair, with certain individuals having an advantage over the rest, they will become unwilling to participate. Lack of investor participation will cause the free flow of capital from lenders to borrowers to cease and cause detrimental effects to the economy. This is, of course, a

worst-case scenario, but it is the underlying reasoning behind the regulations already in place. To remedy the problem of “spring-loaded” options, regulations can be enacted that would create a blackout period for executives privy to market-moving information. The blackout period would prevent executives from timing their options to be granted just prior to the release of the information.

Enforcement of Existing Reporting Regulations

The Sarbanes-Oxley Act of 2002 amended portions of the Securities Exchange Act, requiring the reporting of a stock option within two business days of the grant. Stock option grants, as well as option exercises, require the filing of a Form 4 within two business days of the transaction. However, there is a clause in the rule that exempts the two-business-day reporting period if it is deemed that it would not be “feasible” to report the grant within the timeframe. Many companies continue to report option grants beyond the two-day required time period. This loophole can be remedied through stricter enforcement of the Sarbanes-Oxley Act by regulating bodies such as the SEC. If large monetary penalties were levied or transactions were negated the occurrence of backdating could be reduced.

The Timeframe and Frequency of Stock Option Grants

Normally, most companies grant stock options once a year. However, there is no regulation guiding when, or how frequently, a stock option can be issued. By allowing the stock option to be granted on any day of the fiscal year, it allows executives to research stock prices and backdate their options to the most desirable date. To minimize this problem a fixed grant date schedule could be adopted. Stock options would be granted on a periodic basis (monthly, quarterly, or annually), along with rules that would govern option exercise prices on grant dates. Requiring a disclosure of the rationale for grants on a certain date would also help to prevent his problem. An explanation of why the compensation committee chose a certain date, over other possible dates, would mitigate the problem of fraudulent backdating. These requirements would inhibit executives from picking specific low-stock price days to maximize compensation.

The recent exposure of the backdating scandal in the United States has left many investors wary of executive compensation practices. Regardless of the legality of backdating, its inherent untruthfulness and the financial detriment to the shareholders make it unethical. A contractual-based ethical framework dictates that the voluntary nature of an executive's employment inherently obligates them to act in an ethical manner conducive to the group he belongs to. The vast number of executives and corporations involved in the current scandal implies a level of moral disengagement, brought upon by the social networking of many of the directors involved. Tighter regulations regarding the use of market-moving information and the timing of option grants, as well as enforcement of existing regulation are recommendations for the eradication of backdating. Unethical practices in the business environment have begun to diminish the confidence people have in corporations, and a lack of trust will lead to larger economic problems.

Works Cited

- Allen, Ted and Mishra, Subodh. "An Investor Guide to the Stock Option Timing Scandal." Institutional Shareholder Services. 2006. 17 Oct. 2006
<<http://www.issproxy.com/pdf/OptionTiming.pdf>>
- "CFA Centre Calls For Greater Scrutiny Of 'Spring Loading' Practices, Restricted Stock Grants, Off-Balance-Sheet Reporting." CFA Institute. 2006. 18 Oct. 2006\
http://www.cfainstitute.org/aboutus/press/release/06releases/20060906_01.html
- Choi, Yoonhee. "Stock Option Backdating and Disclosure Requirement." 2006. The Journal of The Business Law Society. 18 Oct. 2006. University of Illinois College of Law.
<http://iblsjournal.typepad.com/illinois_business_law_soc/2006/09/stock_option_ba.html>.
- Forelle, Charles. "How the Journal Analyzed Stock Option Grants." Yale University. 2006. The Wall Street Journal. 20 Oct. 2006
<<http://www.stat.yale.edu/~jay/News/WSJmethods.pdf>>
- Heron, Randall A. "What Fraction of Stock Option Grants Have Been Backdated or

- Manipulated.” Institutional Shareholder Services. 2006. Indiana University. 19 Oct. 2006 <<http://www.issproxy.com/pdf/OptionsBackdatingStudy071406.pdf>>
- “Managing the Risks Associated with Stock Options Backdating.” OpenPages. 2006. 18 Oct. 2006 <http://www.openpages.com/solutions/enterprise_risk_management/stock-options-1.asp>
- Maremont, Mark. “Authorities Probe Improper Backdating of Options.” The Wall Street Journal. 2005. Post Gazette. 20 Oct. 2006 <<http://www.post-gazette.com/pg/05315/604987.stm>>
- Pasha, Shaheen. “Psst! Heard About How Easy Backdating Is?” CNN Money. 2006. 22 Oct. 2006 <http://money.cnn.com/2006/10/20/news/companies/backdating_study/?postversion=2006102010>
- Thomsen, Linda. “Testimony Concerning Executive Compensation and Options Backdating Practices.” 2006. US Securities and Exchange Commission. 20 Oct. 2006 <<http://www.sec.gov/news/testimony/2006/ts090606lt.htm>>
- Vranceanu, Radu. “Manager Unethical Behavior During the New Economy Bubble.” ESSEC Research Center. 2003. 20 Oct. 2006 <[http://domservices.essec.fr/domsite/cv.nsf/0/e8e1d513691d2659c1256e01002e1d0f/\\$FILE/DR%2003026%20Internet.pdf](http://domservices.essec.fr/domsite/cv.nsf/0/e8e1d513691d2659c1256e01002e1d0f/$FILE/DR%2003026%20Internet.pdf)>
- Zecca, Anthony. “Now is the Time for Business Ethics.” US Business Review. 2006 19 Oct. 2006. <http://www.usbusiness-review.com/content_archives/Aug06/04.html>

Information and War

The Actuality of Wartime Journalism

Lisa Dreith, Kelly Merritt, Brandon Matloff

The Setting

On February 29, 1996, John Rendon, public relations consultant for the Pentagon and CIA, made the following comments to an audience of cadets at the U.S Air Force Academy:

“I am not a national security strategist or a military tactician... I am a politician, and a person who uses communication to meet public policy or corporate policy objectives. In fact, I am an information warrior and a perception manager.” He then proceeded to remind the cadets of a well remembered scene, “When victorious troops rolled into Kuwait City at the end of the first war in the Persian Gulf, they were greeted by hundreds of Kuwaitis waving small American flags. The scene, flashed around the world on television screens, sent the message that U.S. Marines were being welcomed in Kuwait as liberating heroes.”

Rendon then asked, “Did you ever stop to wonder how the people of Kuwait City, after being held hostage for seven long and painful months, were able to get hand-held American (flags), and for that matter, the flags of other coalition countries?” He paused for effect. “Well, you now know the answer... That was one of my jobs” (Rampton, Stauber).

There will always be a game of tug-of-war being played between the government, the military, and the press regarding the information given to the public. Yet, this game leads to an even deeper level of misguided information when a country enters into combat. It has often been said that the first casualty of war is the truth. This is true in any country, yet today it seems that this axiom is all too honest. There are many tactics used by the government in times of war, one of which is propaganda, “the information, ideas,

or rumors deliberately spread widely to help or harm a person, group, movement, institution, nation” (Propaganda). The government and military, in times of war, use propaganda and other manipulation tactics in the mainstream media to form the attitudes of the public, and shape the emotions of society toward a certain political issue. They do this by restricting or managing what specific information is presented to the media and thus what is presented to the public. These manipulations are paramount to controlling the media, thus altering the perceptions of the public. This strategy of media manipulation used by the government and military during wartime, a time of duress on the entire country, is harmful to Americans as well as unethical. The information presented affects the decisions made by the American people. With incorrect and reconstructed information, Americans are at risk of reacting to certain decisions with the wrong intentions.

The American public has a right to unfiltered and unaltered information through mass media that is an accurate representation of events happening during war. This public “right is a right created by the legislature that may be exercised against the government” (Public Right). The Freedom of Information Act is a clear example of how this right can be exercised by the American people and thus gives them the right to this unfiltered information.

History of Manipulation Through War

Over time, the government has continually used their power through the media to evoke a specific response in society. “The key principle used by both the Reagan and Bush administrations is that if you can control where and when journalists (particularly TV journalists) can report, you can control the imagery and its emotional impact on the public”(Beelman 16). One has to wonder where the lines are being drawn regarding the use of media exploitation by the American government. Furthermore, how do American citizens respond to the basic information that is passed on to society by the government? Those who value honesty and integrity absorb the information given to them as truthful and use it to form their individual opinions. The American government and media sources have the responsibility and obligation to not only divulge all vital information that affects the decisions of the American people, but also to deliver that

information in an impartial manner. “From whom, if not from the press, are the American people to get the information on which to base an intelligent decision on the worthiness of a particular issue, or the soundness of their government’s strategies and policies, or the actual conditions on and above the fields of combat?”(Benjamin 4). Americans depend on mass media to obtain and deliver information on events occurring throughout history, and to report this information back to the community.

Through the eyes of the journalists that reported it, the Vietnam War was the most accurate and in depth depiction of war that American journalists have reported. However, many government officials at the time claimed that it was the media who cost the U.S. the Vietnam War. Originally what was a publicly supported effort of war suddenly became heavily scrutinized under the public’s eyes. In 1968, there was a sudden shift in the public’s opinion of the war that many blamed on the media; it was said that the media lost the Vietnam War. Some argue that this abrupt change in opinion was due to a false sense of security held by the public. This was instilled by the sudden government control in the media rather than actual journalists reporting freely (Evanson). Resulting from this sudden change in public opinion and support, the government realized a vital and previously overlooked fact of control: that information is power. From this point forward, they realized the importance of never allowing the media to effect wartime operations in the same manner.

Since Vietnam, and the discoveries of a newfound power over the public, the government has refined the tactics used in the manipulation of mass media. It was once the challenge of journalists to just obtain information without endangering themselves. Today, the challenge for journalists covering battles has become not only gaining uncensored access to U.S troops and battlefields, but also deciphering between information and disinformation. This task has been made all the more difficult due to constant coverage of news events, advancements in technology, and an increasingly studied aspect of military discipline called Information Operations (Shah).

Information Operations is the combination of electronic warfare, computer network operations, psychological operations, military deception, and operations security. It is used to influence, disrupt, corrupt, or effect adversarial human decision making while protecting our own. This is the reasoning behind all manipulation done by

the government and military to the mass media. The government believes that if they can control the public's opinions and emotions related to current wars, they can control the public politically, thus supporting the government's decisions during wartime. This is not proposing that the public has a right to know information that would endanger the military operations or inform the opposition. It is simply suggesting that all other information needs to be presented in a truthful manner, and the altering of this information be stopped. The manipulation of wartime information has grown steadily over the years so as not to only effect wartime approval, but elections and other aspects of media, all of which have several implications that follow (Information Operation).

Issues/Data/Analysis

Throughout the past several decades the government has accumulated multiple ways for this "reconstruction" of information to take place.

Overloading the Media with Information

Overloading is generally achieved by providing the public with too much information. The philosophy behind overloading the media is that if the government floods the public with information, they will deter them from asking questions in the future; "If you make the media happy, the media will not look for the rest of the story"(Shah). This occurs when the military, government and/or media gives the public a large amount of information. However this information may be skewed with the intention of influencing the public so that they agree with the given information. In addition, the massive amount of material that is released into the public domain is sometimes slanted and not given in its entirety. Many of the important implications and facts about a war are left out of the reports. The hope is that with all the other information given, the public will not think to question that which is left out.

Appeal to Ideology

This is the process of appealing to patriotism, pride, and safety. The appeal to patriotism is present in every media vehicle positioning America as "we" and the enemy as "they". The government's need to emphasize a clear distinction between the two sides

of a war persuades the American public to create in their own mind the idea of the enemy. The more the public thinks of themselves as their own distinguished group, one that is either “doing good” or being harmed, the easier it is for them to justify the actions that are being taken against others, especially during wartime. In addition, the strategic naming of certain acts, such as the Patriot Act, eases the public into believing that the act is for their own good and brings them a sense of pride. This manipulates the public through words and takes away from the underlying content and consequences these acts truly intend.

The use of words is critical to how war is portrayed in the media. Labeling, grouping, and euphemisms all play a vital role in shaping public opinion. In 1940 the name of the War Department was changed to Department of Defense. Under Regan’s administration, the MX-Missile was renamed “The Peacekeeper”. Both are examples of using naming to form a positive image for what otherwise has a negative connotation (Shah). This type of manipulation through censorship is most apparent in the context of the Iraq War. From the moment the US was attacked on September 11, 2001, Americans have felt the need to stand strong and support their country. However, five years later, the public is still using phrases such as “War on Terror” and “Operation Iraqi Freedom”. These words are carefully chosen in order to evoke a specific response from the public. This strategically selected phrase will persuade Americans that the war in Iraq is not only justified and appropriate, but should be supported as a necessary measure.

Embedded Journalists

These are journalists that are strategically placed by the military with certain Coalition forces. These journalists are chosen specifically by a military sector that is overseen by the government. They have all expenses paid for (air travel, housing during the stay, food), are shadowed by military personnel, and are debriefed on specific information. The strategy of debriefing journalists is used to:

- Filter and manage certain aspects of the information;
- Diminish importance of set backs, while celebrating military success;
- Limit facts and context;

- Spin certain situations in a way to positively uphold the entire message;
- Set the range of topics that could be discussed (Shah).

This provides the military with the means to control the information relayed to the media. In addition, studies have found that embedded journalists tend to be less objective in their reporting than independent journalists – those that venture to report on their own, with no support from the government (IU study).

Embedded journalists are more likely to use “I” and “we” when reporting about combat in wartime (IU study). Moreover, independent journalists are looked upon by the government as more suspicious sources of reporting – perhaps not there to support what is happening (Shah). These independent journalists threaten military personnel’s control over the information given to the public because it is more difficult to control the information passed on by independent journalists. This gives the military an increased motive to support embedded journalists and therefore better “manage the message” presented to the public. The information that is received by all embedded journalists is reported to the Central Command, where all military press briefings are held. This provides an opportunity for screening of all information so as to filter out potentially controversial bits of information, as well as feed altered information into the media via journalists (Shah). Furthermore, public affairs escorts are assigned as guides to journalists and accompany them into battle. The quality of this escort is generally less than satisfactory. Many have been known to abandon the reporter, leading them in a direction away from conflict, and thus limiting what they are able to see and report. This is just one more way in which the government/military can control what can be seen and reported back home.

Pool Reporting

Pool reporting is limiting the number of selected journalists that are allowed to accompany military or government officials/personnel in certain situations. There are careful steps that are taken by both government and military officials when choosing a pool of journalists that will be reporting the “truth” of what is happening during war. The process of choosing embedded journalists can be based on anything from their political stance and writing style, to their reputation with the public and level of influence. The

information obtained by the pool reporters during war is then reported back to the rest of the journalists, thus “pooling” the information. Finally, reports are written using this pool of information. These pools are reportedly used for the safety of the reporters, so that a limited number are exposed to possible harm; however, the specific reporters chosen, accompanied by intense debriefings, lead to a subjective and biased story.

Paid PR Firms

Public relations firms are hired by the government to promote and sell the war as well as feed stories to the press. These firms are paid in cash to promote issues that the government feels are important. This poses a serious problem; if higher powers in our government feel that the US should go to war, or pass a bill, then there should be no need to manipulate society in order to gain public support. How much truthful information is the public getting through public relations and promotions of certain political issues and actions? For example, it should be public knowledge that many PR firms were employed by the government to promote the Gulf War. US congressman Jimmy Hayes of Louisiana proposed the idea that the government of Kuwait funded the promotion of the Gulf War. It is estimated that as many as 20 PR firms were hired to spur US opinion and drive support for the war. In addition, it has been found that the Rendon Group received approximately \$100,000 a month for media work during wars (Beelman 16).

Implications/Implementations

Due to the constant manipulations carried out over the past few decades by the government through the media, society has lost track of the truth. The American people are part of a society that is unable to depend on the media, the main source of information pertaining to political issues. Americans no longer count on the media to present them with factual, truthful information.

In January 2003, Princeton Survey Research Associates polled more than 1,200 American citizens. When asked how many of the September 11th hijackers were Iraqi citizens, the answer to which is zero, only 17 percent answered correctly while 33 percent did not even know enough to answer the question (Pryor). Many people fear that they do not clearly understand the reasons the U.S. is involved in the Iraqi War. In addition,

others believe that the U.S. is at war because of the attacks on 9/11. Further, polls indicate that the majority of support for the War in Iraq stems from the erroneous belief that it was Saddam Hussein's operatives who flew the two planes into the World Trade Center on September 11, 2001 (Pryor). This state of misunderstanding is what many Americans are basing their political and governmental decisions upon. Because of poll results like these, it has been noted that "The informed public is considerably less hawkish about war with Iraq than the public as a whole. Those who show themselves to be most knowledgeable about the Iraq situation are significantly less likely to support military action in either removing Saddam from power or disarming Iraq." (Rampton, Stauber).

This large distinction between reality and public opinion is no accident. Rather, it is the result of government manipulation of public opinion through the use of mass media. Reiterating falsities helps the current government gain support. This lack of valid information is what the public is basing their support for war on. As a society, Americans should base their decisions to support government actions on what is actually occurring; these decisions should be based on the information that individuals have the right to as stated by the Freedom of Information Act: correct information in its entirety that is un-manufactured and straightforward.

Recommendations

Why does a war need to be sold? War is not a toy, nor is it a matter to be taken lightly. If the United States is at war, it should be for a reason that society can find just cause for. It should not be a matter that the Americans need to be persuaded into agreeing with. The public has the right to truthful information upon which they can make educated decisions. Manipulation of the information that is being presented to individuals nation wide is a method to sway perceptions and decisions. It is unethical because of the right the American people have, as outlined in the Freedom of Information Act, to accurate information regarding the actions our government is taking. There should be no need for information alteration if the reason behind war is sufficient. What needs to be done to prevent this constant increase in altered information by the government?

There needs to be a more intensive system of checks and balances. There should be a committee consisting of representatives from the government, military, and the media all with a coinciding interest in informing the public with truthful information wartime actions. The main idea is that the US needs to revert back to a form of government that values the public's truthful opinions rather than the opinions that they have manufactured. The government should be a reflection of the people's beliefs and opinions rather than the people's beliefs and opinions being a reflection of the government. At present, the government has no accountability if it is proven that they manipulate the information presented to the media. This creates a situation wherein the government has slowly begun to gain more and more control over the media.

In addition, there needs to be an increase in access to the battlefield for journalists reporting on war. There should be a requirement to have a representative from the media at every event during wartime or at least have one stationed with every troop. These could be journalists that are enlisted in the military so they would not pose harm or inconvenience to the troops. Further, independent reporters should be given more support from not only the government but from local news stations as well.

Conclusion

"The basis of our governments being the opinion of the people, the very first object should be to keep that right; and were it left to me to decide whether we should have a government without newspapers, or newspapers without a government, I should not hesitate a moment to prefer the latter."

- Thomas Jefferson

Journalists have the responsibility to give reliable and valid news to the public. The American citizens do not ask for information that will jeopardize armed forces or military objectives. Rather, they only request that the information given is accurate and truthful.

The government and military use calculated propaganda and manipulation tactics to form public attitudes. The shaping of emotions in a society toward certain political issues is especially apparent during wartime. Overloading the public with information, appeals to ideology, pool reporting, embedded journalists, and paid PR firms hired by the

government all contribute to these emotions. If the government, journalists, and public work together to understand and activate the ethical implications of manipulation and the importance of the right of the American people to have access to truthful information during wartime, the country will be united as an informed and educated nation.

Works Cited

- Beelman, Maud. The Dangers of Disinformation in the War on Terrorism, Coverage of Terrorism Women and Journalism: International Perspectives, from Nieman Reports Magazine, Winter 2001, Vol.55, No.4, p.16.
- Benjamin, David. "Censorship in the Gulf." Auburn University. October 2, 2006. p4. <http://web1.duc.auburn.edu/~benjadp/gulf/gulf.html>.
- Evensen, David. "Information Research Paper: Ethical Journalism during the Vietnam War". 20 Oct. 2006. <http://writing.byu.edu/content/honors/contest/20025/evensendaniel.htm>.
- How PR Sold the War in the Persian Gulf, Center of Media and Democracy; Publishers of PR Watch.
- "Information Operation." The Information Warfare Site. 13 Oct. 2006. <http://www.iwar.org.uk/iwar/>.
- "IU study finds that news reports by embedded war correspondents in Iraq were objective". Indiana University Media Relations. (30 May 2006) 22 Oct. 2006. <http://newsinfo.iu.edu/news/page/normal/3486.html>.
- Miller, Laura and Rampton, Sheldon. "The Pentagon's Information Warrior: Rendon to Rescue." Center for Media and Democracy. October 7, 2006. <http://www.prwatch.org/prwissues/2001Q4/rendon.html>.
- "Propaganda." Dictionary.com. 1 Dec. 2006 <http://dictionary.reference.com/search?q=society>
- Pryor, Kane. "A National State of Confusion" 20 Oct. 2006. http://eagle.la.asu.edu/hester/iraq_propaganda.html.
- "Public Right." Dictionar.com. 1 Dec. 2006. http://eagle.la.asu.edu/hester/iraq_propaganda.html.
- Rampton, Sheldon and Stauber, John. "How To Sell a War: The Rendon Group deploys 'perception management' in the war on Iraq". In These Times. (4 Aug. 2003). 3 Oct. 2006. http://www.inthesetimes.com/print.php?id=299_0_1_0.
- Shah, Anup. "Media Manipulation". Mainstream Media. (17 Apr. 2006) 13 Oct. 2006. <http://www.globalissues.org/HumanRights/Media/Manipulation.asp>.

Military Tribunals

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Hypothetical Scenario

The fictional character Zacharia Abdul Alstafani, a native resident of Iraq, was captured in 2005 while supposedly fronting operations for the organization known as Al'Quaeda. He was arrested and imprisoned in an undisclosed location until two weeks ago when he was transferred to Guantanamo, Cuba under the order of the President of the United States. Alstafani has already spent more than a year in detention without trial or recourse in any civilized form of court. In Guantanamo, Alstafani faces trial by military tribunal. He has not yet been appointed council because all lawyers designated as defense for suspected terrorists must be cleared by the US Department of Defense. Alstafani now faces a situation in which he does not know where he will be tried, when he will be tried, who will represent him, and most importantly, he does not have any formal charges against him nor supporting evidence to back such charges. Theoretically, as the Military Order currently states, Alstafani could remain imprisoned indefinitely without trial. If a military tribunal is convened to hear his case, Alstafani could face the death penalty from a system in which he will not be allowed to choose his own defense, nor will he be allowed to view and refute much of the evidence presented against him. Although this is simply a hypothetical situation, the facts and circumstances of such a case are real.

Defining Military Tribunals

Military commissions were established in special circumstances in which courts-martial was not sufficient. A military tribunal is an inquisition based on charges brought by military counsel, tried in a military court, judged by military officers, and sentenced by the same military officers against a member of an adversarial force ("Military

Tribunals: Historical Patterns and Lessons.”). The main purpose of such proceedings is to provide defendants with a trial while protecting the ongoing security interests of the prosecuting nation, especially in times of war. Where the United States is concerned, military tribunals were last notably used in World War II. In 1942, eight German soldiers were tried by military commission. The trial was conducted in secret, and six of the eight men were sentenced to death based on the conclusions of the court (“EX PARTE QUIRIN. 317 U.S. 1 (1942).”). Procedures in military tribunals vary greatly from that of a traditional court system.

The current Military Order, first proposed in 2001 by the Bush Administration, has recently been under tremendous controversy. In June 2006, the Supreme Court ruled that President Bush did not have the authority to run military commissions as the military order explicitly states. The court did state that President Bush could proceed with such tribunals if Congress gave him the permission to do so (“U.S.: Military Tribunal Ruling Second Setback for Bush.”). There are many controversial procedures under the Military Order, three of which are most pertinent to this paper.

The Great Writ

A writ of habeas corpus is a court order addressed to a prison official (or other custodian) ordering that a detainee be brought to the court so it can be determined whether or not that person is imprisoned lawfully and whether or not he or she should be released from custody (“‘Habeas Corpus’ Defined & Explained.”). In order to detain a suspect, a convening authority must present sufficient evidence to justify continued incarceration of a prisoner against his/her will. Traditionally, most countries use a thirty-day standard for detention of prisoners at which time they are afforded the right to contest their imprisonment in a court of law. Suspected terrorists in Guantanamo have not been afforded this right under the Military Order. In the hypothetical scenario, Alstafani could conceivably be detained against his will for an indefinite period of time without Habeas Corpus protections. In fact, some prisoners have been in the custody of the CIA since September 11, 2001.

Defendant's Right to View and Refute Evidence

All defendants in modern criminal procedures are afforded the right to see the evidence against them and thereby are provided an opportunity to refute this evidence. Defendants generally argue against evidence presented through the use of cross examination and direct examination. The current Military Order does not explicitly give defendants this right. Framers have considered allowing a defendant's counsel to view the evidence; however, the actual defendant is not privileged to all of the information presented against him. By not explicitly granting the right to see the evidence in its entirety, the Military Order has made it possible to deny a defendant this right in situations they feel could negatively impact national security. Although proponents of the bill claim that such a situation is rare, it is still outrageous to think that there is ever an instance in which such measures should be taken.

Hearsay and Unsubstantiated Evidence

Most civilizations have laws in place to protect defendants against invalid and inadequate forms of evidence. The United States for example, is regarded as having the strictest requirements for what evidence can be included in a court of law (Westen). This is ironic because the same country is also proposing a system in which coerced testimony and hearsay evidence would be admissible. The Military Order states that under certain circumstances, evidence acquired through coercion and hearsay could be admissible during the proceedings.

Ethical Concerns

Zacharia Abdul Alstafani is the embodiment of the suspected terrorists currently facing gross violations of human rights. He faces a system in which he could be detained indefinitely and, if tried, he could be subjected to a system where he is not permitted to refute the evidence against him. Furthermore, this evidence is often acquired through actions deemed inappropriate by civilized courts such as torture, coerced testimony, and the admission of hearsay evidence. Such a situation raises serious ethical concerns about the protection of human rights.

Fairness and Justice Embedded in Society

Great documents of the world such as the Bill of Rights, the Declaration of the Rights of Man, and the Geneva Convention were written in the interest of an ethical ideal; each of these documents is a direct representation of what the global society values most. Here, many of the proceedings contained in current Military Tribunals are in direct contradiction with the very ethical foundation that has been created. Such core values are designed to protect all people from injustice and cruelty while making no distinction as to who qualifies. Therefore, the issue of classification and labeling with regard to terrorism or terror suspects is irrelevant. Regardless of how defendants are labeled, these terrorists are human beings and still deserve the right to be treated fairly in a judicial system amongst their fellow human counterparts. Failure to respect such principles is a violation of the very values that human society and law are founded upon.

Aristotle and other Greek philosophers have contributed to the idea that all people should be treated equally (Westen). Today, this idea is used to say that ethical actions treat all human beings equally or, if unequally, fairly based on some standard that is defensible (Westen). This is the basic foundation for an ethical framework on fairness and justice. When evaluating an ethical issue based on fairness and justice, the question “does the ethical action treat people equally, or if unequally, does it treat people proportionately and fairly,” must be asked. (no citation)

Many governments, created on the basis of freedom and democracy, apply concepts of fairness and justice. For example, the United States incorporated the Bill of Rights using the principles of fairness and justice. The 14th Amendment extended many basic rights to African Americans in the United States because it was widely felt that the current laws treated African-American citizens unfairly. The tradition was continued in the 19th Amendment whereby women were given suffrage and equal protection under the law. This is clearly in support of the claim that fairness and justice is one of the underlying values at play in US law. Furthermore, on a global scale, the Geneva Convention’s framers used fairness and justice principles when they created laws protecting human beings during times of war. For example, the Geneva Convention protects prisoners of war from unreasonable treatment. It is important to consider not what the Geneva Convention says or whom it protects, but the underlying reason for its

creation in the first place. It goes back to the golden rule first stated in the bible: “*Treat others as you wish to be treated*”. Framers of the Geneva Convention felt that it was necessary to implement guidelines in which all human beings are protected against injustice, regardless of their circumstances or which side they fought for. Consistent amendments to the Constitution and creation of the Geneva Convention are merely two classic examples of the value modern society places on fairness and justice.

Habeas Corpus Within Fairness and Justice

Habeas Corpus and the ethical framework of Fairness and Justice are interrelated. Habeas Corpus was first implemented in English history with the creation of the Magna Carta in 1215. In the 1600s, there was a famous case where the King of England imprisoned five men in the Tower of London without trial. The men petitioned to Parliament who found that it was unfair and unjust to imprison men against their will without sufficient reason. Habeas Corpus was therefore created as a protection against a ruling powers ability to imprison individuals without justification (“Unit One: 1600-1763.”).

Under traditional circumstances, when a person is imprisoned for a crime, the convening authority must have justification for doing so. In the United States, suspending the Writ of Habeas Corpus is considered an extreme alternative to normal application of the law. The fact that such a right has only been suspended four times clearly substantiates the notion that Habeas Corpus is taken very seriously. The “*Great Writ*” as described by the likes of John Marshall and Sandra Day O’Connor is embedded in the very foundation of common law (“Unit One: 1600-1763.”). In contrast to the precedent, Military Tribunals have not upheld this value since they stipulate a possible suspension of this right under certain circumstances.

In the scenario provided, Alstafani has not been given the right to file a Writ of Habeas Corpus. As a result, he has been detained against his will for over a year and could continue to be detained indefinitely. The Military Order’s suspension of the writ is neither fair nor impartial by most civilized standards, nor is it orthodox by the standards of the civilized world. The convening authority, in this case the United States, has failed to provide sufficient justification for suspending a fundamental right considered

impervious to government intrusion. Simply designating someone as an “unlawful combatant” does not necessarily provide an adequate reason for suspending one’s right to trial.

Minimum Standards of Evidence should be Protected

Fairness and justice govern the basic principles of evidence and dictate how it is presented in a trial. Many rules and procedures have been created in the interest of upholding fairness and justice to protect defendants from inadequate information that could be used to convict them. Modern courts have created specific procedures for addressing evidence presented in a case. Defendants are explicitly given the right to address the evidence against them. This basic right did not ground itself firmly in the legal system without an ethical explanation. While Parliament decided Habeas Corpus was necessary in England, other countries, including the US, using similar ideals of fairness and justice, have shown that it is unfair to convict a person of a crime on the basis of unsubstantiated evidence. A legacy of cross-examination within the civilized court system is a testament to the idea that evidence is only accurate once it has been reviewed and corroborated.

Military Tribunals do not allow defendants to view evidence against them in certain circumstances when national security is at stake (“Military Tribunals: Historical Patterns and Lessons.”). National security interests include protection of ongoing anti-terrorist operations, protection of undercover operatives, and the protection of another country’s classified information. The defendant’s right to see the evidence presented in a case is firmly grounded in modern society’s legal framework and values. There is no circumstance in which such a right should ever be infringed upon. The interest of national security is not sufficient grounds for taking away a human being’s fundamental right to defend his or herself.

Furthermore, all evidentiary procedure follows the same ethical principles under fairness and justice. The underlying theme is that a person cannot be convicted of a crime on the basis of evidence that has not been validated and proven to be accurate. It is not ethical to sentence someone to death (often the case with suspected terrorists) on the

basis of uncorroborated evidence. Hearsay and coerced testimony must follow this ethical guideline.

Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. A party is offering a statement to prove the truth of the matter asserted if the party is trying to prove that the assertion made by the declarant (the maker of the pretrial statement) is true (“Hearsay Exceptions.”). Although there are exceptions, most traditional courts consider hearsay evidence to be inadmissible.

Coerced testimony generally refers to evidence and confessions gained using torture. By traditional standards, this form of testimony is deemed highly inadmissible and in fact, law enforcement agencies in the U.S. could be prosecuted if they were found to have implemented methods of coercion. Hearsay evidence and coerced testimony are both highly controversial and it is very disappointing that the Bush Administration would even consider allowing such testimony in a court of law.

Currently, the Military Order contains very lax guidelines on the admission of hearsay and coerced testimony (“Justice at Last or More of the Same?”). In comparison to traditional trial courts, where such testimony is rarely included, military tribunals are somewhat radical. In the stated scenario, Alstafani could conceivably be convicted on a confession acquired through torture. Principles of fairness and justice would dictate that such a situation should not occur. Even if people disregard the idea that a person was tortured, which is another issue in and of itself, it is not ethical for a person to be convicted of a crime on testimony that may have been coerced and potentially invalid.

Classification: An Elaborate Trick

Advocates for Military Tribunals argue that terrorists and unlawful combatants do not qualify for the same protections as civilized lawful combatants. This entire defense is an elaborate ploy to disengage themselves from the ethical implications of their actions. Moral disengagement is frequently written about in the ethical arena. Using clever tactics such as dehumanization, people and societies have found ways to circumvent the fact that what they are doing is wrong. Albert Bandura, a professor at Stanford University, addresses the issue of dehumanization: “The process of dehumanization is an essential ingredient in the perpetration of inhumanities” (Bandura). While Bandura stated this

regarding soldiers on a battlefield, the same circumstances apply in the case of Military Tribunals. Denying defendants' basic rights in a trial and/or sentencing them to death qualifies as unethical.

Very few articles and discussions in the news today address the issue of whether or not the treatment of suspected terrorists is ethical. They constantly bicker about whether or not these people qualify as lawful or unlawful combatants, whether they are protected under the Geneva Convention, and whether or not they are protected under US law. The government, the media, and society have created this overwhelming belief that terrorists are barbarians or savages that do not deserve protections under law and in doing so have avoided the underlying injustice of the situation. This is a form of dehumanization and an elaborate tactic to dance around the fact that denying a person a fair trial is ethically and morally wrong.

Conclusion

The world community holds fairness and justice at the core of its values. The Bill of Rights and the Geneva Convention are testaments to fact that society values a fair system of criminal procedures under the framework of fairness and justice. The ethical framework of fairness and justice must apply to all people regardless of the circumstances. Habeas Corpus, the right to see evidence presented against an individual, and limitations on hearsay and coerced testimony, are all fundamental legal rights that society believes to be of the utmost important. There are no grounds on which a convening authority has the authority to deny a human being these fundamental rights. Regardless of who they are, what they have done, or who they are affiliated with, the individuals held in Guantanamo Bay are human beings and therefore must be given the same rights and protections that society has shown over time to be invaluable.

Works Cited

- Bandura, Albert. "Selective Activation and Disengagement of Moral Control." Stanford University. 1990. 25 October 2006
<<http://www.des.emory.edu/mfp/Bandura1990JSI.pdf>>.
- "Daily Kos: State of the Nation." Kos Media, LLC. 18 Sept. 2006. 22 Oct. 2006
<<http://www.dailykos.com/story/2006/9/18/154635/318>>.
- "EX PARTE QUIRIN. 317 U.S. 1 (1942)." University of Missouri-Kansas City. 21 Oct. 2006 <<http://www.law.umkc.edu/faculty/projects/ftrials/conlaw/quirin.html>>.
- "'Habeas Corpus' Defined & Explained." LectLaw.com. 23 Oct. 2006
<<http://www.lectlaw.com/def/h001.htm>>.
- "Hearsay Exceptions." Pennsylvania Minor Judiciary. Jul. 2000. 22 October 2006
<<http://members.aol.com/StatutesP8/Ev.801.html>>.
- "Justice at last or more of the same? Detentions and Trials after Hamdan v. Rumsfeld." Amnesty International. 18 Sep. 2006. 24 October 2006
<<http://web.amnesty.org/library/index/engamr511462006>>
- "Military Tribunals: Historical Patterns and Lessons." Federation of American Scientists. 9 Jul. 2004. 24 Oct. 2006 <<http://www.fas.org/sgp/crs/natsec/RL32458.pdf>>.
- "Unit One: 1600-1763." Salem Witch Trials Page. 21 Oct. 2006
<<http://www.salemwitchtrials.com/history/1600-1763.htm>>.
- "U.S.: Military tribunal Ruling Second Setback for Bush." 30 June 2006. Radio Free Europe/Radio Liberty. 21 Oct. 2006
<<http://www.rferl.org/featuresarticle/2006/06/567ae7d5ebb6.html>>.
- Westen, Peter. "Speaking of Equality: An Analysis of the Rhetorical Force of 'Equality' in Moral and Legal Discourse." Ethics 102.4. (July 1992): 869-871. 22 Oct. "Step 7 of a Federal Prosecutor's Job." U.S. Department of Justice. 22 Oct. 2006
<<http://www.usdoj.gov/usao/eousa/kidspage/text/step7.html>>

A Case Against the Iraq War

Steve Brazda, Zeb Buckner, Kevin Mayfield

Overview

Throughout the annals of United States history, there have been few instances of US intervention overseas associated with the amount of controversy regarding foreign policy decisions as with the current war in Iraq. The 2003 invasion of Iraq and the subsequent attempt to establish a democratic state in the Middle East are flooded with reports of misjudgments and displacement of responsibility for the events that occurred. While it is difficult to accurately identify the number of Iraqi and American casualties sustained, the Lancet Survey of mortality has conservatively estimated that the bloodshed has claimed the lives of over 100,000 Iraqis and 2,000 American soldiers since the start of the conflict in March 2003 (Roberts 1). In the events that followed President Bush's announcement on May 1, 2003 that major combat operations in Iraq were complete, each step taken towards establishing democracy in Iraq has resulted in discontent among the American public, which has fueled worldwide uncertainty and indignation regarding the ability to sustain a democratic government in the Middle Eastern country.

The primary reason publicly set forth by the Bush Administration for invading Iraq was the biological and chemical weapon disarmament of Saddam Hussein's regime. Over three years later, it has been found that sufficient evidence to support the claim that the Iraqi government possessed or was continuing the development of their weapons program does not exist. Officials from both the US and the United Kingdom have made the claim that evidence of the continued development of weapons of mass destruction (WMD) would be located in due time, but over three years has passed since these claims were made without delivery of such evidence. As more time passes and additional

information comes to light, the impetus for further analyzing the basis for the decision to invade Iraq becomes more intense and powerful.

Accordingly, one of the aims of this essay is to outline the ethical implications of the management and use of information relevant to the decision made by the Bush Administration to launch “Operation Iraqi Freedom”. In the three years since the inception of the war, it has become clear that the United States government, acting as elected public servants, has violated inherent ethical duties to its citizens by intentionally influencing the intelligence community’s efforts, misusing intelligence publicly to justify past policy decisions, and politicizing the process of gathering intelligence data.

The Source of US Government’s Inherent Ethical Duties

The foundation of the US Government is one of democracy. Though the right to vote is determined at the state level, the US Constitution has been amended five separate times in an effort to ease restrictions placed by states on potential voters. The right to vote is viewed as a birth right without regard for race, gender, class, or ethnicity. In this context, US citizens have the opportunity to be heard in the election of public officials and to shape future policy decisions. In the process of elections and the formation of a sovereign Federal Government, an implicit social contract is created between public officials and the citizens of the United States. Appropriately, this essay is based on the framework developed by Jean-Jacque Rousseau in his 1762 work *The Social Contract*.

According to Rousseau, the individuals of a nation can avoid a state of nature, as described by Thomas Hobbes in *Leviathan*, by surrendering individual desires and preferences for the benefit of the collective whole. The act of coming together as a people is more than and different from simply aggregating individual interests; it is the “real foundation of society” (Rousseau 59). In the context of Rousseau’s social contract theory, the idea of reciprocating duties exists: the sovereign government is committed to the good of the citizens that compose it while each individual is likewise committed to the good of the whole. Consequently, the US government has the responsibility to act in a manner aligned with the best interests of its constituents.

The Disconnect Between Intelligence Gathering and Policymaking

In an ideal setting, a properly administered intelligence effort makes a clear distinction between the gathering of data and the process of establishing policies based on such data. While policymakers may direct which topics the intelligence community investigates, under no circumstances are they supposed to influence the conclusions that are reached. This process becomes biased when policymakers repeatedly urge the intelligence community to investigate specific concerns, rather than allowing intelligence analysts to independently assess the concerns worthy of investigation. Further, because the majority of US citizens do not have the time, inclination, or sufficient resources to conduct individual research, the consensus opinion of society is open to manipulation.

Another factor affecting public opinion is that US citizens increasingly turn to those at the top of the governmental hierarchy, such as the President, senior administration officials, and Congress, as a primary source for information about the nation's national security interests. The degree of information asymmetry in the early stages of conflict provides the government an opportunity to influence how the situation is framed to the public (Brody 41). This asymmetry is especially important in the context of the terrorist attacks on September 11, 2001. In the time immediately following the attacks, the Bush Administration was able to capitalize on the vulnerable disposition of the nation in making its case to go to war.

Hidden Motives

The current Bush Administration has been criticized for its intent to misinform and misuse information for the advancement of political agendas. Numerous claims and accusations against the party have been made by a number of political analysts, several of which will be explained in the discussion to follow. Putting aside any bias or ulterior motive, there are facts that ultimately suggest that the United States government, specifically the Bush Administration, knowingly violated implicit duties to its citizens by utilizing various misinformation and propaganda tactics in presenting its case for the invasion of Iraq.

Misusing Intelligence Data

An example of the Bush Administration's misuse of intelligence data is seen in the handling of the National Intelligence Estimate (NIE) in October 2002 on Iraqi weapons programs. This report was a strategic intelligence assessment on various aspects of the possible invasion of Iraq. One of the most important issues conveyed by the 2002 NIE was a best-case scenario. At the time, Iraq was several years away from developing a nuclear weapon and the country was unlikely to use WMDs against the United States. Additionally, the report considered the potential range of obstacles the US would face in post-invasion Iraq. The problems presented included a forecast that Iraq would become increasingly divided, with resentment coming from both Sunnis and Shiites, fueling the increased likelihood of violent conflict between the two groups. The report also predicted that an occupying nation would become a target of hatred and guerilla warfare attacks (Pillar 17).

As the conflict has played out over the past three years, these concerns have been perpetuated. This is best illustrated through the recent controversy over the leak and subsequent declassification of the April 2006 National Intelligence Estimate. After portions of the report were declassified, it identified that "the Iraq conflict has become the 'cause célèbre' for jihadists, breeding a deep resentment of US involvement in the Muslim world and cultivating supporters for the global jihadist movement," (April 2006 NIE). As the CIA's National Intelligence Officer for the Middle Eastern region from 2000-2005, Paul Pillar was charged with heading the intelligence community's evaluation of the threat posed by Iraq (Pillar 15). The fact that the Bush Administration did not request any information from Pillar until a year into the war illustrates that intelligence data on Iraq was not a primary source of influence on its decision to overthrow the Hussein regime. This is also represented in Pillar's sentiments expressed in the *Journal of Foreign Affairs* in March 2006, "What is most remarkable about prewar US intelligence on Iraq is not that it got things wrong and thereby misled policymakers; it is that it played so small a role in one of the most important US policy decisions in recent decades."

Following the first three years of conflict in Iraq, much of the controversy has centered on the methods employed by the Bush Administration to sway public opinion in

its desire to invade Iraq. In this time period, the administration publicly made statements which directly contradicted conclusions reached by the intelligence community. The height of these conflicting statements occurred during the 2003 State of the Union address made by President Bush. In the address, Bush alleged that Iraq had made attempts to purchase uranium ore in Niger, which is an explosive used in the production of nuclear weapons. In late 2002, the Bush Administration received intelligence data from Italian sources of this attempt to procure uranium from Africa. In order to follow up on this information, the CIA sent retired diplomat Joseph Wilson to investigate. Wilson was unable to find sufficient evidence to support this claim and accordingly conveyed this to the US intelligence community. In fact, intelligence analysts increasingly questioned the credibility of the allegation and advised the administration against using the information publicly (Pillar 19).

Despite being advised against using the unsubstantiated intelligence, the Bush Administration still included the statement in the State of the Union address. Rather than relying on the entities charged with assessing the threats posed by foreign nations, this information suggests that President Bush and his administration were searching for reasons to launch an invasion. Following the State of the Union address, Joseph Wilson publicly denied the assertions made by President Bush. In the midst of public attempts to determine which claim was true, an undercover CIA agent's identity was leaked. The CIA agent in question, whose life was put at risk as a result, was Valerie Plame – the wife of Joseph Wilson. Numerous political analysts have since made the claim that a member of the Bush Administration leaked Plame's identity as a form of political retribution in response to Wilson's comments. Though the allegations of political retribution are controversial, the episode fueled an increased level of resentment and misconception expressed by the public regarding the situation in Iraq.

Misinformation on the Iraq War

A survey of the American public from June 2002 to September 2003 shows that more than 6 in 10 US citizens had misperceptions about the conflict. They believed, for example, that weapons of mass destruction were found, that Saddam had ties with Al-Qaeda, and that the collective world opinion favored the US invasion (Milio 631). This

highlights some of the basic misperceptions that many people held surrounding the supposed facts and details concerning the invasion of Iraq. The notion that sixty percent of Americans unknowingly believed false claims cries for a deeper look into how the general public arrived at such viewpoints.

Information Control & Political Bias

A critical factor in the existence of these erroneous beliefs is the public's primary source of news. In the context of the conflict in Iraq, the most accurately informed used National Public Radio and read newspapers while the least informed frequented Fox News (Milio, 632). It is clear that those who watch unaffiliated, unbiased networks and news sources are being presented a perspective situated on one side of the political spectrum, while those that watch networks and news sources connected to special interest parties are receiving a perspective on the other side of the political spectrum.

With this in mind, there is evidence suggesting that political bias exists in government offices abroad. The Baghdad press office's stated task is to communicate to congress and Americans the positive side of the invasion, occupation, and reconstruction. Critics of the Bush Administration have said that the US/Iraq press office in Baghdad is basically a Republican Party operation run by political appointees who have worked on Bush election campaigns, for the Bush family, or in the Bush Administration (Milio 631). This suggests that the current administration is controlling information fed to certain news networks, as well as the source of the information. This is a glaring concern for those who believe in transparency and receiving an objective presentation of the situation, and not a censored, government-approved version. "By comparison, the British press office is staffed by long time civil servants, not political appointees, who have specialist regional knowledge and language skills; the US has five staff who know enough Arabic to be interviewed on Al Jazeera TV" (Milio 632).

The US government has gone to extremes in its desire to control the flow of information in and out of Iraq. The most egregious example of this desire is illustrated in the actions of the Pentagon by paying Iraqi newspapers to print "good" stories for distribution to American news sources. In one such case, a military official told the LA Times that the Pentagon had purchased an Iraqi newspaper and taken control of a radio

station (Guardian Unlimited). This confirms the underlying aspiration of the Bush Administration to establish information asymmetries and then capitalize on them in order to sway public opinion in the US.

Further, it appears that there has been a plot or agenda involved with invading Iraq for quite some time now. After September 11th occurred, Iraq was immediately investigated for any level of involvement, possibly to justify an invasion. Even when no Iraqi involvement was uncovered, Saddam's regime was not completely absolved. Less than a year after the tragic events, nearly three-fourths of the House and Senate backed a resolution of force to remove Saddam Hussein from power. Shortly thereafter, a "preventative" war was ordered to support this cause with the US public rallying behind. There was an erroneous belief that Iraq and the events of September 11th were connected even though no such compelling evidence has been released to date (Western 130). In order for the Bush Administration to further its agenda to invade Iraq, senior administration officials began crafting a method of tying seemingly disconnected pieces of raw intelligence together using various propaganda devices.

Propaganda

Political analysts have stated that the current administration has used propaganda willfully as a tactic to encourage support of the invasion of Iraq. Propaganda uses the intertwining of political leaders, the mass media, public opinion, and their larger impact on one another. By employing the usage of symbols, arguments, and rhetoric repeatedly, the Bush Administration was able to manage the debate over Iraq in the US, conduct foreign policy, and attempt to win the peace by winning the war (Patrick 3). Clearly, this shows war is a very powerful political tool for those who have a vested interest in developing and maintaining power.

In the context of propaganda, there is a clear delination to be made between winning a war and attaining peace in the region. Cessation of war compromises the ability to impose strict informational control, for then media professionals can act virtually at will, independent of the impositions of press pools, media events, censorship or embedding (Patrick 2). Therefore, if war ceases, or at least the appearance of war ceases to exist, those in power in the US lose the benefits derived from their control. In

Sheldon Rampton and John Stauber's 2003 book, *Weapons of Mass Deception: The Uses of Propaganda in Bush's War on Iraq*, the authors explain how it is in the US government's best interest to propel the issue forward into the public, justifying it in any way they can. Thus, it would enable the government to maintain power and rush into a war that had long since been planned. Through precise and careful planning, the Bush Administration was able to time the unfolding events to align with the highly emotional time surrounding the first anniversary of the September 11th attacks. Was there truly a tie to the events of September 11th and Saddam Hussein, or was this simply another propaganda tactic employed?

Misinformation on Weapons of Mass Destruction (WMD)

Finally, the largest and most controversial reason for the invasion of Iraq was the claim that Iraq possessed WMDs, or the components necessary to assemble WMDs. Since the invasion, US and UK forces have failed to uncover any significant amount of either biological or chemical agents (Isenberg 1). The facts surrounding this failure have been largely secretive and unknown. In the aftermath of the controversy surrounding Iraqi WMDs, the Bush Administration has stated publicly that it was not alone in its view that Saddam had active weapons programs however mistaken that opinion may have been. Though inadvertently, the Bush Administration identified the fundamental issue discussed in this essay: that intelligence on Iraqi weapons programs and WMDs were not the primary factor in its decision to go to war. This is highlighted by Paul Pillar's comments and the Joseph Wilson incident, as explained earlier.

It has been established that the Bush Administration used the claim of Iraqi WMDs as the driving force behind the invasion. Yet, it has now conveniently evolved to the establishment of democracy. This shift highlights the intent of the Bush Administration to largely ignore the information as presented to them and instead, manipulate intelligence data to align with its agenda. As the manipulation was uncovered later, Bush was on record saying "We were not lying....it was just a matter of emphasis" (Isenberg 1).

Ethical Implications

In evaluating the ethical implications of actions taken by the Bush Administration, it is important to note that the effectiveness of US foreign-policy development and the right of US citizens to know the basis for decisions taken in the name of their security is at risk. These principles are critical in determining whether the US government actually sought a pretext for launching the military invasion of Iraq. Additionally, it is important to note that one of the fundamental features of democratic politics is that military force is only exercised after considering public sentiment. Though history has shown that elected officials are sensitive to public opinion in regards to conflict, a number of trends have been identified in the public's view on the use of force. Three of these trends include: (1) Americans will support the use of force if their security is threatened – without regard for the legitimacy of the threat, (2) in the events leading to war, Americans prefer diplomacy and multilateral attempts at conflict resolution over unilateral action, and (3) Americans will remain committed to the use of force as long as there is a clear prospect of victory and the costs, both casualties and financial, are required to achieve the stated objectives (Western 108).

Despite the fact that scholars have identified these public predispositions to the use of force, public opinion in these types of conflicts is highly sensitive to information disseminated by the government. The information presented here shows that the manipulation of these trends can result in serious ethical implications. The first of these trends was in fact true. Though there was a sense of a heightened level of risk to the security of the United States and its citizens, this threat was artificially inflated by the tactics employed by the Bush Administration. Americans were deceived into a false belief of the threat, illustrated by the information presented earlier that approximately two-thirds of Americans had misperceptions about the conflict. The use of propaganda, the claim of the possession of WMD's, and the misperception of global support of the invasion all led to a distorted sense of threatened security. The major implication of these actions is that the trust placed by American citizens in the government is compromised. A large part of the foundation that the United States of America was built on is this innate trust between the government and the nation's citizens. Acting in such a manner that violates this trust is contrary to this fundamental value of democracy.

The second trend refers to the use of diplomacy and multilateral action over unilateral action. The actions of the US government in unilaterally dealing with the conflict in Iraq are quite contrary to the United Nations charter. While many in the United States and abroad view the UN as a foreign entity, the UN charter was overwhelmingly ratified by the US Senate and is a treaty of the United States. Under the Constitution, all treaties are a part of US law. Bruce Ackerman, Professor of Law and Political Science at Yale University, concludes that because of this feature of the Constitution, the actions of the US government are not a matter of international law. Rather, the government's actions are a matter of US law. Under the UN charter, Article 51 is the only text that authorizes unilateral military action. The US government has a tradition of avoiding unilateral military action, based on the model set by former Secretary of State Daniel Webster in resolving the dispute between Great Britain and the United States near the US-Canada border in the mid-1800s. The Webster-Ashburton Treaty of 1842 set a legal precedent and the basis of international law that says the US government "can only engage in military action when there is a necessity of self-defense, instant and overwhelming, leaving no choice of means and no moment of deliberation," (Yale Panel 2). In the context of the situation in Iraq and this binding formulation of international law, the Bush Administration was clearly not justified in its use of military action.

As a charter member of the UN and a permanent member of its Security Council, the US government is inherently advocating the use of the multi-lateral negotiations and conflict resolution. This position in the scheme of the geo-political world of today suggests the members of the UN accept and support the policies and initiatives ratified by the organization. In its own interpretation of Resolution 1441, authorized by the UN and negotiated by Secretary of State Colin Powell, the US government directly circumvented the conclusions that were reached. Resolution 1441 stated four points: (1) Iraq was in material breach of the Security Council's prior resolutions, (2) Iraq would have a final opportunity to rectify this breach by submitting various documents relevant to the situation, (3) serious actions would be considered if Iraq was in further material breach, and (4) the Security Council remained resolute in not undertaking military action at the current time (Yale Panel 3). When looking at the Iraq conflict with this structure in mind,

the argument that Iraq was in violation of previous UN resolutions would not justify military intervention, since the Security Council acknowledged that they were in material breach and that some further violation was necessary. Additionally, Iraq did in fact submit the documents requested by the Security Council. Shortly after the final resolution, President Bush attempted to seize jurisdiction from the Security Council, leaving the US as the lone institution to assess whether there was any further violation on the part of Iraq. By circumventing the policies and processes that the government agreed to by signing the UN charter, the Bush Administration is abusing the political capital of the United States, as well as its position of trust with the American people.

The third trend previously identified by Jon Western relates to public opinion in terms of continued support as long as a clear prospect of victory exists. As President Bush and his Administration have stated, the current war in Iraq is like no other war the US has experienced. In this context, it is increasingly difficult to determine a clear prospect of victory – let alone the actual costs in terms of money and casualties. Further, because the stated objectives of the Bush Administration have moved from the destruction of WMDs, to regime change in Iraq, to humanitarian intervention against Saddam Hussein's brutal regime, there is an overwhelming sense of multi-faceted and over-determined motives guiding the actions taken by the Bush Administration. As these objectives change, the prospect of victory in this circumstance becomes diluted to the US public. With this in mind, the wide-sweeping changes seen in public support for the war makes sense. Without clear goals and objectives, the United States government is limiting public support for its actions.

Conclusions

As the cornerstone of democracy in the world, the United States has been historically viewed as a model for other countries to utilize in establishing democratic societies and values. Accordingly, the United States has an inherent burden to uphold those very principles and values such as a free press, government accountability, and the idea that a nation's government *serves* the people, rather than leading it. There are various instances in which the actions of the Bush Administration have deviated from these democratic principles advocated by the US government. The conduct of the US

government has been contrary to the very principles the administration is advocating, in this case to the Iraqi people. This is illustrated by a Senior Pentagon Official saying, “Here we are trying to create the principles of democracy in Iraq. Every speech we give in that country is about democracy. And we're breaking all the first principles of democracy when we're doing it,” (Mazzetti A1). In this sense, there is a fundamental absence of accountability in imposing personally held beliefs and values on another group or sect of people. There is an overlying component of hypocrisy in the way that the Iraq conflict has been and is currently being handled.

The Bush Administration intentionally influenced the intelligence community's efforts by applying pressure on intelligence analysts to provide information that aligns with its agenda, thereby supporting its case to go to war. Additionally, the Administration misused intelligence data publicly in asserting that Iraq was attempting to procure components of WMD's in Bush's 2003 State of the Union address. Finally, the government politicized the process of gathering intelligence by using propaganda to sway the opinions of the US public, such as paying Iraqi news and radio outlets for positive stories. As a result, it is clear that the US government overstated the threat posed by Iraq, and consequently – violated inherent duties to its citizens.

Further Discussion

The United States has an increased burden due to its hegemony in terms of military power. This is illustrated in the fact that the US Defense budget is currently larger than the defense budgets of the next twenty-five largest militaries in the world combined (Hellman 1). As a result of this position as a global military leader, the future of international order and an era of unprecedented US military and economic dominance are at stake.

As a result of the perceived US supremacy going forward, the US government has a responsibility to use this power ethically to serve national and international concerns. In this context, the burden of leading by example is placed on the future actions of the United States and the elected officials leading the nation. On the other hand, the US also has an opportunity to abuse this power without regard of the implications, in order to sustain global dominance (Kaysen 5). This dilemma poses an interesting scenario for US

foreign affairs in the future. Thus, the US must be cognizant of the fine line between building adequate defenses and creating an imperialistic military force. The US cannot create and, at the same time, advocate against this building of global dominance. While this topic is undoubtedly relevant to the issues previously discussed, it is outside of the scope of this essay and is left for further discussion.

Works Cited

- BBC. Profile: Joseph Wilson. 20 October 2005.
<<http://news.bbc.co.uk/1/hi/world/americas/3156166.stm>>
- Brody, Richard. "International Crises: A Rallying Point for the President?" Public Opinion. (December/January 1983-84): p 41.
- "Declassified Key Judgments of the National Intelligence Estimate .Trends in Global Terrorism: Implications for the United States." The Office of the Director of National Intelligence. April 2006.
<http://www.dni.gov/press_releases/Declassified_NIE_Key_Judgments.pdf>.
- Friend, Celeste. "Social Contract Theory." 2006. Social Construct Theory [Internet Encyclopedia of Philosophy] . 21 October 2006 <<http://www.iep.utm.edu/s/soc-cont.htm>>.
- Hellman, Christopher. "Last of the Big Time Spenders: U.S. Military Budget Still the World's Largest, and Growing," Center for Defense Information (4 February 2002). <<http://www.cdi.org/issues/wme/spendersFY03.html>>.
- Isenberg, David, Davis Ian and Ingram Paul. "HuntforChemWIraq." 30 April 2003. 16 October 2006 <<http://www.basicint.org/pubs/HuntforChemWIraq.pdf>>.
- Kaysen, Carl, Miller Steven E., Malin, Martin B., Nordhaus, William D., and Steinbruner, John D.. War with Iraq: Costs, Consequences, and Alternatives. American Academy of Arts & Sciences, Committee on International Security Studies, 2002.
- Mazzetti, Mark. "U.S. Military Covertly Pays to Run Stories in Iraqi Press." Los Angeles Times. 30 November 2005, National Edition: A1.
- Milio, Nancy. "The Dangers of "Spin": Information, Science, Security, and Welfare. J Epidemiol Community Health. 2004 Volume 58: pp 631-632.
- Patrick, Brian, and Trevor Thrall. "Paradox and Propaganda After the Invasion of Iraq." Global Media Journal Volume 2, Issue 4. Fall 2004.Pillar, Paul R. "Intelligence, Policy, and the War in Iraq." Foreign Affairs (March/April 2006): pp15-27.

- Rampton, Sheldon, and John Stauber. Weapons of Mass Deception: The Uses of Propaganda in Bush's War on Iraq. Tarcher Publishing Company. 2003.
- Roberts, Les, Riyadh Lafta, Richard Garfield, and Jamal Khudhairi. "Mortality Before and After the 2003 Invasion of Iraq: Cluster Sample Survey." Lancet. October 29, 2004.
- Rousseau, Jean-Jacques. The Social Contract. Published 1762.
- Western, Jon. "The War over Iraq: Selling War to the American Public." Security Studies (2005): 106-139.
- Wilson, Jamie. "Pentagon Pays Iraqi Papers to Print its 'Good News' Stories." Guardian Unlimited. 1 December 2005. 2 Nov 2006
<<http://www.guardian.co.uk/Iraq/Story/0,2763,1654661,00.html>>.

Information and Society

Intellectual Property Theft

*Kelly Dieterle, Michel Greens, Adriane Powers, Daniel Rosenbaum,
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Sally Sue considers herself to be a very moral and virtuous person. She recently graduated college and is already volunteering at the local library to help kids learn to read. On Sally's short walk to the library she listens to a digital music player each morning. Sally seems like a model citizen, but what she does not know is that she has been participating in a serious crime and never believed she was acting unethically.

Introduction

The serious crime this scenario depicts is intellectual property theft. The current state of the Internet and information technology is distinctive in the fact that it has no set borders for jurisdiction (Rodgers, Marcus). This lack of control has increased the awareness of the ethical issues involved with Intellectual Property Rights. The concern of intellectual property theft, while recognized internationally, is still lacking conceptual understanding and lawful enforcement. The fact that intellectual property theft is wrong is not the question that needs to be addressed; rather, the questions are: why is this problem hard to control and why do many peer groups still participate in these criminal acts? In an effort to understand why some members of peer groups still support the stealing of intellectual property, the theories of moral disengagement and social learning theory are used to justify this act.

Intellectual Property Issues

The Merriam-Webster dictionary defines intellectual property as property that is derived from the work of the mind or intellect by an idea, invention, or process. This

paper investigates two forms of intellectual property that are commonly “pirated” and examines how individuals justify this immoral behavior. The illegal act of piracy is a form of stealing that can be defined as: “To take or appropriate without right with intent to keep or make use of wrongfully” (*Miriam Webster Online.*).

Historical Background of Intellectual Property Theft

The idea of intellectual property ownership has been a concern since the time of ancient Greece. With the creation of the printing press, intellectual property was subject to unauthorized duplication and distribution (*UK Intellectual Property*).

International pressure for intellectual property protection during the 1980’s and the 1990’s forced the first international policy concerning intellectual property rights. During the Uruguay Rounds the General Agreement on Tariffs and Trade (GATT) met for the first time as the World Trade Organization (WTO). During this meeting Intellectual Property Rights became a main topic of discussion (*Grossman, Gene M. and Lai, Edwin L, page 3*). The Uruguay Rounds established the 1994 Agreement on Trade-Related Aspects of Intellectual Property (TRIPs). This agreement gave the WTO regulation over minimum standards of protection for many intellectual property categories. Since the creation of TRIPs, intellectual property laws have become a major factor in determining new entry into the WTO. As an example, Russia’s unwillingness to enforce their own intellectual property laws has been a major factor in their inability to join the World Trade Organization. The root of Russia’s problem stems around a website called AllofMP3.com. This site allows users to download pirated copies of American music for less than a dollar (*Wall Street Journal*).

One classic example of the legal issue surrounding intellectual property rights is Napster. In 1999, Shawn Fanning, a Northeastern college drop out, created a website that changed the way individuals viewed intellectual property theft. The original Napster was a service that allowed users to share MP3 files for free. This website was the first of many sites to allow file sharing. Following the creation of the site, the Industry Association of America filed suit against Napster, charging them with Tributary Copyright Infringement. Although Napster argued in court that because the actual files were never in Napster’s possession the website was not acting illegally (*The Napster*

Controversy), the company was charged with contributing to and facilitating other people's infringement. This case has set a precedent for many other websites accused of similar infringements.

Moral Disengagement and the Social Learning Theory

Social Learning Theory and Moral Disengagement can be used to justify intellectual property theft. The Social Learning Theory focuses on learning that occurs in a social context and explains certain behavioral patterns among humans. When one person sees another performing an act, they are likely to copy that act. This theory explains how an individual is able to unjustly use unauthorized versions of intellectual property, as it is a function of attitudes that are learned and reinforced by peer groups (Akers, 1998). The social learning theory explains that individuals copy behavior observed from others. Thus, learning how to steal intellectual property is a result of behavior mimicked by one's peers (Akers, 1998). As individuals continue to copy their peers, they begin to displace the blame on others instead of themselves. This underlies the theory of moral disengagement because the individual is transforming what may be viewed as immoral in society, but moral in his own mind. Therefore, when behavior has been socially learned, one must morally disengage himself to justify unethical actions.

Moral disengagement can be defined as justifying one's unethical actions by altering what may be deemed unethical by a society. If an individual is able to justify stealing intellectual property, he is morally disengaging himself from what his society may view as unethical. When stealing from recording or software companies, people may believe that they are performing the task of a modern day "Robin Hood". The idea of "Robin Hood" justifies stealing intellectual property as the folk hero would; stealing from the rich and powerful and giving to the commoner. Albert Bandura's theory on Moral Disengagement explains that individuals rationalize stealing by learning methods to justify an immoral act. Even though Bandura refers to inhumanities with several of his theories, Moral Disengagement can be applied to intellectual property theft as well. Bandura says that "People do not ordinarily engage in harmful [inhumane] conduct until they have justified to themselves the morality of their actions" (Bandura, 1999). When

justifying the use of stolen intellectual property, a thief justifies stealing by believing it is okay to take from the rich and powerful just as Robin Hood would have.

Intellectual Property Theft Justified by Legitimate Business

There are many current examples of how social learning theory and moral disengagement negatively influence legitimate businesses. YouTube.com and The Geek Squad are two prominent examples.

YouTube.com

The website www.YouTube.com was founded in February of 2005 as a consumer media website that allows users to watch, share, and tag videos. YouTube.com originated as a personal video sharing service, and has grown into a virtual entertainment destination (YouTube.com).

YouTube gained national attention when a clip from Saturday Night Live was posted on the site. Although YouTube has an official policy that prohibits the submission of copyrighted material without written consent, the Saturday Night clip was illegally uploaded to YouTube. The site does not allow content that is not approved by the United States copyright law. After the posting, NBC took swift action, ordering YouTube to remove the unauthorized clips from the website. To strengthen YouTube's policy on copyright infringement, they set a maximum length for each video. Again, users found a way around this policy by splitting the original video into segments less than 10 minutes, thus making a series of video clips. This is an example of moral disengagement through the idea that there is no visible victim. Users of YouTube have no direct connection to the people they are stealing from.

In October of 2006, Google bought YouTube.com for \$1.65 billion after the site signed agreements with the major networks to escape copyright infringement. As a new age dawns on YouTube, many questions arise. Will the sale of YouTube to Google make a seemingly illegal website legitimate? Will they be able to develop better business practices and technology to help find and remove illegal content? Only society's ethical views can determine the future legitimacy of this site.

The Geek Squad

The Geek Squad is a technology support company specializing in servicing home and office electronics. In 2002, they paired with Best Buy to integrate kiosks in all their stores so that their service can reach a greater number of people.

In April of 2006, “[Winternals Software has] sued Best Buy Co. Inc. in federal court on Tuesday, alleging that the nation's largest consumer electronics retailer was using unlicensed versions of its diagnostic equipment” (Foxnews.com, 2006). They accused the Geek Squad of using pirated versions of their software after they failed to reach an agreement on renewing the license earlier this year.

Within 20 days of filing suit, Best Buy was ordered to stop using the illegal software. They later settled out of court and reached an agreement to reuse Winternals’ programs. While the immediate impact is felt by Best Buy and the Geek Squad, the long-term impact will be felt by everyone. With all the new technology and the precautions companies are taking to stop the theft of their intellectual property, thieves are getting smarter and finding ways around the current technology to keep stealing intellectual property.

The Geek Squad incident reveals how greatly social learning theory affects corporate culture. Employees within this company learned through their fellow workers that pirating illegal software was acceptable.

Recommendations

In the realm of intellectual property, certain members of society have deemed it acceptable to copy original works, as they have seen others do, and view this as acceptable behavior. These actions are justified, as explained earlier, with the social learning theory and the theory of moral disengagement. This problem has intensified to immense proportions and now spans across the globe. Even though the copying of original intellectual property has increased greatly, there are certain solutions that can curb the problem of intellectual property infringement. The recommendations include: changing society’s views, finding a legal solution to share music, and increasing the protection of intellectual property through legislation.

The most effective solution towards the goal of ending copyright infringement and, in this case, illegal music downloading, is to change society's views about the music industry. First, however, one must know how to change individual people's perceptions before an entire societal shift can occur. Albert Bandura, when discussing the displacement of blame in a societal group, states that "When everyone is responsible, no one really feels responsible," (Bandura, 1999). Individual people are much more likely to follow their peers in any situation rather than contradicting them and feel much less guilty than if they were performing the same act alone. In turn, because intellectual property theft has become so common, today's youth are beginning to view intellectual property theft, and more specifically illegal downloading, as a solution rather than a problem.

The main concern is that today's youth is actively participating in moral disengagement and are purposefully ignoring the morality of their actions when they download free music. To change this, influential figures in today's music business must speak out against intellectual property theft. One of the most prominent figures in the rap industry, Dr. Dre, frequently speaks out against illegal music downloading and was also one of the first artists to sue Napster, saying, "I don't like people stealing my music," (Borland, 2000). Through his actions and words, Dr. Dre is demonstrating to children and teens that they are stealing from the artists that they love to listen to and it is affecting them in a very negative way. If more influential artists continue to speak out against illegal downloading the way Dr. Dre has, then hopefully it will change individual's justification for downloading music illegally.

A more concrete solution to altering society's views about downloading music involves gradually introducing a legal solution for downloading music online. In a society where illegal downloading is readily accessible, many college campuses are attempting to fix this widespread problem. Cytrax is a digital media service that provides access to multi media to college students from many universities. In the Bear Creek apartments, at the University of Colorado in Boulder, there is a free program provided to the University to allow students to listen to music online. Cytrax offers over 100,000 artists and 23 genres. This allows students to listen to a wide variety of music on their computer, and if the student wants to permanently own the music that they are listening

to, there is a fee of \$6.99 per month and a cost of \$.89 per each song or a cost of \$ 9.99 for an album. If a student decides to pay for a monthly subscription or the songs that they want, they can transfer their music to an I-pod and permanently have these songs on their computer. If the students decide not to pay the fee, they can continue to listen to the songs in the network for at no cost. This is an attempt to reduce the number of illegal music and multi-media downloads. This system allows royalty fees to be paid to the respected parties and students can listen to the music that they want to listen to (Cytrax). This example represents a tangible solution to a widespread ethical dilemma. If it is possible to spread this system to other campuses, then it will be very possible to influence others to download music legally. If this is combined with music artists speaking out against illegal downloading, then people's views will certainly start to change and the problem of illegal downloading will dissipate.

Another recommendation to solve copyright infringement is to increase intellectual property legislation on a global scale. Because every nation has different laws for different crimes, there is no standard. There must be a universal code in regards to copyright infringement. The U.S. is one of the biggest supporters of increased legislation. As patent attorney Dominic Keating explains, "A legal infrastructure allows business to flourish. In this regard, Intellectual Property Rights protection contributes towards development," (Morse, 2006). What the U.S. Government is trying to do is demonstrate to other countries, particularly those in Asia, that copying other people's work is slowing down the development of business, which ultimately hurts these economies. Yet, because intellectual property theft is lightly regulated in many countries, the adverse piracy business continues to flourish. As stated before, if the piracy business continues to expand in these countries, American companies may have less of an incentive to invent certain types of software and technology, hurting domestic as well as international business. Therefore, it is extremely important that nations across the globe support the initiative towards increased legislation; before individuals lose all incentive to produce any original ideas for fear that they will be stolen.

Conclusion

Although the theft of intellectual property has always been an ethical dilemma, it is rapidly becoming a crucial problem. Intellectual property infringement has reached global proportions. Recommendations for resolution of this issue include: changing societies views, finding a legal solution to share music, and increasing the protection of intellectual property through legislation. When implemented in unison, these recommendations could be effective in reducing immoral attitude towards intellectual property theft. The Sally Sue example demonstrated social learning theory by showing how Sally learned from her peer groups that pirating music is acceptable. In relation to moral disengagement, Sally Sue believed that stealing from the rich and powerful record companies had no observable affect, and so continued her practices with little concern. Finally, as confirmed by both the YouTube and Geek Squad examples, these theories have increased from being applied on an individual level to a corporate business level.

Works Cited

- Akers, R. (1998). *Social learning and social structure: A general theory of crime and deviance*. Boston: North Eastern University Press.
- Associated Press. "Best Buy's 'Geek Squad' Accused of Pirating Software." FoxNews. 13 Apr. 2006. 15 Nov. 2006 <<http://www.foxnews.com/story/0,2933,191593,00.html>>.
- Bandura, A. (1999). *Moral Disengagement in the Perpetration of Inhumanities*. Retrieved October 14, 2006, from:
<http://leedsfaculty.colorado.edu/hovorka/BCOR4000/Bandura%20Moral%20Dis.pdf>
- Grossman, Gene M. and Lai, Edwin L. "International Protection of Intellectual Property" January 2002. NBER Working Paper No. 8704. October 1, 2006
<<http://www.nber.org/papers/w8704.pdf>>
- Intellectual Property. 12 November 2006. <http://www.intellectual-property.gov.uk/resources/copyright/history.htm>
- Levin, Aron M.; Dato-on, Mary Conway; Rhee, Kenneth. "Money for Nothing and Hits for Free: The Ethics of Downloading Music from Peer to Peer Web Sites. *Journal of Marketing Theory & Practice*, Winter2004, Vol. 12 Issue 1, p48-60, 13p, 3 charts, 1 diagram
- Morse, Jane. *Intellectual Property Benefits All Nations, U.S. Experts Say*. Retrieved October 14, 2006, from: <http://usinfo.state.gov/xarchives/display.html?p=washfile-english&y=2006&m=June&x=20060629163125ajesrom0.5217707>
- "Music Site Is Roadblock, To Russia's WTO Entry", Associated Press- Wall Street Journal. October 5, 2006 4:35 p.m
- Rogers, Marcus K. "A social Learning Theory and Moral Disengagement Analysis of Criminal Computer Behavior: an exploratory study" October 10, 2006.
<<http://homes.cerias.purdue.edu/~mkr/cybercrime-thesis.pdf>>
- The Napster Controversy. October 5, 2006.
<<http://iml.jou.ufl.edu/projects/Spring01/Burkhalter/Napster%20history.html>>

Ethics of Facial Recognition Technology

David Avexander, Jacob Richert-Boe

Introduction

In July of 2001, construction worker Rob Milliron was eating lunch in Tampa, Florida's Ybor City entertainment district. Unbeknownst to Mr. Milliron, a hidden government surveillance camera was using facial recognition technology in an attempt to identify criminals. As Mr. Milliron ate his lunch, these facial recognition systems captured and stored his image. Without Mr. Milliron's consent, his photograph was taken and used in a U.S. News & World Report article regarding facial recognition technology. The accompanying headline read: "You can't hide those lying eyes in Tampa."

A woman in Oklahoma saw the picture, misidentified Milliron as her ex-husband wanted on child neglect charges, and called the police. After convincing police he had never been married, had kids, or even been to Oklahoma, he told the St. Petersburg Times, "They made me feel like a criminal." (Kopel & Krause, 2002). Cases like Mr. Milliron's showcase the issues surrounding the use of facial recognition technology in public places and the need to address them.

Facial Recognition Technology's Recent History

Since its introduction to the American public in 2001, facial recognition technology has grown rapidly and interest in these systems is increasing. Facial recognition systems are computer-based security systems that are capable of identifying specified individuals with the use of surveillance cameras. Complex algorithms are used by these systems to compare the faces observed by these camera systems with a database of individual photographs. This allows individuals to monitor other individuals who come into the camera's recording range.

The facial recognition process starts by collecting an image from specified security cameras. The system then measures the nodal points on the face such as the distance between the eyes, the shape of the cheekbones, and other distinguishable features. These nodal points are then compared to the nodal points computed from a database of pictures in order to find a match (EPIC, 2006). This technology is currently being employed by many different businesses and branches of the government in an attempt to improve security. The Department of Homeland Security has spent millions of dollars on cameras with facial recognition capabilities in an attempt to identify potential threats to the American people.

Limitations

Although this technology is being used by many different organizations, a number of issues surround its installation and use. Current facial recognition technology is very inaccurate and has shown to have little or no effect in areas where it was implemented. Inaccuracies have led to a number of false identifications that have been found to harm individuals. These inaccuracies can be attributed to many factors including image quality, variations in light and appearance of individuals, and the size of the photograph database.

Quality of Database Images

One of the main factors limiting the success of these systems is the quality of the images used in the comparisons. In some cases, the images are dated or of low quality. This makes the process of matching photographs difficult for the system. Clear images on both sides of the equation are needed to generate an accurate match. In most cases, however, this is very hard to accomplish and does not occur. Some photographs can be up to five to ten years old; this is concerning because an individual's facial features are not constant and can change significantly in a short period of time: people age, may grow facial hair, fluctuate in weight, and obtain facial injuries that can all play a part in the success rate of these systems.

The limitations of dated photographs are even more evident when the study conducted by the National Institute of Standards and Technology (NIST) is considered.

NIST found a 43% false rejection rate for pictures of the same person taken one and a half years apart (Phillips, Martin, Wilson, & Przybocki, 2000). It is unfeasible to continuously collect high resolution up to date photos of the individuals the system is attempting to monitor. Obtaining photographs of the desired individuals that the system can use for accurate comparisons can be impossible. This also assumes that the systems have photographs of all the people they are trying to monitor and that they know who they are monitoring. These systems are unable to identify everyone who is a potential threat. This technology is useless when it does not have all the photographs required. If these systems don't have a photograph of certain individuals then their use is of no concern to those individuals.

Quality of Captured Images

Image quality is also affected by variations within the photographs captured by the system. Even if these systems were able to collect high quality images of everyone, they still present inaccuracies. In a test conducted by Richard Smith, former head of the Privacy Foundation at Denver University, changes in lighting, eyeglasses, background objects, camera position, facial position, and expression were all found to seriously affected image quality and system accuracy (Kopel & Krause, 2002). In another test conducted by Palm Beach International Airport, the motion of test subject's heads often had a significant effect on the systems ability to accurately identify target individuals. There was substantial reduction in successful matches if test subjects posed 15 to 30 degrees off of the input camera focal point; eyeglasses were also problematic (Palm Beach, 2002). In effect, a pair of sunglasses and a tilt of the head can be the only thing needed to evade these systems. Even a simple change in facial expression can cause the system to have trouble identifying a match.

Database Size

Although image quality does affect the accuracies of facial recognition systems, it is not the only factor leading to these systems inaccuracies. If it was assumed that these systems were capable of acquiring the required quality photographs from both sides of the comparison, they will still make false matches. As the number of photographs stored

in the system's database increases, performance has been shown to steadily decrease. In a vendor test conducted by NIST, the size of the databases affected the accuracy of matches even in the top-ranked system. The best system tested returned an 85% identification rate on a database of 800 people, 83% on a database of 1600 people, and 73% on a database of just over 37,000 photographs (NIST, 2006). Performance decreased approximately 2-3 percent every time the number of photographs in the database doubled. This presents a huge problem for proposed facial recognition systems because they will be using databases much larger than the ones used in the example. In some systems, more than one image is required to formulate a match. The sizes of these databases are increasing dramatically and with this performance and accuracy will suffer.

Ineffectiveness in Public Places

The inaccuracies of current facial recognition systems are clear and because of this their performance has suffered. These systems have shown to have little or no effect in areas where they were implemented. One such case of the systems ineffectiveness occurred in Tampa, Florida. Cameras employed with facial recognition technologies were installed in various high volume areas, including the 2001 Super Bowl, to help identify criminals. They targeted people in these areas and compared their 'face prints' to the database of photographs (Kopel & Krause, 2002).

What was intended to help prevent crime and identify criminals turned out to be a complete and utter failure. The system made obvious errors, including matching male and female subjects and subjects with significant differences in age or weight (ACLU, 2002). The program was later abandoned and no positive matches were ever recorded. These systems are incapable of correctly identifying features that would be obvious to humans such as sex or weight. Because of inaccuracies like these, facial recognition systems cannot be trusted to accurately identify anyone. If they have shown to have no effect in public areas and the intent of the systems is to identify criminals, there is no reason for the continued installation and use of these systems because they are not doing their job.

False Identifications

Not only are these systems ineffective, they are making false identifications. At Palm Beach International Airport, the capabilities of facial recognition technology were once again tested. The month-long test compared fifteen employees against a database containing the mug shots of two hundred and fifty airport workers. Nine hundred and fifty eight attempts were made to match the fifteen test employee's faces to the database. Under optimal conditions, the system succeeded only four hundred and fifty five times. It also returned one thousand and eighty one false alarms (Palm Beach, 2002). The system was unable to detect 52.5% of the people in the database who were scanned. This is hardly a reliable percentage. The high number of false alarms also is of concern. With higher traffic and many more faces to be scanned, the number of people stopped for no reason could be very significant. These inaccuracies can lead these systems to do more harm than good.

Ethical Issues Surrounding Facial Recognition Technology

Given the present performance levels and shortcomings, it would be easy to argue that the issue is a nonstarter. The effectiveness of facial recognition is currently questionable, if not laughable. However, the more relevant point is the future of facial recognition systems. With continued research and development, in concert with the inevitable progress in processing power, camera resolution, networks, databases, and improved algorithms, the question is not a matter of if facial recognition will become accurate and effective, but when will it become accurate and effective. Thus, the question is not one of technology but one of ethics. Even when the technology's existing deficiencies are addressed, there still remains the question of the ethics of facial recognition technology. The use of facial recognition in public places is unethical, primarily due to privacy concerns, but the ethics of the company/media portrayals of said systems also need to be examined.

Many believe that ethical dilemmas can be resolved by merely consulting codified ethics for a given organization or field. There are relevant codes of ethics for those employed in computer related fields which address the development, engineering, and

application of programs and systems as they pertain specifically to privacy. The ACM (Association for Computing Machinery) code of ethics lists the following points:

1.1 Contribute to society and human well-being.

When designing or implementing systems, computing professionals must attempt to ensure that the products of their efforts will be used in socially responsible ways...

1.7 Respect the privacy of others.

Computing and communication technology enables the collection and exchange of personal information on a scale unprecedented in the history of civilization. Thus there is increased potential for violating the privacy of individuals and groups. It is the responsibility of professionals to maintain the privacy and integrity of data describing individuals. This includes taking precautions to ensure the accuracy of data, as well as protecting it from unauthorized access or accidental disclosure to inappropriate individuals. Furthermore, procedures must be established to allow individuals to review their records and correct inaccuracies.

Members of the AITP (Association of Information Technology Professionals) pledge the following:

In recognition of my obligation to society I shall:

- Protect the privacy and confidentiality of all information entrusted to me.
- To the best of my ability, insure that the products of my work are used in a socially responsible way.

Finally the Software Engineering code of ethics includes the following:

Software engineers shall act consistently with the public interest. In particular, software engineers shall, as appropriate:

1.3 Approve software only if they have a well-founded belief that it is safe, meets specifications, passes appropriate tests, and does not diminish quality of life, diminish privacy or harm the environment. The ultimate effect of the work should be to the public good.

These are salient points and would seem to have a direct bearing on the development and deployment of facial recognition systems. Each of these codes specifically addresses privacy as a primary concern that should be preserved in all aspects of developing and deploying technology. Unfortunately these codes of ethics do not provide an ethical framework which can be used to discern the ethics of facial recognition systems. Instead, the codes of ethics simply reduce to value judgments as those involved in the development and deployment of these systems may believe they are being used in socially responsible ways and that sufficient steps have been taken to protect the privacy of those subjected to the systems (Bowyer, 2003).

The ethics of the claims regarding the performance and effectiveness of facial recognition systems by the media, and those companies selling the systems, merits some consideration. In a Time article about the use of facial recognition at Super Bowl XXXV the author, Lev Grossman, states, "The beauty of the system is that it is disguise-proof. You can grow a beard and put on sunglasses, and FaceTrac will still pick you out of a crowd" (Time 2001). While the claim sounds reassuring, in reality it is certainly not accurate as studies have shown.

In a study conducted by NIST, changes in illumination, facial position, temporal (time between image captures), distance from the camera, facial expression, and the cameras used to capture images, were all found to adversely affect performance of these systems, sometimes to the point of being completely ineffective (NIST 2000). Tom Colatosti, chief executive of Viisage Technology Inc., made this claim after the September 11th, 2001 terrorist attacks: "If our technology had been deployed, the likelihood is [the terrorists] would have been recognized." This claim is highly unlikely as only two of the 19 hijackers were known to the FBI and CIA and there is no photo database of terrorists (9-11 Commission 2005). Ethically questionable performance claims only serve to undermine industry credibility and trust. It is in the long-term self-interest of the purveyors of these systems to not misrepresent or mislead in regards to the performance and capabilities of facial recognition systems.

Next there is the question of government invasion of privacy through the use of facial recognition technology. Current legal doctrine, as decided by the Supreme Court, holds that there is little or no expectation of privacy in public and thus there is no

infringement of privacy by use of facial recognition in public places. This view does not account for the advancement of technology and the implications it portends for privacy. Just as technological advances required re-interpretation of legal doctrine concerning eavesdropping, which led to the Supreme Court's decision of a reasonable expectation of privacy in *Katz v. United States* in 1967, so too there is hope that current legal interpretation will be updated in response to the threats posed by facial recognition systems. However, even given the fact that the use of these systems may be legal currently, it does not follow that said use is ethical.

Although there is significant philosophical debate about the exact source, nature, and extent of privacy, the threat posed by facial recognition technology is potentially so dire, to any and all forms of privacy, that facial recognition systems should, ideally, be prohibited. A person could be captured by the system anywhere and at anytime. This might reveal those with whom they associate and causes they support, without their consent. What if someone's face is captured in the "wrong" part of town, or with the "wrong" people? What of the face captured at the abortion clinic or gay-rights meeting, leading to that individual being labeled and categorized in a potentially unfavorable manner? The aspect that makes this all the more egregious is the current ineffectiveness of the systems and the potential for false identification as happened to Rob Milliron.

These systems are taking a photograph of each individual who passes by them. It is unknown how long these photographs will be stored and who will have access to them. This creates the opportunity for misuse of this information. Mr. Milliron had no way to consent to his photograph being taken and used in a national periodical. It is not known how these images will be used or distributed. Even if the person being monitored has not committed an illegal or questionable act, these systems can still have negative effects for the people they are photographing. Mr. Milliron was eating lunch and he was apprehended by the police and questioned. The potential for similar kinds of misuse is clearly present and can deter people from doing anything in public places if they know there is a chance they will be monitored and possibly prosecuted for everyday acts.

The threat posed to privacy by facial recognition technology far outweighs any possible benefits of the technology. As Philip E. Agre, of the University of California, Los Angeles argues, "The potential for abuse is astronomical. Pervasive automatic face

recognition could be used to track individuals wherever they go. Systems operated by different organizations could easily be networked to cooperate in tracking an individual from place to place, whether they know the person's identity or not, and they can share whatever identities they do know.” (Agre 2003). This raises the salient point of the inevitability of these systems being networked, databases being shared, and individuals being tracked in real-time, all to the detriment of personal privacy and dignity. The self-censorship affected by the ubiquitous use of cameras is degrading and an affront to human dignity. In Great Britain it was discovered that “the people behind [the cameras] are zooming in on unconventional behavior in public that has nothing to do with terrorism”. “And rather than thwarting serious crime, the cameras are being used to enforce social conformity...” (Rosen 2001) Should it really be necessary to constantly feel the need to self-censor and relinquish control to the faceless figures behind the cameras for fear of being caught doing something not even remotely illegal, but which might be construed or portrayed in an unflattering way?

Recommendations For the Future of Facial Recognition Software

Because of the threat posed by facial recognition technology, policies and laws need to be enacted that will, if not forbid their use, at least provide the necessary protections to curtail the obvious threat these systems pose to personal privacy. Currently there are no laws governing facial recognition technology, but federally mandated policies are clearly needed. Issues that need to be addressed are many and varied but at a minimum include the following:

- Who gets to add pictures to the database of wanted faces?
- What oversight will be implemented for adding pictures to the database to avoid abuse, personal gain, or conflicts of interest?
- How long do pictures stay in the database?
- Who has access to the database, internally and externally?
- What protections are required to secure the database?
- Under what conditions will the database be shared with other agencies or companies?
- What recourse do people have if they are entered into the database incorrectly?

Until these most basic questions are answered, and avenues of recourse made available to correct misidentification, the use of facial recognition technology should be proscribed in the interest of an individual's right to privacy.

Works Cited

- ACLU. "Drawing a Blank: "Tampa Police Records Reveal Poor Performance of Face-Recognition Technology" *ACLU.org*. 28 September 2006
<<http://www.aclu.org/privacy/gen/14802prs20020103.html>>
- ACM. "ACM Code of Ethics and Professional Conduct" *ACM.org*. 16 October 1992
<<http://www.acm.org/constitution/code.html>>
- Agre, Philip E. "Your Face Is Not a Bar Code: Arguments Against Automatic Face Recognition in Public Places" *UCLA.edu*. 10 September 2003
<<http://polaris.gseis.ucla.edu/pagre/bar-code.html>>
- AITP. "Code of Ethics" *AITP.org*. 2006
<<http://www.aitp.org/organization/about/ethics/ethics.jsp>>
- Bowyer, K.W. "Face recognition technology: security versus privacy" *Technology and Society Magazine*. 23.1 (2004): 9-19
- Blackburn, D.M., Bone, M., Phillips, J.P. Ph.D. "Facial Recognition Vendor Test Evaluation Report" *FRVT.org*. February 2004 <<http://www.frvt.org/FRVT2000/>>
- Electronic Privacy Information Center. "Face Recognition History". *EPIC.org*. 10 October 2006 <<http://www.epic.org/privacy/facerecognition>>
- Gomes, Lee. "Can facial recognition snag terrorists?" *The Wall Street Journal* 27 September 2001.
- Grossman, Lev. "Welcome to the Snooper Bowl" *Time* 12 February 2001
- IEEE-CS/ACM. "*Software Engineering Code of Ethics and Professional Practice*" *onlineethics.org*. 2002 <<http://onlineethics.org/codes/softeng.html>>
- Kopel, David & Krause, Michael. "Facial recognition technology's troubled past and troubling future". *Reason.com*. 29 September 2006
<<http://www.reason.com/0210/fe.dk.face.shtml>>
- The National Commission on Terrorist Attacks Upon the United States. 9-11 Commission Report. 2002.
- NIST. "Facial Recognition Vendor Test 2002: Overview and Summary". *NIST.gov*. 10 October 2006

<ftp://sequoyah.nist.gov/pub/nist_internal_reports/ir_6965/FRVT_2002_Overview_and_Summary.pdf>

Palm Beach County Department of Airports. (2002). Facial Recognition System Test (Phase I) Summary. Palm Beach, Florida.

Phillips, J.P., Martin, A, Wilson, C.L., & Pryzbocki. "An Introduction to Evaluating Biometric Systems" *Computer*. 33.2 (2000): 56-63.

Rosen, Jeffrey. "A Watchful State" *New York Times* 7 October 2001, *Magazine Desk Late Edition*: Section 6 Page 38.

Ethics of Data Mining and Aggregation

Brian Busovsky

Introduction: A Paradox of Power

The terrorist attacks of September 11, 2001 were a global tragedy that brought feelings of fear, anger, and helplessness to people worldwide. After sharing this initial reaction, Hank Asher, founder of Seisint, a private company that maintained a massive database filled with personal information records about individuals worldwide, had an idea. Just days after 9/11, Asher realized that he had the ultimate resource for identifying the terrorists at his finger tips: a massive database filled with detailed information about the traits, actions, and tendencies of 450 million people (No Place to Hide). After realizing the power of the database, Hank developed a set of complex search algorithms for the purpose of searching the database to identify individuals whose records contained certain attributes, events, or pattern of events. Two of the traits specified in the algorithms were male individuals of Muslim descent (No Place to Hide). Thus, Asher's supercomputer searched for the potential terrorists and quickly narrowed the list of suspects from four hundred and fifty million individuals to four hundred and nineteen, five of which were later found to be directly involved with the attacks (No Place to Hide). At first glance, Asher's database and algorithms appeared to be an incredible tool in the war against terrorism and, as a result, received federal funding and became known as The MATRIX (The Multistate Anti-Terrorism Information eXchange). The database and the search techniques made it possible to organize and search troves of data for potential terrorists and terrorist threats. Consider, however, that four hundred and fourteen of the individuals that showed up on Asher's list had no readily apparent connections to the terrorist attacks. They simply had a certain set of traits and events in their records that matched those that were being searched for by the queries. Despite their innocence, they

have undoubtedly been identified as potential threats and are being watched carefully by the government. The MATRIX and similar government programs, such as Total Information Awareness, have an undeniable power to improve national security. At the same time, however, they have an unheard of ability to gather and sort information from nearly every aspect of an individual's life which can subsequently be used to categorize and potentially condemn them. This paradox of power has created one of the most heavily debated ethical dilemmas of our time: personal privacy versus national security.

The Growth of Database Use

The use of databases to harness the power of data has grown and continues to grow rapidly for three primary reasons: databases can transform data into information, an increase in the amount of available data, and significant improves to both the hardware and software components of database technology. First, organizations are beginning to understand that databases have the power to sort through massive amounts of meaningless *data* and turn it into understandable and useable *information*. Companies are using them to sort and analyze consumer data and transaction data to uncover trends that will enable them to more successfully target market their customers. Amazon.com, for example, stores information about which items an individual views, which items she buys, and which items she sells. This helps the company to uncover patterns and correlations between certain items, thus enabling the company to improve their target marketing and their bottom line (Associated Press). The database technologies make it possible to eliminate existing paper-based systems and digitize data, which ultimately makes it significantly easier to manage and effectively utilize it. As organizations have come to realize this power, the use of databases has grown significantly.

The second factor that has brought about increased use of database technology is the development and widespread use of new consumer technologies such as the Internet and cell phones. These widely used items have increased the amount of data available for organizations to store, query, and use to their advantage. The data from these devices, such as "cookies" from Internet browsing and call logs from cell phones, can be added to a database, sorted into existing personal records, and searched to uncover new patterns. There have also been significant developments in non-consumer-use devices, such as

security cameras and RFID (Radio Frequency Identification) chips, which can be used by government entities to track and monitor individuals or by companies to track inventories and monitor employees. Companies can use the data to enhance their services and bottom lines by improving their supply chain management and reducing employee theft. The government can use the data from these technologies to uncover patterns of activity, identify suspicious individuals, and monitor them. The power of both varieties of technology (consumer and non consumer) to increase the amount of data available has been furthered by an interesting and unusual cost trend. Rather than seeing increasing costs for enhanced devices, there is a general pattern of decreasing costs. For example, as a microchip becomes smaller and more powerful it also becomes cheaper (Kelly). This has enabled new devices to become heavily deployed in our society, which has increased their ability to generate even larger amounts of data that companies and government entities can use to enhance the power of their databases.

Finally, the third major factor that has influenced database use is the advancement of digital storage technology. Data storage devices, such as mainframes and hard drives, are decreasing in price, becoming physically smaller, growing in capacity, and becoming faster (Sadashige). This has enabled almost every company, large or small, to store information digitally. The subsequent development of advanced database software has made it possible to utilize the capacity by making it easy to effectively store, organize, and search the data held on the devices. Ultimately, the combination of these three factors (the realization of database power, increased number of data sources, and availability to all) has led to rapid growth in the use of databases and database tools by companies of all sizes. This paper will focus on government use of databases and will examine the ethical issues surrounding the implementation of government data mining programs, like The MATRIX, to gather and sort data about people.

Government Use of Databases

In an attempt to improve national security and prevent future terrorist attacks, the government has made several attempts to combine data from public and private sector databases to create a “grand, centralized database” that contains personalized information records that are composed of as much data as possible on as many people as possible

(Democracy Now). Despite public declarations of anxiety about privacy infringement, the government has persisted in building a massive database and has used the factors described above as their rationale. Companies nationwide are taking advantage of the new database technologies to assess and revamp their business models to increase profits. Each company uses their individual database(s) to store customer data that pertains directly to their company. Cell phone companies, for example, maintain huge databases of call records to prepare billing statements and to understand what pricing options they may be able to offer to attract more customers (Markoff). Similarly, Amazon maintains a database with information about the items that an individual has purchased, viewed, or sold. Individually, each of these databases poses only a minor threat to personal privacy as they only reveal a portion of the habits of the individual the information pertains to. The government is taking advantage of the wide use of databases by combining the information contained in each individual database in one “grand, centralized database”. The privacy threat inherent in such a database comes from its ability to bring together the information held in previously autonomous databases into one massive database that contains significantly more in-depth records about each individual. By combining information from multiple databases, an administrator sitting in front of a computer screen in a government office can view intricate details of an individual’s day-to-day life by simply typing in search queries, commonly known as data mining. Data mining is the process of extracting desired data from a database using a search language such as SQL. This is the *ultimate* privacy threat of our time and forces us to consider that the government is making a strong character judgment about the citizens of this country. The use of data mining suggests that federal agencies consider individuals to be inherently bad and that they must be monitored to avoid terrorism.

The government has embarked upon numerous large-scale data mining initiatives over the past several years. The first widely recognized attempt to combine information from multiple databases into a central database was called Total Information Awareness (TIA). The program was started by John Poindexter and the Defense Advanced Research Projects Agency (DARPA – the research arm of the Department of Defense) in early 2002. The objective of the project was to attempt to gather as much information as possible about individuals and store it in a massive database maintained by the

government. The information in the database allegedly included information from online activity, credit card transactions, health records, academic institutions, bank statements, phone calls, and a variety of other sources (Scheeres). Information for the database was also obtained from databases maintained by private companies, such as JetBlue Airlines and the Professional Association of Scuba Instructors (Sullivan). The ultimate goal of the program was to aggregate as much data as possible and use complex queries and algorithms to sort the data to identify patterns and, hopefully, uncover and deter potential terrorist attacks. Despite a strong attempt by supporters to build government trust in the program by renaming it to Terrorism Information Awareness and noting that it would be used primarily for foreign intelligence, lawmakers eventually decided to shut the program down in 2003. The opponents cited that the program was far too invasive, compromised personal privacy rights, and gave no guarantees of success (Hulse). TIA had presented an excellent opportunity to eliminate future terrorist attacks, but the public was simply not ready to sacrifice privacy in exchange for the promise of increased security. Despite public opposition to the program, TIA was not the last effort by the government to gather data about individuals to deter terrorism.

Following the cancellation of TIA, The MATRIX program (The Multistate Anti-Terrorism Information Exchange) emerged and quickly gained recognition and funding from the federal government. MATRIX differed from TIA in that each state was given the option to join the program based on its ethical stance on the privacy issues at hand. The MATRIX was touted as less of a threat to privacy because it was run at the state level rather than the federal level and supposedly collected less information (creators refused to specify exactly what information was gathered). Further, supporters claimed that it simply computerized the existing paper sorting processes used before the growth of database technology and that the program only aggregated data that was already available to individual companies (The Matrix). Thus, essentially all the program did was combine the information in one database rather than keeping it distributed over several (The Matrix). The aggregation of this information into a single source is precisely the problem with these programs. As discussed earlier, dispersed information reveals a significantly smaller and less-detailed portion of the habits of an individual being analyzed. Aggregating data, on the other hand, enables an analyst to view a full and detailed picture

of the day-to-day activities and habits of the subject under investigation. Thus, one of the primary arguments in favor of the programs is fundamentally flawed. Regardless of the declarations of preservation of privacy by supporters, most states were leery of the program and chose not to join. At the height of its success in 2003, the program was being used in thirteen states, but six dropped out shortly after and the remaining seven began using the program for tracking criminals rather than identifying terrorists (The Matrix). Federal funding for the program ended in 2005 and the program was terminated later in the same year (ACLU Applauds).

Public opposition to the use of these programs has not deterred the government from continuing to make attempts to develop and maintain these databases. In fact, recent articles have reported that Total Information Awareness has continued to exist as a secret program being operated under the cloak of the National Security Agency (Democracy Now). This situation brings to light the government's ability to make secret that which it desires to keep from the public. Thus, the public is at the mercy of secret and public initiatives alike. Unlike public initiatives, society is unable to mount opposition to secret programs, which means that the ideals of the government will take precedence over those of the public. In essence, Americans are subject to the whims of the government. TIA and MATRIX are only the most notable and public examples of data mining efforts. TIPS (The Terrorism Information and Prevention System) and CAPSII (Computer Assisted Passenger Pre-screening System II) are similar government developments with similar objectives and ramifications. These program have simply received less public attention for a variety of reasons. The government has developed numerous programs for data mining and aggregation and, despite opposition, is continuing to utilize these programs to aggregate information to sort and analyze people.

Potential Implications of Data Aggregation

There are a huge number of potential consequences that may arise from these government programs. The first and most readily apparent outcome of the program is its intended effect: the identification and aversion of future terrorist attacks with the ultimate outcome of increased security and trust in government policies. It seems unlikely that increased trust in the programs will be a result. Recent government actions (i.e. – the war

in Iraq, the poor handling of Hurricane Katrina, the passing of the Patriot Act, etc.) have already worked to degrade public trust in the government. Thus, the majority of informed citizens are viewing these government programs with an eye of doubt and will need major evidence of their positive attributes to accept them. The nature of the programs, however, eliminates any evidence of an attack. Thus, the government can say that they have deterred the next 9/11, but there will be no way to prove the statement because the program will have allegedly stopped the event from occurring. Even if the program is able to eliminate some attacks, any failure of the program to stop terrorist activity will discredit any positive reputation the program has managed to gather. If the program fails to eliminate the terrorist threat, or even a single attack, the public will cry out and the government will have a multi-million dollar tool that can no longer be used for the intended purpose. In this event, there is a strong possibility that the database will be used for other, as of yet undefined, purposes. Ultimately, the program does indeed have the potential to eradicate terrorism, but it is more likely that it will continue to be viewed as an abuse of power and a violation of civil rights.

As the government has continued to utilize and develop ethically questionable tactics and programs, there have been growing levels of doubt in the public that the government is acting in the best interests of the people. If the level of doubt reaches high enough, there may be a growth of hatred towards the government, which may lead to social unrest or rebellion. While it is unlikely that society will never reach the point of insurgence, it is almost inevitable that data mining initiatives will push society towards this end of the spectrum rather than the approving end. The programs may also result in the growth of social paranoia and the development of individual tactics geared towards preserving privacy (Simons). Those aware of the databases may work to maintain their privacy by avoiding things the government is tracking, such as cell phones, Internet usage, and credit card transactions, in an attempt to eliminate their paper and data trails. These tactics will work to safeguard privacy but will also hinder social interaction and result in an isolated and secretive society. This new model of culture may reverse economic development as services monitored by the government are boycotted (Simons). This has the potential to force huge numbers of companies into bankruptcy, which will increase unemployment rates, decrease per capita income, and reduce the standard of

living. These developments will force Americans to become more reliant upon government assistance, which ultimately creates a vicious cycle that gives even more power to the government. This internal situation does not even begin to examine or consider the impact of these programs on a global level.

In the current era, it is critical to examine how a new government program will influence foreign relations. An essential part of any government data mining program is gathering and querying information on foreign individuals. This suggests to foreign individuals, much like American citizens, and governments that the United States considers them to be threats to national security. This has a strong potential to create feelings of animosity towards the United States, which may lead to the degradation of foreign relations and the isolation of America from the rest of the world. This has major implications for the ability of our country to function in a world that is becoming increasingly dependant upon the global economy.

Finally, the information contained in the database may be compromised or distorted because large pools of information are natural targets for hackers and ill-intentioned computer geniuses. The ramifications of an attack on a centralized database are enormous and unpredictable. Two notable potential outcomes are hackers stealing and/or changing information in the database, both of which would compromise the integrity and the security of the information (Simons). Although the government has assured the public that the database is secure, there is no way to know how protected it is until a break in is attempted. The information in the database will be considered the master set, meaning that any information contained in the database will trump conflicting information from other sources. Thus, information that was covertly changed by a hacker may lead to false accusations of terrorist intentions. Ultimately, the negative consequences of data mining and aggregation programs drastically outweigh the potential benefits of the programs. It is reasonable to assume that the government has fully considered these possibilities and has decided in favor of pursuing the programs, which forces the public to consider where the priorities of the government lie.

Eerie Similarities

The government efforts to track and monitor individuals, along with a variety of other recent government actions, have eerie similarities to the society envisioned by George Orwell in his novel 1984. He described a country where individuals are monitored via “telescreens”, devices that combine the functionality of a television and a video camera. These devices are placed permanently in homes, offices, cubicles, street corners, shop windows, and everywhere else people go. Individuals in the society live with the knowledge that they are being watched and that anything out of the ordinary (a strange facial expression, a different route home from work, a new purchase, etc.) may draw attention from the secret police (Orwell). Thus, they “had to live – did live, from habit that became instinct – in the assumption that every sound [they] made was overheard, and, except in darkness, every movement was scrutinized (Orwell).” They lived their lives in such a way that they wouldn’t draw attention to themselves, generally meaning that they partook in the same ordinary events every day. In our society, individuals are at liberty to make almost any facial expression they please without fear of getting in trouble. With the advent of data mining, however, it has become necessary to be cognizant of the fact that our actions are being monitored and that a strange sequence or combination of events, even those that may not be considered to be out of the ordinary, may become a red flag for terrorist activity. If a data mining program becomes a fixture in our society, it will force individuals to alter their lifestyles and live in such a way that they intentionally avoid certain activities and interactions, regardless of their intentions, in order to avoid interrogation and harassment. This ability to influence society and force individuals to alter their lifestyles may be an ulterior motive of government data mining projects.

Other recent actions suggest that our government may be on a path towards becoming the Big Brother organization proposed by Orwell. In 1984, the government is an all-powerful entity that rules without opposition. The individuals in the society believe, either forcibly or by choice, that the government represents supreme goodness and is always acting in the best interests of the public. Similarly, the government also believes that it is doing what is best. Orwell’s government assumes that people are threats to the social order and decided that it was necessary to monitor them in order to

maintain peace (Orwell). Readers understand how ludicrous it is to believe that the policies enacted by Orwell's government are good for the people because they live in a society where the government is a representative of the desires of the people. If individuals are not careful, however, our society and the individuals in it will fall victim to an overbearing and powerful government that also genuinely believes that it is acting in the best interests of the people. By taking this consequence-based ethical approach of doing what it believes will benefit the greatest number of people, the government is bypassing duty ethics by disregarding its responsibility to be a representative of the people. Further, the government has begun carrying out questionable tactics in secrecy in order to avoid the negative effects of public outcry.

Classification of certain programs suggests that the government understands the questionable nature of the programs, but believes so strongly that the tactics are necessary to security that it is willing to act upon them without informing the public. Even further, the government is giving itself more power to make and enact decisions without public approval by weakening the laws surrounding the development of surveillance programs (Stanley). This gives the government increasing levels of power to carry out questionable initiatives that it deems necessary to national security without exposing them to the public eye. Ultimately, it is vital to constantly scrutinize government actions and remember that it is the duty of the government to represent the interests of the public rather than the interests of a select few heads of state (Vogt). This necessary scrutiny requires us to give heavy consideration to the data mining initiatives and decide if the government is indeed representing the best interests of the society or if it is pursuing the contents of an alternative agenda.

Resolutions

Based on the discussion of the data mining programs and their potential consequences, there are three basic courses of action that the American public can choose to embark upon with respects to the future of data mining and aggregation. The first of these is to accept data mining and diminished privacy in return for increased security. This option requires individuals to place faith in the government to do what is right for the society despite questionable government classification and secrecy. The second

option is to strike a compromise wherein some of the government policies are accepted and others are refuted. The final option is to rebel against data aggregation and mining programs in order to preserve our privacy. This option assumes that there are other ways to deter terrorist attacks or that the terrorist threat is not worth sacrificing privacy for. These options are the key players in the ethical debate over privacy versus security and, like most ethical dilemmas, there is no clear cut answer. Thus, it becomes the job of each person to weigh all sides of the debate and make an informed decision that they are willing to stand behind.

By accepting data mining, American society will essentially give in to the rise of an invasive and overbearing government. Alan Moore and David Lloyd's graphic movie, V for Vendetta, describes a society controlled by such a government. "Both [writers] were political pessimists, and decided that the world they wanted to portray...would be pretty grim, bleak and totalitarian (Boudreaux)." If the government is given the power to watch every individual's every action, any rights the public had or once believed they had would be in danger. The American people would indirectly be forced to forfeit any sense of privacy in hopes of gaining complete security from the government. The problem here is that the public would have no choice but to comply with the government rules of right and wrong and what they could and couldn't do, which would eventually lead to the disappearance of the country once defined as the land of the free. This option may become more acceptable if terrorism becomes rampant and widespread, but until then it seems to be the least likely of the outcomes described above.

The second option is to attempt to reach a compromise with the government regarding the use of data mining programs. This compromise could come in a variety of forms ranging from disclosure of details of the program to limitations on the type and amount of data that may be collected on a certain individual. Despite the alluring nature of this option, however, there are two fundamental flaws with the logic inherent in the proposal. First, recent government trends of secrecy and confidentiality will make it impossible for the public to know if the government is indeed holding up its end of the bargain. The actual nature of TIA is a prime example. The government claimed that the program had been dissolved, but it was in fact being operated secretly under a new name in a new agency. The government has extremely secret agencies, such as the NSA, that

are able to keep secret any information they deem unfit for public knowledge, thus making it impossible to reach a secure compromise. The second fundamental flaw with this option is that reaching a compromise will decrease the effectiveness of the program. If the public and the government agree to disclosure of information about the program, terrorists will be able to understand how the program works and develop ways to avoid detection. Similarly, decreasing the pool of information sources will decrease the ability to identify patterns that suggest terrorist activity. Ultimately, a compromise will force the government to lie or it will decrease the overall effectiveness of the program, thus leading to the sacrifice of certain amounts of privacy to a program that has less potential to positively influence security.

The final option is to rebel against data aggregation and mining programs in order to preserve individual privacy. This option would force the government to utilize other potentially less invasive tactics to identify and deter terrorist threats. Not only would this be a much more publicly supported solution (depending, of course, on the new tactics), but it would most likely lead to increased public trust in the political decision makers of the country. If the government recognizes and responds to public skepticism, there will hopefully be widespread feelings of confidence, trust, and cooperation. Government response will lead to the development of a united society wherein the government and the public are on a cooperative team devoted to the protection of the country. The new solution would potentially provide two primary benefits: (1) Increased trust in the government and (2) preservation of individual privacy. The new solution would eventually lead to the highest amount of utility provided to the greatest number of people. By providing increased utility to society as a whole, the standard of living would go up (other things equal), national security would be improved, and public rights would be sustained. Ultimately, this option will foster the growth of cooperation within the nation and will enable the government and the public to work together to create terrorism avoidance techniques that sustain privacy and improve national security.

Closing Remarks

The combination of the growth of databases and fear of terrorist attacks are making the society and government presented in 1984 a distinct possibility. The future of

our democracy depends upon our ability to judge government actions and consider if they are indeed what is best for society. The government is frequently telling the public what it believes it wants to hear while concurrently developing questionable programs outside of the public eye. These initiatives are creating major modifications to our society and the lives led by individuals in it without public approval. Thus, it is becoming an increasingly important duty of the people to examine the words of spokespersons and to understand the real issues at hand to decide if the government is indeed doing what is right. A centralized database is a huge violation of individual privacy regardless of government guarantees that its use will be limited and heavily monitored. There is no way to know how a tool with such vast capabilities will be used by the government and its slew of secretive agencies. Further, there is no way to know if our information is being scrutinized and watched or if it is one of the millions sitting idly. Many Americans have claimed that they are willing to divulge their privacy rights slightly in order to increase national security simply because they have nothing to hide (Vogt). The average citizen, however, has no way of knowing what series of events, details, and interactions are considered to be indicators of terrorist activity. Thus, what is considered to be nothing by many may indeed be everything. Further, these databases are more than small intrusions into privacy. Rather, they represent the ultimate invasion; they give a single individual the power to sit behind a computer screen and view the intricacies of each and every one of our lives. This means that “nothing is [your] own except for the few cubic centimeters inside your skull (Orwell),” and recent technological projects are beginning to threaten this space as well (Murray). It is critical that the public heavily scrutinizes government actions and takes a stand against the proliferation of government tactics that threaten privacy. Americans need to discontinue their passive observations of government policy and let the representatives of the public know how they feel about the growth of the Big Brother ideal in this country.

Works Cited

- “ACLU Applauds End of "Matrix" Program.” American Civil Liberties Union. April 2005. 8 Mar. 2006
<<http://www.aclu.org/privacy/spying/15324prs20050415.html>>
- Associated Press. “Amazon Knows Who You Are.” Wired News. Mar. 2005. 20 Mar. 2006 <<http://www.wired.com/news/ebiz/0,1272,67034,00.html>>
- Boudreaux, Madelyn. “An Annotation of Literary, Historic, and Artistic References in Alan Moore’s Graphic Novel, V for Vendetta.” Mar. 2005. 20 Mar. 2006
<<http://www.stahl.bau.tu-bs.de/~hildeb/vendetta/annotations/v-for-vendetta.1.shtml>>
- Hulse, Carl. “Congress Shuts Pentagon Unit Over Privacy.” The New York Times. Sept. 2003. 20 Apr. 2006
<<http://www.nytimes.com/2003/09/26/politics/26SURV.html?ex=1146715200&en=7ee39a8d863b5044&ei=5070>>
- Kelly, Kevin. "New Rules for the New Economy." Wired Magazine (1997): 8-10.
- “No Place to Hide.” American RadioWorks. Narr. John Biewen and Robert O’Harrow, Jr. Transcript available at:
<<http://americanradioworks.publicradio.org/features/noplacetohide/index.html>>
- Markoff, John. “Taking Spying to a Higher Level, Agencies Look for More Ways to Mine Data.” The New York Times. Feb. 2006. 17 Mar. 2006
<<http://www.nytimes.com/2006/02/25/technology/25data.html?ei=5070&en=9716a9fe318e5875&ex=1145592000&adxnnl=1&adxnnlx=1145419581-9FGk2D+fWyB2GtJPfV7oYQ>>
- “The Matrix: Total Information Awareness Reloaded – Data Mining Moves Into the States.” American Civil Liberties Union. Oct. 2003. 2 Mar. 2006
<<http://www.aclu.org/privacy/spying/15694res20031030.html#attach>>
- Murray, Frank. “NASA Plans to Read Terrorist’s Minds at Airports.” The Washington Times. Aug. 2002. 30 Mar. 2006
<<http://www.maebrussell.com/Articles%20and%20Notes/NASA%20to%20read%20minds%20at%20airports.html>>

- Orwell, George. 1984. New York: Penguin Books, 1949.
- Sadashige, Koichi. "Data Storage Technology Assessment." National Media Laboratory. Mar. 2003. 15 Apr. 2006
<http://www.imation.com/government/nml/pdfs/AP_NMLdoc_DSTAssessment.pdf>
- Scheeres, Julia. "Bush Data-Mining Plan in Hotseat." Wired News. Feb. 2003. 15 Mar. 2006 <<http://www.wired.com/news/politics/0,1283,57568,00.html>>
- Simons, Barbara. The Association for Computing Machinery. Jan. 2003. 23 Apr. 2006
<<http://www.eff.org/Privacy/TIA/acm-letter.php>>
- Stanley, Jay, Barry Steinhardt. "Bigger Monster, Weaker Chains: The Growth of an American Surveillance Society." American Civil Liberties Union. 2003: 9 - 10.
- Sullivan, Bob. "Are Private Firms Helping Big Brother Too Much?" MSNBC. Aug. 2004. 18 Mar. 2006 <<http://www.msnbc.msn.com/id/5737239/>>
- "Total Information Awareness Lives On Inside the National Security Agency." Democracy Now. Feb. 2006. 18 Mar. 2006
<<http://www.democracynow.org/article.pl?sid=06/02/27/1519235>>
- Vogt, Carlton. "Pentagon Data Mining: Just Say No." InfoWorld. (n.d.). 4 Mar. 2006
<<http://www.infoworld.com/articles/op/xml/02/11/22/021122opethics.html>>

Suggested Readings

Bergstein, Brian. "In this Data-mining Society, Privacy Advocates Shudder." Seattlepi.

Jan. 2004. 22 Mar. 2006

<http://seattlepi.nwsourc.com/business/154986_privacychallenge02.html>

"Data Mining: Federal Efforts Cover a Wide Range of Uses." United States General Accounting Office (GAO). May 2004. 18 Mar. 2006

<<http://www.gao.gov/new.items/d04548.pdf>>

Granneman, Scott. "RFID Chips are Here." Security Focus. June 2003. 20 Mar. 2006

<<http://www.securityfocus.com/columnists/169>>

Ramasastri, Anita. "The Safeguards Needed for Government Data Mining." FindLaw.

Jan. 2004. 27 Feb. 2006

<<http://writ.news.findlaw.com/ramasastri/20040107.html>>

"Total Information Awareness Resource Center." 10 Mar. 2006. Collection available at

<<http://www.geocities.com/totalinformationawareness/>>

Singel, Ryan. "Pentagon Defends Data Search Plan." Wired News. May 2005. 26 Feb. 2006

<http://www.wired.com/news/privacy/0,58936-0.html?tw=wn_story_page_prev2>

Ethical Issues of Presenting Misinformation in Docudramas

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Introduction

The problem of whether or not it is ethical to present false information in a factual film in order to produce a dramatic effect or arouse debate is the main question at hand in this paper. In a genre, such as documentaries, where the facts are the most important part of the film, it is necessary for film makers to present only accurate information in their quest to produce a compelling documentary. Using outright lies to sway the opinion of the viewers is unprofessional and unethical. Docudramas (which are defined as a type of television miniseries or movie that uses a sequence of events from a real historical occurrence to create a film-script intended to provoke debate about an event or occurrence (Docudrama and Mock-Documentary, 2002)) have been used irresponsibly in the effort to raise concern about historical events. In these films, directors tend to distort many facts and occasionally inject events that never actually occurred to promote debate. This practice is unethical and the following discussion will examine the implications and possible solutions to this ethical problem.

Background

The docudrama is a blend of two very different genres: documentaries, which are presentations or re-creations of both fact and history to show the unbiased truth, and melodramas, which create situations that are intended to stun and surprise audiences. In this blend, docudramas do not hold explicitly to the structures of either genre. They present facts and, at the same time, tell a story that keeps the audience guessing on an

eventual conclusion that is likely already public knowledge. In order to keep people interested in the facts that they likely already know, it is necessary for the director to emphasize the facts that support the side of the issue that they wish to highlight.

Docudramas have been in existence in some form or another for as long as people have shared their stories with one another. The desire to use actual historical information when telling a story in a more dramatic fashion is something that has been seen since the earliest days of film. The idea of a docudrama is to incorporate historical fact with literary and narrative techniques in order to create a story-like depiction of an actual event. While docudramas have existed for years, they have only recently become the topics of ethical debates with a special emphasis on how facts can be stretched in order to create a more dramatic effect. A recent example of this was seen in the September 2006 ABC miniseries entitled *The Path to 9/11*. This film was marketed in the US, as well as in other countries, as the “official true story” of the events that lead to the World Trade Center attacks in September of 2001. The film’s producers originally claimed that the entire film was based on the 9/11 Commission Report, a statement that was later modified to say that it was only *partly* and *loosely* based on the actual report. What is being emphasized by this example is not whether it was right or wrong to inject instances of fiction into the script, but rather that it included these pieces of misinformation while originally claiming to only present true facts.

Docudramas are often of a political nature when ethical questions arise regarding the validity of specific facts. *The Path to 9/11*, *The Reagans*, and even the 2006 film *United 93* were politically motivated films that have received criticism for how their respective stories are portrayed. Due to the nature of politics and the controversy that commonly accompanies it, it is not overly surprising that films of this nature create such debate.

When producing a docudrama, it is necessary that the construction of the film is such that it not only provides the facts that are important to the issue but also create a story that will keep the audience’s attention and ease their understanding of the issue. Creative license is seen in almost every mainstream film and can now be seen in docudramas as well. This, combined with a goal to persuade the viewer to one specific

position of an issue, has given docudramas a reputation for being a bias form of journalism.

The Problem

In order to be considered a factual and ethical docudrama, there are certain standards that should be met. The first is that the evidence portrayed in these films should be factual and not distorted in any way via other media sources. In a British docudrama about a drug connection between Colombia and the UK called *The Connection*, images were shown of mules passing into Britain with heroin concealed in their stomachs. It was later found that no such thing happened and that it was only a fabrication created by the director. Examples like this one lead to the creation of unethical dramas mainly because the audience is expecting truth and is presented with lies, leading to both the destruction of the validity of docudramas as well as a greater distrust between audiences and filmmakers. The director of a docudrama should have the obligation to portray the truth as it actually occurred, not simply what they wish to show in order to create a more dramatic effect. It is imperative that when presenting the facts of a given issue, the director abides by the ethical rules of docudramas and documentaries and does not add inconsistent or incorrect facts. This would be similar to presenting misinformation to voters in political campaigns or presenting false information on a resume.

Docudramas vs. Documentaries

Similar problems can be seen in documentaries where cases of misinformation or intentionally inaccurate information are presented in order to make the film more one-sided, possibly without the audience even noticing. If documentary filmmakers are going to freely express their opinion through film, they cannot legitimately call their films documentaries. Instead of looking at the makers of documentaries as filmmakers, it is better to view them as journalists representing facts. In the world of journalism, journalists are not free to depict events however they would like; they have a responsibility to their audience, their subjects, and their peers to present evidence in the most unbiased and accurate way possible.

Docudramas and documentaries are thus similar because the makers of each type of film have an ethical obligation to present the facts as they actually occurred. If either type of filmmaker attempts to present certain fictional scenes, untrue facts, or even overly-dramatized films in general, they can simply be considered purveyors of fiction or even blatant liars; the audience is dependent on them to present true information, and a breach of this expectation results when the filmmaker lies to the audience. By using these unethical practices, filmmakers of both docudramas and documentaries cheat their respective audiences and the other filmmakers within their profession by taking away from the validity of other such films. People will question not only the validity of specific films, but the validity of an entire genre (documentary and/or docudrama) as well.

Implications

One ethical implication that is obvious is the presentation of misinformation. When false statements are made in a docudrama regarding a specific person, it can be extremely difficult for those statements to be disproved. Even if degrading statements are true, the dilemma is whether or not there is a moral responsibility to protect another's private affairs (Rosenthal 233). A similar situation exists with the previously mentioned ABC docudrama *The Path To 9/11*. The series implies that President Bill Clinton ignored advice to pursue Osama Bin Laden because he was too busy dealing with the Monica Lewinsky scandal (Peyser 2). Essentially, Clinton is blamed for the tragic events of 9/11. The validity of this allegation is under review but no matter the result it will tarnish President Clinton's legacy. The aforementioned example of the ramifications of something as seemingly inconsequential as a TV show proves just how valuable principles of privacy and honesty can be.

Even when a docudrama exhibits no misinformation or misleading assumptions, there may still be ethical repercussions. Many docudramas are accounts of horrific events in history. Some people argue that the victims of these terrible events should have the right to keep them private. Of course there are also those who would argue that such limitations would violate the First Amendment right to the freedom of speech. After all, if the consent of every minor subject had to be granted, it would be the end of media as it is known. An interesting example of this ethical dilemma dates back to the 1920s with

what may be considered one of the greatest films ever made, Einstein's *Battleship Potemkin*. After the film was released, a sailor who claimed to have survived a gruesome battle depicted in the film demanded payment for the rights to 'his story'. As it turned out, there was insufficient evidence of the man's tale and no payments were made (Rosenthal 120). This demonstrates that even the most seemingly clear-cut ethical dilemmas can be difficult to resolve.

Docudramas frequently tiptoe along the edge of both ethical and legal ramifications. These film producers dodge prosecution in a variety of ways, the first of which is by adding a disclaimer to the film. For example, the beginning of a docudrama may read "The following dramatization is based on police reports, personal interviews, various news reports and court records. Some dramatic license has been taken in the creation of certain scenes" (Carveth 4). It is true, but hard to believe, that a law exists for the sole purpose of protecting the inaccuracy of these features. The legislation, called the False Light Doctrine, states that a person's privacy may be invaded if the story is fictionalized or the use of their same name is unintentional. Lawsuits have been filed claiming that these 'coincidentally similar' stories are wildly inaccurate, however the Supreme Court has ruled that actual malice must be proven for the plaintiff to receive damages (Carveth 5). These precautions may protect against litigation, but they don't change the plethora of ethical concerns exhibited by docudramas.

Counter-argument

One of the main counter-arguments to this problem is that directors of film have the right to use creative license to portray the issue as they see fit. This can be seen in all forms of media that are *based on true stories*.

Creative license is an important tool for directors and producers of movies, TV shows, and radio broadcasts. It allows directors to take the facts of the event and produce a final product that is entertaining, being a product of the entertainment business, as well as factual. Make no mistake, docudramas are produced to get ratings first and provide an accurate picture to the public second. This type of pseudo-journalism can be irresponsible because it does not force the creators to provide the facts in a straight forward manner. Michael Moore has, on more than one occasion, used the facts he has gathered to produce

docudramas with glaring bias and liberal views. This does not mean that the information he has provided was false but his agenda was not to simply present the facts, it was to persuade the viewer to accept his conclusion from the facts. All of Moore's docudramas have been developed for exactly this purpose; he wants to sell an idea to the public. This kind of film is why docudramas are under scrutiny.

Suggestions

During an era where documentary and docudrama films have become very popular, it is becoming more and more important to ensure the validity of such films. The very definition of a docudrama states that it should be "factually accurate and contain no fictional elements." Why then have there been portrayals of events in recent docudramas that never actually happened? The example of *The Path to 9/11* miniseries, which claimed to portray the tragic events leading to the September 11th attacks on our country exactly as they actually occurred, is a perfect example of something that should not have been able to happen: the marketing of a docudrama as accurate when the creators knew it wasn't.

So why *are* these things able to happen? One of the main reasons, mostly pertaining to documentary filmmaking but relevant to docudramas, has to do with the consent forms that the "actors" are required to fill out. Most consent forms are written using such complicated language and legalese that they are virtually impossible to understand for the general populace. Therefore people tend to sign without understanding the full implications of what they have signed. If many of these people actually read and understood what they were signing, they would likely see that "they are very nearly signing their lives away" (Cross-Cultural Filmmaking p.52). Within many of these consent forms lie certain language that give the filmmaker the ability to portray the footage that they have collected in whatever manner they want to, even if the end result misconstrues whatever the actor (or in a documentary the participant) is attempting to convey. This participant signed their name on the dotted line so anything the filmmaker does is technically legal, but at what point are they acting unethical?

The ethical questions that arise are closely related to a rights-based ethical framework. The viewers of a given film have the right to be presented with an actual

assessment of factual information; after all, this is the primary reason for viewing such a film. The filmmaker doesn't have the right to use the film as a soapbox for their personal agenda, simply because they are in control of the subject matter.

An initial suggestion to alleviate this problem, even if slightly, would be to allow the actors, or participants, in such films to sign the consent form after they have seen the finished product. If they decide they don't like what they see, and do not sign, then the film can not be released. This would help to prevent filmmakers from some instances of slander; if they make a film that they know the participants wouldn't be likely to sign off on after seeing, the filmmakers would not waste their time and money creating a film that will never see the light of day. If a participant in a film is being paid for their appearance, they may sign any document, regardless of the slander that it may provoke, due to the economic initiative. In this case, having them sign before or after the completion of the film may not make much of a difference. Unfortunately, there isn't much that can be done about these cases. Obviously allowing the participants to sign the consent form post-production and after they have screened the film would prevent some instances of misconstructions of truth in these types of filmmaking.

A second suggestion to help solve the problem of misinformation in docudramas would be to make it mandatory to clearly label all reconstructions. This is another step that only fixes the problem in small steps, but it would help nonetheless. Reconstructions and re-enactments are often clearly labeled as such in docudramas, television shows, and even infomercials. But there are also instances, especially in docudrama films, where reconstructions are attempting to pass off as the actual events themselves. These would be the instances where clear labeling should be mandatory. This would be a difficult practice to police, but some effort needs to be made to do so. The main problems with more factual docudramas are the reconstructed scenes that are attempting to convey an actual past event. Even if the re-enacted scene is for example 99.9% accurate, there is still a chance that that remaining one tenth of a percent can misconstrue the entire truth, and therefore the scene should be labeled clearly as a re-enactment. An argument against this measure would be the that even a scene that isn't a reconstruction, but a wholly accurate portrayal of an actual event, can still be potentially misconstrued or misinterpreted by the viewer. The opinion that one forms after having seen a docudrama,

documentary, or a film of any type for that matter, is completely personal. The least that a filmmaker can do to try and convey a historically and factually accurate depiction of events is to clearly label any instance that isn't actual live event.

One last suggestion is to create a secondary or subcategory of documentary or docudrama. This subcategory would include films such as those made by, for example, Michael Moore. Michael Moore is openly known as an extremely liberal activist, and his films tend to portray this fact. Although he is openly liberal and against many of the policies that the current conservative administration stands for, he is also known as a diligent fact-checker of the information he presents in his films. A film such as *Fahrenheit 9/11* should be presented to the public in a subcategory of films that cannot be labeled as either docudrama or documentary. Although it is still a form of documentary film, we are suggesting that it is presented with such blatant bias that it deserves its own category. This category should include films that present factual information, but are more biased and opinionated than other documentaries. An entirely separate issue would be how to classify films...

Conclusion

Not to be lost in the reading this paper is that a morally just and historically accurate documentary or docudrama can be an extremely valuable tool in learning about past events. Most docudramas paint a clear picture of relative facts, and may therefore be considered as helpful, ethical, and just. However, there are instances of misinformation in a small handful of these films and miniseries, and it creates ethical dilemmas for the entire genre. This misrepresentation of information is irresponsible and unethical and directors, producers and actions should be more conscious and responsible for the content they choose to put in their films.

Works Cited

- Blumenthal, Max. "ABC 9/11 Docudrama's Right-Wing Roots." The Nation 11 Sept. 2006 <http://www.thenation.com/doc/20060925/path_to_911>.
- Carveth, Rod. "Amy Fisher and the ethics of 'headline' docudramas". Journal of Popular Film and Television, 1993
<http://findarticles.com/p/articles/mi_m0412/is_n3_v21/ai_15475509>.
- "CBS Pulls Reagan Miniseries." CNN 5 Nov. 2003
<<http://www.cnn.com/2003/SHOWBIZ/TV/11/04/cbs.reagans.ap/>>.
- Lipkin, Steven N. "Real Emotional Logic: Persuasive Strategies in Docudrama." Cinema Journal Summer 1999.
- McEnteer, James. Shooting The Truth. Westport: Praeger, 2006.
- Paget, Derek, Steven N. Lipkin, and Jane Roscoe. "Docudrama and Mock-Documentary: Defining Terms, Proposing Canons." Docufictions. Jefferson, NC: McFarland and Company, Inc, 2006
- Peyser, Marc. "An Untrue Path?" Newsweek 8 Sept. 2006.
- The Regents of The University of California. Cross-Cultural Filmmaking: A handbook for making documentary and ethnographic films and videos. London, England: University of California Press, 1997.
- Rosenthal, Alan. Why Docudrama? Fact – Fiction on Film and TV. Edwardsville, Illinois: Southern University Press, 1999.
- Winston, Brian. Lies, Damn Lies and Documentaries. London: British Film Institute, 2000.