

Sharyl Attkisson, April 11, 2024

As a journalist starting in local news, I quickly learned the value of developing information based on sources that sometimes couldn't be identified. In decades of reporting nationally at CNN, CBS, PBS, and for the last nine years on my TV Show, Full Measure, countless news stories that I broke or facets of them could not have been reported without sources whose identities needed to be protected. To name just a few:

Enron¹,
BP Oil Spill²,
TARP Bank Bailout³,
Follow the Money investigations on: Taxpayer Spending⁴,
Congressional Oversight⁵, and
Congressional Fundraising⁶,
Prescription Drug and Vaccine Dangers⁷,
Haiti Earthquake Aid⁸,
K Street Lobbying⁹,
Green Energy Failures¹⁰,
Waste and Fraud at the Red Cross¹¹,
Firestone Tires¹²,
Benghazi¹³, and

¹ <https://sharylattkisson.com/other-investigations/>

² *ibidem*

³

https://www.adweek.com/tvnewser/awards_accolades/cbs_pbs_bbc_america_take_home_business_emmys_145206.asp

⁴ <https://www.imdb.com/event/ev0000493/2010/1/>

⁵ *ibidem*

⁶ <https://www.imdb.com/event/ev0000493/2013/1/>

⁷ cdn.emmyonline.org/news_24th_nominations.pdf

⁸

https://web.archive.org/web/20110919191049/http://www.emmyonline.tv/mediacenter/pdf/news_32nd_nominees.pdf

⁹

https://web.archive.org/web/20131021121031/http://emmyonline.com/day_40th_nominations

¹⁰ <https://www.imdb.com/event/ev0000493/2013/1/>

¹¹

https://web.archive.org/web/20140325161117/http://cdn.emmyonline.org/news_24th_winners.pdf

¹²

https://web.archive.org/web/20141229064144/http://cdn.emmyonline.org/news_22nd_nominations.pdf

¹³ <https://www.imdb.com/event/ev0000493/2013/1/>

Fast and Furious¹⁴. (:46)

The last 12 stories, I mentioned, thanks to some information provided by sources who could not be quoted by name, received recognition from the Emmy Awards. Multiply that by thousands of reporters and countless stories and it's fair to argue that a lot of important facts would never have been exposed if journalists couldn't ensure protection of sensitive sources' identities.

Today's managed information landscape makes it more difficult for journalists and our sources to report on ethical lapses, wrongdoing, and crimes. Today, much of the media is less likely to report those things, unless it serves certain political or financial interests. More often than not, the truth-teller— when named— is smeared and ruined while the wrongdoers carry on, escape accountability, and may even get promoted. Even when it comes to potentially life saving information, sources feel they can't risk their names being attached to a story publicly.

So it makes sense to ask: What's the impact if we can no longer assure our sources that we can protect their identities? 1:41

It's not a new concern. Some time ago, the lawyers who reviewed my stories for me at CBS News alerted me to the shifting legal environment. They told me there were some new, adverse court decisions when it came to journalists being able to protect a source's identity.

From then on, we started having to consider whether a confidential source in a story would be okay with ultimately having his identity revealed if a judge ordered it. Obviously, the answer was often no. I could no longer provide assurances to a whistleblower who feared for his career or safety— that I could guarantee protection of his identity.

Some stories still got done. But many became nonstarters. I couldn't even have the opening conversation with some sources who might have eventually been convinced to go on the record, always preferable, but some conversations can't begin without guarantees that— until the source is comfortable— he's not risking his identity being revealed. 2:32

There's no way to quantify with any certainty the impact of what we've lost and what we're not able to do. But I don't think there are many investigative reporters who would say it isn't having a big impact.

There are ideas to help, such as the "Protect Reporters from Exploitative State Spying Act" or the PRESS Act.¹⁵ It would generally bar federal agencies from forcing telecommunications firms to turn over records belonging to journalists. But it's important

¹⁴ http://emmyonline.com/news/33rd_nominations

¹⁵ <https://www.congress.gov/bill/118th-congress/house-bill/4250/text>

to note that some of the most egregious intrusions on press freedoms don't happen that way. 3:02

Our intelligence agencies have been working hand in hand with the telecommunications firms for decades, with billions of dollars in dark contracts and secretive arrangements. They don't need to ask the telecommunications firms for permission to access journalists' records, or those of Congress or regular citizens.

Thirty years ago, in 1994, the Communications Assistance for Law Enforcement Act wiretapping law required Verizon other carriers to design and allow for built-in surveillance capabilities that lets the FBI and other federal agencies monitor all telephone and internet traffic.¹⁶ Dishonest players in government can circumvent the rules and take what they want. Additionally, some inside federal agencies have worked over the decades to erode our constitutional protections in the name of security and establish policies that let them push the envelope far beyond what most Americans would consider acceptable. 3:55

Current efforts to reauthorize Section 702 of the Foreign Intelligence Surveillance Act relates to all of this. There's a lengthy record of government surveillance abuses to be found in just the little that we've been able to learn about.^{17, 18} We know that over the years, intelligence officials have misled Congress about surveilling U.S. citizens¹⁹ — even spying on journalists and political figures, their staff, and allies.^{20, 21} Prior to President Trump taking office, intelligence officials apparently modified rules to make it easier to share and leak intelligence involving innocent U.S. citizens, including people connected to the Trump campaign. Administration requests reached a crescendo to “unmask” the identities of Americans whose private information supposedly was collected “incidentally” during the monitoring of other targets. 4:40

The FISA court has documented numerous serious government surveillance abuses over the years, including a scathing review issued by the court in the fall of 2016, a critical election year, accusing the National Security Agency (NSA) of a problematic “lack of candor” that raised constitutional questions.²² 5:00

¹⁶ <https://www.fcc.gov/calea#:~:text=The Communications Assistance for law,necessary surveillance capabilities to comply>

¹⁷ <https://thehill.com/opinion/judiciary/475364-six-ways-we-were-blind-to-screaming-red-flags-about-government/>

¹⁸ <https://thehill.com/opinion/national-security/366442-10-times-the-intel-community-violated-the-trust-of-americas/>

¹⁹ <https://sharylattkisson.com/2017/12/is-govt-unaware-of-its-own-surveillance-abuses/>

²⁰ <https://sharylattkisson.com/2023/06/obama-era-surveillance-timeline/>

²¹ <https://www.usatoday.com/story/news/politics/2019/12/17/fisa-court-rebukes-fbi-over-handling-carter-page-surveillance/2677516001/>

²² <https://www.intelligence.gov/ic-on-the-record-database/results/10-release-of-three-opinions-issued-by-the-foreign-intelligence-surveillance-court>

It's been a known problem for decades. In April 2001 the FBI created the "Woods Procedures" to address abuses committed by FBI officials in wiretap applications submitted to the court.²³ Yet we know through an Inspector General report in 2020 that *the FBI violated Woods Procedures in every single wiretap audited*.²⁴ There were at least 409 errors in 29 FISA applications reviewed. Even when caught and pressed, the FBI had fessed up to only half of them.²⁵ It was all chalked up to innocent mistakes and poor training—as usual. 5:32

It's been 11 years since CBS News officially announced that I was targeted by unauthorized intrusions into my work computer. Subsequent forensics unearthed government-controlled IP addresses used in the intrusions, and proved that not only did the guilty parties monitor my work in real time, they also accessed my Fast and Furious files, got into the larger CBS system, planted classified documents deep in my operating system, and were able to listen in on conversations by activating Skype audio. 6:00

I sued after it was clear the Department of Justice would not hold thier own accountable.²⁶ The case is the first we know of in which a journalist spied on by the government received a clerk's default against an agent working for government parties in a surveillance operation. It's a small victory because he was soon reported dead, which means we can't access potential information leading to the larger players. 6:18

Besides that, I've learned that wrongdoers in the federal government have their own shield laws that protect them from accountability.

First: Government officials have broad immunity from lawsuits like mine under a law that I don't believe was intended to protect criminal acts and wrongdoing, but has been twisted into that very purpose. Congress should change that. 6:38

Second: The fornesic proof and admissions of the government's involvement isn't enough. The courts require the person who was spied on to somehow produce all the evidence of who did what — prior to getting discovery. But discovery is needed to get

²³ <https://irp.fas.org/agency/doj/fisa/fbi082903.pdf>

²⁴ <https://oig.justice.gov/reports/audit-federal-bureau-investigations-execution-its-woods-procedures-applications-filed>

²⁵ [O]ur audit had identified Woods Procedures non-compliance in all 29 FISA applications we reviewed, which were approved by the Foreign Intelligence Surveillance Court (FISC) between fiscal years 2015 and 2019. DOJ thereafter notified the FISC of 209 errors in those applications...Our further audit work identified over 200 additional instances of Woods Procedures non-compliance...We also identified at least 183 FISA applications for which the required Woods File was missing or incomplete.

<https://oig.justice.gov/sites/default/files/reports/21-129.pdf>

²⁶ <https://sharylattkisson.com/2023/11/attkisson-v-doj-and-fbi-for-the-government-computer-intrusions-the-definitive-summary-2/>

more evidence. It's a vicious loop that ensures many plaintiffs can't progress their case even with solid proof of the offense. 6:59

Third: The journalist who was spied on has to get permission from the government agencies involved in order to question the guilty agents or those with information, or to access documents. It's like telling an assault victim that he has to somehow get the attacker's permission in order to obtain evidence. Obviously, the attacker simply says no. So does the government. 7:19

Lastly: There seems to be an enormous presumption benefiting the government in court. In my case, one of the accused federal agents served time in prison for unrelated corruption committed when he was assigned to the Baltimore U.S. attorney's office during the spy operations against me and others. In a deposition, when this agent, an ex-con, simply said he didn't do any spying, the judge accepted his word without question as if were an established fact proving his innocence because he said so. 7:46

This is all to say that dishonest actors in government who would distort rules and laws for their own purposes have been left to do so for too long, and through many different ways, the system has been manipulated to stack the deck against journalists doing an important, constitutionally protected job, not to mention other citizens.

Making sure journalists can protect their sources is critical, but making new laws won't necessarily impact dishonest actors in government who have proven more than capable and willing of skirting the laws to access the information they want. 8:10