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Source: *Journal of Contemporary History*, Vol. 16, No. 4 (Oct., 1981), pp. 663-690

Published by: [Sage Publications, Ltd.](#)

Stable URL: <http://www.jstor.org/stable/260341>

Accessed: 05/06/2013 17:04

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Dina Goren

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A news-story, published by the *Chicago Tribune* in 1942, following the battle of Midway, has since been routinely referred to when the problem of restraining the press for reasons of national security is being discussed. Although it is mentioned quite frequently, however, the circumstances of this incident were never fully described. As a result, the matter has been quoted to prove different, even conflicting, points of view.

Thus for example, in June 1971 just before the Supreme Court was to pass its decision on the Pentagon Papers case, Arthur Schlesinger Jr. wrote in the *New York Times* that '...on June 7, 1942 during the battle of Midway, a *Chicago Tribune* story revealed that we had broken the Japanese naval codes...' and that the Roosevelt Administration 'finally abandoned legal action forced by the Navy on a reluctant Department of Justice. One reason for this restraint was the recognition that freedom of the press is an essential value in American Society'.¹ Clayton Kirkpatrick, editor of the *Chicago Tribune*, replied to this article stating that 'The *Tribune* has never wavered in its conviction that the controversial stories violated no law and the publication was consistent with a newspaper's privileges under the First Amendment. Only a distortion of history could support the insinuations that the newspaper violated national interests.'²

The purpose of this paper is to describe the incident as fully as possible. To this end, unpublished materials, as well as published

Author's note: this paper was written while the author was a Visiting Scholar at the Yale Law School.

Journal of Contemporary History (SAGE, London and Beverly Hills),
Vol. 16 (1981), 663-90

sources, have been used. To understand better what had happened it was also necessary to describe the political and military background against which the events in question were being played out. Although in the legal sense, the matter was settled when a grand jury refused to indict the newspaper, questions as to the true culpability of the parties involved have lingered on. By placing the incident within its wider context, we hope to be able to answer these questions. We do not, however, attempt to address the problem which lies at the core of the whole affair. For it was, perhaps, the first example of what Attorney General Griffin Bell has described as the inability of the American government to prosecute someone in a criminal court for revealing classified information without having to introduce into evidence the very secrets it is trying to protect. It is a problem which has remained a crucial one ever since, one which has to be approached within the wider framework of reconciling the need for secrecy for reasons of national security with the First Amendment.

On 7 June 1942, the *Chicago Tribune** published a front page story under the headline: 'Navy had Word of Jap Plan to Strike at Sea'. Dated Washington, DC, and bearing no by-line, the story began as follows: 'The strength of the Japanese forces with which the American Navy is battling somewhere west of Midway Island in what is believed to be the greatest naval battle of the war, was well known in American naval circles, several days before the battle began, reliable sources in the naval intelligence disclosed here tonight'. It went on to say that the information in the hands of the Navy Department 'was so definite that a feint at some American base, to be accompanied by a serious effort to invade and occupy another base, was predicted'. The dispatch then listed the names, tonnages and armaments of the various Japanese vessels which were designed to take part in the action.

On the morning after the story appeared, the *Tribune*'s Washington Bureau-Chief, Arthur Sears Henning, was notified by the Bureau of Censorship that the paper had been cited for violating the censorship code. Henning replied in writing and, according to the *Tribune*, was notified a few hours later 'that his reply was adequate and that the censorship bureau had no further quarrel with *The Tribune* in this matter'.³

*The story also appeared in the *New York Daily News* and the *Washington Times-Herald*.

On 9 June Frank Knox, the Secretary of the Navy, wrote to the Attorney General Francis Biddle recommending that 'immediate action be taken. . . to obtain indictments under the Espionage Act (50 USC 31) against Mr. Stanley Johnston. . . Mr. J. O. Maloney and such other individuals as are implicated in the unauthorized publication of a newspaper article which appeared on June 7, 1942'. Knox mentioned in his letter that Mr Johnston was on board a Navy vessel returning from the Coral Sea, when 'a secret and confidential dispatch was received on board from the Commander in Chief of the United States Pacific Fleet. The contents of the article. . . leaves no room for reasonable doubt in the mind of any intelligent person that Mr. Johnston "lawfully or unlawfully" came into possession of the said dispatch and willfully communicated the same to his publishers. . .'.⁴

According to his own testimony, Biddle was reluctant to start the proceedings, but eventually, at the Navy's insistence he had asked William D. Mitchell to present the case to a grand jury. On 7 August Biddle announced that an investigation of the matter was under-way and that a grand jury was to be convened in Chicago to hear the case.⁵

Even before that, on 9 July, Johnston, and the *Tribune's* managing editor, J. Loy Maloney, had proceeded to Washington and 'appeared before navy officials to make a statement surrounding the publication of the story and to submit to any questions the admirals wanted to put. . .'.⁶

Following Biddle's announcement of the grand jury investigation, the *Chicago Tribune*, which until then had not mentioned the matter in any way, started to play it up editorially. It took the line that the whole affair was the result of the administration's traditional prejudice against the *Tribune* and particularly of Secretary of the Navy Knox's vindictive discrimination toward the paper. As to the circumstances surrounding the publication of the story under investigation, the *Tribune* insisted that Johnston had written it in the *Tribune's* newsroom on the night of 6 June after Admiral Nimitz's victory announcement had come through. Since he had just returned from the Pacific, Johnston was able to write up a 'report of the probable enemy forces which he had worked out from his own knowledge of the situation with the aid of reference books on the Jap Navy, from his knowledge of the Jap Coral Sea losses, and from discussions with naval men of all countries and his battle comrades of the remaining ships available to the Japs'. The

main source of Johnston's naval expertise and his intimate knowledge of the Japanese navy is stated by the *Tribune* to be *Jane's Fighting Ships*. It is stressed again and again how familiar he was with this publication: he is quoted as saying that it had been 'his Bible' ever since Pearl Harbor, that during his stay in London his office was adjacent to that of 'Jane's' editor Francis E. McMurtrie with whom he had been in the habit of discussing the naval strength of the world's navies, and that, after the battle of Coral Sea, he had often discussed the make-up of the Japanese Fleet as listed in the latest edition of *Jane's Fighting Ships* with the officers with whom he associated on his way back from Coral Sea. Notwithstanding Johnston's great expertise, the *Tribune's* managing editor, Loy Maloney, admitted, when questioned on the matter by Admiral Willson in Washington, that he was not well enough known at the time to be quoted as a naval authority. Therefore, he had decided to publish the story under a Washington dateline and attribute it to naval intelligence sources, whom, he felt, he 'was doing an honor and a favor in attributing to the officials of this service, knowledge which Johnston fully believed they did possess thru their alertness and savvy'. The same version was eventually presented by Johnston and Maloney to the grand jury which had called them, at their own insistence. On 19 August 1942 the grand jury decided to drop the matter. William D. Mitchell was already on his way to New York when his statement was handed out to the press. It read as follows:

The Grand Jury, considering the matter of the publication on June 7, 1942 in the *Chicago Tribune* and in other newspapers of an article relating to the Japanese Fleet in the Midway Battle, have decided that no indictment should be returned. I was asked by the Attorney General to come here and conduct the inquiry and in so doing to see that the Grand Jury had before them all the facts. I have conducted the inquiry as fully and as fairly as I know how. Those under investigation were given the unusual privilege of appearing before the Grand Jury and explained their connection with the incident. The Jury has considered the case fully and its conclusion that no violation of the law *was disclosed* [emphasis supplied] settles the matter.

The *Chicago Tribune* printed Mitchell's statement on page 1, under a banner headline. On the same page, above Mitchell's statement, there appears a statement by the *Tribune's* publisher, Colonel Robert R. McCormick, in which he stresses that he 'never had the slightest fear of an indictment' and that 'our whole effort is to win the war'. On the day after, the *Tribune* published an editorial

entitled 'Finis', repeating how certain it had been all along of the outcome of the investigation. It went on to say that '... we did not relish the insult but we believe some good may come of the incident, particularly in allaying the hysteria which communists and fellow travellers in the east have striven to arouse against the *Tribune* and those who share its views... We shall not seek reprisals or indulge in factional politics. So far as we are concerned the chapter is closed'.⁷

Thereafter, the *Tribune* meticulously kept this promise. For, although the paper had been prepared to turn the matter into a big political issue, it apparently was more than content to hold its fire upon learning the grand jury's decision.

Other publications were not so completely reassured of the *Tribune's* innocence in the matter. *Time* published its version under the heading 'Mystery in Chicago', calling it 'one of the strangest episodes in the history of World War II censorship'. 'Strangest of all' — commented *Time* — 'was the Government's procedure from beginning to end... If the Government's case was so weak that an indictment was not likely, why had it raised the issue?... If the Government was leaning over backwards to be fair to an anti-Administration paper, why did it attempt to prosecute? And if the case was not shaky, what happened? Answers to these questions will be heard after the war.'⁸ As far as this writer was able to ascertain, they were not, except for a brief explanation provided by Attorney General Biddle, in his autobiography:

As Mitchell was developing the case in Chicago, before the grand jury Frank Knox telephoned me to say he had reconsidered the matter on further extended consultations, and that as a result he had concluded that it would be a grave risk to the protection of our naval code if the Japanese got word that we had broken theirs. The United States must not put on any evidence of this nature. He was terribly sorry... [omission in original] I was annoyed and angry and told him so; but there was nothing for me to do but call Mitchell in Chicago and explain the situation to him. He was a good sport about it and went through the form of presenting the other evidence to the jury. The members of the jury wanted to know whether they should be asked to indict the correspondent and those responsible for publishing the story for what apparently was a technical offense... They resented the fact that Mitchell would not take them into his confidence, and refused to indict.⁹

While the grand jury was not told why the message in question was so sensitive, speculation on the subject was rife, and guesses were being published daily. Some of them were very near to the

truth. Thus, for example, the *Chicago Daily Times* wrote after the jury's decision was announced: 'If anyone in our naval intelligence had disclosed the make-up of the Japanese attacking force, which presumably our profound scholars in Washington cubbyholes had identified by deciphering the secret Japanese code, there would have been a violation of the Espionage Act. . . . Of course the Japs would immediately change their code and that would hinder our war effort and endanger our fighters until we cracked their new code.'¹⁰ A few days later, the breaking of the Japanese code was also mentioned in Congress. On 3 August Rep. Holland (D. Penn.) made a statement which included the following: 'It is public knowledge that the *Tribune* story. . . tipped off the Japanese high command that somehow our Navy had secured and broken the secret code of the Japanese Navy. That is a priceless advantage in war — to know your enemy's plans through your knowledge of his code. Three days after the *Tribune* story was published the Japs changed their code. . . '¹¹ It is not clear where Rep. Holland got his information. In any event it was false. The Japanese Navy had not changed its code as a result of the *Tribune*'s story of 7 June nor did it change it as the result of the speculations on the subject which were being published in August, nor indeed did Holland's very specific reference to the matter, which was widely quoted in the press, induce them to do so. The failure of the Japanese intelligence services to realize in the face of such abundant evidence that the Naval code had been broken, is one of the most puzzling aspects of the whole affair.

A possible explanation of the Japanese behaviour is proposed by David Kahn in his comprehensive treatment of cryptology. After describing the shortcomings of the Japanese in this area before and during World War II, Kahn concludes that,

In part, the Japanese trusted too much to the reconditeness of their language for communications security, clinging to the myth that no foreigner could ever learn its multiple meanings well enough to understand it properly. In part they would not envision the possibility that their codes might be read. . . . Perhaps their own failures with American ciphers convinced them that cryptanalysis was a practical impossibility. In any event they hypnotized themselves into the delusion that their codes were never seriously compromised.¹²

The behaviour of the Japanese intelligence services in this con-

nection was yet another example of closure, a syndrome which has come to afflict intelligence services of more than one nation.*

It was the realization that the Japanese had not noticed the Midway story, or that, if they did, they had not grasped its true impact, which made the Navy change its mind as to the prosecution of the case. It took several weeks before the Navy's cryptanalysts could be sure of this.

Ever since Pearl Harbor, three Allied cryptanalytic units in the Pacific, as well as a unit in Washington, were working in close cooperation in an effort to crack the Japanese Naval code (JN 25). In the spring of 1942, these joint efforts resulted in the capacity of these units to read and understand a considerable part of the Japanese coded communications. Although the Japanese had no suspicion of this activity, they had decided to place in service a new edition of their naval code (JN 25c, instead of JN 25b in use until then) on 1 April 1942. Due to administrative confusion and the physical difficulty of distributing the new code books to their widely dispersed installations and units, they then decided to postpone the introduction of the new edition to 1 May and then, once again, to 1 June. As a result, when the Japanese started organizing their Midway operation, American cryptologists were able to read about 90 percent of their coded messages. Changing the naval code was a routine procedure in the Japanese fleet. The system was changed every six months to a year, its additives every month to six months and the tactical code every month. JN 25 went through about a dozen editions during the war.¹⁴ Even before the battle of Midway,

*In the case of Japan, its failure to realize that the Americans were reading their coded naval messages was to have far-reaching results. Almost a year after the *Chicago Tribune* had published its battle of Midway story, on 18 April 1943 American fighter planes succeeded in shooting down the Japanese bomber in which Admiral Yamamoto was travelling, over the island of Bougainville. The American fighter planes had set an aerial ambush for the Commander-in-Chief of the Japanese combined fleet as the result of a spectacular feat of intelligence based on cryptanalysis. Kahn mentions that the officer in command of the unit who was to carry out the operation, had pointed out to Admiral Nimitz the danger of making the Japanese suspicious that the Allies were reading their codes. Nimitz decided to go ahead with the action, but was careful to prepare an elaborate cover story to account for the information on Yamamoto. It proved unnecessary, since the Japanese had still not realized that their codes had been broken. In Washington, on the other hand, rumours as to the role of cryptanalysis in Yamamoto's death were so widespread as to cause General Marshall to request that the FBI investigate the matter.¹³

the cryptanalysts working at Admiral Nimitz's headquarters had told him that there was little chance of more information becoming available before the attack, because the Japanese had changed their operational code, as they did routinely, or at least issued a new set of additives. Commander Rochefort, head of the cryptanalysis unit, told Admiral Nimitz that weeks would pass before traffic in the new code built up to the point where the repetitions on which cryptanalysis relied occurred.¹⁵ Several weeks were to pass, then, before the Navy's codebreakers could be sure that what the Japanese were using was a new edition of their original JN 25 code, and that they had not introduced an entirely different system as the result of the *Chicago Tribune's* story. It was only then that the naval authorities decided not to allow any reference to the nature of the intelligence concerned to be brought before the grand jury.

It seems that not even Attorney General Biddle and William Mitchell, who conducted the investigation, were given a full explanation, although they were obviously aware that the original intelligence report resulted from breaking the Japanese code. In his autobiography, published twenty years after the event, Biddle says that Secretary Knox had told him that 'it would be a grave risk to the protection of our naval code if the Japanese got word that we had broken theirs'. Biddle quotes this rather absurd reason without any comment. Apparently, Knox had felt that he owed a somewhat more convincing explanation to Mitchell. On 31 August, Biddle had forwarded to Knox a copy of Mitchell's detailed letter to himself. In this letter, Mitchell had repeatedly reminded Biddle of his reluctance to proceed with the case and that he had only agreed to do so on the basis of a firm promise that the Navy would come forward with the necessary evidence.

You may remember — he wrote — that at the very beginning, when I had only been on this case two or three days, I became convinced that no progress could be made in the case at all unless the Navy was willing to have intelligence officers explain how the information collected at Pearl Harbor had been obtained, and how the Japs could make the necessary inferences from the publication to enable them to take such action as would hamper further efforts of the naval intelligence along the same lines. I felt so certain of this that I thought that the Navy ought to be consulted at once, and if they declined to have this information disclosed, the case ought to be dropped. As a result of that, you will remember, you and I went over to the Navy Department and took this up with them, and were told that, although the Navy did not like to have us do it, they consented to it. I then went back to work on the case and after two or three weeks, having got-

ten to the bottom of it, I was more impressed than ever with the necessity of making disclosures, and I felt that the Navy ought to have another chance to consider the matter as their initial consent had been rather half hearted.'¹⁶

On 14 July, Mitchell had repeated these arguments in the report he had submitted to Biddle and to Knox on his preliminary investigation, stressing that in his opinion further prosecution would not be advisable from the Navy's standpoint. Thereupon he was informed by Biddle that the Navy had decided to go on with the case. Not unnaturally, Mitchell was very angry with the Navy. 'I felt that they ought to have made a final decision then and there (upon receiving the 14 July report) and stuck to it, and that in letting me go to Chicago under the circumstances and then stopping disclosure at that stage, they sort of sold me down the river and the Department of Justice as well.' Having received a copy of this letter, Secretary Knox had obviously felt that it was his duty to explain his decision to Mitchell. In a letter written on 2 September, which Mitchell was asked to destroy after 'digesting its contents', Knox wrote:

I think that you are entitled to know, confidentially and personally, why this change of attitude occurred on the part of the Department, just prior to the convening of the Grand Jury. The truth was that we had just again successfully broken the Japanese code and this fact was of immense value to us in operations then in progress. . . . It was an extremely difficult choice to make but in the light of the very great value access to Japanese information had, even I was compelled to admit that the decision must be negative, even though it cost us a chance of bringing the offenders in the Tribune to the book.¹⁷

It appears that both Biddle and Mitchell, and possibly even Knox himself, were under the impression that the Japanese code had indeed been changed as the result of the *Chicago Tribune's* Midway story, and that it had later been broken again.

While it is evident from Knox's letter to Mitchell that, as far as he was concerned, the decision to withhold the necessary evidence from the grand jury was tantamount to giving up any prospect of indictment, the Navy itself was, apparently, not so clear on the matter. On 15 August, Admiral Cunningham, Head of the British Admiralty Delegation to Washington, wrote to Admiral King to express the Admiralty's concern 'about the danger that details of our special intelligence methods may be compromised during the course of the [*Chicago Tribune's*] trial. The terms of the charge as given in the press are themselves an indication that we had prior informa-

tion, and it is probably this that has aroused concern in the Admiralty.¹⁸ British cryptanalysts, it will be recalled, had worked in close cooperation with their American counterparts in the Pacific in breaking the Japanese naval code, and the Admiralty, which was also making use of decoded Japanese messages, was understandably disturbed.* Before replying to Cunningham on 17 August and reassuring him that the Navy Department 'will continue to give full weight to the security of our special intelligence' Admiral King had received a memorandum on the matter from Admiral Willson. It had been prepared by Captain Holden, King's communication officer. It suggests that the Navy make it clear to the British Admiralty that 'definite assurance has been given the Navy that, insofar as the Grand Jury investigation is concerned, the proceedings will be conducted and the indictment drawn so as to fully protect naval security'. The authors of the memo seem to have had little doubt that the grand jury would indeed return an indictment since they proceed to write that action after the indictment should be contingent on: '(a) findings of the Grand Jury, (b) Latest developments in the Radio Intelligence field, (c) Wishes of higher authority. There will be ample time to consider the question of the trial' — the memo concludes — 'since it would normally not take place before October.'¹⁹

Two reasons seem to have accounted for the confidence of the naval officers in the outcome of the investigation. For one thing, they were less concerned with the legal aspects of the case than were the civilians who were involved in it. As we shall proceed to show, they had no doubt that the *Tribune's* dispatch was based on decoded Japanese messages. Moreover, they were aware, more than anyone else, of the extreme operational importance of being able to decypher the code. It is thus hardly surprising that the Navy fully expected that the *Chicago Tribune* would be punished in proportion to the severity of what might have resulted from its action.

Although no actual proof has been provided to the effect, there seems to be little doubt that Stanley Johnston, the *Chicago Tribune's* correspondent who had written the dispatch, had actually seen a classified naval communication before writing his story.**

*Churchill himself was extremely annoyed upon learning about the *Tribune* story (see F. W. Winterbotham, *The Ultra Secret* (London 1974), 176).

**It is possible that Johnston's own explanation is to be found in the archives of the *Chicago Tribune*. This author's request for access to Johnston's papers was declined by the Tribune Company's archivist.²⁰

The message he had seen was probably the one which had been sent by Admiral Nimitz on 31 May 1942 (31/1221) to all the commanders of the Pacific Fleet. Rated classified it read as follows:

CINC PACIFIC FLEET ESTIMATE MIDWAY FORCE ORGANIZATION X
STRIKING FORCE 4 CARRIERS (AKAGI KAGA HIRYU SORYU) 2
KIRISHIMAS 2 TONE CLASS CRUISERS 12 DESTROYERS SCREEN AND
PLANE GUARD X SUPPORT FORCE 1 DV OR XCV 2 KIRISHIMAS 4
MOGAMIS 1 ATAGO 1 ? BD SCREEN XX OCCUPATION FORCE 1
TAKAO 1-2 MYOKOS (QUESTION) 1 CHITOSE 1 CHITOYODA 2-4
KAMIKAWA MARU 4-6 AK 8-12 AP 12 DESTROYERS X APPROXIMATE-
LY 16 SS RECONNAISSANCE AND SCOUTING MISSION MID PACIFIC-
HAWAIIAN ISLANDS AREA.²¹

The similarity of this message to the second part of Johnston's story, in which the various elements of the Japanese fleet are listed, cannot have been the result of mere coincidence. It read as follows:

The various forces were made up approximately as follows, according to navy information here:

THE STRIKING FORCE: Four aircraft carriers, the Akaga and Kaga of 26,900 tons each, and the Hiryu and Soryu of 10,000 tons each; 2 battleships of the Kirishima class — 29,300 tons with 14 inch guns; 2 cruisers of the Tone class — new 8,500 ton 6.1 inch gun ships; 12 destroyers.

Support Force Listed.

THE SUPPORT FORCE: One aircraft carrier of the Ryuzo class, 7,100 tons; 2 Kirishima class battleships; 4 new 8,500 ton cruisers of the Mogami class, including the Mogami, Mikuma, Suzuya, and Kumano — with 15 guns of 6.1 inch caliber; 1 light cruiser; 10 destroyers.

THE OCCUPATION FORCE: Four cruisers — the Chakas, Myoko, Chitore, and Choda, all believed of 8,500 tons with main batteries of 6.1 inch guns; 2 armored transports of the Kunikisima Maru class — converted liners; 4 to 6 troopships; 8 to 12 supply vessels; 12 destroyers; 10 submarines.²²

It is not clear whether or not the grand jury was shown the text of this or a similar message by Admiral Nimitz. The Navy might well have presented them with a copy without revealing the source of its information. The grand jury, it seems, accepted that Johnston had seen a classified naval message before writing his story. However, as Mitchell pointed out in his letter to Biddle, 'in the absence of any showing of the damage done, they [the jury] considered the charge made out a purely technical one'. Furthermore, the jury were 'also somewhat aroused about the action of officers on the *Barnett* in being careless in letting a copy of a secret dispatch lie around. They

brought that up, and they asked why they should be asked to indict Maloney and Johnston for what they said was a technical offense without damage to the national safety, when the officers on the ship were guilty of equal carelessness and nothing was being done to them.'

In a recent article, Grant Sanger quotes Adlai Stevenson, who had been Secretary Knox's special assistant from 1941 to 1944, on the subject. In 1959, writes Sanger, he had asked Stevenson about the matter and was told that Johnston had admitted to the grand jury, that while travelling on the USS *New Orleans* after being picked up after the sinking of the USS *Lexington* in the battle of Coral Sea, one day he had passed through the captain's cabin, seen the open message on the desk and had memorized its content without touching it.²³ According to Sanger, Johnston had reached Pearl Harbor on 26 May aboard the *New Orleans* and had filed his story from Honolulu. Due to an oversight, writes Sanger, Johnston had not been asked to sign accreditation papers when he was attached to the Navy as a war correspondent, and 'This freed him from submitting for censorship anything he wrote'. Sanger's article is intended to refute the versions of what he calls 'revisionist historians' on how Johnston had acquired the information for his article.²⁴ However, some of the details in Sanger's own version appear to be incorrect: Johnston was not on the *New Orleans* and he did not file from Honolulu. He was on board the USS *Barnett* en route to San Diego, and could thus have seen Admiral Nimitz's message, quoted above, which was dated 31 May, before reaching California on 2 or 3 June. There is little reason to doubt the *Tribune's* own description of Johnston's subsequent moves. Upon arrival in San Diego, Johnston immediately called the *Tribune* in Chicago and told his editor that he had 'the most fascinating detailed eyewitness story of a sea battle which has been told in a lifetime'. When asked for details he refused to give any, saying that under Navy regulations, to which he was subject as a correspondent, he had to transmit the outline of his stories, which had already been written, to the Navy Department in Washington. This he did on 3 June and then proceeded to Chicago at once, to write his full account of the battle of Coral Sea.²⁵ Johnston was the only naval correspondent who took part in the Coral Sea battle. His dramatic eyewitness reports of the five day engagement, published in the *Tribune* were followed up by a bestselling book *Queen of the Flat-Tops*, first published in September 1942 and going through five editions before

the end of the year.²⁶ Johnston's part in the battle had been more than that of a mere observer. He had also distinguished himself by showing great personal valour in going below decks on the burning USS *Lexington* and helping to rescue several sailors who had been trapped there. At the time the investigation of the Midway dispatch was being conducted, a recommendation to cite Johnston for bravery was resting on Admiral King's desk, together with other Coral Sea citations.²⁷ While Johnston was engaged in writing up his record of the Coral Sea battle, the battle of Midway was being fought in the Pacific (4-6 June). When Admiral Nimitz's victory communiqué came into the newsroom on Saturday night, Johnston went to his editor and told him that he could supplement this story with information in his possession. It is only in their explanation of how Johnston had acquired this information that he and Maloney must have departed from the truth. The similarities between Johnston's article and Admiral Nimitz's message have already been pointed out, and it has been stressed that they could by no means be accounted for by sheer coincidence. Furthermore, both the message and Johnston's story include identical versions in the spelling of Japanese ship names (e.g. *Kirishima*, while *Jane's* quotes the name as *Kirisima*), and in referring to the name of a single ship as the name of a class. It is, however, quite obvious from Johnston's story that he was using a copy of *Jane's Fighting Ships*²⁸ while writing it. The tonnages of the various ships listed, and the calibres of the guns on board are all taken from *Jane's*. It is also true that a number of ships, to which Johnston refers by name (notably, those making up the support force), do not appear in the Nimitz message and are apparently taken from *Jane's*, but, given the large number of ships in each class and category listed by that publication, Johnston could not possibly have made up the list he did on the basis of *Jane's* alone. Strangely enough, he did not even bother to correct the misspellings in the naval message, although he could very easily have done so while he was using a copy of *Jane's*. It is true that throughout the investigation both Johnston and his editor tried to cover up the fact that he had seen and probably copied a classified naval message. However, in our opinion, this does not prove that either Johnston or Maloney were aware in any way that the Nimitz message was based on decyphered Japanese communications and that in printing the story they were revealing that the code had been broken. Their efforts to disguise the source of Johnston's information had probably to do with the fact that,

technically, even copying and publishing a classified message was enough to make both Johnston and Maloney liable to prosecution under the Espionage Act (18 USC //793, particularly sec. [e]). In view of the *Chicago Tribune's* anti-administration position and its record in publishing the government's secret documents, it seems hardly surprising that the paper fully expected that the government would now do its utmost to retaliate against it.

The assumption that Johnston could not have known the real source of the information he was using is reinforced by what is probably the true version of how he had come to see the Nimitz message. The story is told by Rear Admiral Clyde J. Van Arsdall, who had been chief engineer of the USS *Barnett* at the time Johnston was travelling on it, on his way back from the Coral Sea. Commenting on Sanger's article soon after its publication, Van Arsdall writes that the *Barnett*, a marine transport, was not kept abreast of the combat zone activities. It had a 'skeleton coding board which only decoded messages that included its name. However, at the time in question the ship was carrying the survivors of the USS *Lexington* who apparently wanted to know more about events in the battle zone. The senior officer among the *Lexington's* survivors, Commander Morton T. Seligman, had approached the *Barnett's* communication officer and suggested that, since there now were numerous qualified communication watch officers on board, 'a procedure be set up to have the broadcast schedule decoded'. Since the officers of the *Barnett* could not find any directives to prohibit such a procedure, Seligman's proposal was accepted. Van Arsdall points out that instructions on how the decoded messages were to be handled and on who would be allowed to see them were very specific. It is clear, however, that none of the officers on board had any operational need to read these messages. Van Arsdall also points out that Johnston, Seligman and two other officers were assigned to the same suite while on board.

After disembarking her passengers in San Diego, on 3 June, the *Barnett* proceeded to San Francisco. En route, Van Arsdall continues, 'We received an alarming and very specific dispatch: lock and seal all dispatch files, lock and seal the coding room; commanding officer and communications officer be prepared to appear before board of investigation on arrival...' As far as he can remember, says Van Arsdall, the investigation seems to have found no culpability to support court-martial of any person. Among others investigated was Commander Seligman.²⁹ Although there

was no proof against the officer, Admiral King later admitted that with the approval of the Secretary and the President, he had personally arranged that Seligman, a commander and naval aviator, should never be promoted.³⁰ Seligman, incidentally, together with the *Lexington's* commanding officer, Rear Admiral Frederick Sherman, had appeared before the grand jury while it was investigating the affair in Chicago.³¹

Since the *Tribune's* 7 June story was datelined Washington, DC, and was purporting to quote naval intelligence sources there, it is hardly surprising that some time was to pass before the Navy focused its investigation on the USS *Barnett*.^{*} What had happened at the Navy Department on the morning of Sunday, 7 June, after the publication of the dispatch, is described by Arthur H. McCollum, then a naval officer on the staff of the Commander-in-Chief of the Navy.³³ 'I came down to the Navy Department I think it was about the 7th of June, a Sunday morning, and my goodness, the place was shaking.' Upon being told by his superior, Admiral Cooke, that he was suspected to 'have been talking to reporters some damn place', McCollum rushed to his own office and compared the newspaper's story with his own 'bootlegged copy of Admiral Nimitz's appreciation'. He soon became convinced that 'whoever this reporter was... had seen that particular dispatch'. He then went to show this to Admiral Wilkinson, at the risk of revealing that he had a 'bootlegged' copy of the message. Admiral Wilkinson, continues McCollum,

grabbed the secret dispatch out of my hand and the newspaper clipping out of the other and he went charging down the hall toward Admiral King's office with me behind him hollering, 'Wait, wait, wait, don't take that down'. He paid no damned attention — he was a little deaf anyway. He went charging through the outer office, into King's office, and Carl Holden, who was King's communication officer, and I got into the office just in time to hear Carl Holden say, 'well, they can't point the finger at me. There are only five copies of that dispatch in existence, and I've got all five of them'. Well here was Wilkinson going in there with Number Six.

A little later, McCollum recounts, he was told by Admiral Cooke that it was decided to prosecute Colonel McCormack (sic). When he asked the Admiral how this would be done, Cooke replied, 'He's

*E.B. Potter in his biography of Nimitz³² writes that Johnston and Seligman were travelling to San Diego aboard the USS *Chester*, before 24 May. The fact that Mitchell in his report specifically mentions the *Barnett* seems to discredit this version.

a goddam traitor, that's what he is . . . going to give it to the Department of Justice. The President is buying this thing and we're going to hang this guy higher than Hayman.' As Secretary Knox was to inform the President two days later, in a handwritten note attached to a copy of his letter to the Attorney General, the idea of charging those involved with treason had to be abandoned. This seems to indicate that earlier on the President had been informed of the possibility of bringing a charge of treason. The Navy's reaction, at this point, is somewhat difficult to understand. Obviously, the Navy was justified in assuming that the Japanese might be alerted to the breaking of their code as a result of the dispatch. It seems that even before its publication, it was feared that the Japanese might guess the truth. A note on press releases in King's files, dated 7 June, but bearing no mention of the *Tribune* affair, states that,

King and Marshall were concerned that the Japanese would wonder why the Americans were so well prepared and might guess code breaking. King — the note goes on to say — decides to explain thus: Japanese 'energetic countermeasures' were to be expected following period of maintaining(?) after Doolittle Raid and Coral Sea . . . Midway and Aleutians were both valuable and exposed so it was natural to expect Japanese to attack them, so US naturally was prepared for an attack which indeed developed. King and Nimitz agree success not to be exaggerated.³⁴

At 5 pm on Sunday 7 June, Admiral King held a press conference, 'I feel' — he told the assembled reporters — 'that the information at hand at this time permits me to give you a little bit of background that led up to these operations . . .' He then proceeded to explain matters to them according to the policy outlined in the note. In the course of this conference, going 'off the record' and being most emphatic about it, King mentioned that morning's dispatch, admitting that it unmistakably came 'from a leak that may involve very serious consequences'. He also warned the correspondents present to be on their 'guard against, even inadvertently, being party to any disclosure which will give "aid and comfort" to the enemy'.³⁵ King's warning, it will be noted, uses language reminiscent of the Espionage Act. Having arranged for the publication of a reasonable explanation to account for its state of preparedness, the Navy could have allowed the matter to rest. The Japanese, after all, could hardly have known that Johnston had misspelled the names of their ships in the same manner as did the Nimitz message. Furthermore, the dispatch did appear after the

battle, a fact which might easily have been used to account for the list of ship names it included. However, instead of playing down the matter along these lines, the Navy persisted in prosecuting the case. Nobody, it appears, could believe at this stage, that the Japanese had failed to notice the dispatch or to understand what it meant. Besides, quite apart from the military aspects of the matter, it seems very probable that the President, too, was eager to pursue the matter.

Among major American newspapers, the *Chicago Tribune* was undoubtedly the Roosevelt Administration's most persistent and vocal adversary. Since the first days of the New Deal, Colonel McCormick's paper had attacked every single policy of the administration. Roosevelt and the members of his cabinet were continuously being described in strongly abusive terms and referred to as both communists and fascists. Where the administration was concerned, the paper had abandoned any pretence of journalistic objectivity.* Among the members of Roosevelt's cabinet, one man in particular, Harold L. Ickes, found it difficult to resist the *Tribune's* continuing taunts. In a book published in 1939, he devoted two whole chapters to an attack on the *Chicago Tribune*.³⁶ Ickes was aware that they were 'full of libel', but was advised by a friend of his 'to print them anyhow because he does not believe for a minute that McCormick would sue me, or that he could win in a suit. . . .'³⁷ Having spent most of his adult life in Chicago, before coming to Washington to become Roosevelt's Secretary of the Interior in 1933, Ickes admits to having regarded the *Tribune* for many years as a dirty and scurrilous sheet.

When Archibald MacLeish, Librarian of Congress, informed the President that the *Chicago Tribune* had attacked him, Roosevelt replied, welcoming him to the 'Society of the Immortals'. 'Bertie McCormick started it many years ago' — wrote the President — 'and he incorporated it in 1919 when he broke Woodrow Wilson's heart and made him the first of the Immortals.** The trouble is that Ber-

*In his 1937 study *The Washington Correspondents*, Leo Rosten reported that the subjects of the study considered the *Chicago Tribune* to be 'the least fair and reliable' individual newspaper in the country.

**Roosevelt was referring to the *Chicago Tribune's* most celebrated scoop of all time. In June 1919, the *Tribune's* Paris correspondent had secured a draft of the Treaty of Versailles three weeks before it was signed. After publishing the gist of it, the *Tribune's* correspondent brought a complete copy of the treaty to Washington and handed it over to Senator Borah, who placed the entire text in the *Congressional Record*.

tie, Joe Patterson and Cissie, deserve neither hate nor praise, only pity for their unbalanced mentalities.³⁸ As one of the foremost spokesmen of the 'America First' movement, Colonel McCormick intensified his attacks on Roosevelt even more after the outbreak of World War II, blaming him continuously for trying to involve the United States in the war. On 4 December 1941, the *Tribune* provided its readers with what it claimed to be incontestable proof of the administration's treacherous pro-communist intents. Under a banner headline, using the largest letters ever, details of 'FDR's War Plans' were spelled out. 'A confidential report' — the story began — 'prepared by the joint Army and Navy high command by direction of President Roosevelt calls for an American Expeditionary Force aggregating five million men for a final land offensive against Germany and her satellites. It contemplates total armed forces of 10,045,658 men.'³⁹ Written by Chesly Manly of the *Tribune's* Washington bureau, the story was based on a report which had been handed to the President on 11 September 1941. At his press conference on 5 December, Roosevelt refused to comment on the *Tribune's* disclosures. His press secretary told reporters that since there was no censorship in the United States, it was up to the government to keep its secrets. Secretary of War Stimson read a prepared statement to the press in which the paper's lack of patriotism was denounced in the strongest terms.⁴⁰

According to Harold Ickes, the matter had also been discussed in the cabinet. Attorney General Biddle said that not only had the Espionage Act been violated, but there had undoubtedly been a conspiracy involved. Ickes then asked whether Colonel McCormick was still a reserve officer, and if so, whether he could be court-martialled. The President asked the Secretary of War to look it up, but Stimson said that even if he were, he could not be court-martialled.

It did not seem to me — admits Ickes — that the President and other members of cabinet were particularly interested in this matter, although they were all very angry. . . . I continued to press and I think I may have made some impression. The President said. . . . that there might be something to my suggestion of a Republican as a special prosecutor. . . . I thought that an example ought to be made. As a matter of fact, I believe that the charge of treason should have been thrown at McCormick immediately. . . .⁴¹

As it turned out, no charges were brought. The FBI and the

Army and Navy intelligence services did not succeed in discovering the source of the leak, and after three days the United States was at war. Six months later, on 7 June 1942, when the *Tribune* published its Midway story, someone, in all probability Ickes himself, must have remembered this discussion. William D. Mitchell, who was chosen by Biddle to present the case to the grand jury, was indeed a Republican. He had been Attorney General under President Hoover.

How the *Tribune* got the story on 'FDR's War Plans' was only revealed many years later when, in 1962, Senator Burton K. Wheeler published his autobiography.⁴² A liberal on domestic policies, the Democrat from Montana was a pronounced opponent of America's involvement in the war. A numbered copy of the report was brought to his home on 3 December by an Army captain with whom he had been in touch, and left overnight. Wheeler felt sure that 'some top ranking officer or official must have ordered or authorized the disclosure'.* He was also convinced that disclosure of the document 'involved no violation of existing law', and fearing that the Senate's Foreign Relations Committee might 'bury it', he proceeded to show it to Chesly Manly, for 'I liked Manly and knew his paper would give the plan the kind of attention it deserved'. Upon receiving parts of the report which Manly had copied at Wheeler's house, Colonel McCormick congratulated Arthur Sear Henning, the *Tribune's* Washington bureau chief, for what he called 'perhaps the greatest scoop in the history of journalism'. McCormick must have felt especially gratified to have been able to publish this scoop on that particular day. For it was on 4 December 1941 that the *Chicago Sun* appeared for the first time. The appearance of the *Chicago Sun* was more than a commercial challenge to McCormick. For more than two years his paper had been Chicago's only morning paper. However, although it enjoyed a comfortable circulation of around 900,000 and proclaimed itself to be 'The World's Greatest Newspaper', the *Chicago Tribune* was not unanimously liked by the city's inhabitants. 'Everybody in

*In 1976 it was revealed that the purported paper, leaked to Wheeler was, in fact, a plant. It was concocted by the Political Warfare Department of BSC (British Security Coordination) in New York, out of material already known to have reached the Germans and some misleading information. Senator Wheeler was chosen to be the instrument of leaking the report to the anti-war press at the recommendation of FBI counter-intelligence agents. (See William Stevenson, *A Man Called Intrepid*, p. 318 of the Sphere Books edition, 1977.)

Chicago hates the *Tribune*,' an observer was writing early in 1942. 'For ninety years the *Tribune* has been fastening its parietic grip on Chicago, not by virtue of this issue or that, but by virtue of its simply being there, by virtue of its being a hard-hitting newspaper in a hard-hitting town, and by virtue of its being, mechanically and technically, one of the best newspapers in the world. . . .'⁴³ Since the beginning of the war, many Chicago citizens had grown increasingly annoyed with the *Tribune*'s editorial policy. The Chicago chapter of the Fight for Freedom Committee started organizing rallies and petitions in protest against the paper.⁴⁴ It was at this point that Marshall Field III decided to invest \$5,000,000 in a new morning paper in Chicago. He was already financing, at a considerable deficit, a paper appearing in New York, *PM*. Frank Knox, owner and former publisher of the *Chicago Daily News*, rented the *Sun* three floors and the use of mechanical equipment in the News Building.⁴⁵ Knox, a prominent Republican whom McCormick had supported for the Vice-Presidential nomination in 1936, had become one of the prime targets of the *Tribune*'s invective, after joining the Roosevelt Administration as Secretary of the Navy.

The *Sun*, as it happened, never seriously endangered the *Chicago Tribune*'s dominance of the market. It was, however, instrumental in dealing Colonel McCormick the only setback he was ever to receive at the hands of the administration. It only came in 1945, after lengthy legal proceedings when the United States Supreme Court found against the 'Associated Press', declaring it to be an illegal monopoly and pointing out that it could not invoke the First Amendment in its protection since by refusing to grant a franchise to the *Chicago Sun* it impeded the dissemination of information by imposing restraints on newspaper competition.⁴⁶ It had been at Colonel McCormick's insistence that the *Sun*'s application for an AP franchise had been turned down originally. McCormick had felt that in the name of press freedom, it was justified to exclude Marshall Field, whose New York afternoon tabloid 'was frankly New-Deal and pro-British' and who was himself educated at Eton and Cambridge and married to an English-woman.⁴⁷

On 6 August 1942, one day before Attorney General Biddle was to announce the grand jury investigation of the Midway story, *PM* started to publish a series on what it called 'The Newspaper Axis in America', namely the *Chicago Tribune*, published by Colonel McCormick, the *New York Daily News*, published by his cousin Cap-

tain Joe Patterson, and the *Washington Times Herald*, owned and published by Eleanor (Cissie) Patterson, Joe's sister. (The Midway dispatch as well as the 4 December story on FDR's 'War Plans' had been published by all three newspapers.) 'The Axis pattern of the three newspapers', said *PM*, 'first began to emerge about Munich time. Then, all were appeasers. In lend-lease days, all were isolationist. Today, after minor divergencies in the eight months since Pearl Harbor, the colonel, the captain and Cissie are again together — unanimously parroting each other's and Hitler's favorite propaganda themes.'⁴⁸ The *PM* series on the subject was published almost daily until 19 August, using photostatic evidence from the three papers and from Axis sources to prove its point. At the very same time, Rep. Holland (Dem.-Penn), was making similar charges in the House.⁴⁹ It should be recalled that during this period Nazi sympathizers were being tried for charges of treason in Chicago and elsewhere, and that six Nazi saboteurs who were landed in the United States by submarine had just been executed after trial by a Military Court.

The *Chicago Tribune*, in the meantime, was preparing against a possible indictment by the grand jury. On 8 August, the day after Biddle's announcement, or, to quote the *Tribune* — Biddle's 'attack' upon it — there appeared a lengthy story to explain how Johnston had written the Midway dispatch. Johnston's heroism during the battle of Coral Sea is also described as well as his own and Maloney's World War I records, which are cited as proof of their patriotism.*

*Johnston was an Australian, who had enlisted at the beginning of World War I, when he was only fourteen years old. After the war he became a mining engineer and worked in the New Guinea gold mines for ten years. He then went to Europe and worked in several cities on a new automatic wireless printer which was then being installed for Press Wireless. When the Germans invaded Holland he escaped to London and it was there that his relationship with the *Tribune* began, first in a technical capacity and later as a correspondent. He was then brought to Chicago and, after becoming an American citizen, was sent to the Pacific. After the war he was sent by the paper on a brief tour in Latin America. Apparently his performance in peacetime was not very satisfactory, because when he returned to Chicago, it was 'to assist in the promotion department'. Colonel McCormick seemed to have reserved a special place in his heart for Stanley Johnston. A copy of Johnston's Coral Sea dispatch, framed in gold, had moved him to tears when presented to him by the *Tribune's* staff. When McCormick died in 1955, Johnston was made general manager of his estate, Chantigny, which was left in trust and opened to the public. Johnston died in 1962.⁵⁰

Biddle, the *Tribune* tells its readers, quoting from *Who's Who in America* 'served in the US Army from October 23 to November 29, 1918. The armistice was signed on November 11.'

On 9 August, the *Tribune* demonstrated that it was going to fight the issue along political lines. It also replaced the slogan on its editorial page with a quotation from Thomas Jefferson on the Freedom of the Press. In an editorial, moved to page one, it declared:

The attack on the *Tribune* is now in the open. An administration which for years has been seeking by one sly means or another, but always with complete futility, to intimidate this newspaper has finally despaired of all other means and is now preparing criminal prosecutions. . . . We take pride in the knowledge that the administration was moved to this action because of its previous failures to scare us or cajole us into surrender of our independence. How far they were prepared to go is suggested by the fact that one Republican editor of a far smaller and far less influential Chicago paper has been taken into the cabinet. . . . this newspaper was not open to such offers. It is not for sale at any price.

That day's article on the matter is devoted to a detailed description of how Secretary Knox favoured his own newspaper at the expense of the *Tribune* and other papers. It also says that Knox is getting \$60,000 a year in 'an advisory capacity' from his newspaper, while his salary as Secretary of the Navy is only \$15,000. 'How much time he puts in on each [job] is probably a military secret.' The prosecution against the *Tribune's* naval correspondent, it is implied again and again, is clearly the making of the Secretary of the Navy, who had also held up the recommendation to cite Johnston for his bravery in the battle of Coral Sea.

On 13 August, Rep. Hoffman (R.-Michigan) repeated these charges, placed the *Tribune's* article in the *Congressional Record* and formally asked for an investigation of the charges against Knox.⁵¹ Charges of political persecution against the *Tribune* were also made in the Senate by Senator Wayland Brooks (R.-Ill.) who, among other things, read into the record Colonel McCormick's citation for a Distinguished Service Medal in World War I. Brooks also accused the government of conducting a smear campaign against the *Tribune*. His charges were echoed by Senator Robert A. Taft (R.-Ohio) who mentioned the *PM* articles as proof of the administration's attempts to smear the *Tribune*. Taft was careful to point out that he was speaking from hearsay, since he did not read 'the sheet — the little pipsqueak, so-called newspaper, *PM*

...which is merely the veriform appendix of Marshall Field's Chicago newspaper...'⁵²

On 17 August, *Time* magazine summarized the defence line taken by the *Tribune* and pointed to the effect this might have on the government's own position: 'It looked very much as if Publisher McCormick might make the public believe that he was being persecuted unless the government would loosen up enough to tell what real damage the *Tribune* story had done.' Members of the grand jury were also reading the newspapers. As Mitchell wrote to Biddle after the jury had concluded its hearings, 'the Grand Jury were rather flabbergasted at being asked to consider an indictment when the Government refused to disclose to them that any damage did or could have resulted...'. Mitchell was apparently worried that more would be made by the grand jury of this aspect of the matter, for, in his letter to Biddle he concluded that 'notwithstanding the outcome of the Grand Jury inquiry, I think we got off fairly comfortable [sic]...'. He was particularly pleased at having convinced the members of the jury of Knox's innocence. 'The *Tribune* had been charging that the case had been instigated by Secretary Knox, a personal enemy of the *Tribune*, and the jury murmured something about that, but I called their attention to the fact that Secretary Knox had granted the *Tribune*... the privilege of having a special correspondent with the fleet and that did not look like mistreatment to the *Tribune*, and the jury all nodded their heads and appeared satisfied that Secretary Knox was in the clear.'

The grand jury's finding cut short the *Tribune*'s campaign. As we have mentioned already, it was more than content to drop the matter, notwithstanding its proclamations of political persecution. Thirty years later the *Tribune*'s editor, Clayton Kirkpatrick, was again repeating the original version of how Johnston wrote his story on the basis of his own 'remarkably accurate' deductions, concluding that 'the *Tribune* has never wavered in its convictions that the controversial stories violated no law and that publication was consistent with a newspaper's privileges under the First Amendment. Only a distortion of history could support the insinuations that the newspaper violated national interests.'⁵³

President Roosevelt and some of the members of his cabinet must probably have felt disappointed that in the interest of safeguarding a supremely important military secret, the politically attractive option of prosecuting the *Chicago Tribune* had to be abandoned. One can only speculate as to the outcome of such a

trial, had it taken place, and as to the result this may have had on future developments in the area of prior restraint on the press for reasons of national security.

The affair did have some consequences which should be mentioned at this point. On the day the Midway dispatch was published, the censorship code was changed to include the stipulation that news items describing advance knowledge on the subject of the movements of enemy troops, planes and ships should also be submitted for prior examination to the Office of Censorship. Such a demand had not been included in the original version of the code, as published in January 1942.⁵⁴ The fact that the supplementary regulation was issued after the *Tribune's* story had appeared was construed by the paper as proof that 'previously promulgated regulations did not forbid such publication'.⁵⁵ In the technical sense this was no doubt true. It proves that, for six months after the United States had entered the war, its Censorship Office was not aware of the potential danger of revealing intelligence sources by allowing newspapers to publish stories describing the enemy's plans of action. This, in itself, is hardly surprising, since the growing operational value of communication intelligence had not been demonstrated before. The battle of Midway was, in fact, the first instance in which its overbearing importance had been proven beyond any doubt. After the battle, Admiral Nimitz had recommended that Commander Rochefort, Head of the Cryptanalysis unit, be awarded the Distinguished Service Medal. His recommendation was turned down by Admiral King, not because King doubted the importance of the unit's contribution to victory, but because he believed that it could not be attributed to a single officer.⁵⁶

In 1951 the provision forbidding the unauthorized disclosure of classified information 'obtained by the processes of communication intelligence from the communications of any foreign government . . .' was added to the Espionage Act.⁵⁷ The term 'communication intelligence' is defined as 'all procedures and methods used in the interception of communications and the obtaining of information from such communications by other than the intended recipients'. While American newsmedia in recent years have been increasingly distrustful of any claim made by the government as to the damage to the national security which might result from publication in the news, they appear, at least for a time, to have shared the view that communication intelligence was indeed an area of utmost sensitivity. Even after the *New York Times* started

publishing the *Pentagon Papers*, it did comply with the CIA's request to withhold several pages with specific data on the subject.⁵⁸ In 1974, after the *New York Times* correspondent Seymour Hersh had learned that the CIA was attempting to raise a sunken Soviet submarine which, among other things, was said to contain important communication intelligence data, Agency Director Colby met with the Editorial Board of the *New York Times*, the publisher of the *Washington Post* and with the heads of other important news organizations and succeeded in convincing them to keep the story out of circulation. About a year later, in February 1975, a partial version nevertheless got into print, published by the *Los Angeles Times*. At this point, Hersh started to work on his story again, and the CIA redoubled their efforts to keep him from publishing it. A classified CIA message, written at this time, notes that 'Mr Hersh might be amenable to being educated on technical collection systems', and that 'he writes about information which he really does not understand and therefore is insensitive to what is truly highly classified'.⁵⁹ The story eventually got published. The problem involved in such publication has remained. The need for secrecy in military affairs in a world which is not made up of open societies cannot be wished away, and no amount of evidence as to the abuse of secrecy by democratic governments can diminish it. Stated in this manner, the problem, really, is one of definition — of defining the area of secrecy as narrowly as possible. Communication intelligence, it would appear, should be covered even by the narrowest of definitions, for it is a truly technical subject, of no relevance to laymen. Devising a mechanism to forestall accidental publication of related information should therefore not be construed as a matter of principle. A mechanism of this kind is necessary because such information, once revealed, whether inadvertently or not, cannot be made secret again. Furthermore, irrespective of their intent, prosecution of those responsible is almost impossible, as we have seen. This is as true today as it was in the summer of 1942.

Notes

I should like to take this opportunity to thank the Yale Law School for allowing me to spend the academic year 1977-78 in residence as a Visiting Scholar. This paper, and other work I have done in the course of the year, would not have been possible without the excellent facilities of the Law School Library and of Yale University's Sterling Memorial Library.

For helping me trace some hitherto unpublished materials, I should like to thank Mr William R. Emerson, Director of the Franklin D. Roosevelt Library at Hyde Park, Dr D. C. Allard, Head of Operational Archives at the Navy Historical Center, Washington, DC, Commander Thomas B. Buell, of the US Navy and the Department of History at West Point, and Dr Grant Sanger, of the Department of Surgery at Columbia University.

Finally, a word of thanks to James C. Goodale, Visiting Professor of Communication (News Media) Law, at Yale Law School. It was he who asked the question which set me off on the search, which resulted in the present study.

1. Arthur Schlesinger Jr., 'Truth or Reputation', *New York Times*, 24 June 1971, 39.
2. Clayton Kirkpatrick, 'The Chicago Tribune', *New York Times*, 9 July 1971, 31.
3. *Chicago Tribune*, 8 August 1942.
4. Letter from Secretary of the Navy, Frank Knox, to Attorney General Francis Biddle, dated 9 June 1942, from copy in file PSF, F. D. Roosevelt Library, Hyde Park.
5. Francis Biddle, *In Brief Authority* (Garden City, NY 1962), 248-251.
6. *Chicago Tribune*, 8 August 1942.
7. *Chicago Tribune*, 21 August 1942, 12.
8. *Time*, 31 August 1942, 64.
9. Biddle, op. cit., 250.
10. Quoted by *Time*, loc. cit.
11. *Congressional Record*, Vol. 88, part 5, 77th Congress, 2nd Session, 7011.
12. David Kahn, *The Codebreakers* (New York 1967), 591.
13. Op. cit., 595-603.
14. Op. cit., 587.
15. E. B. Potter, *Nimitz* (Annapolis, Maryland, 1976), 82.
16. Letter from William D. Mitchell to Attorney General Francis Biddle dated New York, 25 August 1942. From copy in Box 5, Secretary Knox Papers, Operational Archives, Naval Historical Center, Washington DC.
17. Letter from Secretary Knox to William D. Mitchell, dated 2 September 1942, *ibid*.
18. Letter from Admiral Sir Andrew Cunningham, British Admiralty Delegation in Washington, to Admiral King, dated 15 August 1942. Box 2, Admiral King Papers, Operational Archives, Naval Historical Center.
19. Memorandum from Admiral Willson to Admiral King, 16 August 1942, *ibid*.
20. Letter to author, 30 March 1978.

21. From Midway message file, Nimitz Papers, Operational Archives, Naval Historical Center.

22. *Chicago Tribune*, 7 June 1942, 1.

23. Grant M. D. Sanger, 'Freedom of the Press or Treason?', *US Naval Institute Proceedings*, September 1977, 96-97.

24. Among them is Phillip Knightley who, in his book on the history of war correspondence, repeats the *Tribune's* own version of the incident almost verbatim, see *The First Casualty* (New York 1975), 284.

25. *Chicago Tribune*, 8 August 1942.

26. Stanley Johnston, *Queen of the Flat-Tops: The USS Lexington and the Coral Sea Battle* (New York 1942). Following his recent experiences, Johnston was careful to point out on the title page of his book that 'the information herein had been inspected by the Office of Censorship, which found no objection'. Otherwise there seems no evidence to warrant Phillip Knightley's conclusion that Johnston's reputation had been ruined as the result of his having been linked with espionage allegations. His book received excellent reviews and in 1943 he published another bestseller about the exploits of naval combat pilots in the Pacific War, *The Grim Reapers* (New York, 1943).

27. *Chicago Tribune*, 8 August 1942.

28. Francis E. McMurtrie, *Jane's Fighting Ships* (New York 1942).

29. Rear Admiral Clyde J. Van Arsdaal, Jr. (Comment on 'Freedom of the Press or Treason?') *US Naval Institute Proceedings* (December 1977), 77-79.

30. From memorandum by Walter Muir Whitehill, dated 30 July 1950 supplied by Commander Thomas Buell from his personal files.

31. *Chicago Tribune*, 15 August 1942, 1.

32. Potter, op. cit., 82.

33. Pp. 472-475, oral history of Arthur H. McCollum, on file in the US Naval Institute, Annapolis, Maryland.

34. From Box 57, file 231 COMINCH files, Operational Archives, Naval Historical Center.

35. From minutes of Admiral King's Press conference of 7 June 1942.

36. Harold L. Ickes, *America's House of Lords: An Inquiry into the Freedom of the Press* (New York), Chapters X, XI.

37. Harold L. Ickes, *The Secret Diary of Harold L. Ickes* (New York 1954), Vol. II, 698.

38. Letter from President Roosevelt to Archibald MacLeish, 13 July 1942, No. 6295 PPE file, FDR Library.

39. *Chicago Tribune*, 4 December 1941.

40. *New York Times*, 6 December 1941.

41. Ickes, *Secret Diaries*, Vol. III, 659-660.

42. Burton K. Wheeler with Paul Healy, *Yankee from the West* (New York 1962), 32-35.

43. Milton Mayer, in *The Nation*, 7 March 1942, 279.

44. Jerome E. Edwards, *The Foreign Policy of Colonel McCormick's Tribune 1929-41* (Reno 1971), 195-205.

45. John J. McPhaul, *Deadlines and Monkeyshines — The Fabled World of Chicago Journalism* (Englewood Cliffs, NJ), 292.

46. *Associated Press et al. vs. United States*, 326 US (1945) 20. 'Freedom of the

Press from Government interference under the First Amendment does not sanction repression of that freedom for private interests' (opinion of the Court).

47. Philip Kinsley, *Liberty of the Press: A History of the Chicago Tribune's Fight to Preserve a Free Press for the American People* (Chicago 1944), 57-58.

48. *PM*, 6 August, 3.

49. *Congressional Record*, Vol. 88, part 5, 6803-6807. In Chicago, the local branch of the Union for Democratic Action published a pamphlet entitled *The People vs. the Chicago Tribune*. Although published anonymously, this utterly libellous pamphlet was written by Elmer Gertz, a Chicago attorney, who many years later was to be awarded damages for libel by a newspaper following the Supreme Court's decision in *Elmer Gertz v. Robert Welch Inc.*, 418 US 323 (1974).

50. *Chicago Tribune*, 14 September 1962, 1-2; *New York Times*, 14 September 1962.

51. *Congressional Record*, Vol. 88, part 5, 6849-6852.

52. *Ibid.*, 6785-6792.

53. *New York Times*, 9 July 1971, 31.

54. *New York Times*, 15 January 1942, 12.

55. *Chicago Tribune*, 8 August 1942.

56. Potter, *op. cit.*, 104.

57. 18 USC §798, added 31 October 1951 cc. 655 §24(a) 65 Stat. 719 quoted in *Freedom vs. National Security* by Morton H. Halperin and Daniel Hoffman (New York 1977), 254.

58. According to James L. Greenfield, Assistant Managing Editor, *New York Times*, in oral communication, 31 October 1977.

59. From classified CIA message, dated 26 February 1975, released, as was other information quoted on subject, between June and September 1977, as the result of action brought by Harriet A. Phillippi against the CIA, under the Freedom of Information Act. (Civil Action No. 75-1265, US District Court, for the District of Columbia.)

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