"National security' vs right-to-know is ongoing debate

"Necessary Secrets: National Security, The Media And The Rule Of Law" By Gabriel Schoenfeld, Norton ($27.95)

Sunday, August 08, 2010
By Glenn C. Altschuler

Following Sept. 11, 2001, William Safire, the conservative columnist for The New York Times, claimed that the "fundamental right of Americans, through our free press, to penetrate and criticize the workings of our government is under attack as never before."

Nicholas Kristof, his liberal colleague, agreed that the policies of the Bush administration "would appall us if they were happening in Kazakhstan."

This "conventional wisdom," argues Gabriel Schoenfeld, is wrong. A senior fellow at the Hudson Institute and former editor at Commentary magazine, Mr. Schoenfeld believes that the United States remains "the most open society in the world."

Acknowledging that democracy depends on the free flow of information, he insists that secrecy is essential to the "fundamental business of government, namely self-preservation." He also believes that recently the press has moved from an excess of deference to an "excess of defiance," regarding itself as "the sovereign power, above the three branches, and free to violate democratically enacted laws in pursuit of its mission."

Mr. Schoenfeld provides an informative and often fascinating account of attempts throughout American history to promulgate policies that would protect national security without unduly limiting "discussions of matters of vital public concern."

From the First Continental Congress to the Cold War (and beyond), he demonstrates, virtually no one maintained that the First Amendment gave editors an absolute right to publish anything they wanted.

The Comint Act of 1950, which makes it a crime to publish any classified material involving intelligence activities, for example, is still on the books.

The author thinks the U.S. Justice Department should have used it in 2005 to prosecute The New York Times for running an article in revealing a National Security Agency program designed to tap al-Qaeda phone calls and e-mails.

Such action is necessary, Mr. Schoenfeld claims, because the media is not exercising adequate self-censorship and because government claims of damage due to disclosure are "plausible."

But, as Mr. Schoenfeld knows, the assertions of administration officials can be discounted "as self-serving or exaggerated." They certainly were with the Pentagon Papers.

The author seems insufficiently concerned about the use of secrets to hide government illegal activity. The NSA was not, in fact, "functioning within the normal give and take of our constitutional system."

According to most knowledgeable observers, the wiretaps violated the Foreign Intelligence Surveillance Act of 1978, which stated that special courts created by that act shall be "the exclusive means" by which electronic surveillance might be authorized. If President Bush believed that advances in communications technology and the terror threat rendered the '78 law unsuitable, he should have asked Congress to revise the law.

Mr. Schoenfeld's evidence doesn't justify his conclusion that an extremist press is "wantonly compromising operational terrorist programs." Or that the government should initiate criminal prosecutions to put them in their place.

Quite the contrary. In this dangerous world, it is necessary for politicians and government bureaucrats to keep some secrets. And just as necessary for the press to continue to do its part to hold their feet to the fire in behalf of an informed electorate.

Glenn C. Altschuler is the Thomas and Dorothy Litwin Professor of American Studies at Cornell University.