

EPISODE 503

[INTERVIEW]

[00:00:01] AH: Welcome to this week's episode of SpyCast. So, I'm a spy, and I'd like to write a book. This week's guests include Nada Bacos, a former CIA Analyst and Chief targeting Officer' Mark Fallon, a former NCIS Special Agent, and Director of the Criminal Investigative Task Force at Guantanamo; and Frank Snepp, a former Chief Analyst of North Vietnamese Strategy for the CIA during the Vietnam War. What did they have in common? They all wanted to tell their story. They all wanted to write a book. And they all turned to one man for help, Mark S. Zaid esquire, one of the nation's top national security lawyers. Indeed, as the National Law Journal one wrote, "If agent Molder ever needed a lawyer, Zaid would be his man."

This week's guests discuss their motivations, frustrations, victories and defeats in publishing the targeter, unjustifiable means and decent interval.

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I just want to kick it over to Mark now. Set the scene for us. What exactly are we talking about here? What's at stake? Help give our listeners an understanding of the landscape as you see it as someone who has represented so many people that have tried to get their book or their story out but have struggled to get it out?

[00:02:37] MF: Absolutely. And we've got a stellar group of people here. Of course, I have to first say that participating in this podcast is also to make sure that I dominate on your predecessor, Mark Stout, who was the historian at the Spy Museum before you, who we have a running joke of who does more podcasts? And I am hopefully now in the lead or close to taking over from him.

This is a fascinating topic, and one which lots of people interact with, but probably don't realize it as they read some of the bestselling books that come out from former government officials, especially in the intelligence, and military, and law enforcement communities. So I've been working on these cases now, for almost 30 years, 25 plus years of representing individuals from within these communities who has prepublication review requirements.

And to talk at a 30,000 foot view so that we don't get too much into the weeds from the legal perspective, those folks who have access to classified information in the US Government at different levels have different pre-pub review obligations. If you have access to what's called SCI, Sensitive Compartmented Information, which you would normally hear as a TSSCI in the lingo that we're familiar with, Top Secret SCI information, the contractual documents that they sign requires a mandatory pre-pub review.

If you have had access to a lower level of classified information where the majority of federal officials are, millions of people, they don't have a pre-pub obligation, but they do have a legal obligation not to publish classified information. And I still always recommend to clients that no matter the level that they have had access to, that they submit the book for pre-pub, because the reality is the last thing you want to ever have to do is defend yourself in a criminal proceeding against the US Government. I'd much rather represent you in a civil proceeding to challenge classification determinations that we don't agree with than the other way around.

But once you put it in, and the problems are, and we're going to hear this throughout the stories we'll hear today, there is a tremendous amount of flexibility, of inconsistency, of problems with timing. How long does it take for the book to be reviewed? What information is reviewed? What is the scope of the information that is subject to pre-publication review? And I'll say just to separate it from the table, we're only going to be talking about those individuals who have already left government service. There are different rules if you still remain in government and

you are trying to write a book. If you're still, let's say, in the CIA, forget being a contractor, but as a CIA employee, there's still a difference.

But the bottom line to kind of finish off the introduction in some way is there is no – It is well-settled. There is no First Amendment right to the publication of classified information. So the key to understand what these obligations is everyone who has had access, like I said, has an obligation not to print or disclose verbally or in writing classified information. It's a separate issue on the pre-pub review requirement. Meaning, if you do not submit the book for pre-publication review, the government can go after you for breach of contract. A simple contract just like anyone who enters into any contract, meaning, for the SCI component, if you don't submit. And Frank, of course, will talk a lot about that, because that was much of Frank's situation almost, well, 40 years ago already.

So what we're seeing and we'll turn back around with John Bolton's situation. John Bolton is both being accused of breaching his contract for not having completed the review, and submitting the book, without having permission from the government, but also for containing classified information. And that can be criminal or civil. And they're very different situations. And the burdens are, of course, very different. But that's the basic overview of the situation.

And of course, we'll talk about how different agencies handled these different review obligations. And I'll say it's complicated, controversial. You'll hear frustration. I'm sure it will be the consistent factor from each of our three other guests, deservedly so, understandably so. And hopefully, we'll come up with some ideas of how to better the system.

[00:07:36] AH: Well, thanks for the 30,000 feet view, Mark. That's been really helpful. And I think it'd be really interesting now to explore our three distinguished guests, their stories, their careers, how their own individual lives intersected with this issue, because I think that at one level it's obviously an abstract matter of law or principle, but we're talking about real people with real lives and it's affected them in various ways. And one of the people, Frank Snepps, because his case was one of the landmark, if not the landmark case in this issue. So, over to you, Frank.

[00:08:13] FS: One of the most important elements to pre-publication review is time. Time. It takes time. I was one of the last 17 CIA officers to come off the roof in the Embassy in Saigon,

April 29th 1975. I quit the agency a year later and published my memoir about the events in 1977. That was lightning fast, because time was of the essence. I was hoping to shame the United States Government into intervening diplomatically or, otherwise, to save the Vietnamese we'd left behind in Saigon, and especially those who had worked for the CIA who were in imminent danger because of their association for us.

I was partially successful. And I want to put this out right up front because it humanizes what happens and why pre-publication review and the way it's conducted and delays involved can be so dangerous. After my book was published, the top US rescue refugee coordinator in Thailand said, "Decent interval my memoir that helped catalyze international support for Vietnamese escapees." I was trying to help them. And my book helped.

And communist officials in Hanoi told journalists that because of my book, they had decided to let 1 million boat people escape Vietnam. Because based on the numbers I published, there were too many Saigon loyal Vietnamese left behind to reeducate, rid, kill. So my book accomplished what it was designed to do. Had it been delayed forever and ever and ever, that would have been one more life every day, many lives every day of Vietnamese we left behind being persecuted. And because of the book, because I got it out fast, within literally two years of my leaving the agency, it did some good. And that's what I was – In fact, it makes everything I went through justified and bearable. And I would do it all over again just the same way despite everything that happened.

The reason I resigned from the agency to write a book is because I knew that active duty employees – And Mark, you mentioned this. Active duty employees are under different obligations. And I knew I would never be allowed to publish the book I did if I'd been at the agency. In fact, I had pleaded with the agency to do an after action report on the fall of Saigon so we can learn from our mistakes so we wouldn't do it again so that people would be prompted to look to the safety of the Vietnamese who had been left behind.

When I published my manuscript, as now is history, I published it without CIA clearance, because I thought I was entitled to do so. I thought I was entitled to do so as a former employee. And as long as there were no secrets in my manuscript, the last five secrecy agreements I signed, and listen to this, folks, I signed six of them. And the last five I signed did not cover

secrets free, or I should say, they covered only material that was classified. I was not required to submit for pre-publication review. And again, folks, that is a fancy word for saying censorship before the book or manuscript is published. But I wasn't required to submit any such manuscript that did not contain secrets. And I believe me, I had no intention of publishing any secrets. The last thing I wanted to do was to cause further injury to the Vietnamese we had left behind. On my last day, and I'm sorry to get into these details, but I want you to live with me, the experiences that you have, and the last day I was at the agency, I told my exit interviewers that I was leaving to write a book because I didn't want to submit it for censorship. I told them I would protect secrets. They said nothing to me about clearing anything else, non-secrets. What the hell was that? I wasn't going to publish non-secrets. I'm also going to publish secrets. I was going to publish only what I thought was safe to publish. And they did circulate, by the way, on the day I left, a warning to fellow CIA employees. And they said to the employee, "Stay away from Frank Snepp. He's writing a book and he's not going to submit it for review." They said that right at the beginning. Everybody knew it. Everybody knew I was a bad guy. They signal this to everybody. So never let anyone tell you that the agency didn't know what I was up to. And by the way, those documents were produced in litigation by the government. So it was on record from the very beginning that I was a bad guy from their standpoint. I was not going to submit for review. But I told them, emphatically, I will publish no secrets.

Now, folks, it never occurred to me. Never occurred to me that I would need the agency's help to identify secrets in my manuscript, that I have to bring agency censors to tell me what secrets were. Folks, I had been trained to identify secrets. Mother of God, I knew secrets of the Gazoo. I knew what they look like. I knew what they smell like. I could classify them myself. During my five and a half years in Vietnam, I was attached to a small, elite unit of analysts, which were cleared for all sorts of intelligence. That's SCI. You name it. There wasn't a secret we didn't know.

Now, once in a while, there were some methodologies we didn't know about. We know every secret that mattered in Vietnam. And eventually I became the CIA, the Senior CIA Analyst charged with protecting enemy intentions. I was the ambassador's principal intelligence briefer. At his behest and blessing, I routinely briefed journalists spontaneously, spontaneously.

Mark, I'd be briefing you. I didn't need the agency looking over my shoulder to edit out secrets. I knew instinctively, and I never betrayed them. So I knew how to protect secrets I didn't need big brother telling me, "Well, strike this out." I knew how to do it. And that's, by the way, what separates me – And I say this with no humbleness, because it happens to be true. But it may separate me from people who are not so well-trained. And that's one of the secrets here, folks. You've got to train analysts, operatives, people in the DoD better how to protect secrets when they're on the job so that becomes instinctive, right? That's the key part of it.

Anyway, one of the things I did when I was in the agency, I was deeply involved in our most sensitive intelligence operations involving agents behind enemy lines. I bring this up because it brings, again, this story to a personal level. Two weeks before the end of the war, I met with this agent, Vo Van Ba is his name. His name is now known because the communist captured documents about him and have published them, which I couldn't do when I was writing my book. But anyway, so I talked to Vo Van Ba. He comes in. He is dressed as a woman. He's been flown into Saigon posing as a dead person. He arrives, he loves Budweiser beer. We sit down. We begin talking. He tells me what the communists are going to do. What they're going to do is they're going to attack Saigon within two weeks. They're not going to provide for negotiations. They've had it with the negotiations. And he gave us the blueprint. He was like having an agent inside Hitler's bunker. He gave it all to us, all to us. The US Ambassador discounted that report. He bet on negotiations, and he did not plan for an evacuation in time. And that's why so many Vietnamese were left behind.

I love Vo Van Ba. And one of the reasons I wrote these novels because I did secrets. Folks were not abstract for me. They embodied voices, lives, aspiration, sacrifices of the bravest people I knew, and you that I was going to protect them. After the communist seize Saigon, and I want to, again, set the scene for you, because this happens a lot of time. The agencies tries to censor out material that has already spilled into the public domain. In my case, that was in spades, baby. After the communist seize Saigon, they picked up, they located thousands and thousands of classified US documents that had been left undestroyed. The agent, Vo Van Ba, who talked to me, bad things happened to him.

A CIA, a friend of mine was captured by the communist and gave up the guy's identity. The day Saigon fell or after it fell, Vo Van BA was arrested. He was tortured. And he hung himself with

his belt. One of the bravest men I ever know. Ran risk for us. And we wound up getting him killed. The point is, the point is apart from intelligence methods, there were no meaningful secrets about Vietnam that survived the communist takeover. And so I kept the identity of Random House as my publisher secret. We were running a spy operation. I'd meet with my editor in the parks to handoff manuscript to him. I practiced tradecraft stagecraft. I would look in mirrors to make sure I wasn't being followed. I worried about being monitored on the telephone. By the way, in discovery, we found out the agency had assigned a case officer to me as if I were a hostile spy. I had a major confrontation with the CIA Director, Admiral Stansfield Turner. He was a nice, wonderful old guy. Didn't know what the hell he was doing as the Director of the CIA. A lot of people had turned against him. So he's so pissed off. He didn't want anything, anybody showing indiscipline. And I was the walking example of indiscipline in his view.

I met with him and I said to him, "Admiral, this is just a few months before publication." I said, "Admiral, I'm not going to publish any secrets. I'm going to protect secrets and I'm going to adhere to my secrecy obligations. Period. Over and out. You don't have to worry, Admiral. I'm on your side." He pulled out a secrecy agreement I hadn't seen in nine years. This secrecy agreement is the one I signed when I joined the agency in 1968. And it was a doozy. It was like something I'd never imagined. It surprised me. It said that I had to clear everything. Whoa, not everything. Did that mean if I wanted to talk about the agency cafeteria's menu? That had to be cleared. This is what this document implied more than that. And here's the real Zinger. It said it was agency policy to disallow publication of anything. So this document I had didn't make any sense, right? And I walk in and I said, "Crap, I'm not going to stay with this anymore. I'm going to go ahead and do what I intended to do in the first place. I'm going to publish my book as I see fit. I did so.

A month after the book was published, in November 1977, and it hit the newsstands. It was all over the New York Times. I debuted on 60 Minutes. I was just hot shot. And I was outrageous. That was part of the problem. I had a huge exposure. Huge. I got publicity that hadn't been devoted to an actual security story since the Pentagon Papers case. It's hard to imagine.

So what they did was to bring lawsuit against me. The Justice Department said that for all practical purposes, there were no secrets in my book. That's right. They basically said that everything I had written was in the public domain. My sin, they said, was that I published it

without clearance. Also, there's a problem with the idea of a secrecy agreement as a contract – Mark, hello, there. There's a big problem with it.

Under contract law, you've got to prove damage in order to collect damages, unless you're going to collect a dollar for symbolic reasons. But how do you calculate damage from a book that contains no secrets? That was a problem for the government. So what they did, they reached back to British common law and they said, “But think horse thief. Think horse thief.” Francis Snepp is like a horse thief. He’s stolen a horse. And he's now required to restore all the money made from the horse, or reselling it to the government, or to the owner, the government. And that's how they justified confiscation of all of my profits without any showing of damage.

[00:22:31] AH: Well, there's a lot there that I would like to unpack a little bit more. And I'm no lawyer, but I'm pretty sure that if you dig back into English common law, you can reach just about any conclusion you want. Because I'm pretty sure there's still some law that says that it's legal to kill a Scotsman within the city walls of York with a bow and arrow. That's my before another SpyCast. So let's move on to Mark. Tell us a little bit more about your story, and frustrations, and things that you encountered along the way.

[00:23:04] MF: I wrote *Unjustifiable Means* because I felt compelled to. Torturers and their apologists made a concerted effort to rewrite history, shake the perception of the American public, and they use dubious claims of heroic action. But there's nothing heroic about abusing a defenseless human being. Those actions cost lives. Those actions are a stain on the constitution. Those actions contributed to the proliferation of global violent extremism and turn the global war on terror into a global war of terror. We continue to pay the price for accepting torture as a matter of national policy. Truth matters, and the public deserves to know the truth about torture. And so I wrote *Unjustifiable Means* because I was compelled to.

Now let me talk a little bit about my background, my career, and what I've done subsequent to government service that continues to be censored in the manner in which Frank has described. So of no concerning issues related to prepublication review, some of the issues that were paramount was that I was Chief of Counterintelligence operations for the NCIS Europe, Africa Middle East division. So I was responsible for the collection, assimilation, I had teams of

analysts, and the dissemination of any threat warning information regarding the Department of Navy, the Navy or Marine Corps.

When the USS Cole was attacked, I became the Tactical Commander of the USS Cole Task Force investigating the al Qaeda terrorist network for the attack on the Cole. Now those responsibilities included both criminal investigation, which we work jointly with the FBI as a federal agent, and the collection of intelligence and dissemination of intelligence in the Department of Defense as collectors as the primary counterintelligence agency for the Navy or Marine Corps.

Subsequent to that, after the attacks of September 11th, I was detailed to the army and reported to the office of Secretary of Defense the general counsel for Donald Rumsfeld. And I became the Deputy Commander and Chief Investigator for the Criminal Investigation Task Force. And I was the government's Chief Investigator responsible for the investigation of the al Qaeda terrorist network for trials before military commissions. Those trials that are continuing at Guantanamo Bay, Cuba 20 years after the offenses that some of those have been accused of where I involved in.

Also, I also served on the Board of Governors of the Department of Defense Joint Counterintelligence Training Academy. So that's the entity that oversees the counterintelligence training within the Department of Defense and on the Federal Law Enforcement Training Accreditation Board, accrediting federal training academies. So that is totally unclassified in those reviews.

In 2010, when I retired from government service, I didn't fade away and become nothing, okay? I have a career post-government service that continues to be censored. So in 2010, I became the Senior Vice President of The Soufan Group, and international consultancy, and the Director of Law Enforcement Programs at the Qatar, or Qatar, as most Americans pronounce it, International Academy for Security Studies.

I was a Program Manager for Studies of Violent Extremism, and traveled around the world with a team of researchers that included former FBI, former CIA, former NCIS personnel. And we interviewed formers, former extremist, former combatants, former terrorist. We traveled to

France, Indonesia, Northern Ireland, Singapore, Great Britain, and we talked to formers all over the place. We talked to former IRA combatants, loyalists groups, Jemaah Islamiya, al Qaeda and their affiliates. We spoke to convicted terrorists. We went into jails. We debriefed Ali Imron, one of the Bali bombers. We spoke to terrorists financiers, terrorist training camp, Amir's, terrorist recruiters and terrorists radicalizes.

We submitted a report to the Interpol General Assembly, and we did a follow-on study on narrative strategies and counter-narrative strategies. Okay, through all of that period, those two years of doing these interviews, writing reports, publicly disseminating them, not once did anyone come back and say, "Hey, did anybody review those things?" Because never do we envision that that post-government work would require someone to take a look and review and potentially censor our material.

So in 2012, I started my own strategic consulting firm, ClubFed LLC. And when President Obama issued Executive Order 13491, saying the government will no longer torture. That led to the establishment of the US Government's high value detainee interrogation group. And that led to the first time in 50 years of major US government sponsored research into why somebody would actually give us information. Okay, so why someone would talk to us? And how we would extract it? We're not going to torture, because we know that doesn't provide accurate and reliable information. What techniques should we use to elicit that?

And so I was appointed to the HIG, the High-Value Detainee Interrogation Group Research Committee, and I was the first Chair of that research committee. And I helped the HIG, which was a joint agency with a director from the FBI, one Deputy Director from the CIA, and one Deputy Director from the DIA, Defense Intelligence Agency. And so I would help assist them in training interrogators who are the people who be designated to interrogate the highest value targets to our national security.

In that capacity, I was encouraged to speak out publicly and to write about the HIG research program. I went around to conferences. I wrote articles in Police Chief Magazine. I wrote articles in The Journal of Applied Cognitive Psychology all with the encouragement of the HIG, the High-Value Detainee Interrogation Group never wants requesting that I submit anything I published

for their review or prepublication review. I openly submitted it, and was never asked a question about it.

The HIG was re disseminating what I was writing because it promoted lawful, evidence-based and human rights compliant techniques. I went to Capitol Hill. I met with senators and congressmen. I was part of Human Rights First National Security Professionals Program. We brought national security professionals together to talk to policymakers about how dangerous it is to utilize torture as an instrument of national power, because it's not only ineffective, it's counterproductive. It gets you bad information and it results in bad policy decisions and bad results.

Now, the first time I really wrote in detail about the torture program is I was asked to by Human Rights First. They asked if they could use my voice, because they heard me speak about this in a number of different venues. When I saw the torture program as a reason that we captured or that we killed Osama bin Laden, I knew that to be factually inaccurate. So I was the deputy commander of a task force of manning of 230 personnel with our deployed personnel in Afghanistan, Iraq, Guantanamo Bay, Cuba, collecting information to determine who we brought to justice for military commissions, to conduct those investigations, and to also Chair transfer review boards to determine who we might want to release or transfer from custody at Guantanamo. So that was the background I had in government service. And when I got out of government service – So I wrote a piece for Huffington Post, and it was titled *Interrogator Speak Out: Torture is Illegal, Immoral and Ineffective*. That was in 2012. Never heard anything back, no one questioned it.

In 2014, in conjunction with the release of the senate torture report executive summary. In 2015, I wrote an op-ed in the New York Times, “Times up on Gitmo, Mr. President,” when Obama was president, when I was urging him to close Guantanamo. Never once that anyone tell me that should have been submitted to prepublication review. In 2016, I published more pieces in the Huffington Post. Congress should act to solidify the ban against torture, surviving, evading resisting and escaping, SEER, accountability. And Congress administration must review efforts to close Guantanamo. Not once that anyone questioned me. Not once did anyone give me any feedback that I should have submitted those to prepublication review. Not once did I receive any criticism for publishing those from anyone within the government.

It wasn't until 2017 when my publisher, Regan Arts, posted the cover of *Unjustifiable Means*, and that I became the target of government scrutiny in an offensive effort to try to determine what I was going to publish. The government started to look at me as an insider threat. And I know this because I was told that from people within the government. Officers of the CIA started asking questions about me of my colleagues from NCIS. Now I had a 31-year career with the United States government being involved in some of the most significant terrorist operations in US history from the case against the Blind Shake, to the First World Trade Center attack to the USS Cole, the 9/11 attack. And now I am being offensively targeted as an insider threat. They took runs at me. They had they had people call me. They asked what my intentions were about prepublication review. And I told them upfront, I fully intend if I had that obligation, which I did not know. I legitimately was not sure and had intended to ask that question when the time was right. But when Regan Arts published the cover, I was still in the midst of the manuscript. So I wasn't done. And when I was completed, I was going to try to determine because the people I asked within NCIS, nobody knew. Everyone said, "Well, we know the FBI does." I talked to people in NCIS who publish books once said, "Yeah, I gave him a week to look at it, two weeks." Other said, "I published, didn't ask anybody. Don't think we have that requirement." So I legitimately didn't know.

So in that post government service career, I was also an elected official of the International Association of Chiefs of Police. So I am currently the Chair of the International Managers of Police Academies and College Trainers. So I write and publish work in *Police Chief Magazine*, and within the ICP, as a law enforcement professional. That work product now is submitted for prepublication review. And so the first piece I wrote in *Police Chief Magazine*, I did not submit because it was prior to 2017, before I was told I had an affirmative obligation. I published a piece this year that went through prepublication review. So I also completed a two year – I completed my two-year term with the ICP.

In 2016, I was asked by Juan Mendez, the UN special rapporteur on torture, to assist him as a consultant in the development of a thematic that he presented before the UN General Assembly in 2016.

He presented those findings. And in 2017, I spoke at the General Assembly in New York City about the dangers of using torture as an instrument of national policy. Since 2017, I've been on a 15-person global steering committee looking at principles for effective interviewing that are about to be published. I intentionally did not include myself as an author of any of that finished product, because that would have opened up those other coauthors to scrutiny by the United States government. And so I removed myself from the drafting of it. Now I remained as consultant. I gave advice and counsel. I remained a sphere of that, but I intentionally did not write that.

I am currently on the Advisory Council of the Center for Ethics and the Rule of Law at the University of Pennsylvania Carey Law School. If I write anything for Searle, it is subject to prepublication review. And I had been published in the Rule of Law blog at Penn Law, and that work product has been subjected to prepublication review. I'm currently a visiting scholar within the Department of Psychology looking at research on interrogations at John Jay College of Criminal Justice. I'm the cofounder of Project Alethia, a project established to bridge the gap between the science and practice of interrogation. I've been published with a coauthor who is a research psychologist from John Jay named Maria Hartwig. We're published a few months ago in Psychology Today. Our work product was subjected to prepublication review.

This infringes upon academic freedoms. If I write with a lawyer, it infringes upon some of their responsibilities. They were people who will not write with me when I tell them that my product is subjected to prepublication review. So my point is, now, when I consult with clients, or when I speak publicly or write something, it is not my government service I'm writing about. It is about a body of work subsequent to my government service that encompasses all of this work. My work doing unclassified research projects, my work as a visiting scholar, my work on the Center for Ethics and the Rule of Law at the University of Pennsylvania Law School, my work as an elected official of the International Association of Chiefs of Police. And I feel that this is an intrusion upon the public's right to know what someone like me has accumulated with the body of work, not of my government service, but as a foundation and since my government service. And so that is why I speak out so vocally about this because I think it's a matter of public interest, and we are denying the public the right to choose what information to listen to.

[00:40:06] AH: Okay. Thanks, Mark. We haven't been very successful at sticking to the two or three minutes. But I feel like I can impose that on Nada. So, yeah, over to you. I'm looking forward to hearing your story.

[00:40:24] NB: I think what's really interesting about hearing Frank and Mark's perspective is that each of them have talked about why they wrote their book. And so often within the intelligence community, we really criticize each other for releasing information and talking at times, especially former employees before the most recent glut of books.

I was questioned by former employees, "Well, why are you writing a book constantly?" Not all, but some, because that that shroud of secrecy, especially around CIA, is sacrosanct to employees. And there're many former employees who will live and die their anonymous service to our country as CIA employees. But one of the reasons I decided to write the book is because I thought there were not a lot of women, and especially analysts, that were writing books about their perspective and their role in what it's like to work for the CIA. And I think there is a need for diversity within national security. I think we all know, it's a fairly male-dominated workplace for a long time. It's much better now. And so I wanted something that other young women could actually envision themselves doing.

But I also wanted to write from the perspective of an analyst, because I think the more the public understands how the intelligence community functions and how the CIA functions, the less confusion there is about what their role is and their mandate, because I think we've all seen the movies where CIA officers run around arresting people. That doesn't happen, because they're not law enforcement. So some of this is inside baseball stuff, but at the same time, I think the taxpayers really need to understand what they're paying for. And that's part of how come I wanted to write my book. But in addition to the fact that I was part of the team then, the run up to the Iraq war that was charged with analyzing whether or not Iraq had anything to do with 9/11 and al Qaeda. And we found that they did not prior to the war. We delivered all that information to congress and the president.

And then my experience after the invasion, as well, as an analyst, and then eventually becoming a targeting officer, I wanted the public to see how we execute counterterrorism strategies and tactics. What did that look like inside of Iraq? What did that look like more broadly

outside of Iraq? What are the pitfalls of some of those strategies and tactics? And what should we do differently. And I think the people who have lived and breathed some of these things, similar to what Frank and Mark were talking about, we are here for lessons learned. We are here to tell the public and future employees, "Here's something you could do differently that we weren't able to do, or didn't do."

And I think that's important as well. But I would say, from my perspective on the prepublication review, going through the process of having to sue the government was a real decision. Because Mark's not cheap, I had to pay that money out of the book. I wasn't paid Oprah wages for my book. I wasn't public employee for a large part of my career. So I didn't have the bank account to draw from to just forfeit the funds and publish it without worrying. So I went through the process of trying to extract it and legally publish it. And I do think it's important to protect sources and methods and classified information. And that's another reason that I went through this process. But at the same time, that process is so broken. It's – I can't even say the word. It is very, very broken.

To change that process, it wouldn't be that hard. I mean, reciprocal agreements between government agencies to start with, that you have a deadline that you have to meet. Once you receive that manuscript, you have to give it back to the hosts, the originator, within a certain amount of time. My manuscript went to almost every agency out there because I worked with so many different agencies during my time at the CIA, and was held up for a long time because of these lack of deadlines and enforcement's.

There're lots of inconsistency about how they go about declassifying or classifying information. We all know that. But things are over classified quite often. But within the publication review process, they're not declassifying information. What they're doing is just making sure that we're not telling secrets, and that we're not revealing the sources and methods.

And as Frank had mentioned earlier a lot of us were at the top of our career for subject matter expert within the field that we're talking about. And so for them to review that piece of it, there may be only one or two other people within the agency who were read into the same things that we were. I can just say like there are probably only three or four people that could have read my book and really understood what sources and methods could or could not have been

compromised. So I was very careful when I wrote the book to make sure that I didn't hurt any ongoing operations.

My old boss was still there working in some of those areas. So I was very conscious of it. And I would also say within the publication piece, one of the things that changed under Obama is our inability to cite published works as being already out in the public domain. So then, therefore, we could use this information. That all changed with Snowden and WikiLeaks. That changed our world completely.

So it didn't matter if it was published over and over and over in the New York Times. We couldn't talk about it or confirm it. Because they're saying if we discuss it, then we're confirming that information. And I understand that to a certain extent. But when something is out in public domain for a certain period of time and discussed as fact, I think the cat is out of the bag, and we need to realize that there is information that's confirmed whether I say it or not.

So the one thing I want to conclude with is how I extracted my book. I hired Mark Zaid. He helped prompt the government to at least respond to me and tell me why the book is stuck. Mark, tell me if I can say this part. I ended up having to sit down with the components of the Department of Defense in a secure room. And I'll tell you, I don't currently hold a clearance. Nor did I when I extracted the book and sat with them. And walk them through every single redaction that they had redacted and explained to them why in some cases they didn't have primacy over those redactions, because I'm not a DoD employee. I don't have obligations to them in the same way I do CIA. And they were trying to redact things that were specific CIA operations and specific to the CIA. So I did cover that piece.

Then they were trying to redact very simple things like General McChrystal's name. He had a book out by then, and had been speaking publicly. He and I both appeared in HBO's Manhunt, and spoke. It was a long slog and a long day of conversations. But we got through it. And some of it was because DoD did not have clear guidance for everybody. They didn't really understand what they're supposed to look at. They were looking at it going, "Well, that looks like sources and methods." So I completely understand why those guys came to the conclusions they did with some pieces of that book, because they didn't know. And so, thankfully, after that day, I was

actually able to extract the book for the most part. What I have published now is probably three quarters of what I had submitted. So I was pretty happy at least with that piece.

[00:48:54] MF: Yeah, I was just got to say. Nada, like you, I was unable to cite newspaper accounts. I was unable to cite congressional hearings. Because what I did is I went back through the Senate armed service committee hearings. I went back through the Senate torture report hearings. And I tried to piece what was happening around me during my time. And even things that were published in Congress were redacted. And my manuscript was shipped out to 10 different agencies. They wouldn't tell me who, and they refused to sit down with me. I said, "If you'll sit down with me, I'll show you the public sources for this, all of this. I watched all the C-SPAN hearings. I pulled all this from open source material when I was an investigator, right? I know how to do this stuff. I just put these parts of the mosaic together to show why I failed and bring terrorists to justice. There are a lot of these decisions that happen that I didn't know about. I just pieced them together in a way that they didn't like. And so at least you got to sit down and be frustrated. I was able to be frustrated never having been able to sit down with them.

[00:50:04] MZ: You had to have hired me, Mark, and I promise you, promise you, they will sit down with you.

[00:50:11] FS: Can I interject to two thoughts coming off of this previous conversation. We're talking about for the folks who are tuning in and don't have to submit a prepublication review. It may get a little complicated. We're talking about two phenomena. One is what do you have to submit for prepublication review? Number two, what can be deleted once they got your manuscript? What has to be submitted is about this. It just about comes down to this. It certainly does for me. I have to submit everything to prepublication review to determine what I must submit to prepublication review. Because if you guess wrong, the penalties are pretty significant. So what you wind up doing is over-censoring yourself in deference to the imprecision and the breadth of the government rules.

Number two, one of the things that has bedeviled me most in trying to get things cleared once, I should say get released after I've submitted them for review for a decision on deletions, is a concept known as reclassification. The Reagan Administration adopted a rule that I'd never heard of before, which was the government can take a perfectly good non-secret or something

that has been declassified and released, say, under the Freedom of Information Act, and for reasons that are totally obscure, reclassify it. So that what you got published today as unclassified can be reclassified tomorrow and subject to redaction, which makes the entire censorship process per se, a crapshoot and totally uninterruptible. You cannot go into this. Now, what the hell may be whacked out of your manuscript?

I had a situation where I had had something cleared in a previous manuscript that what got whacked out in the next one. I submitted the same passage, the same reference. And I had to go back and say, "Hey, folks, what's happened here? Don't you have any records?" The problem is the PRB is over. It is overworked. And they don't have a bank of information on what's been cleared and what isn't. And your suggestion, I know that we have some kind of mechanisms created for that kind of retrieval. So they know what they've played before. But the craziness about this is that it's imprecise as to what you must submit. And so you must submit everything to be on the safe side.

So there's another complication. I mentioned this only, Andrew, because if you're listening to this podcast, this sounds like a lot of smoke and mirrors. And the agencies all have a good public policy rationale. It is that you, Mark, I'm talking about Mr. Fallon there, don't know enough to be able to identify every piece of information which released seemingly harmless might do real harm in the larger mosaic of intelligence that only the gods know and you don't. Right. Thank you.

For those of you who can't see what he's putting on the screen, it begins with B and ends with T. Exactly. But unfortunately, you try to go into court and you argue that. It won't work. I tell you, B plus T just doesn't swing it with a lot of judges, and they will be very deferential to the government's claims against you.

[00:53:49] MZ: Let me give you a little bit aspect of something. I'll start with the fact though. I recommend irreparable harm that Frank wrote in 1999 by a publisher who is also my publisher, the University Press of Kansas. A fantastic book detailing what Frank went through. And one of the things that Frank did, and also, strangely enough, Stansfield Turner, who you spoke about earlier, there's a book that he wrote called *Secrecy and Democracy* in 1985. And it's ironically funny, because in his introduction, he talks about Frank's case because he was the DCI, the

Director of CIA at the time. And then he just decries the CIA review process that he went through because of all the very things that each of you have talked about today.

And he and his lawyer, who was a former General Counsel of CIA, Tony Lapham, who's sadly deceased, good guy, they told the CIA, and I know many people who did this, John Bolton did this too. This does not work. Hey, you, government, I'm going to publish. If you think this book is so seriously jeopardizing sources or methods, come after me. You filed the lawsuit to prevent me from publishing. CIA or any agency never does it. They require and force each of you to go to court on your own. And Mark and Nada, you describe different circumstances, the difference being in Nada's case we sued, in Mark's case, you didn't. And that's unfortunate, because you should all be treated the same. But for those of my clients who we go to court, we don't always win. I can tell you cases we didn't win. But we generally significantly prevail because we get a third-party, the judiciary involved. Two, although they're deferential, as Frank mentioned, they will hold an agency's feet to the fire if the agency is coming across unreasonable, or, frankly, laughable at times. And some of these decisions really are that

[BREAK]

[00:56:02] AH: I want to take a moment to thank this week's sponsor, NordVPN. So back in the day, when you're traveling on the open road, there was always a real danger that you could be held, stopped and told to stand and deliver. I'm talking about highway robbery of course. Being on the Internet has often been compared to being on an information superhighway. But unfortunately, these days people won't even have the courtesy to tell you they're taking something from you. What's the solution? This is where a virtual private network comes in, which is often compared to having a tunnel to relay information privately. go to nordvpn.com/spycast, or use code SPYCAST to get 73% off your two-year plan, plus four bonus months for free. Be quick, because this software is for a limited time only. It's equivalent to buying a cup of coffee a month. And you'll get more benefit out of this.

[INTERVIEW CONTINUED]

[00:57:02] AH: It's been great all of sharing your stories and stuff. But I want to try to lasso the conversation a little bit more and try to – There're a few things that I want to touch upon. I mean, I guess one thing that just came to mind was Stansfield Turner was a former Navy Admiral. That was the DCI, as Mark said, during the Carter era, so '77 to '81. And just really briefly, Mark, for people that aren't lawyers, where's the Fourth Circuit?

[00:58:30] MZ: So the Fourth Circuit covers Northern Virginia where the CIA is, and North Carolina. I think, West Virginia and Maryland.

[00:58:42] FS: Yeah, and it is the CIA's backyard. Yes. And it also handle almost all of these cases, if I'm not mistaken, certainly from Marchetti to mine, and right down to the present. So they are very attuned to the CIA's point of view. And very, I hate to say it, sympathetic oftentimes. I want to just interject something, again, because the people will be listening in may find much of this not accessible. Not that we haven't articulated brilliantly, folks, but nonetheless, surviving a lifetime gag rule. I've been trying to think how to make it comprehensible to somebody on the outside. It's sort of like having big brother potentially at your shoulder with a listening device in your head and a pistol cocked to the back of your ear. You're constantly second guessing yourself as you write and speak. You're constantly consulting lawyers like Mark to find out what the hell you can do. What you must submit? You're constantly worrying about what you got cleared yesterday may be classified or reclassified, or somehow re-designated so it can't be published tomorrow. You're constantly trying to persuade producers, editors, publishers that they don't run any risks themselves by buying your stuff. All of these things inhibit you as a human being and you're reduced to what George Orwell merely imagined, which is big brother's play thing. I mean, really? That sounds ridiculous. You got to put yourself in the shoes of the people who've appeared on this podcast. That's exactly what it's like exactly.

[01:00:26] AH: Just briefly, Mark Zaid, tell us about the Marchetti case. We've mentioned that a couple of times. Just for a couple of sentence answer.

[01:00:35] MZ: Yeah, Victor Marchetti rose to be the executive assistant to the director I think was his last position, if I recall, and he wrote a book with another individual called *The Cult of Intelligence*. He became very outspoken against the CIA. He submitted it for pre-pub, as Frank

indicated. It started out in – He lived in Northern Virginia, like many CIA employees do. So it was significantly censored. And his case decisions are actually fairly favorable, in particular, because it talked about a 30-day period, which is irrelevant now. And it also talked about the possibility. And I believe, as I recall, Frank, actually, you dealt with this too, which is mind-blowing today, but it talked about having a trial on the substantive decisions. Like literally having witnesses to talk about from both sides what should and should not be classified. I guess that was a pipe dream back in the 1970s. It's not a reality today. And I think from a practical standpoint, what I also have to tell for everybody who's listening is, most cases, and I think this was probably the case for all of – Well, I think, for all of you guys, and is typical. Most times people write their manuscript, give it to a literary agent. The literary agent then gets it to a publisher. The publisher then accepts it. It goes through editing. And then it gets submitted, if it gets submitted at all. Hopefully it does. It gets submitted for pre-pub review. Those are all violations, all violations, because no one can share their information with anyone else until authorized. I never want anyone to be on the defensive in a pre-pub review case. You will lose. If you're on the offensive, you can win.

[01:02:32] AH: Why is that, Mark? Why do you stand the chance when you're on the offense but not on defense? Just like for a laymen.

[01:02:41] MF: Primarily because, oftentimes, the government can't support what its arguments are, quite frankly. The timing is always an issue. And that's going to be subjective. How long has the process been? I usually like to say I don't want to sue before six months has gone by. That six months is actually not a bad period of time historically. I think it should be shorter. But just looking at how long these take as a practical matter, especially with Covid now, obviously.

But it is usually because what has been created, judicially speaking, is that there is a framework for what the government, the executive branch needs to provide to the judicial branch to justify its decisions. And it's complicated because, again, I can't be involved as much as I think I should be as a lawyer. But in the Stillman case, the three of you all mentioned the level of expertise that you have. Because of the Stillman case, I would be able to have you draft a declaration showing your expertise to counter the government's alleged expertise with a caveat. How are you going to do that? What are you going to type your document on? Because you can't create a classified document on your non-secure computer. And that's complicated, and you won't be allowed to

see the government's classified submission, which complicates it. And this is where there's room for additional strengthening of the process, especially with respect to the access that the lawyers and the individual authors can get so that they can show to the court the two sides of the coin. Because, ultimately, I know for these three guests, and I know for the other clients I've had, I have not yet met a client who tells me they want to disclose classified information. No, it's the opposite. They don't want to disclose classified information. But there's an argument about is this properly classified? And we need a neutral arbitrator or arbiter In the court system to be able to take on that mission.

[01:05:04] MF: I think it's important, I mean, as someone who would investigate people for unauthorized disclosures, that this process could frustrate someone into disclosures. And so I think it's actually counterproductive. If you drive someone to frustration, if you delegitimize a process that ought to be legitimate, that ought to be helpful to authors like us who would never, ever want to jeopardize national security. I mean, we've stood when we've risked our lives. I mean, I've been in Iraq and Afghanistan, in Yemen in places like that, right? I mean, this is not something that we take lightly. I still have a clearance. I still consult with the government. I would never ever envision trying to jeopardize that. I understand that the requirements are lifelong.

What I am certainly not contesting is that. I'm contesting that what they are doing is creating a process that's counterproductive to their aims. If your goal is to prevent disclosures, this does nothing towards that. And I'm not sure if the listeners understand this. It applies to fictional work. So Rick came in as a lawyer. He defended somebody I investigated, a guy named Nasseri, who we believe was part of the boats operation or the USS Cole attack. He's currently undergoing military commission at Guantanamo. Rick was alerted defense counsel who retired. Wrote a fictional book about the court process. It's been more than a year, he tells me. I just contact him recently and said, "What's the status that his work of fiction is being under review?"

Now, if it's fiction, are they trying to, in his mind, determine what fictional character might have something classified? I mean, clearly, what this could result in is frustration. More Snowdens. More people who just say, "This isn't, "Joe."

[01:07:02] FS: Snowden is a class by himself, Mark.

[01:07:06] MZ: Yeah, there are examples of what Mark is speaking about, though, of individuals who got frustrated with the process. And because the process wasn't fluid enough, they went ahead and published. And some of them got away with it. And others, frankly, did not have. Although, we can question whether they frankly care about it.

[01:07:26] NB: But when you talk about they got away with it, how many people have really been criminally prosecuted? Because I think this is something that the listener needs to understand. Criminal prosecutions are fairly rare. We talked about John Bolton possibly facing that. But majority of the people who have gotten away with it were people who were wealthy and could afford to just forfeit the funds. And that, to me is a path that's opening that is really, really setting a horrible precedent that the government just seems to be fine with in a way.

[01:07:55] AH: Can I just jump in? Nada, can you just speak a little bit more about that, please? I know we spoke about it the other night on the phone. Like you mentioned that there's a process in place for people that don't have money and so forth.

[01:08:08] NB: So, for example, there were a couple of books in more recent history that were published that was not submitted for review. One was published under the name Ishmael Jones, and another one was published under by Amaryllis Fox. Neither of those books had prepublication review. I do believe at least one of them was submitted, but just never got a response and went ahead and published. I think that is setting a precedent that is really detrimental, because my understanding is both of those parties walked away from worrying about any financial repercussions because they have the funds. They have the wealth behind them to not worry about it.

If you are someone that is a typical former government employee, you don't normally have the funds to be able to just walk away from it, being approved for the TV and film rights. Oh, by the time it was actually approved, those conversations had fallen apart because we're talking like 18 months later. So those are just a couple examples.

[01:09:12] MZ: But I will say there are, to my knowledge, no known examples of anyone being criminally prosecuted for – Including classified information in a book publication.

[01:09:24] MF: Well, there's a guy named Morrison. No. Morrison was prosecuted. I forgot his first name.

[01:09:32] MZ: You're right. You're right. Samuel.

[01:09:34] FS: Samuel Morrison.

[01:09:35] MZ: You're right, Samuel Morrison. You're right, back in the 80s.

[01:09:35] MF: My attorney represented him. And he was craned. He was craned because he did publish – He was craned under a theft of government property, statutes and variations on the espionage statute. So yeah, you can be very seriously craned. And let's not forget. And what about – I'm sorry. What about Snowden? He's being prosecuted on –

[01:10:03] NB: That's a separate issue.

[01:10:06] MF: The point is, though, there are penalties out there that have been levied against serious offenders.

[01:10:13] NB: But not very consistently, and certainly not from the criminal prosecution. And one thing the public needs to understand is the classification process is not verifying truthfulness in these manuscripts. Their job is not to make sure you're telling the truth. Their job is just to make sure you're not divulging secrets and sources and methods.

[01:10:33] AH: So SpyCast listeners go the whole gamut from people that are in the IC, former IC, through to just the average person on the street that is quite interested in this issue. So for this, I know about the Pentagon Papers. I know about Edward Snowden. Like, is this something different? Or is this similar? And are these guys whistleblowers or not whistleblowers? They all had different rationales, although there was some strain of similarity. Mark Zaid, break this down for us. I want to get market on this because SpyCast can't afford to pay his fees. So **[inaudible 01:11:13]** do this pro bono? I just kind of want to get him involved. So over to you, Mark. Help the average listener understand all of this.

[01:11:23] MZ: Sure. And I'm thinking more about Frank's comments about Sam Morrison. And I'm not sure. He wrote – I don't think it was a book. It was an article in Jains– He published an articles in Jains Weekly, a UK publication. And he gave them photographs that – So from a book standpoint, I mean, it's close enough that I agree. And so to understand for the Pentagon Papers, and this goes to actually what I was talking about earlier with respect to should the US Government go after someone for an injunction. And there's a reason why we want the government. We try to encourage the government to come after the author, even though it never does. Because the burden that was created in the Pentagon Paper's case, which was Daniel Ellsberg illegally leaking classified information. Pentagon secret history to the New York Times, The Washington Post, and others, and then the government sued civilly to get an injunction that the Court, the Supreme Court held that it was an incredibly high burden.

Now, if they had been prosecuted, it would have been probably very different, and the Supreme Court talked about that. But that's a totally separate issue for us to do a podcast on the Espionage Act. But you can sense the frustration from our speakers here of the inconsistency, the selectiveness of the US Government as to how it handles these reviews. Some of that is because it's different agencies. Some of it is because of when they submitted the book and what was the country going through at the time, the people in power. We haven't even talked about, but I'll throw in now, the differential treatment that is given to former senior government officials. Meaning, even, we've got senior people here. But I'm talking about at the director level, where they just seemingly get their books published very quickly. It goes through the review very quickly, very little in the way of redaction. And all of that just creates this increasing frustration, much, to some extent, or maybe even contributing to what was discussed about earlier, is if the system isn't refined or reformed, does it actually accomplish what it wants? Can it actually have the negative impact of leading people to disregard submitting their books? And we all know, and we don't have to go into the detail here, but we know of some people who constantly publish and never have their work reviewed.

I should also say – And Frank's case is unique in the sense it created what the government can do as far as a civil remedy. And NATO was just commenting about the notion of, “Well, if you have money and you could afford the civil loss, then it's not as a deterrent, so to speak.” And that is because the civil remedy for the breach of contract, not the criminality aspect, is to get an injunction against the royalties that have not yet occurred. Frank Snepp is still paying, or

Random House is still paying whatever royalties Frank gets for a book that was published 44 years ago, goes to the US Government. But if you didn't make any money off of anything, there's very little the government can do.

For those who go on the news, nowadays, a lot of newscasters or contributors are former CI people, or military people. And they're not submitting anything for review, because they're talking extemporaneously in the live moment. And hopefully they don't reveal anything classified, because if they did, they could be prosecuted. I never heard of that happening that I know of. But they're not submitting. You're supposed to technically verbal. Well, let's put it very poignantly, blankly. This program right now, technically speaking, we should have called up our agencies who hold our clearances and summarize what we were going to talk about and make sure it's okay. They don't have the resources to be able to even handle this. And it's such a joke, because I can't call them up and have a classified phone conversation on a non-secure line. I mean, I'm the only one of the four of us who's actually near the seat of the US government. Everybody else is thousands of hundreds, if not thousands of miles away.

So the system is broken. It is designed to protect the executive branch. And it is unfortunate that no one else seems to have an interest in really fixing it. But my role as the lawyer is to give guidance to folks like we have here to make sure that they don't get in any trouble. That's the first and foremost, and that they can get as much information published as possible. And like I said, oftentimes we succeed. Not always. And fictionalized accounts, you're right. They'll block that. And Mark, you should tell Rick to contact me, because I'll sue the government for him.

[01:16:46] MF: I think he told me he couldn't afford you.

[01:16:48] FS: Andrew, I want to interject something, because we've gone through this whole broadcast and not mention US versus Snepp in the sense of what it did. The United States Supreme Court, in my case, in 1980, decided that I had – Despite the fact there were no reported secrets in my book and no prosecutable secrets, it confiscated all of my profits and established a regime which is governing the entire prepublication review system. And it basically certifies the government's right to demand to see just about anything, any government fiduciary. And I'm talking about people who have necessarily signed clear contracts. But if you're in a position of trust in the national security community, and if you were exposed to classified

information, the Supreme Court of the United States says that alone could subject you to prepublication review.

And this ruling, which was decided so narrowly, not with either side, not my lawyers, not the government's being allowed to offer arguments to the court. The court basically read the news clips and our initial filings very few and decided against me and for the government across the board. And that's what's established this regime we're talking about today. And unfortunately, it's anchored on an argument that's very hard to refute, which is that somebody, if absent prepublication review, might accidentally release something dangerous to the government. It's so speculative. It's contrary to the Pentagon Paper's notion that you need a heavy burden of proof to stop someone from saying something. The ruling, in my case, stands for a completely relaxed standard on stopping people from saying something. It is just whether or not there may be, might be, could be damage from what you do.

[01:18:48] AH: And one thing that I wanted to ask each of our authors is at what point did you know that you wanted to write a book? Was there a specific turning point? Like for Frank, for example, I read description that you give being on top of that roof in 1975 and looking down at the Vietnamese people. Was that the moment when you needed to write a book?

[01:19:14] FS: The moment I decided to write something was when I ride back at Langley after the fall of Saigon. I thought everybody would be brought in. We'd have a review. We decide what we could do. We would mobilize the State Department to rescue Vietnamese who've been left behind. Instead, I was given a document that pre- oncede conclusions. Nothing went wrong. Everybody who wanted to get out could. End of story. Frank, would you like to go to Mexico and work there for the CI? Choice assignment. Just shut up. Take the language training, and be happy. You've got a job." That pissed me off so badly I literally thought I was going to go crazy. I said in Spanish language training, and I heard the voices of people who've been screaming for help over our radios in Saigon the last day. I left. I remember, it was so vivid, I said "This can stand . If I become complicit in the silence, I am as immoral as the people who made the wrong decisions in Vietnam. Over and out. Right, Frank, that was my response.

[01:20:22] MF: Yeah. For me, I was working quite a bit with Human Rights First, their National Security Professionals program. And we were really gathering former CIA officials and FBI

officials and really trying to correct the narrative about torture, because it was clear to me that there was a CIA information operation ongoing. Perception management as what we used to call it in the old tradecraft, where they continue to try to emphasize three things that when they decided to torture. What they said in November of 2001, the lawyers, was that we need to ensure that whatever we do is viewed as effective and that we saved lives, because the international community would be less likely to come against us.

Okay. And so they needed this effectiveness argument so the public would think that torture was needed. And so their argument was it was safe, necessary and effective. And that was the argument when Tennant was a director of the CIA and Bill Harlow was his Communications Specialist advocating those three things, safe, necessary and effective.

George Tennant retires from the CIA and writes a book. And who did he write it with? Bill Harlow. And he talks about how safe, necessary and effective torture was. Jose Rodriguez writes a book. Who does he write it with? Bill Harlow. Advocating that torture is safe, necessary and effective. The torture report comes out. They gather former CIA officials to say that, "No. No. It's wrong. There's another side of this story." Those officials, guess who's the editor of all other essays? Bill Harlow.

Since then, Mitchell, the voodoo scientist, the torturer, called the torture architect. The person actually just reestablished the old MK Ultra program. He wrote a book about how great enhanced interrogations were, EIT, the excuses to inflict torture. Guess who was it written with? Bill Harlow, the same communication specialist with the CIA who was there when this narrative was established has continued to try to shape the public perception that torture is safe, necessarily and effective.

Now, I'm the one who alerted the Pentagon that the CIA techniques were gravitating from the CIA to Guantanamo. Later went on to Abu Ghraib, alright? And I was the one who challenged there was al Qaeda in Iraq. And so when I was working with the torture report and going around congress briefing senators, why the torture report should be released. I met with Dianne Feinstein, and I met with a bunch of senators. Well, it was John McCain and Dianne Feinstein who urged me to get my story out there. John McCain said the public needs to know, because he was involved in the Senate Armed Service Committee hearings. He knew the true story. And

so my book was – Really, I intended it to be about the leadership challenges of leading during crisis, about what it's like telling truth to power. But it was really John McCain who really inspired me to make sure I got it across the goal line, because he's the one who told me that story needs to be told.

[01:23:45] NB: I started thinking about writing my book shortly after I left, because ISIS was on the rise. And this was not a new phenomenon. We saw this happen with Al Qaeda. We saw this happen with **[inaudible 01:24:00]** organization. And I could see the media treating this as a new problem set. And the way that the conversation, and the narrative in the public domain was going about describing or how do we deal with ISIS? I really wanted that everybody to understand what we had done that worked and what does not work.

And instead of adopting the tactics from the AUMF, which was the legislation passed that allowed the military intelligence organizations to go after everything tied to 9/11 and al Qaeda. And it was pretty broad as far as what tactics and strategies can be used. I didn't want to see that play out again, and again, and again tying every terrorist organization that were identifying to that. And because we were finding a lot of this was not working. And that was initially why I was thinking of writing the book. But I also wanted people to have a realistic view of the CIA where it's not James Bond. It's sometimes like the office. And I wanted that optic to be out there as well. Because these are humans, make mistakes, and are committed to – Usually, committed to their job and the mission. And it's not this cloak and dagger thing that you see in the movies. And I just wanted that optic out there as well.

[01:25:29] AH: As you can imagine, a diversity of people listen to the show. And there will be some people that say, “Well, come on, you've signed the dotted line. You're working for an intelligence agency. Why should you be the person that decides what part of your story you get to tell?” Surely, to go back to your point, Nada, if the CIA want to craft some kind of narrative, then that's for them to do. It's not for you to create that. So I just wondered if each of you had kind of thought on that?

[01:26:02] NB: Well, in response to that, certainly, my book was definitely not the CIA's narrative, per se. I didn't write it as a disgruntled employee either. I see a lot of those books as well. This was really coming from my experience as a subject matter expert in the world of

counterterrorism and dealing with extremist organizations in general, and how that kind of radicalization can take place, and how it's not all about just one cause and one kind of person that joins these organizations. There was just – It seemed like, especially in some of the academic writings at the time, it was always just this one theme over and over. And so just for me, it wasn't about what the CIA wanted to do. It was about what I wanted to get out there of what I thought needed to be done.

[01:26:52] MF: For me, I think in a liberal democracy, the public has a right to know particularly when it comes to illegal acts. And I don't think that once you've spent time and touch the base as a government employee, that they ought to have the right to shape and narrate what your opinion is for the rest of your life. And so I think it's important that we, as former national security professionals, who have a perspective and choose to have the right, constitutionally guaranteed right, to speak out on issues that we think are important within the public forum. And so I feel it's kind of that obligation that I talked about Roosevelt talking about in a republic. There's a responsibility to do so.

[01:27:41] FS: Engraved on the wall of the CIA foyer is a biblical quotation, “You shall know the truth, and the truth shall make you free.” I believed implicitly in that doctrine. That was what guided me as a CIA agent. And what worried me along the way was that the agency forgot that. So those of you out there who think that we were doing somehow wrong and we should walk in lockstep like a Hitlarian squad. Think again. True, sometimes, demand speaking truth to power. Even powers the agency. And those of us who do it are serving truth. And that's what the agency is about. If it gets that across to its members, to its agents, it's done the right thing. If they forget it, then they're thugs. They're thugs. You shall know the truth. The truth shall make you free.

[01:28:41] AH: And coming back to Mark Zaid?

[01:28:46] MZ: I hear that all the time, from my clients, from folks within the agencies on the notion of, “You knew what you signed up for. You shouldn't be speaking out.” And I will say, yeah, they all know, especially nowadays, what they signed up for. But they should be speaking out. They should be speaking out lawfully. And this is what we're talking about with the prepublication review process, that the effort to do so properly and lawfully is perfectly fine. It is

well-established, going back decades, that every one of those who served within the federal government in a classified arena has a right to publish non-classified, unclassified information. No right to publish classified information. But if you write your book properly, if you go through the review process properly, assuming it's being handled properly, you have every right and should not be condemned in any way for contributing to that. And it's not what it used to be.

If you look back to the books about the FBI, the CIA in the 40s, the 50s, the 60s, it's all the former senior officials, the directors, Hoover, and Dulles, and the rest writing the books. It's not the folks who have the actual subject matter expertise like we have on this panel. And works like theirs contributes significantly to our democracy. And so long as it's done right and right on both sides, and the other side is broken, unfortunately, then there is no reason why they shouldn't be writing. They are contributing to democracy. Not undermining democracy. It's the illegal classified leaks that undermine democracy. And that's not what –

[01:30:39] AH: How does all of these compare to – Say, we have a lot of listeners in the UK, Australia and so forth, like, is this a particularly American phenomenon? I'm thinking immediately of the Spycatcher case, Peter Wright, a former senior intelligence officer. Wanted to publish and he ended up doing so from Australia to get around various legal hurdles that were there. Like help us get our heads around how this may compare to other countries.

[01:31:10] MZ: Sure. From a legal perspective, it's very different. This is a US constitutional issue. And there might be in other countries where they have a similar statutory or regulatory right from where you were from, or are from, Andrew. United Kingdom has. It's not as bad as it used to be, but the Official Secrets Act, where no one within any intelligence agency can ever publish anything. Our provisions have developed over the years. They are better now than they used to be, which, again, since you've heard in all this podcasts, we're not where we need to be.

But like I said, I mean, it is a well-established right, that everyone has a First Amendment right to publish nongovernmental information, meaning unclassified information, hands down. And some of what was described, Nada mentioned the notion of redacting General McChrystal's name. That's actually very unique to the Defense Department. For whatever reason, the Defense Department always wants to redact names for privacy reasons. It's not a classification issue. I doubt they explained it very well to Nada. I was not allowed to be in the meeting, which

is also undermining the process. So she had the affair for herself, and she did great. But this is very much an American situation. You really don't hear about this in other countries. And generally speaking, I would say, when you have someone in another country from their intelligence agency who writes a book, they tend to be found in a another country afterwards when they write the book. And there's a reason for that.

[01:32:55] FS: We also have something the British don't have, which is known as the First Amendment. The First Amendment, in its classic meaning, is a ban on prior restraint. You cannot censor someone before they speak. It can't prevent a publication from being published. That's written essentially into the Constitution. Congress shall make no law abridging freedom of speech, etc., etc. So when it happens in this country, when we are facing prior restraint, because that's what we're talking about. It's basically anti-American. It's basically anti-First Amendment. That's why it's so devastating here. It's more understandable in Britain, Andrew, because you don't have a First Amendment.

Official Secrets Act is, "Oh, okay. It's just tradition. Flows out of sort of the noblesse oblige." We do have one. And so the system we're talking about, and for those of you out there who think, "Well, just sign on the dotted line, and you follow your orders, etc." Read the First Amendment. God bless it. And that's what we should be adhering to. And this system has walked so far away from it. It's barely within whistling distance of the First Amendment.

[01:34:12] AH: I think we've done a pretty good job of getting our arms around this. But I just want to make sure that I understand. I'm putting myself in the shoes of the listener just to really make sure I know what's going on here. So I joined an intelligence agency amid to sign something saying that I can't repeat secrets any further. If I'm just seeing something that's in the public domain, then it shouldn't be an issue. So why – Just asking a kind of very simplistic question. I still don't understand why it's such an issue then. If I'm seeing something that's in the public domain, Frank was saying that **[inaudible 01:34:52]** knowing what a secret is and what it looks like and making a conscious decision not to release it. So why is it still an issue? Why can't you just write the books that you want to write as long as you don't betray any secrets?

[01:35:07] MZ: **[inaudible 01:35:07]**. Let me kind of give an easier overview here. Part of it is when folks like these write the books, they are perceived to, in some ways, be telling more of

the truth than when it would come out of the mouth pieces of the leadership. When Allen Dulles wrote books` – I don't know the extent that Allen Dulles actually wrote any of the book, or J. Edgar Hoover. These were the mouthpieces of the agencies. They were pushing policy. And the best example that I've had that explains the concerns is a pre-pub issue. But it is one where the person was still in the government. But it actually explains it better.

I had an NSA, National Security Agency client, who wrote a paper, an academic paper, about mathematics. I have no idea what the hell it was about, right? I would never understand what he's talking about. And he wrote it before he joined NSA. But it was going to be published because it went through peer review after he started at NSA. And he had to submit it for pre-pub because of that, now, current relationship. And NSA did not let him publish it. It actually took 10 years to get approval. But they didn't let him publish it because they were concerned that if someone saw and read the article with that guy's name on it, that they, the reader, would assume that what was talked about by way of code in the article was something that was of interest to NSA. And NSA didn't want to telegraph to anybody that it had an interest in whatever the heck this over my head writing was about. And it is sometimes the affiliation. This is what the argument will be, the affiliation of the person, because they think that people will believe it what is written in the books, even though that's actually not, as we've already discussed, the reason for the pre-pub review, or at least the substantive –

[01:37:16] AH: Just a couple of final points, and then we'll wrap up. I guess one of the things that I've been thinking the whole time is to what extent is about power and control by these institutions or by the leaders of these institutions? To what extent is it mendacity? Or it really just a good old fashioned example of government miss-function and bureaucratic, everyone's at sixes and sevens? What's your take on it all? Like what's going on here? Some of this seems to be from what yours are saying that it's just a case of disciplining the troops and making sure that they're all kind of towing the line and the institution, its leaders, are not going to be – They're not going to be showing up badly. Any thoughts on any of that?

[01:38:06] MF: I'll talk a little bit about that. So I think a lot of this is about protecting the tribe, right? Protecting the institution. I know with me, of course, my issue is about state-sponsored torture. It is about war crimes that the US Government committed in the name of the people. I mean, this is clear and unequivocal. I mean, the prohibition against torture was absolute. The

CIA and the US government made a decision to ignore that. And so I challenge that, and I do so when the people who made those decisions were still in power.

Okay. And so when my book was about to be published, you had Mitchell and Jessen, the contractors who the CIA brought in and who made over \$80 million as part of the torture program, at least Mitchell and Jessen Associates it, where there was a trial, a tort trial, the ACLU going on against them. And so publishing my book would have been very detrimental to the US Government who had an indemnity clause that they gave Mitchell and Jessen only after the Abu Gharib photos were released, decided that we better give them some legal protection to shut them up. We made decisions based on fear, ignorance and arrogance. And people in power don't like when we point that out, because they're in job to protect their bureaucracies. And we challenge that. Each of us challenges that in our own ways, at our own spheres. And that's why we're a problem.

[01:39:44] FS: I want to speak for the intelligence agencies for a second, because I think their views deserve some attention here. We've paid some deference to it. Discipline is very important in the military. Many of the precedents, to my case, came out of the military. If you're in the US Military, you don't have the same constitutional rights as people on the outside. That's because discipline is key. And very early on, outside of all these circumstances we've been discussing, two people who have done things that showed an absolute indifference to discipline that was devastating.

Philip Agee, he was a CIA agent back in the 70s, began leaking the names of CIA agents. That action, those action was just unspeakable. And he said agents who are undercover up for kill. And that action, so soured liberal thinkers in the agency made them nervous, that they sort of overreacted. We got to do something to re instill discipline. And I hate to say it, but Snowden did the same thing.

So there are examples out there that unfortunately reinforced the notion that discipline must be maintained at all cost, otherwise, national security could be at risk. Philip Agee proved that, and so did Snowden. So, folks, for all of our very valuable arguments, the government has some points of view that are worth paying attention to. The question is how do you balance their interests with the interests of free speech? And that's really the key, isn't it?

[01:41:25] NB: So I think it's a combination. I think there is, in some cases, politicization that's happening, and there is information that they don't want out that might not be palatable for the public to hear. I think, sometimes it's just bureaucracy. But I think in many cases, it's a combination, because so many of these manuscripts are subjected to so many different agency reviews. In my case, the CIA didn't seem to care as much as the DoD about the substance of the book. I flew right through my meeting with CIA and got just small word changes done. My DoD meeting was an all day long affair, with lots of conversation around what they had primacy over and what they didn't. So I think it's really a combination of many different things. And some of this just comes down to lack of guidance for the entire intelligence community apparatus. Nobody has a standard to which they really are able to understand and adhere to when they're reviewing these books.

[01:42:36] AH: I just want to kind of close off by asking each of our authors, what advice they would give to someone that's in the IC, or has left the IC, or thinking of submitting a book other than calling Mark Zaid esquire?

[01:42:57] MZ: That's the best advice to give each one of them should you say, "Just call Mark."

[01:43:01] NB: This is just like one big commercial for you.

[01:43:04] AH: Basically. That's the quid pro quo about not paying his fees. Before we get there, Mark, is there any like last words from you before we get some advice from our authors on potential authors that are out there?

[01:43:23] MZ: We joke about it, but it really is understand what your rights and obligations are. Whether that's consult with your agency that has your equities, your lawful obligation exists to. Consult with them for guidance. I mean, there are many good people in these review boards in each agency that want to help you to get the book out. But as well, consult someone who has an expertise and experience outside of that process. A lawyer is frankly the better way to go. But even talking to someone who has gone through it before so you have a better understanding of what the experience is. Because what we want to do is maximize your ability to publish and minimize the risk to you to get into trouble.

[01:44:15] AH: And each of our authors, what advice would you give to someone out there that's potentially thinking of walking in similar shoes to each of you?

[01:44:24] FS: My advice would be just remember, no good deed goes unpunished. Whistleblowing is a blood sport. And if you think you're going to be honored for honoring the truth, forget it. You're going to be trashed. That's why you better be very sure you believe in what you are pushing, what you're pushing out there, that you're not going to be honored in your own house. The honor comes with telling the truth and getting the truth out.

[END]