

possesses some of the documents, he might be in violation of the Espionage Act. Allen Weinstein, who heads the National Archives, has halted the documents' reclassification.

The FBI is seeking access to the papers of the late muckraking columnist Jack Anderson to seize classified documents in his files. Anderson broke many stories the government tried to keep secret. His family, citing the First Amendment, has refused the agency's request. It is unclear how far the FBI plans to push the matter, or whether the government will try next to examine the files of other journalists, dead or alive.

Porter J. Goss, director of the CIA, has testified that "it is my aim and it is my hope" that reporters who receive leaks on intelligence subjects are hauled before a grand jury and forced "to reveal who is leaking this information." The CIA dismissed Mary O. McCarthy, a senior official, for allegedly having unauthorized contacts with the media and disclosing classified information to reporters. The agency let stand the impression that she had leaked the story of the CIA secret prisons for terrorists in Eastern Europe to Dana Priest of The Washington Post, who won a Pulitzer Prize for her account. McCarthy's attorney says she was not the source of the story and has never leaked classified information.

Congress is considering legislation that would enable intelligence agencies to revoke the pensions of employees who make unauthorized disclosures. The measure also would allow the CIA and NSA to arrest suspicious people outside their gates without a warrant.

Although the indictment of the two lobbyists for the American Israel Public Affairs Committee is replete with references to "classified information," the espionage laws, with one narrow exception, refer only to "information relating to the national defense." The spy laws were passed in 1917 during World War I. A 1951 presidential executive order created the current system of classifying documents.

There is no law prohibiting leaks, so the government has used the espionage laws to combat the practice. President Clinton vetoed anti-leak legislation passed in 2000 that would have made it a crime for a government official to disclose classified information.

To criminalize leaks of government information simply because the information is marked "classified" is absurd. In 2004, the most recent year for which figures are available, the government classified over 15.3 million documents. It is hardly likely that the government has that many real secrets to withhold from its citizens.

Unnecessarily classifying documents is a fact of life in Washington. Many bureaucrats know that unless they stamp a document "secret" or "top secret," their superiors may not even bother to read it. One agency classified the fact that water does not flow uphill. During World War II, the Army labeled the bow and arrow a secret, calling it a "silent flash less weapon."

The government's theory in the lobbyists' prosecution could, if it stands, change the nature of how news is gathered in Washington and how lobbyists and academics interact with the government.

"What makes the AIPAC case so alarming," said Steven Aftergood, director of the Project on Government Secrecy of the Federation of American Scientists, "is the defendants are not being charged with being agents of a foreign power but with receiving classified information without authorization. Most Americans who read the newspaper are also in possession of classified information, whether they know it or not. The scope of the charges is incredibly broad."

Officials in Washington talk to reporters every day about matters that may, in some

government file cabinet, in some agency, be stamped with a secrecy classification. How would a journalist be expected to know that he or she was a "recipient" of classified information and, in theory, subject to prosecution under a law that was meant to catch spies?

The original British Official Secrets Act, passed in 1911, allowed the crown to prosecute anyone, even a journalist, who published a railroad timetable. The act was made less draconian in 1989, but still carries tough provisions and can apply to journalists.

Until recently, the U.S. government applied the espionage laws to officials who leaked, not to the recipients.

"Otherwise," Aftergood said, "Bob Woodward would not be a wealthy, bestselling author. He would be serving a life sentence."

[From the New York Times]

SCARED OF SCOOPS

(By Geoffrey R. Stone)

While tensions between the federal government and the press are as old as the Republic itself, presidential administrations have never been inclined to criminally prosecute the news media for publishing information they would rather keep secret. In recent weeks, however, the Bush administration and its advocates, including Attorney General Alberto Gonzales, have spoken of prosecuting The Washington Post and The New York Times for publishing Pulitzer Prize-winning exposés of the administration's secret prisons in Eastern Europe and secret National Security Agency surveillance of Americans.

Specifically, the president and some of his supporters say reporters and publishers have violated a provision of the 1917 Espionage Act, which provides in part that anyone in unauthorized possession "of information relating to the national defense, which information the possessor has reason to believe could be used to the injury of the United States" who willfully communicates it to any person not entitled to receive it "shall be fined under this title or imprisoned not more than 10 years, or both."

But for at least three reasons, such threats are largely empty. First, the provision was never intended to be used against the press. When the Espionage Act was proposed by President Woodrow Wilson, it included a section that would expressly have made it a crime for the press to publish information that the president had declared to be "of such character that it is or might be useful to the enemy." Congress overwhelmingly rejected that proposal, with members of both parties characterizing it as "un-American" and "an instrument of tyranny."

Second, if the 1917 act were meant to apply to journalists, it would unquestionably violate the First Amendment. Laws regulating speech must be precisely tailored to prohibit only speech that may constitutionally be proscribed. This requirement addresses the concern that overbroad laws will chill the willingness of individuals to speak freely.

Not surprisingly, because the act was drafted before the Supreme Court had ever interpreted the First Amendment in a relevant manner, it does not incorporate any of the safeguards the court has since held the Constitution requires. For example, the provision of the act is not limited only to published accounts that pose a "clear and present danger" to the nation. For this reason, it seems clear, any prosecution of the press under it would be dismissed out of hand by the judiciary.

Third, if Congress today enacted legislation that incorporated the requirements of the First Amendment, it could not apply to

articles like those published by The Times and The Post. Such a statute would have to be limited to articles that, first, do not disclose information of legitimate and important public interest and, second, pose a clear and present danger. Nobody could deny that articles like those on secret prisons and electronic surveillance of Americans clearly concerned matters of legitimate and important public interest; nor could the administration show that such disclosures created a clear and present danger of serious harm to the national security.

I do not mean to suggest that the government has no interest in keeping military secrets or that it may never punish the press for disclosing classified information. To the contrary, the government may take many steps to keep such information secret, including (in appropriate circumstances) firing and even prosecuting public employees who unlawfully leak such information.

Moreover, in narrowly defined circumstances, the government may prosecute the press for disclosing classified national security information. Such a prosecution might be consistent with the First Amendment, for example, if a newspaper revealed that the government had secretly broken an important Qaeda code, thus causing that group to change its cipher. But revelations like those in The Times and Post revealed significant government wrongdoing and therefore are essential to effective self-governance; they are at the very core of the First Amendment.

Although the threats of the White House are largely bluster, they must nonetheless be taken seriously. Not because newspapers are really in danger of being prosecuted, but because such intimidation is the latest step in this administration's relentless campaign to control the press and keep the American people in the dark.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. MCHENRY) is recognized for 5 minutes.

(Mr. MCHENRY addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

DON FRANCISCO

Ms. ROS-LEHTINEN. Mr. Speaker, I ask unanimous consent to claim Mr. MCHENRY's time.

The SPEAKER pro tempore. Without objection, the gentlewoman from Florida (Ms. ROS-LEHTINEN) is recognized for 5 minutes.

There was no objection.

Ms. ROS-LEHTINEN. Mr. Speaker, I am so proud to rise today to honor the 20th anniversary of the television personality Don Francisco and his wildly popular show Sabado Gigante.

This show was created and is still hosted by Mr. Mario Kreutzberger, better known as Don Francisco, and is watched every Saturday evening by, get this, more than 100 million people worldwide.

Don Francisco's Spanish language international television show Sabado Gigante was recognized by the Guinness Book of World Records as the world's longest-running variety program.

After a successful 24-year run in Chile, the show's operations were