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Government steps up crackdown on press leaking security secrets

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WASHINGTON — Speaking loudly and carrying a tough criminal statute, the Reagan administration has stepped up its crackdown on national security leaks by threatening to prosecute publishers and broadcasters of government secrets.

CIA director William Casey chose to confront the press over the publication of intelligence information that is neither fresh news to the public nor a secret unknown to the Soviet Union.

And up to now, the Justice Department has shown little interest in prosecuting journalists.

The latest episode involved Casey's recommendation for legal action against NBC and the agreement the Washington Post made under pressure to remove material from an article about U.S. eavesdropping. They underscored a growing tension between the government's responsibility to protect the nation's secrets and the freedom of the press to report what the U.S. government is doing.

MANY ANALYSTS say Casey is so embarrassed and infuriated by leaks and spy cases that he has decided to try to intimidate the press into withholding information about U.S. intelligence operations — including the covert operations abroad that the CIA is vigorously seeking to expand.

"The White House is not worried about what the Soviet Union may learn," said Thomas Polgar, a retired CIA official. "It is embarrassed by all the bad publicity and is trying to take countermeasures to keep the bad news out of the newspapers and off the air.

"They are able to intimidate quite a few people. Even the Washington Post backed down," Polgar said.

On May 2, Casey met with Post editors after learning that the newspaper planned to publish an article stating that Ronald Pelton, a former National Security Agency employe on trial for espionage, had informed the Soviet Union about U.S. eavesdropping on Soviet communications. Casey urged the Post editors to withhold the story.

"I'm not threatening you," the Post quoted Casey as saying, "but you've got to know that if you publish this, I would recommend that you be prosecuted under the intelligence statute."

HE CITED an espionage law, enacted in 1950 and known as the COMINT statute, that bars the unauthorized disclosure of classified U.S. communications intelligence, such as codes and other secret messages. No news organizations have been prosecuted under the statute.

Casey said to Post editors that "We've already got five absolutely cold violations" of the COMINT law against the Post, Washington Times, New York Times and Time and Newsweek magazines. He mentioned stories about U.S. interception of Libyan messages.

But, as it turned out, the Justice Department was cool to Casey's "absolutely cold violations."

Said a Justice Department official, who asked not to be identified: "We haven't moved forward with it. That should tell you something."

Last Tuesday, Casey asked the Justice Department to prosecute NBC News for broadcasting the following sentence:

"Pelton apparently gave away one of the NSA's most sensitive secrets, a project with the code name Ivy Bells believed to be a top-secret eavesdropping program by American submarines inside Soviet harbors."

THE NEXT DAY, the Post published its story, headlined "Eavesdropping System Betrayed." It said that, for $35,000, Pelton had sold the Soviets information about an intelligence operation that used a "high-technology device" to intercept Soviet communications.

The Post story said a description of the technology was excised. Post editors said later that they could not be certain that its disclosure would not harm national security.

A Justice Department official said Friday that Casey had not yet proposed prosecution of the Post, although he said the Post story contained as much, if not more, intelligence information as the NBC report.

Policy at the Post in such situations was expressed last month by Katherine Graham, chairwoman of the board of the Washington Post Co.

"I want to emphasize," she wrote in the Post, "that the media are willing — and they do — withhold information that is likely to endanger human life or jeopardize national security." (Twice within the past year, the newspaper agreed to comply with requests not to identify an individual whose life could have been endangered by publication, a Post editor said.)

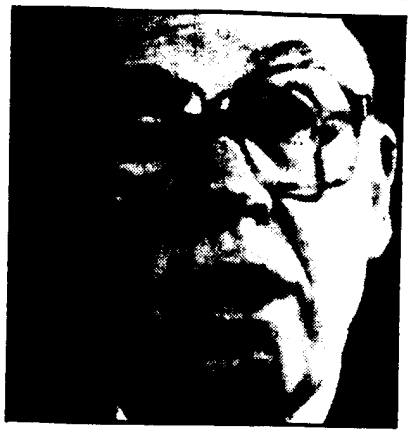
William Terry Maguire, vice-president and general counsel of the American Newspaper Publishers Association, said there are no general guidelines for editors, so each case must be decided separately.

"I THINK our feeling is that it is usually appropriate for newspaper editors to discuss these issues with the government, then make the determination of what to publish and what not to publish, based on a more complete understanding of what's involved," said Maguire.

James Bamford, author of "The Puzzle Palace," a study of the National Security Agency, said that the NBC and Post stories did not add to public knowledge. Information that U.S. submarines had planted eavesdropping devices near the Soviet coast have been published since 1975 and had been "rehashed" many times since.

He said he believed that 'Ivy Bells' was the NSA's way of "attaching a new code word to an old operation."

News organizations may find that defending a COMINT violation of unauthorized disclosure of classified communications intelligence because it was previously published or was already known to the Soviet Union won't



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work, said Bamford and several lawyers with backgrounds in national security.

Anthony Lapham, former chief counsel to the CIA, said the only court to have interpreted the statute — the 9th U.S. Circuit Court of Appeals in California — appeared to have ruled out all claims that, because of previous publication, the government should not have kept the published information a secret.

That court wrote in 1977 that it was irrelevant whether the information was properly classified or not. "The fact of classification . . . is enough," the court wrote.

"But," Lapham said, "that is not the final word. It is still an open question."