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Reagan moves on journalists in war against leaks

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

Ironically, CIA Director William J. 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.

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

The latest episode involved a recommendation by Casey for legal action against NBC and an agreement under pressure by The Washington Post to remove material from an article about U.S. eavesdropping. It 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 describe Casey as 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."

Casey meets editors

On May 2, Casey met with Post editors after learning that the newspaper planned to publish an article stating that Ronald W. Pelton, a former National Security Agency employee 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, which 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 told Post editors that "we've already got five absolutely cold violations" of the COMINT law against The Post, The Washington Times, The 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 source, who asked not to be identified: "We haven't moved forward with it. That should tell you something."

Reagan's phone call

On May 10, President Reagan reiterated Casey's point in a call to Katharine Graham, chairman of the board of the Washington Post Co. In what Graham later said was "a very civilized, low-key conversation," the president asked that The Post not publish its scheduled intelligence story and said it might be prosecuted if it did.

Boisfeuillet Jones Jr., attorney for The Post, explained that the newspaper's editors, with the COMINT law in mind, had weighed their story's potential threat to national security against the public benefit of publishing it.

Jones noted that, in recent rulings, the federal courts have been "very deferential" to national security interests.

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 to 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 explained later that they could not be sure 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's 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 Graham.

"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, that each case must be decided separately.

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 has been

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published since 1975.

But Bamford and several lawyers with backgrounds in national security said it may be no defense to a COMINT violation for a news organization to contend that its unauthorized disclosure of classified communications intelligence was previously published or already was known to the Soviet Union.

Anthony A. Lapham, former chief counsel to the CIA, noted that 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, due to previous publication or for some other reason, the government should not have kept the published information a secret.

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

Meanwhile, said media lawyer Bruce Sanford, "I think it's foolish and futile for the government to threaten prosecutions. What we need is greater cooperation on sensitive information . . ."

"It is not going to be helpful for the Bill Caseys of the world . . . to tell the news media that they can't print things because you know darn well there are all kinds of people in the media who won't buy that."

But Polgar observed: "I've known Casey for a number of years. Sometimes he's wrong but he's never unsure. He sees things in black and white. Gray is not in his color scheme."



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