

ARTICLE APPEARED
ON PAGE A-23

NEW YORK TIMES
21 February 1985

ABROAD AT HOME | Anthony Lewis ^J

The Greater Threat

The whimpering end of General Westmoreland's libel suit against CBS confirms what some of us thought from the start: The dispute about enemy force statistics in the Vietnam War was a political one that should have been left to public debate, not put to the courts.

By pressing the lawsuit, the general only hurt himself. Those who encouraged the suit, using him to fight their war against the press, owe him an apology. Everyone would have benefited if the judge had dismissed the case before trial.

The failure of this misconceived suit, with its chilling implications for freedom to criticize public officials, will relieve all those concerned about the First Amendment. But it is no time to relax in that concern. Other political libel cases, brought by senators and governors and judges, are still there. So is a trend that I think is a greater threat than libel suits to the central meaning of the First Amendment, the right freely to debate public policy.

The trend is toward secrecy in government. Every President finds reasons for secrecy, but President Reagan and his people have carried the obsession to an extreme. Right now they are trying to bring off a legal coup that would give the Government a powerful new weapon to stop public discussion of policy.

The aim, described in a previous column, is to impose on the United States the equivalent of Britain's discredited Official Secrets Act. The Reagan Administration is trying to do that not by going to Congress in a direct way but by asking the courts to apply the Espionage Act of 1917 to the use of leaked material in journalism.

The case is the criminal prosecution of Samuel Loring Morison, an employee of the Navy and part time, with Navy approval, of Jane's Fighting Ships. He is charged with espionage for sending Jane's for publication three U.S. satellite photographs of a Soviet aircraft carrier. The Government argues that he violated the Espionage Law even if he acted without subversive intent — even, indeed, if his sole aim was to expose wrongdoing. That view would turn the act into a strict anti-leak law.

^A The notion that we already have such a sweeping law is amazing. If so, a former C.I.A. general counsel, Anthony Lapham, said in 1979, then "We have had in this country for the last 60 years an absolutely unprecedented crime wave, because surely there have been thousands upon thousands of unauthorized disclosures of classified information... yet none has ever been prosecuted."

Moreover, Congress has repeatedly refused to pass a general law making leaks a criminal offense. Instead, it has taken careful aim and outlawed in strict terms only disclosures of a particularly dangerous kind — of nuclear data, for example, and communications intelligence such as that gleaned from electronic eavesdropping.

For the Reagan Administration to ask the courts, by "interpretation," to do what Congress has declined to do must seem extraordinary. Mr. Reagan and his lawyers have talked so much about the need for "judicial restraint," and urged judges to leave lawmaking to Congress.

But the talk of judicial restraint is only that: talk. The Reagan lawyers have not made it a consistent principle. Their real interest is in moving American law radically to the right; when they thought judges would do that, they have not hesitated to ask.

And the present Supreme Court just might disregard the long record of Congressional no's to proposed anti-leak laws and read the Espionage Act to make disclosures for publication a crime. After all, the Court last year sustained the Reagan Administration's ban on travel to Cuba in the teeth of contrary legislative history. The justices seem inclined to say yes to any claim of executive power, however extravagant, when national security is said to be involved.

What will the American press do about the Administration's extraordinary grab for power? About its move to give this country an Official Secrets Act and thus throttle public debate on large areas of policy? About its attempt to do all this without putting the proposals to Congress?

I ask those questions because the press often seems inert, on First Amendment issues, unless its own interest is directly involved. A big libel suit arouses the passions of the press, but a move to oppose a new blanket of secrecy on Washington may not.

The Morison case has its first hearing in Federal Court in Baltimore tomorrow. Editors and members of Congress and Americans generally should see it for what it is: a dangerous sneak attack on the American system of freedom. □