

In the Small Print, An 'Official

By Edmund S. Muskie

FROSTBURG, Md.—We are tangled in angry and important disputes about Presidential and Congressional power, about spending and taxation, about social needs and governmental indifference, about the whole structure of our Federal system and about the integrity of our political process.

And to those disputes we must now add a new one brought on by this Administration's latest attempt to stifle the flow of official information to the public. The attempt is hidden deep in a lengthy and complex legislative proposal (S.1400) introduced in the Congress as a revision of the Federal Criminal Code. Five sections of that proposal, taken together, would establish in peacetime a system of Government censorship that a democracy could hardly tolerate in a time of war.

The "official secrets act" being proposed would punish Government officials who disclosed almost any kind of defense and foreign policy information, whether or not its disclosure would endanger national security.

It would punish newsmen who received such information unless they promptly reported the disclosure and returned the material to a Government official.

It would punish not only reporters but all responsible officials of their publications or broadcasting companies who participated in making the unauthorized information public.

It would punish Government employees who knew of a colleague's unauthorized disclosure and failed to report their co-worker's action.

The law's penalties—from three to seven years in jail, from \$25,000 to \$50,000 in fines—would be imposed on actions which are not now considered crimes, which are, instead, the applauded work of investigative journalists.

For instance, part of the law would make any unauthorized disclosure of what is called classified information a crime.

And the law would explicitly prevent officials who disclosed such information from defending their action by proving that the information was improperly classified.

Well, what is classified information? According to the Administration proposal, it is "any information, regardless of its origin, which is marked or designated pursuant to the provisions of a statute or executive order or a regulation or rule thereunder, an information requiring a specific degree of protection against unauthorized disclosure for reasons of national security."

On its surface, that language sounds reasonable, it does what existing law already does by insuring secrecy of data about our defense codes, about our electronic surveillance techniques, about military installations and weapons, about our atomic secrets and about plans and operations which might aid our enemies. All that information is already kept secret by laws which punish its disclosure with intent to damage America and its security.

But this new law would go farther. It would prohibit and penalize disclosure of any classified information,

regardless of whether or not it damaged security.

Classified information, you should know, is any document or record or other material which any one of over 20,000 Government officials might have decided—for reasons they need never explain—should be kept secret. It is any piece of paper marked top secret, secret or confidential, because someone, sometime, supposedly decided that its disclosure could prejudice the defense interests of the nation.

In practice, however, classified information is material which some individual in the Government decides he does not want made public. He could make that decision to hide incompetence. Many have.

He could be trying to conceal waste. Many have.

He could even be attempting to camouflage corrupt behavior and improper influence. Many have.

He could simply be covering up facts which might embarrass him or his bosses. Many have.

Classified information is the 20 million documents the Pentagon's own most experienced security officer has estimated to be in Defense Department files. Classified information is the 26-year backlog of foreign policy records in the State Department archives.

And most of that information is improperly classified—not out of evil motives, but out of a mistaken interpretation by conscientious employees of what security actually requires. They do not limit the use of secrecy stamps just to information which would really affect our national defense, if disclosed. They often use them simply to keep material out of the newspapers—to make it a little harder, perhaps, for a foreign nation to get the information, whether the information is defense-related or not.

Let me give you a few examples.

Around 1960, a sign in front of a monkey cage in the National Zoo explained that the monkey on display was a research animal who had traveled into space in American rockets. But at the same time the Pentagon was classifying all information that showed we were using monkeys in space.

The reason given for trying to keep the information secret was someone's concern that it might damage our relationships with India where some religious sects worship monkeys.

Another example deals with India. Over a year ago when India and Pakistan were at war over the independence of Bangladesh, the Nixon Administration insisted in public that it was not interfering in the conflict, that it was trying to be neutral. But Jack Anderson revealed classified information that proved that President Nixon had instructed Mr. Kissinger and others to "tilt" toward Pakistan. That information was being kept secret to conceal a lie.

India and Pakistan knew the truth. Only Americans were being deceived.

Similarly, a laboratory at M.I.T. prepared an assembly manual last February for a gyroscopic device used in missiles. Again the Air Force classified the manual and put the following words on its front page: "Each section of this volume is in itself unclassified. To protect the compilation of information contained in the complete volume, the complete volume is confidential." And then in 1969 it was disclosed

that someone in the Navy Department was clipping newspaper articles that contained facts that were embarrassing to the Navy, pasting those articles onto sheets of paper and stamping the paper secret. It turned out that such a practice was common throughout the Defense Department.

If newspaper articles can be stamped secret as a matter of course, what else is systematically being hidden from the public? Should this Administration proposal become law, you and I will never know the answer to that question.

The examples I have given should indicate to you the folly of any blanket prohibition against the disclosure of classified information, as long as our system of classification is so erratic, arbitrary and unmanageable.

Not only would the proposed law perpetuate the widespread abuses of secrecy I have listed, it would enforce public ignorance by making criminals out of honest men and women who put the public interest above bureaucratic secrecy. Indeed, the Administration's proposed secrecy law goes far beyond protection of what might be legitimate secrets as determined by a workable classification system, should one be developed.

Additionally, it would punish the unauthorized disclosure of "information relating to the national defense . . . regardless of its origin" which relates, among other things, to "the conduct of foreign relations affecting the national defense." That broad definition could bar intelligent public scrutiny of America's most significant foreign policy decisions.

What could the enactment of such a sweeping gag rule mean to the flow of information to the public?

For one thing, the proposed law would mean that Robert Kennedy, were he alive and writing now, would risk prosecution for publishing in his book, "Thirteen Days," the secret cable Nikita Khrushchev sent the White House during the Cuba missile crisis of October, 1962.

It would mean that Seymour Hersh of The New York Times could not write, as he did last year, about the still-classified Peers Report — the Army's own investigation of the My Lai massacre and the responsibility of Army officers for concealing the facts of that event.

It would mean that knowledgeable and conscientious Government employees could be brought to trial for telling newsmen about waste in defense contracts, or about fraud in the management of the military P.X. system.

It could mean denying the public the information necessary to understand how cost estimates on 47 weapons systems rose by over \$2 billion between March 31 and June 30 last year.

Thus, the Administration's official secrets act would create staggering penalties for disclosure of information even when the information is totally misclassified or classified only to prevent public knowledge of waste, error, dishonesty or corruption.

We already have the criminal sanctions we need against disclosure of true defense secrets. To expand the coverage of those penalties can only stifle the flow of important but not injurious information to the press and therefore to the public.

Secrecy Act'

With the criminal penalties already in the law and with the proven record of responsible behavior by the great majority of Government employes and newsmen, the only purpose behind further expansion of the secrecy laws would be the effort to silence dissent within the Government and hide incompetence and misbehavior.

New penalties will not further deter espionage and spying. They will only harm those who want the public to know what the Government is doing.

Nothing could be better designed to restrict the news you get to the pasteurized jargon of official press releases than a law which would punish a newsman for receiving sensitive information unless he returned the material promptly to an authorized official.

Nothing could damage the press more than a provision which would make a newsman an accomplice in crime unless he revealed the source of information disclosed to him.

The Administration proposal carries an even greater danger in the power it would give to the officials who now determine what shall be secret and what shall be disclosed. Not only would they be able to continue to make those decisions without regard to any real injury disclosure might cause, they would be empowered to prosecute anyone who defied their judgment. Their imposition of secrecy could not be reviewed in the courts. And a violation of their decision would be a crime involving not only Government employes but journalists as well.



The Justice Department proposal goes far beyond any laws we have had, even the emergency requirements of World Wars I and II. No law now gives the Government such power to prosecute newsmen not only for revealing what they determine the public should know but just for possessing information the Government says they should not have.

Under this proposal, a reporter who catches the Government in a lie, who uncovers fraud, who unearths examples of monumental waste could go to jail—even if he could show, beyond any question, that the Government had not right to keep the information secret and that its release could not possibly harm national defense.

This law then would force journalists to rely on self-serving press releases manufactured by timid bureaucrats—or risk going to jail for uncovering the truth.

It would force Government employes to spy on each other in a manner familiar in Communist or fascist states but abhorrent to our concept of an open democracy.

We have had enough of that abuse of secrecy in the attempts to hide the facts about our conduct in Vietnam from the American people. Official secrecy has even been used to keep back vital facts about Government meat inspection programs or pesticide regulations or drug tests or import restrictions or rulings that interpret income tax regulations.

These are excerpts from a speech delivered April 1 by Senator Edmund S. Muskie, Democrat of Maine, at Frostburg State College.
