

Official Secrets

By Anthony Lewis

LONDON, Feb. 18—Alan Grimwood, a postal clerk in Chingford, Essex, wrote to the local paper the other day to explain that slow service in the town post office was caused by a shortage of help. When his letter was published, he was accused of violating the Official Secrets Act.

The Sunday Times of London got hold of a report by consultants to the British Railways Board raising the idea of a drastic cut in rail services. When the paper ran a story, detectives from Scotland Yard visited the editor and said that he might have committed a crime.

To Americans brought up in the tradition of free speech, those incidents must seem absurd—worthy of a banana republic, as a British legal journal said. Obviously, we would say, nothing like that could happen in the United States. But it could.

At this very moment the United States Government is trying to create its own replica of Britain's much-hated Secrets Act, making it a crime to publish the most trivial fact of official life without permission. That is the purpose, and would be the result if it succeeds, of the prosecution of Daniel Ellsberg and Anthony Russo.

The charges in the Ellsberg-Russo trial of course relate not to something trivial, like a village post office, but to the Pentagon papers. People may therefore assume that there must be a law directly covering the alleged conveying of that official history of the Vietnam war to the press.

But there is no such law. Congress has never been willing to pass a statute plainly and squarely forbidding leaks to the press by Government officials. The Justice Department instead is trying to bring the facts of this case under three other statutes.

The first is the Espionage Act. As its name indicates, this law is directed generally at espionage, not leaking. The particular section invoked against Dr. Ellsberg and Mr. Russo has been used in the past against persons alleged to have passed information to a foreign agent. There is of course no such charge against these defendants; the Justice Department is trying to persuade the courts that mere disclosure of defense information is enough to constitute a crime under the Espionage Act.

Second, Dr. Ellsberg and Mr. Russo are charged with violating the general Federal statute against conspiracy. This section of the criminal code was recently described by the Chief Judge of the Federal District Court for Northern Illinois, William J. Campbell, as the "darling of the lazy or publicity-

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seeking prosecutor," he urged its repeal.

Specifically, Dr. Ellsberg and Mr. Russo are accused of conspiring to "defraud the United States" by "impairing, obstructing and defeating its lawful governmental function of controlling" classified information. In other words, instead of a specific statute, we have a vague creature called a "lawful governmental function" against which it is a crime—a bootstrap crime—to conspire.

Third, the Pentagon papers defendants are charged under the general statute against stealing Federal property. The "property" supposedly involved is not the volumes of war history themselves but the information they include.

If the courts accept this ingenious legal theory, it will then potentially be a crime to acquire any information from the Government, however trivial, without the specific approval of some official. The United States will then indeed have an Official Secrets Act on exactly the model of the British law regarded as so sweeping and silly that an official committee has recommended its reform.

It is no accident that the Federal statute books lack any clear, direct law against publishing official information. Congress has had ample opportunity to pass such an act. It has not done so, and the reason is easy enough to understand. Leaking is a widespread phenomenon, deeply rooted in the American system of government, and using the criminal law to stop it would raise grave difficulties.

The Justice Department's attempt to construct a law against leaking from existing statutes, without fresh Congressional consideration, raises very great dangers of centralized information control. There is one particular danger that ought to be understood by the press.

If the Nixon Administration prevails with its theory that Government information is "property," or otherwise gets and sustains a conviction against Dr. Ellsberg and Mr. Russo, then leaking will be a crime. Under the Supreme Court decision in the Caldwell case last year, reporters may be forced to testify about alleged crimes. That means that any leak disliked by some future Administration could lead not only to investigations of the press but to forced testimony—or jail terms.

The American press has been generally complacent so far about the prosecution of Daniel Ellsberg and Anthony Russo. If it understood the implications, I do not think it could be.