



SEN. BARRY GOLDWATER
... lists legal grounds

Goldwater: Prosecute The Post'

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Sen. Barry M. Goldwater (R-Ariz.) said yesterday "it would be in the national interest" for the Attorney General "to immediately institute criminal prosecutions against The Washington Post" for publication of leaks of confidential FBI memoranda.

Goldwater, saying "it is high time we find out if the government of the United States can protect its top-secret materials" and deal with other nations in an atmosphere of confidence, listed five criminal grounds on which he said The Post could be prosecuted for such publication.

Benjamin C. Bradlee, executive editor of The Washington Post, flatly rejected the allegation that any criminality was involved. He said the materials in question were "lawfully" acquired and disclosed.

Shortly after Goldwater inserted his remarks in the Congressional Record, he said in a telephone interview with The Post that he had "no intention" of asking the Justice Department to prosecute, and that his only purpose was to alert the press that grounds already are on the books for what he called "good-faith prosecution" — presumably

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meaning a case not brought simply as an act of harassment.

"The real culprits, in this whole thing are those people in government who release classified material," Goldwater said in the interview. "I would much rather get at those people than at the newspapers. This is not aimed at The Post, but at people like Ellsberg who stole material and it made a national hero of him. Frankly, it worries me that the files of the FBI are open to people who want them."

Goldwater specifically criticized a story in The Washington Post's June 12 editions quoting from "top-secret" FBI memos as contradicting Secretary of State Henry A. Kissinger's account of his role in the current national security wiretapping controversy.

The story said FBI documents obtained by The Post indicated that Kissinger had phoned then-FBI Director J. Edgar Hoover and set in motion the surveillance that led to the tapping over a 21-month period of 13 high-ranking government officials and four newsmen.

Kissinger has said his own role was primarily to target subordinates with access to documents involved in four major news leaks in early 1969 that concerned President Nixon, then-Attorney General John N. Mitchell and Hoover.

Accompanying the story was a reproduction of the FBI memo from Hoover to Mitchell stating that on May 12, 1970, Gen. Alexander M. Haig Jr., then Kissinger's chief aide on the National Security Council staff, advised that Kissinger "had requested that as soon as possible a telephone surveillance be instituted on the home of K. of the National Security Council staff." "K" was not further identified in the memo or the story.

In his Senate remarks yesterday, Goldwater said that "the possible criminality of The Post's activities lies not only in its disclosure and retention of top-secret documents, but also in the use to which these documents were put, which was to challenge the credibility of the Secretary of State at a time when this country is engaged in negotiations of a monumental nature."

Arguing that it should be determined "whether the specific criminal laws Congress has passed to protect government property and preserve government secrets mean anything at all," Goldwater inserted in the Congressional Record a 38-page legal memo he said was prepared by his staff legal counsel, J. Terry Emerson. It listed these specific provisions of the U.S. Criminal Code as the basis for prosecution:

"Communicating documents relating to the national defense; retaining national defense documents; conversion of property of the United States; conspiracy to commit an offense against the United States; conspiracy to impair, obstruct or defeat the lawful functions of the United States and the Secretary of State."

Last week, Goldwater charged that The Washington Post had committed "an act of treason" in printing the secret FBI documents, but yesterday he withdrew the charge because "my attorneys and other legal advisers tell me that they doubt that the act I complained about would come under this term."

Bradlee said of Goldwater's remarks and actions:

"Last week Senator Goldwater charged The Washington Post with treason. Now he's down to theft, but his accusation is again false. We acquired the documents lawfully from a source who had acquired them lawfully, possessed them lawfully and disclosed them lawfully.

"The documents deal with the questionably legal, and perhaps criminal, act of wiretapping—more than four years ago. They are overwhelmingly relevant to the critical issues of our time. Our counsel specifically advised us that no crime was involved in their publication."