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White House Trains Efforts on Media Leaks

Sources, Reporters Could Be Prosecuted

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The Bush administration, seeking to limit leaks of classified information, has launched initiatives targeting journalists and their possible government sources. The efforts include several FBI probes, a polygraph investigation inside the CIA and a warning from the Justice Department that reporters could be prosecuted under espionage laws.

In recent weeks, dozens of employees at the CIA, the National Security Agency and other intelligence agencies have been interviewed by agents from the FBI's Washington field office, who are investigating possible leaks that led to reports about secret CIA prisons and the NSA's warrantless domestic surveillance program, according to law enforcement and intelligence officials familiar with the two cases.

Numerous employees at the CIA, FBI, Justice Department and other agencies also have received letters from Justice prohibiting them from discussing even unclassified issues related to the NSA program, according to sources familiar with the notices. Some GOP lawmakers are also considering whether to approve tougher penalties for leaking.

In a little-noticed case in California, FBI agents from Los Angeles have already contacted reporters at the Sacramento Bee about stories published in July that were based on sealed court documents related to a terrorism case in Lodi, according to the newspaper.

Some media watchers, lawyers and editors say that, taken together, the incidents represent perhaps the most extensive and overt campaign against leaks in a generation, and that they have worsened the already-tense relationship between mainstream news organizations and the White House.

"There's a tone of gleeful relish in the way they talk about dragging reporters before grand juries, their appetite for withholding information, and the hints that reporters who look too hard into the public's business risk being branded traitors," said New York Times Executive Editor Bill Keller, in a statement responding to questions from The Washington Post. "I don't know how far action will follow rhetoric, but some days it sounds like the administration is declaring war at home on the values it professes to be promoting abroad."

President Bush has called the NSA leak "a shameful act" that was "helping the enemy," and said in December that he was hopeful the Justice Department would conduct a full investigation into the disclosure.

"We need to protect the right to free speech and the First Amendment, and the president is doing that," said White House spokesman Trent Duffy. "But, at the same

time, we do need to protect classified information which helps fight the war on terror."

Disclosing classified information without authorization has long been against the law, yet such leaks are one of the realities of life in Washington -- accounting for much of the back-channel conversation that goes on daily among journalists, policy intellectuals, and current and former government officials.

Presidents have also long complained about leaks: Richard Nixon's infamous "plumbers" were originally set up to plug them, and he tried, but failed, to prevent publication of a classified history of the Vietnam War called the Pentagon Papers. Ronald Reagan exclaimed at one point that he was "up to my keister" in leaks.

Bush administration officials -- who complain that reports about detainee abuse, clandestine surveillance and other topics have endangered the nation during a time of war -- have arguably taken a more aggressive approach than other recent administrations, including a clear willingness to take on journalists more directly if necessary.

"Almost every administration has kind of come in saying they want an open administration, and then getting bad press and fuming about leaks," said David Greenberg, a Rutgers University journalism professor and author of "Nixon's Shadow." "But it's a pretty fair statement to say you haven't seen this kind of crackdown on leaks since the Nixon administration."

But David B. Rivkin Jr., a partner at Baker & Hostetler in Washington and a senior lawyer in the Reagan and George H.W. Bush administrations, said the leaking is "out of control," especially given the unique threat posed by terrorist groups.

"We're at the end of this paradigm where we had this sort of gentlemen's agreement where you had leaks and journalists were allowed to protect the leakers," Rivkin said. "Everyone is playing Russian roulette now."

At Langley, the CIA's security office has been conducting numerous interviews and polygraph examinations of employees in an effort to discover whether any of them have had unauthorized contact with journalists. CIA Director Porter J. Goss has spoken about the issue at an "all hands" meeting of employees, and sent a recent cable to the field aimed at discouraging media contacts and reminding employees of the penalties for disclosing classified information, according to intelligence sources and people in touch with agency officials.

"It is my aim, and it is my hope, that we will witness a grand jury investigation with reporters present being asked to reveal who is leaking this information," Goss told a Senate committee.

The Justice Department also argued in a court filing last month that reporters can be prosecuted under the 1917 Espionage Act for receiving and publishing classified information. The brief was filed in support of a case against two pro-Israeli lobbyists, who are the first nongovernment officials to be prosecuted for receiving and distributing classified information.

Sen. Pat Roberts (R-Kan.), chairman of the Senate intelligence committee, said last month that he is considering legislation that would criminalize the leaking of a wider

range of classified information than what is now covered by law. The measure would be similar to earlier legislation that was vetoed by President Bill Clinton in 2000 and opposed by then-Attorney General John D. Ashcroft in 2002.

But the vice chairman of the same committee, Sen. John D. Rockefeller IV (D-W.Va.), complained in a letter to the national intelligence director last month that "damaging revelations of intelligence sources and methods are generated primarily by Executive Branch officials pushing a particular policy, and not by the rank-and-file employees of the intelligence agencies."

As evidence, Rockefeller points to the case of Valerie Plame, a CIA officer whose identity was leaked to the media. A grand jury investigation by Special Counsel Patrick J. Fitzgerald resulted last year in the jailing of Judith Miller, then a reporter at the New York Times, for refusing to testify, and in criminal charges against I. Lewis "Scooter" Libby, who resigned as Vice President Cheney's chief of staff. In court papers, Libby has said that his "superiors" authorized him to disclose a classified government report.

The New York Times, which first disclosed the NSA program in December, and The Post, which reported on secret CIA prisons in November, said investigators have not contacted reporters or editors about those articles.

Leonard Downie Jr., executive editor of The Post, said there has long been a "natural and healthy tension between government and the media" on national security issues, but that he is "concerned" about comments by Goss and others that appear to reflect a more aggressive stance by the government. Downie noted that The Post had at times honored government requests not to report particularly sensitive information, such as the location of CIA prisons in Eastern Europe.

"We do not want to inadvertently threaten human life or legitimately harm national security in our reporting," he said. "But it's important . . . in our constitutional system that these final decisions be made by newspaper editors and not the government."

In Sacramento, the Bee newspaper reported last month that FBI agents had contacted two of its reporters and, along with a federal prosecutor, had "questioned" a third reporter about articles last July detailing the contents of sealed court documents about five terrorism suspects. A Bee article on the contacts did not address whether the reporters supplied the agents with any information or whether they were subject to subpoenas.

Executive Editor Rick Rodriguez said last week he could not comment based on the advice of newspaper attorneys. Representatives of the FBI and the U.S. attorney's office in Los Angeles, which is conducting the inquiry, also declined to comment.

CIA spokeswoman Jennifer Millerwise Dyck declined to discuss details of the leak investigations there but said they were being conducted independently of the White House and were not aimed at pressuring journalists.

In prosecuting a former Defense Department analyst and two pro-Israel lobbyists for allegedly spreading sensitive national security information about U.S. policy in the Middle East, the Bush administration is making use of a statute whose origins lie in the first anxious days of World War I.

The Espionage Act makes it a crime for a government official with access to "national defense information" to communicate it intentionally to any unauthorized person. A 1950 amendment aimed at Soviet spying broadened the law, forbidding an unauthorized recipient of the information to pass it on, or even to keep it to himself.

Lawyers for American Israel Public Affairs Committee staff members Steven J. Rosen and Keith Weissman say the vagueness of the statute makes the Justice Department's prosecution of their clients unconstitutional. One count of the indictment specifically charges them with passing "classified national defense information" to a member of the media in 2004.

The Justice Department said "there plainly is no exemption" for the media under the Espionage Act, but added, "a prosecution under the espionage laws of an *actual* member of the press for publishing classified information leaked to it by a government source would raise legitimate and serious issues and would not be undertaken lightly, indeed, the fact that there has never been such a prosecution speaks for itself."