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Official Secrets Act is draconian

Bond's bill is intended to stifle flow of information.

Missouri Sen. Kit Bond is out to keep information from the public.

He doesn't want you to know that the White House is spying on you. He doesn't want you to know that the White House might have your phone records. He doesn't want you to know that the White House might have access to your bank records. He doesn't want you to know that the president might have signed forms exempting the White House from secret court hearings that would have determined whether all that information was available to intelligence sources.

Bond, it seems, doesn't want you to know much of anything at all.

That's the spirit behind Bond's Senate Bill 3774, the so-called Official Secrets Act which would criminalize any unauthorized leak of any information the president determines is classified. The purpose of the bill, if you read Bond's words below as he argues for the act, is simple. He's sick and tired of administration secrecy ending up on the front pages of the New York Times or the Washington Post. He wants the administration to go about its business with no oversight whatsoever.

Bond is wrong. The Official Secrets Act is dangerous. It should be defeated.

The act is as much an attack on the First Amendment and the press as it is an attempt to protect national security. While the proposed law wouldn't directly put reporters in jail, it would dry up their sources and decrease the chances that a government whistle-blower might come forward with important information about administration misdeeds.

This is not to say that the media should be without standards and respect for administration secrecy during times of war or that government employees shouldn't take seriously their pledges to keep classified information to themselves. But narrowly focused laws that truly take national security into account already exist and are being used, such as in the federal investigation into the disclosure of the identity of CIA agent Valerie Plame.

This new law would merely give more presidential authority to a White House that is drunk with power and give the congressional imprimatur to the commander-in-chief to continue to consolidate power that our Founding Fathers thought was better balanced among three equal branches of government.

Most alarming about Bond's witch hunt for leakers is that the law wouldn't even apply to him. As is par for the course in Washington, D.C., this law exempts senators and representatives from the overly strict leaking provisions, giving them cover to continue to use the leak as a political tool. Such a move is as transparent as Bond's real purpose, which is purely to punish the media.

"Our intelligence personnel were very, very disturbed and disappointed by media revelations of hitherto classified information," Bond said in January after the Times revealed the potentially illegal use of wiretaps on Americans by the White House. "Several people said the recent

revelations have blown the cover on some very significant sources who are now targeted for assassination."

Oh, really senator?

Our challenge to Bond is this: Show us the proof.

Bond continues to complain about media reports on White House secrecy efforts without showing any real damage to national security. Have we lost agents? Have programs been stifled?

We don't know the answer to that, but we know Bond can't make a legitimate case national security has been harmed by any reporting of previously classified information.

President Bill Clinton vetoed this identical bill in 2000 because he recognized that the "free flow of information is essential to a democratic society."

That was true then. It's even more true today.

We understand Bond's overzealousness on this issue. His son, Sam, served in Iraq as an intelligence officer. We don't blame members of the intelligence community for wanting to keep as many secrets as they can. That's their business.

But it's the business of the Congress to uphold the constitutional freedoms and checks and balances that limit government power.

This bill would take a horrible step in the wrong direction by criminalizing the efforts of men and women who believe they're doing their patriotic duty.

<http://www.news-leader.com/apps/pbcs.dll/article?AID=/20060813/OPINIONS/608130365/1006>

Kansas City Star

<http://www.kansascity.com/mld/kansascity/15192641.htm>

Sen. Kit Bond has gone way too far in an effort to curtail the public's right to information on government operations.

Supposedly to protect national security, the Missouri Republican wants Congress to pass a law that would severely punish government workers who leak classified information to the news media.

Bond should withdraw his proposal immediately. It obviously is not well thought out. Its wide-ranging chilling effect would potentially restrict the public's right to know and would promote government secrecy. Prosecutors could bring charges without even showing that national security had been damaged.

Bond opined on the Senate floor that his bill was needed because "each violation of trust guarantees chaos and violence in the world."

Oh, come on, senator. It is vital that the people know what their government is up to.

Bond's plan would squelch the "free flow of information that is essential to a democratic society," as former President Bill Clinton put it when he vetoed a similar proposal in 2000. It was a bad idea then and it's a bad idea now.

The Joplin Globe

http://www.joplinglobe.com/editorial/local_story_234010203?keyword=topstory

In our view: Bond plan goes too far

We will give U.S. Sen. Kit Bond, R-Mo., the benefit of the doubt that his legislation to dramatically lower the threshold for prosecuting those who leak classified information is well-intentioned.

But the measure goes way too far, and is - quite frankly - inappropriate for a free society.

Under current law, prosecutors must show that someone who leaked classified information did so knowingly and that actual damage to national security did result or could result.

Bond wants to, as he says, "simplify" the law to say that anyone convicted of leaking "classified" material, regardless of whether it harmed or even truly dealt with national security, can be fined and sent to prison for up to three years.

The problem is the definition of "classified." Despite federal sunshine laws, the U.S. government has become a secret-making machine when it comes to disclosing legitimate information to the public. A low-level bureaucrat wielding a "classified" stamp can shut out the citizens, and they do so on a routine basis.

Bond wants to characterize his measure as a response to a President Bush-hating media that has gone on a destructive binge of revealing state secrets to al-Qaida. But the fact is Bond introduced similar legislation in 2000, long before the war on terror.

The public must be allowed to know, in substantial measure, what its government is doing.

Some want to point to the domestic spying program detailed by The New York Times, L.A. Times and other news organizations as evidence that so-called leakers are harming the country. We will vehemently disagree.

First, the domestic spying program was not necessarily a secret, even though it was classified. Second, there is considerable debate whether the program meets constitutional muster (we feel it clearly does not). Third, no one has offered evidence that the stories harmed or would harm national security. Lots of rhetoric, but no evidence.

In fact, months after the newspapers reported domestic spying, British and U.S. intelligence agencies, with the help of Pakistan, broke up a terrorist cell intending to use liquid explosives to blow up airliners.

If the voters are to judge whether their constitutional protections are being violated, they must have adequate information. Sometimes this comes from patriots from within the system who feel strongly the public needs to know what is going on.

No one thinks newspapers, radio or television stations or Internet sites should report troop movements or strategic plans. The occasional wacky Geraldo Rivera-like incidents aside, the media has neither sought nor published this information.

But criminalizing those who reveal "classified" information without even the slim protection of prosecutors having to show that national security was, indeed, at stake is wrong and goes against our core national values.

The Missoulian, Missoula, MT,

<http://www.missoulian.com/articles/2006/08/20/opinion/opinion1.txt>

Focus on security, not secrets

Sunday, August 20, 2006

SUMMARY: Proposal to criminalize all leaks will do more to stifle democracy than protect security.

The U.S. Constitution specifically authorizes prosecution of treason and empowers Congress to determine the penalties for traitors. The penalty can be death. There also are federal statutes against sedition, with stiff penalties. It's against the law for government workers to disclose classified defense or national security information. Also on the books is a law called the Espionage Act, which a federal judge only recently declared may be used by the government to prosecute citizens for unauthorized receipt or disclosure of classified information.

To gild this legal lily, U.S. Sen. Christopher Bond, R-Mo., has proposed what amounts to an Official Secrets Act, further criminalizing leaks of any information the government doesn't want made public. Among the co-sponsors joining Bond on the bill, S. 3774, is Montana's own Republican Sen. Conrad Burns.

It's a bad idea. Not because there isn't sensitive information worth keeping secret. There is. But authorities already have ample power to prosecute cases in which individuals and perhaps even the press compromise the nation's security. The proposed law aims to make it much easier to prosecute government employees who disclose secrets. Anyone who envisions this additional power being used for good should also take a moment to consider the potential to use it for evil.

The proposed law would relieve government prosecutors of the need to prove a broken secret harmed national security. Indeed, the law isn't about national security. It's about maintaining secrets. Anyone who discloses classified information to another person not authorized to have it would be guilty.

Except, of course, the government always has discretion to prosecute or not. Government operatives who leak secrets with the tacit and sometimes explicit authorization of their bosses as part of routine politicking doubtless would skate, while whistleblowers and critics of government policy would go to jail.

In 2000, President Bill Clinton vetoed a bill containing a virtually identical measure. At the time, he said the provision would create an “undue chilling effect” on the free flow of information that is essential to democracy. Clinton had a secret or two of his own he likely wished to suppress, and his administration began the increased secrecy classification of information that has further accelerated under the Bush administration. But he was exactly right when he said the criminalization of all leaks goes too far. If you know only what the people in power at the moment want you to know, you might as well kiss the notion of democracy and self-determination goodbye.

To understand why criminalizing leaks is a bad idea, you need only consider the extent to which the government classifies information as secret. The federal government maintains at least 1.5 billion pages of classified documents, adding millions more every year. Some of this comprises legitimate state secrets, important to protect national security. But through the routine declassification of old information (a process that has slowed and even reversed in recent years), we've seen that much of what gets classified as secret is embarrassing or inconvenient to the government or politicians and has no real national security implication. Some of what gets classified is stuff you really ought to know - as when the government systematically violates people's rights or engages in covert wars in defiance of Congress.

Interestingly, members of the president's Sept. 11 Commission complained repeatedly that too much of the classified information they reviewed as part of their inquiry had no reason to be classified. Beyond politics, there seems to be a natural, bureaucratic inclination to keep information on a need-to-know basis - the presumption being, you don't need to know. This is no surprise. Knowledge is indeed power, and those in power seldom are very keen on sharing it.

People who actually compromise national security are traitors and should be dealt with accordingly. People who uncover wrongdoing and subversion of democracy are patriots, even if they break secrets to do so. We already have laws to deal with the former. We won't benefit from a new law likely to be used most in stifling the latter.

The Jackson (TN) Sun

<http://www.jacksonsun.com/apps/pbcs.dll/article?AID=2006609290303>

Article published Sep 29, 2006

Bill that clamps down on leaks goes too far

It's a shame that someone as smart and politically savvy as Sen. Lamar Alexander, R-Tenn., would allow his name to be associated with a bill aimed at clamping down on leaks of classified information to the media. The proposed law is draconian and unfairly penalizes the press for seeking to do its job and people who seek to exercise their First Amendment right to free speech. It should be defeated.

The legislation, sponsored by Sen. Kit Bond, R-Mo., would impose fines and prison sentences of up to three years for those who leak classified information. Alexander says the proposal is not aimed at reporters and that it does not affect the freedom of reporters under the First Amendment.

The problems with the Bond proposal are as numerous as they are serious.

This law is unnecessary, because there already is a law on the books prohibiting the release of classified information. And there's no guarantee that the new, tougher law would work as intended.

People who leak information to the press know the rules for handling classified information. And they know the consequences of leaking it if they are caught. What makes Bond, or anyone else, think that the new, tougher law will stop the leaks?

The other question that needs to be asked is, who do the leaks hurt, really? Think of the good that has come from people who have been willing to stand up and blow the whistle on unscrupulous government activity.

During the Watergate era, it was an anonymous source that leaked information to reporters Carl Bernstein and Bob Woodward about a presidential cover-up and ultimately brought down an administration. More recently, it was an anonymous leak that revealed the National Security Agency's domestic spying program.

Bond's proposal is a thinly disguised attempt to intimidate people who possess information that might be of value to the public. And it is an attempt to intimidate a press that has raised some serious questions about the policies of this administration. This proposal has no place in a truly free society.

The Gazette, Kalamazoo, MI

<http://www.mlive.com/news/kzgazette/index.ssf?/base/columns-2/115859298167610.xml&coll=7>

Defend the Constitution; say no to Senate Bill 3774

Monday, September 18, 2006

In this country, there has always been a balance between Americans' right to know what their government is doing and government's need to keep some information secret for national security reasons.

Typically, in times of war or threat of war, there is a tendency by those in government to err on the side of secrecy.

Unfortunately, some government officials also want to keep secret the activities they are doing illegally, immorally or incompetently. So, all too often, information that may be merely politically embarrassing suddenly is elevated to the level of classified information.

Today, on Constitution Day, we urge Congress to reject Senate Bill 3774, which the Sunshine in Government Initiative calls "overly broad legislation that would, for the first time in our nation's history, criminalize disclosures of classified information."

The Initiative -- brought about by a coalition that includes the American Society of Newspaper Editors, the National Newspaper Association, Reporters Committee for Freedom on the Press, the Society of Professional Journalists, the Associated Press, the Radio-Television News Directors Association and other news organizations -- warns that the bill, introduced by U.S. Sen. Kitt Bond, R-Mo., would have a chilling effect on the relationship between government officials and the public.

"With the threat of criminal prosecution looming, it would alter the way in which government officials -- including members of Congress -- deal with the press, the way in which the press gathers and reports the news and the way in which the public learns about its government," the Initiative members said in a recent letter to Bond. "... Such legislation would discourage government 'whistleblowers' from coming forward with information that may shed light on inappropriate or unlawful activities."

Constitution Day, which was established to teach the importance of protecting the Constitution and the freedoms it guarantees, is an ideal day to speak out against this bill.

We believe this proposed legislation would seriously impair the public's right to know what its government is doing in its name, on its behalf and with its tax dollars.

"We recognize that the government has a duty to protect national security and that some unauthorized disclosures of classified information may cause serious damage," the Initiative letter said. "The media clearly have an obligation to act carefully and responsibly and to avoid harm to national security as they make their decisions whether to publish."

Yet it is vital that our government be held accountable, and that the public knows its government is fighting the war on terror legally and ethically. Those who claim the United States can't win the war on terror by legal and ethical means are wrong.

And so there must be a delicate balance.

Senate Bill 3774 would upset that balance by favoring the government's desire for secrecy and endangering the American public's right to know.

Commentary

Paul K. McMasters, First Amendment Center Ombudsman

August 11, 2006 10:32 AM

Criminalizing Speech to Protect Secrets

When members of the House of Representatives take up crucial intelligence bills, the vast majority elect not to read the classified portions - which is to say the really important parts - and they don't sign up for classified briefings on the bills' provisions.

Which means they essentially are voting blind, even on those bills they approve overwhelmingly.

Why? Not because they're too busy or they don't care. It's because they are afraid.

In an article on its survey of House members published this past weekend, *The Boston Globe* reported that our elected representatives face "an untenable choice" on intelligence bills: "Either consent to a review process so secretive that they could never mention anything about it in House debates, under the threat of prosecution, or vote on classified provisions they knew nothing about. Most chose to know nothing."

As a result, members are reluctant to discuss such matters with one another, their staffs or outside experts. That frequently translates into no real or relevant public debate on issues increasingly crucial since the war on terrorism began. More and more, our lawmakers and the public depend on press accounts based on unauthorized disclosures, or leaks, for information on national security.

But that vital information flow continues to be threatened by a concerted crackdown on leakers and journalists. The latest is legislation introduced Aug. 2 by Sen. Kit Bond, R-Mo., that would criminalize the disclosure of classified information. Bond was joined by 11 fellow Republicans as co-sponsors in offering up what has become known as an "official secrets act."

Word for word, this is the legislation that caused President Clinton to veto the entire intelligence authorization act in 2000. A year later, the Senate Intelligence Committee declined to act on the same bill. Congress has for more than half a century rejected similar versions of this effort to criminalize leaks. The Supreme Court warned in 1971 that its ruling in the Pentagon Papers case might have been different if such a criminal statute had been on the books.

For a multitude of reasons, this bill has been deemed too dangerous for democracy. It is unnecessary, it is a threat to First Amendment rights and it is an affront to responsible governing.

Current law already criminalizes the most dangerous of leaks: identities of covert agents, capabilities and intelligence regarding communications and restricted data concerning nuclear weapons. Administrative discipline and loss of security clearances or jobs awaits those within government who disclose other classified information.

This proposal would expand the definition of what is properly classified. It would require no intent to benefit our enemies. It would require no proof of damage to our security. It would leave the public dependent on official announcements and "authorized leaks" designed to bolster official policies and influence public opinion.

And it would cast a debilitating pall over free speech, the free flow of information and government accountability.

There has been a startling expansion of secrecy in the past five years. It has become very difficult to find out about, let alone challenge, important actions and policies concerning our security.

Executive-branch officials have thrown up a daunting array of obstacles for citizens and lawmakers: overclassification, misclassification, reclassification and pseudo-classification. Even congressional committees and independent commissions with a lot of clout find it difficult to get over the administration's stone walls.

Meanwhile, alternative sources of information - whistleblowers and journalists - are hounded, harassed and threatened with jail.

Equally important, this law would chill the speech of a host of other important speakers in public discourse: elected and appointed officials at all levels of government, scholars, lobbyists and public-interest groups. Even former government officials, never sure what is classified or reclassified, would be vulnerable to prosecution for their writing, teaching or other public activities.

The impact of an official secrets act would be particularly acute for the press. Though the sponsors of the act insist that the press is not targeted, the potential harm is great. The law would authorize grand jury subpoenas for journalists and search warrants for their records and notes. It could make them witnesses to and possible co-conspirators in a criminal act.

They could be hauled before a grand jury and forced to reveal their sources - or go to jail.

The better approach to the problem of unauthorized disclosures of classified information is to reduce and better police classification, open a dialogue between the press and

intelligence community, and unclog and legitimize official channels for government employees to share concerns about government policy and action.

An official secrets act flouts the First Amendment and allows government officials to slip through the back door of the nation's newsrooms to stifle legitimate inquiry and punish journalists and others who raise uncomfortable issues.

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