

THE PENTAGON'S MEDIA ANALYST DOMESTIC PSY-OPS PROGRAM: IS IT LEGAL?

By now you have probably heard that the New York Times has an in-depth piece by David Barstow out for Sunday's edition on the use by the Pentagon of media "military experts" as propaganda conduits.

It would be nice to be able to say that the revelations in Barstow's article are shocking, but they are not. Spin and propaganda have, from the outset, been more important to the Bush Administration than efficient and effective performance and truth. This already looks to be a big deal around the blogosphere, everybody will be discussing the general parameters of the story. Dave Neiwert serves up a dissection at FDL (and do click through his links here and here to his earlier pieces at Orcinus in 2004 on Bush Administration psy-op propaganda, they are excellent).

Beyond the face value of the NYT article, however, lurk some more interesting issues. Marcy has, as usual, immediately found one in relation to the spotty history of the NYT on Bushco propaganda, most notably in regard to Judith Miller and the case for the Iraq War (can you say "Sweet Judy Blew Lies"? I can). Here is mine; we know this Pentagon propaganda scheme is crass and loathsome, but is it legal?

Arguably, the answer is no, it is not legal; of course, as we have seen time and again, that is never an impediment to the Bush Administration. And, as with so many other Bushco ills, we have a template for analysis because they have made a pattern and practice of crossing the line of propriety in this area. The gang of tricks is all here, "creative" expansion of law and standards, even one of those OLC opinions

exonerating the conduct.

The framework for analysis here is supplied by the previous actions of the Bush administration in relation to paying Armstrong Williams to shill the No Child Left Behind program and the propagation of prepackaged fake video news stories. The heavy involvement of the Pentagon in the disingenuous news business was demonstrated by Jeff Gerth in a December 2005 NYT article:

The media center in Fayetteville, N.C., would be the envy of any global communications company.

In state of the art studios, producers prepare the daily mix of music and news for the group's radio stations or spots for friendly television outlets. Writers putting out newspapers and magazines in Baghdad and Kabul converse via teleconferences. Mobile trailers with high-tech gear are parked outside, ready for the next crisis.

The center is not part of a news organization, but a military operation, and those writers and producers are soldiers. The 1,200-strong psychological operations unit based at Fort Bragg turns out what its officers call "truthful messages" to support the United States government's objectives, though its commander acknowledges that those stories are one-sided and their American sponsorship is hidden.

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The recent disclosures that a Pentagon contractor in Iraq paid newspapers to print "good news" articles written by American soldiers prompted an outcry in Washington, where members of Congress said the practice undermined American credibility and top military and White House officials disavowed any knowledge of it. President Bush was described by Stephen J. Hadley, his national security

adviser, as "very troubled" about the matter. The Pentagon is investigating.

But the work of the contractor, the Lincoln Group, was not a rogue operation. Hoping to counter anti-American sentiment in the Muslim world, the Bush administration has been conducting an information war that is extensive, costly and often hidden, according to documents and interviews with contractors, government officials and military personnel.

The campaign was begun by the White House, which set up a secret panel soon after the Sept. 11 attacks to coordinate information operations by the Pentagon, other government agencies and private contractors.

Since 1951, Congress has enacted an annual, government wide prohibition on the use of appropriated funds for purposes of "publicity or propaganda." For instance, in 2005, the prohibition stated

No part of any appropriation contained in this or any other Act shall be used for publicity or propaganda purposes within the United States not heretofore authorized by the Congress. Consolidated Appropriations Act, 2005, Pub. L. No. 108-447, div. G, title II, 624, 118 Stat. 2809, 3278 (Dec. 8, 2004). (The language of the prohibition has remained virtually unchanged since 1951.)

All of these ginned up propaganda programs started hitting the public consciousness in 2005, causing a public outcry and Congressional calls for an investigation, which was undertaken by the Government Accountability Office. The GAO issued a formal report in February 2005 indicating that the Bush Administration efforts to shape the news via the prepackaged video news

releases were inappropriate. The GAO subsequently issued similar opinions on the other Bush propaganda programs, for instance, this September 2005 report on the paid use of Armstrong Williams on NCLB:

In previous opinions and decisions, we have found “materials . . . prepared by an agency or its contractors at the behest of the agency and circulated as the ostensible position of parties outside the agency” amount to covert propaganda that violates the prohibition. B-229257, June 10, 1988. A critical element of this violation is the concealment of, or failure to disclose, the agency’s role in sponsoring the material. E.g., B-303495, Jan. 5, 2005. For example, in B-223098, B-223098.2, Oct. 10, 1986, the Small Business Administration (SBA) prepared “suggested editorials” and distributed them to newspapers. The editorials advocated public support for an administration proposal to merge the SBA with the Department of Commerce. We found that those agency-prepared editorials were misleading as to their origins. The agency intended for the newspapers to print the editorials as their own position without identifying them as SBA-authored documents. This effort to conceal the agency’s authorship and make it appear that respected, independent authorities were endorsing the agency’s position went “beyond the range of acceptable agency public information activities” and violated the publicity or propaganda prohibition. Id. Similarly, in 66 Comp. Gen. 707 (1987), we held that newspaper articles and editorials (supporting the government’s Central American policy) that were prepared by paid consultants at government request and published as the work of nongovernmental parties violated the prohibition. Again, it was

the covertness of the government's actions that led to the violation. In that case, the government was attempting to convey a message to the public advocating the government's position while misleading the public as to the origins of the message. Id. at 709.

In addition to the violation of the standard Appropriations Act language, the GAO has also pointed to the violation of the provisions of the Anti-Deficiency Act provisions:

The Department's use of appropriated funds in violation of the publicity or propaganda prohibition also constituted a violation of the Antideficiency Act, 31 U.S.C. sect. 1341(a). This act prohibits making or authorizing an expenditure or obligation that exceeds available budget authority. B-300325, Dec. 13, 2002. Because the Department has no appropriation available to procure favorable commentary in violation of the publicity or propaganda prohibition, it violated the Antideficiency Act, 31 U.S.C. sect. 1341(a). Cf. B-303495, Jan. 4, 2005; B-302710, May 19, 2004. Under 31 U.S.C. sect. 1351, the Department must report its Antideficiency Act violations to the President and the Congress. At the same time, a copy must be sent to the Comptroller General.

The bottom line seems to be that any "covert" program by the government to shape the news, or disseminate false news, to the domestic American audience constitutes a violation of both the Appropriations Act prohibitions as well as the Anti-Deficiency Act. As further evidence of how sensitive the United States has historically been on prohibiting the governmental dissemination of domestic propaganda, keep in mind that the Smith-Mundt Act even prohibits the domestic dissemination of information utilized

in foreign propaganda efforts of the US, which, of course, are legal (think Voice of America radio).

You would have to imagine that the first rationalization from Bushco will be along the lines of "well this is different than the Armstrong Williams situation because we didn't expend any money paying the military analysts and there was no *quid pro quo*". I would argue that the following snippets from today's NYT article put the lie to that likely defense:

Early one Friday morning, they put a group of retired military officers on one of the jets normally used by Vice President Dick Cheney and flew them to Cuba for a carefully orchestrated tour of Guantánamo.

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In turn, members of this group have echoed administration talking points, sometimes even when they suspected the information was false or inflated. Some analysts acknowledge they suppressed doubts because they feared jeopardizing their access.

A few expressed regret for participating in what they regarded as an effort to dupe the American public with propaganda dressed as independent military analysis.

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Internal Pentagon documents repeatedly refer to the military analysts as "message force multipliers" or "surrogates" who could be counted on to deliver administration "themes and messages" to millions of Americans "in the form of their own opinions."

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Conversely, the administration has demonstrated that there is a price for sustained criticism, many analysts said. "You'll lose all access," Dr. McCausland said.

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Some of these analysts were on the mission to Cuba on June 24, 2005 – the first of six such Guantánamo trips – which was designed to mobilize analysts against the growing perception of Guantánamo as an international symbol of inhumane treatment.

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It was, he said, “psyops on steroids” – a nuanced exercise in influence through flattery and proximity. “It’s not like it’s, ‘We’ll pay you \$500 to get our story out,’ ” he said. “It’s more subtle.” The access came with a condition. Participants were instructed not to quote their briefers directly or otherwise describe their contacts with the Pentagon.

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The memorandum led to a proposal to take analysts on a tour of Iraq in September 2003, timed to help overcome the sticker shock from Mr. Bush’s request for \$87 billion in emergency war financing.

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Some Pentagon officials said they were well aware that some analysts viewed their special access as a business advantage. “Of course we realized that,” Mr. Krueger said. “We weren’t naïve about that.”

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Some e-mail messages between the Pentagon and the analysts reveal an implicit trade of privileged access for favorable coverage.

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The Pentagon paid a private contractor, Omnitec Solutions, hundreds of thousands of dollars to scour databases for any trace of the analysts, be it a segment on “The O’Reilly Factor” or an interview with The Daily Inter Lake in Montana, circulation 20,000.

Sure looks like there was a conscious *quid pro quo*, and that a lot of money and effort went into this program that was not formally appropriated, and therefore was in violation of both the Appropriations Act yearly provisions and the Anti-Deficiency Act provisions.

Oh, by the way, remember my mention of the attempted use of one of those golden OLC Opinion shields? Here it is, although it now seems to be missing from the official list on the DOJ website. The opinion was authored by our old friend Steven Bradbury; although, clearly, neither the GAO nor Congress found it persuasive in the least. What a shock.