

THE NATIONAL SECURITY ADVISOR EXCEPTION UNDER THE ESPIONAGE ACT

When the FBI found sensitive – though it turned out, unclassified – documents in Thomas Drake's basement, he was charged under the Espionage Act. When the Army found hundreds of thousands of classified – but not Top Secret – cables on Bradley Manning's computer, they charged him with Espionage and Aiding the Enemy.

But when the FBI found Top Secret documents on Sudan – our actual enemy, if sanctions count – in Reagan National Security Advisor Robert McFarlane's basement, it decided to investigate him for illegal lobbying.

The FBI has searched the apartment of former Reagan administration national security adviser Robert McFarlane for evidence of whether he lobbied for the government of Sudan, in violation of federal law.

The search warrant is on file in federal district court in Washington. It shows agents seized items this month including handwritten notes about Sudan and White House documents with classifications up to Top Secret.

From this I can only assume that McFarlane is being subjected to the same double standard that Clinton's National Security Advisor Sandy Berger was (represented, it should be noted, by former Criminal Division chief Lanny Breuer), when he snuck 9/11 related documents out of the Archives, yet only plead guilty to a misdemeanor.

When National Security Advisors take top secret documents, they're called lobbyists, not spies.

I can't wait to find out what Condi Rice will be called if she's ever caught with sensitive documents in her basement.