

Is government propaganda legal?

Well, maybe. Maybe not.

BY KEVIN R. KOSAR

In the past couple of years, the Bush administration has been blasted by the media and citizens alike for spending taxpayer's dollars on propaganda. "Very quickly after 9/11 the administration shifted its focus to Iraq. Then, intelligence departments spent months and huge amounts of money on propaganda, to enlist popular support for an invasion," wrote an annoyed reader in Takoma Park, Md., to the New York Times in late December. Meanwhile, the Washington Post recently roasted the administration for "secretly paying Iraqi journalists and news organizations to write and run positive stories about the war."

Even the president condemns it

In some instances, the complaints about propaganda might be dismissed as partisan sniping. Yes, a Web site devoted to President Bush's Scottish Terriers, www.Barney.gov, complete with photos, video, and more, may be viewed as a less than judicious use of public money. But, is this really dangerous propaganda? I've not met anyone who thought so.

That said, President Bush's people, in

their zeal to promote him and his policies, have undertaken public-relations activities. Hackles were raised when the Internal Revenue Service issued a press release reminding taxpayers to pay their taxes and informing them that "America has a choice: It can continue to grow the economy and create new jobs as the president's policies are doing, or it can raise taxes on American families and small businesses, hurting economic recovery and future job creation."

In at least one instance, the president's promoters have gone so far that he publicly rebuked them. Quite an uproar erupted when it was learned that conservative commentator Armstrong Williams got money from the U.S. Department of Education to promote the No Child Left Behind Act. Amidst the clamor, President Bush spoke out, saying "All our cabinet secretaries must realize that we will not be paying, you know, commentators to advance our agenda. Our agenda ought to be able to stand on its own two feet."

Despite that federal activities to promote the administration's agenda have not abated. The media has reported that soldiers serving in Iraq appeared in a "staged teleconference" with the presi-

dent to talk of U.S. successes in Iraq and of Islamic scholars being "paid to aid U.S. propaganda." Congress was sufficiently aggrieved it held hearings last year and may hold more.

Can't do much about it, anyway

Readers may wonder, "How is it that the federal government can produce propaganda?" Well, the answer is rather simple: The laws of our nation do little to stop propaganda.

A search of the public record for Congress' intent turns up only a brief colloquy in 1913 before the adoption of the prohibition against the employment of publicity experts. Rep. Frederick H. Gillett (R-Mass.), who was displeased to learn that the Office of Public Roads of the Department of Agriculture sought to hire a publicity expert, proposed an amendment to an appropriations bill. Rep. Asbury F. Lever (D-S.C.) sought clarification — "The gentleman has defined the publicity expert . . . [as] a man whose business is to extol and exploit the virtues of [an] agency. The gentleman does not undertake in this amendment to prevent someone employed by the [U.S.] Department of Agriculture, for instance,

giving to the country information as to the work of the department?" Rep. Gillett responded, "Of course not."

And there you have it — the law prohibits hiring a public-relations flack to promote an agency itself, but does not prohibit the promotion of an agency's policies or works.

Readers might be tempted to condemn Congress for failing to define what constitutes acceptable agency communications with the public and what is "propaganda." The challenges of defining propaganda are formidable and may call to the reader's mind Supreme Court Justice Potter Stewart's concurrence in *Jacobellis vs. Ohio* (1964), which involved a theater manager being arrested for showing an erotic French film. Stewart wrote, "I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description [of "hard-core pornography"]; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it."

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PROPAGANDA ABROAD

If one searches that great corpus of American law, the U.S. code, <http://uscode.house.gov/>, for mentions of the word "propaganda," one won't find much. You might read that "foreign agents" who propagandize must register with the U.S. government, but you won't locate any law that prohibits the U.S. government from promoting the United States and its policies to citizens in other nations. "Public diplomacy" and, in the military context, "information warfare" are permissible and have long been practiced by the federal government.

PROPAGANDA AT HOME

But, what of federal propaganda directed toward domestic audiences? A near century-old law (5 U.S.C. 3107) prohibits federal money from being "used for the compensation of any publicity expert unless specifically appropriated for that purpose." And annual appropriations acts often include provisions stating "No part of any appropriation contained in this Act shall be used for publicity or propaganda purposes not heretofore authorized by Congress."