NEW YORK TIMES
8 DEC 1972

[redacted]

STATINTL

Watch on the Media

By Herbert Mitgang

More than five years after the Freedom of Information Act became Federal law, it is still difficult for journalists, historians and researchers to obtain information freely. The idea behind the law was to take the rubber stamp marked "Confidential" out of the hands of bureaucrats and open up public records, opinions and policies of Federal agencies to public scrutiny. It hasn't worked that way.

When President Johnson signed the bill, he declared that it struck a proper balance between Government confidentiality and the people's right to know. In actual practice, it has taken court actions to gain access to Government records. An effort is finally being made to declassify the tons of documents by the Interagency Classification Review Committee, under the chairmanship of former Ambassador John Eisenhower. This historical survey will take years.

But more than mere documents are involved. There is a matter of the negative tone in Washington.

The White House and its large communications staff have lengthened the distance between executive branch, Congress and the public. Of course, every Administration has instinctively applied cosmetics to its public face, but this is the first one operating for a full term under the mandate of the Freedom of Information Act. The result is that official information — especially if it appears to brush the Administration's robes unfavorably — is not communicated but excommunicated.

The other day Senator Symington of Missouri, a former Air Force Secretary who has been questioning the wisdom of the President's B-52 foreign policy in Southeast Asia, said: "I would hope that during this session of Congress everything possible is done to eliminate unnecessary secrecy especially as in most cases this practice has nothing to do with the security of the United States and, in fact, actually operates against that security."

This point was underscored before the House Subcommittee on Freedom of Information by Rear Adm. Gene R. La Rocque, a former Mediterranean fleet commander who since retiring has headed the independent Center for Defense Information. Admiral La Rocque said that Pentagon classification was designed to keep facts from civilians in the State and Defense Departments and that some Congressmen were considered "bad security risks" because they shared information with the public.

Reputable historians trying to unearth facts often encounter Catch-22 conditions. The Authors League of America and its members have resisted those bureaucrats offering "cooperation" on condition that manuscripts be checked and approved before book publication. The Department of Housing and Urban Development has denied requests for information about slum housing appraisals. The Department of Agriculture turned down the consumer-oriented Center for the Study of Responsive Law in Washington when it asked for research materials about pesticide safety.

The unprecedented attempt by the Administration to block publication of the Pentagon Papers, a historical study of the Vietnam war, took place despite the Freedom of Information Act, not to mention the First Amendment. And the Justice Department is still diverting its "war on crime" energies to the hot pursuit of scholars who had the temerity to share their knowledge of the real war with the public. Such Government activities not only defy the intent of the Freedom of Information Act; they serve as warnings to journalists, professors, librarians and others whose fortunes fall within the line of vision — budgetary, perhaps punitive— of the Federal Government.

The executive branch's battery of media watchmen are busiest with broadcasting because of its franchises and large audiences. At least one White House aide, eyes glued to the news programs on the commercial networks, grades reporters as for or against the President. In one case that sent a chill through network newsrooms, a correspondent received a personal communication from a highly placed Administration official questioning his patriotism after he had reported from North Vietnam. Good news (meaning good for the Administration) gets a call or a letter of praise.

The major pressure on the commercial and public stations originates from the White House Office of Telecommunications Policy, whose director has made it clear that controversial subjects in the great documentary tradition should be avoided. The same viewpoint has been echoed by the President's new head of the Corporation for Public Broadcasting, which finances major programs on educational stations. This Government corporation is now engaged in a battle to downgrade the Public Broadcasting Service, its creative and interconnecting arm responsible for serious news shows.

Long before there was a Freedom of Information Act, Henry David Thoreau was jailed for speaking out and defying the Government's role in the Mexican war, last century's Vietnam. "A very few men serve the State with their consciences," he wrote, "and they are commonly treated as enemies by it." Grand juries, subpoenas and even Government jailers will be unable to overpower today's men of conscience.

Herbert Mitgang is a member of the editorial board of The Times.

WASHINGTON POST STATINTL
14 DEC 1972

U.S. Edict Fails to Stir Data Flow

By Lewis Gulick
Associated Press

A presidential order aimed at prying the secrecy wraps from old government papers has produced only a trickle of new public information since it took effect five months ago.

The White House edict will show greater impact later on, officials say, as declassifiers delve into a mountain of aging documents, and controls crimp the flood of new secret writings.

But an effort by The Associated Press to dislodge some documents under one portion of the order has met with virtually no success so far. Other inquirers have had similar experiences.

Under President Nixon's June 1 directive, any paper more than 10 years old is supposed to be made available to a member of the public if he asks for it unless a review by officials finds it should be kept secret.

The order calls also for automatic declassification for all documents when they become 30 years old, unless specifically exempted by a department head in writing, and it pares sharply the number of officials allowed to impose secrecy stamps.

Of eight requests made by the AP since June 1 under the 10-year proviso, seven have yet to produce any once-secret material.

CIA Refused

The lone exception was a request for a National Security Council document from the Kennedy administration. Nearly two months after the request was submitted, the NSC noted that it had already been declassified.

All other AP queries have proven fruitless to date, including a request for the record of NSC recommendations made to former President Dwight D. Eisenhower during the 1958 Lebanon crisis.

David Young, an NSC aide supervising the declassification program for the administration, has acknowledged that the request for the 1958 papers falls within the guidelines of Mr. Nixon's order. But the papers have yet to be made available.

The CIA responded to a query [illegible] to an incident in the early 1950s by saying that the request was not specific enough.

However, the CIA refused to say what additional information was needed and a follow-up request, couched in more specific terms, was turned down.

The AP has appealed the CIA's rejection to an Interagency Classification Review Committee set up under Nixon's order.

Study on Access

A June 1 request to the Defense Department for some Korean war documents produced a July 11 response that the material was not in the files of the assistant secretary for international security affairs and an Aug. 8 response that a search for it would require "an unreasonable amount of effort."

After a newsman noted that Eisenhower referred to the material in his memoirs as coming from the Joint Chiefs of Staff, the Pentagon searchers said they would look some more.

A book-length report on scholars' access to documents covered by the June 1 executive order says the new review procedures "will not be of much assistance to the scholar."

The study, published by the nonprofit Twentieth Century Fund, notes that the 1966 Freedom of Information Act already allows citizens to ask for declassification of documents, of whatever age, with appeal possible in court.

The June 1 order, which covers only documents that are at least 10 years old, provides for appeal within the executive branch, where the secrecy label was applied in the first place.

The directive requires also that the request be specific enough that a government search can locate the document "with only a reasonable amount of effort."

Countless Files

However, only insiders know just what secret documents exist. An outsider can guess, but serious scholars usually prefer to have access to an entire file to make sure they don't miss something important.

Just how many requests have been made under the new directive is uncertain. Officials say that there have been more then a hundred so far, with most still in various stages of processing.

Thus, early signs are that the June 1 executive order will not prove of much immediate help to scholars or newsmen searching for secret papers tucked away in countless government files.

Prospects are much brighter, however, for creation of an internal-control system stemming the flood of new secret writings and for yanking away the secrecy of government documents by the time they are 30 years old.

No one knows exactly how many government documents are under lock and key, hidden from public view by security classifications ranging from "confidential" to "top secret."

But by conservative estimate, there are more than a billion pages of such material. That's enough paper to circle the earth a half-dozen times if placed end to end along the equator.

NSC Directive

And, with the help of modern photocopying gear, federal officials were spewing an estimated 200,000 pages of newly classified documents into their files daily as of June 1.

All that secrecy is expensive.

A General Accounting Office study covering just four agencies—the State Department, Defense Department, NASA and the Atomic Energy Commission—rated their annual outlay for administering the security-classification system at $60 million.

Since June 1, the White House says, the number of persons authorized to wield secrecy stamps has been slashed 49 per cent or from 32,586 to 16,238. Those figures do not include the Central Intelligence Agency, which keeps the number of its classifiers secret.

By NSC directive, each agency is supposed to report by July 1, 1973, all major classified documents on file after the end of this year, giving their subject headings and when they should become available to the public.

This information is to be fed into a computerized Data Index System [illegible]h, hopefully, will start [illegible]ng up-to-date accounting [illegible] the secret paper flow in 1973.

The end of the line for most old government papers, and counting duplicate copies and minor items which are destroyed, is the national Archives.

Remove Secrecy

And here, say the archivists, the outlook is bright for eventually putting nearly all once-secret documents into the public domain.

NEW YORK TIMES
22 NOV 1972

Nixon Order Fails to Ease Access to Classified Data

Bureaucratic Obstacles and High Costs Are Impeding Efforts to Obtain Older Government Documents

By FELIX BELAIR JR.
Special to The New York Times

WASHINGTON, Nov. 21—President Nixon's pledge "to lift the veil of secrecy" from needlessly classified official papers is being throttled by bureaucratic confusion timidity and prohibitive costs, in the opinion of historians, other scholars and newsmen.

Five months after the President's order on June 1, directing a freer flow of information to the public from secret and confidential papers more than 10 years old, the output is still no more than a trickle. More requests for documents have been denied or labeled "pending" than have been granted.

Those seeking access to the documents are searching for information that might throw new light on the origins of the United States involvement in the Korean and Vietnam wars, the Cuban Bay of Pigs invasion and other matters relating to the nation's military and foreign policies.

In an interview on results of the Presidential edict, Prof. Lloyd C. Gardiner, chairman of the history department at Rutgers University, said that "for misdirection, subterfuge and circumlocution there has been nothing like this bureaucratic performance since the old-fashioned shell game."

Professor Gardner, who has been trying for nearly 10 years to obtain State Department papers on the origins of the Korean war, has also been a leading critic before Congressional committees of efforts to devise a secrecy classification system by Executive order.

Future Effect Seen

Those in charge of carrying out the President's order say it will have a greater effect in years to come as more papers are brought under review and new restrictions inhibit the use of secrecy labels.

To Professor Gardner, however, "the brightest prospect is that Congress will put an end to secret classification by administrative orders and spell out in legislation what material can be put under security wraps and by whom." A House watchdog committee has charged that the President's June 1 order was issued to head off such a bill, on which it was then holding hearings.

Figures compiled by the White House staff suggest that results under the new order—the first "reform" since 1953—have not been too bad. Of 177 requests made to various agencies in the five months through October, 83 were granted in full and four in part; 52 were denied in full and 38 are still pending, the White House figures show.

The breakdown, however, does not take into account that some of the information grante was not responsive to a request. One of the features of the system is that the person requesting declassification must agree in advance to buy the material. He must agree in advance to pay the cost of locating, identifying and reviewing the material even though it may not answer his question.

Balked by Officials

Officials' attitudes, as much as the rules permitting continued classification, hinder access to old papers on defense and foreign policy, it has been charged. Some of these officials relate prestige and the importance of their jobs to the volume of secret information coming across their desks, according to testimony before the House Subcommittee on Freedom of Information.

Rear Adm. Gene R. La Rocque, who retired from the Navy after 31 years and who received the Legion of Merit for his work on strategic planning for the Joint Chiefs of Staff, told the House panel that Pentagon classification was ordered for a variety of reasons other than the legitimate one of preventing information from falling into the hands of a potential enemy.

He listed among the other reasons: "To keep it from the other military services: from civilians in their own service; from civilians in the Defense Department, from the State Department and, of course, from the Congress." He said that many officers regarded Congressmen as "bad security risks" because of a tendency to "tell all to the public."

Other former high Government officials acknowledged the existence among some bureaucrats of the extreme view that "public business is no business of the public.

On the other hand, one of the most eloquent statements of the public's "right to know" was given by President Nixon in promulgating the June 1 order.

"Fundamental to our way of life," he said, "is the belief that when information which properly belongs to the public is systematically withheld by those in power, the people soon become ignorant of their own affairs, distrustful of those who manage them, and—eventually—incapable of determining their own destinies."

Despite this endorsement of a better-informed public, the language of the President's order makes access to classified information more difficult rather than the reverse.

The order provides that, after 10 years, secret material on national security and foreign polisy mst be reviewed for declassification on request, provided that the information is described "with sufficient particularity that it can be obtained with only a reasonable amount of effort."

Drawback Cited

The drawback in this requirement, those who have made the effort say, is that only the officials know what is in the classified files and how it is identified. Outsiders can guess at what is there and provide approximate dates. But to start the process the outsider must agree in writing to assume any costs entailed in identification and location of the material and security review.

The average citizen and most news media consider this cost prohibitive.

The Washington bureau of The New York Times, within a week of the effective date of the President's order, submitted 31 foreign policy questions to the State Department and requested declassification of the material presumably containing the answers. All together, 55 requests went to five Federal agencies.

Three weeks later the State Department responded that "we have concluded that your request does not describe the records you seek with sufficient particularity to enable the department to identify them, and that as described, they cannot be obtained with a reasonable amount of effort."

The Associated Press submitted eight requests on June 1. Seven have yet to be answered with a yes or no.

Reference in Memoirs

Among the June 1 requests by The Associated Press was one to the Defense Department for certain material on the Korean war. The Pentagon replied on July 11 that the material was not in the files of the Assistant Secretary for International Security Affairs. Another reply on Aug. 8 said that the material could not be located "with a reasonable amount of effort."

When it was pointed out that the material had been referred to in the memoirs of former President Eisenhower as coming from the Joint Chiefs of Staff, Pentagon searchers said they would go on looking.

Before its rejection of the request by The Times, the State Department advised that the cost of identifying, locating and reviewing the material could be "as much as $7,000 or more" but that this was not to be taken as an estimate of any validity and none could be attempted.

In any case, The Times was told it would have to state in writing in advance that it would assume whatever cost was assigned to producing the material, even though the review process determined that it could not be declassified and released.

Pending the outcome of a written protest to David Young, head of declassification operations at the White House, The Times on June 21 withdrew its requests to the State Department and four other Federal agencies.

In a letter to Mr. Young, Max Frankel, the Washington correspondent of The Times said that "we will not buy a pig in a poke, nor should the Government ask us to play research roulette, even if we acknowledged some responsibility for sharing the costs involved."

Mr. Frankel's chief complaint was that "the bureaucrats misunderstand virtually every issue involved in this whole proceeding." He said, "We have, first, the admission (and in the case of the Pentagon papers, the demonstration) that vast amounts of information have been either misclassified or wrongly held classified for too long."

Mr. Frankel, who is also chief of the Washington bureau of The Times, said that the obvious intent of the President's order had been to correct both categories of error and said:

"If the Government intends to honor the intent and the spirit of the President's order, then it should facilitate access, not raise one barrier after another. In short, if the Government means what it says and took elaborate credit for so say-

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The secrecy game

Secrecy in government, either to protect bureaucratic bumbling or for legitimate protection of vital national defense and foreign policy documents, is an issue that will not go away. The balance between an informed public and government censorship is not easy to strike.

One of the latest proposals comes from Rep. William S. Moorhead, Pennsylvania Democrat, who introduced legislation intended to give "top secret" documents only three years to live outside of public scrutiny. He claims that President Nixon's directive revamping the security system is "unworkable, unmanageable and filled with technical defeats and massive loopholes." The bill would create a nine-member independent regulatory body and give it extensive power over the security classifying system of the executive branch. Top-secret stamps would go only to top officials in the White House, State Department, Pentagon, Central Intelligence Agency and Atomic Energy Commission.

The only exemption would be provided for highly sensitive national defense data, such as codes and intelligence sources. They could be hidden only when invoked by a president or top official, and even this would need approval of the new commission.

As with all good endeavors in this field, there is no reason to believe that it will be much more successful than previous attempts. The first obstacle is the imperfectability of human judgment. What should be secret to one may not even be classified as restricted by another. The temptation to hide one's errors of omission or commission is well-nigh irresistible.

Once set in motion, a classification system seems to develop a life of its own. Any attempt to reclassify the 85 million or more documents in the Pentagon, for instance, would require a substantial army of intelligen. men of mature judgment, working in shifts around the clock for many, many years.

The best hope of these reform efforts is that it will make officials hesitate to classify indiscriminately. The final hope is that good common sense will be applied to the issue of security classification, rather than the whims of vain, egotistical men of little minds.

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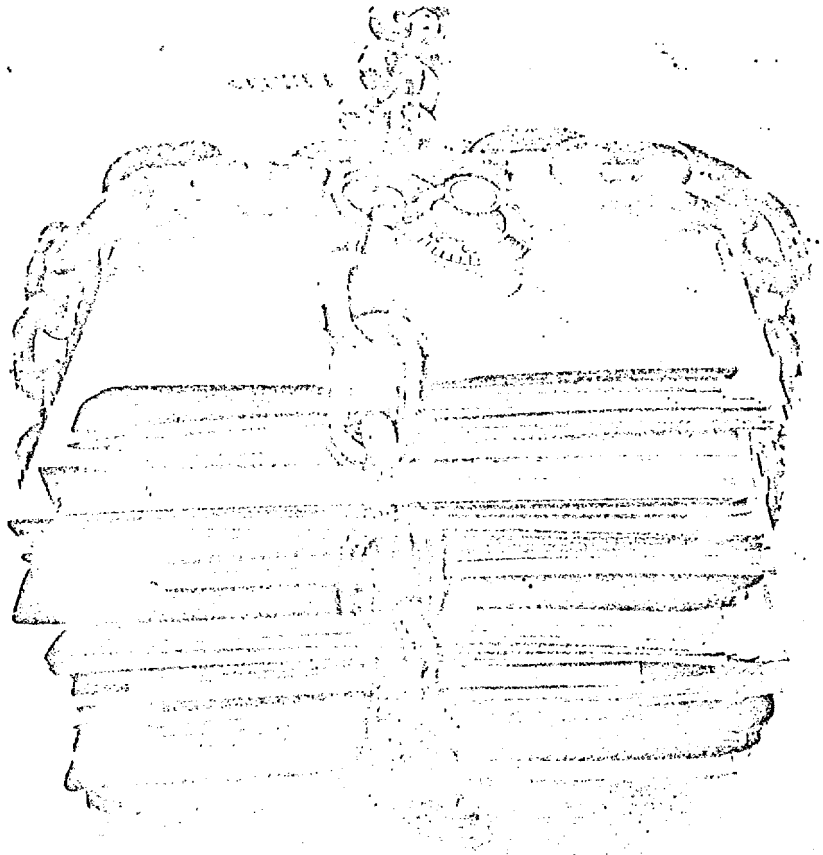
CLASSIFIED FILES: The Yellowing Pages

A Report on Scholars' Access to Government Documents

By Carol M. Barker and Matthew H. Fox



The Twentieth Century Fund/New York/1972

Continued

for a hearing, and any person whose interest may be affected by the issuance of this license amendment may file a petition for leave to intervene. A request for a hearing and petitions to intervene shall be filed in accordance with the provisions of the Commission's rules of practice, 10 CFR Part 2. If a request for a hearing or a petition for leave to intervene is filed within the time prescribed in this notice, a notice of hearing or an appropriate order will be issued.

For further details with respect to this issuance, see the application dated July 12, 1967, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Dated at Bethesda, Md., this 13th day of July, 1967.

For the Atomic Energy Commission.

PETER A. MORRIS,
Director,
Division of Reactor Licensing.

[License No. DPR-14; Amdt. 1]

The Atomic Energy Commission having found that:

a. The application for license amendment dated July 12, 1967, complies with the requirements of the Atomic Energy Act of 1954, as amended, and the Commission's regulations set forth in Title 10, Chapter 1, CFR;

b. The issuance of the amendment will not be inimical to the common defense and security or to the health and safety of the public; and

c. Prior public notice of proposed issuance of this amendment is not required since the amendment does not involve significant hazards considerations different from those previously evaluated.

Facility License No. DPR-14 is hereby amended by restating subparagraph 2.B., in its entirety, to read as follows:

"2.B. To receive, possess, and use at any one time 6,550 kilograms of contained uranium-235 in connection with operation of the facility pursuant to the Act and Title 10 CFR, Part 70, 'Special Nuclear Material'."

This amendment is effective as of the date of issuance.

Date of issuance: July 13, 1967.

For the Atomic Energy Commission.

PETER A. MORRIS,
Director,
Division of Reactor Licensing.

[F.R. Doc. 67-8445; Filed, July 20, 1967; 8:45 a.m.]

CENTRAL INTELLIGENCE AGENCY

PUBLIC ACCESS TO RECORDS

Procedures

1. *Purpose.* Pursuant to the requirements of the Public Information Section of the Administrative Procedure Act (5 U.S.C. 552), the following are established as the rules of procedure with respect to public access to the records of the Central Intelligence Agency.

2. *Organization and requests for information.* The headquarters of the Central Intelligence Agency is located in Fairfax County, Va. Requests for information and decisions and other submittals may be addressed to the Assistant to the Director, Central Intelligence Agency, Washington, D.C. 20505.

3. *Procedures for request of records.* (a) Requests for access to records of the Central Intelligence Agency may be filed by mail addressed to the Assistant to the Director, Central Intelligence Agency, Washington, D.C. 20505.

(b) Requests need not be made on any special form but may be by letter or other written statement setting forth the pertinent facts with enough specificity that the requested record can be identified.

(c) If the request does not sufficiently identify the record, the Assistant to the Director shall so inform the requestor who may then resubmit his request together with any additional information which will help to identify it.

(d) When the requested record has been identified the Agency will determine whether it is exempt from public inspection under the provisions of 5 U.S.C. 552(b). If it is exempt, the Assistant to the Director shall deny the request.

(e) If the Agency determines that the requested record is not subject to exemption, the Assistant to the Director will inform the requestor as to the appropriate reproduction fee and upon receipt of this fee, will have the record reproduced and sent to the requestor. Fees paid in accordance with this paragraph will be paid by check or postal money order forwarded to the Assistant to the Director and made payable to the Treasurer of the United States.

4. *Appeals.* Any person aggrieved by any determination made or action taken pursuant to the foregoing provisions of this notice may request the Executive Director of the Agency to review that determination or action. No specific form is prescribed for this purpose and a letter or other written statement setting forth pertinent facts shall be sufficient. The Executive Director reserves the right to require the person involved to present additional information in support of his request for review. The Executive Director will promptly consider each such request and notify the person involved of his decision.

5. *Effective date.* This notice shall become effective upon its publication in the FEDERAL REGISTER.

L. K. WHITE,
Executive Director,
Central Intelligence Agency.

[F.R. Doc. 67-8446; Filed, July 20, 1967; 8:45 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 17436]

ALLEGHENY AIRLINES ROUTE 97 INVESTIGATION

Notice of Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding will be held on August 15, 1967, at 10 a.m., e.d.s.t., in Room 726, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C., before the undersigned examiner.

For information concerning the issues involved and other details in this proceeding, interested persons are referred to the prehearing conference report served on May 8, 1967, and other documents which are in the docket of this proceeding on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., July 14, 1967.

[SEAL] MILTON H. SHAPIRO,
Hearing Examiner.

[F.R. Doc. 67-8471; Filed, July 20, 1967; 8:47 a.m.]

[Docket No. 18595]

ALM DUTCH ANTILLEAN AIRLINES

Notice of Postponement of Hearing

Notice is given herewith, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that public hearing in the above-entitled proceeding heretofore assigned to be held on July 26, 1967, is hereby postponed and is now assigned to be held on August 9, 1967, at 10 a.m., e.d.s.t., in Room 726, Universal Building, 1825 Connecticut Avenue NW., Washington, D.C.

Dated at Washington, D.C., July 18, 1967.

[SEAL] RICHARD A. WALSH,
Hearing Examiner.

[F.R. Doc. 67-8472; Filed, July 20, 1967; 8:47 a.m.]

[Docket No. 19655; Order No. E-25423]

EASTERN AIR LINES, INC., ET AL.

Order Regarding Reservations Practices and Procedures in East Coast-Florida Market

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 17th day of July, 1967.

Agreement adopted by Eastern Air Lines, Inc., National Airlines, Inc., and Northeast Airlines, Inc., relating to reservations practices and procedures in the East Coast-Florida Market, Docket 18554, Agreement C.A.B. 19655, as amended.

An agreement has been filed with the Board pursuant to section 412(a) of the Federal Aviation Act of 1958 (the Act) and Part 261 of the Board's Economic Regulations, between Eastern Air Lines, Inc., National Airlines, Inc., and Northeast Airlines, Inc., which establishes ticketing time limits in certain East Coast Markets[1] in an effort to alleviate reservation problems during peak holiday periods.[2]

[1] Between Fort Lauderdale, Fort Myers, Key West, Miami, Sarasota/Bradenton, Tampa/St. Petersburg, and West Palm Beach on the one hand, and, Baltimore, Boston, Hartford/Springfield, New Haven, New York/Newark, Philadelphia, Providence, Washington, D.C., and Wilmington on the other hand.

[2] Southbound from Dec. 15, through Dec. 26, 1967, and northbound from Dec. 30, 1967 through Jan. 7, 1968.

WASHINGTON POST

STATINTL

[redacted]

The Washington Merry-Go-Rou

By Jack Anderson

Harlem Heroin—Rep. Charles Rangel (D-N.Y.), worried about drug addiction in his Harlem district, has privately asked Central Intelligence Director Richard Helms for 10 studies the CIA has made on worldwide drug routes to the U.S. When Helms declined, Rangel served notice he would invoke the Freedom of Information Act.

WASHINGTON STAR

21 MAR 1972

[redacted]

WASHINGTON CLOSE-UP

Grip on Secrecy Stamp Still Firm

By ORR KELLY

STATINTL

The administration is now in the midst of a thorough overhaul of its security and and secrecy classification system—and about time, too.

But anyone who thinks this overhaul will result in any significant loosening up of information about day-to-day operations of the government in a form that will useful to the press or the public will be sadly disappointed.

Recent congressional testimony explaining and supporting the President's new executive order on safeguarding of official information clearly shows that the government, as an institution, rather than either the press or the public, will be the principal beneficiary of the changes being made.

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If the changes are carried out and the new rules laid down by the President are rigorously applied, there will be two results. One will be a freer flow of information within the government and within those parts of industry that serve the government, particularly in the production of military hardware. The other will be a reduction in the cost of keeping secrets.

The amount of confidential, secret or top secret material the government and government contractors have in storage is almost unbelievable. It amounts to thousands, perhaps millions, of tons of paper—stored away in elaborate file cabinets and safes that cost an average of $460 apiece. It is hard to know even where to begin to deal with such a mountain of material.

David Packard, the former deputy defense secretary, took one practical approach in May of last year when he ordered the military services and defense agencies to start cutting down on the amount of material they keep classified. He put teeth in his order by telling them they could not buy any more of those expensive security containers for a year and a half.

By the end of last year, two of the smaller defense agencies, the office of the Joint Chiefs of Staff and the Defense Intelligence Agency, had managed to empty 158 of their containers, according to Joseph J. Liebling, deputy assistant defense secretary for security policy.

One defense contractor, Liebling said, got rid of 90 tons of classified material last year and another one destroyed 53 tons of the stuff in a 90-day period.

The Defense Department also has been trying to cut down the cost of keeping things secret by reducing the number of people who have access to highly classified documents. It costs $5.44 for the average investigation required before a person receives clearance to handle confidential material. But it costs an average of $263.28 for the full field investigation required for a top secret clearance.

It is now estimated that 3.6 million persons have security clearances. Of these, 464,550 are top secret clearances. But, according to J. Fred Buzhardt, the Defense Department's general counsel, that number has been cut by 31.2 percent—from a high of 697,000—since mid-1971.

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The President's new rules, which go into effect June 1, will restrict the number of people able to classify material, expand the number able to remove classification and speed up the automatic declassification process.

If, as intended, these changes promote greater governmental efficiency at lower cost, the public generally will benefit.

But these changes, and any conceivable changes that might be legislated by Congress, do not begin to touch the kind of problems raised by the Pentagon papers and the more recent White House minutes published by Jack Anderson.

The fact is that, under the

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old rules, the new rules or any other rules you might care to imagine, the executive branch of the government will retain the power to control the flow of information to the public about its internal decision-making process—at least until it is of interest primarily to historians. If the President and his close advisers deliberately set out to mislead the public—and this reporter is *not* impressed by the evidence contained in the Pentagon and Anderson papers that they did make such attempts — no law on earth is going to stop them.

Attempts to write such laws may, in fact, be dangerous. It is ironic and a little frightening, for example, to find Buzhardt, the Pentagon's top lawyer, arguing that the "clearest congressional acknowledgement of the President's authority to restrict dissemination of information" is found in the Freedom of Information Act.

Despite the administration's efforts to ease security restrictions, it probably would be well for us all to keep in mind these words attributed to Lord Tyrell of the British Foreign Office:

"You think we lie to you. But we don't lie, really we don't. However, when you discover that, you make an even greater error. You think we tell you the truth."

NEW YORK TIMES
15 MAR 1972

[redacted]

INFORMATION ACT SCORED AS FUTILE

Nader Assistant Criticizes It —Official Defends Law

By RICHARD HALLORAN
Special to The New York Times

WASHINGTON, March 14—A lawyer with Ralph Nader's Center for Study of Responsive Law asserted today that the Freedom of Information Act of 1967 "has foundered on the rocks of bureaucratic self-interest and secrecy."

Peter H. Schuck, a consultant to the consumer advocate's law center, told a House subcommitte that "a statute which should have facilitated public participation in the public's works has instead engendered endless litigation" and has "produced relatively little information of consequence."

However, Roger C. Cramton, chairman of the Administrative Conference of the United States, an independent Federal agency that monitors Government procedures, testified at the same hearing that "the act is a success story in the possibility of orderly change of bureaucratic organizations."

'Problems Remain'

But Mr. Cramton added, "Despite the substantial progress, uncertainties and problems remain in abundance. Complaints continue to abound of foot-draffing and unnecessary red tape in making information available."

Mr. Schuck and Mr. Cramton appeared before a Government Operations subcommittee headed by Representative William S. Moorhead, Democrat of Pennsylvania. It is investigating the implementation of the Freedom of INFORMATION Act, which was intended to open up sources of Government information to private citizens.

Mr. Schuck said he had been denied information on a Missouri meat inspection program of the Department of Agriculture by what he called the "fob - him - - off - with -a meaningless - summary" stratagem or the "delay - until - the - information - becomes - stale" routine.

Mr. Schuck also alleged that he had been denied information on the Department of Agriculture's civil rights record by what he termed the "it's-exempt-because-it's-embarrassing" approach. Under the act, certain categories of information are exempt from disclosure.

In a third example, Mr. Schuck said another attorney from Mr. Nader's center had asked for information on suspected violations of Federal meat laws and had been denied it by a "sue-us-again" tactic. He contended that the right of access had been established by a court ruling but that the Department of Agriculture insisted on having the issue decided in court again.

Neither the public information officer of the Agriculture Department nor an official of the department's office of legal counsel had any comment. A representative of the department is scheduled to appear before Mr. Moorhead's panel later this month.

Incentives Recommended

Mr. Cshuck recommended that the act be strengthened by legislating "sufficient incentives for bureaucratic compliance so that the act will become to a significant extent self-enforcing." Among his suggestions were the following:

¶Establishing a freedom of information unit outside the existing agencies to police enforcement of the law.

¶Setting specific deadlines by which Government agencies must respond to requests for information, either affirmatively or negatively.

¶Allowing applicants for information to recover legal fees if a court rules that he should be given the information. "If the court rules that the agency's denial of the information was frivolous or willful, the requester should be entitled to recover punitive damages from the agency," Mr. Schuck said.

Amending the act to include information in the hands of Congress and the work of Government consultants and contractors.

Mr. Cramton was less specific but more wide-ranging in his testimony. He said that the record of compliance with general principles the Administrative Conference had recommended was good. But compliance with specific proposals, he said, was "much more checkered."

Mr. Cramton, who was formerly a professor of law at the University of Michigan, said that agency rules were good about identifying offices where the public may go for information and that few agencies require special forms for requesting it.

But, he said, few agencies have rules requiring an answer to a request within a given time and few require that the reasons for a denial of information be given. Moreover, he said, few have rules governing the time in which an appeal must be taken or the time for a response to an appeal.

EDITOR & PUBLISHER
11 MAR 1972
[redacted]

Court, Congress assay effect of Information Act

The Supreme Court and a Congressional committee have embarked on separate inquiries into the way the Freedom of Information Act, passed five years ago to curb excessive government secrecy and enhance the free flow of information to the public, is working.

The high court agreed for the first time to hear a case involving the Act, brought by 33 Congressmen, to force the White House to disclose reports and letters prepared for President Nixon relating to the underground nuclear explosion at Amchitka Island, Alaska.

A Federal District judge ruled that the documents were exempt from the disclosure provisions of the FoI. The U.S. Court of Appeals for the District of Columbia, however, ordered the District Judge to inspect the documents and decide whether some of them could be made public without endangering national security.

In its appeal to the Supreme Court the Government contended that inspection by judges would invite judicial tampering with national security and go beyond the intention of Congress to encourage free exchange of ideas within and between government bureaus.

The court's action coincided with hearings by a House Government Information Subcommittee into how the FoI act is working and whether the Executive Branch is following the letter and the spirit of the law. Representative William S. Moorhead of Pennsylvania, chairman, said the committee planned to "suggest legislative solutions to any shortcomings we uncover."

James C. Hagerty, press secretary to President Eisenhower, testified that a system of classification of documents is essential to the operation of any government but that government procedures should be reviewed periodically to bring them into line with changing times and conditions.

George Reedy, press secretary to President Johnson, said Congress should look into the proliferation of executive privilege operations in the White House, which he said made it "literally impossible to get at the facts."

Morehead said he deplored the fact that Herbert G. Klein, the Nixon Administration's director of communications, had declined to testify on the ground that the President's immediate staff do not appear before Congressional committees.

Changes suggested

Hagerty called the existing classification system an antiquated one, dating from World War I, and often subjected to abuse. He made the following recommendations concerning changes:

(1) Each [illegible] should have a classification clearing house which would have sole authority to determine whether any of its papers or actions should be classified. Such an organization should be staffed by high-level government personnel.

(2) The Freedom of Information Act might be amended to provide for a required periodic review of all classified material, either by an independent quasi-judicial board, or commission, or by a special staff of the National Security Council or by a similar board or staff within each department and agency reporting directly to the Cabinet officer or Agency head.

"Such a board or staff would be authorized to determine periodically, whether existing documents, or portions of them that do not endanger national security, should be removed from classified listings," Hagerty said. "It would be a gigantic—and awesome—job at first, and it would take a long time to go through the present classified documents, but if it could be started it would have the result of eliminating some of the problems relating to government information."

Hagerty, who is a vicepresident of American Broadcasting Co., remarked about the frustrations of trying to release over-classified information when he was in the White House. Sometimes, he said, documents for release at a news conference would arrive "literally covered with classified stamps, including the highest secrecy ratings."

"I would actually have to take these papers to the President and have him declassify them on the spot. And the only thing that was top secret about that was what he would say when he had to go through such nonsense."

Richard [illegible] of Georgetown University's Law Center's Institute for Public Interest Representation, suggested that the Act should be amended to require every agency to respond to a request to make records available within 10 days after receipt of the request. He said this would speed up the flow of information to the public.

Kissinger identified as source

In another aspect of government secrecy, the *Boston Globe* and the *Miami Herald* identified Dr. Henry A. Kissinger as the "Administration spokesman" who had discussed President Nixon's recent talks with China leaders at a "background" meeting of newsmen who had been on the trip.

John S. Knight, editorial chairman of Knight Newspapers, reported that the White House had asked why the Miami Herald's reporter did not abide "by the rules."

"Well, what rules? Whose rules?" Knight wrote in his Editor's Notebook.

"Unfortunately, many Washington correspondents who regard themselves as 'statesmen' let themselves be used and fall for the 'background' con game while forgetting they are supposed to be reporters.

"It's a shoddy practice which more often than not actually embarasses the very officials attempting to serve their own ends.

"And that is what I told the Biscayne White House."

The Boston Globe said its reporter had not been invited to the Kissinger session and "therefore is free to identify the source of the material."

The edited transcript of Kissinger's briefing contained sections marked "off the record" and "on the record," and this led to some confusion among the reporters.

Nixon order limits 'Top Secret' label

President Nixon has issued an Executive Order, effective June 1, which substantially restricts authority to classify papers "Top Secret."

Materials may be classified "Top Secret" only if their unauthorized disclosure "could reasonably be expected to cause exceptionally grave damage to the nation's security."

The burden of proof is placed upon those who want to preserve secrecy rather than on those who want to declassify the documents. This is the first time such a requirement has been imposed.

The order limits authority to use the "Top Secret" label to 12 departments and agencies. Under current rules 24 agencies have broad classification authority.

In the State, Defense and the Central Intelligence Agency, the number of officials authorized to classify material "Top Secret" is reduced by the new Nixon order from 5,100 to 1,860.

The new system provides that "Top Secret" information is to be downgraded to "Secret" after two years and to "Confidential" after two more years and declassified after 10 years.

[redacted]

STATINTL

NEW YORK TIMES

11 MAR 1972

Nixon's Order Held 'Restrictive' By House Information Specialist

But Moorhead, Subcommittee Head, Praises President's Statement on Secrecy

By RICHARD HALLORAN
Special to The New York Times

WASHINGTON, March 10—Representative William S. Moorhead, chairman of a House subcommittee on Government information, criticized today President Nixon's new Executive order on secrecy in national security papers calling it "a very restrictive document."

But the Pennsylvania Democrat praised the President's statement accompanying the Executive order for, as he puts it, "emphasizing past abuses of the classification system," under which documents are stamped "top secret," "secret" or "confidential." The order, issued Wednesday, goes into effect June 1.

Mr. Moorhead, at the opening of a hearing by his subcommittee this morning, asserted that a preliminary study of the order itself indicated that it "does not live up to the laudable goals of the President's statement."

"It appears to be an order written by classifiers for classifiers," Mr. Moorhead said.

Sees Way to Cover Errors

The Executive order is designed to reduce the secrecy surrounding national security material by limiting the use of secrecy classifications when the papers are written and by speeding up the process by which they are later made public.

Among its provisions is one ordering that "top secret" documents be automatically declassified and made available to the public after 10 years, "secret" papers after eight years and "confidential" ones after six, with certain exceptions that Nixon said would be narrowly applied.

But Mr. Moorhead argued that, under this arrangement, a "President could safely stay in office for his full two constitutional terms, totaling eight years, and at the same time make it possible for his Vice President or another of his supporters to succeed him without the public knowing the full details of major defense or foreign policy errors his administration had committed."

United Press International
William S. Moorhead

A Distinction Is Made

"In other words," Mr. Moorhead said, "the same political party could control the Presidency for 12 years when, perhaps, the public would throw it out of office if only the facts were known."

In his remarks, Mr. Moorhead drew the distinction between information covered by the Freedom of Information Act and that covered by the Executive order. The law concerns the disclosure of information on the Government's day-to-day activities, while the White House order covers information on national defense and foreign policy or, as the President put it, national security.

In the subcommittee hearing Assistant Attorney General Ralph E. Erickson testified that from July 1967, to July, 1971 the Justice Department received about 535 requests for access to its records under the Freedom of Information Act.

Mr. Erickson said that access had been granted in 224 cases and denied in 311. The majority of the denials, he said, involved investigative files or cases where the privacy of an individual would have been violated.

Order Is Defended

In another hearing, before a House Armed Services subcommittee on intelligence, Deputy Assistant Secretary of State William D. Blair Jr. continued the Administration's effort to explain the Executive order and head off legislation that would establish a joint executive-Congressional-judicial commission to review secrecy in the Government.

Mr. Blair conceded that "too much material — probably far too much—was being classified in the first place, and too much of that was being over classified.

He said that, in the central foreign policy files since 1950 alone, there were more than eight milion documents, at least half of them classified. To declassify them, he said, would take 10 years, while more papers piled up.

Mr. Blair noted that the new order severely limited the authority of officials to classify material. He said that about 800 officers of the department may now stamp papers "top secret," that number will be cut to about 300 when the new order becomes effective.

1,860 May Use Stamp

Under the Executive order, about 1,860 persons designated by the President or the White House staff, as well as the heads of 12 agencies or those designated by them, may use the "top secret" stamp.

They are the heads of the State Defense, Treasury and Justice Departments; the Departments of the Army, the Navy and the Air Force; the Central Intelligence Agency, the National Aeronautics and Space Administration and the Agency for Internatoinal Development.

The heads of 13 more agencies and their principal subordinates may use the "secret" classification. They are the Department of Transportation, the Department of Commerce, and the Department of Health, Education and Welfare; the Federal Communications Commission, the Export-Import Bank, the Civil Service Commission, the United States Information Agency, the General Services Administration, the Civil Aeronautics Board, the Federal Maritime Commission, the Federal Power Commission, the National Science Foundation and the Overseas Private Investment Corporation.

Regulations to Be Issued

Each agency, before June 1, will designate those officials who will have the authority to use each stamp. The agencies will also issue regulations and guidelines within the framework of the Executive order.

For classified documents already in existence, anyone will be able to apply to gain access to them by specifying which ones he wants to see. The agency that originated the documents will then review them to make sure national security will not be compromised by releasing them.

If the applicant is dissatisfied, he may then appeal to the National Security Council's Interagency Classification Review Committee, established by the new order. If that committee still refuses to release the document, the applicant may go to Federal court.

[redacted]

STATINTL

WASHINGTON POST
9 MAR 1972

U.S. Is Sued By Ashbrook On Secrets

United Press International

Rep. John Ashbrook (R-Ohio), announced yesterday a suit to force the Defense Department to make public secret documents on Soviet military strength obtained from a Red army official.

The suit, he told a news conference, would allow access to the so-called Penkovsky Papers—a compilation of statistics on Soviet nuclear weaponry by Col. Oleg Penkovsky, a senior intelligence officer with the Russian army general staff, who was executed for espionage 10 years ago.

Ashbrook, conservative challenger to President Nixon in Republican presidential primaries, said declassification of the documents was essential to any debate on a SALT agreement which may be forthcoming between the United States and Russia.

He said his efforts to persuade the Pentagon to voluntarily declassify the papers were unsuccessful. A suit under the Freedom of Information Act was filed in federal district court for southern Illlinois yesterday, he said.

"It is the right of the American people to know how the Soviet Union plans to destroy them; and it is their right to know just how the Nixon administration plans to protect them," Ashbrook commented.

Material from Penkovsky's reports was rewritten and published in the United States in 1966 as "the Penkovsky Papers." But the raw material on which the book was based has never been released.

WASHINGTON POST
7 MAR 1972

Hill, Court Assessing Data Disclosure

By John P. MacKenzie
Washington Post Staff Writers

Congress and the Supreme Court embarked yesterday on separate inquiries into whether the Freedom of Information Act is working poorly — or too well — in getting official data into the open.

A House Information subcommittee opened hearings to see whether the White House and executive departments are still withholding too much public information despite the 1967 law.

In the Supreme Court, the government won the right to argue that too many of its secrets would be compromised under a recent interpretation of the act by the U.S. Court of Appeals here.

The court's action marks the first time that the justices have agreed to review a case involving the act, which was hailed five years ago as a breakthrough in the battle over "the public's right to know."

The law, which preserves official secrecy in national security and other areas but gives citizens the right to take the government to court over non-disclosure, was invoked last fall by Rep. Patsy Mink (D-Hawaii) and 32 other congressmen. They challenged the underground nuclear explosion at Amchitka Island, Alaska.

Classified documents sought by the legislators were held to be exempt from the law's disclosure provisions by District Court Judge George L. Hart Jr. but the court of appeals ordered him to inspect the documents in his chambers to see whether some of them could be made public without endangering security.

Government lawyers asked the court to rule that such inspection by judges would take the judiciary out of its depth, invite tampering with national security and go beyond Congress's intention to encourage free exchange of ideas within and between government bureaus.

Ramsey Clark, counsel for the 33 legislators, urged the court not to review the case in its current state. But he said if review was granted, he would argue that members of Congress may not be denied the requested information, even if the average citizen is denied it under the act's exemptions.

The court's action is expected to figure prominently when the House subcommittee holds its second day of hearings today to hear the testimony of lawyer witnesses familiar with the administration of the act.

Yesterday's opening witnesses were former White House press secretaries James C. Hagerty and George Reedy and other former government information officers.

Hagerty, now vice president of the American Broadcasting Co., reported on the frustrations of trying to release overclassified information to the public when he was in the Eisenhower administration.

Sometimes documents for release at a press conference would arrive "literally covered with classified stamps, including the highest ratings," Hagerty said. "I would then actually have to take these papers to the President and have him declassify them on the spot. And the only thing that was Top Secret about that was what he would say when he had to go through such nonsense."

Both Hagerty and Reedy said the subcommittee should come to grips with modern problems of executive privilege.

Reedy, press aide to President Johnson, agreed with Chairman William Moorhead (D-Pa.) that executive agency officials who once could be reached by congressional inquiry are increasingly winding up on White House staffs, immune from legislative summons.

Key, intimate presidential advisers should remain protected from possible harassment, Reedy said, but some attempt should be made to reach lower-level but nevertheless important operating officials for their testimony.

PITTSBURGH, PA.
POST-GAZETTE
FEB 21 1972
M - 243,938

GOVERNMENT MOOD KEEPS COVER INTACT

Moorhead Sees No Secrecy Cuts

By MILTON JAQUES
Post-Gazette Washington Correspondent

WASHINGTON — The mood in Congress and in the Nixon administration at this time is probably against reducing secrecy in government.

And that is too bad, according to Rep. William S. Moorhead, Shadyside Democrat, who heads the House subcommittee dealing with government information policies.

On his own assessment, Moorhead feels it would probably be futile this year to attempt to get liberalizing legislation enacted to the 1967 Freedom of Information Act.

That leaves Moorhead facing the possibility of holding extensive hearings on the act this year, with a view toward later legislation.

Moorhead's assessment grows out of his study during the past year of government information practices. These range from the "ridiculous" as practiced by the intelligence apparatus, the Central Intelligence Agency, or the "spooks" as Moorhead calls them, to the just plain bureaucracy covering-up of goofs and political deals with a secrets label.

During the year, too, the publication of the so-called "Pentagon Papers" and the "Anderson Papers" caused shocks to race through the government over leaks in the secrecy erected around some official documents.

THE PENTAGON PAPERS dealt with an official staff study, ordered by former Defense Secretary Robert S. McNamara on the origins and background of the unpopular war in Vietnam. The other papers disclosed concerned apparent differences between the administration's public and private positions on the India-Pakistan conflict.

Moorhead, a lawyer, is deeply involved in the congressional discussions on the sensational disclosures. He's chairman of the House subcommittee on foreign operations and government information, a unit of the House Government Operations Committee.

His thinking now is that Congress should at some point assert its watchdog role more over the area of official secrets, and the process by which the government classifies its documents.

"You can't set up an executive branch institution to correct secrecy in the executive department," Moorhead figures as a point of departure for his study. If he had a proposal to make, it would be to have Congress appoint a commission dealing with the matter of secret classification of government documents.

The details of such a commission, and the legislation to create it, according to Moorhead, are "negotiable." He is inclined toward a measure (S-2965), introduced by Sen. Edmund S. Muskie (D-Me.), the presidential aspirant, which would provide Congress and the public a means for gaining access to certain information now locked in government files.

MOORHEAD INDICATES he is also impressed with the testimony given to his subcommittee by at least one former Pentagon security official who claims an excessive amount of information is stamped classified.

"There are good citizens within government and outside who think this classification has been overdone," Moorhead says. The object of the Freedom of Information Act, he believes "is to make the maximum amount of information available to the public, not the minimum.

"A Democratic society doesn't work well unless it has the maximum."

The testimony on over-classification was supplied by William G. Florence, who said that "disclosure of information in at least 99.5 per cent of those classified documents could not be prejudicial to the defense interests of the nation."

Florence, who retired that figure, estimated that the percentage of information that should be withheld could range from one to five per cent, instead of 0.5 per cent.

Florence obviously in the Moorhead view is one of those "good citizens" who believe the classification system has gotten out of hand.

The mood in the Nixon administration, as Moorhead sees it, is toward greater secrecy, not less. Efforts within the administration are directed at stopping leaks, such as those in the Pentagon Papers and the incident involving columnist Jack Anderson.

"Of course it is a legitimate effort to try to prevent leaks," Moorhead says, "but it should have its counterpart in how to maximize the amount of information available."

ANOTHER PROBLEM facing the subcommittee, Moorhead feels, is the amount of leeway given a President in revealing secrets. During the subcommittee hearings which begin next month former presidential press secretaries have been invited to testify on this aspect of their work at the White House.

President Nixon's recent speech revealing secret negotiations carried on with the North Vietnamese about their American prisoners of war was cited by Moorhead as in this area of security.

According to Moorhead, the Nixon speech disclosing the talks "blew the cover" (revealed the identity) and disclosed the role of presidential adviser Henry Kissinger. This presents Congress with the problem that "if you only let the top elected political official blow the covers of a country, then he won't reveal all, just that which is advantageous to him and keep concealed that which isn't."

Moorhead said the memoirs of former President Lyndon Johnson also revealed secrets with a one-sided treatment toward accuracy.

Secrecy's other uses, the Congressman feels, is in "covering up for goofs in government."

"Whenever somebody has made a mistake, he may try to cover that up with a secret label" Moorhead contends.

"It took a change of administration and a whole series of coincidences" for Moorhead and Sen. William Proxmire (D-Wis.) to get the information leading to their exposing of the Air Force's problems with huge cost overruns on the C5-A aircraft.

"We never would have gotten that information otherwise," Moorhead says.

ALONG WITH other Democrats, Moorhead also suspects the Republican administration may be using secret tags to cover defense spending for what might be called political purposes. The charge grows out of the administration's call to Congress for extra funds this year for the department of defense.

The feeling in Congress is that some of the money being spent in the 1972 election year could be interpreted as for political purposes if it is directed solely toward relieving unemployment and thereby helping to reelect the president.

continued

STATINTL

WASHINGTON POST
12 FEB 1972

STATINTL

[redacted]

Pentagon Fights Secrets Plan

By Sanford J. Ungar
Washington Post Staff Writer

The Defense Department is opposing a National Security Council recommendation that all classified government information be made public after being kept secret for a maximum of 30 years.

Criticizing an NSC draft revision of government security regulations, the Pentagon has appealed for a "savings clause" that would permit agency heads to designate material affecting foreign relations which they believe must remain secret indefinitely in the interest of "national security."

But the Defense Department also questions some sections of the NSC draft as unduly restrictive and has suggested changes that might have the effect of reducing the number of classified documents in government archives.

The Pentagon suggestions are contained in a memorandum to the National Security Council from J. Fred Buzhardt, general counsel of the Defense Department.

The Washington Post has obtained a copy of that memorandum, one of several that will be considered by the National Security Council before submitting the draft for presidential approval.

Meanwhile, members of Congress and other experts on security classification attacked the NSC draft for cutting back on public access to government information rather than expanding it.

Rep. John E. Moss (D-Calif.), the author of the Freedom of Information Act, said that "no more stringent regulations are needed. They are the antithesis of a free society."

Commenting on details of the NSC draft as revealed in The Washington Post yesterday, Moss was especially critical of the suggestion that the President seek legislation, similar to the British Official Secrets Act, which would severely punish anyone who receives classified information as well as those who disclose it.

Such legislation, Moss said, "would be an outrageous imposition upon the American people. I will fight it, and I would hope that every enlightened American will fight it."

Rep. William S Moorhead (D-Pa.), whose House Subcommittee on Foreign Operations and Government Information will open new hearings next month, complained yesterday that the NSC draft was "aimed only at closing information leaks in the executive branch rather than (making) more information available to the public and to Congress."

Moorhead said he had requested a copy of the NSC draft from the White House.

Earlier in the day, the Office of Legal Counsel at the Justice Department declined to provide a copy to the staff of the Moorhead subcommittee, saying that it was only "a working draft."

The Jan. 11 letter of transmittal which accompanied the NSC proposal when it was sent to the Departments of State, Defense and Justice, the Central Intelligence Agency and the Atomic Energy Commission, however, called it "the final draft."

The Defense Department recommendations concerning the draft, sent to the NSC on Jan. 21, were the product of a review by the three military departments and "a working group composed of classification specialists, intelligence experts and lawyers," according to Buzhardt's memorandum.

Buzhart observed in the memo that the Pentagon found so many problems with the draft that it should "be substantially reworked before submission to the President."

Among other matters, the Defense Department urged an updating of the definitions of the three security classifications as follows:

• "The test for assigning 'Top Secret' classification shall be whether its unauthorized disclosure could reasonably be expected to cause exceptionally grave damage to the nation or its citizens."

As examples of such damage, it cited a range of situations from "armed hostilities against the United States or its allies" to "the compromise of cryptologic and communications intelligence systems."

• "Secret" is to be used to prevent "serious damage" such as "endangerment to the effectiveness of a program of policy significantly related to the national security" or "jeopardy to the lives of prisoners-of-war."

• "Confidential" refers to national security information or material, the unauthorized disclosure of which could reasonably cause damage to the national security." No examples were listed in this category.

The Pentagon also said that "it is imperative that these restrictions be imposed only where there is an established need."

The Defense Department objected, however, to the NSC's proposed requirement that every classified document be marked to indicate who had declared it secret. Buzhardt's memo called this condition "both unrealistic and unworkable."

Its strongest objection appeared to involve the NSC suggestion for a 30-year rule guaranteeing that all secret documents are released eventually.

"A savings clause to provide for exceptions to be exercised only by the agency head concerned is essential to prevent damage to national security," the Pentagon recommendations said

"There are certain contingency plans dating from the 1920s which should be exempt from the 30-year rule," the Pentagon critique added "Release of such documents would be unacceptable from a foreign relations standpoint for an indefinite period."

William G. Florence, a retired security expert for the Air Force, complained yesterday that the NSC draft, as reported in The Washington Post, "will continue to permit hundreds of thousands of people to continue putting unwarranted security classifications on information."

Florence referred to the practice as "illegal censorship."

NEW YORK TIMES
24 JAN 1972

[redacted]

STATINTL

COST OF SECRECY TO U.S. ESTIMATED

Yearly Bill Is Put at Over $60-Million, House Aides Say

By NEIL SHEEHAN
Special to The New York Times

WASHINGTON, Jan. 23—The staff of the House subcommittee on Foreign Operations and Government Information has been told that the cost to the taxpayers of Government secret-keeping runs $60-million to $80-million a year.

The estimate is based on the preliminary findings of an examination the Government Accounting Office is conducting for the subcommittee on the cost of running the security classification system, including the outlays on everything from safes and file cabinets to document cover sheets marked Top Secret. One Government official familiar with the classification system believes, however, that this $60-to-$80-million estimate is too low.

The examination is part of the preparations the subcommittee is making for extensive hearings this year, beginning on March 6, on the workings of the security classification system and on how the executive branch withholds information from Congress and the public. The G.A.O. is the investigating agency of Congress.

These hearings by the subcommittee, which is headed by Representative William S. Moorhead, Democrat of Pennsylvania, will extend and develop the exploratory sessions held last summer following publication of the Pentagon papers. This year's hearings will seek ways to force executive-branch disclosures by strengthening the Freedom of Information Act and will look into the possibility of creating an independent agency to declassify documents.

Effect of Act Is Sought

The broad framework of the hearings will be a review of what effect four years of the Freedom of Information Act has had on the flow of information to Congress and the public. The act went into effect in 1967.

The general opinion in Washington has been that the act has resulted in relatively little increase in disclosure, particularly in the controversial areas of foreign and military policy. A clause in the act now exempts the executive branch from disclosing these types of information.

The staff of the subcommittee has sent out a questionaire to nearly 100 Government departments, agencies, bureaus and commissions asking for detailed records of what requests for information were made under the act and what responses, including denials, the agencies gave. The responses to the questionaire already fill three cabinets, a senior subcommittee staff member said.

Representative Ogden R. Reid of New York, the ranking Republican on the subcommittee, intends to submit for consideration an amendment to the act that would drastically strengthen the ability of Congress to obtain information from the executive. Mr. Reid, along with Representative John E. Moss, Democrat of California, was a co-author of the original act.

Reid Sees a Basic Fault

Under Mr. Reid's amendment, the executive branch could still provide the information to Congress in classified form, so that the data could not be made public. But Mr. Reid argues that at least Congress would be informed, as it now is not.

"We've got to put some teeth into this thing," he said in a telephone interview. "As it stands today, in 9 cases out of 10, the Congress doesn't know know what is going on or they find out too late.

"I would like to see a right of access by Congress established and exercised in an appropirate way, with security interests, to the body of documents in which the Congress has a vital interests."

"What we've been seeing," he continued, "is an erosion in the power of Congress vis-a-vis the executive and a virtual inability for the Congress to share in the decisions of war and peace and life and death. There is now a fundamental imbalance in our system."

Mr. Reid also intends to submit other amendments to the Freedom of Information Act. One of these would give Congress independent power to declassify what information it does obtain from the executive branch. Another would create some independent body to oversee the entire classification system and declassify documents.

A senior member of the subcommmittee's staff noted that "this is a pretty tough area" and that the subcommittee would not get legislation to this effect through Congress this session. He said, however, that the subcommittee hoped the hearing, which may extend until June, would lay the groundwork for the passage of such legislation next year.

NEW YORK TIMES
6 DEC 1971

[redacted]

WAR PAPERS PLEA DENIED BY JUDGE

Two Congressmen Rebuffed in Suit for Full Disclosure

Special to The New York Times

WASHINGTON, Dec. 7 — A Federal district judge denied today a suit by two Congressmen to compel the release of all or part of the still classified segments of the Pentagon Papers.

At a hearing here last Friday Representatives Ogden R. Reid, Republican of Westchester, and John E. Moss, Democrat of California, co-authors of the Freedom of Information Act, asked Judge Gerhard A. Gesell to examine the still classified segments in a secret session and decide whether all or part should be made public.

In his written opinion today, Judge Gesell said that an independent court review like this was neither required by the Freedom of Information Act nor desirable. Judge Gesell ruled against the Nixon Administration last June in the Government's attempt to restrain the Washington Post from publishing articles based on the Pentagon Papers.

The two Congressmen specifically requested review of the material the Government withheld when it published a declassified version of the first 43 volumes of the papers last September—about 2 per cent of the total—and the four remaining volumes on the secret Vietnam diplomacy of the Johnson Administration. None of the newspapers that published articles last summer have obtained these four volumes.

Legislation Urged

Mr. Reid said in a statement that Judge Gesell's opinion "points up the need for new legislation to give some independent reviewing body the authority and resources to evaluate classified documents and order declassification of those which are being improperly withheld from the public domain."

He said that the House Subcommittee on Foreign Operations and Government Information would hold extensive hearings in February to determine what kind of reviewing agency should be created and to propose legialation on this and other aspects of the classification of information by the executive branch. Mr. Moss is the subcommittee chairman.

The precise character of the proposed reviewing agency is a matter for the hearings to develop, Mr. Reid said, but he suggested that it could be a joint committee of the House and Senate.

The agency should be "accountable to Congress and the people and independent of the executive," Mr. Reid asserted.

Purposes of Hearings

The hearings will explore the possibility that Congress might assume the power to declassify information it receives from the executive branch, a power the executive now exercises exclusively. The withholding of information from Congress even when Congress does not intend to make the material public will also be examined, and ways to strengthen the Freedom of Information Act will be sought.

One way in which Mr. Reid hopes to fortify the act is to narrow the criteria under which the executive can now withold fro mthe public matters "specifically required by Executive order to be kept secret in the interest of he national defense or foreign policy."

In his opinion, Judge Gessell said this exemption made an indepenent court review unnecessary. He noted that counsel for the Congressmen had conceded at the hearing that the Government was claiming the exemption in this case "in good faith" because the decisin to keep the relevant portions of the Pentagon Papers classified had been made "at the highest level of the Department of Defense after careful consideration."

Review Held Undesirable

On the undesirability of a court review, Judge Gesell said:

"It is entirely foreign to our traditions to place papers in the hands of a judge for his private ex parte inspection, excluding them from the eyes of the litigants.

"The determination of the interests of national defense or foreign policy cannot be made by applying some simple litmus test to a document presented."

He added that since he had "no experience or background in such matters" he would need detailed "background briefing" by some neutral authority "even to make a tentative judgment and thus the litigation would proceed in secret with those seeking the data wholly excluded."

Mr. Reed said some way must be found to break what he called the pattern of "withholding, obfuscation and outright deceit" practiced by the executive branch in its information policy toward Congress and the general public and to make the executive "accountable" for its actions.

WASHINGTON POST
8 DEC 1971

[redacted]

War Papers Disclosure Barred

By Sanford J. Ungar
Washington Post Staff Writer

A federal judge yesterday upheld the government's refusal to release the final four volumes of the Pentagon papers, which deal primarily with American diplomatic efforts through other governments to obtain the release of prisoners of war in Vietnam.

U.S. District Court Judge Gerhard A. Gesell granted judgment for the government on lawsuits brought by two congressmen and a journalism professor at the University of Missouri under the Freedom of Information Act.

Gesell said that he had accepted the Defense Department's assertion that the material in the four volumes "could, if disclosed, result in serious damage to the nation by jeopardizing the international relations of the United States."

"The public's right to be informed cannot be transposed into a legal requirement that all governmental papers will be automatically revealed," the judge said.

Gesell ruled last June that The Washington Post was entitled to print articles based on the secret Pentagon study of the Vietnam war, because the government had failed to show in court that such disclosure was a threat to national security.

Legal observers regard Gesell's earlier opinions in the Pentagon papers case—when the Justice Department sought to enjoin publication — as among the firmest in upholding strict interpretation of freedom of the press.

On two occasions, he refused to stay his decision even momentarily while government lawyers sought review of them by the U.S. Court of Appeals here.

But in yesterday's decision, Gesell drew a distinction between the main body of the Pentagon papers and the four "diplomatic" volumes, which never came into the possession of The Washington Post, The New York Times or other newspapers.

His ruling also applied to deletions made by the Defense Department from the other 43 volumes of the papers, which were formally released in September after a high-level declassification review.

Those deletions, the government said in an affidavit recently submitted to the court, fell into four categories: "Information concerning the United States military plans;" "Information concerning joint planning of defense arrangements by the United States with other countries;" "Information concerning United States diplomatic negotiations with high-level officials of other countries;" and "Information derived from United States intelligence."

Much of the deleted material has already appeared, however, in another edition of the Pentagon papers, released by Beacon Press in Boston, after a near-complete set of the study was turned over to the publisher by Sen. Mike Gravel (D-Alaska).

The suits under the Freedom of Information Act were brought by Reps. John E. Moss (D-Calif.) and Ogden R. Reid (R-N.Y.) and by Paul Fisher, director of the Freedom of Information Center at the Missouri School of Journalism.

They argued that as legislators and citizens they had "a right to inspect and copy the requested documents."

But Gesell, inding that the withheld portions of the Pentagon papers fall under exemption to the information act, said, "Obviously documents involving such matters as militray plans and foreign negotiations are particularly the type of documents entitled to confidentiality . . . Government, like individuals, must have some degree of privacy or it will be stifled in its legitimate pursuits."

The judge also rejected the congressmen's suggestion that he inspect the disputed documents in secret before making his decision. "It is entirely foreign to our traditions to place papers in the hands of a judge for his private . . . inspection, excluding them from the eyes of the litigants."

NEW YORK TIMES
21 NOV 1971

STATINTL

[redacted]

Press

Persico Case:

Does the Public Have a 'Right To Know?'

Freedom of the press and freedom of information have never been more persistently challenged in this country—or more vigorously asserted — than they have been this year.

Last week, the issue was raised once again when New York Supreme Court Justice George Postel barred the press and public from the trial of Carmine Persico on extortion and conspiracy charges in connection with alleged loan-sharking. Judge Postel closed the trial because newspaper reporters persisted in including in their articles material that was not brought out in court—Persico's nickname ("The Snake"), his criminal record and the allegation that he is connected with organized crime. Persico's lawyer contended that this material, if it came to the notice of the jurors, could prejudice them against his client.

Judge Postel first threatened to hold reporters in contempt of court — to throw them "in the can," as he put it — if they wrote anything about the trial that had not "transpired" in court. When the reporters published accounts of his conversation with them, he charged the press with "contumacious conduct" and granted a defense motion to exclude the press and public from the Persico trial.

Judge Postel thereby set the scene for a legal test of whether a judge may exclude the press from an ordinary criminal trial: Five members of a committee of 100 New York reporters have brought suit to reopen the Persico trial to the public. They claim their Constitutional rights have been violated. Their case will be heard tomorrow in the Appellate Division of the New York State Supreme Court.

It probably will be argued there that the New York State Judiciary Act allows a judge to exclude the public only in certain kinds of cases — rape cases and adoption proceedings, for example — and closing the courtroom to exclude the press and insulate the jury is not authorized by the act. It will also be argued that Judge Postel had other means at his disposal to ensure the impartiality of the jury and should have used them, rather than transgressing the Constitutional guarantee of a public trial.

Judge Postel might, for example, have sequestered the jury in the Persico case to keep it from reading the newspapers. He might have ordered the trial held elsewhere, or declared a mistrial if he thought the jury had been tainted by prejudicial publicity. Instead, he barred the press — ironically, leaving the jury free to read whatever the press might write about Persico.

Underlying the reporters' suit is the so-called right to know, the right of the public to know how public business, including the administration of justice, is being conducted. There is no right to know explicitly stated in the Constitution. The right to a public trial, for example, has been found by the New York State Court of Appeals to belong only to the defendant, not to the public or to the press, and Carmine Persico has waived that right in his trial before Judge Postel. That ruling, in which the Court of Appeals was evenly divided will be challenged tomorrow.

Legal scholars disagree about it. Prof. Herbert Wechsler of Columbia University, who represented The New York Times in one famous case — the Sullivan case, in which public officials were held to be practically immune to libel — takes the position of the Court of Appeals.

Professor Alexander Bickel of Yale, who represented The Times in another famous case — the case of the Pentagon papers — has told the New York Post: "I think there's more to the guarantee of an open trial than the rights of the defendant. There is a public interest that is part of the picture."

That public interest, in this view, is too see — not merely to be told — that the law is being effectively and fairly enforced, especially in a case involving organized crime, which vitally affects the public welfare.

This, then, is the issue: While there is no stated right to know in the Constitution, is there a presumed, implied or inherent right that derives from the other liberties guaranteed to us and from our system of democracy and the requirements of an open society? Is there a widespread long-established assumption that public business should be conducted in public?

Freedom of the press does not require anybody to give information to the press. Can freedom, however, be fully exercised if the press is unduly hindered or inhibited in gathering information, or if its sources of information are arbitrarily shut off?

These are some of the questions that will face the Appeals Court tomorrow.

—CLIFTON DANIEL

continued

WASHINGTON STAR
17 NOV 1971

[redacted]

STATINTL

Nutter Memo to Aides On Interviews Released

Assistant Defense Secretary G. Warren Nutter issued written instructions to his top assistants on June 29, 1970, telling them not to talk to reporters unless a Pentagon public affairs official was present, according to a document made public today.

A copy of the Memo to the deputy assistant secretary in Nutter's Office of International security Affairs was released by The Pentagon in response to a request from Samuel J. Archibald, a director of the Washington office of the Freedom of Information Center of the University of Missouri.

Archibald cited the Freedom of Information Act in requesting a copy of Nutter's memo. The Pentagon previously had refused to supply the memo to newsmen who asked for it.

The memo said: "The weekly activities report indicates that DASD (Deputy Assistant Secretary of Defense) have evidently been conducting interviews with news media personnel without a public affairs representative in attendance. Mr. Nutter desires that this practice be discontinued and that a PA representative be in attendance at all discussions with press personnel."

Early in the Kennedy administration, Defense Secretary Robert S. McNamara set up a "monitor" system in which every official who talked with reporters was supposed to have a public affairs officer present or to make a written report of the conversation. The system helped McNamara cut down on use of the press in inter-service rivalries, but it also was routinely ignored. Before McNamara left the Pentagon, the monitoring requirement was dropped.

It has persisted in some parts of the Pentagon, however, and has been enforced by Nutter whose office frequently works in areas of particular interest to the White House and State Department.

NEW YORK TIMES
21 OCT 1971

Editors Cite Times on Pentagon Papers

By JONATHAN KANDELL
Special to The New York Times

PHILADELPHIA, Oct. 20—The Associated Press Managing Editors Association presented its first Freedom of Information Citation today, honoring The New York Times for its publication of the Pentagon papers.

The award was established last spring to reward newsmen or newspapers that have "made an outstanding contribution to maintaining present freedom-of-information standards against encroachments or in any way widening the scope of information available to the public."

In accepting the award at the association's convention in the Bellevue Stratford Hotel here, A. M. Rosenthal, managing editor of The Times, said the Pentagon papers contained a "treasury of facts—not innuendo or rumor—which showed the decision-making process in Government."

He added that if The Times had not published the documents, it would have "deprived the people of the country of an extremely important body of information" and "would have made a mockery of freedom of the press."

Ellsberg on Panel

. . a panel discussion before the presentation of the award, Dr. Daniel Ellsberg, the former Defense Department official who says he made the Pentagon papers available to the press, declared that the real lesson of the documents was the Government's "process of secrecy to deceive the American people." Dr. Ellsberg contended that "99.5 per cent of what is now classified should not be."

He also remarked that "some official secrets have been shared with" countries turned hostile "long before they were shared with the American people."

In a dissenting view, Martin Hayden, editor of The Detroit News, said that the process of government secrecy was "a system under which the American people have become the best-informed electorate in the world."

Mr. Hayden said that under the First Amendment, newspaper editors "have a privilege, not a license, to print everything that they can get their hands on."

He also warned that the publication of the Pentagon papers could cause a backlash in public opinion that would "lead to the enactment of an official-secrets act," similar to the one in Britain, prohibiting the disclosure of any secrets thought detrimental to security.

'Not for Whole Press'

Mr. Hayden said that the Supreme Court decision permitting The New York Times, The Washington Post and other newspapers to publish the Pentagon Papers was "a great court victory" for those newspapers, but that it was not "a victory for the whole press."

In rebuttal, Mr. Rosenthal said the material in the Pentagon papers "did not involve the military security of the United States."

Noting that much of the information in the papers had been previously made available, Mr. Rosenthal emphasized that the documents contained "no secrets, but insight into how decisions were made, and how they were concealed."

In a poll taken before the presentation of the award to The Times, one-fourth of the 365 newspaper editors attending the convention said that the Pentagon papers should not have been published.

WASHINGTON STAR

16 OCT 1971

Secrets Policy Voided By Court in A-Blast Suit

By WINSTON GROOM
Star Staff Writer

The U.S. Court of Appeals here has struck down the government policy of arbitrarily classifying all documents in a file the same as the highest classified single document in the group.

The ruling came yesterday in the case of 33 congressmen, led by Rep. Patsy T. Mink, D-Hawaii, who have sued the Nixon administration for release of a secret report on the proposed atomic test at Amchitka Island in Alaska.

The test, code named "Cannikin," is scheduled to be carried out this month if President Nixon gives his approval. Several environmentalist groups have filed suits to stop the blast, and their cases are pending in the federal courts.

The suit involved in yesterday's ruling sought release of a secret report held by the Environmental Protection Agency that allegedly contains negative comments on the test from several other government agencies.

The ruling sends the case back to U.S. District Court Judge George Hart Jr., instructing him to hold a secret hearing at which EPA's Amchitka papers can be screened — and those documents which would not normally bear a security classification can be separated from those which would.

The congressmen opposed to the blast hope that once they have the documents in hand, they can convince the court of appeals that the Amchitka test is ill-advised.

The question of whether or not the government should classify all documents in a file just because one or more of them is classified has been the subject of controversy in the case of the Pentagon papers. Part of that report on the U.S. involvement in Vietnam was classified top secret but some of the report had been published previously without classification.

Today's ruling overturns a 1953 presidential order that set the current policy for classifying documents. It had said.

"A document . . . shall bear a classification at least as high as that of its highest classified component. The document shall bear only one overall classification not withstanding that pages, paragraphs, sections or components thereof bear different classification."

In striking down that policy, the appellate court held that the Freedom of Information Act of 1970 supercedes the executive order.

"Secrecy by association is not favored. If the non-secret components are separate from the secret remainder and may be read separately without distortion of meaning they too should be disclosed."

In its instructions to the lower court regarding the Amchitka papers, the appellate court suggested that a cautious attitude should be adopted by Judge Hart in reviewing the matter.

"In approaching this problem we have in mind the very special place the President occupies in the conduct of foreign affairs," the court said in its

WASHINGTON DAILY NEWS

28 SEP 1971

Rep. Moorhead takes stand

Does freedom of information stop at Hill?

By DANIEL RAPOPORT

(UPI) — The new chairman of the House "Freedom of Information" subcommittee has taken a stand that may not endear him to his colleagues. He thinks Congress ought to be as free of secrets as it wants the government to be.

Rep. William Moorhead, D-Pa., did not blare out his position, he did not even volunteer it. It came in response to a reporter's question and was expressed in a soft, somewhat hesitating voice.

What he suggested was that the legislative branch of the federal government be covered by the provisions of the Freedom of Information Act, the same as the executive branch.

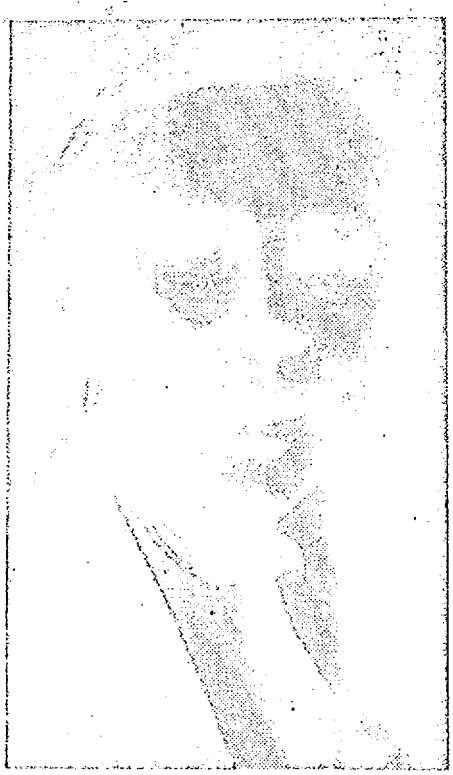
The proposition may seem logical to outsiders but to lawmakers it is literally unthinkable. Congress specifically exempted itself when it drafted and approved the bill in 1966 and the odds are heavily against Rep. Moorhead if he ever tries to put his theory into practice.

NOTHING NEW

For Rep. Moorhead that would be nothing new. Tho he is not personally combative — shy would be a better word — the 48-year-old lawmaker has a way of now and then getting in battles with congressional powerhouses.

Back in 1959 he calmly remarked on a TV interview that some member of Congress had dealt so long with the Pentagon and its contractors that they no longer could see their faults. The late Rep. L. Mendel Rivers, D-S.C., chairman of the House Armed Services Committee, was outraged. He virtually ordered Rep. Moorhead to appear before his committee and back up his charge.

Rep. Moorhead, who at the time was carrying on a campaign against the Air Force's



REP. MOORHEAD

C5 transport, accepted the offer. Rep. Rivers backed down.

In that same year Rep. Moorhead infuriated another powerful defender of the military, Rep. Chet Holifield, D-Calif. With information prepared by his staff, Rep. Moorhead surprised and annoyed Rep. Holifield by utilizing a hearing of Rep. Holifield's Government Operations Subcommittee to raise some embarrassing questions about the C5 with Air Force witnesses.

"Bill is a lot tougher than he appears," says one congressional friend.

PITTSBURGH FAMILY

Rep. Moorhead reflects his background. He comes from a well established Pittsburgh family, and in Washington he lives in fashionable Georgetown. His education is pure eastern establishment — Phillips Andover Academy, Yale, and Harvard Law School.

His political ideology is solid liberal Democrat. The conservative Americans for Constitutional Action examined his 12-year voting record and gave him an approval rating of 6 out of 100.

Rep. Moorhead took over the reins of the "Freedom of Information," subcommittee this year when its first and only chairman, Rep. John E. Moss, D-Calif., was forced to step down because of a Democratic rule limiting Democrats to one legislative subcommittee chairmanship.

Known officially as the Foreign Operations and Government Information subcommittee of the House Government Operations Committee, the panel was created in 1955. Its purpose is to serve as a watchdog over government information practices and protect the public's right to know.

CHAMPION OF PRESS

Over the years it became a champion of the press and its staff has worked with reporters in prying information out of reluctant agencies. In 1965, following a reorganization of the Government Operations Committee, it picked up the added task of maintaining a watch on the foreign aid and other U.S. overseas programs. Tho its title was enlarged, newsmen still refer to it as "the Freedom of Information" subcommittee.

In 1966 Rep. Moss and the panel achieved its crowning triumph, passage of the Freedom of Information Act. The law went into effect on July 4, 1967, and stated as a general principle that all federal government records, unless specifically exempt, should be open to any citizen.

MANY EXEMPT

Such areas as military and trade secrets, personnel files and criminal investigative data were exempt. Courts were authorized to settle disputes between an individual and an agency over whether a particular piece of information should be exempt, with the burden of proof on the government.

Congress, however, was not covered. A former staff aide who played a part in drafting the law explained that it was directed against the executive branch and he could not recall any representative or senator proposing that it apply to the legislative branch.

Rep. Moorhead, when asked about the point, noted that Congress served as the elected representative of the people, and the ultimate policy makers for their government.

"I should think that the public's business would be public," he observed.

The Atlanta center was scheduled to go into full operation this month, but only eight patients are being treated, and they are in the psychiatric ward. Plans for renovation of the hospital's fifth floor into a 16-bed drug-treatment center still are awaiting approval from Washington.

The hospital's director, Dr. Julian Jarman, said the moratorium on hiring came at a time when requests for treatment were growing.

BEWARE CLASSIFICATION OF GOVERNMENT DOCUMENTS

(Mr. MONAGAN asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. MONAGAN. Mr. Speaker, the overclassification of Government information has repeatedly been criticized and challenged because of the blatant inconsistencies in the procedures utilized by the various departments and agencies of the executive branch. There have been frequent claims that the power of classification has been abused in an attempt to suppress information which the public has a right to know.

The classifying of Government information has not been exercised solely by those departments and agencies which concern themselves with matters of national security or foreign relations. Recently a Ph. D. candidate was refused access to 70-year-old documents in the National Archives which concerned a pollution investigation conducted by the Federal Bureau of Investigation. I cannot see where there is any justification based upon military security or foreign relations for prohibiting public access to such documents. The absurdity of the present classification procedures is quite evident. This incident and numerous others are recounted in an article by Morton Mintz which appeared in the July 20, 1971 issue of the Washington Post.

By the calculated classification of specific information public officials can shield themselves from public criticism. The classification appears ridiculous when every day we read and hear reports in the news media which are attributed to "leaks of inside information." Decisive action must be taken to make classification procedures comply with a policy of free availability of Government information which will not jeopardize our national security. The public's right to know must not be restricted. Decisive action must be taken to find a viable remedy to this situation.

I have been concerned with the public's right to know for some time. While I was a member of the Subcommittee on Foreign Operations and Government Information I submitted a bill dealing with freedom of information which was enacted into law. I feel that it is again necessary to submit legislation concerning this problem.

I have today filed a bill to establish a joint committee to conduct a complete investigation of the practices and methods used in the executive branch of the Government for the classification, reclassification and declassification of Government information in order to determine whether such practices and methods are exercised for purposes contrary to the public interest, and to determine appropriate procedures for the discovery, reclassification and declassification of Government information.

The membership of the joint committee would be composed of the chairman and ranking minority member of the Senate and House Committees on Armed Services, Foreign Affairs, and the Appropriations Subcommittee on Defense, and an additional three Senators appointed by the President of the Senate and three Representatives appointed by the Speaker of the House.

The joint committee would carry out its activities for the period of 1 year and at its termination it would submit a report of its findings and recommendations to the Senate and House of Representatives. If the joint committee had not completed its investigation and report within the year an extension for an additional year might be made by concurrent resolution. Any sensitive information which the joint committee might acquire through its activities might be kept secret by the committee.

The result of the efforts of the joint committee would be the availability of ample data and resulting recommendations for the proper classification of Government information. It would then be possible to formulate and put into effect an efficient, effective, just and uniform classification procedure.

I wish to append to my remarks the editorial entitled "The Right To Know" which appeared in the July 10, 1971, edition of the Christian Science Monitor and an editorial entitled "Secrets of the Bureaucracies" which appeared in the July 20, 1971, edition of the Washington Post:

THE RIGHT TO KNOW

The current controversy over classification of government documents centers on one key question: Can government by consent have any real meaning if those governed do not know to what it is that they are consenting? It was only the right, indeed the absolute need, of the people to know what their government is doing and has done, and why, that could have justified the recent publication by several newspapers, including this one, of documents bearing a "top secret" classification.

The rightness or wrongness of the decision by the particular newspapers to go ahead with that publication is now in the hands of history to determine.

But the need of the people to know goes on. So does the government classification procedure system that kept the Pentagon papers hidden so long. That system needs to be drastically overhauled, as recognized by the recent six-day hearing of the House Government Operations subcommittee, which sought to find out just how much classified material actually exists, who classifies it, and by what criteria. Not surprisingly, the subcommittee found out what everybody has long recognized, that overclassification is a perennial fact of government.

There are estimates of something like 100 million pages of classified wartime records, dating back to World War II, and 20 million classified documents in the Pentagon's machine-operated files. One former CIA official estimated that only 10 percent of the classified documents he handled over the years were "really sensitive."

The criteria by which classification takes place appears all too vague. It is clear that in wartime, any hard information about troops, armaments, and plans must be kept out of enemy hands. But it is equally clear that 100 million pages of records from a war which ended in victory a quarter of a century ago hardly fall into that category.

And any Washington newspaper reporter knows firsthand how the classification system is used by bureaucrats to shield themselves from public surveillance, to serve their personal political aims, or to leak out "inside information" to chosen segments of the mass media at a tempo designed to build support for a particular policy. And the habitual breaking of security by the very officials who order documents classified—often in memoirs—only confirms the absurdity of the system.

Hopefully the House subcommittee will come up with some meaningful solutions. Worth considering is the suggestion of Rep. Sam Gibbons (D) of Florida, that Executive Order 10501—issued by President Eisenhower in 1953, and the basic law governing the system today—be scrapped. It is too vaguely worded, allowing as it does that any "extremely sensitive information or material" be kept from declassification for an unlimited time. One must ask, sensitive to whom, and for what reasons?

Mr. Gibbons would declassify everything that cannot be proven essentially confidential, and publish an annual list of what remains classified. Within three years, these holdovers would be automatically declassified unless a person of at least cabinet rank ordered to the contrary.

We believe the public's right to know is more basic and vital to the continued democratic operation of the United States Government than is the government's right to withhold, although secrecy has its obvious necessities. But the burden of proof for this necessity should lie on the government, and it should be the exception rather than the rule.

SECRETS OF THE BUREAUCRACIES

(By Morton Mintz)

"I am from Missoula, Montana, and I have been in Washington doing research on pollution for a Ph.D. dissertation in history," Donald Mac Millan said in a letter to Sen. Lee Metcalf (D-Mont.) the other day. "At the National Archives I was advised that I could not use anything that was stamped 'Bureau of Investigation.' The period I was interested in was essentially the first decade of the twentieth century . . . I feel ridiculous even suggesting that the Nation's security could be threatened by information seventy years passed, but apparently somebody does. . . . If we cannot have an honest and rigorous search for the truth our future as a self-governing democracy is indeed bleak."

Mac Millan's astonished discovery that he could not have access to—it bears repeating—files on pollution seven decades old serves to make a point which, quite understandably, drew scant attention in the recent momentous struggle over the Pentagon Papers. The point is that secrecy seems to be endemic in all bureaucracies—not just those occupied with national security—and it is manifested, almost always, against the very public supposedly being served; this happens readily and pervasively even when no justification in military security or foreign relations is so much as claimed.

The evidence of this, regrettably, is as easy to come by in the "open administration" of President Nixon as it ever was in those of his predecessors. Here are some examples:

The Walsh-Healy Act empowers the Department of Labor to make federal contractors comply with the job-safety standards it has approved. The department had traditionally refused to make public inspection reports and notices of violation. It claimed that the Freedom of Information Act, enacted to protect "the public's right to know,"

THE NEW REPUBLIC
18 SEPTEMBER 1971

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Keeping Secrets

The President refused, August 31, to give Senator Fulbright's Foreign Relations Committee a copy of the Pentagon's five-year foreign military assistance plan, citing "executive privilege" as his reason. Two days later it was reported, and then partially confirmed in Secretary Rogers' press conference, that news leaks out of the State Department were being investigated with lie-detector tests given to "high-ranking" department officials. These two incidents may have been totally unrelated, and their timing fortuitous. Or they may represent a deliberate tightening on all fronts of the administration's treatment of "official secrets," maybe even a considered response to the Supreme Court's Pentagon Papers decision.

The Court's ruling that no judicial decree may constitutionally prevent the publication of a news story or copy of a government document leaked to the press can be taken as teaching the virtue of self-reliance. The Court said, in essence, that under existing statutes once a government secret is out, the First Amendment makes it public property and forbids its censorship or suppression. So the sole line of defense for official secrets is control by the executive departments of their own personnel and confidential material.

Hard-nosed investigation of State Department leaks is plainly one way of deterring unwanted disclosures. Secretary Rogers – apparently tutored by the opinions of some Supreme Court Justices who indicated, in lengthy asides, that they saw no constitutional difficulty in after-the-fact criminal prosecutions of those who disclosed top-secret information – asked reporters, at his press conference, with shocked innocence, "Is there anything wrong with investigating a crime when it occurs?" It seems that a *New York Times* article in mid-July had given details of secret bargaining positions taken by US negotiators at the SALT talks, and, according to the secretary, several executive departments then applied for an FBI investigation "to find out whether a crime was committed and who committed it." (The Espionage Act of 1917 – used to indict Daniel Ellsberg and much cited in the Pentagon Papers case – makes it a crime to disclose defense information which could be used "to the injury of the United States.") Mr. Rogers announced that he was satisfied from the results that there had been no violation, but the first *Times* story on the FBI's efforts reported, significantly, that previously available State Department officials had recently taken to not answering newmen's telephone calls.

Could Mr. Rogers – a former attorney general and lawyer with a successful private practice – really have been unaware that the prospect of a visit from an FBI agent carrying a polygraph machine would make a foreign service officer reluctant to chat with a reporter even on subjects whose disclosure is not remotely criminal? Brandishing the threat of criminal investigation and prosecution over the heads of the foreign service – a group never noted for independence or daring – equals in subtlety the administration's

continued

WASHINGTON POST
27 AUG 1971

[redacted]

STATINTL

Judge Rules For Secrecy Of A-Report

By Philip A. McCombs
Washington Post Staff Writer

U.S. District Court Judge George L. Hart, asserting that "some things have got to be secret," yesterday denied the effort of 33 members of Congress to obtain release of a report said to have advised President Nixon against the nuclear test (code-named Cannikin) scheduled for Oct. 2 under Alaska's Amchitka Island.

The members of Congress need the report so that they can "exercise their constitutional power," former U.S. Attorney General Ramsey Clark told the court.

He said they are entitled to such information under the Freedom of Information Act unless the President specifically invokes his executive privilege, which he has not done in the case of the report.

It was sent to the President July 17 by a special National Security Council committee headed by Under Secretary of State John N. Irwin III.

The report includes several memoranda and reports classified "top secret" and "secret," including documents from Henry Kissinger's Defense Program Review Committee, the Atomic Energy Commission, the Council on Environmental Quality, the Environmental Protection Agency and the Office of Science and Technology.

In the argument with Clark and government attorneys yesterday, Judge Hart said, "It seems to me you members of Congress would like to put a reporter in the Cabinet room and listen to who advises the President of what."

Judge Hart argued the government's point of view that if members of Congress cannot obtain documents with their own powers, then it is not the place of courts, under the separation of powers, to intervene. He told Clark that, "I can't think of any group on earth, including the President, that has a greater ability to gather information than the Congress."

Clark said he believes that the secret report recommends against the Cannikin test on grounds that it will be detrimental to the environment. Judge Hart challenged this, asking how Clark knew what it said.

Clark conceded that he was not positive, but said this simply underlined his argument that members of Congress need to see the report to be able to legislate intelligently.

He also suggested that Judge Hart should rule in favor of the members of Congress to avoid a stinging reversal, such as the one administered April 13 to Judge John H. Pratt's dismissal last summer of an attempt by environmental groups to obtain release of a secret anti-SST report prepared for the President by the Office of Science and Technology.

The U.S. Court of Appeals here ruled that the report was not covered by executive privilege, and ordered Judge Pratt to reconsider whether it came under one of the nine exemptions to the Freedom of Information Act.

In an unexpected move, the government released the SST report the week before the lower court reconsidered it, saying it did so "to counter impressions . . . depicting the government as attempting to conceal hitherto undisclosed factual data . . ."

Yesterday Judge Hart, to avoid a constitutional issue, dismissed the suit as brought by members of Congress. Further, he ruled that as individual citizens the plaintiffs are not entitled to see the report because it falls under two exemption categories of the Fredom of Information Act.

These categories pertain to materials "specifically required by executive order to be kept secret in the interest of the national defense or foreign policy" and to "inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency."

The members of Congress, led by Patsy T. Mink (D-Hawaii) and including a number of congressmen from the West Coast, have been fighting the Cannikin test mainly because they fear it will trigger earthquakes or tidal waves.

The five-megaton test of an ABM warhead for the Spartan missile is expected to be the largest underground atomic test ever conducted by the United States and is expected to release almost five times the amount of explosive energy let loose by the largest previous underground U.S. test.

Environmentalists say the test will kill large numbers of sea otters, seals and sea lions. They also claim that Cannikin will destroy nests of two of the world's rarest birds, the peregrine falcon and the American bald eagle.

Another suit filed July 8 by eight national conservation and antiwar groups seeks to block the test entirely as a threat to wildlife, the environment and international relations.

The government last week filed a motion to dismiss this suit, and the case is pending before Judge Hart.