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MEMORANDUM FOR: DDA Records Management Officer
DDI Records Management Officer
DDO Records Management Officer
DDS&T Records Management Officer
DCI Administrative Officer

SUBJECT: Authority to Classify

REFERENCES: a. E.O. 11652, "Classification and Declassification of National Security Information and Material," dated 8 March 1973
b. National Security Council Directive, dated 1 May 1972
c. [ ]

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1. This Staff has been assigned partial responsibility for the implementation of Classification/Declassification procedures established by E.O. 11652 and the implementing NSC Directive.

2. Attached are copies of a pamphlet entitled, "Know Your Responsibilities as an Authorized Classifier," provided by the Interagency Classification Review Committee for all authorized classifiers. A copy of the pamphlet is to be distributed to all authorized classifiers with the name of the classifier typed on the pamphlet, and a note reminding the classifier to read and be familiar with his responsibilities in this connection. May we ask that you please accomplish distribution to those classifiers in your component (computer listing attached).

3. At the same time, may we request that a thorough review be made of the listing of classifiers to determine if the requirement for classifying authority continues in each case.

4. Action should be taken to delete classifying authority in cases where a real need does not exist. I would appreciate having the results of such a review by 26 September 1975.

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[ ]
Chief, Information Systems Analysis Staff

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Attachments (DDI-[ ] DCI-[ ] DDS&T-[ ] DDA-[ ] DDO [ ]
ISAS:BEC:dr (2Sept75)

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A Thousand Clouds
Variable cloudiness tonight, low near 35. Mostly sunny tomorrow, highs in 50s. Details: B-4.

The Washington Star

HOME FINAL

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Justice Department Considers System of Secrecy for Records

By Jerry Oppenheimer
Washington Star Staff Writer

At a time when the Carter administration and Atty. Gen. Griffin B. Bell are proclaiming a new "open-door policy" at the Justice Department, officials there have been asked to consider implementing a program that would impose greater secrecy on records and documents.

A proposed order being circulated in the Justice Department would allow officials to stamp the designation "DOJ Sensitive" on any unclassified information "which for a significant reason must be protected against uncontrolled release." The "sensitive" designation could stay in effect for four years or longer.

Whether the proposal will be adopted is uncertain, in light of strong opposition from many Justice officials and the belief of sources close to Atty. Gen. Griffin Bell that he will not approve such a system.

A Justice Department spokesman said today that Bell had never seen the proposed order until it was brought to the attention of his aides by The Star. The spokesman, Marvin Wall, said his office was trying to determine who requested the development of the idea.

This is believed to be the first time recently that a classification system — it's called a "control marking" in the order — has been seriously proposed for the Justice Department.

The only records now classified are those involving national security matters. At the same time, documents dealing with pending criminal and grand jury investigations are restricted from disclosure.

THE PLAN, if adopted, could adversely affect the transmission of records and documents within the department and to those on the outside who are not cleared to handle the "sensitive" materials. It could also hinder the disclosure process under the Freedom of Information and Privacy acts, critics of the proposal asserted yesterday.

The proposed order has not been well received by many department officials. A number of them said yesterday that they intend to oppose the plan vehemently.

Since becoming attorney general earlier this year, Bell has publicly voiced his concern over "leaks" to the press of information regarding the department's sensitive investigations.

Entitled "Control and Protection of Department of Justice Sensitive Information," the proposed order was said to have been formulated in the office of Robert L. Dennis, acting director of security and administrative programs, part of the Office of Management and Finance. Dennis could not be reached for comment yesterday.

It could not be determined who, if anyone, requested Dennis' office to develop the proposal. Some Justice Department officials speculated that the proposed order was written in the wake of Bell's public comments about leaks.

See SECRECY, A-6

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SECRECY

Continued From A-1

A memorandum attached to the order, dated March 31 and signed by Edward Dolan, acting assistant attorney general for administration, asked the heads of all Justice Department divisions, boards and offices to submit their comments on the proposal by tomorrow.

"IF YOUR RESPONSE is not received by that date," the memo said, "we will conclude that you concur with the proposed order as written." Calls to some high-ranking officials in the department whose comments had been solicited showed that they had never seen the proposal.

One Justice lawyer involved in handling Freedom of Information and Privacy acts requests said, "I just saw it yesterday. It's absolutely insane. It reads like an official secrets act, like something they would put together over at the Pentagon. There's an obvious need for secruity here, but this thing is overkill."

Another Justice official said the proposed classification plan "would undercut everything we've been trying to do around here for the past couple of years. We've been trying to overcome the public's vision of the Justice Department as clutching to its bosom every record and document it has and saying, 'No, you can't have it.' I'll do my best to keep it from being promulgated."

"I blew my stack when I saw the thing the other day," another angry Justice lawyer said. "Besides the secrecy, which would give the department a black eye, the order proposes a bureaucratic nightmare. We'd be putting 'sensitive' stamps on everthing. I think this thing will die of its own weight."

THE ORDER STATES that as head of the Justice Department, "the attorney general's authority to govern the conduct of business and the custody and use of records is plainly sufficient to support a system regulating" the flow of information within the department and to determine what information can be given to the public.

—United Press International

Atty. Gen. Griffin Bell: Role in Justice's secrecy order still not known.

The proposed order defines the designation "DOJ Sensitive" as being applied to any "unclassified departmental information which for a signficant reason must be protected against uncontrolled release. . . ." The order says that this "control marking . . . denotes unclassified, sensitive departmental information exempted from public disclosure under law."

Requests under the Freedom of Information or Privacy acts for access to "DOJ Sensitive" information "shall not be honored until the originating office or higher authority has been consulted," the order states.

It also lists precautions against "oral disclosure" of the classified information "during discussions, prevention of visual access to the information, protection against unauthorized assessing of the information . . . in telecommunications systems, and unauthorized release of documents, either gratuitously or in response to a specific request for information."

THE ORDER SPECIFIES that "except as specifically exempted, DOJ Sensitive material becomes automatically decontrolled four years after the designation." It says that such materials can be released for "official purposes" outside the department, but it raises the possibility that the recipients might have to undergo FBI investigation to determine their "trustworthyness."

The order goes into great detail on the methods for storing and transmitting the classified material to preclude unauthorized disclosure and even warns department officials about using the telephone to discuss such information.

"In view of the ease with which information can be compromised by the use of the telephone, officials should consider the risks involved and the sensitivity of the information, and exercise discretion in using this transmission medium."

The order said that "DOJ Sensitive" material which does not have to be retained "shall be destroyed in the same manner as classified waste, such as by burning, pulping or shredding."

Officials were instructed to ensure that prompt and appropriate administrative action be taken against any department officials or employes at any level who are determined to have been responsible for the unauthorized release or disclosure of such classified information. "Such leaks . . . will be immediately reported to the department security officer."

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KNOW YOUR RESPONSIBILITIES AS AN AUTHORIZED CLASSIFIER

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A new system for classifying Government documents relating to national security matters was established on March 8, 1972, by Executive Order 11652 and further implemented by a National Security Council (NSC) directive on May 17, 1972. The change represented the first major overhaul in the classification system of Federal documents in 20 years. Every authorized classifier should obtain a copy of the order, the implementing NSC directive, and the regulations of his or her own department or agency and become thoroughly familiar with their contents.

Authority To Classify

The authority to originally classify information or material under Executive Order 11652 is restricted solely to those offices within the executive branch, enumerated in the order, that are concerned with matters of national security and is limited within those offices to the minimum number of persons absolutely required for efficient administration. This authority may be exercised only by the heads of the departments or agencies and certain other properly designated officials and subordinates. No one else may assign original classifications. Designated officials may classify information or material only at the level authorized and below. Authority to classify may not be delegated to individuals not properly designated.

Security Classification Categories

Official information or material that requires protection against unauthorized disclosure in the interest of the national defense or foreign relations of the United States (collectively termed "national security" information or material) shall be classified in one of three categories; namely, TOP SECRET, SECRET, or CONFIDENTIAL. No other categories shall be used except as expressly provided by statute. These categories may only be used in accordance with the following definitions:

TOP SECRET refers to that national security information or material which requires the highest degree of protection. The test for assigning TOP SECRET classification shall be whether its unauthorized disclosure could reasonably be expected to cause exceptionally grave damage to the national security. Examples of exceptionally grave damage include armed hostilities against the United States or its allies, disruption of foreign relations vitally affecting the national security, the compromise of vital national defense plans or complex cryptologic and communications intelligence systems, the revelation of sensitive intelligence operations, and the disclosure of scientific or technological developments vital to national security. This classification shall be used with the utmost restraint.

SECRET refers to that national security information or material which requires a substantial degree of protection. The test for assigning SECRET classification shall be whether its unauthoribed disclosure could reasonably be expected to cause serious damage to the national security. Examples of serious damage include disruption of foreign relations significantly affecting the national security, significant impairment of a program or policy directly related to the national security, revelation of significant military plans or intelligence operations, and compromise of significant scientific or technological developments relating to national security. The classification SECRET shall be used sparingly.

CONFIDENTIAL refers to that national security information or material which requires protection. The test for assigning CONFIDENTIAL classification shall be whether its unauthoribed disclosure could reasonably be expected to cause damage to the national security.

Other designations coupled with one of the above three categories pertain to access restrictions only.

Personal Responsibility

Each person possessing classifying authority shall be held accountable for the propriety of the classification attributed to him. Both unnecessary classification and over-classification must be avoided. Classifications must be based solely on national security considerations. In no case may information be classified to conceal inefficiency or administrative error, to prevent embarrassment to a person or department, to restrain competition or independent initiative, or to prevent for any other reason the release of information that does not require protection in the interest of national security.

Any Government officer or employee who unnecessarily classifies or over-classifies information or material will be so notified. Repeated abuse of the classification process is grounds for an administrative reprimand. The term "classification abuse" means unnecessary classification, over- or under-classification, failure to assign the proper downgrading and declassification schedule, improper application of classification markings, improper placing of a document in an exempt declassification category, any classification or exemption action taken without authority, or an improper delegation of classification authority.

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When Classifying a Document

Unless specifically exempted, pursuant to one of the four exemption categories set forth in Section 5(B) of Executive Order 11652, by an official authorized to originally classify information or material TOP SECRET, classified information and material must be subject to the General Declassification Schedule (GDS). Alternatively, it may be designated for automatic declassification on a given event or on a date earlier than provided for in the GDS. This is called the Advance Declassification Schedule (ADS). The use of the exemption authority shall be kept to the absolute minimum consistent with national security requirements.

Proper marking of a classified document is important! Each classified document shall show on its face its classification and whether it is subject to the ADS or GDS or exempt from the GDS. Only authorized stamps, properly completed, may be used. If a document is stamped "Restricted Data" or "Formerly Restricted Data," such markings are, in themselves, evidence of exemption from the GDS. The face of the document shall also show the office of origin and the date of preparation and classification. To the extent practicable, the body of the document should be marked to indicate which portions are classified and at what level and which portions are not classified in order to facilitate excerpting and other use. Material containing references to classified materials, which references do not reveal classified information, shall not be classified. Each classified document must also identify in some manner, in accordance with approved procedures, the individual at the highest level that authorized the classification. Where the individual who signs or otherwise authenticates a document has also authorized the classification, no further annotation as to his identity is required. Every authorized classifier should become thoroughly familiar with the proper marking requirements.

If the classifier has any substantial doubt as to which of the classified categories is appropriate, or as to whether the information or material should be classified at all, the least restrictive treatment should be used.

Special Responsibility To Protect

An authorized classifier or other holder of national security information or material shall observe and respect the classification assigned by the originator, giving it the strict protection required by its level of classification. If a holder believes that there is unnecessary classification, that the assigned classification is improper, or that the document is subject to declassification under Executive Order 11652, the holder shall so inform the originator, who shall thereupon reexamine the classification. Under no circumstances may a holder make an unauthorized release of national security information. There are provisions in the U.S. Criminal Code and other applicable statutes relating to penalties for such unauthorized disclosures.

Implementation and Review Responsibilities

The Interagency Classification Review Committee (ICRC) was established at the direction of the President to assist the National Security Council in monitoring the implementation of Executive Order 11652. The ICRC has extensive oversight responsibilities, which are outlined in the order and in the implementing National Security directive of May 17, 1972.

Within each department or agency, there is a departmental review committee that has responsibilities to act on all suggestions or complaints with respect to the individual department's administration of the order. Such suggestions or complaints may include those regarding over-classification, failure to declassify, or delay in declassifying not otherwise resolved.

Interagency Classification Review Committee
Washington, D.C. 20408

GSA DC 75-11231

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The Director
Central Intelligence Agency

Washington, D.C. 20505

OLC 77-3872/b

25 OCT 1977

Honorable Howard W. Cannon, Chairman
Committee on Rules and Administration
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

Thank you for your letter of 7 September 1977 requesting information on downgrading certain classified intelligence information from the Central Intelligence Agency provided to the Senate Select Committee on Presidential Campaign Activities. I understand that this information is now in the custody of your Committee pursuant to a Senate resolution.

All or a great part of that intelligence information was compiled through the use of sensitive intelligence sources and methods. It is, therefore, exempt from automatic declassification under Section 5, paragraph B(2) of Executive Order 11652, and each classified document in your possession should contain a notice to that effect. If such a notice has in any case been omitted through oversight, I request that you accept this letter as equivalent assurance that the Agency documents in your custody are not subject to automatic declassification.

I might add that our understanding with the Senate Select Committee on Presidential Campaign Activities has always been that information derived from intelligence sources and methods would not be subject to declassification in keeping with the provisions of Executive Order 11652 already cited.

I appreciate your interest in bringing this matter to my attention.

Yours sincerely,

/S/

STANSFIELD TURNER

STAT

Distribution:
Orig - Adse
1 - DCI
1 - Acting DDCI
1 - ER
1 - OLC/Subj
1 - OLC/Chrono
OLC/RJK/ksn (13 Oct 77)

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LARRY E. SMITH, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON
RULES AND ADMINISTRATION
WASHINGTON, D.C. 20510

September 7, 1977

OLC #77-3872

Admiral Stansfield Turner
Director
Central Intelligence Agency
Washington, D. C. 20505

Dear Admiral Turner:

In the course of its investigation, the Senate Select Committee on Presidential Campaign Activities (Sam Ervin's "Watergate Committee") obtained certain classified material from the Central Intelligence Agency. Senate Resolution 369 of the 93rd Congress transferred custody of these and other files to the Senate Committee on Rules and Administration.

Under Chapter IV, Section A, Subsection 2, of Executive Order 11652, as modified, "information and material originally classified "Secret" shall become automatically downgraded to "Confidential" at the end of the second calendar year following the year in which it was originated, and declassified at the end of the eighth full calendar year following the year in which it was originated."

These materials were classified "Secret" in the calendar year 1974 and now seem to qualify under the automatic declassification subsection of Executive Order 11714.

Downgrading the classification at this time would permit us to include this material in the working files of the Watergate Committee, now housed in the vaults of the Manuscript Division of the Library of Congress and allow this material to be made available by this Committee, on a limited basis, to our highest need category of requestors comprised of prosecutors, defendants and Congressional Committees.

I will appreciate your early response.

STAT

Sincerely,

Howard W. Cannon
HOWARD W. CANNON
Chairman

HWC/SS/gr

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LARRY E. SMITH, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON
RULES AND ADMINISTRATION
WASHINGTON, D.C. 20510

September 7, 1977

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Director
Central Intelligence Agency
Washington, D. C. 20505

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Sincerely,

Howard W. Cannon
HOWARD W. CANNON
Chairman

HWC/SS/gr

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Carter Proposes Curbs on Data Classifications

Associated Press

President Carter is proposing new secrecy rules that would strip the authority to classify information from 10 government agencies and cut back the authority of four others.

The proposal, contained in a draft of an executive order, would take classification authority away from agencies that seldom use it. One, the Department of Agriculture, never has used it.

Other parts of the draft propose that:

- Four years be cut off the usual 10 years the government may keep most of its top secrets and two years cut off the usual eight years it may keep its ordinary secrets.

However, anyone with top-secret classification authority could grant extensions for up to 20 years. And, after review, the extensions could be renewed for up to 10 years a time.

Gary Barron, a member of the National Security Council staff who helped write the draft, conceded this could keep information classified indefinitely. But he said limiting extension authority to top-secret classifiers would mean fewer extensions.

- Agencies be allowed to make employees sign promises to remain silent as long as secrets they hold are under wraps.

Some agencies use secrecy agreements now. But only a few, including the Central Intelligence Agency, require them from prospective employees before they are hired.

The Supreme Court said two years ago that such secrecy agreements give the CIA the right to censor the writings of former employees.

Barron said the secrecy agreements in the draft were "a thing the lawyers did . . . The whole idea was to have something uniform. This thing was not put in there to enjoin any publications. That was not the intent."

The draft is the result of a Carter request to his staff last June to review the government's entire secrecy system. During last year's campaign for the presidency, Carter pledged an open administration. In a first for executive orders, the draft of his order will be sent to agencies, congressional committees and some interested non-government groups for their comments.

Then the National Security Council and Carter's domestic affairs staff will decide on the final form to present to Carter for his signature. Once signed, the order will replace secrecy rules set by President Nixon in 1972.

Under the Carter draft, these agencies in addition to the Agriculture Department would lose classification authority:

The Federal Communications Commission; the Civil Service Commission; the Department of Health, Education and Welfare; the Civil Aeronautics Board; the Federal Maritime Commission; the Federal Power Commission; the National Science Foundation; the Interstate Commerce Commission, and the Office of Science and Technology Policy.

The Labor Department would have its authority to classify information top secret cut to the power to stamp it confidential. The Overseas Private Investment Corp. would have its secret authority cut back to confidential, the Agency for International Development from top secret to secret, and the Export-Import Bank from secret to confidential.

'The Agriculture Department hasn't classified anything," Barron said. "It has never used its authority. The National Science Foundation, rarely if ever. The Federal Power Commission, the Federal Maritime Commission, rarely."

Under the Carter draft, nothing may be classified unless it meets at least one of 13 criteria, all related to national security. They are designed to exclude purely domestic matters with no tie to any threat against the foreign policy or national defense interests of the nation.

Unlike the Nixon rules, the Carter draft specifically excludes basic scientific research which is not restricted under the Atomic Energy Act or "directly related to the national security."

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For the Record

From the Architect of the Capitol's new report on Capitol Hill planning alternatives:

During the middle of March 1976, the chief of the Capitol Guide Service and his staff administered survey questionnaires to a random sample of visitors. . . .

Of the 533 visitors surveyed, 444 were from 49 of the 50 states; 52 visitors came from 15 foreign countries. The average visitor stay in Washington was 3.3 days. Approximately 88 per cent of the visitors were staying for more than one day. One of the most interesting aspects of the survey dealt with how people arrived at the Capitol. On this question, 515 of the 533 persons surveyed responded, and of this group 269 arrived by private car. . . .

When asked if they plan to have any meals in the Capitol area during their visit, 379 indicated that they did and 134 indicated that they did not. The survey was conducted before the tour of the Capitol and the visitor probably had not found out that eating facilities in the Capitol are limited. . . .

The last question on the survey asked for any comments regarding the building and services on Capitol Hill. Of the 147 persons responding, 93 responded favorably and 54 unfavorably. Most people were very pleased with what they had seen at the Capitol, with the service of the Capitol Police and Guide Force and with the scale and beauty of the building and grounds. Unfavorable comments related to the lack of convenient off-street parking and the need for signs or other means of direction to find their way around the Capitol. Numerous suggestions were made for painting and general repairs. No one commented on the lack of restroom or other facilities, probably because they were interviewed just after entering the Capitol.

HE EDITOR

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God will not hold guiltless those who stand in the way of moral standards that God himself has set. This includes The Washington Post.

WILLIAM I. BARKLEY SR.
Columbia

Public-Spirited Restorer

In "A 'Camouflage' for Old Georgetown Market" [op-ed, Sept. 2], the thesis of the article seems to be that John D. Zimmerman Jr., who the article's author, Padraic Burke, refers to as "a former supermarket manager," is planning to subvert the preservationists' intent by turning the market into a boutique row. I would like to point out that Mr. Zimmerman has worked for many years on a variety of preservationist causes, including Historic Georgetown, Inc., and the Woodrow Wilson House Council. He has also served as a President of the National Fire Fighting Museum. Zimmerman worked very closely with the Historic Preservation Committee of the Citizens Association

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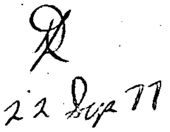

Security by injunction

THE MARCHETTI CASE: NEW CASE LAW

John S. Warner*

The Marchetti case is truly a landmark case in the annals of the law—and it has far-reaching implications for the Central Intelligence Agency, the intelligence community, and the federal government as a whole, as will be demonstrated.

Actually, the legal story consists of two separate but related legal actions:

(1) The first case was initiated at the request of CIA by the United States of America, represented by the Department of Justice. CIA sought an injunction which would prevent a former employee, Victor Marchetti, from publishing a proposed magazine article by enforcing the secrecy agreement he signed upon entering into employment with CIA. After hearings, appeals, trials, and further appeals, a permanent injunction was issued. The decision of the United States District Court for the Eastern District of Virginia in Alexandria, Va., was appealed to the U.S. Court of Appeals for the Fourth Circuit. There the original decision was affirmed, and a petition for a writ of *certiorari*** was filed with the U.S. Supreme Court. That court declined to review the decision of the Circuit Court, which is cited as *U.S.* v. *Marchetti*, 466F 2d 1309(1972).

(2) The second case was initiated by Alfred A. Knopf, a publisher, and Marchetti and John D. Marks, co-authors of a proposed book, *The CIA and The Cult of Intelligence*, submitted to CIA on 27 August 1973 pursuant to the terms of the injunction issued in the first case. This latter case, against the United States, was filed in the U.S. District Court for the Southern District of New York. On motion of Department of Justice lawyers, and after hearing arguments, that court ordered the case removed to the Alexandria District Court which had heard the first case and had issued the injunction. The basic issue in this second case concerned the appropriateness of the deletions CIA had made from the Marchetti-Marks manuscript. After trial, the Alexandria District Court made a decision which was extremely adverse to the government's position. Upon appeal, the Fourth Circuit Court of Appeals reversed the District Court, fully approving the government's position—i.e., agreeing with all the deletions requested by CIA. This case too was appealed to the Supreme Court, but *certiorari* was denied. This case is cited as *Knopf* v. *Colby*, 509F 2d 1362(1975).

Perhaps this is the place for some background on the central figure, Victor Leo Marchetti. Marchetti served for two years, 1951-1953, in France and Germany as a corporal in Army Intelligence, including six months of Russian Area study at the EUCOM Intelligence School in Oberammergau. Returning to the United States to complete his college studies, he graduated from Penn State in June 1955 with a bachelor's degree in History (Russian Area Studies), worked three months as an analyst at the National Security Agency, and entered on duty with CIA as a GS-7 on 3

*The author wishes to acknowledge the assistance of Lawrence R. Houston and John K. Greaney in the preparation of this article.

**A writ of *certiorari* certifies that the Supreme Court agrees to hear the case in question; when such a writ is denied, it means the Supreme Court sees no reason for taking the case to the Supreme Court.

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October 1955 at the age of 25. He rose relatively rapidly, primarily through the Office of Research and Reports, but also with tours in the Directorate of Operations and the Office of National Estimates. From ONE, as a GS-14, he went to the Office of Plans, Programs, and Budget in January, 1966, and served there for two and a half years. In July, 1968, having reached the GS-15 level, he became Executive Assistant to the Deputy Director of Central Intelligence for a period of nine months. He was then assigned to the Planning, Programming, and Budget Staff at the National Photographic Interpretation Center, and five months later resigned for "personal reasons" in September, 1969.

In his assignments with the CIA PPB office, where he handled the papers for the "303 Committee" (later the "40 Committee") which passed on Covert Action proposals, and particularly with the DDCI, Marchetti got an overall view of the Agency and access to sensitive information afforded to extremely few Agency employees. There was no evidence of serious disillusion or disenchantment with the Agency before he left.

After his departure from the Agency, Marchetti began writing, first a novel, *The Rope-Dancer*, and then non-fiction articles concerning Agency activities. In March 1972, the Agency received a draft of an article Marchetti had written for *Esquire* magazine, together with the outline of a proposed book on CIA. The source expressed the opinion that the Agency might be concerned with the content, because many aspects seemed classified and sensitive. Indeed, the Agency was concerned. Very serious classified matters were discussed. Included were names of agents, relations with named governments, and identifying details of ongoing operations. There were items which might have led to the rupture of diplomatic relations between the United States and other countries. Disclosure would cause grave harm to intelligence activities of the U.S. Government and to CIA.

William E. Colby, then Executive Director, telephoned me in my capacity of Deputy General Counsel at the time, asking what legal action could be taken. The answer was that no criminal action would be successful once the material were published, but this might be the proper situation for seeking an injunction. Colby asked whether we were certain of our legal position as to an injunction. We noted that extensive legal research within the Agency and consultation with the Department of Justice had taken place five or six years before. Colby asked for some documents on this as quickly as possible, and had them within 30 minutes.

It is useful to digress to look at this novel legal approach. For years the Agency had recognized the practical impossibility, under existing law, of applying criminal sanctions to employees and former employees who disclosed classified information to unauthorized persons. In the mid-Sixties, however, under threat of a revealing book by a disgruntled former employee, the lawyers looked into the possibility of civil sanctions—namely, an injunction to enforce his contract based on the secrecy agreement each employee signs at the beginning of his employment. It was known, of course, that various industry agreements had been enforced in the courts—agreements that protected industrial processes and other proprietary rights from disclosure by employees, both during and after employment. Why shouldn't the U.S. Government also be protected on the simple basis of a valid contract? The conclusion was reached that a court action had a good chance of success. The Department of Justice was consulted, and after thorough review agreed. The pending threat went away, but the papers were preserved against later need.

What did Colby do with the documents when we produced them? He discussed them with the then-Director, Richard Helms, who took the matter up personally with

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the President. The President said he would turn this over to John Ehrlichman, then his Counsel. Helms asked CIA General Counsel Lawrence R. Houston and me to go to the White House to see Ehrlichman and discuss possible action on the proposed article and book by Marchetti. In late March 1972 we were shown into Ehrlichman's office in the White House. In a few minutes Ehrlichman appeared, accompanied by an assistant, David R. Young. They had done their homework, knew the factual situation, had studied the pertinent criminal law, and had the proper law books in their hands. After thorough discussion, it was agreed that the criminal statutes would provide no remedy for the problem facing us. Talk then turned to the injunction possibility. We presented our view in favor of a try in the courts for an injunction, conceding that there was no precedent involving the U.S. Government in the case law.

Finally it was mutually agreed to have a try at an injunction. Talk then turned to the means of preparing the case. Houston and I urged care with respect to which Deparment of Justice attorney would handle the case, on the grounds that dealing with classified intelligence information would require considerable understanding to prepare a complaint, briefs, and oral argument while at the same time protecting the sensitive aspects; this, after all, was what the case was all about. He then suggested Daniel J. McAuliffe, an attorney in the Internal Security Division of the Department of Justice, who was on detail to the White House. Ehrlichman described McAuliffe as very able and discreet. Within a day or so, McAuliffe came to the Headquarters Building to begin his study of the case and to start his education into the intricacies of classification and intelligence. There were to be many hours of joint study and consultation. McAuliffe was indeed a thoroughly competent professional who performed the research and prepared the documentation which was the basis for the subsequent court action. When it came time to go to court, the matter was turned over to Irwin Goldbloom, another thoroughly expert and capable lawyer in the Civil Division of the Department of Justice.

One of the first problems came with the realization that if Marchetti published the information about which we were concerned, then the injunction proceeding would be useless. Normally, in seeking an injunction, the person against whom it is sought is served with appropriate papers and given an opportunity to be represented before the judge. We were afraid, however, that Marchetti, if served, might immediately get in touch with the media and broadcast the very items about which we were concerned. Accordingly, we took the backup documentation, together with the proposed temporary restraining order, to Judge Albert V. Bryan Jr., of the U.S. District Court for Eastern Virginia, sitting in Alexandria. We met Judge Bryan in his chambers, showed him quotations from Marchetti's manuscript which, to us, appeared most damaging if made public, and explained our theory of an injunction based on the secrecy agreement. We also stated that Marchetti had not been served and explained why we came in with an *ex parte* proceeding under these circumstances.

Judge Bryan agreed with the argument put forward by Goldbloom and signed the temporary restraining order without hesitation on 18 April 1972. He then called in one of the marshals and ordered him to serve Marchetti immediately with the executed order.

This set in motion the proceedings leading to the first court hearing before Judge Bryan, at which Marchetti was represented by counsel for the American Civil Liberties Union. The defense counsel appealed on technical grounds on an urgent basis, and the appeal was heard within a few days by the U.S. Fourth Circuit Court of Appeals sitting in Alexandria. While the appellate court refused to stop the

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proceedings, they did raise some troublesome questions, particularly about clearance of witnesses for the defense who would have access to the classified material. They warned that nothing could be done which could be construed as intimidating or warning off witnesses.

Some details of the actual trial are appropriate here because of their relevance to the second case. Judge Bryan permitted the government to file classified briefs and classified exhibits. Much testimony of witnesses was *in camera*—court closed to the public. The judge issued appropriate protective orders, binding on all parties and their attorneys, and at the close of the trial ordered all classified records sealed. This sealed record, of course, was made available to the Fourth Circuit Court of Appeals. There were affidavits and oral testimony by Agency personnel as to which matters in the proposed *Esquire* article and the book outline were considered classified. Judge Bryan had some difficulty in accepting simple testimony that a matter was classified. The issue was not whether a matter had been properly classified, but rather whether it was in fact classified at all, in instances where the defendant argued that it was not. For example, in a situation involving the true name of an agent, the judge was satisfied when shown an acknowledgment of an assigned pseudonym on a card showing the agent's true name and stamped "Secret." Similar types of documents for other situations were exhibited to support the testimony of Agency employees, and the judge appeared satisfied as did the defendant's lawyers. Judge Bryan issued a permanent injunction on 19 May and an appeal was taken.

Now, what were the basic legal issues reviewed by the Circuit Court? From the beginning, Marchetti's lawyers (from the American Civil Liberties Union) urged that an injunction was a prior restraint in violation of the First Amendment providing that "Congress shall make no law. . . . abridging the freedom . . . of the press." By case law the amendment has been applied to the Executive Branch and to the courts. The Circuit Court reviewed the constitutional basis for secrecy within the Executive Branch and its right and duty to maintain secrecy. The Court went on to say that First Amendment rights and freedom of speech are not absolute rights, and that the secrecy agreement was a reasonable and constitutional means for the Director of Central Intelligence to implement his statutory charge to protect intelligence sources and methods from unauthorized disclosure. In other areas, the Court said that the Agency must review any submission within 30 days, and that Marchetti, if dissatisfied with the Agency action, could seek judicial review. This burden, the Court added, should not be on CIA. The Court went on to say:

> Indeed, in most instances, there ought to be no practical reason for judicial review since, because of its limited nature, there would be only narrow areas for possible disagreement.

The Court also held that:

> The issues upon judicial review would seem to be simply whether or not the information was classified and, if so, whether or not, by prior disclosure [by the Government], it had come into the public domain.

Inasmuch as the Court held that "the process of classification is part of the Executive function beyond the scope of judicial review," CIA would have no obligation to establish the *propriety* of classification, but would be required to establish only the *fact* of classification.

The three judges, Clement F. Haynesworth, Harrison L. Winter, and the late J. Braxton Craven, Jr., agreed on the basic opinion except that Craven would not

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subscribe to a flat rule that there should not be any judicial review of classification. As he put it,

> I would not object to a presumption of reasonableness [on the part of the Government], and a requirement that the assailant demonstrate by clear and convincing evidence that a classification is arbitrary and capricious before it may be invalidated.

The opinion of the Circuit Court remanded the case to the District Court to limit the injunction to classified information so that on 15 March 1973 it finally read as follows:

> ORDERED:
>
> That the operative provisions of the permanent injunction entered by this Court on May 24, 1972 be and they hereby are revised and that the "Ordered" provisions of said permanent injunction shall now provide:
>
> That the defendent, Victor L. Marchetti, his agents, servants, employees and attorneys, and all other persons in active concert or participation with him, and each of them, be, and they hereby are permanently enjoined from further breaching the terms and conditions of the defendant's secrecy agreement, dated 3 March 1955, with the Central Intelligence Agency by disclosing in any manner (1) any classified information relating to intelligence activities, (2) any classified information concerning intelligence sources and methods; *Provided*, however, that this Injunction shall not apply to any such information, the release of which has been authorized in accordance with the terms and conditions of the aforesaid contract, and *Provided*, further, that this Injunction shall apply only with respect to classified information obtained by said defendent during the course of his employment under the aforesaid secrecy agreement and which has not been placed in the public domain by prior disclosure by the United States; and it is
>
> FURTHER ORDERED:
>
> that the defendant shall submit to the Central Intelligence Agency, for examination 30 days in advance of release to any person or corporation, any manuscript, article or essay, or other writing, factual, fictional or otherwise, which relates to or purports to relate to the Central Intelligence Agency, intelligence, intelligence activities, or intelligence sources and methods, for the purpose of avoiding inadvertent disclosure of classified information contrary to the provisions and conditions of the aforesaid secrecy agreement, and such manuscript, article, essay or other writing shall not be released without prior authorization from the Director of Central Intelligence or his designated representative.

CIA had fashioned a workable tool in a court of law, based on a simple contract theory. This tool could prevent serious damage to the interests of the United States or threats to the personal safety of individuals, by acting *in advance* of the threatened disclosure. Even if the government were able to take criminal action on a disclosure, the damage would already have been done. Other agencies in the Intelligence Community were urged to establish secrecy agreement procedures. In the face of increasing concern over publication of classified information, CIA had taken the initiative in the courts and won a significant victory in a landmark legal case.

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II

The second case starts with a letter from Marchetti's lawyer dated 27 August 1973 which transmitted a proposed manuscript of 517 pages pursuant to the terms of the permanent injunction issued in the first case. CIA had 30 days to respond. A task force was organized with representatives from the four directorates, and at the same time each of the four Deputy Directors was charged with reading the entire manuscript within a matter of days. At a meeting of the four deputies and the task force, it was agreed that the manuscript was in fact "Top Secret—Sensitive," and should be so marked. There were other difficulties: the manuscript included compartmented information and sensitive need-to-know projects, and not all of the task force members or Agency lawyers had the requisite clearances (which were quickly granted). Also, some items were of prime interest to other agencies, including State, NSA, and Navy. Excerpts were sent to other agencies as appropriate. The task force was informed that for each item adjudged as classified, the judgment would have to be backed up with documentation. The process also began of sorting out which items would be assigned to which Deputy Director for final judgment.

Colby—by now DCI—was of course kept fully informed of precisely how this mammoth judgmental and mechanical task was being planned and pushed forward. There was careful consideration of which items, although classified, were so widely known that no serious harm would result from publication. Colby made the decision that we should proceed to list all classified items consistent with the language of the injunction, with the view that at a later date, possibly at trial, CIA could withdraw on the softer items. I debated this with Colby—probably insufficiently and not vociferously enough—on the grounds that the authors and their lawyers would publicize the items withdrawn with the simple theme that CIA had listed them as classified and then changed its mind. The inference drawn would be that CIA thereby confirmed the validity of each item previously deleted but subsequently cleared. When the book was published, this was precisely what happened—all of the items which CIA first deleted and then cleared were printed in boldface type so that any reader knew what CIA regarded as classified as of the submission of the manuscript.

It is impossible to overemphasize the massive job of reviewing these 517 pages of manuscript. Some reviewers had a tendency to delete three or four pages at a time so as to drop an entire subject, when in fact deletion of a few sentences, names, or places would have done the job. This happened particularly with the other agencies involved, but inasmuch as the Agency was responding on behalf of all (no volunteers here to go on the record or to provide witnesses in court), there had to be consistency. Finally the job was done, and a letter dated 26 September 1973 was sent forward attaching a listing of 339 deletions, referring, for example, to words three through eight on line 17 of page 276. This was done to avoid putting the classified words in the letter, so that the letter itself could remain unclassified for use in the open court record. In the letter, an offer was made for a conference to ascertain if by modest word changes some of the listed deletions could be made acceptable to CIA.

Such a conference was held on 4 October 1973 with Marchetti, his ACLU lawyer Melvin Wulf, myself as CIA General Counsel, and John K. Greaney as Assistant General Counsel. It was an all-day session which got nowhere. They presented a quantity of newspaper clippings which contained information similar to items in the manuscript and urged that such information in the clippings in effect made the items in the manuscript unclassified. We countered that this was not so, and that if Marchetti would simply attribute the information in the manuscript to the media sources, CIA would have no problem. But no, they wanted whatever authenticity could be gained from asserting the information as Marchetti's knowledge. Other

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suggestions were made, such as deletion of names of people, substitution of a general geographical area for a specific capital or country, or deletion of certain details of operational projects. These too were rejected, and by the end of the day it became clear that they were not going to make any changes. One can wonder whether they came to negotiate, or simply to make a record that such a conference had been held. The Agency in the next few days considered its position on the full 339 items, and made the decision that it would withdraw its objections to the "soft" items, which totalled 114. Later, after a thorough review of the remaining deletions, and more careful study by the four deputies and the lawyers as to what they would face as witnesses in the actual trial, CIA withdraw on another 57 items, leaving 168 deletions on which CIA stood fast.

Marchetti, in submitting the manuscript, had included John D. Marks as co-author. Marks was a former State Department employee, who had worked in intelligence and had signed a secrecy agreement. It also developed that Marchetti had signed a contract for the publication of the book with Alfred A. Knopf, Inc.

The court aspect of this second case now began with the filing of a legal action in the U.S. District Court for the Sourthern District of New York. The plaintiffs were Knopf, Marchetti, and Marks, seeking an order which would permit publication of the remaining 168 deleted items. One can only speculate about the motives behind their choice of a court: sheer legal tactics, easier jurisdiction in terms of the subject matter, or physical convenience for plaintiffs' lawyers, who were all based in New York City. The case law and court rules clearly favored jurisdiction where the injunction had been issued on 15 March 1973. Upon motion and after oral argument, the action was transferred to the Eastern District of Virginia (Alexandria) where the first case had been tried and where it would come before Judge Bryan, who had tried the first case. So much for tactics or whatever.

Now came the depositions preparatory for trial: sworn testimony with lawyers from both sides present for cross-examination. Among the witnesses were the four deputies, the DCI, Marchetti, and Marks. Marks had been granting interviews to journalists and had appeared on radio and television discussing information similar to that contained in the manuscript. Again, as earlier, it was argued that because the information was in the media it was no longer classified. This was a bootstrap operation: leak information in the manuscript, and then claim it is thereby declassified by publication. Marks, however, was put in a dilemma when asked whether he had given specific items to the press. If he admitted it, he could be subject to a citation of contempt under the original injunction inasmuch as he now was a co-author; if he denied it, he would be risking perjury charges. He resorted to pleading the Fifth Amendment on five occasions. Later, at the trial, the judge took note of this, saying, in effect, you can't have it both ways.

It is worthwhile to digress here for a moment to comment on the degradation and dilution of security that characterized this entire matter. Obviously Marks, Marchetti's lawyers, and Knopf's lawyers had access to a mass of sensitive information. It should be noted that Knopf's lawyer, Floyd Abrams, voluntarily undertook not to expose the manuscript to his client. In court, not only the judge but his clerk, the bailiff, the stenographer, and others were exposed to sensitive classified information. Papers and documents in the court and in the lawyers' offices were not stored under the rigidly controlled conditions prevailing at CIA. Nor were most of these people trained, by experience or otherwise, in how to deal with highly classified information and documents. The crowning blow came when CIA asked the District Court for access to the record of the first trial. Back came the answer: "We can't find it." And they never have!

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Now came the trial. It was clear from the briefs filed that the plaintiffs wished to re-litigate the First Amendment issue. It was also clear that the judge would have none of this, but the issue was in the record for the inevitable appeal. The four Deputy Directors were witnesses and collectively covered all the 168 deletion items. They testified that the information was classified, and had been since the inception of the program or from the witness's first contact with it, and was still classified. Then excerpts of classified documents were submitted as exhibits, heavily censored so as not to furnish new sensitive information. The witnesses than tied each of the deletion items to information in the various exhibits, which was the procedure Judge Bryan found acceptable at the first trial. This time, however, Judge Bryan was having even greater difficulty in understanding the basic concept of classification and the procedure followed. He appeared to think that the government should be able to punch a computer button that would result in a showing that a deletion had been classified by a proper official on a specific date in the past. He accepted a few documents which specifically stated that certain types of information should be classified at certain levels. One such document, for example, was a DCI Directive specifying that locations of communications intelligence collection facilities would be classified "Secret." One such deletion item was thus accepted by the judge, together with an additional 25. In a decision stunning to the government, however, Judge Bryan found that the fact of classification of the remaining 142 items had not been proved.

To CIA, it seemed self-evident that matters such as names of agents and details of ongoing clandestine collection operations were classified. In his opinion, Judge Bryan stated that it seemed to him that the four Deputy Directors were making *ad hoc* classifications of material after having read the manuscript, although he recognized that the Deputy Directors had denied this. No evidence or even assertions contradicted the four deputies. Could the judge have thought that they were lying? It was clear that the judge simply had not comprehended the classification system. Further he had abandoned the method of proving classification which had been acceptable to him and to the defendants at the first trial, and had also been acceptable to the Circuit Court of Appeals. In the second trial, however, he neglected to advise the government that he had so abandoned the procedure for proof, nor did he state what would be acceptable.

Preparations accordingly were made for the appeal. The Department of Justice lawyers who had handled the trial, Irwin Goldbloom—by now Deputy Assistant Attorney General, Civil Division—and his assistant, David J. Anderson, started writing appeal briefs. There was the continuing close working relationship between them and, for the Agency, John Greaney and me. Greaney and I, working with the information supplied by the four Directorates, wrote the classified briefs; The Department of Justice lawyers wrote their unclassified briefs; then we exchanged them for comment. We all wanted to make certain that we made clear to the Circuit Court what classification in the intelligence arena was all about. The briefs and other documents constituting the record were duly filed, consisting of several thousand pages. In any event it was an enormous record for the Circuit Court to review. Oral argument was heard on 3 June 1974 before the same three judges who had heard the first case, Haynesworth, Winter and Craven. At the close of questioning Judge Winter made an observation to the effect that "When this matter was before us previously, none of us then realized how enormously complicated this matter of classification really is." This observation clearly foreshadowed parts of the opinion, such as, in speaking of their opinion in the first case,

> . . . . we did not foresee the problems as they developed in the District Court. We had not envisioned any problem of identifying classified information embodied in a document produced from the files of such an agency as the CIA. . . . We perhaps misled the District Judge into the

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imposition upon the United States of an unreasonable and improper burden of proof of classification.

Finally, after an almost unprecedented length of time—more than nine months—the Circuit Court on 7 February 1975 handed down its opinion: total and complete victory for CIA and the U.S. Government on the fundamental issues. The plaintiffs of course petitioned the U.S. Supreme Court for a writ of *certiorari*, but this was denied. What were the basic issues decided?

1) The court declined to modify its "previous holding that the First Amendment is no bar against an injunction forbidding the disclosure of" classified information acquired by an employee of the U.S. Government in the course of such employment, and "its disclosure would violate a solemn agreement made by the employee at the commencement of his employment." The Court held "he effectively relinquished his First Amendment rights."

> 2) The District Judge properly held that classified information obtained by the CIA or the State Department was not in the public domain unless there had been official disclosure of it. . . . It is one thing for a reporter or author to speculate or guess that a thing may be so, or even . . . to say that it is so; it is quite another thing for one in a position to know of it officially to say that it is so.
>
> 3) The Court referred to:
>
> . . . the fact that Marks, on Fifth Amendment grounds, on five different occasions declined to answer whether he was the undisclosed source of information contained in five magazine articles offered by the plaintiffs to show that the information was in the public domain. A public official in a confidential relationship surely may not leak information in violation of the confidence reposed in him and use the resulting publication as legitimating his own subsequent open and public disclosure of this same information.
>
> 4) . . . the individuals bound by the secrecy agreements may not disclose information, still classified, learned by them during their employments regardless of what they may learn or might learn thereafter.
>
> Also
>
> Information later received as a consequence of the indiscretion of overly trusting former associates is in the same category.
>
> 5) The Court dwelt at some length on the well-established doctrine of presumption of regularity by a public official in his public duty:
>
> . . . in the absence of clear evidence to the contrary, courts presume that they [public officials] have properly discharged their official duties. . . . That presumption leaves no room for speculation that information which the district court can recognize as proper for Top Secret classification was not classified at all by the official who placed the "Top Secret" legend on the document.
>
> The Court summarized by saying,
>
> In short, the government was required to show no more than that each deletion item disclosed information which was required to be classified in any degree and which was contained in a document bearing a classification stamp.

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> ~~classified in any degree and which was contained in a document bearing a classification stamp.~~

This summary not only is reasonable, but also reflects exactly the standard and procedure accepted by Judge Bryan in the first trial! How or why he rejected this standard in the second trial, one can only wonder.

6) While it is not one of the primary issues, it is still important to note what the Court said about the deletions of additional and irrelevant information in the documents submitted as exhibits by the government:

> Nor was it necessary for the government to disclose to lawyers, judges, court reporters, expert witnesses and others, perhaps, sensitive but irrelevant information in a classified document in order to prove that a particular item of information within it had been classified. It is not to slight judges, lawyers or any one else to suggest that such disclosure carries with it serious risk that highly sensitive information may be compromised. In our own chambers, we are ill-equipped to provide the kind of security highly sensitive information should have.

7) The action of the Fourth Circuit Court of Appeals is embodied in the following:

> For such reasons, we conclude that the burden of proof imposed upon the defendants to establish classification was far too stringent and that it is appropriate to vacate the judgment and remand for reconsideration and fresh findings imposing a burden of proof consistent with this opinion. . . .

Thus was written the penultimate chapter of the Marchetti case. The final chapter was the drafting* of proposed findings of the District Court, which act, it was hoped, would close the case. Those readers who are lawyers can imagine the task. In any event, the detailed findings of fact for court approval, involving some 142 specific fact situations, were filed. On 22 October 1975 a final order was issued. No appeals were filed, and the order became final. It was reported in the press that in answer to a question about contesting the "findings of fact" and the order entered by the District Court, Knopf's lawyer answered that more than $150,000 in legal fees had been spent and that it did not seem appropriate to contest the matter further. The basic constitutional issues were settled, and further legal action would only be nitpicking on factual issues. The ACLU also had no stomach for further legal battling. The book, meanwhile, had been published with gaps for the deletions and boldface type for the original deletions subsequently withdrawn by the CIA.

Conclusion

What had all this accomplished and what were the implications for the future? For the first time CIA had taken the initiative in the courts to prevent the unauthorized disclosure of intelligence sources and methods. The courts had affirmed in the particular circumstances the most fundamental of legal principles—the sanctity of a contract. The courts had affirmed the right—and the duty—of the government to seek enforcement of that contract to protect its secrets, i.e., sensitive classified information. As previously mentioned, there was a degradation and dilution of security, and we have the acknowledgment by the Circuit Court itself that ". . . . we are ill-equipped to provide the kind of security highly sensitive information should have." While it was not perfect, a highly useful tool had been fashioned.

*Originally by Walter L. Pforzheimer as a consultant to General Counsel.

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Marchetti Case

When the Rockefeller Commission (Commission on CIA Activities Within the United States) was established by the President on 4 January 1975, there were immediate discussions concerning procedures to be followed by the Commission in protecting CIA sensitive classification information. The Commission and its professional staff were cooperative. CIA asked that all staff members sign secrecy agreements. Bowing to the inexorable logic of the question posed by CIA of what law or legal tool could be used to protect classified information *except* the secrecy agreement, the Commission directed its staff members to sign such agreements. Next came the Senate Select Committee to Study Intelligence Activities, and the House Select Committee on Intelligence. At the request of CIA, the chairmen of the two committees directed all staff members to sign secrecy agreements. During this same period the Department of Justice was conducting an investigation of possible crimes by employees or former employees of CIA. The Special Prosecutor investigating Watergate was also investigating possible crimes by Agency personnel. At the request of the CIA, the Attorney General and the Special Prosecutor directed all their employees having access to CIA information to sign secrecy agreements. While there may have been some leaks, no books or published articles not submitted to proper authority have appeared attributed to any of the above sources. But for the Marchetti case, it is not likely that secrecy agreements would have been obtained in all of the above situations, and one can only speculate about possible publications.

In the meantime, CIA had been working closely with the Department of Justice on proposed legislation to provide criminal sanctions for the unauthorized disclosure of intelligence sources and methods. As a part of that legislative package there was a provision for CIA to apply for an injunction when there were threatened violations of the proposed law. Justice for two years would not concur in this provision, arguing that the Marchetti case established the principle of an injunction. CIA argued strongly the well-established fact that the other ten judicial circuits were not bound to follow the precedent established by just one circuit, the Fourth. CIA wanted a firm statutory basis for an injunction in whatever jurisdiction a new case might arise. Justice finally relented, and the President sent the legislative package forward to Congress with the injunction provision. This was done in February 1976 with a recommendation for Congressional approval. No action was taken in 1976, but it is hoped there will be some action in 1977.

As a result of the various investigations of intelligence activities, the President on 19 February 1976 issued Executive Order 11905, entitled "United States Foreign Intelligence Activities." The order was to clarify the authority and responsibilities of intelligence activities—in other words, a listing of do's and don'ts. Section 7(a) is pertinent here:

> (a) In order to improve the protection of sources and methods of intelligence, all members of the Executive Branch and its contractors given access to information containing sources and methods of intelligence shall, as a condition of obtaining access, sign an agreement that they will not disclose that information to persons not authorized to receive it.

Section 7(c) provides that when there is a threatened unauthorized disclosure of intelligence sources and methods by a person who has signed a secrecy agreement, the matter will be referred "to the Attorney General for appropriate legal action, including the seeking of a judicial order to prevent such disclosure."

Section 7(a) directs all intelligence agencies to do what CIA had done since it was established on 18 September 1947. Section 7(c) directs all agencies to do what CIA

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had taken the initiative to do nearly four years ago—i.e., take a prospective violator of the secrecy agreement like Marchetti to court to prevent disclosure.

I feel that the above paragraphs under the heading of "Conclusion" show vividly and graphically the impact of the Marchetti case, not only as a legal precedent but also as a guideline for the conduct of intelligence on a day-to-day basis. No one will claim that the Marchetti case offers a panacea to prevent disclosure of classified intelligence information. The United States needs criminal sanctions, as discussed earlier, for unauthorized disclosure of intelligence sources and methods where the injunctive remedy cannot or has not been applied. (This is clearly demonstrated by the recent Department of Justice announcement that Philip Agee will not be prosecuted, should he return to the United States, for publication abroad of a book replete with details of Agency operations.) If an author publishes a book or article prior to submission to CIA for review as to classified information, obviously injunctive relief is valueless. Current laws provide no usable criminal sanctions; thus the need for the "sources and methods" legislative package.

Nevertheless, the Marchetti case has provided an extremely valuable legal tool, helping the Agency in working with would-be authors and also helping to improve security in Agency relationships with other government entities and agencies, the Congress, and the Judiciary.

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fact that they have not been announced to or noticed by other Members. The problem is serious because such amendments are often quite important. They typically restrict the disbursement of funds being appropriated, thus rendering ineffective some previously established policy or program. We would all do well to think about the implications of allowing unannounced or unnoticed amendments.

Whether or not one generally votes in favor of unannounced or unnoticed amendments to appropriations bills, it must be conceded that there are strong arguments against their admissibility. Because such amendments may not be expected, their introduction may take many Members by surprise. Members may be acutely embarrassed if they are inadequately briefed on an issue which has been raised all of a sudden. Worse still, since many Members may be uninformed about such amendments the meaningfulness of the debate and the validity of the final vote are seriously compromised. Consider yet another reason why this method of legislating is suspect: Given the nature of surprise amendments, more often than not committee hearings have not been held and committee reports have not been filed. If the amendments are adopted and the appropriations bills passed, what will the ramifications of the laws be and who will determine the precise intent of Congress in enacting them? Obviously, these questions are not easy to answer. The upshot is an inexcusable uncertainty in the statute books. At a time when many Members are calling for increased efficiency and effectiveness in Government programs and for increased diligence and accountability on the part of public officials, unannounced or unnoticed amendments must cause concern. Congress has no standing to criticize others' failings if it does not put its own house in order.

I am introducing today a resolution amending the Rules of the House of Representatives. The resolution would preserve a longstanding custom of conscientious deliberation in the House. Briefly, it would provide that an amendment to any bill or joint resolution making appropriations may not be considered in the Committee of the Whole House unless the amendment is printed in the CONGRESSIONAL RECORD at least 2 days before the day the amendment is considered and unless at least 25 copies of the amendment are available to the Clerk of the House before the amendment is offered for distribution to Members. To my mind, the 2-day period prior to consideration would give Members a chance to familiarize themselves with the more important potential consequences of such amendments. In the absence of committee hearings and reports, this is the least that can be asked.

Mr. Speaker, I do not favor the elimination of amendments to appropriations bills. The option should remain available to us. However, I believe that the legislative process would be greatly enhanced by guaranteeing advance notice to Members of such amendments. In an attempt to solve a worrisome problem and to secure the integrity of the House of Representatives, I urge support for the resolution which I am introducing.

SECURITY CLASSIFICATION

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

Mr. PREYER. Mr. Speaker, in several weeks President Carter will issue a new Executive order on security classification. The Subcommittee on Government Information and Individual Rights, which I chair, will hold hearings on this order shortly thereafter.

With this in mind, I asked the subcommittee staff prior to the August recess, to prepare a memorandum regarding the experience we have had under the old order—Executive Order 11652—and suggest ways in which the present system might be improved.

The staff has now concluded its study, and has incorporated its recommendations to me in a detailed memorandum. In view of the order about to be issued, I think this memorandum is particularly timely, and provides some valuable suggestions for reform. Due to the length of the memorandum, I will place in today's RECORD only the portion dealing with the executive branch performance under the order. The staff's recommendations with respect to improvement of the classification system will appear the following day.

I might add that there is a lengthy appendix to this study, consisting of statistical data, which I will not include here, but which may be obtained from the subcommittee staff.

The memorandum follows:

GOVERNMENT INFORMATION AND INDIVIDUAL RIGHTS SUBCOMMITTEE OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, D.C., September 6, 1977.

MEMORANDUM

Re Security classification: The experience under Executive Order 11652 from 1973 to 1976.
To: Honorable Richardson Preyer, Chairman.
From: Staff of the Subcommittee on Government Information and Individual Rights.

In response to your request, we have prepared the following memorandum regarding the experience under the Nixon Executive order on security classification. We have also suggested, at your urging, a number of modifications in the order which we feel would result in a system less weighted in favor of secrecy.

BACKGROUND

On March 8, 1972, President Richard M. Nixon issued Executive Order 11652 which provided a system for classifying and declassifying information held by the Executive Branch, the disclosure of which could prove harmful to the interests of the United States. In general, the order was viewed as permitting greater public access to information than had been possible under the previous executive order.

According to the interagency committee charged with oversight of its implementation, the new order was drafted to "classify less, to declassify more and sooner, and to better safeguard that information which truly requires protection against unauthorized disclosure in the interests of national security."[1]

EXPLANATION OF EXECUTIVE ORDER 11652

In general

Executive Order 11652 authorizes officials in certain Executive agencies and departments to classify information in their possession if the disclosure of such information, in the judgment of such official, could result in damage to the national security. Whether particular information requires a "Top Secret", "Secret", or "Confidential" classification depends upon the amount of damage the official reasonably expects such information to cause to the United States if it were disclosed.

At the same time an official places a classification marking on a document, the Executive order requires that he make a judgment regarding its declassification. The official may specify a particular date on which such information will be declassified, or he may specify that declassification will occur pursuant to the general declassification schedule set out in the order, or, if he has "Top Secret" classification authority and the information pertains to certain categories set out in the order, he may exempt such information from declassification at any specified time.

All classified information whose declassification is subject to the General Declassification Schedule is declassified no later than 10 years from the date of original classification.

Information which is exempted from declassification may, after 10 years, be reviewed at the request of a department or member of the public for the purpose of determining whether continued classification protection is warranted. Any such request which is denied by the classifying authority may be appealed within the department and then to an interagency committee.

All classified information is automatically declassified under the order after thirty years, unless the head of the originating department determines that additional classification is warranted, in which case, he must specify a particular date for declassification.

The National Security Council is charged with monitoring the implementation of the executive order, and an interagency committee, the Interagency Classification Review Committee, is established to oversee its operation.

Specific provisions

1. Classification Authority. The Executive order, as amended, provides that the heads of the departments listed below, and designated "senior principal deputies and assistants", shall have authority to classify information as "Top Secret":

Executive Office of the President[2]
Central Intelligence Agency
Department of State
Department of the Treasury
Department of Defense[3]
U.S. Arms Control & Disarmament Agency
Department of Justice
National Aeronautics & Space Administration
Agency for International Development
Energy Research and Development Administration
Department of Commerce
Department of Labor
Department of Agriculture
Interstate Commerce Commission

These same officials have the authority to employ the lesser classifications of "Secret" and "Confidential". In addition, the application of these lesser classifications is authorized to the heads of the following departments, as well as designated "senior principal deputies and assistants":

Department of Transportation

Footnotes at end of article.

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Federal Communications Commission
Export-Import Bank of the U.S.
U.S. Civil Service Commission
U.S. Information Agency
General Services Administration
Department of Health, Education & Welfare
Civil Aeronautics Board
Federal Power Commission
National Science Foundation
Overseas Private Investment Corporation
Nuclear Regulatory Commission
Office of Micronesian Status Negotiations
Panama Canal Company

2. Authority to Declassify and Downgrade. A classified document may be declassified or downgraded by the official who was responsible for the original classification, his successor in office, or by an official who is designated by departmental regulation to carry out such actions. Classified information which has been transferred to the National Archives may be declassified by the Archivist after consultation with the department or agency having an interest in the subject matter.

3. Declassification and Downgrading. Declassifying and downgrading of a classification may be performed at any time by the official responsible for the original classification.

Declassification and downgrading may also occur pursuant to the General Declassification Schedule (GDS) set out in the order. This schedule provides: (1) "Top Secret" documents will be downgraded in two years to "Secret", in four years to "Confidential", and declassified entirely ten years from the date of original classification; (2) "Secret" documents will be downgraded to "Confidential in two years, and be declassified entirely eight years from the date of original classification; (3) "Confidential" documents will be declassified 6 years from the date of original classification.

Classified documents may also be exempted from downgrading and declassification until a date later than that prescribed by the GDS, or they may be exempted without specifying a date for declassification, providing (1) that the classifier has "Top Secret" classification authority [4] and (2) the document contains information furnished by foreign governments or international organizations under a pledge of confidentiality, or pertains to cryptography; or discloses intelligence sources and methods, or discloses a system, plan, installation, project or specific foreign relations matter essential to the national security; or contains information that would place a person in immediate jeopardy.

The order further specifies that exemption authority will be "kept to an absolute minimum consistent with national security requirements."

All classified information, including that which has been exempted from declassification, is automatically declassified after thirty years from the date of original classification, unless the head of the originating agency specifies that such document requires further protection. If such determination is made, a declassification date must be assigned. All documents classified before the effective date of the order and more than 30 years old shall be declassified by the Archivist of the United States subject to the authority of an agency head to continue the protection of such document.

4. Improper and Unnecessary Classification. The order provides that "in no case shall information be classified in order to conceal inefficiency or administrative error, to prevent embarrassment to a person or department, to restrain competition or independent initiative, or to prevent for any other reason the release of information which does not require protection in the interest of national security."

The order further provides that any holder of classified information who thinks the classification of a particular document is unnecessary or improper, shall inform the originator of the classification, who shall reexamine it.

The order also contemplates having the Interagency Classification Review Committee act as a "watchdog" over the classification system by requiring it to report to the Agency concerned any unnecessary classification or overclassification which it discovers.

5. The Interagency Classification Review Committee. The order establishes this interagency committee, composed of representatives of State, Defense, Justice, ERDA, CIA, National Security Council, and the National Archives and Records Service. The order provides two functions for the committee: (1) to oversee the implementation of the order within the Exectuive branch, and (2) receive complaints and suggestions with respect to the administration of the order, and take appropriate action regarding them. This latter function has been interpreted as hearing appeals from the various departments with respect to mandatory review requests for classified documents over 10 years old which have been denied.

PERFORMANCE UNDER THE EXECUTIVE ORDER

Introduction

The Interagency Classification Review Committee (ICRC), referred to above, carries out its oversight function primarily through a series of quarterly reports reports required of each agency with classification authority. It also makes on-site inspections of each agency to determine the degree of compliance with the order.

The subcommittee staff, in making the following analysis, has relied entirely upon figures furnished by the ICRC. A summary of this data with respect to all Executive agencies with classification authority is shown at Appendix A. An agency-by-agency summary of the experience under Executive Order 11652 is shown at Appendix B.

Authority to Classify

Twenty-eight Executive agencies currently have the authority to classify information (see p. 3). Within these agencies, in 1976, 13,977 persons were designated as individuals who may exercise classification authority. Of these, 1,487 had the authority to classify information "Top Secret"; 8,557 had the authority to classify information "Secret"; and 3,933 could classify information "Confidential".

These figures represent a considerable reduction in the number of officials authorized to classify information under the previous Executive order. Under the old order, 59,316 persons exercised such authority in 1971. Since the issuance of Executive Order 11652, gradual reductions have taken place each year.

By far, the Department of Defense (with 4,265 authorized classifiers) and the Energy Research and Development Administration (with 4,796 classifiers) have the greatest numbers of persons with classification authority. Together with the CIA (with 1,864) and the State Department (with 1,633), these agencies employ over 85 percent of the Executive branch employees with classification authority.

Frequency of classification actions

Despite the substantial reduction in the number of officials authorized to classify information, there has been no substantial reduction in the number of classification actions undertaken each year under the order. In fact, the number of classification actions in 1976 rose about 800,000 over the previous year.

In 1976, the Executive Branch classified approximately 4.5 million documents. Of this number, approximately 37,000 were classified "Top Secret", 1.3 million were classified "Secret", and 3.2 million were classified "Confidential".

The Department of Defense, with 3,678,145 classification actions in 1976, classified more documents than the remainder of the Executive Branch combined. Other executive agencies with a significant number of classification actions included the CIA (with 574,091), the State Department (with 125,620) and the Energy Research and Development Agency (with 118,551).[5]

In contrast, four agencies with classification authority—the Department of Agriculture, the Civil Aeronautics Board, the Civil Service Commission and the Interstate Commerce Commission—have not classified a single document since 1972. Two other agencies with classification authority—the Federal Power Commission and the National Science Foundation—have only classified 4 documents and 2 documents, respectively, since 1972.

Declassification policies

The Department of Defense—the most prolific classifier—did not report to the ICRC the numbers of documents it had scheduled for declassification in advance of the General Declassification Schedule, or the number which it had exempted from it.[6] Without these figures, a meaningful analysis of declassification policy on a government-wide basis is not possible. There are identifiable trends, however, that emerge from the data reported by the other Executive agencies to the ICRC.[7]

First, it is clear while the Executive order provides that the original classifier may schedule a document for declassification "at any time" in advance of the General Declassification Schedule, this authority is seldom used. In 1976, less than 1% of the classification actions reported to the ICRC (by agencies other than the Department of Defense) were marked for declassification in advance of the General Declassification schedule, This rather negligible percentage has remained constant throughout the history of the order.

Second, it is apparent that, although the General Declassification Schedule is intended by the order to be the normal standard for setting deadlines for declassification, it is being applied in practice to a relatively small percentage of documents that are classified. Excluding the Department of Defense and the Executive Office of the President, which have not reported figures in this manner to the ICRC, approximately 40 percent of the documents classified in 1976 were assigned to the General Declassification Schedule.[8]

Third, despite the language in the Executive order which states that "use of the exemption authority will be kept to an absolute minimum consistent with national security requirements", there is a discernible tendency on the part of some Executive departments and agencies which have the authority to exempt classified materials from the General Declassification Schedule to exempt most of the documents they classify. The CIA, for example, in a sampling of classification actions reported to the ICRC in 1976, exempted all but 366 documents out of 23,494 reported actions from the General Declassification Schedule. Presumably, the Agency's rationale for such a high exemption rate is that such documents revealed "intelligence sources and methods". Similarly, ERDA, in taking 118,551 classification actions in 1976, exempted all but 1,615 documents from the General Declassification Schedule. The Justice Department followed a similar course, exempting all but 1,105 documents out of 13,744 from the General Declassification Schedule.

The notable exception to this general tendency is the Department of State which assigned 104,434 classification actions—out

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of 125,619 actions taken—in 1976 to the General Declassification Schedule. Although the Executive Order permits exemptions if the documents are received in confidence from a foreign government or if they disclose a "specific foreign relations matter", the State Department has apparently not applied this exemption authority as a matter of routine to the documents which it originates.

Fourth, it is apparent that although the Executive Order provides that only agency heads with "Top Secret" classification authority may exempt classified documents from the General Declassification Schedule, agency heads without "Top Secret" classification authority have exempted classified documents from declassification presumably on the grounds that they relate to documents classified and exempted by other agencies with whom they have dealings. This "derivative exemption authority" is evidenced by the following examples. In 1976, the FCC exempted all 42 of its classification actions for the year from the General Declassification Schedule. The Department of Health, Education and Welfare exempted 79 out of its 82 classification actions in 1976 from the General Declassification Schedule. The Department of Transportation exempted 304 of its 651 classification actions in 1976 from the General Schedule. None of these departments has explicit authority under the Executive order to exempt classified documents from the General Schedule.

Handling declassification requests

The order provides that any person or department may request declassification of any exempted documents at any time after 10 years from the date of original classification. Until 1976, however, the number of requests for declassification under this procedure was extremely small; 621 such requests were made in 1973; 1,017 in 1974; and 1,993 in 1975. In 1976, the number rose to 3,791, but when considered in proportion to the millions of exempted classified documents held by the Executive branch, even this figure appears small. It is, furthermore, noteworthy that many of these requests originate with presidential libraries, which have been requested by historians and researchers to initiate declassification review requests.[8]

Although difficult to document the reasons for the relatively small use of the declassification procedure provided for in the order are apparent. First, private individuals can obtain a similar declassification review at any time (not simply after 10 years) by filing a request under the Freedom of Information Act (5 U.S.C. 552(b)). If such a request is denied by the department concerned, the requestor has the option of seeking judicial relief, an option not available under the Executive order. Second, the procedure for declassification review under the order is not well-known to the public. Finally, the fact that this procedure is available only for documents which are more than 10 years old, necessarily limits its use, for the most part, to persons with an academic interest in the subject. The procedure would not ordinarily be useful, for instance, to the press or other institutions concerned with contemporary decisionmaking.

Agencies to which declassification requests have been made have, for the most part, complied in whole or in part with such requests. Out of the 5,477 declassification review requests received and acted upon by Executive agencies from 1973–1976, 53 percent were granted in full and 33 percent were granted in part. Only 14 percent of the requests were denied. Of the requests which were denied, either in whole or in part, 191 were appealed within the agencies concerned to special departmental committees. Of those requests appealed, 28 were granted in full, and 83 were granted in part.

Of those requests which were denied in whole or in part by the departmental committees, 43 were appealed to the Interagency Classification Review Committee (ICRC). The ICRC resolved these appeals by granting 7 in full and 16 in part; 13 appeals were denied.

It should furthermore be noted that beginning in 1976, the ICRC began hearing appeals of Freedom of Information Act requests for documents over 10 years old which had been denied by an Executive agency. Although the Executive order does not explicitly give the ICRC this authority, these appeals were heard on the theory that the requestor, being denied a request under the FOIA procedures, could begin anew under the Executive order procedures and request declassification. Since the department's response would be presumed to be the same, the requestor was permitted to "shortcut" this procedure and appeal directly to the ICRC under the Executive order. Since May 1976, the ICRC has heard 6 appeals of this nature, 1 of which was granted in full, 4 were granted in part, and 1 was denied.

Declassifying old records

The Executive order provides that the original classification authority may declassify a document "at any time". It further mandates the declassification of any document over thirty years old, unless the original classifying authority decides to continue the classification as being essential to national security.

To a limited degree, several executive agencies subject to the order have instituted on their own declassification programs to eliminate or reduce their classified inventories. For the most part, these declassification efforts have been limited to very old records held by these agencies. For example, ERDA reviewed 250,109 documents in its classified inventory in 1976 and declassified 71 percent of these documents. In the case of the Department of Defense, this effort has been even more significant. Since 1970, DOD has reviewed over 200 million classified documents, and has declassified approximately 98 percent of those records reviewed.

Responsibility for declassifying documents over thirty years old rests with the Archivist of the United States. Since 1972, over 200 million documents have been declassified under this program.

Correcting classification abuses

The Order contains specific prohibitions concerning improper use of the classification system. Furthermore, it requires anyone in possession of a classified document who is of the opinion that the document is overclassified or unnecessarily classified to inform the original classification authority of his views. Finally, the Order implicitly directs the ICRC to monitor the system for unnecessary classification or overclassification since it instructs the ICRC to report to each agency and the individual responsible any improprieties it discovers with respect to such misuse.

The ICRC requires each agency with classification authority to submit a quarterly report of "classification abuses". While the ICRC does ask each agency to report the instances of "overclassification" and "unnecessary classification" it has discovered each quarter, the bulk of the "classification abuses" reported to the ICRC concern administrative shortcomings in implementing the technical provisions of the Order, e.g., failure to downgrade on schedule, failure to identify the classification authority or exemption category, failure to mark the documents correctly.

From 1973–76, only 7 of the 28 agencies with classification authority have reported any instances of unnecessary classification. In all, 131 such instances have been reported to the IRCR during this period.

Insofar as overclassification is concerned, only 8 of the 28 agencies have reported abuses of this nature. In all, 88 instances of overclassification were reported during the four-year period.

The ICRC requires no report of the instances in which persons in possession of classified information have challenged the classification, as is contemplated in the Executive order.

While the ICRC does require a report of the agency's corrective action when an instance of over-classification or unnecessary classification is discovered, it does not seek to determine the circumstances of the abuse, nor whether the corrective action taken was appropriate.

Finally, the ICRC does not, as a practical matter, seek out such abuses during its onsite inspections of agency records. If such abuse were evident, the ICRC would presumably include it in its inspection report, but the ICRC itself does not ordinarily attempt to pass judgment on the propriety of agency classifications.

Preventing unauthorized disclosures

One purpose of the Executive Order is to prevent disclosures of information which could be harmful to the national security. The number of unauthorized disclosures, therefore, is often viewed as a measure of the Order's effectiveness. The ICRC requires a quarterly report of such violations.

During the period from 1973–76, only 6 of the 28 agencies with classification authority reported any unauthorized disclosures. In all, 47 unauthorized disclosures were reported to the ICRC during this four-year period.

The ICRC does not require that it be informed of the circumstances of each unauthorized disclosure, nor does it ask for a report of how such violation was treated by the agency, e.g. whether an investigation took place, whether criminal charges were brought, or whether it was ignored.

FOOTNOTES

[1] Interagency Classification Review Committee, *1975 Progress Report*, p. 1.

[2] The Executive Office of the President includes eleven offices: Council of Economic Advisers, Council on International Economic Policy, Domestic Council, Intelligence Oversight Board, National Security Council, Office of Management and Budget, Office of Science and Technology Policy, Office of the Special Representative for Trade Negotiations, Office of Telecommunications Policy, the President's Foreign Intelligence Advisory Board (abolished in 1977), and the White House Office.

[3] Includes the Departments of the Army, Navy, and Air Force, the National Security Agency and the Defense Intelligence Agency.

[4] The only agency with "Secret" classification authority whihc is permitted to exempt documents from the General Declassification Schedule is the U.S. Information Agency. Conversely, one agency with "Top Secret" classification authority, the Department of Labor, is not authorized to exempt documents from declassification. Both exceptions to the general policy contained in Executive Order 11652 were made in an amendment dated September 30, 1972.

[5] While DoD and ERDA have a similar number of officials authorized to classify information (4,265 and 4,796 respectively), DoD officials took 31 times as many classification actions in 1976.

[6] Presumably, due to the enormous volume of classification actions, DoD was unable to categorize such actions according to declassification requirement.

[7] In addition to DoD, the Executive Office of the President also failed to categorize its classification actions according to declassification requirement, and CIA reported only a sampling of such actions. All other agen-

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cies with classification authority reported these figures to the ICRC.

[8] This figure must be weighed in view of the fact that two of the agencies which are the most prolific classifiers, CIA and ERDA, also have the highest exemption rates among government agencies.

[9] Since the Freedom of Information Act has not been applied to presidential papers, the procedures set forth in the Executive order constitute the only avenue through which declassification of presidential documents may be sought.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted as follows to:

Mr. FOUNTAIN (at the request of Mr. WRIGHT), after 3:45 p.m. today and for Friday, September 9, on account of official business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. JEFFORDS) to revise and extend their remarks, and to include extraneous matter to:)

Mr. MCKINNEY, for 20 minutes, today.
Mr. FINDLEY, for 5 minutes, today.
Mr. BOB WILSON, for 5 minutes, today.
Mr. SARASIN, for 5 minutes, today.
Mr. BURKE of Florida, for 10 minutes, today.
Mr. GILMAN, for 60 minutes, today.

(The following Members (at the request of Mr. CAVANAUGH) to revise and extend their remarks and include extraneous material:)

Mr. ANNUNZIO, for 5 minutes, today.
Mr. GONZALEZ, for 5 minutes, today.
Mr. MURPHY of Pennsylvania, for 15 minutes, today.
Mr. PREYER, for 5 minutes, today.
Mr. CONYERS, for 5 minutes, today.
Mr. SIKES, for 5 minutes, today.
Mrs. MEYNER, for 5 minutes, today.
Mr. PEPPER, for 5 minutes, today.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. PREYER, notwithstanding the fact that it exceeds two pages of the CONGRESSIONAL RECORD and is estimated by the Public Printer to cost $1,127.

Mr. HOWARD, following the debate and vote on the amendment in the nature of a substitute offered by Mr. ROUSSELOT on House Concurrent Resolution 341.

Mr. CONTE, to revise and extend his remarks immediately prior to the vote on the Foley amendment in the Committee of the Whole today.

Mr. LAGOMARSINO, to revise and extend his remarks immediately prior to the vote on the Rousselot amendment in the Committee of the Whole today.

Mr. AMBRO, immediately after the vote on the Addabbo amendment to the Mahon motion on Senate amendment No. 41 to H.R. 7933 in the House today.

(The following Members (at the request of Mr. JEFFORDS) and to include extraneous matter:)

Mr. HILLIS.
Mr. BURGENER.
Mr. MCCLORY.
Mr. STEERS.
Mr. SYMMS.
Mr. RINALDO.
Mr. ABDNOR in three instances.
Mr. BAFALIS.
Mr. DORNAN in two instances.
Mr. MCKINNEY.
Mr. DERWINSKI in three instances.
Mr. QUIE.
Mr. CRANE.
Mr. ASHBROOK in three instances.
Mr. LENT.
Mr. DEVINE.
Mr. ANDERSON of Illinois.
Mr. BURKE of Florida.
Mr. MICHEL.
Mr. ROBERT W. DANIEL, JR.
Mr. WHALEN in two instances.

(The following Members (at the request of Mr. CAVANAUGH) and to include extraneous matter:)

Mr. EDGAR in two instances.
Mr. FRASER in three instances.
Mr. RICHMOND.
Mr. MCDONALD in five instances.
Mr. WOLFF in three instances.
Mr. MURPHY of Illinois.
Mr. GONZALEZ in three instances.
Mr. ANDERSON of California in three instances.
Mr. BOLAND.
Mr. CLAY in two instances.
Mr. FORD of Michigan.
Mr. FORD of Tennessee.
Mr. EILBERG in three instances.
Mr. UDALL in five instances.
Mr. OBERSTAR.
Mrs. SCHROEDER in three instances.
Mr. TEAGUE in 10 instances.
Mr. HANNAFORD.
Mr. KREBS.
Mr. LEGGETT.
Ms. OAKAR in two instances.
Mr. BLOUIN.
Mr. STUMP in two instances.
Mr. MILFORD.
Mr. PHILLIP BURTON.
Mr. NIX.
Mr. PEPPER.
Mr. KILDEE.
Mr. DOWNEY.
Mr. OTTINGER.
Mr. JACOBS.

SENATE BILL REFERRED

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 1752. An act to extend certain programs under the Elementary and Secondary Education Act of 1965 for one year, and for other purposes; to the Committee on Education and Labor.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to an enrolled bill of the Senate of the following title:

S. 1153. An act to abolish the Joint Committee on Atomic Energy and to reassign certain functions and authorities thereof, and for other purposes.

ADJOURNMENT

Mr. CAVANAUGH. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 6 o'clock and 5 minutes p.m.), the House adjourned until tomorrow, Friday, September 9, 1977, at 10 o'clock a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

2261. A communication from the President of the United States, transmitting a statement in support of the administration's proposal to sell Iran seven Airborne Warning and Control Systems (AWACS) (H. Doc. No. 95-216); to the Committee on International Relations and ordered to be printed.

2262. A letter from the Assistant Secretary of Defense (Comptroller), transmitting a report covering the first quarter of fiscal year 1977 on receipts and disbursements pertaining to the disposal of surplus military supplies, equipment, and material, and for expenses involving the production of lumber and timber products, pursuant to section 712 of Public Law 94-212; to the Committee on Appropriations.

2263. A letter from the Director, Defense Security Assistance Agency transmitting a report on the impact on U.S. readiness of the proposed sale by the Air Force of certain defense articles and services to Egypt (transmittal No. 77-80), pursuant to section 813 of Public Law 94-106; to the Committee on Armed Services.

2264. A letter from the Director, Defense Security Assistance Agency, transmitting a report on the impact on U.S. readiness of the proposed sale by the Air Force of certain defense articles and services to Egypt (transmittal No. 77-83), pursuant to section 813 of Public Law 94-106; to the Committee on Armed Services.

2265. A letter from the President and Chairman, Export-Import Bank of the United States, transmitting a statement describing a proposed transaction exceeding $60 million with the Bank of Tokyo, Ltd., Japan, pursuant to section 2(b)(3) of the Export-Import Bank Act of 1945, as amended; to the Committee on Banking, Finance and Urban Affairs.

2266. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of Council Act No. 2-61, "To authorize variable periods for the issuanse and expiration of licenses, registrations and permits," pursuant to section 602(c) of Public Law 93-198; to the Committee on the District of Columbia.

2267. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of Council Act No. 2-63, "To provide for the elimination of lead in public property frequented by children," pursuant to section 602(a) of Public Law 93-198; to the Committee on the District of Columbia.

2268. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of Council Act No. 2-64, "To provide standards for definition by the Board of Appeals and Review and to provide for an expedited procedure in cases involving certification of certain persons with prior criminal convictions as security officers, and for other purposes," pursuant to section 602(c) of Public Law 93-198; to the Committee on the District of Columbia.

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