

THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS

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STATEMENT OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS

Delivered By

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and
ELAINE ENGLISH, ESQ., DIRECTOR, THE FOI SERVICE CENTER

Re: Federal Polygraph Limitation and
Anti-Censorship Act of 1984
With References To

The Public Information Censorship Policies of the Administration

Before

The Subcommittee on Civil Service

The Committee on Post Office and Civil Service

U.S. House of Representatives

Wednesday, Feb. 29, 1984 Washington, D.C.

Steering Committee
WASHINGTON
David Beckwith
*Time Magazine
Alfred Friendly, Sr.
Freelance
Sara Fritz
*Los Angeles Times
Hays Gorey
*Time Magazine
Morton Kondracke
*The New Republic
Jack C. Landau
*Newhouse
Newspapers
Jack Nelson
*Los Angeles Times

Max Robinson
*ABC News
Christine Russell
*Washington Post
Howard K. Smith
Freelance
Lesley Stahl
*CBS News
Phillip Taubman
*New York Times
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NEW YORK
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Diane Camper
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David Rosenbaum
*New York Times
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*Dallas Morning News
DENVER
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*Denver Post
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North Carolina
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SUMMARY OF REPORTERS COMMITTEE TESTIMONY BEFORE
SUBCOMMITTEE ON CIVIL SERVICE IN RE REAGAN PRIOR RESTRAINT,
POLYGRAPH AND PRESS MONITORING DIRECTIVE:

I INTRODUCTION:

A: Reagan Directive Is Part of "Comprehensive And Consistent" Campaign To Impose "Unprecedented" Peacetime Censorship On Government Information About Government Actions And Policy-Making: White House Policies Are "Most Serious Threat To Government Accountability Since Censorship" of World War II.

B: Reporters Committee's Compendium: 30 Of The Most Serious Suppressions of Government Information: (Part I: Chronologically; Part II: By Catagory; With Appendix On Each Action Listed).

II OVERALL ANALYSIS OF THE THREE-PART PRESIDENTIAL DIRECTIVE
AS INITIALLY ENFORCED:

A: 1) Pre-Clearance Contract For Books and 2) Polygraph Tests For News Leaks and 3) Requirement That Agencies Monitor All Contacts With The Press Is An "Inter-Linking Three-Part Prior Restraint System" To Suppress Government Information Without Any Showing Of Harm To The Government.

B: Directive Establishes An "Official Secrets Act" Based On The "Licensing" And "Sedition" Theory.

III CURRENT STATUS OF THE DIRECTIVE:

A: Congress: Has Partially Suspended The Directive Until April 15;

No Enforcement Of Pre-Clearance For Books, etc. For Former Employees: Still In Force For Present Employees;

No Polygraphs For Defense Department Employees: Still In Force For All Other Agencies;

Press Monitoring Requirement Still In Force.

B: The President: Has Partially "Suspended" Directive: May Be Reimposed At Any Time; Suspension In Effect:

Stops Pre-Clearance Contracts For Books By Employees With Mid-Level Security Access: Allows Contract For Employees With Access To Classified Or Classifiable Information;

Stops Polygraph For Entire Government;

Allows Press Monitoring System To Be Continued.

IV IMPACT OF DIRECTIVE:

Based On Unprecedented and Unconstitutional Theory That Government Owns Government Information And May License Its Use: Same Argument Used By Nixon Administration In Original S-1, In Pentagon Papers And In Reporters Committee v. Nixon.

V THE ADMINISTRATION DEFENSE OF THE 3-PART DIRECTIVE:
THE WILLARD REPORT:

Deputy Attorney General Willard In His Report Supported The Necessity To Actively Discourage And Intimidate Government Employees Who Wish To Write Books, etc. Without Government Approval. Supported Directive As Major Step Toward Goal "Of A Fundamental Change In" Traditional "Attitudes" Of Government Employees Writing Unapproved Books And Articles Based On Their Government Experience.

VI THE BROOKS BILL: A BALANCED APPROACH:
REPORTERS COMMITTEE BELIEVES THAT SOME STRICTER SAFEGUARDS ARE
REQUIRED BECAUSE ADMINISTRATION COMMITMENT TO SUPPRESSING
GOVERNMENT INFORMATION WILL CAUSE IT TO TRY TO AVOID OR ESCAPE FROM
THE LIMITATIONS IN THE BILL:

A: Reporters Committee Supports Brooks Bill Prohibition On Any Pre-Clearance Contracts (Except CIA);

Reporters Committee Believes Administration Will Try To Reimpose Pre-Clearance Procedure By Using Snepp v. U.S. Theory That Government Employees Are Trustees Of Government Information And May Not Release It Without Permission (Regardless Of Whether There Is A Contract);

Reporters Committee Suggests That Bill Be Amended To Bar Any Pre-Clearance Regardless Of What Legal Tactic Is Devised.

B: Reporters Committee Prefers That Polygraph Tests For Government Employees Suspected Of Leaking Information To Press Be Entirely Prohibited: Says Existing Criminal Federal Law Is Adequate For Improper Release Of Classified Information;

If Not, Then Committee Suggests That Brooks Bill Require A Lawyer To Be Present Because of Command Control Coercion By Government Superiors And Because Of Self-Incrimination Dangers.

VII BROOKS BILL DOES NOT ADDRESS PRESIDENTIAL DIRECTIVE
REQUIREMENT THAT ALL AGENCIES SET UP SYSTEM TO MONITOR ALL EMPLOYEE
CONTACTS WITH THE PRESS (But Not Other Groups):

A: Reporters Committee Urges That Bill Outlaw Directive Requirement That All Agencies Must Set Up System To Monitor Press Contacts With Employees (Although Not Employee Contacts With Any Other Groups).

B: Committee Says That Monitoring Requirement For Press Contacts Violates First Amendment, Equal Protection And The Prohibition On Monitoring First Amendment Activities In The Federal Privacy Act.

I INTRODUCTION:

We would like to thank Chairwoman Schroeder for inviting us to testify. We appreciate this forum to address the important issues and legislation pending before this Subcommittee.

My name is Jack C. Landau. I am a working news reporter and attorney. I am employed as the Supreme Court correspondent of The Newhouse Newspapers. I also serve as the Executive Director of The Reporters Committee for Freedom of the Press.

I am joined by Elaine English, Esq., Director of the Freedom of Information Service Center, a special project of The Reporters Committee.*/_/

The Reporters Committee was established in 1970 by working news editors and reporters. The Committee is dedicated to defending the First Amendment and freedom of information rights of the print and broadcast media to gather and publish news, particularly news relating to local, state and national government.

The Reporters Committee is a legal defense and resource center, which last year answered more than 3,500 telephone and letter inquiries from print and broadcast reporters, editors, news organizations and media attorneys for legal aid and information.

We have litigated a number of important issues involving prior restraint and news gathering threats of the public in cases such as The Reporters Committee v. Nixon, 433 U.S. 425 (1977) (preventing former President Nixon from removing 42 million White House documents and tapes from public access); Reporters Committee v. American Telephone and Telegraph Co., Inc., 593 F.2d 1030 (D.C. Cir. 1978), cert. denied, 440 U.S. 949 (1979) (Justice Department seizure of telephone records to trace reporter contacts with government sources); Zurcher v. Stanford Daily, 436 U.S. 547 (1978) (as amicus, we argued that the press should not be subject to no-notice police searches of the newsroom).

We also have testified on these issues before a number of Congressional committees and subcommittees over the past 14 years. In many ways, the Official Secret Act effort of the Administration in the current Directive reminds us very much of a similar effort by the Nixon Administration starting in 1973 with the famous S-1.

We did extensive historical and constitutional research and provided testimony on S-1. Fortunately, the Congress rebuffed the President's efforts and we hope that this Congress will do the same to President Reagan's efforts.

* We would like to express our appreciation to Suzanne Michel, Gail Garey, Pat Doran, and Alan Town, law and journalism student interns at the Reporters Committee, for their research assistance.

Numerous obstacles block the First Amendment and statutory rights of the press today more than ever. Certainly, the most serious overall threat is the Administration's consistent and comprehensive campaign to limit public access to government information.

We have prepared a chart for this Subcommittee documenting 30 of the most offensive actions taken by the Administration. (See Appendix A) Beginning in 1981, the Administration has used executive orders, executive regulations, public policy statements, efforts in Congress and before the courts in this wide-ranging plan to impose the broadest censorship on government information that we have known since the beginning of World War II.

The following examples serve to demonstrate the Administration's attitude toward the public's right to know:

-- The Administration proposed that the CIA be totally exempt from the Freedom of Information Act, allowing information that shows the Agency's violations of the law to be suppressed.

-- The Department of Justice under Attorney General Smith supported a law allowing surprise raids of newsrooms if done in order to trace national security leaks in the press.

-- The Administration denied the press access to the American invasion of Grenada and allowed the public only Pentagon-approved film footage of the invasion's first 48 hours in what one Washington Post editorial writer described as "the first official war in the history of the United States, produced, filmed and reported by the Pentagon, under the sanctions of the President."

-- The Administration's executive order on classification (E.O. 12356) is the most restrictive in history. Under its provisions, the public's right to know is no longer considered when documents are classified. The order states the designations can be imposed indefinitely.

The Presidential Directive on pre-clearance is a direct and we believe unconstitutional prior restraint whose suppression power is doubly-reinforced by the polygraph and press monitoring provisions of the Directive.

This Directive must be added to the Administration's already sad record which includes efforts to suppress information about consumer fraud, drugs, sex and race discrimination, law enforcement, defense policy planning, military planning and foreign affairs.

It is a sorry record to those of us who believe in the accountability of government and it will probably get worse when, as most political observers state, Mr. Reagan wins a second term.

Buoyed by public approval at the polls, Mr. Reagan may well feel -- as he apparently felt about Grenada -- that the rights of

the public and the press under the First Amendment are prescribed by some kind of political popularity test rather than by the principles we all should believe in.

II ANALYSIS OF THE PRESIDENTIAL DIRECTIVE AS ISSUED:

We begin our analysis by looking at Presidential Directive No. 84. It establishes an inter-linking three-part prior restraint system to suppress government information without any showing that disclosure of the information poses any danger to national security.

The Directive is a classic Official Secrets Act based on the licensing and sedition theory we rejected from the British Crown. It automatically suppresses all information -- regardless of content and without any standard for review -- obtained during the course of employment with classified facts or facts which might be classified in the future. It does this by the ancient device of giving a license to publish by first demanding the right to pre-clear books and articles by government employees.

It supplements its suppression of written information by establishing a coercive suppression on verbal contacts in requiring polygraph tests to discover leaks.

And then, it has further attempted to stop verbal and written information from reaching the press by requiring all agencies to establish procedures to monitor government employees' contacts with the press, but not contacts with other groups, such as political organizations, religious interests, etc.

III CURRENT STATUS OF THE DIRECTIVE:

The present legal status of the Directive is somewhat uncertain. Congress has suspended the pre-clearance provisions, but for only those employees who leave the government. It has suspended the polygraph provisions but only for Defense Department employees. It has not suspended the press monitoring provision which applies to all agencies.

This means that, under the Congressional action, pre-clearance is required for all current government employees who write books; that polygraph tests can be required of all employees except the Defense Department; and that the policy of establishing a system to monitor all contacts between government employees and the press is still in effect for all agencies.

The Administration has announced that it has "suspended" enforcement of the polygraph provision and the pre-clearance provision as it relates to employees with access to Secret Compartmented Information, a mid-level security status. But it has not suspended the provision requiring pre-clearance of employees who have access to "classified" information (as opposed to the higher SCI).

Reluctantly, and in a somewhat slap-legal manner, President Reagan finally appears to have realized -- if under political duress -- that he cannot unilaterally attempt to censor government information that has been available in one form or another for years. Even so, he has not revoked, withdrawn or otherwise disavowed the suspended measures. And as far as we know, they could be re-imposed tomorrow were it not for the partial ban imposed by Congress until April 15, 1984.

IV IMPACT OF THE DIRECTIVE:

One of the major problems we see with the Directive is its unprecedented theory that all government information belongs to the government, not to the public. This idea directly contravenes the underlying purpose of the First Amendment and was rejected by the Supreme Court in the Nixon and the Pentagon papers cases. Government ownership of its information has been repeatedly rejected since the Supreme Court's decision of 1834. Our concept is that the public owns the information. The open question of course is whether the public can receive it, and if so, under what circumstances.

President Reagan and his spokesmen want to change this tradition. If the government owns its information, then -- as in the Directive -- the government can automatically suppress it without any showing of harm to any governmental interest.

This is an unfounded effort to minimize public debate and to maximize political manipulation of public sentiment through an attempt to monopolize sources of public information on virtually every important political issue.

V THE ADMINISTRATION'S DEFENSE: THE WILLARD REPORT:

The Administration's major public effort to justify this Directive is the report of Deputy Attorney General Willard, which was based on what we know was the unbiased input of government agencies.

The report states that the widespread tradition of public employees writing books and articles about their government experiences -- analyzing, critiquing and taking issue with government policy -- must be reversed by coercion and built-in intimidation.

The focus is no longer on disclosure and accountability. It is on suppression of information and secrecy. This is blatantly stated in the contracts distributed under the Directive: employees are required to state that "all information to which I may obtain access by signing this Agreement is now and will forever remain the property of the United States Government."

We know that this illegal attempt to assert ownership of government information violates the copyright provision of Article I of the Constitution, the Copyright Acts of 1909 and 1976, and the opinions of the Supreme Court.

The Directive also illegally requires at least 2.5 million government employees who have access to "classifiable" information to surrender their First Amendment rights as a condition of employment. The Supreme Court has stated that prior restraints are permissible only if the government can show that a "clear and present danger" exists to the national security.

Presidential Directive No. 84 automatically imposes massive and standardless censorship on speech for prospective, existing and former employees based on only the unsubstantiated claim that it serves "national security" interests. Such claims are far below rigid Constitutional rules prohibiting both direct and indirect prior restraint.

The present Administration has frequently raised the false flag of "national security" as justification for attempts to stifle the flow of information. But the Administration has failed to give it any definition of national security or to produce any facts in public to justify this repeated alarums.

As an example of how this term has been used, in January 1982, the Administration adopted a policy to protect national security that required clearance of all interviews with top officials by the "national media." According to press reports, this was in response to leaks of three stories:

- 1) the total defense budget for the next fiscal year -- a major political issue due to cutbacks in many other government programs.
- 2) the decision by the Administration to reduce sales of warplanes to Taiwan -- a fact so secret that the manufacturer was, according to press reports, already trying to sell the planes back to the Pentagon.
- 3) the decision by the President to establish tax-free, urban redevelopment zones.

Such disclosures were of great political importance and perhaps did cause some "embarrassment" to the Administration, but they did not endanger our "national security."

VI THE BROOKS BILL: A BALANCED APPROACH:

We strongly support the underlying rationale and the specific provisions of this bill, House Resolution 4681, the Federal Polygraph Limitation and Anti-Censorship Act of 1984. We think it is carefully drafted and provides a sensible balancing of real

national security interests with the need for government accountability.

Most importantly, Rep. Brooks has refused to swallow willy-nilly every vague claim of damage to the national security and has attempted to impose conventional and strict protections for the First Amendment interests of the government employees, the public and the press.

Under normal circumstances, if we had a President such as Presidents Ford and Carter who supported public access to information most of the time, we would be completely satisfied with Rep. Brooks' approach.

However, we have an Administration which we think will use every means possible and every devious tactic to attempt to escape from the good faith limitations on censorship imposed by the Brooks' Bill.

Therefore, we would suggest that certain provisions of the bill be strengthened to guard against the 3 year record of bad faith which this Administration has shown in its dealings with public information. We are certain the Administration will attempt to re-impose what the bill is designed to prevent unless a few of these more inviting loopholes are closed.

We agree with the findings in the introduction of this bill that the Administration's censorship policy under the Directive is "intentional manipulation" of government information for "partisan purposes." To us, this is a persuasive overture to the main provisions of the bill.

A: PRE-PUBLICATION REVIEW: CONGRESS SHOULD ALSO BAN REVIEW UNDER THE "TRUSTEE" THEORY THAT THE GOVERNMENT OWNS INFORMATION:

The Brooks Bill would appear to completely eliminate the right of the government in all circumstances to require pre-publication review of writings and speeches of present and former government employees. It rescinds all existing contracts and prohibits future requirements of any new government contracts for pre-publication clearance.

Normally, we should be satisfied with this plenary prohibition. The Reagan Administration has read the Snepp case as imposing on all government employees -- not just CIA employees -- a constructive trust not to disclose any confidential information without government permission.

This means that the Reagan Administration -- blocked from requiring pre-publication clearance by contract -- will almost certainly try to impose clearance by reverting to the Snepp theory.

For example, it can use Snepp, it has said, to claim that employees in the Department of Agriculture, the Labor Department, State or Defense, etc. must obtain permission from the government

to exercise their First Amendment rights -- not for reasons of national security -- but because the information is government property held in trust by the government employee as in Snepp.

The Administration claims that the Supreme Court hardly mentioned the contract with the CIA; and really held that Snepp had gained access to government information and as a trustee he violated his trust not to release it without the government's approval. This interpretation can be applied to any government employee in any agency, creating an enforceable duty to submit to pre-publication review. Snepp v. United States, 444 U.S. 507 (1980).

We would therefore urge Congress to explicitly reject this broad reading of Snepp that claims all government employees with access to classified or unclassified information have a duty to submit to pre-clearance review because they are trustees.

In addition to prohibiting pre-clearance contracts, the bill should be amended to eliminate the trusteeship suppression claim. For example, it could state that "no government employee may be required to submit any speeches or writing, etc. under any policy, rule or regulation of the Executive branch," excepting of course the CIA and NSA.

If not, I can almost guarantee that within a year the Administration will be claiming that any release of unclassified government information violates the employees' trust to the government and -- with or without a contract -- the employee must obtain government approval for release of the information.

B: USE OF POLYGRAPH TESTS IN LEAK INVESTIGATIONS: CONGRESS SHOULD IMPOSE SELF-INCRIMINATION PROTECTIONS BECAUSE OF THE BUILT-IN "COMMAND INFLUENCE" OF A GOVERNMENT SUPERIOR OVER HIS SUBORDINATE:

The Brooks Bill attempts to restrict the coercive use of polygraph tests in investigating news leaks by barring the government from asking an employee to take a polygraph unless the employee is the focus of the investigation.

Under the bill, if an employee is a suspect and refuses to take the polygraph test, the agency cannot impose punitive sanctions. We feel that this still leaves a number of problems unaddressed, once again because of the Administration's commitment to administer polygraphs test if at all possible.

HR 4681 limits the circumstances under which an employee could be asked to submit to a polygraph test to those specific investigations involving criminal conduct or unauthorized disclosure of classified information.

But we think it does leave some loopholes which should be closed. First of all, government use of polygraphs on public servants always raises the spectre of secret economic coercion or "command control."

We can assume that many employees will "voluntarily" submit to a polygraph because they fear their superiors will always find a way to circumvent the Brooks Bill prohibition against job sanctions.

In addition, disclosure of classified information without permission violates the federal criminal statutes.

If the Administration was sincerely trying to stop unlawful disclosures of secret information, they would not have to look beyond existing criminal statutes.

The Espionage Act, 18 U.S.C. Sec. 793, gives the Administration broad powers to investigate and prosecute unauthorized disclosure of government secrets. Although the Justice Department has stated that prosecutions under this provision are difficult, particularly under sections (a)-(e), which require the government to show disclosure was made with the intent to injure the United States or to "advantage" a foreign nation, there is a section that does not require proof-of-intent.

Section (f) of the Espionage Act does not require the government to show that the disclosure was made with the intent to cause injury to the United States. This section merely requires a showing that the employee had been entrusted with "information relating to the national defense . . .," that the employee had "knowledge" that the disclosure was to an unauthorized person, and finally, that the employee failed to report the disclosure to his or her superior. This law, in fact, is broader than the Presidential Directive because it covers more than classified information. It applies to all information relating to the "national defense," and therefore, should be adequate to protect against leaks which the Directive sought to limit. This law carries a possible penalty of 10 years imprisonment and a \$10,000 fine.

The presence of this statute is important to your consideration of this bill. It provides the authority under which a law enforcement agency could conduct its own investigation of leaks and prosecute any wrongdoers, thus obviating the need for polygraphs outside of their customary use.

Therefore, the real danger of command control coercion to take the test combined with the self-incrimination dangers under the federal criminal code convinces us that the best alternative would be to completely prohibit any government agency from giving a polygraph test to trace the source of information -- except if done by the FBI or a similar law enforcement agency conducting a valid criminal investigation.

For 200 years, we have trusted our government employees and treated them with personal dignity. They have responded by being, in the main, overwhelmingly loyal and devoted to their jobs. Considering the millions of secrets held in our vast government,

we think our government employees are to be commended for their discretion.

It is true that occasionally there are leaks. But many of these leaks have greatly benefited public understanding and awareness of otherwise secret government policies and -- despite repeated whining about national security from all presidents -- our national security remains perhaps even stronger for these disclosures. As before, we should leave these decisions to our citizens who work in our government.

If they violate the law, then they can be prosecuted. If they violate department regulations, they can be punished.

However, if banning these pseudo-scientific but personally intrusive polygraph tests is politically impractical in Congress, then at the least, we would suggest one further protection to the Brooks Bill.

We would ask this Subcommittee to consider stricter standards for even requesting an employee to take a polygraph test. At the very least the government should be able to demonstrate probable cause, be required to give appropriate warnings and allow the employee to have an attorney present.

At a minimum, the conventional protections against command control coercion and of a warning and an attorney should be required.

VII. AGENCY "MONITORING" OF ALL EMPLOYEE CONTACTS WITH THE PRESS:
THIS OVERLOOKED PROVISION SHOULD BE COMPLETELY PROHIBITED:

There is one feature of the Directive that has received little attention thus far and I would like to address that matter in the remainder of this statement.

The Directive also requires that agencies develop procedures for monitoring all contacts between employees and the press. It does not require any monitoring of employee contacts with political action groups, political parties, environmental and consumer organizations, religious interests -- only the press. This provision sends a message to all employees that contacts with the press are to be discouraged as opposed to contact with every other type of citizen.

Clearly, the Administration is attempting to impose, without any justification, a heavier burden on the news media than on any other group. The Directive does not impose this restriction on other segments of society and clearly denies equal protection of the law. It imposes burdens on the First Amendment rights of the press, as opposed to First Amendment rights of non-press groups.

If the Directive's goal is to stop leaks, certainly employee contact with the Democratic or Republican National Committees

poses as great a danger of unauthorized use of government information as does employee contacts with a news reporter.

This provision is unconstitutional and dangerous. It assumes that we reporters have some kind of taint not carried by other members of the public. It is an insult to anyone concerned with free expression.

Therefore, we would urge this Subcommittee to amend the Brooks Bill and to prohibit the government from monitoring employee contacts with the press. We might point out, by the way, that the Privacy Act specifically prohibits the government from keeping any record of a citizen's activities if it involves the First Amendment. So this monitoring provision -- in addition to being unconstitutional discrimination against the press -- also violates the Privacy Act.

It can hardly be argued that any conversation between a reporter and a government employee automatically endangers the nation. But an executive order making such a conversation illegal goes a long way in showing the attitude of Mr. Reagan toward the press and the public's right to information about its government.

CONCLUSION

We are encouraged that Congress is considering legislation that would oppose the Administration's campaign to further suppress the flow of public information. The Administration must be put on notice that government information is not "their information." It is everyone's government and everyone's information.

HR 4681, with the suggestions we have made, would provide this needed protection. It would also hopefully send a strong message to President Reagan, Attorney General Designate Meese and those other great constitutional scholars in the White House that the Executive Branch must -- unfortunately -- be coerced by Congress into obeying the Constitution. We would have preferred respect for our values to come spontaneously from the President. Unfortunately, that is not the case now -- and probably will not be the case for a number of years to come.

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ACTIONS TAKEN BY THE REAGAN ADMINISTRATION
TO RESTRICT PUBLIC ACCESS TO GOVERNMENT INFORMATION

- SECTION ONE - Index of Actions by
Category of Restriction
- SECTION TWO - Index of Same Actions By
Chronological Order
- SECTION THREE - Memo on Particular Actions
Keyed to Numbers in Secs. 1 & 2

Prepared by
The Reporters Committee for Freedom of the Press

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BY CATEGORY OF RESTRICTION

| DATE | DATE | CATEGORY | DESCRIPTION |
|------|--------------|---|---|
| 01 | 03 81 Mar 81 | Editorial Privacy (<u>Natl Security</u>) | Defense Dept. says employees with access to <u>national security</u> information must take lie detector tests to aid in effort to <u>trace news leaks</u> to the press. |
| 02 | 05 81 May 81 | Editorial Privacy (<u>Natl Security</u>) | Atty. Gen. Wm. French Smith supports law allowing surprise raids of newsrooms if done in order to trace <u>national security leaks</u> in the press. |
| 03 | 08 81 Aug 81 | Editorial Privacy (<u>Natl Security</u>) | CIA will brief press going abroad only if reporters will agree ahead of time to collect information for the Agency (J. Weighart story in NY News) |
| 04 | 12 81 Dec 81 | Editorial Privacy (<u>Natl Security</u>) | Executive Order allows CIA and FBI to monitor and <u>infiltrate press</u> and academic groups on on belief that necessary for <u>national security</u> . Reverses Carter Admin. policy. |
| 05 | 03 83 Mar 83 | Editorial Privacy (<u>Natl Security</u>) | Require government employees with access to classified <u>nat'l security</u> information to take lie detector tests to trace source of <u>news leaks</u> to press. |
| 06 | 03 83 Mar 83 | Editorial Privacy (Crime-Disorders) | Allows FBI to monitor and <u>infiltrate press</u> and academic institutions on non-probable cause of suspicion of involvement in or information about domestic crime or disorders |
| 07 | 04 81 Apr 81 | Govt Info/Access (All Info) | Administration cuts way back on government studies and statistical reports in name of economy: closes down most GPO bookstores. |
| 08 | 05 81 May 81 | Govt Info/Access (All Info) | Administration cuts way back on funds for National Archives. Result is that much government information will be suppressed because no arhivists to process it. |
| 09 | 01 83 Jan 83 | Govt Info/Access (All Info) | White House orders preclearance for all but a few designated officials & staffers to talk to press. **We are told this has been highly effective. |
| 10 | 01 82 Jan 82 | Govt Info/Access (<u>Natl Security</u>) | White House orders pre-clearance of all interviews with "national media" on national security issues: Later backs down. |

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| DATE | DATE | CATEGORY | DESCRIPTION |
|------|--------------|---|---|
| 11 | 08 82 Aug 82 | Govt Info/FOI Act (<u>Natl Security</u>) | Executive Order suppresses much historical information available under FOI Act: reverses tradition of 20 years against over-classification of foreign policy and defense info |
| 12 | 03 83 Mar 83 | Govt Info/FOI Act (<u>Natl Security</u>) | Seeks to exempt Secret Service from FOI Act for national security reasons. **Note that Service licenses press coverage of White House. |
| 13 | 05 82 Apr 82 | Govt Info/FOI Act (<u>Natl Security</u>) | Wins U.S. Supreme Court decision that identities of Iranian officials -- who are citizens of the U.S. can be suppressed for national security and privacy reasons. (<u>Wash Post</u> case) |
| 14 | 06 82 Jun 82 | Govt Info/FOI Act (<u>Natl Security</u>) | Asks for total exemption from FOI Act for CIA |
| 15 | 04 81 Apr 81 | Govt Info/FOI Act (All Info) | Atty Gen. Wm. French Smith issues new FOIA rules encouraging suppression of government information: New Rules reverse Carter Admin. rules encouraging FOIA openness. |
| 16 | 02 83 Feb 83 | Govt Info/FOI Act (All Info) | Justice Department issues new rules designed to make it more expensive for press and scholars to use FOI Act by insisting on no fee waivers as provided by FOI Act |
| 17 | 10 81 Oct 81 | Govt Info/FOI Legis (Consumer/Envrnt) | Supports bill to exempt much government regulatory information from FOI Act if it relates to any competitive information: i.e. sex/race discrimination: pollution: consumer fraud |
| 18 | 10 81 Oct 81 | Govt Info/FOI Legis (Legal Settle'ts) | Supports bill to exempt details of government legal settlements even if shows law violation |
| 19 | 10 81 Oct 81 | Govt Info/FOI Legis (Law Enforcement) | Supports bill to exempt much law enforcement info from FOI Act if it relates to organized crime, counter-intelligence and domestic disorders even if it shows law violation |
| 30 | 09 83 Sep 83 | Govt Info/Def Dept. (Law Enforcement) | Defense Dept. supports MX appropriations bill which includes provision that would seal all information on military air accidents from press and public from air safety investigation. |

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| DATE | DATE | CATEGORY | DESCRIPTION |
|------|-------|--|---|
| 20 | 05 81 | May 81 Prior Restraint (<u>Natl Security</u>) | Justice Dept. says it will enforce pre-publication clearance contract signed by CIA agents requiring approval for all writing inincluding non-defense. Follows Carter Admin. policy |
| 21 | 06 81 | Jun 81 Prior Restraint (<u>Natl Security</u>) | Justice Dept. wins U.S. Supreme Court case cancelling passports of U.S. critics abroad who criticize American foreign policy. (Philip Agree case). |
| 22 | 08 81 | Aug 81 Prior Restraint (<u>Natl Security</u>) | CBS Newsmen Wm. Worthy threatened with espionage prosecution for importing books sold in Iran: Books are shredded U.S. cables from embassy: Case settled in March 1983 |
| 23 | 08 81 | Aug 81 Prior Restraint (<u>Natl Security</u>) | U.S. holds up books and newspapers from Cuba. |
| 24 | 01 82 | Jan 82 Prior Restraint (<u>Natl Security</u>) | CIA official tells scientists to voluntarily submit research for CIA prior review: |
| 25 | 06 82 | Jun 82 Prior Restraint (<u>Natl Security</u>) | Supports most punitive version of Agent Identities Bill. Allows prosecution for naming CIA agent without having to show any damage to national security. |
| 26 | 12 82 | Dec 82 Prior Restraint (<u>Natl Security</u>) | Defense Dept. says reporters will have to sign pre-publication secrecy pledge in order to on U.S.S.R. military hardware. |
| 27 | 02 83 | Feb 83 Prior Restraint (<u>Natl Security</u>) | Justice Dept. orders Canadian films to register, carry disclaimer and list with government names of American groups seeking to see film. Ignores 1st Amt exemption in Act |
| 28 | 03 83 | Mar 83 Prior Restaint (<u>Natl Security</u>) | Requires any government employees with access to classified nat'l security information to sign pre-publication clearance agreements for books and articles, etc. |
| 29 | 10 81 | Oct 81 Prior Restraint (Govt Copyright) | Establish for first time royalty fees for using government information. Says it applies to "technical" info. Example used was training manuals. Will cover vast amounts of info. |
| 31 | 25 83 | Oct 83 Prior Restraint (<u>Natl Security</u>) | Excludes American reporters from covering Granadian invasion while allowing foreign reporters; Brought in own DOD news service; detained 3 U.S. reporters and threatened to shoot others. |

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EVENTS BY CHRONOLOGICAL ORDER

| DATE | DATE | CATEGORY | DESCRIPTION |
|------|-------|--|---|
| 01 | 03 81 | Mar 81 Editorial Privacy (<u>Natl Security</u>) | Defense Dept. says employees with access to <u>national security</u> information must take lie detector tests to aid in effort to <u>trace news leaks</u> to the press. |
| 07 | 04 81 | Apr 81 Govt Info/Access (All Info) | Administration cuts way back on government studies and statistical reports in name of economy: closes down most GPO bookstores. |
| 15 | 04 81 | Apr 81 Govt Info/FOI Act (All Info) | Atty Gen. Wm. French Smith issues new FOIA rules encouraging suppression of government information: New Rules reverse Carter Admin. rules encouraging FOIA openness. |
| 02 | 05 81 | May 81 Editorial Privacy (<u>Natl Security</u>) | Atty. Gen. Wm. French Smith supports law allowing surprise raids of newsrooms if done in order to trace <u>national security leaks</u> in the press. |
| 08 | 05 81 | May 81 Govt Info/Access (All Info) | Administration cuts way back on funds for National Archives. Result is that much government information will be suppressed because no archivists to process it. |
| 20 | 05 81 | May 81 Prior Restraint (<u>Natl Security</u>) | Justice Dept. says it will enforce pre-publication clearance contract signed by CIA agents requiring approval for all writing including non-defense. Follows Carter Admin. policy |
| 21 | 06 81 | Jun 81 Prior Restraint (<u>Natl Security</u>) | Justice Dept. wins U.S. Supreme Court case cancelling passports of U.S. critics abroad who criticize American foreign policy. (Philip Agree case). |
| 03 | 08 81 | Aug 81 Editorial Privacy (<u>Natl Security</u>) | CIA will brief press going abroad only if reporters will agree ahead of time to collect information for the Agency (J. Weighart story in NY News) |
| 22 | 08 81 | Aug 81 Prior Restraint (<u>Natl Security</u>) | CBS Newsman Wm. Worthy threatened with espionage prosecution for importing books sold in Iran: Books are shredded U.S. cables from embassy: Case settled in March 1983 |

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| | DATE | DATE | CATEGORY | DESCRIPTION |
|----|-------|--------|---|--|
| 23 | 08 81 | Aug 81 | Prior Restraint (<u>Natl Security</u>) | U.S. holds up books and newspapers from Cuba. |
| 17 | 10 81 | Oct 81 | Govt Info/FOI Legis (Consumer/Envrnt) | Supports bill to exempt much government regulatory information from FOI Act if it relates to any competitive information: i.e. sex/race discrimination: pollution: consumer fraud |
| 18 | 10 81 | Oct 81 | Govt Info/FOI Legis (Legal Settle'ts) | Supports bill to exempt details of government legal settlements even if shows law violation |
| 19 | 10 81 | Oct 81 | Govt Info/FOI Legis (Law Enforcement) | Supports bill to exempt much law enforcement info from FOI Act if it relates to organized crime, counter-intelligence and domestic disorders even if it shows law violation |
| 29 | 10 81 | Oct 81 | Prior Restraint (Govt Copyright) | Establish for first time royalty fees for using government information. Says it applies to "technical" info. Example used was training manuals. Will cover vast amounts of info. |
| 04 | 12 81 | Dec 81 | Editorial Privacy (<u>Natl Security</u>) | Executive Order allows CIA and FBI to monitor and <u>infiltrate press</u> and academic groups on on belief that necessary for <u>national security</u> . Reverses Carter Admin. policy. |
| 10 | 01 82 | Jan 82 | Govt Info/Access (<u>Natl Security</u>) | White House orders pre-clearance of all interviews with "national media" on national security issues: Later backs down. |
| 24 | 01 82 | Jan 82 | Prior Restraint (<u>Natl Security</u>) | CIA official tells scientists to voluntarily submit research for CIA prior review: |
| 13 | 05 82 | Apr 82 | Govt Info/FOI Act (<u>Natl Security</u>) | Wins U.S. Supreme Court decision that identities of Iranian officials — who are citizens of the U.S. can be suppressed for national security and privacy reasons. (<u>Wash Post</u> case) |
| 14 | 06 82 | Jun 82 | Govt Info/FOI Act (<u>Natl Security</u>) | Asks for total exemption from FOI Act for CIA |

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|----|--------------|---------------------|-------------------|---|
| 25 | 06 82 Jun 82 | Prior Restraint | (Natl Security) | Supports most punitive version of Agent Identities Bill. Allows prosecution for naming CIA agent without having to show any damage to national security. |
| 11 | 08 82 Aug 82 | Govt Info/FOI Act | (Natl Security) | Executive Order suppresses much historical information available under FOI Act; reverses tradition of 20 years against over-classification of foreign policy and defense info |
| 26 | 12 82 Dec 82 | Prior Restraint | (Natl Security) | Defense Dept. says reporters will have to sign pre-publication secrecy pledge in order to on U.S.S.R. military hardware. |
| 09 | 01 83 Jan 83 | Govt Info/Access | (All Info) | White House orders preclearance for all but a few designated officials & staffers to talk to press. **We are told this has been highly effective. |
| 16 | 02 83 Feb 83 | Govt Info/FOI Act | (All Info) | Justice Department issues new rules designed to make it more expensive for press and scholars to use FOI Act by insisting on no fee waivers as provided by FOI Act |
| 27 | 02 83 Feb 83 | Prior Restraint | (Natl Security) | Justice Dept. orders Canadian films to register, carry disclaimer and list with government names of American groups seeking to see film. Ignores 1st Amt exemption in Act |
| 05 | 03 83 Mar 83 | Editorial Privacy | (Natl Security) | Require government employees with access to classified <u>nat'l security</u> information to take lie detector tests to trace source of <u>news leaks</u> to press. |
| 06 | 03 83 Mar 83 | Editorial Privacy | (Crime-Disorders) | Allows FBI to monitor and <u>infiltrate press</u> and academic institutions on non-probable cause of suspicion of involvement in or information about domestic crime or disorders |
| 12 | 03 83 Mar 83 | Govt Info/FOI Act | (Natl Security) | Seeks to exempt Secret Service from FOI Act for national security reasons. **Note that Service licenses press coverage of White House. |
| 28 | 03 83 Mar 83 | Prior Restraint | (Natl Security) | Requires any government employees with access to classified nat'l security information to sign pre-publication clearance agreements for books and articles, etc. |
| 30 | 09 83 Sep 83 | Govt Info/Def Dept. | (Law Enforcement) | Defense Dept. supports MX appropriations bill which includes provision that would seal all information on military air accidents from a press and public from air safety investigation. |
| 31 | 25 83 Oct 83 | Prior Restraint | | Excludes American reporters from covering Granadian invasion while allowing foreign reporters; brought in own DOD news service; detained 3 U.S. reporters and threatened to shoot others. |

1. (Defense Department Employees Must Take Lie Detector Tests) Deputy Secretary of Defense Frank Carlucci passed a rule stating that all persons with access to classified information must submit to lie detector tests if asked when the Administration wishes to trace news leaks to the press. Failure to submit will result in adverse employment action. Date: 03/81
2. (Supports newsroom raids) Atty. Gen. Wm. French Smith says he would support legislation to permit newsroom raids if effort was to trace leaks of national security info. This idea put forth by Casey at CIA. This would revoke new law severely limiting police raids of newsrooms. Date 05/81.
3. (CIA info exchange with press) NY News reported that CIA said it would brief reporters going abroad only if reporters would agree to collect info for agency. Date 08/81.
4. (FBI/CIA May Now Infiltrate Media - national security) Justice Dept. passed regs removing restrictions of Carter Administration. Allows infiltration of media, political groups and academia with approval of Attorney General if in interests of National Security Date 12/81.
5. (Lie Detector Tests for News Leaks) President Reagan announced that all government employees having access to moderately classified information (SCI - Special Compartmentalized Information) which is leaked to press must take lie detector tests or face punitive job actions. Very intimidating device. Applies to Defense, State, Justice, FBI, Treasury, Budget, NSC, etc. Date: 03/83.
6. (FBI May Infiltrate Press - organized crime; terrorism) Passed regs allowing FBI to investigate, infiltrate and monitor domestic groups, including press, if suspicion that necessary for organized crime or terrorism investigation. Date 03/83.
7. (Government Budget Cuts Back on Government Reports) 1982 budget cuts way back on a variety of government reports in a number of agencies. Particularly seems to affect education, health, urban affairs, labor and agriculture. See New York Times story of 11-16-82, at page A1; 04/81
8. (Budget Cuts Restrict Archives Access) The 1982 budget cut approximately 60 per cent from the archival indexing staff of the U.S. Archives. This means that access to historical information will be delayed for perhaps years because most of this information, including the Nixon tapes, has to be indexed and cleared before it is released. Date: 05/81
9. Jan. 1983 Pre clearance of all interviews with White House staff on all topics. Both effort to protect national security and to avoid embarrassment to President. Date 01/83.
10. (Jan. 1982 Pre clearance for national security news interviews) Set up new rule that all interviews with "national media" involving national security (i.e. foreign affairs and defense) must be precleared by White House. Backed down after confrontation with White House press corps. Date: 01/82.

11. (New classification order - suppressing historical documents). Passed new regulations to keep secret massive collections of historical documents which had been available to scholars and journalists under FOI Act. Reversed 18 years of presidential studies which had said that too much was classified. Previous rule was release unless publication would cause "IDENTIFIABLE" harm to national security. New reg allows suppression for any "harm" to national security. Date 08/82.

12. (Exempt Secret Service from FOI) Currently supports effort to exempt in interests of national security Secret Service from FOI Act. Note please that Secret Service licenses press coverage of President and White House. Already lost one law suit for excluding Robert Sherrill of National magazine because of his political views. Date 03/83 De Concini bill supported by Administration: originally proposed in Treasury Department assassination report of 08/81.

13. (Keep secret Iranian govt officials who are American citizens). Told U.S. Supreme Court would violate privacy and national security to release names of revolutionary government officials who were American citizens. U.S. Supreme Court agreed. Date 05/82.

14. (Exempt CIA from FOI) Currently, supporting a total exemption for the CIA from the FOI Act. Once again, would allow suppression of information even if showed that agency violating law or policy directives. Strange request because CIA never lost a FOI case of properly classified information under FOI Act. Date 08/82.

15. (New FOI Guidelines Encourage Information Suppression) Atty. Gen. William French Smith issues new guidelines stating that any information technically covered by the FOI Act should be suppressed even if its release would pose danger to the government or any third party. This reverses Carter Administration guidelines which said that information technically covered by Act should be released unless it posed a danger to government or a third party. Date: 04/81

16. (New FOI Guidelines Encouraging Higher Fees For Press and Scholars): Atty. Gen. William French Smith issues new guidelines warning government FOI officials to be ever watchful of "the public treasury" and not to ordinarily give fee reductions and waivers to journalists, scholars, authors, etc. FOI Act states government "shall" give waivers or reductions if in the public interest. Date: 02/83

17. (Administration Support FOI Act amendment suppression government regulatory information) The Administration supported a bill introduced by Sen. Orrin Hatch which would have suppressed any "competitive" information submitted to the government by any regulated corporation. This bill would have suppressed, for example, information submitted to the government showing sex discrimination, race discrimination, consumer fraud, pollution threats, environmental problems, dangerous foods and drugs etc. Current law does allow suppression but only if this is really a "trade secret" or is truly confidential financial information. Date: 10/81

18. (Administration Supports FOI Act Amendment to Suppress Details of Government Legal Settlements) The Administration supported a bill introduced by Sen. Orrin Hatch which would have suppressed under the FOI Act all government information relating to why the government settled a law suit. Currently, that information is available. The bill would have suppressed this information even if the law suit was settled due to conflict of interest or even a criminal law violation. Date: 10/81

19. (Administration Support FOI Act Amendment to Suppress Law Enforcement Information if it Shows Government is Committing a Crime) The Administration supported a bill introduced by Sen. Orrin Hatch which would have suppressed under the FOI Act all law enforcement information relating to "organized crime", "counter intelligence" and "terrorism". Should be noted that infiltration of domestic political groups under Nixon called "counter-intelligence" and campaign against Actress Jean Seaberg was done under rubric of a "terrorism" investigation. Date: 10/81

20. (Uphold pre publication agreements for CIA agents) Supported position (taken by Carter Admin) that CIA agents can be forced to submit all writings (including poetry etc) to agency under contract signed at time of employment. U.S. Supreme Court agreed due to very sensitive nature of CIA. Date: 05/81

21. (Cancel passports of U.S. critics) Told U.S. Supreme Court that government could unilaterally cancel passports of American citizens who went abroad and then endangered national security by publishing (Philip Agee is the issue here). U.S. Supreme Court agreed and said no danger to national security need to be shown. Date: 06/81.

22. (CBS reporter threatened with espionage act for Iranian books) Seized books of CBS News stringer Wm Worthy. Books bought in Iran are reconstructed cables of U.S. embassy taken over. Have been published in Europe and freely on sale in Teheren says Worthy. Threatened Worthy with prosecution. Finally dropped and paid Worthy \$16,000. Date 08/81.

23. (Cuban books and newspapers) Under trading with the enemy act, held up books and newspapers from Cuba for months. Date 08/81.

24. (CIA Officials Seek Prior Review of University Research) Deputy CIA Director Bobby Inman told a group of scientists that they should voluntarily submit to the Agency all proposals for privately funded university research. He cited danger to national security. (Later, this concept pushed as danger to foreign trade in re Japanese using American technology). Date: 01/82

25. (Agent ID Bill) Supported the most punitive version of "Agent Identities Bill" which has made it a crime to name an intelligence agent even if he is breaking federal law or regulations. Not necessary to show that newspaper published information with intent to harm U.S. or that information posed any danger to national security. Are some defenses but they are weak and mainly cosmetic. Date 06/82.

26. (Reporters Sign Secrecy Pledge) Defense Department asked reporters to sign a secrecy pledge before being given briefing on USSR military build-up. Date: 12/82

27. (Canadian films) Required film distributed by film board of Canada to carry notice of "political propoganda" when shown in this country. Films were on pollution and nuclear disarmaments. Done under Foreign Agents Registration Act which has exemption for info not primarily benefiting foreign government. Act also requires names of all American groups who seek to see film. Date 02/83.

28. (Now wants pre publication agreement for all persons who have access to classified info in Defense, State, Dept. of Justice, Treasury, etc.) Announced that would require pre publication agreements for broad category of persons in interest of national security. Date 03/83.

29. (Establish Royalty Fees For Use of Government Information) The Administration supported a bill introduced by Sen. Orrin Hatch which would have, for the first time, imposed fees for the "commercial" value of government information obtained under the FOI Act. Act said "technological information" but David Gergen, Director of White House Office of Communications used as one example "training manuals" of the Department of Defense. Seems fair to conclude here this would first step in establishing government copyright. Date: 10/81. This information specified was "tehnical" information. The example given by David Gergen at the National Press Club was amry training manuals. If army training manuals can be subject in effect to government copyright, what is next? Dept of Treasury reports (they have conmerical value, etc.).

30. (Sealing of all information on military aircraft accidents resulting from the air safety investigation.) Department of Defense attempts to include a provision in the MX defense appropriations bill that would seal all information from the press and the public resulting from the air safety investigation conducted by the military.

31. (Excludes American News Media From Covering U.S. Invasion of Granada.) During the invasion of Granada, the Administration

- a. Excluded American reporters from covering the invasion while allowing foreign reporters to remain;
- b. Brought in their own Department of Defense news service to provide favorable coverage of the invasion;
- c. Detained three American reporters who were already on the island during the invasion;
- d. Threatened to shoot at any reporters who attempted to reach the island on their own.