

Statement of
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before
HOUSE FOREIGN OPERATIONS
AND GOVERNMENT INFORMATION SUBCOMMITTEE

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Mr. Chairman, I welcome the opportunity to testify today on H.R. 12004, introduced by you and others, to replace with a statutory classification system the existing system established by Executive Order 11652, and to discuss the operations of this Executive Order within the Central Intelligence Agency.

Mr. Chairman, at the outset I want you to know that while we in the intelligence profession do have some special security needs, we fully recognize that the bedrock of our system of government is an open society and an informed public.

In a report issued last year your committee stated that "...there is an unquestioned need for Federal agencies to avoid the release or dissemination to the public of certain sensitive types of information, the safeguarding of which is truly vital to protecting the national defense and to maintain necessary confidentiality of dealings between our country and foreign nations." The necessity to safeguard certain truly vital foreign intelligence secrets has been recognized by the Congress in its direction to the Director of Central Intelligence in the National Security Act of 1947 to protect intelligence sources and methods from unauthorized disclosure.

There are special problems involved in protecting intelligence sources and methods which I believe bear directly upon H.R. 12004 and Executive Order 11652. These problems flow from the very nature of intelligence information - its substance and the means by which it is obtained.

The flight characteristics of a foreign fighter plane, the accuracy and numbers of a foreign ballistic missile, or the plans and capabilities of a foreign country in the economic or political fields are examples of substantive intelligence information. Very often such intelligence information can be a benefit to this nation only if our potential adversary is unaware that we have such knowledge. On this

basis such substantive intelligence information is deserving of protection as affecting our nation's vital interests.

But inherent in the substantive information itself are clues to the means through which it was obtained – intelligence sources and methods. Unless these means are protected, countermeasures can be mounted to nullify or impair collection efforts. It was this concern, I believe, which led to the statutory directive that the Director of Central Intelligence is responsible for protecting intelligence sources and methods from unauthorized disclosure.

- Clearly a secret agent operating abroad in a hostile climate must be protected – not only to enable him to continue to supply intelligence, but also because the freedom and lives of individuals may be at stake. The exposure of an agent obviously ends his immediate usefulness. It may or may not expose his sub-agents and any networks for collecting information he may have established. Finally it may affect our ability to obtain assistance from others. Credibility in protecting our sources is the sine quo non of the intelligence profession.
- Foreign intelligence services and security agencies are also positive contributors to our intelligence and counterintelligence programs abroad and continued cooperation often depends upon confidence that the existence of the relationship will be protected.
- Revelation of methods of technical intelligence collection may result in countermeasures to mislead or obstruct methods of collection and render ineffective costly programs.
- While a particular piece of intelligence information by itself may not be revealing of sensitive sources and methods, accumulation of bits of intelligence information may well eventually lead back to the sources or methods relied upon for its collection.

In view of these considerations, I believe Congress acted wisely when in the 1947 National Security Act it identified a focal point to assume the responsibility to protect against the unauthorized disclosure of sensitive intelligence sources and methods.

Recently I testified before the Intelligence Subcommittee of the House Armed Services Committee on H.R. 15845, which amends the charter of the Central Intelligence Agency in the National Security Act of 1947. One amendment in that

bill would reinforce the charge in the original Act by requiring the Director to develop appropriate plans, policies, and regulations for the protection of intelligence sources and methods. In that testimony I pointed out that I do not believe the present statutes provide sufficient measures to enforce this responsibility, and that proposals are under consideration in the Executive Branch to remedy this weakness.

The Central Intelligence Agency is not a public information agency, but was established to provide our government with information and assessments to assist policy decisions about developments abroad affecting the United States. Much of this material is necessarily classified as it comes from sensitive intelligence sources. It is thus made available in classified form to the members of the Executive Branch concerned with these questions. Such material is also made available to the Congress, in executive session, to endeavor to assist the Congress in its role in decision-making under the American Constitution. To the extent feasible, moreover, the Agency's information is made available to the public, directly or indirectly, in a number of ways.

- Where possible the Agency identifies for public release information resulting from its efforts. A recent example was the *China Atlas* published in 1972 and an atlas on the Middle East published in 1973.
- The Agency briefs appropriate committees of the Congress – the Foreign Affairs and Foreign Relations Committees, the Armed Services Committees, and the Joint Committee on Atomic Energy – in executive session in order to provide the fruits of our nation's intelligence investment. To the extent possible, such information is later cleared for publication. A recent example of this procedure was the detailed testimony on the economies of the Soviet Union and China provided to the Joint Economic Committee and published on 19 July after appropriate screening. We also fully brief the CIA oversight subcommittees of the Armed Services and Appropriations Committees on budget and operational matters.
- We are completing a review of nearly 1,000 cubic feet of classified OSS records in the custody of the Archivist and over 90% of them are being declassified. Moreover, we have reviewed and declassified nearly 250 OSS films.
- The Agency responds affirmatively whenever possible to requests for information under the Freedom of Information Act and Executive Order 11652. Of requests received and acted on in 1973, affirmative action was taken in 80% of the cases.

In our efforts to screen our information to decide what can be made available to the public, we must depend upon the training, background, and experience of professional intelligence officers to identify those matters which might appear innocuous but which could reveal to a foreign intelligence service our intelligence sources or methods.

With this background, I would now like to address myself to the provisions of H.R. 12004.

Very simply, H.R. 12004 would conflict severely with the responsibilities of the Director of Central Intelligence to protect intelligence sources and methods. Under the bill all SECRET and CONFIDENTIAL information must be declassified in two and one years, respectively. A great deal of our intelligence product, even of our sources and methods, would not meet the standard under the language of the bill to be classified as TOP SECRET. All such information thus would be declassified in no more than two years. I would find it very difficult, in good conscience and in terms of practicality, to urge a foreign intelligence service or a strategically placed individual in a foreign government or a foreign country to cooperate with this Agency and to provide information in confidence if the law of this country required that such information be made available to the public two years later.

All TOP SECRET information would be declassified under the bill in three years, unless it falls within one of several categories, one of which is information which would disclose intelligence sources and methods. But even this information could be declassified by the Classification Review Commission which the bill would establish. Moreover, the Commission could do so in the face of and notwithstanding a written detailed justification by the President himself "for the continued safeguarding of such information based upon national defense interests of the United States of the highest importance." This would seem to raise constitutional questions and it surely would impair my ability to protect intelligence sources and methods.

Under the bill information may be classified only in the interest of "national defense," as contrasted with "national defense or foreign relations of the United States" as now provided by the Executive Order. I believe it important that the bill be in terms which make it clear that the information which may be protected is not limited to strictly defense information.

The bill requires that the names and addresses of all persons authorized to classify must be furnished quarterly to the Classification Review Commission and, upon request, to any member of Congress or the Comptroller General. This feature would hamper severely the operation of the intelligence-gathering function of this Agency, since it would serve to identify many employees whose duties and prospective duties require that their status as employees of CIA not be revealed. It would also be in conflict with the provision of the Central Intelligence Agency Act of 1949 which exempts the Agency from the provisions of any law which require publication or disclosure of certain information concerning Agency personnel.

The requirements for downgrading and declassifying existing information in the first and succeeding years after enactment would pose tremendous administrative burdens. The requirement to transfer to the Classification Review Commission information downgraded from TOP SECRET likewise would be administratively burdensome. Further, it would impinge on my responsibility to protect intelligence sources and methods.

My final point with respect to H.R. 12004 concerns the impact its enactment would have on the authority departments would retain to withhold information based on one of the exemptions of the Freedom of Information Act. Exemption 1 of that Act permits withholding of information classified pursuant to executive order. Exemption 3 permits withholding of information which is "specifically exempted from disclosure by statute." If enactment of H.R. 12004 resulted in the rescission of Executive Order 11652, as I assume it would, the protection of Exemption 1 would be gone. And it might be contended that classification actions made under H.R. 12004 and the regulations of the Classification Review Commission are made "pursuant to" rather than "by" statute and therefore are not to be withheld under Exemption 3. If this contention is sound it would mean that classified information requested under the Freedom of Information Act could not be withheld. Clarification by appropriate revision would be highly desirable.

I turn now to Executive Order 11652. That Order, and H.R. 12004 as well, obviously represent an effort to overcome the problem of too much classification and for too long. I believe responsible opinion is in agreement that there are problems in this area. Executive Order 11652, the first major change in classification practices in nearly 20 years, was an attempt to make a turn-around in the government's classification practices which date back to World War II, and to deal with the untold volumes of documents which remain classified. This is a major undertaking. It will require time and much work.

The Order of course has impacted on CIA operations in a number of ways, some of which I mentioned earlier. I propose now to summarize certain others, Mr. Chairman, and, with your permission, I will submit for the record a supplementary statement which provides certain statistics and details.

To meet the requirements of the Executive Order, we have made minor modifications in our data index system, which we had developed through the years as an aid in locating and retrieving information. We have made significant reductions in the numbers of persons authorized to classify information.