

UNCLASSIFIED

FACSIMILE TRANSMITTAL FORM

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FROM: [redacted] (b)(3)

SUBJECT: Leaks

TO: (ADDRESSEE/ORGANIZATION/OFFICE/EXTENSION)

- 1. Michelle Lang
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SPECIAL INSTRUCTIONS: typed on § #, unless you changed the BU... A2 in lieu of delete in entirety. ED log (#3) is accurate. Thanks!

RELEASING OFFICIAL: [redacted] (b)(3)

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Section 3034 creates a new felony offense for a current or former United States official or employee, or any other person with authorized access to classified information, to knowingly and willfully disclose any classified information to a person not authorized to receive it, when the person providing the classified information knows that the person receiving the information is not authorized to receive it.

This new statute applies only to the unauthorized disclosure of information or material that is "properly classified" ~~and clearly marked as such~~, or that the person disclosing the information knows or has reason to believe has been properly classified by appropriate authorities, pursuant to the provisions of a statute or an Executive Order.

The managers note that the current Executive Order governing classified national security information (E.O. 12958) requires that, in order to classify information, the original classifying authority must determine that unauthorized disclosure of the information reasonably could be expected to result in damage to the national security and must be able to identify or describe the damage. The managers further note that the current Executive Order specifically prohibits the classification of information in order to conceal violations of law, inefficiency, or administrative error or to prevent embarrassment to the government.

It is the intent of the managers that the government may meet its burden of proof under this statute by proving that the information ~~was~~ is classified under the applicable statute or Executive Order. The government should not be required to prove that damage to the national security actually has or will result from the unauthorized disclosure. Subsection (c)(2) is not intended by the managers to create a defense based on a technical error in the classification markings, or the lack thereof, or to create a right of the defendant to dispute the propriety of the President's classification decision. The managers believe that requiring the government to prove that the classified information is or has been properly classified under an applicable statute or Executive Order strikes the appropriate balance between protecting only that information that would damage the national security if disclosed and not creating a burden of proof that is so great that the government could never meet its burden without having to disclose unnecessarily additional classified information.