

VAC - 04764-02

Central Intelligence Agency



Washington, D.C. 20505

OCA 2000-1473

31 October 2000

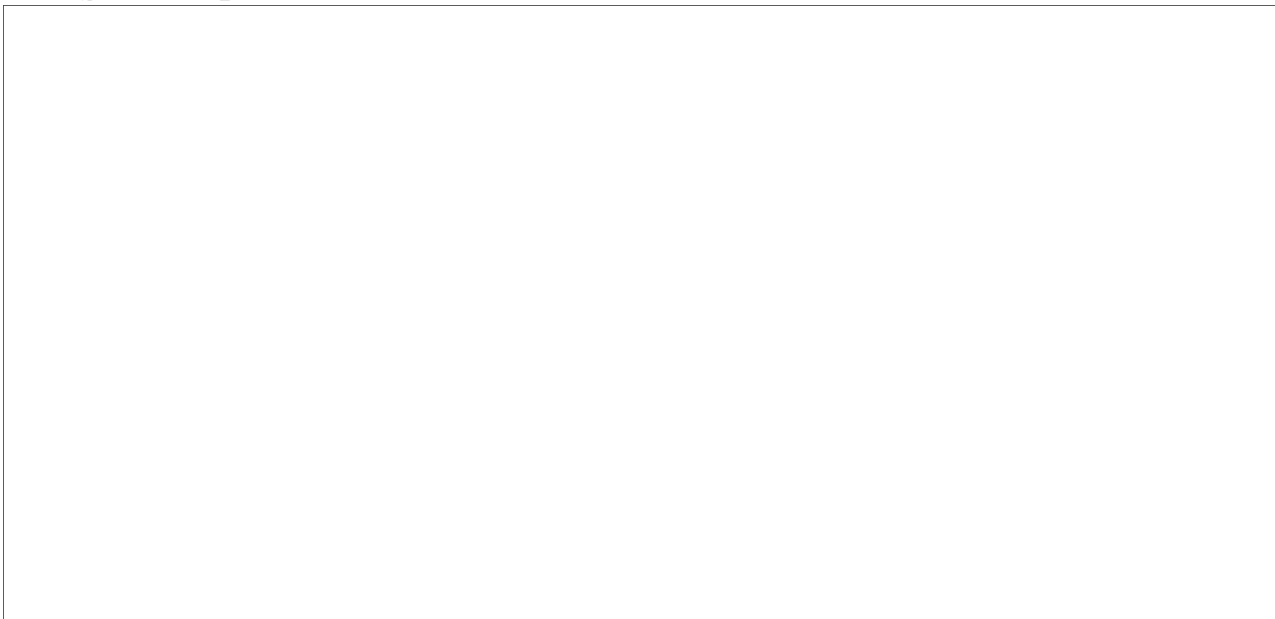
The Honorable Jacob J. Lew  
Director  
Office of Management and Budget  
Washington, DC 20503

re Intelligence Authorization Act for FY 2001

Dear Mr. Lew:

The Central Intelligence Agency (CIA) submits the following comments for the President's consideration on the above-referenced bill. CIA supports this bill and recommends that the President sign it.

CIA concurs with the Department of Justice's comments on Section 304 ("Leaks") of the enrolled bill. We believe that the law as drafted is narrowly tailored to close an existing statutory gap and that recent press accounts and concerns expressed by members of Congress misunderstand the intent and scope of this provision. Therefore we join with DoJ and recommend that the President issue his signing statement incorporating DoJ's language, forwarded to you separately.



(b)(1)  
(b)(3)



**Statement by the President: Veto of the "Intelligence Authorization Act for Fiscal Year 2001"  
(11/4/00)**

THE WHITE HOUSE

Office of the Press Secretary

(Chappaqua, New York)

For Immediate Release

November 4, 2000

STATEMENT BY THE PRESIDENT

TO THE HOUSE OF REPRESENTATIVES:

Today, I am disapproving H.R. 4392, the "Intelligence Authorization Act for Fiscal Year 2001," because of one badly flawed provision that would have made a felony of unauthorized disclosures of classified information. Although well intentioned, that provision is overbroad and may unnecessarily chill legitimate activities that are at the heart of a democracy.

I agree that unauthorized disclosures can be extraordinarily harmful to United States national security interests and that far too many such disclosures occur. I have been particularly concerned about their potential effects on the sometimes irreplaceable intelligence sources and methods on which we rely to acquire accurate and timely information I need in order to make the most appropriate decisions on matters of national security. Unauthorized disclosures damage our intelligence relationships abroad, compromise intelligence gathering, jeopardize lives, and increase the threat of terrorism. As Justice Stewart stated in the Pentagon Papers case, "it is elementary that the successful conduct of international diplomacy and the maintenance of an effective national defense require both confidentiality and secrecy. Other nations can hardly deal with this Nation in an atmosphere of mutual trust unless they can be assured that their confidences will be kept . . . and the development of considered and intelligent international policies would be impossible if those charged with their formulation could not communicate with each other freely." Those who disclose classified information inappropriately thus commit a gross breach of the public trust and may recklessly put our national security at risk. To the extent that existing sanctions have proven insufficient to address and deter unauthorized disclosures, they should be strengthened. What is in dispute is not the gravity of the problem, but the best way to respond to it.

In addressing this issue, we must never forget that the free flow of information is essential to a democratic society. Justice Stewart also wrote in the Pentagon Papers case that "the only effective restraint upon executive policy in the areas of national defense and international affairs may lie in an enlightened citizenry -- in an informed and critical public opinion which alone can here protect the values of democratic government."

Justice Brandeis reminded us that "those who won our independence believed . . . that public discussion is a political duty; and that this should be a fundamental principle of the American government." His words caution that we must always tread carefully when considering measures that may limit public discussion -- even when those measures are intended to achieve laudable, indeed necessary, goals.

As President, therefore, it is my obligation to protect not only our

Government's vital information from improper disclosure, but also to protect the rights of citizens to receive the information necessary for democracy to work. Furthering these two goals requires a careful balancing, which must be assessed in light of our system of classifying information over a range of categories. This legislation does not achieve the proper balance. For example, there is a serious risk that this legislation would tend to have a chilling effect on those who engage in legitimate activities. A desire to avoid the risk that their good faith choice of words -- their exercise of judgment -- could become the subject of a criminal referral for prosecution might discourage Government officials from engaging even in appropriate public discussion, press briefings, or other legitimate official activities. Similarly, the legislation may unduly restrain the ability of former Government officials to teach, write, or engage in any activity aimed at building public understanding of complex issues. Incurring such risks is unnecessary and inappropriate in a society built on freedom of expression and the consent of the governed and is particularly inadvisable in a context in which the range of classified materials is so extensive. In such circumstances, this criminal provision would, in my view, create an undue chilling effect.

The problem is compounded because this provision was passed without benefit of public hearings -- a particular concern given that it is the public that this law seeks ultimately to protect. The Administration shares the process burden since its deliberations lacked the thoroughness this provision warranted, which in turn led to a failure to apprise the Congress of the concerns I am expressing today.

I deeply appreciate the sincere efforts of Members of Congress to address the problem of unauthorized disclosures and I fully share their commitment. When the Congress returns, I encourage it to send me this bill with this provision deleted and I encourage the Congress as soon as possible to pursue a more narrowly drawn provision tested in public hearings so that those they represent can also be heard on this important issue.

Since the adjournment of the Congress has prevented my return of H.R. 4392 within the meaning of Article I, section 7, clause 2 of the Constitution, my withholding of approval from the bill precludes its becoming law. The Pocket Veto Case, 279 U.S. 655 (1929). In addition to withholding my signature and thereby invoking my constitutional power to "pocket veto" bills during an adjournment of the Congress, to avoid litigation, I am also sending H.R. 4392 to the House of Representatives with my objections, to leave no possible doubt that I have vetoed the measure.

WILLIAM J. CLINTON

THE WHITE HOUSE,  
November 4, 2000.

###

1 *maximizes the procurement of products properly designated*  
2 *as having been made in the United States.*

3 **SEC. 304. PROHIBITION ON UNAUTHORIZED DISCLOSURE**  
4 **OF CLASSIFIED INFORMATION.**

5 (a) *IN GENERAL.*—Chapter 37 of title 18, United  
6 States Code, is amended—

7 (1) *by redesignating section 798A as section*  
8 *798B; and*

9 (2) *by inserting after section 798 the following*  
10 *new section 798A:*

11 **“§ 798A. Unauthorized disclosure of classified infor-**  
12 **mation**

13 *“(a) PROHIBITION.—Whoever, being an officer or em-*  
14 *ployee of the United States, a former or retired officer or*  
15 *employee of the United States, any other person with au-*  
16 *thorized access to classified information, or any other per-*  
17 *son formerly with authorized access to classified informa-*  
18 *tion, knowingly and willfully discloses, or attempts to dis-*  
19 *close, any classified information acquired as a result of such*  
20 *person’s authorized access to classified information to a per-*  
21 *son (other than an officer or employee of the United States)*  
22 *who is not authorized access to such classified information,*  
23 *knowing that the person is not authorized access to such*  
24 *classified information, shall be fined under this title, im-*  
25 *prisoned not more than 3 years, or both.*

1       “(b) *CONSTRUCTION OF PROHIBITION.*—Nothing in  
2 *this section shall be construed to establish criminal liability*  
3 *for disclosure of classified information in accordance with*  
4 *applicable law to the following:*

5               “(1) *Any justice or judge of a court of the United*  
6 *States established pursuant to article III of the Con-*  
7 *stitution of the United States.*

8               “(2) *The Senate or House of Representatives, or*  
9 *any committee or subcommittee thereof, or joint com-*  
10 *mittee thereof, or any Member of Congress.*

11               “(3) *A person or persons acting on behalf of a*  
12 *foreign power (including an international organiza-*  
13 *tion) if the disclosure—*

14                       “(A) *is made by an officer or employee of*  
15 *the United States who has been authorized to*  
16 *make the disclosure; and*

17                       “(B) *is within the scope of such officer's or*  
18 *employee's duties.*

19               “(4) *Any other person authorized to receive the*  
20 *classified information.*

21       “(c) *DEFINITIONS.*—*In this section:*

22               “(1) *The term ‘authorized’, in the case of access*  
23 *to classified information, means having authority or*  
24 *permission to have access to the classified information*  
25 *pursuant to the provisions of a statute, Executive*

1       *order, regulation, or directive of the head of any de-*  
2       *partment or agency who is empowered to classify in-*  
3       *formation, an order of any United States court, or a*  
4       *provision of any Resolution of the Senate or Rule of*  
5       *the House of Representatives which governs release of*  
6       *classified information by such House of Congress.*

7               “(2) *The term ‘classified information’ means in-*  
8       *formation or material properly classified and clearly*  
9       *marked or represented, or that the person knows or*  
10       *has reason to believe has been properly classified by*  
11       *appropriate authorities, pursuant to the provisions of*  
12       *a statute or Executive order, as requiring protection*  
13       *against unauthorized disclosure for reasons of na-*  
14       *tional security.*

15               “(3) *The term ‘officer or employee of the United*  
16       *States’ means the following:*

17                       “(A) *An officer or employee (as those terms*  
18       *are defined in sections 2104 and 2105 of title 5).*

19                       “(B) *An officer or enlisted member of the*  
20       *Armed Forces (as those terms are defined in sec-*  
21       *tion 101(b) of title 10).”*

22       (b) **CLERICAL AMENDMENT.**—*The table of sections at*  
23       *the beginning of that chapter is amended by striking the*  
24       *item relating to section 798A and inserting the following*  
25       *new items:*