CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

17 SEP 1974

The Honorable William B. Saxbe
Attorney General
Department of Justice
Washington, D. C. 20530

Dear Mr. Saxbe:

On 24 April 1974 I wrote to you to express my concern over the Department's recommendation to the Office of Management and Budget against submission to Congress of legislation proposed by this Agency to amend the National Security Act of 1947 to furnish additional protection for intelligence information. In your reply on 14 May 1974, you expressed your agreement with my goal of preventing unauthorized disclosures of information relating to intelligence sources and methods and of successfully prosecuting violators. You noted that you had asked Assistant Attorneys General Rakestraw and Petersen to work with my General Counsel so that our proposed legislation would be acceptable to all concerned.

In the ensuing months your staffs and mine have had several conferences and have done a great deal of work in an attempt to draft legislation which would be acceptable to the Department and the Agency. While progress has been made and acceptable compromises reached on some issues, the Department and the Agency are still apart on several basic points. The Department has submitted a draft as a result of these conferences which I believe does not answer our needs in three major areas:

a. in camera court review of the protected information;

b. statutory injunction authority; and

c. recognition that heads of other departments and agencies engaging in intelligence activities may designate protected information.

I am enclosing the most recently modified drafts of the Department of Justice's and the Agency's proposed bills and a comparative analysis of

them. The Agency's newest draft attempts to accommodate some of the points posed by the Department.

With respect to court review, I believe that our position is fully consistent with the views expressed by President Ford in his letter of 20 August 1974 to the Chairmen of the Conference Committee Considering the Amendments to the Freedom of Information Act. The President's position was that he could not accept a provision of law which would

> ... place the burden of proof upon an agency to satisfy a court that a document classified because it concerns military or intelligence (including intelligence sources and methods) secrets and diplomatic relations is, in fact, properly classified,....

However, the President did state that he could accept a provision with an express presumption that the classification was proper and with in camera judicial review. The President then stated:

> Following this review, the court could then disclose the document if it finds the classification to have been arbitrary, capricious, or without a reasonable basis.

It is our intent that the in camera review would take place with defense counsel participating.

As I stated in my earlier letter to you, I consider the statutory injunction provision extremely important and believe that the difficulties in securing an injunction in the Marchetti case sufficiently show that another court in another case might not enjoin in the absence of statutory authority. Also, in some cases I believe the injunctive authority can be as great or a greater deterrent to disclosure than is a potential criminal penalty and, more importantly, is more likely to prevent disclosure. While the Department's draft does not include the injunction provision, I understand the Department now may be willing to consider supporting it.

The Department's draft deals only with designation of classified information relating to intelligence sources and methods by the Director

of Central Intelligence. This Agency is only one part of the entire intelligence community. Consequently, it is imperative that the coverage of this bill extend to the entire intelligence community, and the designation of information should extend to other departments and agencies of the United States Government which engage in intelligence activities.

There are a number of other differences of lesser importance between the positions of your staff and mine, but I believe some of these can be worked out. Nevertheless, there are significant differences in the three areas mentioned above, and I feel the need to provide adequate protection to intelligence sources and methods is impelling and well demonstrated. I would hope that we can still work toward a more effective compromise in time for it possibly to be included in the bill (H.R. 15845) amending the National Security Act of 1947, which may be reported by the House Armed Services Committee in the near future. To this end I would like to discuss this personally with you.

Sincerely,

/s/ Bill

W. E. Colby
Director

Enclosures