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Court upholds CIA to require review of Marchetti data

By DONALD R. MORRIS
Post News Analyst

A number of federal agencies are breathing easier in the wake of a recent Supreme Court decision. The CIA's injunction to prevent Victor Marchetti from publishing material based on his service with them has been upheld by the highest court in the land.

As usual in such cases, the issues are far from clear and generate considerable emo-

Post analysis

tion. Marchetti claimed that the injunction interfered with his freedom of speech, was contrary to a 1971 ruling permitting the media to publish portions of the Pentagon Papers, and would lead to a systematic scheme of censorship. He was supported by the Authors League of America, the Association of American Publishers and the American Civil Liberties Union.

The injunction, issued by a U.S. Circuit Court in September, binds Marchetti to adhere to the secrecy agreement he signed when he went to work for the CIA in 1956. The agreement does not prohibit Marchetti from publishing. It only requires him to submit relevant material to the agency prior to publication for review on security grounds.

Despite the dangers seemingly present in such an arrangement, the CIA has an excellent track record in previous cases. Marchetti, in fact, is the first former employe the agency has taken to court in a quarter of a century.

The agency's stand, which the record bears out, is that it makes no effort to interfere with attacks on its policies or operations. It will, however, take action to prevent disclosure of operations, techniques or the identity of personnel not already known to opposition intelligence services.

The key phrase is not "classified material" but "previous disclosure." All paperwork is classified as it is generated, and the level is unimportant because "Confidential," "Secret" and "Top Secret" are simply internal routine indicators and all boil down to "internal use only." Over the years, much of this material becomes known to the Soviet services — the KGB and the GRU — and thus loses its sensitivity. The KGB discovers techniques and identifies agents, and operations are terminated. The material has been "disclosed" and is no longer "sensitive," although it is still technically "classified" — and will remain so until some one faces the chore of declassifying it. A previous employe might write a book based entirely on such material without upsetting the agency a whit. It would only intervene to delete reference to materials which would aid the clandestine activities of the KBG or the GRU.

Declassifying dated material is a major headache. An agency official once showed me a letter. "Here is a major newspaper," he said, "asking for all documents we hold bearing on Viet Nam from 1955 through 1963 — the 47 volumes of the Pentagon Papers are simply extracts from the mass he is asking for in its entirety. There are over 3 million microfilms for the period in question, warehoused. To review for declassification would involve making hard copies of all, screening them, and having them reviewed by the officials who drafted them — several thousand of them no longer in government service and other thousand scattered all over the world. Over 5,000 foreign names would have to be traced to determine current status. We have no Congressional appropriations to hire the task force of about fifty people needed even to start such a job. Even if we made hard copies and just handed them over without screening, they would fill about six trucks, and just what would the man who asked for them do with them then?

How am I supposed to answer such a letter?"

NEW YORK TIMES
JUN 26 1972

Watch on the Media

By Herbert Mitgang

More than five years after the Freedom of Information Act became Federal law, it is still difficult for journalists, historians and researchers to obtain information freely. The idea behind the law was to take the rubber stamp marked "Confidential" out of the hands of bureaucrats and open up public records, opinions and policies of Federal agencies to public scrutiny. It hasn't worked that way.

When President Johnson signed the bill, he declared that it struck a proper balance between Government confidentiality and the people's right to know. In actual practice, it has taken court actions to gain access to Government records. An effort is finally being made to declassify the tons of documents by the Interagency Classification Review Committee, under the chairmanship of former Ambassador John Eisenhower. This historical survey will take years.

But more than mere documents are involved. There is a matter of the negative tone in Washington.

The White House and its large communications staff have lengthened the distance between executive branch, Congress and the public. Of course, every Administration has instinctively applied cosmetics to its public face, but this is the first one operating for a full term under the mandate of the Freedom of Information Act. The result is that official information — especially if it appears to brush the Administration's robes unfavorably — is not communicated but excommunicated.

The other day Senator Symington of Missouri, a former Air Force Secretary who has been questioning the wisdom of the President's B-52 foreign policy in Southeast Asia, said: "I would hope that during this session of Congress everything possible is done to eliminate unnecessary secrecy especially as in most cases this practice has nothing to do with the security of the United States and, in fact, actually operates against that security."

This point was underscored before the House Subcommittee on Freedom of Information by Rear Adm. Gene R. La Rocque, a former Mediterranean fleet commander who since retiring has headed the independent Center for Defense Information. Admiral La Rocque said that Pentagon classification was designed to keep facts from civilians in the State and Defense Departments and that some Congressmen were considered "bad security risks" because they shared information with the public.

Reputable historians trying to unearth facts often encounter Catch-22 conditions. The Authors League of America and its members have resisted those bureaucrats offering "cooperation" on condition that manuscripts be checked and approved before book publication. The Department of Housing and Urban Development has denied requests for information about slum housing appraisals. The Department of Agriculture turned down the consumer-oriented Center for the Study of Responsive Law in Washington when it asked for research materials about pesticide safety.

The unprecedented attempt by the Administration to block publication of the Pentagon Papers, a historical study of the Vietnam war, took place despite the Freedom of Information Act, not to mention the First Amendment. And the Justice Department is still diverting its "war on crime" energies to the hot pursuit of scholars who had the temerity to share their knowledge of the real war with the public. Such Government activities not only defy the intent of the Freedom of Information Act; they serve as warnings to journalists, professors, librarians and others whose fortunes fall within the line of vision — budgetary, perhaps punitive— of the Federal Government.

The executive branch's battery of media watchmen are busiest with broadcasting because of its franchises and large audiences. At least one White House aide, eyes glued to the news programs on the commercial networks, grades reporters as for or against the President. In one case that sent a chill through network newsrooms, a correspondent received a personal communication from a highly placed Administration official questioning his patriotism after he had reported from North Vietnam. Good news (meaning good for the Administration) gets a call or a letter of praise.

The major pressure on the commercial and public stations originates from the White House Office of Telecommunications Policy, whose director has made it clear that controversial subjects in the great documentary tradition should be avoided. The same viewpoint has been echoed by the President's new head of the Corporation for Public Broadcasting, which finances major programs on educational stations. This Government corporation is now engaged in a battle to downgrade the Public Broadcasting Service, its creative and interconnecting arm responsible for serious news shows.

Long before there was a Freedom of Information Act, Henry David Thoreau was jailed for speaking out and defying the Government's role in the Mexican war, last century's Vietnam. "A very few men serve the State with their consciences," he wrote, "and they are commonly treated as enemies by it." Grand juries, subpoenas and even Government jailers will be unable to overpower today's men of conscience.

Herbert Mitgang is a member of the editorial board of The Times.

WASHINGTON POST
1 4 DEC 1972

U.S. Edict Fails to Stir Data Flow

By Lewis Gulick
Associated Press

A presidential order aimed at prying the secrecy wraps from old government papers has produced only a trickle of new public information since it took effect five months ago.

The White House edict will show greater impact later on, officials say, as declassifiers delve into a mountain of aging documents, and controls crimp the flood of new secret writings.

But an effort by The Associated Press to dislodge some documents under one portion of the order has met with virtually no success so far. Other inquirers have had similar experiences.

Under President Nixon's June 1 directive, any paper more than 10 years old is supposed to be made available to a member of the public if he asks for it unless a review by officials finds it should be kept secret.

The order calls also for automatic declassification for all documents when they become 30 years old, unless specifically exempted by a department head in writing, and it pares sharply the number of officials allowed to impose secrecy stamps.

Of eight requests made by the AP since June 1 under the 10-year proviso, seven have yet to produce any once-secret material.

CIA Refused

The lone exception was a request for a National Security Council document from the Kennedy administration. Nearly two months after the request was submitted, the NSC noted that it had already been declassified.

All other AP queries have proven fruitless to date, including a request for the record of NSC recommendations made to former President Dwight D. Eisenhower during the 1958 Lebanon crisis.

David Young, an NSC aide supervising the declassification program for the administration, has acknowledged that the request for the 1958 papers falls within the guidelines of Mr. Nixon's order. But the papers have yet to be made available.

The CIA responded to a query for documents related to an incident in the early 1950s by saying that the request was not specific enough.

However, the CIA refused to say what additional information was needed and a follow-up request, couched in more specific terms, was turned down.

The AP has appealed the CIA's rejection to an Interagency Classification Review Committee set up under Nixon's order.

Study on Access

A June 1 request to the Defense Department for some Korean war documents produced a July 11 response that the material was not in the files of the assistant secretary for international security affairs and an Aug. 8 response that a search for it would require "an unreasonable amount of effort."

After a newsman noted that Eisenhower referred to the material in his memoirs as coming from the Joint Chiefs of Staff, the Pentagon searchers said they would look some more.

A book-length report on scholars' access to documents covered by the June 1 executive order says the new review procedures "will not be of much assistance to the scholar."

The study, published by the nonprofit Twentieth Century Fund, notes that the 1966 Freedom of Information Act already allows citizens to ask for declassification of documents, of whatever age, with appeal possible in court.

The June 1 order, which covers only documents that are at least 10 years old, provides for appeal within the executive branch, where the secrecy label was applied in the first place.

The directive requires also that the request be specific enough that a government search can locate the document "with only a reasonable amount of effort."

Countless Files

However, only insiders know just what secret documents exist. An outsider can guess, but serious scholars usually prefer to have access to an entire file to make sure they don't miss something important.

Just how many requests have been made under the new directive is uncertain. But guesses put that there have been more then a hundred so far, with most still in various stages of processing.

Thus, early signs are that the June 1 executive order will not prove of much immediate help to scholars or newsmen searching for secret papers tucked away in countless government files.

Prospects are much brighter, however, for creation of an internal-control system stemming the flood of new secret writings and for yanking away the secrecy of government documents by the time they are 30 years old.

No one knows exactly how many government documents are under lock and key, hidden from public view by security classifications ranging from "confidential" to "top secret."

But by conservative estimate, there are more than a billion pages of such material. That's enough paper to circle the earth a half-dozen times if placed end to end along the equator.

NSC Directive

And, with the help of modern photocopying gear, federal officials were spewing an estimated 200,000 pages of newly classified documents into their files daily as of June 1.

All that secrecy is expensive.

A General Accounting Office study covering just four agencies—the State Department, Defense Department, NASA and the Atomic Energy Commission—rated their annual outlay for administering the security-classification system at $60 million.

Since June 1, the White House says, the number of persons authorized to wield secrecy stamps has been slashed 49 per cent or from 32,586 to 16,238. Those figures do not include the Central Intelligence Agency, which keeps the number of its classifiers secret.

By NSC directive, each agency is supposed to report by July 1, 1973, all major classified documents on file after the end of this year, giving their subject headings and when they should become available to the public.

This information is to be fed into a computerized Data Index System which, hopefully, will start giving up-to-date accounting on the secret paper flow in 1973.

The end of the line for most old government papers, and counting duplicate copies and minor items which are destroyed, is the national Archives.

Remove Secrecy

And here, say the archivists, the outlook is bright for eventually putting nearly all once-secret documents into the public domain.

NEW YORK TIMES
22 NOV 1972

Nixon Order Fails to Ease Access to Classified Data

Bureaucratic Obstacles and High Costs Are Impeding Efforts to Obtain Older Government Documents

By FELIX BELAIR JR.
Special to The New York Times

WASHINGTON, Nov. 21—President Nixon's pledge "to lift the veil of secrecy" from needlessly classified official papers is being throttled by bureaucratic confusion timidity and prohibitive costs, in the opinion of historians, other scholars and newsmen.

Five months after the President's order on June 1, directing a freer flow of information to the public from secret and confidential papers more than 10 years old, the output is still no more than a trickle. More requests for documents have been denied or labeled "pending" than have been granted.

Those seeking access to the documents are searching for information that might throw new light on the origins of the United States involvement in the Korean and Vietnam wars, the Cuban Bay of Pigs invasion and other matters relating to the nation's military and foreign policies.

In an interview on results of the Presidential edict, Prof. Lloyd C. Gardiner, chairman of the history department at Rutgers University, said that "for misdirection, subterfuge and circumlocution there has been nothing like this burcaucratic performance since the old-fashioned shell game."

Professor Gardner, who has been trying for nearly 10 years to obtain State Department papers on the origins of the Korean war, has also been a leading critic before Congressional committees of efforts to devise a secrecy classification system by Executive order.

Future Effect Seen

Those in charge of carrying out the President's order say it will have a greater effect in years to come as more papers are brought under review and new restrictions inhibit the use of secrecy labels.

To Professor Gardner, however, "the brightest prospect is that Congress will put an end to secret classification by administrative order and will write out in legislation what material can be put under security wraps and by whom." A House watchdog committee has charged that the President's June 1 order was issued to head off such a bill, on which it was then holding hearings.

Figures compiled by the White House staff suggest that results under the new order—the first "reform" since 1953—have not been too bad. Of 177 requests made to various agencies in the five months through October, 83 were granted in full and four in part; 52 were denied in full and 38 are still pending, the White House figures show.

The breakdown, however, does not take into account that some of the information grante was not responsive to a request. One of the features of the system is that the person requesting declassification must agree in advance to buy the material. He must agree in advance to pay the cost of locating, identifying and reviewing the material even though it may not answer his question.

Balked by Officials

Officials' attitudes, as much as the rules permitting continued classification, hinder access to old papers on defense and foreign policy, it has been charged. Some of these officials relate prestige and the importance of their jobs to the volume of secret information coming across their desks, according to testimony before the House Subcommittee on Freedom of Information.

Rear Adm. Gene R. La Rocque, who retired from the Navy after 31 years and who received the Legion of Merit for his work on strategic planning for the Joint Chiefs of Staff, told the House panel that Pentagon classification was ordered for a variety of reasons other than the legitimate one of preventing information from falling into the hands of a potential enemy.

He listed among the other reasons: "To keep it from the other military services: from civilians in their own service; from civilians in the Defense Department; from the State Department; from the White House; from the Congress." He said that many officers regarded Congressmen as "bad security risks" because of a tendency to "tell all to the public."

Other former high Government officials acknowledged the existence among some bureaucrats of the extreme view that "public business is no business of the public.

On the other hand, one of the most eloquent statements of the public's "right to know" was given by President Nixon in promulgating the June 1 order.

"Fundamental to our way of life," he said, "is the belief that when information which properly belongs to the public is systematically withheld by those in power, the people soon become ignorant of their own affairs, distrustful of those who manage them, and—eventually—incapable of determining their own destinies."

Despite this endorsement of a better-informed public, the language of the President's order makes access to classified information more difficult rather than the reverse.

The order provides that, after 10 years, secret material on national security and foreign polisy mst be reviewed for declassification on request, provided that the information is described "with sufficient particularity that it can be obtained with only a reasonable amount of effort."

Drawback Cited

The drawback in this requirement, those who have made the effort say, is that only the officials know what is in the classified files and how it is identified. Outsiders can guess at what is there and provide approximate dates. But to start the process the outsider must agree in writing to assume any costs entailed in identification and location of the material and security review.

The average citizen and most news media consider this cost prohibitive.

The Washington bureau of The New York Times, within a week of the effective date of the President's order, submitted 31 foreign policy questions to the State Department and requested declassification of the material presumably containing the answers. All together, 55 requests went to five Federal agencies.

Three weeks later the State Department responded that "we have concluded that your request does not describe the records you seek with sufficient particularity to enable the department to identify them, and that as described, they cannot be obtained with a reasonable amount of effort."

The Associated Press submitted eight requests on June 1. Seven have yet to be answered with a yes or no.

Reference in Memoirs

Among the June 1 requests by The Associated Press was one to the Defense Department for certain material on the Korean war. The Pentagon replied on July 11 that the material was not in the files of the Assistant Secretary for International Security Affairs. Another reply on Aug. 8 said that the material could not be located "with a reasonable amount of effort."

When it was pointed out that the material had been referred to in the memoirs of former President Eisenhower as coming from the Joint Chiefs of Staff, Pentagon searchers said they would go on looking.

Before its rejection of the request by The Times, the State Department advised that the cost of identifying, locating and reviewing the material could be "as much as $7,000 or more" but that this was not to be taken as an estimate of any validity and none could be attempted.

In any case, The Times was told it would have to state in writing in advance that it would assume whatever cost was assigned to producing the material, even though the review process determined that it could not be declassified and released.

Pending the outcome of a written protest to David Young, head of declassification operations at the White House, The Times on June 21 withdrew its requests to the State Department and four other Federal agencies.

In a letter to Mr. Young, Max Frankel, the Washington correspondent of The Times said that "we will not buy a pig in a poke, nor should the Government ask us to play research roulette, even if we acknowledged some responsibility for sharing the costs involved."

Mr. Frankel's chief complaint was that "the bureaucrats misunderstand virtually every issue involved in this whole proceeding." He said, "We have, first, the admission (and in the case of the Pentagon papers, the demonstration) that vast amounts of information have been either misclassified or wrongly held classified for too long."

Mr. Frankel, who is also chief of the Washington bureau of The Times, said that the obvious intent of the President's order had been to correct both categories of error and said:

"If the Government intends to honor the intent and the spirit of the President's order, then it should facilitate access, not raise one barrier after another. In short, if the Government means what it says and deserves credit for so say-

continued

NEW YORK TIMES
19 NOV 1972

The New Iron Curtain

IN THE NATION

By Tom Wicker

The Supreme Court ruled last week that despite the Government's wiretapping of a member of the Daniel Ellsberg defense team, the trial of Mr. Ellsberg and his friend, Anthony Russo, could continue. But it does not seem to be widely recognized that the charges against these two men, if sustained, will provide the Government with far more sweeping powers of secrecy and censorship than it has ever had.

In that case, John Kincaid has written in the magazine of the War Resisters League, "The executive branch will have succeeded in using the judicial branch to produce a new, repressive information control law which the legislative branch has always refused to enact." The little-known truth is that there is now no statute—none—which gives the President the explicit right to establish a system of classifying information. The classification system ("top secret," etc.) rests instead on Executive orders, and those who have violated it in the past have suffered only administrative reprimands or the loss of their jobs—not criminal prosecution.

It is a crime, declared so by statute, to make public certain information dealing with codes and atomic energy; neither Mr. Ellsberg nor Mr. Russo did that, nor are they so charged. It is also a crime, under the Internal Security Act, to hand classified information to a Communist country; neither defendant did that either, nor are they charged with it. Among other things, Mr. Ellsberg and Mr. Russo are charged with conspiring to "defraud" the Federal Government of its "lawful function" of withholding classified information from the public. But Congress has never by statute declared that to be a "lawful function" nor made releasing classified information a crime. In this case, the Government is contending that setting up a classification system is an inherent or implied power of the executive function—which it may be; but to prosecute Mr. Ellsberg and Mr. Russo for a crime in violating an Executive order rather than a statute, the Government also has to claim that it has inherent or implied power to declare certain behavior criminal, when Congress has never done so.

The Ellsberg-Russo indictments also charge them with violation of the Espionage Act. In every other case brought under that act, the Government has had to show that the defendants acted, as the statute requires, "with intent or reason to believe that the information to be obtained is to be used to the injury of the United States or to the advantage of any foreign nation." But the Government, despite this plain requirement, does not so charge Mr. Ellsberg and Mr. Russo; instead, the indictment charges them with communicating the Pentagon Papers "to persons not entitled to receive them," a very different thing.

The "theft" part of the indictment, moreover, charges Mr. Ellsberg with stealing, converting and communicating information and ideas—not documents (the actual documents were Xeroxed, and the Government retains possession of the originals). The Ellsberg defense maintains that the Government has never been construed by the courts or Congress to have proprietary rights over information; it has, for instance, no right to obtain a copyright, on the theory that no government should have the power to own or control information, and that a government's information is a collective possession of its people.

These are the remarkable issues that now must go to trial. If the Government gets a conviction on these issues, and the conviction is sustained all the way through the Supreme Court, it will mean that making public classified information will have been declared a crime, although no statute makes it a crime. It will mean, further, that the Government will not even have been required to show that such an act was intended to injure the country or to aid a foreign power—only that information was passed to persons "not entitled" to have it. And finally, the Government's proprietary right to control information—not just physical documents, plans, films, etc.—will have been established.

Honest men may debate the wisdom and motives of Daniel Ellsberg and Anthony Russo in releasing the Pentagon Papers; but the implications of the case the Government seeks to make against them transcend such questions. For if that case is sustained, the Government will be enabled to make it a crime to make public anything on which it chooses to place a classification stamp. Then, anyone who discloses such information—say, an Air Force colonel "leaking" information about a faulty weapon or a wasteful program—and anyone who receives it—for instance, Joseph Alsop or Rowland Evans being clued in by the C.I.A.—will be committing a crime for which he can be prosecuted.

If that happens, there will be almost no limit on the Government's capacity to act in secret—which is to say its

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THE PENTAGON PAPERS TRIAL

"When a juror says he's going to be fair, he doesn't really know if he is," observes Marie Goldstein with a long sigh. She is something of a newly self-discovered expert on the subject. After sitting for several days as a tentative juror in the Pentagon Papers trial in Los Angeles, she became the first person excused for cause by U.S. District Court Judge W. Matt Byrne, Jr. What did her in was the frank admission that if she were not a juror in the case, she would have "definite sympathy" for the defendants, Daniel Ellsberg and Anthony Russo.

Mrs. Goldstein was disappointed to be dismissed so quickly. "I think I ought to be able to be a good juror," she says with a trace of good-citizen indignation. So willing, indeed enthusiastic, was she to serve that she had decided to give up a scheduled vacation trip to Japan if she were chosen for the final panel. She would have preferred to be the object of a peremptory challenge by the government prosecutors (peremptories require no statement of reasons and are merely an indication of each side's preferences and prejudices) rather than a declaration by the judge, in effect, that she was unfit to serve. Reflecting on the experience, she acknowledged that "I did it to myself by what I said. . . . But then my husband [a doctor in Pomona, thirty-three miles east of Los Angeles] said maybe this was just my subconscious way of telling them I could not be a good juror."

There was, in fact, no chance that Mrs. Goldstein might have had to forgo her trip to Japan for jury duty. Had she not been the first potential juror eliminated for cause, she would surely have been the government's first peremptory choice. What she "did to herself" was to reveal that her daughter demonstrated at the 1968 Democratic National Convention in Chicago, that she herself had a college degree in economics, that she supports George McGovern for President, and that she has a draft-age son (with Selective Service lottery number 10, although that fact never surfaced). For a murder, rape, burglary,

Although Judge Byrne and various lawyers on both sides would insist from time to time, when it was useful for the point they were trying to make, that the case must be treated just like any other one in every respect, jury selection for the Ellsberg-Russo trial posed some very special problems. Inevitably political, the Pentagon Papers case is a decisive test of the federal government's capacity to control the disclosure of information stamped "secret," of an individual's right to defy the security classification system, and at least peripherally, of the press's ability to rely on "leaks" in government circles.

Neither the prosecution nor the defense was about to let onto the jury anyone who seemed to share ideological bonds with the other side. The problems were complicated, doubtless, by the fact that the case looked to the public like a controversial, notorious, even exciting one. To many prospective jurors it would seem the opportunity for a brush with fame and publicity. This was the kind of jury on which all but the most timid or nervous among those who were called seemed eager to serve.

Musical chairs

The defense attorneys, so numerous that they had to take care not to stumble over each other while playing musical chairs at the defense table, insisted that the only way to select a fair jury would be to allow defense and prosecuting attorneys to participate personally in the voir dire, the process by which each venireman is questioned to elicit information about his background and attitudes. They repeatedly pressed Judge Byrne to permit them to interrogate the prospective jurors.

Standard practice in the federal courts is for the judge to conduct the voir dire himself. But, as Ellsberg's chief counsel, Leonard B. Boudin, often reminded Byrne, Judge R. Dixon Herman had only recently departed from that procedure in the Harrisburg conspiracy case. As a result, five weeks were spent in picking the Harrisburg jury.

Herman's indulgence was exactly what Byrne, a brand-new judge with obvious concerns about judicial efficiency, intended not to emulate. With a characteristic glance at the clock, he estimated, before the start of questioning, that a jury could be selected in perhaps three days.

That estimate dropped the jaws of even the three prosecutors, led by David R. Nissen. A slight, dapper man, he achieved his reputation for toughness while handling racketeering cases for Byrne when the judge was United States Attorney in Los Angeles. As the federal courts have increasingly become a forum for political issues over the past several years, and have been used for criminal cases testing the limits and styles of dissent and protest against national policy, jury selection has developed into a complex and sophisticated process.

Prosecution and defense attorneys generally find out in advance far more about the individuals summoned for jury duty in such cases than they tell about themselves from the jury box during voir dire. For example, federal prosecutors have the increasingly computerized resources of the FBI at their command. In California it is a simple matter for the defense to learn each juror's party registration, when he voted, and whether he ever signed referendum petitions on such issues as the death penalty, pollution control, and open housing.

Sometimes both sides case the prospective jurors' neighborhoods and find out how and with whom they spend their spare time. During jury selection in the Pentagon Papers case, Ellsberg's and Russo's attorneys discovered that one man, eliminated from the panel, was "probably gay." Another was peremptorily excused by the defense, despite his avid complaint during voir dire that while in the service he saw many documents classified which should not have been, because a background investigation portrayed him as a "Goldwater type."

As each new group of veniremen was called to the jury box, staff from each side—FBI agents and members of the defense "law commune"—nearly collided with each other as they scurried in and out of the courtroom to assemble information for the lawyers. Aware that the jury which acquitted Angela Davis in a California state court had been selected with the help of a panel of black psychologists sitting in the courtroom, the Ellsberg-Russo defense brought in psychiatrists to watch from the audience and sort out the people they

BIRMINGHAM, ALA.
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The 'secret' stampers get some new rules

By Richard Hollander
Scripps-Howard Newspapers

Along with a myriad of other matters, the Department of Defense is presently engaged in trying to digest the contents of a weighty tome which lays down regulations "governing the classification, downgrading, declassification and safeguarding of classified information," stemming, no doubt, from the dust-up over the leaking of the "Pentagon Papers" some months ago.

Like so many examples of military and civilian gobbledegook produced by all governments at all levels, this particular effort could only have been written by recent honor students in the graduate school of obfuscation at muddied waters state teachers college.

However, and fortunately, military and civilian bureaucrats seem to be able to understand each other, even though few of the rest of us do, and it's to be hoped that the new regulations covering security of documents and equipment will make more sense than sometimes has been true in the past.

National security controls as they were learned, perforce, long ago by older, more sophisticated nations, are relatively new to us. Even as recently as in the months before Pearl Harbor we were naive by comparison.

It was then, for instance, in that hot summer of 1941, when Hitler's forces were sprawled fatly across most of Europe, and Britain stood alone, trying to fashion a continuing military miracle out of the escape from Dunkirk, that a small, new American agency was set up in Washington by order of President Roosevelt.

Its responsibilities were somewhat masked by its innocuous title: Office of the Co-ordinator of Information (COI). Mostly, though, it was called "the Donovan Office" after its chief, Col. (later major general) William J. (Wild Bill) Donovan. From it eventually stemmed two war-time agencies, the Office of Strategic Services (OSS) and the Office of War Information (OWI). And from these emerged two post-war agencies, the Central Intelligence Agency (CIA) and the United States Information Agency (USIA).

Well, the COI had a security officer. In addition to seeing to it that all black-gloved young ladies who wanted to become secret agents, a la Mata Hari of World War I, signed their names before entering the offices, he ordered that each document, paper, etc., delivered to the agency be stamped with a classification.

"Secret" meant that the material, if it were to fall into the wrong hands, might endanger the life of the nation. "Confidential" meant that the material might endanger U. S. interests. "Restricted" meant that the information should not be given to the general public.

The security officer's order was followed to the letter. One of my proudest possessions dating from that time — since thrown out with other memorabilia of by-gone days — was a copy of the Washington Evening Star newspaper red-stamped "restricted."

Thus, even so long ago, inflation had hit the classification business. "Restricted" lost whatever value it might have had, and it no longer appears in the Pentagon lexicon.

As World War II progressed, "confidential" became pretty thin gruel and even "secret" wasn't anything to lose much sleep over. It was superseded, first by "very secret," then "top secret," and, later, "most secret." Later still came "eyes only" which meant that the message should be shown only to the high-ranking person to whom it was addressed, apparently overlooking the fact that the person who showed it to him had already seen it.

Finally, in the months before Normandy D-Day, there was a special classification working on invasion plans. For reasons that are shrouded in the mists of the past, this was called "bigot." Before sitting down to a meeting on, say, the projected distribution of toilet paper to liberated Frenchmen in the neighborhood of Cherbourg, people asked each other the somewhat incriminating question:

"Are you bigoted?"

In those simpler times, it was a proud thing to be able to say yes. You proved it by showing a card that had been run off a mimeograph machine.

As history will attest, D-Day was an eminently successful operation, and our side won the war in spite of everything.

The new Pentagon regulations recognize only "confidential," "secret," and "top secret." Fortunately, the literal-mindedness of the COI's security officer in 1941 is sternly interdicted in the new Chapter IV, Section I, Paragraph R-102, titled "Exception," which states categorically:

"No article which, in whole or in part, has appeared in newspapers, magazines or elsewhere in the public domain, nor any copy thereof, which is being reviewed and evaluated by any component of the Department of Defense to compare its content with official information which is being safeguarded in the Deprtment of Defense by security classification, may be marked on its face with any security classification, control or other kind of restrictive marking. The results of the review and evaluation shall be separate from the article in question."

At last the comic pages are home free.

WASHINGTON STAR
18 OCT 1972

That 'Top Secret' Stamp

By ALAN HORTON
Scripps-Howard News Service

The Pentagon is in the process of distributing throughout the massive Defense bureaucracy a 106-page book which may vastly reduce the number of secret documents.

Classifiers throughout the federal government have been using their Top Secret, Secret and Confidential stamps 30 million times a year.

The b l u e - b o u n d volume being passed out is a new regulation called "Information Security Program Regulation." Its Nixon administration authors say it will reduce the amount of classified material and increase the declassified.

The number of classifiers has been chopped significantly already. Under the old rules there were 52,114 federal workers with the power to classify. Now there are 20,695, a 60 percent reduction.

In the Defense Department alone the number has been cut from 30,542 to 8,809. The State Department total is down from 5,435 to 2,233. Those with top secret stamps government-wide is down 77 percent, from 7,134 to 1,671. About half are in the Defense Department.

But reducing the number of classifiers is no guarantee the number of documents classified will drop, hence the new regulation.

Classifiers now must identify themselves by title when they stamp documents. Government monitors call this an "Audit trail" so auditors can later track down those guilty of over" or under-classifying.

The regulation also is full of reminders to set a declassification date that will arrive sooner than the automatic declassification date. Classifers are, in effect, asked to balance the values of non-classification against the benefits of classification. The automatic declassification date now is a maximum of 10 years, instead of the old 12, from the classification date.

Nothing may be classified for more than 30 years under the new rule, and anyone may ask that a document by declassified after 10 years. The declassification request must be decided quickly. Only classifiers with "top secret" stamps may grant exemptions to the 10-year rule.

The old regulation allowed classification if information "could" damage the interests of national defense. Now information "must reasonably be expected to damage the interests of national defense or foreign relations."

Behind the new concepts are potential teeth.

An Interagency Classification Review C o m m i t t e e (ICRC), headed by former ambassador John S. D. Eisenhower, is responsible for seeing that the regulation is followed. ICRC already has asked the National Archieves to set up a quarterly reporting system by Jan. 1 to see how well the regulation is working. Computers keep track of classified documents.

Department inspectors are checking up on classifiers and the General Accounting Office, the federal watchdog, may be asked to make and annual random audit.

The top secret stamp may be used only when information would "reasonably be expected to cause exceptionally grave damage;" secret, "serious" damage, and confidential, "Damage."

The Pentagon already has received 60 or 70 requests for declassification, but Declassification request forms haven't been devised yet.

SAN DIEGO, CAL.
UNION
M - 139,739
S - 246,007
AUG 1 5 1972

STAT

Author Reveals Secret Papers Open To Public

By KIP COOPER
Military Affairs Editor
The San Diego Union

Top secret government papers are available to anyone who wants to read them in the libraries of major universities, a former CIA employe said here yesterday in an interview.

R. Harris Smith, author of the newly published book "OSS — The Secret History of America's First Central Intelligence Agency," said there are "hundreds of boxes of the stuff" at Stanford University where he did some of his research.

He said he saw some documents he considered so sensitive he suggested they be taken out of the public files and properly guarded.

"An enormous amount of top secret and secret information has been deposited in university libraries by former employes of the government," he said.

"You can walk in and read it, anybody can," he said.

RECENT REPORTS

Smith said much of the material was taken by people after World War II, but that some of it is less than 20 years old and "some of it is very recent." Some of it includes recent CIA reports on the Chiang Kai-shek government, he said.

"They (government employes) just stuffed the material in their cars and took it home with them," he said. "Later, they left it with their papers in bequests to various universities. There's a lot of it floating around. And it still has top secret and secret stamps on it."

Smith said he used classified papers from "five very large boxes" from collections of papers in the Stanford University library.

Some of the collections Smith credits in his book as sources of information are Charles W. Thayer, Preston Goodfellow, Leland Rounds and Milton

LEAVES CIA

Now a lecturer in political science at the University of California, Smith resigned from the Central Intelligence Agency in May, 1968 after serving a year as an analyst.

He said the freewheeling activities of the OSS, in which insubordination was a way of life, undoubtedly contributed to French resistance to the U.S. role in Vietnam today.

"The OSS team in Hanoi in 1945 were anti-colonialists who felt that Ho Chi Minh deserved U.S. support," he said. "Some of the French intelligence agents there who were snubbed by the OSS then became high officials in the De Gaulle government and they have never forgotten the OSS role there."

Smith said there is a "very common belief" in Washington that French intelligence agents "are supporting the North Vietnamese" in the current conflict.

GLENDALE CALIFORNIA NEWS-PRESS
15 August 1972

STAT

Top secret papers found 'on public library shelves'

SAN DIEGO, Calif. (AP) — An "enormous amount" of top secret and secret government papers is available to the general public in libraries of major universities, says an author and former employe of the Central Intelligence Agency.

R. Harris Smith, author of the recently published "OSS: The Secret History of America's First Central Intelligence Agency," said his research for the book included reading classified papers he found at Stanford University.

There are "hundreds of boxes of the stuff" at Stanford, including some documents so sensitive that Smith suggested to university officials they be removed from the public files and properly guarded, he said in an interview Monday.

"An enormous amount of top secret and secret information has been deposited in university libraries by former employes of the government," said Smith, a former analyst for the CIA. "You can walk in and read it—anybody can."

Government employes "just stuffed the material in their cars and took it home with them," he said. "Later they left it with their papers in bequests to various universities. There's a lot of it floating around. And it still has top secret and secret stamps on it."

Smith said much of the material he saw dealt with pre-World War II topics but that some of it was less than 20 years old and "some of it is very recent."

STAT

SALEM, ORE.
JOURNAL

E - 24,360
AUG 7 1972

Gains in war on secrecy

The 25-year struggle to gain control of the secrecy machine finally is paying off.

The White House has announced that the program to reduce the amount of classification of papers is on the move. Already the number of people empowered to stamp a document secret (or top secret or confidential) has been more than cut in half.

Theoretically, if you reduce the number of people with such authorization you reduce the number of papers so stamped. And everybody agrees that far too much of the millions of tons of paper turned out by federal agencies has been hidden from the public.

Two months ago, according to White House figures, 43,586 people in the federal government had classification powers. In 60 days that number has been reduced to 16,238. And the beat goes on. Presumably when the program is done there will be only 10,000 or so.

But the White House doesn't say whether these figures include military people in the field. We doubt it. And we aren't too concerned, anyway. If there's any excuse for secrecy, that's where it is, and it would be a bit ridiculous to reduce the numbers too greatly there.

But the whole struggle to make public information public is likely to be a sham in the end. For example, the above figures definitely do not include the Central Intelligence Agency. The White House will say only that the number of CIA people allowed to stamp documents has been reduced by 84 per cent.

The reason is that all personnel files in the CIA are stamped top secret. We can't find out if the committee which is overhauling the classification system has access to them even in statistical form.

We applaud the effort, however. It can't but have helped.

But we still are cynical. We recently tried to find out if some specific World War II documents had been declassified at least. We learned that the index to these documents — which would tell us which ones we could read — was classified.

NEW YORK TIMES
5 AUG 1972

Senator Proposes Bill to End Secrecy In the Government

By MARJORIE Hunter
Special to The New York Times

WASHINGTON, Aug. 4 — Senator Lawton Chiles, criticizing Government decisions made in secret, proposed today what he called a "government in the sunshine" law.

The Florida Democrat said that his bill would virtually eliminate secret meetings in Congress and the executive branch of Government.

The bill would require open meetings if all Congressional committees and Government agencies except in matters relating to national security and defense, matters required by other law to be kept confidential, matters relating solely to an agency's internal management and disciplinary proceedings that would adversely affect an individual's reputation.

"Sin I came to the United States Senate last year," he said, "I have become very disturbed by the great amount of public business I have found being conducted behind closed doors and by the attitude of secrecy I've seen in our Federal agencies."

His stand against Gvernment secrecy reflected the feelings of a number of younger members of the Senate and the House, but the outlook for passage of his bill is believed to be slim at this time.

However, with a number of elderly members retiring from Congress at the end of this year, some reformers view the Chiles bill as the possible basis for change in the years ahead.

The bill was patterned along the lines of the "government in the sunshine" law passed in Florida in 1967 when Mr.Chiles was a member of the State Senate.

NEW YORK TIMES
4 AUG 1972

Washington: For the Record

Aug. 3, 1972

THE PRESIDENT

Intelligence. President Nixon announced the appointment of John B. Connally as a member of his Foreign Intelligence Advisory Board. Mr. Connally, former Secretary of the Treasury, previously served on the board.

U.N. The President announced the appointment of Philip E. Hoffman of South Orange, N.J., to be the representative of the United States on the Human Rights Commission of the United Nations. Mr. Hoffman, 63 years old, succeeds Rita E. Hauser, who has resigned.

Activities. The President saw John S. D. Eisenhower, chairman of the Interagency Classification Review Committee, and received a progress report. He also met with the former professional football player Ollie Matson and his family.

MAJOR POSITIONS

Education. The President nominated Dr. Sidney P. Marland Jr. of New York to be Assistant Secretary for Education. Dr. Marland, 59 years old, has served as Commissioner of Education since December, 1970.

WASHINGTON POST
4 AUG 1972

STAT

Report Shows 63% Decrease In Those Allowed to Classify

By Elsie Carper
Washington Post Staff Writer

The number of federal employes authorized to stamp papers "top secret," "secret" or "confidential" has been cut substantially, President Nixon was told yesterday.

John Eisenhower, chairman of the Interagency Classification Review Committee, delivered a report to the President showing that the number of persons authorized to classify national security information has been reduced 63 per cent, from 43,586 to 16,238 in the past 60 days.

Eisenhower, son of Dwight D. Eisenhower and father of Mr. Nixon's son-in-law David Eisenhower, was named chairman of the committee last May following his resignation as ambassador to Belgium.

The number of employees authorized to classify a document "top secret" has been reduced 53 per cent, from 2,275 to 1,076. The number allowed to classify "secret" was cut 39 per cent, from 14,316 to 8,671, and the number that could classify "confidential" was reduced 76 per cent, from 26,995 to 6,491, according to the report.

The figures do not include the Central Intelligence Agency which has made an overall reduction of 26 per cent and a reduction in "top secret" of 84 per cent, the White House said.

The biggest reduction was at the Pentagon, where 30,542 employees had been authorized to classify papers. That number has been reduced to 8,809.

The President signed a directive last March designed to restrict the amount of material classified by the government and to speed up the process of making classified documents public. The committee was established to implement the order.

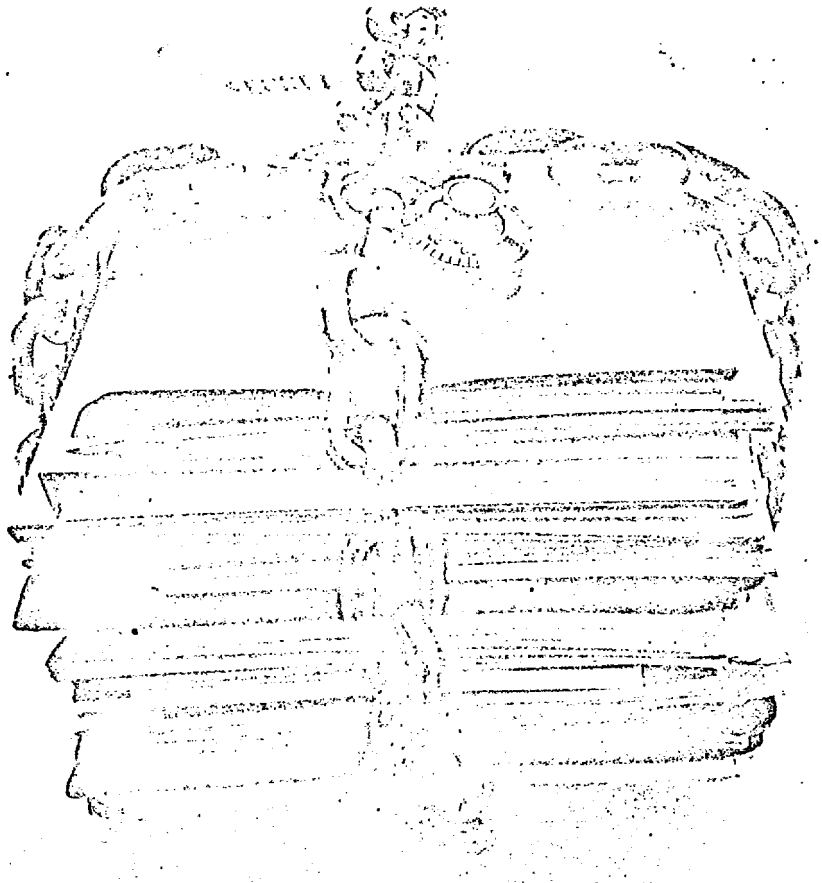
For the first time, departments were required to designate in writing persons having authority to classify documents. The White House said that this, along with the new requirement that the classifier be identified on each document, was expected to substantially reduce the amount of information classified.

The White House said that an effort is now being made to determine how many papers have been declassified under the order. The job is sizable since some 760 millions pages of documents were classified in the 20-year period from 1942 to 1962. The President's order established timetables of 6 to 10 years for automatic declassification of most documents.

CLASSIFIED FILES: The Yellowing Pages

A Report on Scholars' Access to Government Documents

By Carol M. Barker and Matthew H. Fox



The Twentieth Century Fund/New York/1972

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Continued

THE CASE OF THE PAPERS

THE PAPERS & THE PAPERS: AN ACCOUNT OF THE LEGAL AND POLITICAL BATTLE OVER THE PENTAGON PAPERS, by Sanford J. Ungar. E. P. Dutton. 319 pp. $7.95.

reviewed by Arthur S. Miller

If anyone still believes that the Supreme Court's decision in the Pentagon Papers case was a resounding victory for the press, he had better think again. Even better, he should read Sanford Ungar's *The Papers & The Papers.* Ungar, a reporter for *The Washington Post*, has written the first complete account of the struggle to publish the study, commissioned by Robert McNamara, of that dismal swamp of ill-conceived and misbegotten American policy, the Vietnam "war."

True, *The New York Times* and *The Post* did win—surely better than losing. But the victory came at the highest price yet paid in defense of the First Amendment. For the first time in American history, a prior restraint on publication was laid upon newspapers by court injunctions. That, as Ungar says, is a "rather hollow victory," a judgment concurred in by a high Justice Department official who is quoted as saying, "We proved one thing emphatically, that there *can* be prior restraint of publication while a case is being reviewed in the courts." So the hosannas should be muted, particularly with the addition of Lewis Powell and William Rehnquist to the Supreme Court.

Were that all to the case of the Pentagon Papers, it would hardly deserve book-length treatment. But this well written and essentially fair-minded account of the imbroglio points up other deeply important and, at times, disturbing matters. There is much fodder for reflective thought here; to me, the real value of the book lies in what it suggests rather than in what it details. An illustrative listing will have to suffice:

SELECTIVE ENFORCEMENT OF THE LAW. Was it merely fortuitous that the Government sued only those four newspapers that had been critical of the Administration? That would strain credulity to the breaking point. Other newspapers, including *The Los Angeles Times* (essentially a pro-Nixon organ), printed the Papers. Add the strict hands-off attitude toward Jack Anderson's revelations and it is difficult not to conclude that the Justice Department used law for political ends. If that is at least partially accurate, as I think it is, it presents a nasty picture of a "law-and-order" Administration.

THE SECURITY PHOBIA OF GOVERNMENT. Without doubt, much of the material in the Papers was absurdly over-classified. Classification helps to insulate the bureaucracy from revealing mountains of data to which the people are clearly entitled. Without access to information, there can be little or no public accountability for decisions taken. (For that matter, it is noteworthy that rather than being held strictly to account for errors of omission and commission, those who immersed the United States into Vietnam have usually been rewarded by "the system" with lucrative or prestigious jobs out of government —an interesting commentary on the state of the union today. Ungar quotes William Florence, former Air Force security expert, as saying [illegible] more than ninety-nine and [illegible] cent of documents classified [illegible] tional security reasons could be disclosed without being "prejudicial to the defense interests of the nation." Surely it would be difficult to prove that publication of the Papers has in fact harmed the nation.

THE POSTURE OF THE LAWYERS. After the dust had settled from the case, both *The Times* and *The Post* fired their lawyers. And well they should have. Both firms seemed to act more like counsel for the Government than for the newspapers. At eleven the night before the first appearance in court, *The Times'* lawyers quit the case, necessitating frantic efforts to recruit replacements (who had to appear in court with little preparation). That is odd legal behavior, to say the least. As for *The Post,* one Roger Clark, a member of the firm formerly headed by Secretary of State William Rogers, seemed to be more interested in suppressing publication than in finding ways to justify it. Further, according to Ungar, *The Times* paid out $150,000 in legal fees—a sobering lesson in the cost of litigation. Defense of the First Amendment is expensive.

THE SUPREME COURT. Each of the justices found it desirable to write an opinion. Some, particularly Chief Justice Warren Burger and Justice Harry Blackmun, went out of their way to discuss matters not relevant to the decision. They, with Justice Byron White, all but invited the Justice Department to file criminal charges. Burger (and others) were bitter about the haste in which the decision was rendered (something that didn't trouble them at other times—for example, the Amchitka bomb-test case). But then, serious students of the Court know that the justices view consistency as a convenience rather than a necessity.

THE RESPONSIBILITY OF THE PRESS. The analogue to selective enforcement of the law is selective printing of news matter. Ungar relates how *The Post* failed to publish clearly newsworthy material, once when Burger met two *Post* reporters at his home (at about

continued

THE NEW REPUBLIC

What You Don't Know

When the Pentagon Papers became an open book last summer, followed by a flurry of inquiries about the stacks of still secret information, most everyone who bothered his head about the security classification system agreed it overclassified and then too often failed to declassify, hiding too much from the public, press, Congress, historians. Its costs were estimated at a minimum of $126 million a year; it was manipulated for political aggrandizement, making it too easy and tempting for those with access to publicize half-truths that made them look good, while burying the half-truths that didn't.

Then last March President Nixon issued Executive Order 11652, speeding up declassification, cutting back the number of agencies and individuals with the authority to classify, and reducing the number of your-eyes-only documents. The order also established an Interagency Classification Review Committee to administer the order and threatened disciplinary action for "repeated abuse of the process through excessive classification."

But Rep. William Moorhead (D, Pa.), chairman of the House Foreign Operations and Government Information Committee, and Senator Muskie, chairman of the Senate Intergovernmental Relations Committee, were not satisfied. Moorhead said the order is "a document written by classifiers for classifiers." He has held 30 days of hearings on the subject and introduced his own bill to further accelerate declassification, limit the power to conceal, and establish an independent commission to administer the classification system. Muskie's Truth in Government Act is similar.

The issue is this: who will have final authority over the classification system—those who have the information or an independent commission? Nixon's administrative committee consists of members of agencies which stamp the documents: State, Defense, Justice, the CIA, the Atomic Energy Commission and the National Security Council. Moorhead wants a review commission of three members appointed by the speaker of the House, three by the president pro tem of the Senate, and three by the President. It would settle disputes between members of Congress, the public or the press and the executive branch over what's to be made public and what's not and would hear requests from classifying agencies that want to keep information classified longer than usual. Muskie's proposed board would include representatives from the White House, the Congress and the press, but would give the President ultimate power to review any board decision. The real difference provided by an independent board would be apparent when a congressman or reporter asked that certain information be declassified: the decision would come not from the individual in the State or Defense bureaucracy who has the information, but from a disinterested commission conducting a hearing.

Speed is also at issue. Nixon's order allows "top secret" material to be declassified after 10 years, "secret" after eight and "confidential" after six. Moorhead's scale runs three, two and one, and Muskie's starts at two years for the "least sensitive" information and ranges up to 12 for the "most sensitive." All include a "savings clause." Under the Moorhead and Muskie proposals the executive branch, with the approval of the commission, could keep documents secret for longer periods of time. Under the Nixon order, agencies can hide documents longer than 10 years, but must review their decision if specific classified information is requested from them. The categories which can be kept secret forever include information "the continuing protection of which is essential to the national security." Moorhead has questioned the broad wording of this clause.

In dispute also is whether, when and how an individual can challenge classification of a document. Under the Nixon order one must ask for a document (it must be over 10 years old) "with sufficient particularity to enable the department to identify it," and then hope that "the record can be obtained with only a reasonable amount of effort." At that point one may or may not be allowed to see the document, depending on the department's interpretation of "national security." Members of Congress have complained that it's hard to know enough about what is classified to identify exactly what one wants to see, let alone know that such a document exists. Under the Moorhead and Muskie plans the independent commission could help individuals locate what they want and would ensure that a denial of access was justified. Anyone successfully appealing declassification of an item could have his court costs and attorney's fees paid out of public funds.

Declassification is not the final hurdle however. The executive branch may (and does) still hold information from Congress and the public under the cover of executive privilege. The Muskie bill states that declassified documents cannot be held under this privilege, and that even "top secret" documents could be ordered sent to Congress by the courts, though only for closed meetings. This "protective order" practice has been relatively common in Congress.

Senator Fulbright has a separate bill requiring anyone invoking executive privilege to bring a written letter from the President, thus making the President himself directly responsible for withholding information. No presidential letter, no funds for the agency in question.

None of these bills has yet been reported out of committee, but if the Democrats choose to stand firm on their platform pledge to "make information public, except when real national defense interests are involved," they can lay the groundwork for action next year.

WASHINGTON POST
27 JUN 1972

The Washington Merry-Go-Round

The Government Secrecy Syndrome

By Jack Anderson

The custodians of government secrets are gnashing their teeth again over our access to the still-secret portions of the Pentagon Papers. These show how Lyndon Johnson tried to bring pressure upon Hanoi to negotiate a Vietnam settlement by orchestrating the air raids against the North.

He would withhold the bombs for awhile, hoping this would encourage the North Vietnamese to negotiate. Then he would let the bombs fly again when he thought they needed some prodding.

Sometimes, he stepped up the bombing at crucial stages of the secret negotiations. Repeatedly, Hanoi would halt the talks because of the military pressure.

After his retirement, President Johnson published selective excerpts from the secret papers to demonstrate how right and reasonable he had been. He omitted the portions that made him look wrong and unreasonable.

President Nixon also released sensitive information, strictly for political reasons, about Henry Kissinger's secret Vietnam negotiations. The President used the information to reply to his critics.

The power to classify information must be recognized for what it is. It is nothing less than the absolute authority of the government to make a state secret of whatever it wishes. This divine right to classify documents has been abused to a degree beyond toleration.

Not only does the government sweep its bungles and blunders, its errors and embarrassments under the secrecy labels. But our entire foreign policy and defense posture remains secret except for what the federal establishment thinks is in its own interest to make public.

The tragic, bitter lessons of Vietnam have shown the fateful consequences of allowing any president to exercise power in spendid isolation behind the double walls of executive privilege and official secrecy.

We will continue, therefore, to publish information that the government seeks to hide from the public by classifying.

Soviet Role

The unpublished Pentagon Papers, for example, shed new light on the Soviet role in the Vietnam negotiations. The Kremlin, after showing no interest in settling the war, suddenly adopted a different attitude in 1967. Soviet Premier Alexei Kosygin made the new attitude known during a London visit.

"The British were first startled, then delighted to find Kosygin eager to play an active role as intermediary between the U.S. and Hanoi . . .," state the papers. "There was definitely a sharp change from previous Soviet reluctance to play the middleman. . . .

"What produced this change in Soviet attitudes? Were they acting on DRV (North Vietnamese) behest? Or were they now willing to put pressure on Hanoi in pursuit of their own?

"Only a little light is shed on these questions by the materials relating to Kosygin's stay in London. He was apparently willing to transmit proposals for DRV consideration more or less uncritically. While he argued the general merits of the DRV's side of the war, he did not try to bargain or alter specifics of the proposals transmitted to him. . . .

"What is more striking is that he did not react adversely to the substance of the principal de-escalatory proposal under discussion---the termination of all DRV infiltration and supply into SVN in exchange for a U.S. halt in attacks on the North and in troop level augmentation.

Intercepted Call

"Entirely apart from the sequence in which these steps would be taken, their long-term result for the Communists would be extremely adverse militarily. Yet on Feb. 13, he was overheard (by telephone intercept) to tell Brezhnev (the Communist Party chief) of 'a great possibility of achieving the aim, if the Vietnamese will understand the present situation that we have passed to them; and they will have to decide . . .'

"In a retrospective discussion with Thompson (then the U.S. Ambassador) in Moscow, Kosygin expressed a jaundiced view of the role of mediators, saying they either complicated the problem or pretended they were doing something when in fact they were not.

"He had stepped into this uncomfortable spot in London because 'the Vietnamese had for the first time stated they were ready to negotiate if the bombings were stopped unconditionally; this was the first time they had done so. . . .'

"How much the Russians had hoped in fact to accomplish during Kosygin's London trip is impossible to know. They apparently harbored few expectations after his return. Kosygin complained to Thompson about the 'ultimatum' implied in the final proposal he transmitted to Hanoi from London, saying that he knew it was hopeless the minute he read it. . . ."

This incident illustrates how little influence the Kremlin had over the North Vietnamese. It was the beginning, however, of an increased Soviet interest in ending the Vietnam War.

WASHINGTON POST

24 JUN 1972

STAT

Ellsberg Judge Rejects U.S. Motion

By Sanford J. Ungar
Washington Post Staff Writer

LOS ANGELES, June 23 — U.S. District Court Judge W. Matt Byrne Jr. today rejected the Justice Department's effort to ban discussion of freedom of the press during the trial of Daniel Ellsberg and Anthony Russo on charges growing out of disclosure of the top secret Pentagon papers.

During a long day of courtroom debate over ground rules for the upcoming trial of Ellsberg and Russo on conspiracy, theft and espionage charges, Judge Byrne refused the prosecution's request that strict controls be put on defense counsel in the case.

The prosecution had asked that all defense attorneys be forbidden from mentioning in front of the jury such subjects as "any so-called public right-to-know," any views of "the morality or desirability" of U.S. involvement in Vietnam or the leaking of government documents by others.

Leonard B. Boudin, representing Ellsberg, complained in court that the prosecution's "unusual proposal" amounted to a request for "prior restraint" on the lawyers.

The judge agreed, but left open the possibility that he might later restrict the topics which defense lawyers are permitted to discuss in the presence of the jury.

Byrne and chief prosecutor David R. Nissen have clashed previously on the question of whether freedom of the press is an issue in the Ellsberg-Russo trial.

Although the prosecution insists that freedom of the press and the war in Vietnam are irrelevant to the case, it has demanded the right to ask all potential jurors what newspapers they read and how they feel about the war.

During today's court session — one of a series in which final pretrial issues are being thrashed out — Byrne lost patience on several occasions with lawyers on both sides and addressed them harshly.

Nissen, when his position was ruled against, snapped back at the judge and warned about the "detrimental" effect his rulings might have.

Among Judge Byrne's other rulings in the case today:

• He rejected Russo's request to be declared a "pauper" so that the government would pay the cost of bringing his witnesses to Los Angeles and of providing him with daily transcripts in the case.

• He granted a defense request that the jury, once empaneled, be permitted to take notes on the testimony of witnesses and the legal arguments.

At the same time, however, Judge Byrne turned down the defense suggestion that the jurors also be permitted to pose their own questions to witnesses. Attorney Leonard Weinglass, representing Russo, had argued that the jurors have a right to "participate" actively in the trial.

The judge also said he would personally conduct the preliminary questioning of prospective jurors, rather than permitting the lawyers to do it, as requested by the defense.

• He refused to split the case into two separate trials, one on the conspiracy charge and one of the charges of theft of government property and violations of the Espionage Act, as sought by the defense.

• He rejected a defense claim that the government had prejudiced the case by shifting back and forth between different theories of whether it was "documents" or "information" that Ellsberg and Russo allegedly stole from the government.

The defense argues that in order to convict the defendants of theft, the prosecution should be required to show that the government suffered "substantial deprivation" of the contents of the Pentagon papers.

• He ruled that the government must specify more precisely what it means by charging that Ellsberg illegally "converted" the history of American involvement in Southeast Asia.

Thus far, the prosecution has said only that the "conversion" occurred in Los Angeles during an eight-month time period when Ellsberg and Russo photocopied the Papers.

• He said the prosecution must produce any existing inside-government memoranda assessing the effect that disclosure of the papers by newspapers last summer had on national security.

• He required the defense to make an affirmative showing of why it needs a secret CIA document concerning alleged violations of the Espionage Act which were never prosecuted, before the prosecution will be ordered to produce it in court.

• Over Nissen's strenuous objections, he required the prosecution to give the defense all fingerprints found on the copy of the Pentagon papers photocopied by the defendants, rather than only the ones the government intends to use in the trial.

Byrne also rejected a defense effort to keep out of evidence a 600-page government log of public statements made by Ellsberg and Russo since they were indicted.

He said he did not agree with Boudin's argument that it is an "illegal" violation of the First Amendment for FBI or other government agents to attend public speeches with the sole intent of taking notes on what alleged violators of the law say.

STAT

Ellsberg Defense to Call 18 to Stand to Prove Leaks of Secrets Are Common

STAT

By ROBERT A. WRIGHT
Special to The New York Times

LOS ANGELES, June 7—The defense in the Pentagon Papers case said today that it would call 18 witnesses, including former special assistants to Presidents, staff men from the White House, Department of Defense and the Central Intelligence Agency as well as Washington newspaper correspondents, to prove that the leaking of classified Government documents was a common practice.

The potential witnesses were described but not named in an affidavit requested by Judge William Matt Byrne Jr. to support a defense motion for a pretrial hearing. The defense seeks the hearing on its motion to dismiss the indictment on the ground that it constitutes discriminatory prosecution.

The indictment charges the defendants, Dr. Daniel Ellsberg and Anthony J. Russo Jr., both former employes of the Rand Corporation, which did research for the Department of Defense, with stealing and releasing classified Government documents.

The defense lawyers, Charles E. Goodell, the former Senator from New York; and Charles Nesson, charged in the affidavit that "defendants" were singled out for prosecution according to a principle of selection which is invidious, discriminatory, and constitutionally impermissible."

Assertion in Affidavit

While the defendants are charged with having committed the alleged crimes between March, 1969, and September, 1970, it was not until after the publication of the Pentagon Papers by The New York Times on June 13, 1971, that the Government issued a complaint against Dr. Ellsberg, the affidavit asserts.

The defense said a former Government official who is expert in security matters would testify that the classified materials involved in this case were less sensitive in terms of national defense relationship than the bulk of classified material regularly leaked. The so-called Pentagon Papers are a record of intra-government debate on the United States's involvement in the Vietnam war.

The defense affidavit describes five witnesses as journalists, one as a former C.I.A. employe with high responsibility related to the Far East and Vietnam, and one as a close confidante to a former President.

Other prospective witnesses were described as follows: Occupied a high position in Washington within the last 10 years, a former member of the White House staff, a former official of and a former legal adviser to the Department of Defense, a former special assistant in the State Department and Far Eastern adviser to the National Security Council, a diplomatic historian, a member of Congress "who is chairman of an important committee that has dealt over the years with the classification system and had direct responsibility and jurisdiction over significant aspects of our involvement in Vietnam," a former high Government official and a retired archivist.

In an attached affidavit, William G. Florence, former Deputy Assistant for Security and Trade Affairs for the Air Force and a formulator of security regulations, indicates that he will testify to specific instances of leaks.

NEW YORK TIMES
6 JUN 1972

HEARING IS ASKED IN ELLSBERG CASE

His Lawyers Seek to Show That Leaks Are Routine

By ROBERT A. WRIGHT
Special to The New York Times

LOS ANGELES, June 5—Lawyers for Dr. Daniel Ellsberg and Anthony J. Russo, who are accused of stealing the Pentagon papers, argued in a Federal court today that the court should permit a pretrial hearing of witnesses that would show that leaks of classified Government documents were a routine practice of Washington officials.

Charles Nesson, one of Dr. Ellsberg's five lawyers, argued that the evidence would show that the prosecution of Dr. Ellsberg and Mr. Russo was discriminatory.

Both Dr. Ellsberg and Mr. Russo had access to classified Government documents when they were employes of the Rand Corporation, which did research for the Department of Defense. Dr. Ellsberg has admitted giving copies of the Pentagon papers—a recapitulation of intergovernmental debate on the United States involvement in the Vietnam war—to the press.

David R. Nissen, the Department of Justice prosecutor, opposed the hearing on the ground that discriminatory prosecution had never been held a proper defense in Federal courts.

Federal District Judge William liam Matt Byrne Jr. took the arguments under submission, calling for affidavits from the defense attorneys by Thursday that would specify elements of proof that they thought would be provided by a pretrial hearing.

May Take Several Days

The arguments came on the first day of oral arguments on pretrial motions before Federal District Judge William Matthew Byrne Jr. The defense has entered seven motions for dismissal. Although both sides have submitted voluminous briefs, the pretrial arguments are expected to take several days and Judge Byrne is not expected to rule until Wednesday on whether a pretrial hearing is proper.

In the first argument today, Gerald Uelman, a lawyer for Dr. Ellsberg, attempted to convince the court that the charges should be dismissed because the indictment had not been properly signed.

The indictment was signed by Mr. Nissen, and the defense contended that, as a Special Assistant Attorney General, he was not authorized under law to do so. Mr. Uelman argued that Robert L. Meyer, former United States Attorney in Los Angeles, had refused to sign the Federal indictment and that Mr. Nissen had no authority to do so.

Mr. Nissen replied that his appointment as a Special Assistant Attorney General authorized him to carry out all functions that are properly delegated by the Attorney General, including the signing of an indictment.

Told to Work It Out

Judge Byrne asked that the prosecution and defense work out procedures under which an affidavit from Mr. Meyer might be submitted to the court.

In arguments for the pretrial hearing, Mr. Nesson said the defense would produce witnesses who would showthatthe use of classified Government documents for personal use and the leaking of them to the press was a common practice among Government officials.

Mr. Nesson said, "we will present a picture of a system which had extremely elaborate technical specifications which, if followed, would bring our government to a halt."

Judge Byrne said he was inclined to agree with the defense brief, but called on Mr. Nesson to be more specific on the points of proof a hearing might provide.

Mr. Nesson said he was prepared to offer an affidavit from Max Frankel, Washington Bureau chief of The New York Times, that would document routine leaks of classified information to the press.

Mr. Nessen countered that there were no cases in precedent permitting discriminatory prosecution as a defense in Federal cases.

"A person guilty of a crime cannot be excused simply because others who are guilty are ot prosecuted,' he said. "The answer is not to let everybody go, but to let the prosecutor go."

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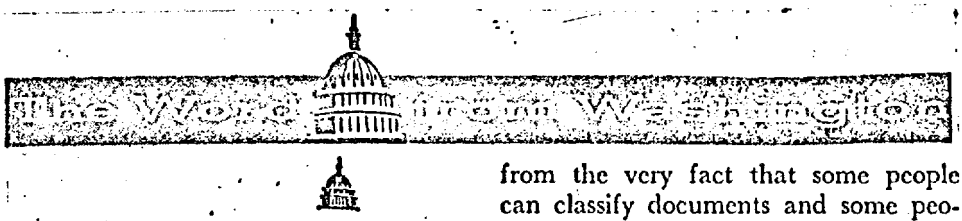


The Government's obsession with secrecy is not confined to current or recent military operations. A former CIA official named Victor L. Marchetti, who left the agency in 1969, is under court order not to speak or write about his past experiences. The search goes on for those who may have aided or abetted Daniel Ellsberg in disclosure of the Pentagon Papers.

The latest secrecy flap centers on the series of Vietnam status reports prepared for the Nixon Administration early in 1969, known officially as National Security Study Memorandum Number One, and unofficially as the Kissinger Papers. (The whereabouts at any given moment of the widely traveled Henry M. Kissinger is now officially classified as a State Secret.) Even the Senate of the United States, which presumably has a modicum of interest in the circumstances surrounding the war, cannot bring itself to place the Kissinger Papers on the public record, though their contents have long since been printed in the press.

When Senator Mike Gravel, Democrat of Alaska, proposed to put the Papers into the *Congressional Record,* the Senate went into secret session to discuss the question of secrecy. Gravel observed that when he was a twenty-three-year-old first lieutenant in the U.S. Army, he had the power to classify documents "Top Secret," and therefore keep their contents from the Senate and from the people of the United States. "In fact," he added, "we have over 200,000 people in this country who classify and declassify information which we in this body do not see. . . . How can we fulfill our role as policymakers if we are not informed as well as the President?" In a democracy, Gravel suggested, the risks of an informed legislature and an informed citizenry must be endured, "because we develop an autocracy from the very fact that some people can classify documents and some people can make determinations of what is right and wrong."

But most of Gravel's colleagues displayed no interest in debating such fine points of philosophy. Senator Barry M. Goldwater, Arizona Republican, spoke for many of them when he declared: "Each one of us has an obligation to respect classification. I do not know that there is a law that requires us to do it, but I know the FBI goes into us very carefully before we are given the right to receive or be briefed on or read anything classified. I thought it was a disgrace this morning when I read that Jack Anderson and *The New York Times* had received a Pulitzer Prize. If they can get away with that and if, with all due respect, the Senator from Alaska can get away with this, there is not going to be anything left in the U.S. Government that is secret." Horrors!

As it turned out, the Senate spent the better part of five hours debating not the issue of publishing the Kissinger Papers, or the broader problem of Government secrecy—both were left unresolved—but the urgent question of whether the transcript of its own secret session ought to be made public. It finally was, though Senator Charles Percy, Illinois Republican, warned: "If this whole record were published, I think we would have a hard time explaining how we spent four hours, with many, many problems this nation faces. . . . I would be ashamed, having been a member of this body, for going through this procedure." He had a point there.

Since it is obviously incapable of dealing with such big issues as war and secrecy, perhaps the World's Greatest Deliberative Body ought to stick to the little things it does so well —revising the national motto, for instance, so that it more accurately reflects the spirit of the Republic. "None of Your Damned Business" might be an appropriate slogan to inscribe on the coinage and currency of these United States. Or, simply, "Shhh!"

WASHINGTON POST
26 MAY 1972

STAT

Plan Would Declassify U.S. Papers

By Richard L. Lyons
Washington Post Staff Writer

Rep. William Moorhead (D-Pa.) proposed legislation yesterday creating new machinery to classify defense and diplomatic secrets and make public most other government documents.

The present classification program, which has placed secret or confidential stamps on millions of documents, operates under executive orders issued by the President rather than by act of Congress. A new order which the administration said will mean fewer classified documents — but which critics say will mean more — takes effect June 1.

Moorhead is chairman of the House Subcommittee on Government Information, which has been fighting official secrecy for 16 years.

A key feature of his bill would be an independent Classification Review Commission — two-thirds appointed by Congress and one-third by the President — which would have great power to decide what documents were entitled to be kept from public or congressional view.

The commission, subject to review by the federal courts, would decide (1) whether Congress was entitled to see a classified document it requested, and (2) whether the President could invoke executive privilege and refuse to furnish Congress with unclassified but confidential documents.

The bill provides for automatic declassification of documents over a maximum period of three years unless the classifying agency can persuade the review commission that they should continue to be secret.

Classified documents would be downgraded one level each year. It would take three years for a "top secret" document to move through "secret," and "confidential" and then into the public domain.

WASHINGTON STAR
23 MAY 1972

Court Bars Writings by Ex-CIA Man

By NED SCHARFF
Star Staff Writer

A federal judge in Alexandria has issued a permanent injunction forbidding former Central Intelligence Agency member Victor L. Marchetti to write or talk about his experiences with the CIA.

U.S. District Judge Albert V. Bryan Jr. ruled that Marchetti's attempts to write analytical articles about the agency were in violation of secrecy contracts he signed before going to work there in 1955 and before his resignation in 1969.

The CIA asked the court to restrain Marchetti's publishing activities last month after it confiscated an outline for a factual article, "Twilight of the Spooks," which Marchetti was writing for Esquire Magazine.

The restraining order will prevent Marchetti, 42, of Vienna, Va., from writing anything about what he learned at the CIA while employed there. It also covers three television interviews Marchetti already taped.

Attorneys for Marchetti's defense had argued that silencing him would be an abridgement of First Amendment rights. But Bryan ruled that the secrecy contract signed by Marchetti "constitutes a waiver of the defendant's right . . . and renders (the case) no more than a usual dispute between an employer . . . and employe."

During the month-long trial, most of which was closed to public and press because of the classified material being discussed, Marchetti's lawyers said, they argued that the CIA's methods of classifying material are arbitrary and capricious. Bryan ruled those arguments irrevelant.

"It is not the role of the court to determine whether material should be classified . . . by contract the defendant has relegated that decision to the CIA," Bryan said.

Marchetti said he resigned two years ago because of personal feelings about his work there.

ALEXANDRIA GAZETTE

STAT

23 MAY 1972

Judge Puts Stop Order On CIA Data

By Douglas L. Pardue
Staff Writer

Ruling that the defendant signed away his constitutional right to freedom of speech when he took employment with the Central Intelligence Agency, U.S. District Court Judge Albert V. Bryan Jr., has ordered a permanent injunction on all writings and lectures of a former agent who has authored material critical of the security agency.

In his nine-page decision, which was handed down late Friday, Judge Bryan noted that the defendant, Victor L. Marchetti of Vienna, who quit the CIA in 1969 after 14 years as a CIA agent, signed two secrecy agreements which contractually prohibit him from discussing anything, based on his experiences in the CIA.

Marchetti's attorney, Melvin Wulf, an American Civil Liberties lawyer, argued during the case, heard in closed court because of classified material discussed, that Marchetti's First Amendment right to freedom of speech supersedes any contractual agreements. Consequently, he argued, Marchetti has the right to write or give lectures based on his experiences in the CIA.

Marchetti, who admitted his writings are based on his experiences in the CIA, said during the trial that he exercises restraint and has not revealed anything which in his opinion could harm U.S. security. He said his writings are intended to point out what he feels are transgressions by the CIA of its function.

The case, said Wulf, is similar to the Pentagon Papers case in that the CIA is trying to exercise prior restraint and because Marchetti is trying to expose actions by the spy agency, which have nothing to do with U.S. security and which are potentially harmful to the rights of U.S. citizens.

Bryan denied Wulf's argument stating that "it is not the role of the court to determine whether material should be classified or whether, even if classified, its revelation is material."

"In the opinion of the court," said Bryan, "the contract takes the case out of the scope of the First Amendment and, to the extent the First Amendment is involved, the contract constituted a waiver of the defendant's rights thereunder." Consequently, noted Bryan, the case is merely one of a dispute between an employer and employe and is not similar to the Pentagon Papers case.

Marchetti, who receives the bulk of his income from his writings, said this morning that he will definitely appeal the decision. Anticipating Bryan's action, Marchetti said, "My lawyers have already made the necessary arrangements."

Marchetti said he plans to appeal on the grounds that his writings, although based on experiences, are fictional and should not be subject to the secrecy oath. The CIA countered that argument during the trial saying that Marchetti's fictional writings approximate reality to such an extent that they jeopardize U.S. security.

NEW YORK TIMES
18 MAY 1972

STAT

Notes on People

Secrecy Watchdog

To head a newly created Government watchdog committee to prevent bureaucrats from overzealously using secrecy stamps, President Nixon named John S. D. Eisenhower.

Mr. Eisenhower, son of the late Dwight D. Eisenhower and the father of Mr. Nixon's son-in-law, David Eisenhower, will be chairman of a committee that will include senior officials of the Justice, Defense and State Departments, the Atomic Energy Commission and the Central Intelligence Agency. The committee will hear appeals from the public for speedier declassification of specific documents, as well as implement an Executive Order of March 8 that Mr. Nixon said would make more Government documents available to the public.

The Executive Order established an automatic declassification schedule for documents stamped after July 1, calling for declassification within 6, 8 or 10 years for almost all documents.

PITTSBURGH, PA.
POST-GAZETTE
MAY 18 1972
M - 243,938

STAT

Ike's Son in Charge

Security Change Effective June 1

By MILTON JAQUES
Post-Gazette Washington Correspondent

WASHINGTON — President Nixon's executive order for a new security classification system will become effective June 1, a White House spokesman said yesterday, as the Administration brushed aside Rep. William S. Moorhead's request for a delay pending congressional st

The President appointed Jonh S. D. Eisenhower, former ambassador to Belgium, as chairman of an interagency classification review committee to oversee the new system. Eisenhower's son David is married to the President's daughter Julie.

OTHER MEMBERS of the review committee will be named by the Departments of Defense, State and Justice, the Central Intelligence Agency and the Atomic Energy Commission.

The President ordered several changes in the system.

Key provisions call for a computerized data index system for information classified. A list of persons with authority to classify documents will be kept on file by the departments.

"This application of computer technology across the board should lead to a much more manageable classification system and greatly enhance the flow of information to the public," the President said in a statement issued by the White House.

"Overseeing our new approach to government documents will not be an easy task, for a delicate balance must be struck between the public's right to know and the government's obligation to protect the national security," he said.

Moorhead indicated he was unhappy with the White House's move ahead with the revamped system, especially on short notice.

THE RULES ISSUED yesterday over the signature of Dr. Henry A. Kissinger, head of the National Security Council, take effect on June 1.

"It's bad practice," Moorhead, a member of the House Government Operations Committee said.

"I don't think they will be ready to operate under the new order by June 1. They're pushing it too fast."

Moorhead's subcommittee on government information has already received testimony that the government is too eager to put its secret stamp on documents. Some experts estimate that 95 per cent of such documents could be made public without damage to the national security.

The President indicated he had no quarrel with some estimates of over-classification of documents. His March 8 statement which announced forthcoming changes in the system said the present regulations had failed to meet the problem.

WASHINGTON POST
18 MAY 1972

Eisenhower Will Head Secrecy Unit

United Press International

President Nixon appointed John Eisenhower yesterday to head a newly created government watchdog committee to prevent overzealous use of secrecy stamps.

Eisenhower, son of Dwight D. Eisenhower and father of Mr. Nixon's son-in-law David Eisenhower, will head a committee that will include senior officials of the Defense, State and Justice departments, the Central Intelligence Agency and the Atomic Energy Commission.

Mr. Nixon on March 8 issued an executive order that he said was intended to make more government documents available to the public. At that time, he announced he would create the interagency committee Eisenhower will head.

In a related development, the National Security Council issued 12 pages of regulations intended to spell out to government bureaucrats what they must do to comply with Mr. Nixon's directive restricting classification of documents.

The regulations require establishment of a computerized index of classified material to assure periodic review of documents to determine if the national security continues to demand their secrecy.

Eisenhower is a graduate of West Point and served more than 20 years in the Army, reaching the rank of lieutenant colonel. Following his retirement, he served for two years as Ambassador to Belgium.

The President's order in March established an automatic declassification schedule for documents stamped after next July 1. The schedule calls for declassification within six, eight, or ten years except for matters considered especially sensitive, which could be suppressed for as many as 30 years.

Eisenhower's committee will hear appeals from the public for speedier declassification of specific documents as well as overseeing the entire declassification process.

LOS ANGELES TIMES

17 MAY 1972

STAT

The White House Classifies, and Congress Ossifies

BY TRB

WASHINGTON—Secrecy leads to self-deception. If you want proof of that overlooked political axiom, look at the way we have gotten involved with a secret mercenary army in Laos.

It all started not so innocently a decade ago when the Central Intelligence Agency recruited, directed and supported an army of Meo tribesmen to keep Laos from going Communist. It was like having a Gurkha army of our own, only no one knew we had it and thus nobody cared that we were getting ever more involved in a war in Laos. It was all going splendidly until the CIA sent Gen. Vang Pao and his army on an ill-fated offensive last spring. The Meo "irregulars" got chewed up; they had about 10% casualties. That might not have been too bad except there were no more tribesmen to recruit in Laos. So the CIA started recruiting mercenaries in Thailand, only it called them "volunteers."

Now the Senate Foreign Relations Committee has discovered that we have a $100 million annual commitment to finance an army of 10,000 Thai "volunteers" fighting in Laos. The Thais like it because they are getting good pay as well as extra military assistance from the United States. Presumably the Laotians like it because the Meo and Thai can do the fighting. But what about Congress and the poor American taxpayer who never knew they were running up a $100 million annual bill in Laos? And what about the present moral character of a nation that 200 years ago won its independence fighting Hessian mercenaries?

Put aside all the moral, geopolitical and financial considerations. It's also a disturbing case of the evils of secrecy in our government and Congress. Secrecy provides a way to subvert the constitutional checks and balances on the war powers.

Oh sure, the CIA informed a few members of the Appropriations Committee. But then it intimidated them by explaining it was so hush-hush they couldn't talk about it to the rest of Congress. After that the privileged few didn't even bother to raise questions—that was until Sen. Stuart Symington (D-Mo.) and his foreign relations subcommittee started poking around in the secret war in Laos. Even now the State Department and CIA won't 'fess up to what they are doing with the Thai mercenaries. The reason is that Congress last year passed a law prohibiting the use of defense funds to help third-country forces fight in support of the Laotian or Cambodian governments. If all the facts were made public, it would be evident that the executive branch was violating the law.

It's easy enough to blame the executive branch for its secrecy. Everybody knows — including President Nixon, who issued a new executive order on classification recently —that the government business is weighted down with excessive secrecy.

For all its criticism of the executive branch, Congress really likes secrecy. At least those in power do because secrecy means power. "If you only knew what I knew" makes a senator very important in his own eyes and in the eyes of his colleagues.

If you want a bewildering example, take the case of Symington. One day he is deploring the executive branch's secrecy on the Thai mercenaries. The next day he is on the Senate floor questioning whether secrets should be given to members of Congress except those on the Armed Services, Foreign Relations, and Atomic Energy committees. Symington, it should be pointed out, is the only member of all three committees.

Or take the case of Rep. Bella Abzug, who had the temerity to introduce a resolution demanding information on how many bombs we are dropping in Indochina. From the horrified look on the face of Rep. F. Edward Hebert, the chairman of the House Armed Services Committee, you would have thought Ms. Abzug wanted to reveal the secrets of the A-bomb. But really his consternation was over the fact that she was challenging the power of the Armed Services Committee, which wants to keep such information locked up in its own safes.

Maybe Sen. Mike Gravel (D-Alaska), with his maverick ways, is finally forcing Congress to face up to the problem. He tried the other day to place in the Congressional Record a copy of a still secret national security memorandum that Henry Kissinger had prepared back in 1969 on the Vietnam options open to the Nixon Administration. It was enough to send the Senate sputtering into two days of secret sessions. The basic objection was that Gravel would be violating the law by making public a document classified secret. Then to the amazement of the senators, it turned out that there was no law specifically authorizing the executive branch to classify information. The whole secrecy system, it turns out, just rests on implied powers assumed by the executive branch.

The whole security system obviously is not going to come tumbling down. Nor should it. But once Congress starts questioning it, maybe it will begin to realize that Gravel has a point when he argues that Congress also can determine what information should be made public. Right now it's reached the point of absurdity; the Senate sends its debates in secret session down to the executive branch to be declassified.

Congress ought to understand that it need not be such a willing, acquiescent partner in a secrecy system that leads not only to deception but to the impotence of Congress.

STAT

ALEXANDRIA GAZETTE
15 MAY 1972

STAT

CIA Agent's Trial Closed For Security

A hearing on a federal injunction placed on writings and lectures of a former CIA agent who has been critical of the security agency was ordered closed this morning in Alexandria by U.S. Court Judge Albert V. Bryan Jr.

The hearing was ordered closed, said U.S. District Attorney Brian P. Gettings, because of "certain classified security material that they are going into." Gettings noted that he expects the hearing will remain closed the rest of the day.

The former agent, Victor L. Marchetti, who quit the CIA in 1969 after 15 years service, was charged in early April in a CIA affidavit with preparing a book and other writings based on his experiences in the CIA which might endanger U.S. security.

In response to the affidavit, Judge Bryan imposed a temporary restraining order on Marchetti. That order prohibits Marchetti from distributing writings or giving lectures concerning the CIA pending the outcome of today's hearing.

The case has been described by American Civil Liberties attorney Melvin Wulf, who is directing Marchetti's case, as "strikingly similar to the Pentagon Papers case." Wulf has argued that the restraining order violated Marchetti's First Amendment right by imposing prior restraint.

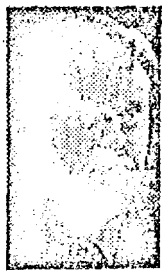
Justice Department attorney Irwin Goldbloom has countered Wulf's argument stating that any writings or lectures by Marchetti based on his experiences in the CIA violate a secrecy oath required of all CIA employees.

WASHINGTON POST
12 MAY 1972

STAT

The Federal Diary

A Way to Stamp Out 'Top Secret' Goofs



By Mike Causey

Federal minions authorized to stamp "TOP SECRET" labels on documents use their powers more to bury bureaucratic and political goofs than to protect national security. At least that is the assessment of Rep. William S. Moorhead (D-Pa.).

Moorhead, who heads the Government Information Subcommittee, says there is less straight government information these days because of White House news management and a nonpartisan affliction similar to St. Vitus Dance that afflicts the hands of individuals who hold secret stamps.

The congressman told a Federal Editors Association luncheon yesterday that noninformation policies will get worse unless government officials start paying attention to the freedom of information law, and until federal public relations personnel are told what their agencies are really doing.

Moorhead, whose group has been probing the federal dissemination of data policy, says "we have found that—contrary to general opinion—much information hidden from the public does not have anything to do with hydrogen bombs, weapons systems, state secrets or other sensitive classified information that we all agree does require safeguarding to protect our national defense and foreign policy."

The chairman said Congress must replace the present security classification system that operates under an executive order with a "workable, manageable" law that will limit classification to documents that really deserve it.

Denying information to Congress, or the press, Moorhead says, makes it easier for crooks, political hacks or honest civil servants who make honest mistakes to hide them "under a secrecy stamp and lock them securely in 1,000-pound file cabinets." Guests at the luncheon swear Moorhead looked in the direction of the Pentagon when he made the latter statement.

Last month Robert O. Beatty, HEW's assistant secretary for public affairs, made a pitch for an end to the 1913 law that prohibits funds to pay "publicity experts," although the government has thousands of them anyhow.

Beatty argued, and Moorhead agreed, that the law has done nothing but damage the career image of the federal information man or woman "and has not prevented the abuses it was supposed to prevent."

Many government information specialists privately complain that they are mistrusted by the press and their own agencies. By the press, because they are considered primarily engaged in covering up stories, and management because they are considered "alien" to the spirit of team cooperation, and tainted by contacts with media people.

"We must give up this idiotic notion that we can compete in the secrecy game with those who invented it," he told the editors. "Secrecy subverts any representative system, just as it is essential to maintain a totalitarian dictatorship."

LOS ANGELES TIMES

10 MAY 1972

STAT

PLUGGING LEAKS

'Nodis' More Secret Than 'Eyes Only?'

WASHINGTON (AP)—In the diplomatic secrecy world, "Eyes Only" is out but "Nodis" is in. And "contrary to certain prominent newspapar talk," this shuts a lot of leak holes.

So said Dept. Undersecretary of State William B. Macomber Jr. in congressional testimony released recently.

During hearings Feb. 24 on $15.4 million in the State Department's communications operations budget proposal, Rep. John J. Rooney (D-N.Y.), chairman of a House Appropriations Committee subcommittee reviewing departmental spending plans, asked how many copies of an "Eyes Only" communication are made for Secretary of State William P. Rogers.

No 'Eyes Only'

The "Eyes Only" caption is no longer in use, said Dep. Asst. Secretary of State William H. Goodman. "We use 'Nodis,' no distribution outside the secretariat," and just 12 copies are made.

Rooney wondered whether this is the highest classification.

"Highest limitation, Mr. Chairman," Macomber said.

"It is not a security classification, it is a most limited distribution because they all go to the secretary and there is no distribution until he approves of the distribution. Literally limited to one until he approves further distribution."

Rooney: "I don't know what to make out of this whole business. You used to make 80 copies of the 'Eyes Only' and at that time the State Department had more to do with our foreign affairs. Now we are down to 12 and you don't have too much to do. Is this good?"

80 or 90 Copies

Macomber: "It is good, Mr. Chairman, to have a capability of limiting distribution when you want to. It is not very reassuring if you are an ambassador in the field and send back a message that you want to have very limited distribution and finding 80 or 90 copies going automatically around the government."

Rooney: "That is the way it was for years, wasn't it? That is, until we pooh-poohed the whole thing up here."

Macomber: "I know it was that way for much too long. There is a greater ability now to limit the distribution. This precludes the possibility of leaks contrary to certain prominent newspaper talk."

With only 12 copies available, Rooney asked how many might be going to Henry A. Kissinger, President Nixon's aide for national security affairs.

"One copy goes to the White House. I am not sure who would get that, Mr. Chairman," Goodman replied.

tions without judge or defending counsel. Television would, of course, occupy half the hearing room; the press the other half. The employee's duties, relations with the President, with other employees in the White House, the State Department, and representatives of foreign governments, his qualifications for his duties, past experience, social life, and friends would all receive attention. He would be asked about matters he had worked on, although not the substance of them, aside from the one on which he was summoned, and long arguments would be provoked about whether the President's letter provided exemption from answering extraneous questions irrelevant to its principal subject.

As summons might follow summons as fast as committee clerks could get them out with the aid of the Congresional Directory and these witnesses followed one another with letters asserting privilege, what a picture could be created of a President in the center of a web of secret machination. What a picture presented to the world of a government as bizarre, absurd, and divided by tragic vendettas as the King of Morocco's birthday party.

In short, what a hell of a way to run a railroad.

Mr. HRUSKA. Mr. President, I wish to say at the conclusion of my remarks what I said at the outset. It would be my hope that Senate Resolution 299 would be placed on the calendar, there to await an occasion when the Senate can properly address itself to this matter, at which time it would be my present intention to make a motion either to lay it on the table or to refer it to the Committee on the Judiciary where it properly belongs. At that time hopefully we would have the presence and the advice and counsel of others on the Committee on the Judiciary. They are not present now through no fault of their own, but are engaged in other activities of the Senate.

Mr. President, I suggest the absence of a quorum.

Mr. JAVTS. Mr. President, will the Senator withhold his request?

The PRESIDING OFFICER (Mr. HARRY F. BYRD, JR.). Does the Senator withhold his request?

Mr. HRUSKA. I withhold my request.

Mr. JAVITS. Mr. President, I wish to be recognized. The Senator really has only to 2 o'clock today to occupy the time of the Senate. I do not intend to let the matter go that long because people have other things to do and obviously any Member can carry us up to 2 o'clock without a quorum, and there is no need to put the Senate to that trouble.

I would like to speak briefly in response so that the RECORD which Senators read may be available on both sides of the issue, the Senator from Nebraska having spoken to the merits of adopting the resolution at length. But before I do that, I ask unanimous consent that a committee print be prepared of the resolution as I have modified it.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, when I am through, unless other Senators wish recognition, I shall ask unanimous consent that the resolution go to the calendar; but I wish to point out the following factors: One, I hope very much the leadership will call this resolution up promptly, precisely because we are now almost compelled to act on this matter.

It is interesting that the record of the Senator from Nebraska (Mr. HRUSKA) of the committee action on bills which may have been introduced to deal with the Penal Code provisions for violations of the classification of documents goes back to the late 1950's. We had two secret sessions last week and a tremendous flap over the fact that one Member of this body used his constitutional immunity to disclose the so-called Pentagon papers, which interested the whole country enormously.

Obviously, the subject is not going to wait for another period of years, whether the Senator from Nebraska wishes that or not.

Second, aside from that, we will probably be faced with an amendment by the Senator from Idaho (Mr. CHURCH)—he has already announced it—to the State Department authorization bill on the question of classified documents, and the Senate will again be in the position which it was in the other day, not really having the benefit of as much information and the pros and cons as it should.

Finally, we are in a very critical period in our national life and the life of this country in terms of our foreign relations. We are in a very serious phase of Vietnam—extremely serious. No one knows how that will go. The documents which may be available on that subject, which were the immediate, inciting cause of the secret sessions of last week, become of supreme importance; and I doubt very much that the questions are simply going to sit around and wait. They are going to demand an answer. We can only have the heat and exacerbation of tempers which result from issues of this kind, where a Member of this body may be wishing to seek his constitutional immunity and saying, "You give me no other course," or we can get the light of reason and authority of the leadership in terms of trying to deal in some way with these vexing problems on the part of the Senate.

Finally, there is no question that it is a deeply agitating question in the country where the people are being denied information, either on classification or through the exercise of the doctrine of executive privilege. At a time of such crisis as this, when one of the great charges is that people are not being adequately informed, the matter could hardly remain in limbo very long.

Finally, the Executive order itself which is referred to indicates the broad scope of the substantive part of this question, quite apart from what should be put in the Penal Code. Obviously, the Judiciary Committee has jurisdiction over what goes in the Penal Code, but it hardly has jurisdiction—certainly not exclusive jurisdiction—over what the Senate does about a document which may be denied or which may be classified or of which one Member of this body may come into possession in such a way that it places an inhibition on him by reason of classification by the State Department. To argue that the Senate cannot strike those manacles from its wrists without the Penal Code is an inconceivable doctrine that cannot and will not stand up.

The matter we are dealing with is a wide-ranging one. Those with authority to impose a classification of "top secret" are not only the Office of the President, but the Central Intelligence Agency, the Atomic Energy Commission, the Department of State, the Department of the Treasury, the Department of Defense, the Department of the Army, the Department of the Navy, the Department of the Air Force, the U.S. Arms Control and Disarmament Agency, the Department of Justice, the National Aeronautics and Space Administration, and the Agency of International Development.

So the Agency for International Development, for example, has a superior standing to the Senate of the United States, and that is what we are asked to perpetuate.

When it comes to the classification of "secret," which stands in the same light, let us see who can stamp the classification of "Secret" on documents: The Department of Transportation, the Federal Communications Commission, the Export-Import Bank of the United States, the Department of Commerce, the U.S. Civil Service Commission, the U.S. Information Agency, a subordinate agency of the Department of State, the General Services Administration, the Department of Health, Education, and Welfare, the Civil Aeronautics Board, the Federal Maritime Commission, the Federal Power Commission, the National Science Foundation, and the Overseas Private Investment Corporation.

All of those agencies, if they classify a document, make a Senator use his constitutional immunity if he is going to use it, and it puts the whole Senate in a twilight zone if it is going to do anything about it, with respect to its procedures. The situation is simply intolerable under present conditions, and the Senate, in my judgment, cannot, and I hope will not, wait.

But the Senator has exercised his privilege very properly. The debate, if continued until 2 o'clock, would result in this matter going to the calendar anyway. So unless the Senator from Nebraska (Mr. HRUSKA) wishes to speak again—obviously he does—I will, at the moment when the debate is finished, ask unanimous consent that the resolution go to the calendar.

Mr. HRUSKA. Mr. President, just an observation or two so that they will be in context with the observations made by the Senator from New York.

Among other things, it has been suggested that we are in a critical period. Certainly now, with these international conferences at the highest level in prospect, and some already having been had, the questions that arise should be answered.

But, Mr. President, they have been answered again and again in similar critical periods of our history. There is not anything in the passage of Senate Resolution 299 that will assist in that regard whatsoever. There is not any question—I know of no authority that would say that there is any question—about the President's right to classify documents. That is so well grounded that it does not require the citation of authority beyond the Con-

THE NATIONAL OBSERVER
6 May 1972

Spook Turns Writer

But His Old Boss, the CIA, Goes to Court, Says His New Book Would Spill Some Secrets

By Michael T. Malloy

Ballplayers leave baseball and write books about what's wrong with it. Soldiers leave the Army and write books about what's wrong with that. Victor Marchetti quit his job and sent an outline of a book about his old business to a New York publisher.

"Then last Tuesday the roof fell in," he said between court appearances last week. "Marshal Dillon and Chester came to the door and presented me with some legal papers. Being just an ordinary guy with three kids living in suburbia, I didn't know where to go for advice. I called my agent and hollered, 'Help!' "

Marchetti's publishing problem is that he used to work for the Central Intelligence Agency (CIA). The legal papers constituted a court order requiring him to clear anything he writes about intelligence matters, even fiction, with his old employer. If the order holds up in further court tests, it could give the Government a new way to plug "leaks" of classified information. Looked at another way, however, it could give the Government a powerful new tool for suppressing informed debate of its military and foreign policies.

ACLU Answers Call

"It's no less important than the Pentagon Papers case," says Melvin Wulf, legal director of the American Civil Liberties Union (ACLU), which immediately responded to Marchetti's call for legal help. "If they establish this precedent," Marchetti contends, "it means no Government employe who had access to classified information will be able to criticize the actions of the Government."

The Government's action grows out of a manuscript that Marchetti submitted to Esquire magazine and a book outline he sent to Alfred A. Knopf, Inc., a publishing house. A CIA agent obtained copies of both, and the agency went to court contending the works contained classified information whose publication would do "irreparable damage" to national security.

To knowingly transmit such information to anyone else, including a publisher, would seem to leave Marchetti open to prosecution under laws that prescribe a 10-year prison sentence for violators. But the Government made a different case. It noted that Marchetti had signed a secrecy agreement while with the CIA, promising to not reveal any classified information without written permission from the agency.

From CIA: No Comment

The Government said this amounted to a legal contract. It contended that Marchetti violated the contract by sending his writings to a publisher. On this ground it obtained an injunction requiring him to clear his writings with the CIA 30 days before showing them to anyone else. If Marchetti violates the injunction, he can go to jail for contempt of court.

The Government's use of this circuitous route to head off a possible breach of security is unprecedented, lawyers say, with the possible exception of an obscure case during World War I. But it offers the Government a method to silence Marchetti without a difficult and time-consuming effort to prove that the information in his articles was damaging to national security. If the CIA's case holds up, it needs to prove only that he violated an agreement that he readily admits signing.

The CIA has a policy of taking its lumps in silence, so no spokesman was available to defend its position. But others familiar with the security laws said the laws paradoxically could require the agency to bring its secrets into open court in order to protect them, and that a prosecution could leave Marchetti free to write and speak for months on end as courts and juries made up their minds.

A Matter of Security

"Ex post facto action against unauthorized disclosure is always difficult," says retired Adm. Rufus L. Taylor, for whom Marchetti was executive assistant when Taylor was deputy director of the CIA. "You've always got to prove damage to the national security and sometimes even intent to damage national security."

To Marchetti and his ACLU lawyers, that is just the point. They say the breach-of-contract argument makes it possible for the Government to silence its critics without proving that they had endangered national security. They say the information in Marchetti's manuscripts did not present such a danger, and that the secrecy "contract" is legally unenforceable because it compels an employe to sign away his freedom of speech.

"A Government agency can still use classified information to support its policies and build its image," Marchetti argues. "When the military budget comes up, all this stuff about Russian missile capabilities comes out to support its position. It's leaked and nothing ever happens. But if somebody took the same information to Jack Anderson to support the opposite position, they'd go to jail."

Marchetti didn't start out to be a crusader, and he still doesn't want to go to jail for the sake of civil liberties. He left the CIA after 14 years in 1969, at least partly because of the here-I-am-going-on-40-and-what-have-I-accomplished blues. He did believe the intelligence apparatus had become too big, too expensive, and too frozen in Cold War attitudes, but mostly, he says, he wanted to be a novelist.

Security vs. Image

He has since published one spy novel, *The Rope Dancer*, which he first showed to the CIA. ("Pretty trashy," says Admiral Taylor.) And he wrote one highly critical magazine article, which he didn't clear with the agency.

"In my opinion, this and other things Victor Marchetti says are damaging to the image of constituted authority, and it does no good to do things of this sort," Admiral Taylor says of the article. "But I personally perceived no outright security breach."

Marchetti suspects that the intelligence agency is more concerned about its image than any security breach in his new manuscripts, which Admiral Taylor hasn't seen.

"The CIA have been the golden boys of the Federal Government, the American James Bonds," Marchetti says. "Very few people have ever spoken out against them. This is a new experience for them and I guess they didn't like it.

"Look, I'm very reluctant to use the initials of the agency where I used to work," Marchetti frets, as he tries to describe his criticisms of the CIA without violating the court order.

Whipping the KGB

But in abstract terms, and trying to avoid any concrete examples that could put him in jail, he argues that the agency has succumbed to the mental inertia that afflicts any bureaucracy when it faces no outside pressure to change. "It's very hard for a bureaucracy to reform itself," he says.

Marchetti would like to see an intelligence system that was smaller, cheaper, more subject to congressional control, and less influenced by the military. He believes the CIA should stick to intelligence gathering and abandon political missions like those that helped overthrow governments in Iran and Guatemala, and involved the United States in a secret war in Laos.

"The CIA can take pride that they whipped the [Soviet] KGB's tail in many places" with cloak-and-dagger operations

continued

the distinguished majority whip has completed his most eloquent and forceful statement, which he is of course entitled to make, I will observe that when the roll is called on the Tunney amendment, I think the number of Senators on this side of the aisle will look pretty good in comparison with the absentees on the other side of the aisle.

Mr. ROBERT C. BYRD. Mr. President, that may be true. However, no absent Senator on this side of the aisle has lodged a request for an objection to be made to a unanimous-consent request to set aside an amendment and to take up some noncontroversial amendment which may be offered. The objection is coming from the other side of the aisle. I say most respectfully that I honor the assistant minority leader for doing his job. But I have a job to do also.

Mr. GRIFFIN. Mr. President, I respect and honor the able majority whip for doing his job. He does it very well and very effectively.

Perhaps a mistake was made in agreeing that any other amendment could be taken up to displace the Stennis amendment. Of course, the pending business before the Senate is the amendment of the distinguished Senator from Mississippi. And we have been ready and willing to vote on the Stennis amendment for these past several days. We are ready and willing to vote today.

The delay has not come from this side of the aisle; or at least it has not come from this side of the issue. I say it that way because I realize that the issue involved is not a partisan matter. Obviously there are Senators on both sides of the political aisle with differences about the merits of the Stennis amendment.

I am inclined to say that perhaps we should keep the Stennis amendment as the pending business and agree to no unanimous-consent requests at all. Perhaps that is the way we should have dealt with the issue. We were merely trying to provide some accommodation.

The ACTING PRESIDENT pro tempore. Without objection, the unanimous-consent request of the Senator from West Virginia is agreed to.

SENATE RESOLUTION 299—SUBMISSION OF A RESOLUTION ESTABLISHING A SELECT COMMITTEE TO STUDY QUESTIONS RELATING TO SECRET AND CONFIDENTIAL GOVERNMENT DOCUMENTS

Mr. JAVITS. Mr. President, I send a resolution to the desk and ask unanimous consent for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will state the resolution.

The second assistant legislative clerk read as follows:

Resolved, that there is hereby established a special, ad hoc Select Committee of the Senate to be composed of ten members, five from the majority and five from the minority. The Majority Leader shall be the Chairman and the Minority Leader the Co-Chairman. Of the remaining eight members, four will be appointed by the Majority Leader and four by the Minority Leader. Any member appointed under the provisions of this resolution shall be exempt from the provisions of the Reorganization Act relating to limitations on Committee service.

The Committee shall conduct a study and report its findings and recommendations to the Senate, within sixty days of its establishment, on all questions relating to the secrecy, confidentiality and classification of government documents committed to the Senate, or any member thereof, and propose guidelines with respect thereof; and, the laws and rules relating to classification, declassification or reclassification of government documents, and the authority therefor.

The ACTING PRESIDENT pro tempore. Is there objection to the request of the Senator from New York?

Mr. GRIFFIN. Mr. President, reserving the right to object, it is my understanding, if I may make an inquiry of the disinguished Senator from New York, the sponsor of this resolution, as to the pariamentary situation which he is pursuing, the way for him to get this on the calendar is to ask for unanimous consent that it be considered immediately. I do not think he really expected that it would be considered immediately today, and it is within the framework of his plans that it be put on the calendar and held over until next week.

Mr. JAVITS. Mr. President, may I say to the Senator that I would have been disappointed if this had not happened. It would not be my plan that we consider it today. I intend to make no comment of any kind on the resolution today except to ask that the clerk read the names of the cosponsors. I expect that it will be held on the calendar until Monday. We will then have both leaders here, and, at their disposition, it can either be discussed and considered if they wish then, or it can go on the calendar and be discussed and considered at an appropriate time.

Mr. GRIFFIN. Mr. President, I have not had any opportunity to consider the merits of the resolution. From listening to the wording of it for the first time, I think that the idea of the Senator to do something in the area of providing a more orderly procedure for declassifying or considering the subject of classification of documents is needed. However, in order to accommodate the situation, and because someone has to make an objection and I happen to be the leader on the floor, I object.

Mr. JAVITS. Mr. President, if I may be recognized, I appreciate that very much. That is exactly what I wanted to see occur. I am grateful to the Senator for his accommodating us in this way. I wish to make it clear myself that I in no way consider this an indication of the Senator's opinion as to what ought to be done on this or any other similar legislation.

Mr. President, I ask unanimous consent that the clerk read the names of the cosponsors on the resolution.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The clerk will state the names of the cosponsors.

The second assistant legislative clerk read as follows:

The Senator from New York (Mr. JAVITS) submits a resolution for himself, the Senator from Massachusetts (Mr. BROOKE), the Senator from West Virginia (Mr. ROBERT C. BYRD), the Senator from Florida (Mr. CHILES), the Senator from Idaho (Mr. CHURCH), the Senator from Kentucky (Mr. COOPER), the Senator from California (Mr. CRANSTON), the Senator from Arkansas (Mr. FULBRIGHT), the Senator from Oregon (Mr. HATFIELD), the Senator from Iowa (Mr. HUGHES), the Senator from Maryland (Mr. MATHIAS), the Senator from West Virginia (Mr. RANDOLPH), and the Senator from Illinois (Mr. STEVENSON).

Mr. JAVITS. Mr. President, I ask unanimous consent that an analysis of the law relating to the confidentiality of documents prepared under the auspices of the Foreign Relations Committee may be made part of my remarks together with a compilation of basic documents on security classification of information from the Library of Congress.

There being no objection, the analysis and compilation were ordered to be printed in the RECORD, as follows:

SECURITY CLASSIFICATION AS A PROBLEM IN THE CONGRESSIONAL ROLE IN FOREIGN POLICY

PREFACE

The controversy generated by the Pentagon Papers is the most recent manifestation of the subterfuge which has undermined popular confidence in our leaders and in our institutions. The U–2 incident of 1960, the Bay of Pigs affair, the Dominican intervention, and the Executive branch's misrepresentations concerning the war in Southeast Asia have all contributed to the skepticism of the general public towards the actions and policies of our Government. Excessive secrecy tends to perpetuate mistaken policies, and undermines the democratic principles upon which this country was founded. For this reason, I requested a study by the Congressional Research Service of the Library of Congress of the security classification procedure and the problem it presents to Congress in the performance of its Constitutional role. I believe that this memorandum will be of interest to both my colleagues and to the general public.

The memorandum was prepared by the Foreign Affairs Division of the Congressional Research Service, to which I express my appreciation.

J. W. FULBRIGHT, *Chairman.*

I. INTRODUCTION

Security classification in this paper means the formal process in the Executive Branch of limiting access to or restricting distribution of information on the grounds of national security. The purpose of this paper is to survey the security classification process to determine how it affects the work of Congress on foreign policy and to explore proposals for changing the process. It does not deal with the related problems of loyalty or censorship, and it attempts to differentiate the problem of security classification from the problem of executive privilege, that is the withholding of either classified or unclassified information from Congress by the Executice Branch on the grounds that it is the right of the President to do so.[1]

First, as background for considering proposed changes, the study outlines the origin of the system, the legislation and regulations on which the Executive Branch bases its process of classification, and present practice. Second, it discusses the access of Congress to classified information and the relationship of classified information to the role of Congress in making foreign policy. Finally, it explores proposals for changing the present classification system.

Secrecy has been a factor in making foreign policy since the first days of the nation's

Footnotes at end of article.

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. . . A Binding Contract

Stealing and-or publishing government secrets for fun and profit has become something of a fad in recent times. But a federal judge in Virginia apparently believes there ought to be some limitations on the practice.

U.S. Dist. Judge Albert V. Bryan Jr. ruled tentatively last week that Victor L. Marchetti, former agent for the Central Intelligence Agency, signed away his constitutional right to write and talk about CIA activities and policies. In his tentative ruling the judge held that Marchetti's dispute with the government agency is a question of an agreement between employer and employe and raised no questions under the First Amendment's free speech guarantee.

In other words, Marchetti would have presumably been perfectly free to talk and write about the CIA until he accepted a job under the agreement that he would keep the agency's private matters private.

That's fair enough, we believe. There should be some protection of important government secrets, the revelation of which would threaten security.

It should be added that one reason the "Top Secret" classification is taken so lightly and violated so frequently with impunity is that it is so often used on frivolous and unimportant matters that have nothing to do with military security.

In Marchetti's case, if he is indeed privy to important security information about CIA, there should be some lawful way to hold him to his agreement to keep silent.—*Tulsa World*

passed the Congress on January 25, 1972 and which was signed by the President on February 7. Now, less-than 3 months after the signing of this bill, we find ourselves faced with the same problem which the Committee and the Congress had labored long and hard to correct.

In view of the executive's challenge to these efforts, the issue before us—posed by the McGee amendment—is whether we are up to the challenge, whether we meant what we wrote into the law just a few short months ago.

Will the Senate assert its right to information so that it can properly discharge its responsibilities or will it bow to the will of the executive?

Will the Senate demand a voice in the policymaking, decisionmaking processes of our Government or will it permit but one voice, the voice of the executive to speak for the Government and the people?

The issues raised by the McGee amendment are just this fundamental.

Mr. CHURCH. Mr. President, will the Senator yield at that point?

Mr. FULBRIGHT. I yield for a question.

Mr. CHURCH. I wonder if the Senator would yield for an observation concerning the need to utilize the power of the purse. There is an excellent example, the Mansfield amendment, and the way it was subsequently disregarded by the President. I think the example illustrates in a classic way the need for Congress to enforce the policy positions it takes by utilizing the power of the purse. If the Senator will yield for that purpose, I would appreciate it.

Mr. FULBRIGHT. I yield to the Senator. How much time does he wish?

Mr. CHURCH. I think it will take 5 minutes.

Mr. FULBRIGHT. I yield the Senator from Idaho 5 minutes.

Mr. CHURCH. Mr. President, three times last year the Senate of the United States passed the Mansfield amendment, and it was enacted into law. The first time the Senate approved the Mansfield amendment was June 22, 1971, by a vote of 57 to 42. It was then attached to S. 9718.

On September 30, 1971, the Senate again approved the Mansfield amendment by a vote of 57 to 38. This time it was attached to H.R. 15582, the military procurement authorization bill.

Finally, on November 11, 1971, without a record vote, the Senate approved the Mansfield amendment for a third time.

As I say, Mr. President, it became the law of the land, and as such it clearly enunciated a congressional policy for bringing an orderly termination to our participation in the war in Vietnam.

Listen to the words of the Mansfield amendment as it was enacted into law. It speaks for itself:

It is hereby declared to be the policy of the United States to terminate at the earliest practicable date all military operations of the United States in Indochina, and to provide for the prompt and orderly withdrawal of all United States military forces at a date certain, subject to the release of all American prisoners of war held by the Government of North Vietnam and forces allied with such Government and an accounting for all Americans missing in action who have been held by or known to such Government or such forces. The Congress hereby urges and requests the President to implement the above-expressed policy by initiating immediately the following actions:

(1) Establishing a final date for the withdrawal from Indochina of all military forces of the United States contingent upon the release of all American prisoners of war held by the Government of North Vietnam and forces allied with such Government and an account for all Americans missing in action who have been held by or known to such Government or such forces.

(2) Negotiate with the Government of North Vietnam for an immediate cease-fire by all parties to the hostilities in Indochina.

(3) Negotiate with the Government of North Vietnam for an agreement which would provide for a series of phased and rapid withdrawals of United States military forces from Indochina in exchange for a corresponding series of phased releases of American prisoners of war, and for the release of any remaining American prisoners of war concurrently with the withdrawal of all remaining military forces of the United States by not later than the date established by the President pursuant to paragraph (1) hereof or by such earlier date as may be agreed upon by the negotiating parties.

Without any question, Congress laid down an orderly policy for terminating our participation in the war. How did the President treat the policy of Congress? One can hardly imagine a more cavalier treatment than the President gave to it. When he signed the law containing the Mansfield amendment, this is what the President said:

To avoid any possible misconceptions, I wish to emphasize that Section 601 of this Act—the so-called Mansfield amendment—does not represent the policies of this Administration. Section 601 urges that the President establish a "final date" for the withdrawal of all U.S. forces from Indochina, subject only to the release of U.S. prisoners of war and an accounting for the missing in action. Section 601 expresses a judgment about the manner in which the American involvement in the war should be ended.

However, it is without binding force or effect and it does not reflect my judgment about the way in which the war should be brought to a conclusion. My signing of the bill that contains this section, therefore, will not change the policies I have pursued and that I shall continue to pursue toward this end.

The President simply said, "I choose to disregard the policy of Congress. It has no binding effect. I disagree with it, and I will continue to follow my own policy."

It is inconceivable that an American chief executive would have disregarded congressional policy in such a peremptory manner a century ago; it reflects upon the lowered stature of Congress that the President deals with us in this high-handed and cavalier way, dismissing a statutory provision because it does not accord with his view of how American involvement in the war in Vietnam should be concluded.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. CHURCH. I ask for 1 additional minute.

Mr. FULBRIGHT. I yield 1 additional minute to the Senator.

Mr. CHURCH. So, Mr. President, it is clear that if Congress is going to give force and effect to the policy provisions it enacts, it must use the power of the purse. It is all we have left. Of course, we may continue to lay down and permit Congress to be walked over in this way, but history will not deal generously with us for our weakness.

For this reason, the Foreign Relations Committee adopted an amendment to the pending bill, offered by the distinguished Senator from New Jersey (Mr. CASE) and myself, to give teeth to the Mansfield amendment by backing it up with the power of the purse; and the real test of how we stand in this body, will come when the Senate votes, perhaps within the coming week, on whether it is willing to stand behind its own declared policy or whether it prefers to acquiesce in the disavowal of that policy that the President has expressed.

Mr. President, I ask unanimous consent to have the text of the Case-Church amendment printed at this point in the RECORD.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

TITLE VII—TERMINATION OF HOSTILITIES IN INDOCHINA

SEC. 701. Notwithstanding any other provision of law, none of the funds authorized or appropriated in this or any other Act may be expended or obligated after December 31, 1972, for the purpose of engaging United States forces, land, sea, or aid, in hostilities in Indochina, subject to an agreement for the release of all prisoners of war held by the Government of North Vietnam and forces allied with such Government and an accounting for all Americans missing in action who have been held by or known to such Government or such forces.

Mr. FULBRIGHT. I yield myself 5 minutes.

Mr. President, I am reminded by the Senator's reference to the President of another aspect of this matter.

The President made a statement on March 8, 1972, a very short time ago. He signed a new executive order on classification procedures which he described as "establishing a new, more progressive system of classification and declassification of government documents relating to national security."

I ask unanimous consent that the executive order and accompanying statement be printed in the RECORD.

THE WHITE HOUSE—STATEMENT BY THE PRESIDENT

I have today signed an Executive order establishing a new, more progressive system of classification and declassification of Government documents relating to national security. This reform springs from a review that I initiated almost 14 months ago and represents the first major overhaul of our classification procedures since 1953.

By a separate action, I have also directed the Secretary of State to accelerate publication of the official documentary series, "Foreign Relations of the United States," so that historians and others will have more rapid access to papers created after World War II.

Both of these actions are designed to lift the veil of secrecy which now enshrouds altogether too many papers written by employees of the Federal establishment—and to do so without jeopardizing any of our legitimate defense or foreign policy interests.

EDITOR & PUBLISHER
29 APRIL 1972

Anderson urges press to resist gov't pressures

By Luther Huston

The First Amendment to the Constitution gives newsmen "the right and the duty" to pry into government secrets and inform the people what bureaucrats are doing and how they do it, Jack Anderson, the columnist, told the 1972 convention of the American Society of Newspaper editors this week in Washington.

The editors of the country have demonstrated their patriotism and responsibility, Anderson said, and should not be intimidated by threats of censorship or threats of prosecution.

Anderson has disturbed the Administration and some editors by publishing secret statements of Henry Kissinger, presidential national security advisor, on policy relating to the Pakistan-India war and, more recently, memos allegedly written by Mrs. Dita Beard, lobbyist for the International Telephone and Telegraph Company, linking an ITT contribution to the Republican National Convention in San Diego to settlement of an antitrust case.

Although he did not mention these instances or any others, Anderson obviously defended his use of secret documents to disclose alleged blunders and machinations of government officials in their efforts to control the flow of information to the public.

In advising editors not to be intimidated by government pressures or threats, Anderson apparently was responding to an implied threat in an address by Kevin T. Maroney, Deputy Assistant Attorney General, Internal Security Division, Department of Justice, who told the editors that: "if you come into possession of information which has been and remains classified, and you publish it, you run the risk of violating a criminal statute." Roger Fisher, Harvard Professor of Law, gave a similar warning when he told the editors that "freedom of the press doesn't mean you can steal papers" and that newsmen should not be exempt from criminal prosecution.

Anderson began his remarks by saying that it was "nice to speak in front of microphones you can see." He asserted that governments in power will do many things in their efforts to retain power, and that whenever the government tries to control information for political advantage it was up to the news media to expose their actions and their motives. Newsmen must be the watchdogs.

Government officials want to control what part of their activities the public should know, Anderson said, "Kissinger decides what to tell you."

The device by which the government practices censorship is classification, and, while not denying the right to classify in some circumstances, Anderson charged

Government officials want to control what the public should know . . .

There is flagrant overclassification in the name of national security.

Bureaucrats themselves often pull out data from sensitive documents.

When the press criticizes government they turn Spiro the Terrible loose on us.

national security and asserted the right of the press in the exercise of its responsibilities to the people to override the judgment of the officials and declassify documents which might have been stamped secret only to cover up blunders of bureaucrats.

In response to a question from I. William Hill of the *Washington Star*, Anderson said he had often checked with officials—the Joint Chiefs of Staff, the Central Intelligence Agency, or others—before making his own decision to publish or not to publish classified material that came into his possession.

Bureaucrats themselves, Anderson declared, often pull out certain data from sensitive documents and leak the information to the press for self-serving reasons, thus making public sensitive information not otherwise available and which the newsmen would be criticized for publishing if they uncovered it by competent in-

When the press criticizes the government for its efforts to keep secret information the public should have, Anderson said, "they turn to Spiro the Terrible loose on us."

Senator Sam J. Ervin, Jr., chairman of the Senate Judiciary Subcommittee which has held hearings on constitutional protections to press freedom, spoke on the same panel with Anderson. He said that the attempt of the Administration to prevent publication of the Pentagon papers and the investigation of Daniel Schorr, CBS newsman on the pretext that he was being considered for a government job, raised questions as to the "administration's devotion to freedom of the press."

First amendment freedoms were often abused, Senator Ervin said, but the only way to prevent abuse would be to abolish [illegible] consummation not to be desired.

Government officials and newsmen should "return to First Amendment prin-

CHICAGO, ILL.
SUN-TIMES

M - 536,108
S - 709,123
APR 22 1972

Another try at censorship

Not quite a year after it took a shellacking on the Pentagon papers, the Nixon administration is again trying in the courts to prevent publication of a book — this one about the Central Intelligence Agency. The government has already been successful in suppressing publication of a magazine article by the book's author, Victor L. Marchetti, a former CIA employe.

The thrust of the government's case is that Marchetti signed pledges that he would not publish anything during or after his term of employment about the CIA and that there may be secrets in the book. This doctrine of "publish and perish" is a matter for a civil suit between Marchetti and the Justice Department for breach of contract; it has nothing to do with the actions of the publisher, Alfred A. Knopf Inc., which says it will resist the government's action.

The CIA says it wants the right to censor the book before publication, and Marchetti has agreed — without making any promises — to listen to what "The Firm" has to say. He adds that he has no classified documents and has no intention of telling any secrets.

The question before the house is the same one raised by the government's attempts to suppress the Pentagon papers: who shall decide what is a secret? We maintain, as we did during last year's caper, that the burden of proof is on the government to show that national security is involved. The government is perfectly free to argue that publication will harm the nation for this or that reason, but the ultimate decision belongs in other hands — editors, publishers, the courts. The government can seek judicial relief after publication, but, as the Supreme Court decision said last year, the government has no automatic right to impose prior restraint.

Those who have read Marchetti's manuscript say that it does in spots make the CIA look silly, but that no national security is involved. It will be recalled, however, that at the height of the Pentagon papers dispute last spring, Herbert Klein, President Nixon's communications czar, said that the President's main concern in enjoining the New York Times and the Washington Post was not because of secrets, but to serve as a warning to employes of this administration that they could not leak secrets with impunity.

This seems to be putting the cart before the horse. If government policies are well debated and well discussed, few will feel they have to take their case to the public. That is the way things should happen in a free society — not by intimidation and half-baked, unconstitutional attempts at censorship.

WASHINGTON POST
20 APR 1972

STAT

Government Secrets and the Press

By William L. Claiborne

A high-level Justice Department official warned the nation's newspaper editors yesterday that if they publish classified government documents or files stolen from government agencies they run the rick of criminal prosecution.

A high-level syndicated newspaper columnist warned the same editors that if they don't publish such documents, they run the risk of assuring the political security of "governmental blunderers."

If the admonitions left the editors confused, they could always fall back on the advice of a Harvard University law professor, who advised them to publish secret documents only after long and serious deliberations, and after they were certain that the national interest would not be compromised.

The Justice Department official was Kevin T. Maroney, deputy assistant attorney general for the Internal Security Division, who was one of four panelists who addressed the convention of the American Society of Newspaper Editors at the Shoreham.

Maroney said that "interminable mischief" would result if the editors were to have substantial access to classified material and were "entirely free to determine for themselves what was proper to publish."

He urged the editors to exercise "the greatest caution" in publishing information which they have determined, without consultation with government officials, to be necessary to the public interest.

In case anyone missed the point, he alluded to the Espionage Act and specifically cited state and federal laws relating to the receipt of stolen property.

The syndicated newspaper columnist was Jack Anderson, who followed Maroney at the podium and declared, "I hope no one will be intimidated by the threats made here today, that you may be put in jail, that you may be prosecuted."

"That is the kind of authority that is exercised in the Kremlin," Anderson said.

Saying that "selected" classification of routine documents is "flagrant" in the Nixon administration, Anderson said, "This isn't national security, this is political security."

In case anybody missed his point, Anderson intoned "They use secret documents if these facts make them look good . . . do your duty to the American people . . . the press is to represent the governed, not the governors."

The Harvard professor was Roger Fisher, a former consultant to the Defense Department, who said that if he were an editor, he would have ublished the Pentagon Papers but would not have claimed afterward that "newsmen would be exempt from the criminal law."

"What is best for newspapers is not necessarily best for the country,' said Fisher. "We all want some secrets kept. Don't ever forget it .... Don't say, 'The more disclosure the better'," advised Fisher.

Warning that a "cat and mouse" tradition between the news media and the government could evolve into the "law of the jungle," Fisher declared "the free press might serve us better if it devoted a little less effort to publishing purloined letters."

WASHINGTON STAR
20 APR 1972

Ignore Secrecy Labels, Anderson Tells Editors

Syndicated columnist Jack Anderson told U.S. newspaper editors yesterday that government secrecy labels are nothing more than attempts at press censorship and should be ignored, even at the risk of legal prosecution.

Speaking at the annual meeting of the American Society of Newspaper Editors, Anderson said, "The 1st Amendment gives us of the press not only the right but the duty to dig into government's secrets and inform the people."

Anderson followed Deputy Asst. Atty. Gen. Kevin T. Maroney as speaker in a four-man panel on press rights and press responsibilities. The other panelists were Sen. Sam J. Ervin Jr., D-N.C., and Harvard University professor Roger Fisher.

Anderson attacked Maroney's call for a "presumption of good faith" by newsmen in cases where the government has classified information.

The columnist called classification of government information "not national security — this is political security.

He said 95 percent of classifed information is not connected with national security.

"After the course is charted and the decisions made, they look over the material and they say, 'All right, what will we tell 'em?' " Anderson added.

But Prof. Fisher, who was a Pentagon consultant whose name is mentioned in the Pentagon Pappers, accused the press of speaking out of both sides of its mouth in what he called a "cat and mouse" approach to classified information: seeking full disclosure from the government on one hand and protection of reporters' sources on the other.

"Jargony phrases will not solve the problem of resolving conflicting interests," Fisher said. "We all want some secretes kept."

Sen. Erwin said he sees no need for new legislation to protect the press in its mission, but warned:

"The 1st Amendment bestows freedom on all people within our land, whether they are wise or foolish."

He recommended that 1st Amendment rights now taken for granted by newspapers should also apply to broadcasting.

A straw vote of delegates to the ASNE showed four out of five editors approving the publishing of the Pentagon Papers. A vote a year ago showed half of them against publication.

WASHINGTON POST

MAR 1972

More Secrecy Under New Rules?

By Walter Pincus

A LITTLE NOTICED broadening of the definition of "Top Secret" in the President's Executive Order on secrecy last month may well lead to more rather than less classification of information in the very areas of public interest that were illuminated by release of The Pentagon Papers. For while the White House — and the news media — focussed their attention on such secrecy frills as reducing the number of "Top Secret" classifiers and agencies and departments with authority to classify along with "speedier" declassification, the most important change for the long term received almost no public attention.

Prior to the March 8 Executive Order, the official definition for "Top Secret" related to "that information or material which the *defense aspect of which is paramount*, and the unauthorized disclosure of which could result in exceptionally grave damage to the nation *such as leading to a definite break in diplomatic relations affecting the defense of the United States*, an armed attack against the United States or its allies, a war, or the compromise of military or defense plans, or intelligence operations, or scientific or technological developments vital to the national defense."

The emphasis clearly was on military secrets though there was recognition that the highest classification should go to foreign policy information *if* its public release would lead not just to a *break in diplomatic relations* but a diplomatic break *"affecting the defense of the United States."*

Under that definition, foreign policy material in the Pentagon Papers which was classified "Top Secret"—and in some cases still is—would appear to have been overclassified. Although there clearly was some unease in Canada, Australia, Thailand, Laos, South Vietnam and elsewhere when the documents were published, there has been nothing close to a break in relations since the disclosures nor for that matter any aparent harm to the defense of the United States.

This, of course, is not to argue that all foreign policy information not rated "Top Secret" should be entirely unclassified. What the pre-March 8 Executive Order recognized was that "Top Secret" was a special, limited category. The definition for the next lower grade, "Secret," contained an arbitrary, catch-all phrase to take in material that regularly flows in diplmatic traffic. Its disclosure, the old order said, "could result in serious damage to the Nation, such as by *jeopardizing the international relations of the United States . . .*" Under that definition almost any bureaucrat or high official could rationalize a "Secret" stamp for foreign policy information coming to the State Department from posts abroad.

In the new revision, however, the "Secret" stamp apparently was not considered adequate. So new definitions were devised: first of all, defense information and that involving foreign relations were joined together in a new category called "national security"; then the "Top Secret" definition was expanded to state that its "unauthorized disclosure could reasonably be expected to cause exceptionally grave damage to the national security. Examples of 'exceptionally grave damage' include armed hostilities against the United States or its allies; *disruption of foreign relations vitally affecting the national security . . .*"

THUS THE threshold test for classifying foreign policy "Top Secret" information has been substantially lowered, from that which would lead to a break in relations with a specific country to that which would disrupt "foreign relations"—a phrase so general that it could mean something as vague as embarrassment of a foreign leader over a policy statement such as the Nixon Doctrine. Going back to our example of the Pentagon Papers, it would be rather simple to qualify some of the released information as "Top Secret" under this new definition since the unease felt and complaints voiced over its disclosure by the Thais and Vietnamese could be considered "disruptive" particularly by our ambassadors in those countries who strive daily to keep relations on a steady, calm plane.

To see how low the threshold of "Top Secret" has fallen in the foreign policy area one has just to note that the definition for "Secret" now includes information unauthorized disclosure of which would cause "disruptin of foreign relations *significantly* affecting the national security. Thus the difference between "Top Secret" and "Secret" has been narrowed to the difference in meaning between the two adverbs "vitally" and "significantly." Webster's Collegiate Dictionary defines "vital" as "of the utmost importance: essential"; "significant" it says is "important, weighty . . . essential to the determination of some larger element . . ."

ADMINISTRATION officials who supervised the revision of the secrecy order were well aware of what they were doing. At the White House briefing for newsmen the day it was released, David Young of the National Security Council staff who headed up the interagency declassification committee, conceded that the new definitions were broader. But he then went on to obfuscate by saying: "The reason for this is that we had to somehow make the definition fit. I don't want to say that the practice outweighed what w wanted to do, but it was far more realistic t recognize that foreign relations was part o the material to be classified. You can't limi the State Department to classifying onl such things as relate to the national de fense."

What this ignores is that the State Depar ment was fully covered up to "Secret"—that the limit to national defense applied solely to "Top Secret." Young went on to say: "In that sense it is broader, but I think by cutting down the number of people who can exempt it, and reducing the number of departments, and also, I think, just by the sheer weight of the whole undertaking, that we are going to be able to get the departments to classify less."

So the White House concedes the area for "Top Secret" information has been made broader—and hopes the departments will classify less rather than more. The questio is raised, therefore, why were the definition enlarged? I suggest one answer can b found in the recent public and private fight in the secrecy area waged not so much be tween the media and the administration a between Congress and the administration. is far easier to keep from the Congress document classified "Top Secret" than it one marked "Secret." And to prevent brin ing a paper to The Hill, administration off cials have never had qualms about raising classification to fit their needs. Now the have Executive Order authority to do ju that.

In 1969, when the Senate Foreign Rel tions Committee's Symington subcommitte on security agreements and commitmen abroad (where I served as chief consultan first sought information on nuclear weapo stored in a European country, the facts we promptly supplied classified "Secret." year later, when the same type of inform tion was sought, the administration refuse on the ground it was "Top Secret" and t sensitive to be held in the committee's saf The difference, however, was not in the cla sification of the information but rather the foreign policy context that had emerg from the subcommittee's inquiry. The high classification was used to delay and event ally prevent a serious review of political a rangements that surround placement American nuclear weapons abroad.

The ease with which that classificati was raised on an admittedly sensitive b

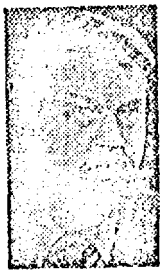
continued

WASHINGTON POST
30 MAR 1972

STAT

The Federal Diary

Upgrading of Publicity Aides Asked



By Mike Causey

Government information offices could do more than crank out homogenized press releases if federal officials would sometimes tell them what is going on, and if the Republican and Democratic national committees would stop treating the offices like retirement havens for over-the-hill ward-heelers.

The above statement (jazzed up a bit so you would read this far) comes not from a wild-eyed radical, but from Robert O. Beatty, an assistant secretary at Health, Education and Welfare.

Beatty's comment on the sad state of federal information-dispensing rocked a lot of bureaucratic boats, especially since he made it at a hearing of the House Government Information Subcommittee.

HEW is one of only three agencies — Defense and State are the others — that give status to public affairs activites by putting them under an assistant secretary. Beatty told the subcommittee, headed by Rep. William Moorhead (D-Pa.) that each Cabinet department should upgrade its information activities, and give the top person a say in policy decisions the information office usually has to explain or defend later.

Beatty blamed the low esteem of the public affairs profession on a 1913 law that says the government can't spend money to pay "publicity experts," which it does, by the millions of dollars, in other ways.

"That well-intentioned constraint on flackery," Beatty said, "has done inestimable psychological harm to professionalism in public affairs in government, and has not prevented the abuses it was supposed to prevent."

In fact, he says, it has driven many activities underground, caused agencies to fake budgets or scrounge money to pay the staffers and driven away competent professionals who correctly believe "the public affairs function is nothing more than an uninspired press release mill."

Beatty believes that public information costs should be made identifiable line items in agency budgets. (Most are now hidden.)

The Moorhead subcommittee has promised to give Beatty's proposals much thought. Beatty, who describes himself as a "naive country boy from Idaho", may have crunched too many colleagues' toes in his crawl out on the limb. But if he does get carried out across his IBM executive model typewriter he will have earned the thanks of many old-line professionals for giving it a try.

Top Secret: The 'top secret' stamp gap in government is widening, with Central Intelligence Agency revealed as having the most so-authorized stampers. Honorable mentions go to the Pentagon and State Department.

Rep. Moorhead believes the White House blew the CIA stamp cover, when it announced Mr. Nixon's plan to reduce the number of people who can classify so-called national security information. At the White House press briefing, an official said that 5,100 people now have the stamp pads and authority to use them in State, Defense and CIA. He said the number would be reduced to 1,860 soon. CIA has never told anybody what its share of the pie is.

But Moorhead says it is a matter of a simple arithmetic, since State and Defense earlier said they had only 1,171 people authorized to stamp 'top secret'.

Moorhead figures that when you take away State-Pentagon's 1,717 stampers from the 5,100 listed by the White House, that leaves CIA with 3,400 authorized to use the stamp. To ruin a good story, however, it must be pointed out that Moorhead doesn't think any of the figures are correct, so we may never know just how many 'top secret' stampers work for the CIA.

BRIDGEPORT, CONN.
TELEGRAM

M - 12,425

MAR 2 3 1972

Congressman Rebukes Aide for CIA 'Leak'

William S. Moorhead said Wednesday a White House aide may have leaked a Central Intelligence Agency secret while briefing newsmen about new document - classifying procedures.

Reporters fell for a "White House sales pitch which was either an outright lie, an exercise in pure stupidity or a dangerous breach of security," the Pennsylvania Democrat said.

Moorhead, chairman of the House government information subcommittee, made his remarks to a professional group of public information officers for the federal government.

White House aide David Young told reporters at a March 8 briefing that the President's executive order on classifying documents would reduce the number of persons who can classify national security information.

He said that 5,100 persons now can classify information 'top secret' in the State Department, the Defense Department and the Central Intelligence Agency, and he said that number would be reduced to 1,860 under the new order," Moorhead said.

"Either Mr. Young is in error—intentionally or unintentionally—or he had disclosed a fact that the rest of the government security apparatus takes great pains to protect," Moorhead said.

In reply to subcommittee questions, Moorhead said, State and Defense Department officials have said publicly that 1,717 of their people can use the top-secret stamp. The CIA, required by law to keep the extent of its operations secret, would not tell the subcommittee publicly "how many of their operatives have 'top secret' authority," he added.

"Has David Young leaked this important government secret? By subtracting 1,717 State and Defense Department officials with 'top secret' authority from the 5,100 listed by Mr. Young, a clever foreign agent can deduce that there are nearly 3,400 top-level operatives at the CIA, he said.

There was no immediate comment from the White House.

Moorhead said "I'm sure that Mr. Young has not breached security. He is a very security-minded person. I think he is engaging in the White House public relations program to sell its new classification system. I do know that it is a PR program, pure and simple, and not an exercise in government information," Moorhead said.

"This is a clear fact because no public information officers of the federal government were asked to comment on the draft of the new classification order. It was, in fact, written by classifiers, for classifiers, and will only perpetuate the security classification management bureaucracy without dealing with the real problems of the system as a whole," Moorhead said.

NEW YORK TIMES
22 MAR 1972

Moorhead Finds 'Errors' in Nixon's Secrecy Order

By RICHARD HALLORAN
Special to The New York Times

WASHINGTON, March 21 — The chairman of the House Subcommittee on Government Information asserted today that President Nixon's new executive order on secrecy in regard to national security documents had "major policy deficiencies" and "obvious technical errors."

Representative William S. Moorhead, Democrat of Pennsylvania, was more specific than in criticism he made earlier and said the order would undoubtedly require amendment before it went into effect on June 1.

The President's order, issued March 8, was intended to reduce the secrecy surrounding national security documents by limiting the use of "top secret," "secret," and "confidential" classifications and by speeding up the process of making such documents available to the public.

Mr. Moorhead, while lauding the intent of the executive order, charged that it was a "shoddy technical effort." He based his statement to the House on what he said was a section-by-section staff analysis.

The order "increases the limitation on the number of persons who can wield classification stamps and restricts public access to lists of persons having such authority," Mr. Moorhead said.

A member of his staff said that the 1,860 persons authorized to classify documents "top secret" could designate an unlimited number of subordinates to use the "secret" classification. They, in turn, may authorize their subordinates to use "confidential."

Thus, he said, a pyramid of "thousands and thousands" of persons will be able to classify documents. That would limit public access to the documents because the level of classification did not make any difference—any classified document would not be made available.

Mr. Moorhead said that the order "contains no requirement to depart from the general declassification rules even when classified information no longer requires protection."

Under the order, "the top secret" papers are to be made public in 10 years, "secret" in 8, and "confidential" in 6, unless they are exempted. Mr. Moorhead, the staff member said, believes that a paper should be immediately declassified when the reasons for classifying it no longer obtains, rather than wait for the specified time.

Mr. Moorhead also asserted in his criticism that the order "broadens authority for the use of special categories of classification." These include labels such as "for official use only," under which material can be kept from the public even though it is not eligible for classification.

SECTION-BY-SECTION COMPARISON AND ANALYSIS OF EXECUTIVE ORDERS 10501 AND 11652, "CLASSIFICATION AND DECLASSIFICATION OF NATIONAL SECURITY INFORMATION AND MATERIAL"

HON. WILLIAM S. MOORHEAD

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, March 21, 1972

Mr. MOORHEAD. Mr. Speaker, on March 8, 1972, President Nixon issued Executive Order 11652, "Classification and Declassification of National Security Information and Material." It was accompanied by a Presidential statement containing more than the usual amount of flowery rhetoric, glib phraseology, and optimistic overkill. The administration's cleverly orchestrated news management of the announcement assured an initial series of press stories lauding the virtues of the new Nixon order. Seldom has any Presidential Executive order received such a hoopla build-up from the White House public relations team.

I regret to report, Mr. Speaker, that the results of a careful analysis of the new Executive Order 11652, prepared by the staff of the Foreign Operations and Government Information Subcommittee, do not bear out the grandiose claims made for it by the White House "flacks."

As I told the House on March 1 of this year, our subcommittee has for many years concentrated considerable attention on the Nation's security classification system—RECORD, page H1637. We held hearings last summer on the operation of the classification system, since the type of Executive order information affecting national defense or foreign policy falls within the language of the Freedom of Information Act—5 U.S.C. 552—on which the subcommittee has legislative as well as oversight jurisdiction.

A week before the President issued the new Executive order, I informed the House that such action was forthcoming and was obviously designed to head off the additional hearings planned by our subcommittee this spring and the hearings by the Special Subcommittee on Intelligence of the House Armed Services Committee headed by the gentleman from Michigan (Mr. NEDZI), on legislation related to the subject of the Executive order. I warned that Congress should have the opportunity to consider legislative alternatives to govern our security classification system and that our subcommittee would explore such legislation at our spring hearings. I also pointed out that a formal request to the White House for the opportunity to review the draft of the proposed new order had been refused and that any action by the President to deal prematurely with this complex problem to circumvent congressional prerogatives would only result in additional chaos.

In remarks to the House on March 8—RECORD, page H1892—I reported that the President chose not to heed my advice of a week earlier and had, in fact, gone ahead that morning with the massive public relations treatment to accompany the issuance of Executive Order 11652. I also reiterated our subcommittee's plans to continue public hearings on security classification matters prior to the effective date of the new order in search of a viable legislative approach to deal effectively with the abuses of the present system.

Mr. Speaker, the new Executive order unfortunately does not, in my judgment, remedy the defects set forth in the President's statement eloquently describing the massive dimensions of the security classification crisis which prompted our subcommittee's current investigation. He said:

> Unfortunately, the system of classification which has evolved in the United States has failed to meet the standards of an open and democratic society, allowing too many papers to be classified for too long a time. The controls which have been imposed on classification authority have proved unworkable, and classification has frequently served to conceal bureaucratic mistakes or to prevent embarrassment to officials and administrations.
>
> Once locked away in Government files, these papers have accumulated in enormous quantities and have become hidden from public exposure for years, for decades—even for generations. It is estimated that the National Archives now has 160 million pages of classified documents from World War II and over 300 million pages of classified documents for the years 1946 through 1954.
>
> The many abuses of the security system can no longer be tolerated. Fundamental to our way of life is the belief that when information which properly belongs to the public is systematically withheld by those in power, the people soon become ignorant of their own affairs, distrustful of those who manage them, and—eventually—incapable of determining their own destinies.
>
> Yet since the early days of the Republic, Americans have also recognized that the Federal Government is obliged to protect certain information which might otherwise jeopardize the security of the country. That need has become particularly acute in recent years as the United States has assumed a powerful position in world affairs, and as world peace has come to depend in large part on how that position is safeguarded. We are also moving into an era of delicate negotiations in which it will be especially important that governments be able to communicate in confidence.
>
> Clearly, the two principles of an informed public and of confidentiality within the Government are irreconcilable in their purest forms, and a balance must be struck between them.

Mr. Speaker, I heartily concur with this clear and succinct statement of the broad problem of security classification procedures under our democratic system. It is regrettable that the eloquence of this description does not carry over to the new Executive order in proposing basic reforms to correct these problems.

The section-by-section analysis that follows details major defects in the new Executive order that is scheduled to take effect on June 1, 1972. It clearly shows why I had urged the White House to make available the draft of the proposed new order so that our subcommittee could informally suggest improvements, based on our many years of oversight experience in this area, to really deal with root causes of the security classification problem. Major policy deficiencies, as well as obvious technical errors in the new Executive Order 11652, as described in our analysis can only intensify the security classification problem and will undoubtedly require amendments to the order even before it becomes operative.

Summarizing just a few of the major defects, Executive Order 11652:

First. Totally misconstrues the basic meaning of the Freedom of Information Act (5 U.S.C. 552);

Second. Confuses the sanctions of the Crimial Code that apply to the wrongful disclosure of classified information;

Third. Confuses the legal meaning of the terms "national defense" and "national security" and the terms "foreign policy and foreign relations" while failing to provide an adequate definition for any of the terms;

Fourth. Increases (not reduces) the limitation on the number of persons who can wield classification stamps and restricts public access to lists of persons having such authority;

Fifth. Provides no specific penalties for overclassification or misclassification of information or material;

Sixth. Permits executive departments to hide the identity of classifiers of specific documents;

Seventh. Contains no requirement to depart from the general declassification rules, even when classified information no longer requires protection;

Eighth. Permits full details of major defense or foreign policy errors of an administration to be cloaked for a minimum of three 4-year Presidential terms but loopholes could extend this secrecy for 30 years or longer;

Ninth. Provides no public accountability to Congress for the actions of the newly created Interagency Classification Review Committee;

Tenth. Legitimizes and broadens authority for the use of special categories of "classification" governing access and distribution of classified information and material beyond the three specified categories—top secret, secret, and confidential; and

Eleventh. Creates a "special privilege" for former Presidential appointees for access to certain papers that could serve as the basis for their private profit through the sale of articles, books, memoirs to publishing houses.

These are by no means all of the criticisms of the new Executive order, Mr. Speaker, and are only illustrative of the type of shoddy technical effort that is represented in the order. The administration has labored for 14 months on the new Executive order and has brought forth a mouse. It is a very restrictive document that does not correct the major security classification problems about which we are all gravely concerned. Indeed, it is a document written by classifiers, for classifiers.

The section by section comparison of Executive Order 10501—as amended, and Executive Order 11652—effective June 1, 1972, and the analysis of Executive Order 11652 follows:

WASHINGTON DAILY NEWS

STAT

21 MAR 1972

Anderson tells of plan to promote revolt in Chile

ITT linked to CIA plot

Close ties between top officials of International Telephone and Telegraph and the Central Intelligence Agency were revealed today by columnist Jack Anderson, who charged that the vast conglomerate plotted to prevent the 1970 election in Chile of leftist President Salvador Allende.

The columnist, whose revelations about ITT's contribution to bring the Republican National Convention to San Diego set off the Senate hearings on the nomination of Richard Kleindienst as Attorney General, said he had copies of "secret documents" that showed that ITT "dealt regularly" with the CIA and "considered triggering a military coup to head off Allende's election."

Mr. Anderson said his documents "portray ITT as a virtual corporate nation in itself with vast international holdings, access to Washington's highest officials, its own intelligence apparatus and even its own classification system.

"They show that ITT officials were in close touch with William V. Broe, who was then director of the Latin American division of the CIA's Clandestine Services. They were plotting together to create economic chaos in Chile, hoping this would cause the Chilean army to pull a coup that would block Allende from coming to power."

The column said ITT President Harold Geneen received a confidential wire from a vice president, E. J. Gerrity, that itemized the methods to provoke an uprising in Chile:

"1. Banks should not renew credit or should delay in doing so.

"2. Companies should drag their feet in sending money, making deliveries, in shipping spare parts, etc.

"3. Savings and loan companies there are in trouble. If pressure were applied, they would have to shut their doors, thereby creating pressure.

"4. We should withdraw all technical help and should not promise any technical assistance in the future. Companies in a position to do so should close their doors.

"5. A list of companies was provided, and it was suggested that we approach them as indicated. I was told that of all the companies involved, ours alone had been responsive and understood the problem. The visitor (evidently the CIA's William Broe) added that money was not a problem. He indicated that certain steps were being taken but that he was looking for additional help aimed at inducing economic collapse."

Mr. Anderson wrote that former CIA boss John McCone, now a director of ITT, received a report on Oct. 9, 1970, from William Merriam, head of ITT's Washington office. The column quoted the memo in part:

"Today I had lunch with our contact at the McLean agency (CIA), and I summarize for you the results of our conversation. "He is still very, very pessimistic about defeating Allende when the congressional vote takes place on Oct. 24.

"Approaches continue to be made to select members of the Armed Forces in an attempt to have them lead some sort of uprising — no success to date . . .

"Practically no progress has been made in trying to get American business to cooperate in some way so as to bring on economic chaos. GM and Ford, for example, say that they have too much inventory on hand in Chile to take any chances and that they keep hoping that everything will work out all right.

"Also, the Bank of America had agreed to close its doors in Santiago but each day keeps postponing the inevitable. According to my source, we must continue to keep the pressure on business."

STAT UPI Photo

ITT lobbyist Dita Beard

WASHINGTON STAR
21 MAR 1972

STAT

WASHINGTON CLOSE-UP

Grip on Secrecy Stamp Still Firm

By ORR KELLY

The administration is now in the midst of a thorough overhaul of its security and and secrecy classification system—and about time, too.

But anyone who thinks this overhaul will result in any significant loosening up of information about day-to-day operations of the government in a form that will useful to the press or the public will be sadly disappointed.

Recent congressional testimony explaining and supporting the President's new executive order on safeguarding of official information clearly shows that the government, as an institution, rather than either the press or the public, will be the principal beneficiary of the changes being made.

★

If the changes are carried out and the new rules laid down by the President are rigorously applied, there will be two results. One will be a freer flow of information within the government and within those parts of industry that serve the government, particularly in the production of military hardware. The other will be a reduction in the cost of keeping secrets.

The amount of confidential, secret or top secret material the government and government contractors have in storage is almost unbelievable. It amounts to thousands, perhaps millions, of tons of paper—stored away in elaborate file cabinets and safes that cost an average of $460 apiece. It is hard to know even where to begin to deal with such a mountain of material.

David Packard, the former deputy defense secretary, took one practical approach in May of last year when he ordered the military services and defense agencies to start cutting down on the amount of material they keep classified. He put teeth in his order by telling them they could not buy any more of those expensive security containers for a year and a half.

By the end of last year, two of the smaller defense agencies, the office of the Joint Chiefs of Staff and the Defense Intelligence Agency, had managed to empty 158 of their containers, according to Joseph J. Liebling, deputy assistant defense secretary for security policy.

One defense contractor, Liebling said, got rid of 90 tons of classified material last year and another one destroyed 53 tons of the stuff in a 90-day period.

The Defense Department also has been trying to cut down the cost of keeping things secret by reducing the number of people who have access to highly classified documents. It costs $5.44 for the average investigation required before a person receives clearance to handle confidential material. But it costs an average of $263.28 for the full field investigation required for a top secret clearance.

It is now estimated that 3.6 million persons have security clearances. Of these, 464,550 are top secret clearances. But, according to J. Fred Buzhardt, the Defense Department's general counsel, that number has been cut by 31.2 percent—from a high of 697,000—since mid-1971.

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The President's new rules, which go into effect June 1, will restrict the number of people able to classify material, expand the number able to remove classification and speed up the automatic declassification process.

If, as intended, these changes promote greater governmental efficiency at lower cost, the public generally will benefit.

But these changes, and any conceivable changes that might be legislated by Congress, do not begin to touch the kind of problems raised by the Pentagon papers and the more recent White House minutes published by Jack Anderson.

The fact is that, under the

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old rules, the new rules or any other rules you might care to imagine, the executive branch of the government will retain the power to control the flow of information to the public about its internal decision-making process—at least until it is of interest primarily to historians. If the President and his close advisers deliberately set out to mislead the public—and this reporter is *not* impressed by the evidence contained in the Pentagon and Anderson papers that they did make such attempts — no law on earth is going to stop them.

Attempts to write such laws may, in fact, be dangerous. It is ironic and a little frightening, for example, to find Buzhardt, the Pentagon's top lawyer, arguing that the "clearest congressional acknowledgement of the President's authority to restrict dissemination of information" is found in the Freedom of Information Act.

Despite the administration's efforts to ease security restrictions, it probably would be well for us all to keep in mind these words attributed to Lord Tyrell of the British Foreign Office:

"You think we lie to you. But we don't lie, really we don't. However, when you discover that, you make an even greater error. You think we tell you the truth."

TIME
20 MAR 1972

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THE NATION

AMERICAN NOTES

Thinning the Veil

Since World War II, Government secrecy has developed into a pervasive bureaucratic habit, an ominous development for a system of, by and for the people. It reached the point where Defense Department subalterns were classifying newspaper clippings, administrators used their SECRET stamps to conceal waste and stupidity, and the vaults of Washington were choked with millions of pages of momentous or banal information that the public was paying millions of dollars a year for the privilege of never seeing.

Last week, after more than a year's review of Government secrecy, the White House overhauled the classification procedures for the first time since 1953. Not that the Government is exactly throwing open its filing cases. The President reduced the number of officials authorized to classify from 5,100 to 1,860. At the other end of the process, the minimum time for automatic declassification of low-sensitivity papers was cut from eight years to six, and most papers will be automatically declassified in ten years.

Nixon said that he wants an "open" Administration. "Fundamental to our way of life," he declared, "is the belief that when information which properly belongs to the public is systematically withheld by those in power, the people soon become ignorant of their own affairs, distrustful of those who manage them." But with a six-year limit on classification, the Administration he was declaring open was Lyndon Johnson's.

The new executive order raised an intriguing question: Would the classification of the Pentagon papers have been "legal" under the new rules? Perhaps. Some of the six-year-old material in the papers could have been acquired by the public without breaking the law, but even that is in doubt, since the study, which dealt with national security, would have required special clearance in any case.

WASHINGTON POST
20 MAR 1972

State Keeps Viet Study Secret

By Murrey Marder
Washington Post Staff Writer

The Senate Foreign Relations Committee has met a flat refusal from the Nixon administration for security clearance of an analysis of Vietnam negotiations between 1964 and 1968.

In a letter to the committee, the State Department claimed that the committee's intended staff reports, based on four never-published volumes of the 47-volume Pentagon Papers, "could harm" present diplomatic efforts in the Indochina conflict.

The title of the suppressed report clearly suggests its contents: "Negotiations, 1964-1968: The Half-Hearted Search for Peace in Vietnam."

Committee staff members are continuing negotiations with the State Department to seek partial clearance of the report. One argument they are using against the blanket refusal of clearance is that President Nixon on Jan. 25 unilaterally declassified information on a dozen secret meetings between adviser Henry A. Kissinger and North Vietnamese negotiators in Paris.

The committee, headed by Sen. J. William Fulbright (D-Ark.), is releasing today the first of a series of its staff analyses of the Pentagon Papers. This non-sensitive report, entitled "Vietnam Commitments, 1961," by staff researcher Ann L. Hollick, consists of 12 pages plus 26 pages of documents previously available publicly. Even so, there are several security deletions because the text used was the version published by the Government Printing Office, although the deleted material, on intelligence operations, was printed in newspapers last summer.

Sen. Fulbright said the published report on 1961 commitments underscores the "unprecedented . . . extent to which the Executive Branch misled both Congress and the public" in "policies and decisions of the first year of the Kennedy administration, which significantly deepened the U.S. military involvement in the Vietnam war."

First Broached by U.S.

This staff study emphasizes that "It was United States officials who first broached the subject of a bilateral treaty (with South Vietnam) and United States officials who pressed for a direct military involvement in Vietnam.

"Although news of the administration's consideration of combat troops did reach the public by means of leaks to the press, neither Congress not the public was made aware of the intergovernmental discussions regarding a bilateral treaty."

The report also focuses attention on a 1961 recommendation by Gen. Maxwell D. Taylor, then President Kennedy's military adviser, to send a 6,000 to 8,000-man U.S. military task force into South Vietnam "under the guise of performing flood relief work." That was first disclosed in press accounts last summer.

Troops Not Sent

The treaty never materialized, nor did the Kennedy administration send combat troops, which Taylor recommended. "Had one or both of these measures been carried out at that time," the report notes in retrospect," a greatly increased national commitment to Vietnam would have resulted" much earlier. In the Johnson administration, U.S. troops reached over a half-million men.

Refusal to declassify the Fulbright committee staff's more sensitive report on negotiations was expressed in a letter dated March 9 by David M. Abshire, Assistant Secretary of State for congressional relations, to Fulbright.

Abshire noted that the intended staff report on "Negotiations, 1964-1968: The Half-Hearted Search for Peace in Vietnam," did contain, as he said Fulbright stated in a Feb. 17 letter, "partial information relating to some of these secret (negotiating) channels" that "appeared in public media..." But, said, Abshire, [illegible] that the substance of these volumes should remain classified." State's letter continued:

"To disclose these secret channels and official communications relating to them would constitute a unilateral violation of confidentiality in diplomatic intercourse without which the diplomatic process cannot function effectively.

Potentially Harmful

"Moreover, such disclosure could harm and possibly preclude future use of these and other channels in our continuing efforts to deal with the issues of the Indochina conflict including that of our prisoners of war."

Abshire, in a postcript, expressed regret "that we cannot concur with your request" realizing "the diligent and extremely capable efforts of the professional staff" in preparing the report.

The reference in the suppressed report to "half-hearted search for peace" is understood to refer to efforts on both sides of the bargaining, American and South Vietnamese on one side, and North Vietnamese and Vietcong on the other. Published portions of the Pentagon Papers have shown that the allied side often was reluctant to have its search for negotiations succeed when the allied military position was weak. The uncleared report presumably also deals with Communist reluctance to negotiate.

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NASHVILLE, TENN.
BANNER
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Restrictions Cut On Right To Know

PRESIDENT NIXON HAS ORDERED sweeping changes in the government's classification procedures in an effort to drastically cut down bureaucratic abuse of the nation's security system.

When signing the executive order last week, the President said he believes the new restrictions will "lift the veil of secrecy" enshrouding warehouses of ducuments written by government employes:

"The many abuses of the security system can no longer be tolerated," President Nixon said. "Fundamental to our way of life is the belief that when information which properly belongs to the public is systematically withheld by those in power, the people soon become ignorant of their own affairs, distrustful of those who manage them, and—eventually—incapable of determining their own destinies."

This demonstrates the President's fine sensitivity to the people's right to an above-the-board government, to government documents and information that insure public scrutiny of bureaucratic actions.

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THE PRESIDENT'S DIRECTIVE, which takes effect June 1, represents the first major overhaul of classification procedures since the administration of President Eisenhower in 1953.

The government security system never was intended as a hedge against administrative blunders and embarassments. As President Nixon noted, classification procedures over the years have evolved into sure-fire cover-up techniques.

Part of the problem has been the number of people authorized to wield the stamps of "top secret," "secret" and "confidential," approximately 5,100 government employes in the State and Defense Departments and the Central Intelligence Agency. The new directive will cut that number to 1,360 and will also trim from 24 to 12 the number of departments and agencies with classification power.

Declassification after 10 years will become the rule rather than the exception under the new order. The President's intention is to release "top secret" information after 10 years, "secret" papers after eight years and "confidential" documents after six years.

The volume of classified government documents is staggering. Since the beginning of World War II, classified documents totaling 460 million pages have piled up in government warehouses. The President's directive should go a long way toward removing the excesses.

Sensibly, the President has displayed proper concern for those documents vital to U.S. security. The President emphasized that information potentially hazardous to national security would continue to be withheld for as long as necessary.

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NIXON ESTABLISHED four tests for determining a document's continuing senstitity. Unless a document meets one of the four tests, it would be declassified in accordance with the President's directive. The tests are:

- It was furnished in confidence by a foreign government or international organization.
- It pertains to codes or discloses intelligence sources or methods.
- It discloses specific foreign relations matters "the continued protection of which is essential to the national security."
- It could place a person in danger of physical harm.

Long term government classification for other reasons amounts to no more than bureaucratic and political conveniences, the doorway to an invisible government, a concept repugnant to a democratic society like ours.

President Nixon has acted forthrightly and responsibly in devising and implementing a plan that will diminish security system abuses and make all government officials more responsive to the public.

NEW YORK TIMES
14 MAR 1972

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PENALTIES CITED IN SECRECY ORDER

But House Panel Calls Some Provisions Unenforceable

By RICHARD HALLORAN
Special to The New York Times

WASHINGTON, March 13 — Assistant Attorney General Ralph E. Erickson told a House Armed Services subcommittee today that "administrative and criminal sanctions may attach to the unauthorized release" of secret national security documents under a new Presidential order.

But, in response to questions, Mr. Erickson was unable to specify those sanctions and said that the Government was seeking ways to strengthen action against officials who made such disclosures and against persons who received secret information without authorization.

Mr. Erickson, who is the Justice Department's legal counsel, also disclosed that the new Executive order provides for only minimal sanctions against officials who stamp "top secret," "secret" and "confidential" classifications on papers that do not require them.

President Nixon's executive order, issued last week, is intended to limit the amount of national security information that is classified and to speed up the process by which such information is eventually made available to the public. It goes into effect June 1.

Rehnquist's Successor

Mr. Erickson succeeded William H. Rehnquist after Mr. Rehnquist was named to the Supreme Court, and was a member of the President's committee that undertook the 14-month study on classification. He testified today before the Special Subcommittee on Intelligence, which is headed by Representative Lucien H. Nedzi, Democrat of Michigan.

Mr. Erickson is scheduled to represent the Justice Department on an interagency review committee that will be established under the new Executive order to supervise its execution.

Mr. Erickson was unable to explain to the subcommittee how the interagency review committee, which will be responsible to the National Security Council, is expected to operate. He said that would be set forth in specific guidelines later.

He added that the committee would be a full-time, regularly functioning panel, with its staff drawn from the departments represented on it. Besides the Justice Department, they will come from the State and Defense Departments, the Central Intelligence Agency, the Atomic Energy Commission and the staff of the National Security Council.

The Executive order says that "repeated abuse of the classification process shall be grounds for an administrative reprimand." Asked to define "repeated abuse," Mr. Erickson said that was yet to be decided but would be in forthcoming regulations.

The new order also says that, "to the extent practicable," portions of a paper containing classified information should be marked to distinguish it from those portions containing unclassified information that can be made public.

John R. Blandford, chief counsel of the Armed Services Committee, asserted that such wording meant that the provision was unenforceable and was a loophole in the order. Mr. Erickson said that the Administration would have to rely on the attitude of Federal employes not to abuse that provision.

Asked how persons with authority to classify papers would be identified, Mr. Erickson said that the regulations governing that had yet to be developed. He added that it would require the name, title and position of the classifier or "some other procedure" whereby the classifier could readily be identified.

Sanctions Not Included

On the question of sanctions, Mr. Erickson conceded that they were not included in the Executive order. He said that the department was looking at the criminal codes as they refer to the handling of classified material as an adjunct to the Executive order.

Although the case of the Pentagon papers was not specifically cited, it appeared that the publication of those secret documents last summer was behind the issue of sanctions.

Asked about the unauthorized release of classified information, Mr. Erickson noted that one title of the criminal code prohibits turning over such information to a foreign agent.

William H. Hogan Jr., the subcommittee counsel, asked whether the law, which says that the disclosure must have the intent of doing harm to national interests, provided adequate sanctions for prosecuting persons who received classified information to which they were not entitled.

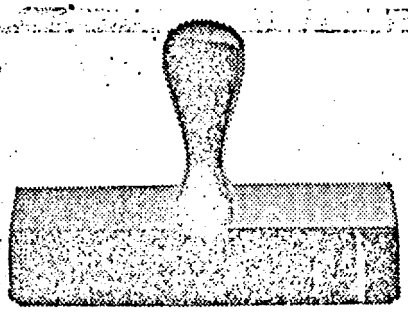
Mr. Erickson said that there were serious restraints on how far the Government could go without raising a constitutional problem under the First Amendment, which provides for freedom of speech and the press.

He also conceded that the executive branch had been unable to solve the problem that arises in such prosecutions, because a court action would require the Government to confirm the accuracy of the information that had been released and perhaps to provide more to persuade a jury that the national interests had been harmed.

NEW YORK TIMES
17 MAR 1972

Classification:

The Word Now Is: 'Easier on That Stamp'



CONFIDENTIAL

. . . for six years.

SECRET

. . . for eight years.

TOP SECRET

. . . for ten years.

WASHINGTON—The bureaucrat, an experienced and dedicated civil servant with a "top secret" clearance, took a sip of his martini and said: "Every guy who writes a document can stamp his own classification on it, at least up to the level of 'Secret.' He just goes on an ego trip. It's a status symbol to see who can have the most classified documents in his file drawers. Some offices, like the Joint Chiefs of Staff, never deal in anything less than top secret—even if it's a clipping from The New York Times. A lot of people play games with classification to get attention. They know their paper won't get read unless it has at least a 'secret' stamp on it."

In an effort to cut into the inflation of secrecy surrounding national security information, President Nixon issued an Executive Order last week that is intended to slow down the use of "top secret," "secret" and 'confidential" classifications on the one hand and to speed up the process of declassifying and making public that information on the other.

The President said that the "many abuses of the security system can no longer be tolerated." He added that "when information which properly belongs to the public is systematically withheld by those in power, the people soon become ignorant of their own affairs, distrustful of those who manage them, and — eventually — incapable of determining their own destinies."

The new order was the consequence of a study begun 14 months ago and spurred by the outcry following publication of the Pentagon Papers last summer. Many of those documents would have already been declassified had the new order been in effect.

The President tightened the rules for classifying documents, instructed officials to use "top secret" with "utmost restraint" and "secret" only "sparingly," limited the number and authority of officials to classify papers, decreed that each official be held personally responsible for not overclassifying documents and ordered that secret information be separated from unclassified material wherever possible.

At the other end of the process, the Executive Order, which goes into effect on June 1, provided that "top secret" papers be opened to the public after 10 years, "secret" after eight and "confidential" after six.

But the President allowed some exemptions — information obtained in confidence from another government, intelligence and code documents, and material that would place a person in jeopardy of physical harm. He also exempted information "the continued protection of which is essential to the national security," a waiver that appeared to leave wide opportunity for advocates of secrecy.

Those exemptions, however, can be challenged. Anyone may ask the department originating a document for it after it is 10 years old. The burden of proof for continuing the secrecy will be on the Government, reversing a policy under which the applicant must show why it should be made public.

Will the new order work? Administration spokesmen admitted that much depended on the attitude and discretion of bureaucrats in applying the new rules. The President himself said that "we cannot be assured of complete success."

But, the President added, "the full force of my office has been committed to this endeavor." He made the National Security Council responsible for the program and established an interagency classification review committee to monitor it and to act as a court of appeal in arguments over whether a document should be made public.

On Capitol Hill, some Congressmen were critical. Representative William S. Moorhead, chairman of a House Subcommittee on Government Information, said that "the Executive Order itself does not live up to the laudable goals of the President's statement."

"It appears to be an order written by classifiers for classifiers," the Pennsylvania Democrat said. Because "top secret" documents will be classified for 10 years, Mr. Moorhead said, "a President could safely stay in office for his full two constitutional terms, totalling eight years, and at the same time make it possible for his Vice President or another of his supporters to succeed him without the public knowing the full details of major defense or foreign policy errors his Administration has committed."

Others were angered by being left out of the effort to curb secrecy. A House Armed Services subcommittee began hearings on a bill that would establish a joint Executive-Congressional-Judicial commission to review continuously the secrecy surrounding secret papers. The Administration, however, opposed the bill, arguing that the Executive branch alone was better equipped to do the job.

A sampling of officials showed at least some initial approval of the President's order. A diplomat pointed to the new test for stamping a paper "top secret" — if disclosed, such a document under the President's new order, "could reasonably be expected to cause" armed hostilities against the United States, disruption of vital foreign relations, compromise of key defense plans or exposure of sensitive intelligence operations.

The diplomat snorted quietly: "that 'top secret' stamp is used much too often now. Look, how many papers are going to start a war if they get out?"

—RICHARD HALLORAN

NEW YORK TIMES

1 6 MAR 1972

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Crack in the Secrecy Wall

The new rules laid down by President Nixon for guarding against overuse of secrecy stamps on Government documents are clothed in all the right rhetoric.

What remains to be demonstrated, however, is whether the changes can overcome the inherent tendency of all bureaucrats—and particularly those in military or diplomatic assignments—to err on the side of overclassification and to find perpetual excuses for keeping things secret long after the most shadowy justification has vanished.

The Administration says it wants to "lift the veil of secrecy which now enshrouds altogether too many papers written by employes of the Federal establishment." But the caveat the President attaches to his own admonition —"to do so without jeopardizing any of our legitimate defense or foreign policy interests"—provides all the mummy wrapping any self-protective suppressionist needs to lock up information forever.

If there is to be genuine headway toward openness in Government information policy, the first step will have to be convincing evidence that the White House itself has abandoned the hostile, even punitive, attitude toward disclosure it exhibited—and still exhibits—in connection with publication of the Pentagon and Anderson papers.

Unquestionably, the new Nixon order enunciates some salutary principles, chief among them its ban on classification of documents to cover up inefficiency or administrative bungling or to shield an official or agency from embarrassment. Also on the plus side is Presidential acceptance of the need for shifting the burden of proof in disputes over whether documents should remain classified. Now Mr. Nixon puts it up to Government officials to show why secrecy is necessary, not up to the challenger to show why the information should be made public. Scholars may get access to historical archives a few years sooner than they have up to now.

But the vigilance and enterprise of an independent press and an alert citizenry will still be needed to dig out on a day-to-day basis the facts crucial to public understanding and intelligent decision-making.

EDITOR & PUBLISHER
11 MAR 1972

STAT

Court, Congress assay effect of Information Act

The Supreme Court and a Congressional committee have embarked on separate inquiries into the way the Freedom of Information Act, passed five years ago to curb excessive government secrecy and enhance the free flow of information to the public, is working.

The high court agreed for the first time to hear a case involving the Act, brought by 33 Congressmen, to force the White House to disclose reports and letters prepared for President Nixon relating to the underground nuclear explosion at Amchitka Island, Alaska.

A Federal District judge ruled that the documents were exempt from the disclosure provisions of the FoI. The U.S. Court of Appeals for the District of Columbia, however, ordered the District Judge to inspect the documents and decide whether some of them could be made public without endangering national security.

In its appeal to the Supreme Court the Government contended that inspection by judges would invite judicial tampering with national security and go beyond the intention of Congress to encourage free exchange of ideas within and between government bureaus.

The court's action coincided with hearings by a House Government Information Subcommittee into how the FoI act is working and whether the Executive Branch is following the letter and the spirit of the law. Representative William S. Moorhead of Pennsylvania, chairman, said the committee planned to "suggest legislative solutions to any shortcomings we uncover."

James C. Hagerty, press secretary to President Eisenhower, testified that a system of classification of documents is essential to the operation of any government but that government procedures should be reviewed periodically to bring them into line with changing times and conditions.

George Reedy, press secretary to President Johnson, said Congress should look into the proliferation of executive privilege operations in the White House, which he said made it "literally impossible to get at the facts."

Morehead said he deplored the fact that Herbert G. Klein, the Nixon Administration's director of communications, had declined to testify on the ground that the President's immediate staff do not appear before Congressional committees.

Changes suggested

Hagerty called the existing classification system an antiquated one, dating from World War I, and often subjected to abuse. He made the following recommendations concerning changes:

(1) Each agency of the government should have a classification clearing house which would have sole authority to determine whether any of its papers or actions should be classified. Such an organization should be staffed by high-level government personnel.

(2) The Freedom of Information Act might be amended to provide for a required periodic review of all classified material, either by an independent quasi-judicial board, or commission, or by a special staff of the National Security Council or by a similar board or staff within each department and agency reporting directly to the Cabinet officer or Agency head.

"Such a board or staff would be authorized to determine periodically, whether existing documents, or portions of them that do not endanger national security, should be removed from classified listings," Hagerty said. "It would be a gigantic—and awesome—job at first, and it would take a long time to go through the present classified documents, but if it could be started it would have the result of eliminating some of the problems relating to government information."

Hagerty, who is a vicepresident of American Broadcasting Co., remarked about the frustrations of trying to release over-classified information when he was in the White House. Sometimes, he said, documents for release at a news conference would arrive "literally covered with classified stamps, including the highest secrecy ratings."

"I would actually have to take these papers to the President and have him declassify them on the spot. And the only thing that was top secret about that was what he would say when he had to go through such nonsense."

Professor John Shattuck of Harvard University's Law Center's Institute for Public Interest Representation, suggested that the Act should be amended to require every agency to respond to a request to make records available within 10 days after receipt of the request. He said this would speed up the flow of information to the public.

Kissinger identified as source

In another aspect of government secrecy, the *Boston Globe* and the *Miami Herald* identified Dr. Henry A. Kissinger as the "Administration spokesman" who had discussed President Nixon's recent talks with China leaders at a "background" meeting of newsmen who had been on the trip.

John S. Knight, editorial chairman of Knight Newspapers, reported that the White House had asked why the Miami Herald's reporter did not abide "by the rules."

"Well, what rules? Whose rules?" Knight wrote in his Editor's Notebook.

"Unfortunately, many Washington correspondents who regard themselves as 'statesmen' let themselves be used and fall for the 'background' con game while forgetting they are supposed to be reporters.

"It's a shoddy practice which more often than not actually embarasses the very officials attempting to serve their own ends.

"And that is what I told the Biscayne White House."

The Boston Globe said its reporter had not been invited to the Kissinger session and "therefore is free to identify the source of the material."

The edited transcript of Kissinger's briefing contained sections marked "off the record" and "on the record," and this led to some confusion among the reporters.

Nixon order limits 'Top Secret' label

President Nixon has issued an Executive Order, effective June 1, which substantially restricts authority to classify papers "Top Secret."

Materials may be classified "Top Secret" only if their unauthorized disclosure "could reasonably be expected to cause exceptionally grave damage to the nation's security."

The burden of proof is placed upon those who want to preserve secrecy rather than on those who want to declassify the documents. This is the first time such a requirement has been imposed.

The order limits authority to use the "Top Secret" label to 12 departments and agencies. Under current rules 24 agencies have broad classification authority.

In the State, Defense and the Central Intelligence Agency, the number of officials authorized to classify material "Top Secret" is reduced by the new Nixon order from 5,100 to 1,860.

The new system provides that "Top Secret" information is to be downgraded to "Secret" after two years and to "Confidential" after two more years and declassified after 10 years.

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NEW YORK DAILY NEWS
11 MAR 1972

CAPITOL STUFF

By FRANK JACKMAN

Washington, March 10—The White House, according to the National Geodetic Survey, has subsided only four-hundredths of an inch—actually, just a silly millimeter—since its reconstruction back in 1952. But when they announced the big order allegedly loosening up on all that secret stuff the other day, the executive mansion must have sunk at least another foot.

A Top Secret Over What's Top Secret

"First of all," said David Young, a special assistant to the National Security Council, "I think this is evidence of, and in keeping with, the President's pledge to have 'an open administration.' This is something that is specific. This is something that you can analyze. We have tried to be as concrete and forthcoming as we can."

Well, maybe you have, Dave. And then again maybe not. Take, for example, who in the executive office is entitled to classify documents and information "top secret"—No. 1 among all the various spooky categories the government uses to keep things to itself.

Besides the White House office, the National Security Council, the Office of Emergency Preparedness, and the President's Foreign Intelligence Advisory Board (our beloved governor, the Hon. Nelson A. Rockefeller, serves on that one, friends; aren't you proud?), the Office of Telecommunications Policy and the President's Council of Economic Advisers also can stamp things "eyes only" or some of those other nifty hush-hush terms.

John D. Ehrlichman
"I don't know—go ask"

It's plain to see why the Council of Economic Advisers needs the authority to classify things top secret. There are a lot of things they are keeping under their hats over there. Why, if the Democrats ever found out when the rate of unemployment was going down, or when wage and price controls were being lifted, they'd claim all the credit for these nice things for themselves. You can't be too careful in politics.

But giving the top secret stamp to the Office of Telecommunications Policy is a mystery, too. So far—and this might very well be garbled in translation — the only conspicuous public action the Office of Telecommunications Policy has taken is to warn Congress that public television is kind of leaning in one ideological direction. And, privately, to complain about the $80,000 salary Sander Vanocur is getting to work for public TV. Of course, William F. Buckley Jr. is getting quite a lot, too, for his Firing Line show, but that's different.

Maybe what the Office of Tele-communications Policy is stamping top secret is how you go about getting those $80,000 jobs. Sure, that's it. And when they're through, all the biggies on TV will be on piecework. Walter and Howard and Harry and John and David and Sandy will be brown-bagging it to the old shop every day. On the bus. Join the club, guys.

But perhaps the best explanation of how the new system actually works came in this bit of persiflage between John D. Ehrlichman, President Nixon's top domestic affairs adviser, and some nosey newsies at Wednesday's White House briefing. Ehrlichman said that the overhaul of the whole classification system had been ordered in January 1971 when the National Security Council issued a "study memorandum" on the subject.

"That was not particularly noticed at the time," he said, "but six or seven months later it became a matter of some notoriety in connection with the controversy concerning classification of the Pentagon papers."

"John," pipes up a reporter, "can I ask one question about that? Where you mention that the original NSC memo didn't receive very much attention, was it publicly announced, or was it classified?"

Ehrlichman: "It was not classified."

Q. "Was it announced by the White House?"

A. "Nobody and came out seized you by the lapels, but those kinds of things are available."

Q. "Is there something available now in the NSC emeos that we ought to be digging up?"

A. "I don't know. Go ask."

(At this point, David Young began his explanation of the new system, mercifully cutting off the hollow laughter at Ehrlichman's blithe "go ask" the NSC. At the NSC, they regard it as treasonable to give out the day of the week.)

Subsequently, however, it became clear that Ehrlichman wasn't kidding when he said nobody was going to come out and "seize you by the lapels" in connection with the immense mass of classified documents.

'The Reasonableness Test'

Said Young: "If the individual, after 10 years, wants to get a (top secret) document which has been exempt, he is given . . . a mandatory right of review if he can identify the document and we can produce it with a reasonable amount of effort. These are the two criteria which are used under the Freedom of Information Act: particularity and the reasonableness test."

But who ultimately judges what is "particular" and "reasonable"? The new Inter-Agency Classification Review Committee acts as a sort of appeals board. And who's on the Inter-Agency, etc.? The State Department, the Defense Department, the CIA, the Justice Department, the Atomic Energy Commission and the National Security Council. And who classifies the most stuff in the first place? The State Department, the Defense Department, the CIA, the Justice —you get the idea. In this ballpark the pitcher is also the umpire.

NEW YORK TIMES
11 MAR 1972

STAT

Nixon's Order Held 'Restrictive' By House Information Specialist

But Moorhead, Subcommittee Head, Praises President's Statement on Secrecy

By RICHARD HALLORAN
Special to The New York Times

WASHINGTON, March 10—Representative William S. Moorhead, chairman of a House subcommittee on Government information, criticized today President Nixon's new Executive order on secrecy in national security papers calling it "a very restrictive document."

But the Pennsylvania Democrat praised the President's statement accompanying the Executive order for, as he puts it, "emphasizing past abuses of the classification system," under which documents are stamped "top secret," "secret" or "confidential." The order, issued Wednesday, goes into effect June 1.

Mr. Moorhead, at the opening of a hearing by his subcommittee this morning, asserted that a preliminary study of the order itself indicated that it "does not live up to the laudable goals of the President's statement."

"It appears to be an order written by classifiers for classifiers," Mr. Moorhead said.

Sees Way to Cover Errors

The Executive order is designed to reduce the secrecy surrounding national security material by limiting the use of secrecy classifications when the papers are written and by speeding up the process by which they are later made public.

Among its provisions is one ordering that "top secret" documents be automatically declassified and made available to the public after 10 years, "secret" papers after eight years and "confidential" ones after six, with certain exceptions that Nixon said would be narrowly applied.

But Mr. Moorhead argued that, under this arrangement, a "President could safely stay in office for his full two constitutional terms, totaling eight years, and at the same time make it possible for his Vice President or another of his supporters to succeed him without the public knowing the full details of major defense or foreign policy errors his administration had committed."

United Press International
William S. Moorhead

A Distinction Is Made

"In other words," Mr. Moorhead said, "the same political party could control the Presidency for 12 years when, perhaps, the public would throw it out of office if only the facts were known."

In his remarks, Mr. Moorhead drew the distinction between information covered by the Freedom of Information Act and that covered by the Executive order. The law concerns the disclosure of information on the Government's day-to-day activities, while the White House order covers information on national defense and foreign policy or, as the President put it, national security.

In the subcommittee hearing Assistant Attorney General Ralph E. Erickson testified that from July 1967, to July, 1971 the Justice Department received about 535 requests for access to its records under the Freedom of Information Act.

Mr. Erickson said that access had been granted in 224 cases and denied in 311. The majority of the denials, he said, involved investigative files or cases where the privacy of an individual would have been violated.

Order Is Defended

In another hearing before a House Armed Services subcommittee on intelligence, Deputy Assistant Secretary of State William D. Blair Jr. continued the Administration's effort to explain the Executive order and head off legislation that would establish a joint executive-Congressional-judicial commission to review secrecy in the Government.

Mr. Blair conceded that "too much material — probably far too much—was being classified in the first place, and too much of that was being over classified.

He said that, in the central foreign policy files since 1950 alone, there were more than eight milion documents, at least half of them classified. To declassify them, he said, would take 10 years, while more papers piled up.

Mr. Blair noted that the new order severely limited the authority of officials to classify material. He said that about 800 officers of the department may now stamp papers "top secret," that number will be cut to about 300 when the new order becomes effective.

1,860 May Use Stamp

Under the Executive order, about 1,860 persons designated by the President or the White House staff, as well as the heads of 12 agencies or those designated by them, may use the "top secret" stamp.

They are the heads of the State Defense, Treasury and Justice Departments; the Departments of the Army, the Navy and the Air Force; the Central Intelligence Agency, the National Aeronautics and Space Administration and the Agency for Internatoinal Development.

The heads of 13 more agencies and their principal subordinates may use the "secret" classification. They are the Department of Transportation, the Department of Commerce, and the Department of Health, Education and Welfare; the Federal Communications Commission, the Export-Import Bank, the Civil Service Commission, the United States Information Agency, the General Services Administration, the Civil Aeronautics Board, the Federal Maritime Commission, the Federal Power Commission, the National Science Foundation and the Overseas Private Investment Corporation.

Regulations to Be Issued

Each agency, before June 1, will designate those officials who will have the authority to use each stamp. The agencies will also issue regulations and guidelines within the framework of the Executive order.

For classified documents already in existence, anyone will be able to apply to gain access to them by specifying which ones he wants to see. The agency that originated the documents will then review them to make sure national security will not be compromised by releasing them.

If the applicant is dissatisfied, he may then appeal to the National Security Council's Interagency Classification Review Committee, established by the new order. If that committee still refuses to release the document, the applicant may go to Federal court.

STAT

LONDON DAILY TELEGRAPH
9 MARCH 1972

PENKOVSKY SECRETS DEMAND

By RICHARD BEESTON
in Washington

A REPUBLICAN presidential candidate filed a suit against the Pentagon yesterday to force publication of the Penkovsky "special collection" Papers which he claimed related to current Russian plans in case of nuclear war against America.

The move coincided with an announcement by President Nixon yesterday ordering the declassification of large quantities of secret documents, but not specifically referring to the Penkovsky Papers.

Mr John Ashbrook, an Ohio member of the House of Representatives, said the papers contained Soviet top-secret doctrine for nuclear war, and long-range strategic plans which the American people had a right to know about.

The papers were provided to British intelligence — which passed them on to Washington —by a Russian intelligence officer, Col Oleg Penkovsky, who was reported to have been executed by the Russians in 1963.

Mr Ashbrook, a conservative, said that those papers which accurately predicted the Soviet nuclear build-up had been published, but not the "special collection" dealing with specific Soviet strategic intentions against America.

Highest classification

He released a copy of a letter from Mr Lawrence Eagleburger, Deputy Assistant Secretary of Defence, acknowledging that the "special collection" contained material of the "highest classification, extremely relevant to current Soviet strategic doctrine and war plans."

Mr Eagleburger said that in all likelihood Russia was still trying to determine which of their secrets Penkovsky had given away. It would not be in America's interest to assist them.

But Mr Ashbrook contended that the only purpose served by continued secrecy "is to keep the American people from knowing what the men in the Kremlin have known for all these 10 years. It is the right of the American people to know, and to know just how the Nixon Administration plans to protect them."

Many abuses

In his statement from the White House yesterday Mr Nixon promised to "lift the veil of secrecy which now enshrouds altogether too many papers." The secret classification of documents did "not meet the standard of an open and democratic society."

The "many abuses" of the security system would no longer be tolerated. Classification frequently served to conceal bureaucratic mistakes.

NEW YORK TIMES
9 MAR 1972

PRESIDENT ORDERS LIMIT ON LABELING OF DATA AS SECRET

Calls for Faster Release of Material Not Injurious to the Nation's Security

By RICHARD HALLORAN
Special to The New York Times

WASHINGTON, March 8—President Nixon signed today an Executive order to limit the secrecy surrounding Federal documents, a major source of information about the Government.

The President said in a statement that his action was "designed o lift the veil of secrecy which how enshrouds altogether too many papers written by employes of the Federal establishment—and to do so without jeopardizing any of our legitimate defense or foreign policy interests."

The Executive order, which will become effective June 1, calls for reducing the number of documents classified "top secret," "secret" or "confidential" when they are written and for limiting the authority of officials to stamp such classifications on those papers.

Rely on Discretion

At the other end of the process, the order calls for speeding up the process of declassifying these documents, making them available to the public, with certain exceptions that the Administration pledged would be narrowly applied.

The President and Administration spokesmen who explained the new order readily conceded, however, that the success of the program would depend largely on the discretion of officials. Mr. Nixon said, "Rules can never be airtight and we must rely upon the good judgment of individuals throughout the Government."

The action is a result of a 14-month study ordered by the President and spurred by the publication last summer of the secret Pentagon study of the Vietnam war. Had the new order been in effect, then, large portions of the documents in the Pentagon papers would already have been declassified.

10-Year Limit Set

Under the new order, "top secret" papers can become public after 10 years. Thus, documents in the Pentagon papers that were written before 1961 would have been automatically declassified or would have been subject to a challenge in which th Government would have had to prove that injury to the national security would have resulted from their publication.

Similarly, many "secret" papers dated before 1963 and "confidential" documents dated earlier than 1965 would have been available. The Pentagon papers included documents from 1945 to 1968.

The new order means that large numbers of papers from the Truman and Eisenhower Administrations should become available, plus those of the early Kennedy years. Documents concerning the Bay of Pigs operation in 1961, for instance, will be eligible for public inspection unless the Government can prove that such disclosure will harm the national interest.

Later this year, under the order, documents pertaining to the Cuban missile crisis of 1962 will become eligible for inspection unless the Government can prove that the national interest will be harmed.

The order drew some immediate fire on Capitol Hill. Representative William S. Moorhead, Democrat of Pennsylvania, who is chairman of a House subcommittee on Government information, said, "Congress may want to write its own statutory law on this important and sensitive matter."

Along the same line, a House Armed Services subcommittee began hearings this morning on a bill proposed by Representatives F. Edward Hébert, Democrat of Louisiana, and Leslie C. Arends, Republican of Illinois, the committee chairman and senior minority member respectively.

While the Nixon Administration plans to keep control of the classification of documents in the hands of the Executive branch, the Hébert-Arends bill would establish a joint executive - Congressional - judicial commission to undertake continuing reviews of secrecy in the Government.

The general couns
Department of Defens
Buzhardt, testified thi
before the House Armed Services subcommittee, which is headed by Representative Lucien N. Nedzi, Democrat of Michigan, in opposition to the Hebert-Arends bill.

Mr. Buzhardt said that, in an effort to stop unauthorized disclosures of secret information, Pentagon researchers had begu looking for a type of paper that could not be Xeroxed or other wise duplicated. The Pentagon vapers given to The New York Times and other newspapers were reportedly Xeroxed copies of the original documents — in some cases, Xeroxes of Xeroxes

In issuing his order today, Mr. Nixon said, "We have reversed the burden of proof: For the first time, we are placin that burden — and even the threat of administrative sanction — upon those who wish to preserve the secrecy of documents rather than upon those who wish to declassify them after a reasonable time."

Under the new order, papers can be classified only if their disclosure "could reasonably be expected" to cause damage to the national interest. Previously a paper could be stamed "secret" even if the threat of damage to the national security was remote.

The new order further reduces the number of Federal agencies, outside the White House, that can classify documents. At present, 38 agencies can classify papers "top secret" or place them under the lesser classifications.

Must Identify Officials

After June 1, however, only 12 agencies, such as the State Department, the Defense Department and the Central Intelligence Agency, can use the "top secret" stamp and 13 more will be able to use the "secret" stamp.

In the agencies that will be able to use the "top secret" label, only 1,860 officials will be authorized to assign such a classification, against 5,100 at present.

Moreover, the President said, each agency will be required to identify those officials doing th classifying. "Each official is to be held personally responsible for the propriety of the classification attributed to him," the President said.

"Repeated abuse of the process through excessive classification," the President continued, "shall be grounds for administrative action." That would be an administrative reprimand, which can be damaging to a civil servant's career.

The President also ordered that, wherever possible, classified information be separated

mation be classified in order to conceal inefficiency or administrative error, to prevent embarrassment to a person or a department, to restrain competition or independent initiative, or to prevent for any other reason the release of information which does not require protection in the interest of national security."

The President ordered that the "top secret" label be used "with utmost restraint" and that the "secret" label be employed "sparingly."

As to declassification, the President ordered that "top secret" documents be made available after 10 years. "secret" papers after eight years and "confidential" items after six years.

But there will be exceptions, including the following:

¶Information furnished in confidence by a foreign government or international organization on the understanding that it be kept in confidence.

¶Information covered by law, such as atomic energy information, or documents pertaining to codes and intelligence operations.

¶Information on a matter "the continuing protection of which is essential to the national security." That broad statement would appear to give advocates of secrecy considerable leeway.

¶Information that, if disclosed, "would place a person in immediate jeopardy." That pertains to intelligence agents.

May Ask for Document

But anyone may, after a document is 10 years old, ask for a review of the reasons why it is still kept secret. He must specify the document he wishes to see, which means that he must know that it exists. Moreover, the agency holding the paper must be able to find it "with a reasonable amount of effort."

That part of the order also applies to documents written before the order becomes effective. The President said that the National Archives had "160 million pages of classified documents from World War II and over 300 million pages of classified documents for the years 1946 through 1954."

Only a small number of those postwar documents have been made available. The vast majority are not now subject to any sort of automatic declassification as provided under the new order. The rest are subject to declassification only after 12 years, as opposed to the top limit of 10 years under the new

WASHINGTON POST
9 MAR 1972

U.S. Is Sued By Ashbrook On Secrets

United Press International

Rep. John Ashbrook (R-Ohio), announced yesterday a suit to force the Defense Department to make public secret documents on Soviet military strength obtained from a Red army official.

The suit, he told a news conference, would allow access to the so-called Penkovsky Papers—a compilation of statistics on Soviet nuclear weaponry by Col. Oleg Penkovsky, a senior intelligence officer with the Russian army general staff, who was executed for espionage 10 years ago.

Ashbrook, conservative challenger to President Nixon in Republican presidential primaries, said declassification of the documents was essential to any debate on a SALT agreement which may be forthcoming between the United States and Russia.

He said his efforts to persuade the Pentagon to voluntarily declassify the papers were unsuccessful. A suit under the Freedom of Information Act was filed in federal district court for southern Illlinois yesterday, he said.

"It is the right of the American people to know how the Soviet Union plans to destroy them; and it is their right to know just how the Nixon administration plans to protect them," Ashbrook commented.

Material from Penkovsky's reports was rewritten and published in the United States in 1966 as "the Penkovsky Papers." But the raw material on which the book was based has never been released.

WASHINGTON STAR

8 MAR 1972

STAT

Nixon Acts to Lift 'Veil of Secrecy'

By GARNETT D. HORNER
Star Staff Writer

President Nixon today ordered a major overhaul of the system for classifying government papers. He said his action was aimed at making more information available to the public.

In an executive order, effective June 1, he substantially restricted authority to classify papers "top secret" and specified that this authority must be used with "utmost restraint."

Those given authority to use the "secret" classification were directed to use it "sparingly."

The President's order also set up a new system speeding declassification of documents.

Nixon said his aim is to "lift the veil of secrecy which now enshrouds too many papers written by employes of the federal establishment—and to do so without jeopardizing any of our legitimate defense or foreign policy interests."

In the past, he said, "classification has frequently served to conceal bureaucratic mistakes or to prevent embarrassment to officials and administrations." Such misuse of the "secret" stamp is specifically banned by the executive order.

In what he described as a "critically important shift," Nixon said his order places the burden of proof for the first time on those who want to preserve the secrecy of documents rather than on those who wish to declassify them.

Under Nixon's order, materials can be classified "top secret" only if their unauthorized disclosure "could reasonably be expected to cause exceptionally grave damage to the national security."

As examples of such damage, it listed armed hostilities against the U.S. or its allies, disruption of foreign relations vitally affecting the national security, and compromise of vital national defense plans or complex cryptologic and communications intelligence systems.

The "secret" classification was limited to materials for which unauthorized disclosure could "reasonably be expected to cause serious damage to the national security." The "confidential" classification can be used on materials for which disclosure might cause plain "damage" to the national security.

Authority Limited

Under current rules, Nixon noted, 24 federal departments and agencies, plus his executive office, have broad classification authority, while others have more restricted powers.

The new system limits the authority to classify information "top secret" to 12 departments and agencies and such White House offices as the President may designate. Those plus 13 others will have authority to stamp papers "secret" and "confidential."

In the principal departments concerned with national security — state, defense and the Central Intelligence Agency — the number of individuals who may be authorized to classify material "top secret" is reduced from 5,100 to approximately 1,860.

This authority may be exercised only by the heads of the agencies and certain high officials whom the heads must designate in writing.

Anticipates Drop

Nixon said he anticipates that these reductions will mean a sharp cut in the quantity of classified material.

The new system for declassifying papers provides that "top secret" information is to be downgraded to "secret" after two years, to "connfidential" after two more years, and declassified after a total of 10 years—with certain exemptions.

"Secret" information is to be downgraded to "confidential" after two years, and declassified after eight years. "Confidential" papers are to be declassified after six years.

The order specified that papers may be exempted from this automatic process only by an official with "top secret" classification authority who must specify in writing the specific reason for the exemption.

Exempt Categories

The order lists four categories of information that may be exempted from the automatic declassifying system. They are classified information:

Furnished in confidence by a foreign government or international organization.

Covered by statute or pertaining to cryptography, or disclosing intelligence sources or methods.

Disclosing a "system, plan, installation, project or specific foreign relations matter the continued protection of which is essential to the national security."

Which would "place a person in immediate jeopardy" (defined as physical harm, not personal embarrassment of discomfiture) if disclosed.

The order specifies that there must be a "mandatory review" of the classification of any exempted material if a document is requested by anyone, including "a member of the general public," so long as the request describes the record so that it may be identified and it can be obtained with a "reasonable amount of effort."

If any material is still classified 30 years after its original classification, the executive order provides, it shall be automatically declassified unless the head of the originating department personally determines in writing that its protection is essential to national security or that its disclosure would place a person in immediate jeopardy.

LOS ANGELES TIMES
MAR 1972

High Court to Rule on Disclosing Nonsensitive Parts of Secret Papers

BY LINDA MATHEWS
Times Staff Writer

WASHINGTON — The Supreme Court agreed Monday to rule on the government's much-debated policy of classifying an entire document "secret" or "top secret" even if sections contain nonsensitive information.

The issue came to the court in a suit brought by Rep. Patsy T. Mink (D-Hawaii) and 32 other members of Congress.

They had sought public access to nine reports prepared for President Nixon on last fall's atomic test at Amchitka Island, Alaska. The reports allegedly contained information about the dangers of underground nuclear testing.

Order to Judge

The Justice Department had asked the Supreme Court to reverse an order by the U.S. Court of Appeals here that would allow release of sections of the documents. The appeal will be heard next term.

In a decision favorable to the congressmen, the Appeals Court ordered Federal Dist. Judge George Hart Jr. to examine the secret documents and decide which sections were so nonsensitive that they could be disclosed.

The Appeals Court ruling also voided the controversial 1953 presidential order requiring that a document carry a classification "at least as high as that of its highest classified component."

The Justice Department, in appealing this order, said it was "highly unrealistic" to think that a court could distinguish secret information from non-secret.

The government also objected that "judicial inquiry into matters which are peculiarly within the province of the executive" is inconsistent with the 1970 Freedom of Information Act.

The high court also cleared the way Monday for a ruling later this term on an attempt by Sen. Mike Gravel (D-Alaska) to stop a federal grand jury in Boston from investigating arrangements he made for publication of the secret Pentagon Papers.

Only two weeks ago, the court agreed to hear the case. At that time, it was expected that arguments could not be heard this court term without extending the session past its customary June recess date. The Justice Department, however, sought and won permission for a speeded-up ruling later this term.

Retroactivity Issue

The department insisted that without an immediate decision the grand jury investigation would be paralyzed and the government would be deprived of information it needs for successful prosecution of Danie Ellsberg and Anthony J. Russo. They will go on trial May 9 in Los Angeles on charges of violating the Espionage Act by giving secret documents to unauthorized persons.

In other actions Monday, the court:

—Let stand, with a dissent from Justice William O. Douglas, the contempt citation of a UC Berkeley demonstrator who violated a pretrial court order forbidding defendants from discussing their cases with the press. Steven Hamilton, one of 10 persons arrested during a November, 1966, protest against military recruiting on the Berkeley campus, claimed the gag order was so broad that it violated his freedom of speech.

—Affirmed a lower court's denial of a hearing to an Alabama woman challenging a state law requiring that driver's licenses be issued to married women in their married names, even if they use their maiden names for all other purposes.

NEW YORK TIMES
7 MAR 1972

STAT

JUSTICES TO WEIGH U.S. SECRECY ROLE

Will Hear Plea on Extent of Government Authority to Bar Reports From Public

By The Associated Press

WASHINGTON, March 6— The Supreme Court agreed today to rule on the scope of the Government's authority to classify documents as secret and keep them from Congress and the public.

The case concerns nine reports and letters prepared for President Nixon in advance of an underground nuclear test that was held last year in Alaska.

The Federal Court of Appeals for the District of Columbia Circuit has ruled that an entire file cannot be classified and kept secret simply because some of the material in it is sensitive.

A Federal judge was directed to separate one kind of document fro the other.

Suit by Congressmen

The Justice Department objected, saying that this kind of judgment belonged exclusively to the executive branch of government. The dispute will be argued next winter and a decision reached by June, 1973.

The nuclear test file was assembled for President Nixon by a committee headed by Under-Secretary of State John N. Irwin It contained reports on potential consequences to the environment, national defense and foreign relations of the test, known as Cannikin and conducted last November on Amchitka Island.

When word leaked out that some Government officials disapproved of the test, 33 members of Congress headed by Representative Patsy T. Mink, Democrat of Hawaii, sued for r lease of portions of the file.

The Supreme Court also acted today to speed up consideration Alaska, about publication of of attempts by a grand jury to question assistants of Senator Mike Gravel, Democrat of the Pentagon Papers. This case also would have been heard next term, but Solicitor General Erwin N. Griswold sought and won promise of a ruling before the end of June.

Mr. Griswold told the court that not only was the grand jury inBoston slowed down but also tht the Government might be deprived of important evidence needed for the prosecution of Daniel Ellsberg and Anthony J. Russo. They go on trial in Los Angeles on May 9 charged with theft of the once-secret study of the Vietnam war.

In a 5-to-2 decision, the high court prevented thousands of prisoners across the country from reopening their cases on the ground that a lawyer was not present at their preliminary hearings.

On June 22, 1970, the Court held that criminal suspects have a constitutional right to a lawyer at these hearings. This is when a judge decides whether to hold the suspect for a grand jury, whether to permit his release on bail and when the prosecution broadly outlines its case.

Justice William J. Brennan Jr. said in today's opinion that the ruling may be invoked to challenge convictions only if the preliminary hearing was held after the date of the Court's ruling. Retroactive application, he said, would cause widespread disruption of court calendars while judges consider pleas for a new trial.

Justices William O.. Douglas and Thurgood Marshall complained in dissent that the ruling was not in accord with "even-handed justice."

Appeal on Prisons Blocked

WASHINGTON, March 6 (UPI) — Without comment, the Supreme Court let stand today a lower court ruling that state prison officials may be sued by inmates for mistreatment or arbitrary punishment in the absence of a fair hearing.

The Court's action was not in the form of an opinion. It merely rejected an appeal by New York authorities from a decision by the United States Court of Appeals for the Second Circuit in favor of a prisoner, Martin Sostre, who was sentenced to solitary confinement fter a dispute with prison officials.

At this point, the ruling of the appeals court applies only in New York, Connecticut and Vermont, but it could be extended to other jurisdictions in subsequent cases.

Sostre, a black sentenced as a second felony offender, filed a $2.5-million damage suit against three state prison officials after he was plced in solitary confinement at the Green Haven Correctional Facility in Stormville. The sentence was imposed by the warden following an altercation over Sostre's legal activities on behalf of a former co-defendant and statements contained in his and statements contained in his outgoing mail.

United States District Judge Constance Baker Motley ruled that he had been improperly punished for expressing his political opinions, awarded him $13,000 in damages and limited his time in solitary to 15 days.

MIAMI HERALD
5 MARCH 1972

Washington Secrecy Run-Around Draws House Probe

By WILLIAM VANCE
Herald Washington Bureau

WASHINGTON — A diet-conscious visitor to Washington, concerned and curious about how much fat he was getting with his hot dogs back in Muncie, Ind., took some time from his touring to ask the government.

The government, in this case the Department of Agriculture, didn't answer. That sort of information, he was told, isn't available to the public.

Although the episode — as related by Ralph Nader's Center for the Study of Responsive law — occurred several months ago, the information on hot dog fat was indeed available.

Months earlier the Agriculture Department had established the maximum fat limit at 30 per cent. What's more, it had published the information in the Federal Register — the public's official guide to agency rules and regulations.

THE MAN from Muncie was simply getting a taste of government secrecy, accidental or intentional, which ranges from trivial to bizarre in the day-to-day operation of the gigantic federal bureaucracy.

Today, a casual caller can learn all about hot dogs from the Agriculture Department. But there are plenty of other things he can't find out there, and elsewhere, in Washington. Things that come under the heading of public information.

Despite the enactment nearly five years ago of the Freedom of Information Act, federal agencies continue to evade, and at times defy, the public's right to know.

Because of recurring criticism of the act's shortcomings, the House subcommittee, which fashioned it, has decided to take another long look at the government's secrecy system.

Rep. Moorhead
... another look

BEGINNING Monday, the so-called freedom of information subcommittee, headed by Rep. William Moorhead (D., Pa.), will begin a series of 29 public hearings designed to measure the gap between the people's right to know and the government's reluctance to tell.

Congressional interest in the secrecy system has been heightened in recent months by publication of the Pentagon papers on the Vietnam war and the Anderson papers on the Indo-Pakistan war.

Moorhead's subcommittee likely will touch on military security classification and the executive branch's withholding of information from Congress.

But the main focus will be on the less dramatic and more frequent clashes between the bureaucracy and the citizenry over information about such things as pesticides, product safety and government subsidies.

The subcommittee will have plenty of examples to work with.

Harrison Welford, environmental associate at the Nader Center and a prospective witness at the hearings, charges that public officials use loopholes in the law to delay and deny the release of information — or to price the information out of sight.

THE INFORMATION Act provides, for example, that agencies may charge "a reasonable fee" for collecting and copying requested information.

"What's 'reasonable' and what's exorbitant?" Welford asked.

"We've petitioned the secretary of agriculture to restrict the use of sodium nitrate in meat products," he said. "We've asked for data on how much is being used and what sort of testing is being done.

"Now we have a letter saying they will give us the information, but because it's scattered throughout the agency we'll have to put up a $100 deposit and pay $25 an hour for the search and 25 cents a page for copies of whatever they find."

That, said Welford, simply had the effect of denying the request.

"HOW ARE we to know that this information isn't all in one place? How can we put up that kind of money on the chance the information will be of some value?".

Higher fees have been asked.

Larry Sherman, a lawyer who represents migrant workers, asked the Agriculture Department for a list of its subsidy payments to sugar beet growers.

The department controls migrant's wages, as well as subsidies, and Sherman though, the comparisons would be valuable.

He was told there was no such subsidy list — although the department publishes farm subsidy payments annually — but that one could be developed for $2,000.

WHAT IS public information in one agency may be locked up as confidential in another.

James Michael, a former lawyer with the Product Safety Commission, spent months compiling a public file on unsafe toys before the commission was absorbed by the FDA about a year ago.

Michael, who subsequently decided to write a book about toy safety, visited the FDA to do some research from his old files, only to be told the information no longer is available to the public.

The Freedom of Information Act says that all government papers, policy statements, opinions, records and staff manuals are to be made available upon request — with certain exemptions for national security, personnel practices, trade secrets and investigatory documents.

IF INFORMATION is refused, the act provides that the requestor can take the agency to court, with the government bearing the burden of proof.

But it also gives an agency or department 60 days to respond to appeals under administrative procedure before court action can start, and lawsuits can take months or years — a long time to wait for informaton.

Welford and other critics say the delay is frequently used as "a stultifying tactic" to thwart the intent of the act.

In some cases, according to subcommittee staffers, agencies will respond with "partial information" on the 60th day. When the reque-

continued

THE LONDON NEW SCIENTIST
2 March 1972

No break in the code war

The business of intercepting and interpreting the radio transmissions of potential enemies grows steadily more sophisticated, more expensive

John Marriott
is the pen name of a retired RN officer who writes on defence matters for British, European and US periodicals

Last week, senior officers of all NATO nations met for a three day conference at the SHAPE headquarters near Brussels to discuss a subject which is commanding increasing attention—electronic warfare. In the words of General Sir Walter Walker, who has just relinquished the command of NATO's Northern Area, "In a limited aggression situation, the skilled use of electronic warfare by Soviet forces could be an overwhelming factor in deciding the outcome of the battle." Interception of enemy transmissions is one of the key elements in electronic warfare.

When the Second World War began, Britain's own intercept organisation, which had done excellent work during the First World War, had dwindled to practically nothing. However, the principles were well known and it was not long before Britain had established listening posts all over the world. Perhaps because the techniques had not been kept alive, Britain's cyphers were singularly insecure and German intelligence was able to break them with little difficulty. At the same time, British cryptographers were able to read many of the German secret messages —so honours were about even.

By 1943, Britain had built up an efficient intercept organisation, known as the 'Y' service. It consisted of a large number of intercept stations, a direction finding net (directed primarily against the U boats) and a headquarters situated in a stately home at Bletchley Park, Buckinghamshire. The 'Y' service grew apace, and by the end of the war no less than 25 000 persons were employed on this work.

The generic term for the business today is Signal Intelligence (Sigint). This is divided into two halves—Communication Intelligence (Comint) and Electronic Intelligence (Elint). The basis of successful cryptanalysis is to have the maximum possible amount of traffic to work on. Comint organisations, therefore, endeavour to intercept as much enemy signal traffic as possible. This may mean establishing listening stations close to an enemy border (or in the air) to intercept frequencies which travel over line of sight paths such as VHF, UHF and microwave, or in good receiving sites at strategic points around the world to intercept high frequency communications. The listening stations themselves can vary between huge receiving complexes, with perhaps 100 or more receivers together with their associated forest of aerials; a UHF receiver in a jeep or on top of a haystack, and receivers in aircraft or satellites.

The intercepted traffic must, of course, be got back quickly to a central headquarters for immediate analysis. Hence Comint organisations have their own communications offices equipped with their own cyphers. The raw intercepted traffic which has been cyphered-up before transmission is decyphered at the headquarters. Using modern on-line cypher machines, this work is nowhere near as laborious as it sounds.

The traffic arriving at the headquarters is subjected to two processes: traffic analysis and cryptanalysis. The former is a method of gleaning intelligence from the scrutiny of traffic passed, without necessarily knowing its contents, and the latter is actual cypher breaking. The very volume of traffic alone may indicate that something is happening, or about to happen; but apart from this, movements of units can often be deduced simply by the manner in which a signal is routed.

Suppose that a warship, whose call sign is ABC, is heard regularly working a Black Sea shore station. Suddenly she is not heard for two weeks; then she is once again picked up, by another listening post, calling a Vladivostok shore station and thereafter she is heard working this station regularly. Obviously she has moved from the Mediterranean area to eastern Russia. The ship could of course change her call sign, but even then it is sometimes possible to recognise a ship's actual transmitter. Transmitters, like typewriters, often have small characteristics unnoticeable to the human senses but instantly detectable by electronic analysis.

Another useful method of recognising a particular unit, so long as the morse code is still with us, is by "fingerprinting" its operators—most of whom have certain peculiarities, one perhaps making his dashes slightly too short, another hurrying over certain letters and so on. By recording messages and analysing them by means of an oscilloscope it is possible to note these idiosyncracies. This useful give-away is, however, gradually being lost as morse code is replaced by teletype and data transmissions generally.

The unbreakable codes

A modern cypher, working on the one time principle, is virtually unbreakable. The simplest form of "one timing" is to code-up the message from a code book into numbered groups. These groups are then subtracted from (or added to) a recyphering table of similar groups, but the groups so used are never used more than once. This system has now been replaced by machines which do the entire process automatically. In fact, it is possible to type out the message *en clair* and the machine will produce the encyphered version as fast as one can type, the one time recyphering tables being fed into the machine on tape, which is then destroyed to ensure that it is never used again. A refinement is to put the process on-line, with the encyphered version produced on tape being fed into a teletype transmitter as it is produced.

What is the situation today? Nobody out-

NEW YORK TIMES
2 MAR 1972

Hearings Indicate Ellsberg Trial Will Raise the Issue of Secrecy

By STEVEN V. ROBERTS
Special to The New York Times

LOS ANGELES, March 1 — Pretrial hearings indicate that the trial of Dr. Daniel Ellsberg and Anthony J. Russo Jr. will result in a detailed debate by expert witnesses on some of the critical sections of the Pentagon papers, the Defense Department stydy of American involvement in Vietnam.

Two days of hearings also indicate that at the trial, schedu to begin May 9, the defendants will make a full-scale attack on the system of Government secrecy and classification of documents.

The hearings were suspended today after Judge William Matthew Byrne Jr., suffered severe abdominal pains.

Dr. Ellsberg, who has admitted giving the documents to the news media, and Mr. Russo, his former colleague at the Rand Corporation, were indicted last December on 15 counts involving Federal laws covering conspiracy, theft of Government property and espionage.

Debate on Defense Move

The likelihood of a substantive discussion of the Pentagon papers were raised in debate on the defendants' motion for a bill of particulars.

Prof., Charles Nesson of the Harvard Law School, a defense attorney, noted that, to violate the espionage laws, a defendant had to act in such a way as to injure the "national defense."

Therefore, Professor Nesson argued, the defense must know which sections of the 38-volume study the Government feels do, in fact, threaten national security by their disclosure. It would be impossible to prepare arguments on all 38 volumes, he said.

Government lawyers vigorously opposed the motion, but Judge Byrne cut off their argument, saying, "There is no question but one of the key issues of this case is whether the documents relate to the national defense."

He then directed both sides to draft a proposed order indicating how the Government would identify those parts of the study that bear on defense issues.

Ruling Buoys Defense

Defense attorneys were delighted with his ruling. "This means we will be able to get into the documents thoroughly," one said.

The Government had tried to limit the case to a discussion of where and how Dr. Ellsberg and Mr. Russo took the papers from the Rand Corporation and copied them on a Xerox machine.

In a brief answering one motion, Government lawyers asserted, "Like most defendants who consider themselves heroes their basic aim is to thwart any effort to try the issues raised by their indictment and instead to transform the trial into a form of 'theater' in which the defendants create new issues and new defendants to be tried in their place."

But the defendants contend that such "new issues" are central to their case. For instance, they note that the theft counts rely heavily on the allegation that they had "unauthorized possession" of the Pentagon study, which they say raises the question of who has "authority" to handle such material.

Speedier Hearings Asked

Special to The New York Times

WASHINGTON, March 1— The Government asked the Supreme Court today to expedite hearings on Senator Mike Gravel's legal effort to stop a Federal grand jury in Boston from investigating efforts he made to publish the Pentagon papers last year.

Erwin N. Griswold, the Solicitor General, said that court stays had effectively halted the grand jury's investigation of possible violations of the Espionage Act in connection with the Pentagon papers. He said that the Government might also be deprived of important evidence needed for the prosecution of Dr. Daniel Ellsberg and Anthony J. Russo Jr. in California.

Last week a spokesman for the Supreme Court, Banning E. Whittington, announced that the appeals involving Senator Gravel and the Government would be heard on an expedited basis.

However, the deputy clerk at the Court, Michael Rodak, said today that that statement was an error growing out of the fact that Chief Justice Warren E. Burger had asked the clerk's office to see if the parties to the appeals would agree to speed up matters.

The two cases that the Government wants to expedite involve a review of the decision of the United States Court of Appeals for the First Circuit, in Boston, concerning immunity from grand jury investigation for aides and other third persons who have dealings with a Senator.

When the Government was attempting to block publication of the Pentagon papers last year, Senator Gravel held a midnight subcommittee hearing at which he read long passages from the secret history of the Vietnam war.

Mr. Gravel has sought to block brand jury testimony by his aides and other parties connected with his effort to publish the papers on the ground that such testimony would violate his constitutional privilege not to be questioned about his actions as a member of Congress.

The Court of Appeals decisio displeased both Mr. Gravel and the Justice Department and both have appealed to the Supreme Court.

An aide to Senator Gravel said tonight that the Government, in its new motion was apparently contradicting what it said in arguments before the Federal District Court and appeals court when it contended that information from the Boston proceedings was not necessary for the trial of Mr. Russo and Dr. Ellsberg in California.

The aide said that Mr. Gravel's attorney intended to file a countermotion to the Government's motion.

The Government asked that arguments be heard the week of April 17, the last scheduled week of argument for this term of the Supreme Court.

requirements of all formal and informal procedures available;

"(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

"(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

"(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter equired to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

"(2) Each agency, in accordance with published rules, shall make available for public inspection and copying—

"(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

"(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register; and

"(C) administrative staff manuals and instructions to staff that affect a member of the public;

unless the materials are promptly published and copies offered for sale. To the extent required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, or staff manual or instruction. However, in each case the justification for the deletion shall be explained fully in writing. Each agency also shall maintain and make available for public inspection and copying a current index providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—

"(i) it has been indexed and either made available or published as provided by this paragraph; or

"(ii) the party has actual and timely notice of the terms thereof.

"(3) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, each agency, on request for identifiable records made in accordance with published rules stating the time, place, fees to the extent authorized by statute, and procedure to be followed, shall make the records promptly available to any person. On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo and the burden is on the agency to sustain its action. In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member. Except as to causes the court considers of greater importance, proceedings before the district court, as authorized by this paragraph, take precedence on the docket over all other causes and shall be assigned for hearing and trial at the earliest practicable date and expedited in every way.

"(4) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

"(b) This section does not apply to matters that are—

"(1) specifically required by Executive order to be kept secret in the interest of the national defense or foreign policy;

"(2) related solely to the internal personnel rules and practices of an agency;

"(3) specifically exempted from disclosure by statute;

"(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

"(5) inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency;

"(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

"(7) investigatory files compiled for law enforcement purposes except to the extent available by law to a party other than an agency;

"(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

"(9) geological and geophysical information and data, including maps, concerning wells.

"(c) This section does not authorize withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress."

SEC. 2. The analysis of chapter 5 of title 5, United States Code, is amended by striking out:

"552. Publication of information, rules, opinions, orders, and public records."

and inserting in place thereof:

"552. Public information; agency rules, opinions, orders, records, and proceedings."

SEC. 3. The Act of July 4, 1966 (Public Law 89-487, 80 Stat. 250), is repealed.

SEC. 4. This Act shall be effective July 4, 1967, or on the date of enactment, whichever is later.

Approved June 5, 1967.

[From the Washington Post, Feb. 11, 1972]

NSC URGES STIFFER LAW ON SECRETS

(By Sanford J. Ungar)

The National Security Council is proposing tougher regulations to keep classified information out of the hands of unauthorized government officials, defense contractors and the public.

It suggests that President Nixon may want to go as far as seeking legislation similar to the British Official Secrets Act, which would have the effect of imposing stiff criminal penalties on anyone who receives classified information, as well as on those who disclose it.

The recommendations are contained in the draft revision of the executive order that has governed the security classification system since 1953.

The draft was submitted to the Department of State, Defense and Justice, the Central Intelligence Agency and the Atomic Energy Commission last month for their comments. A copy was obtained by The Washington Post yesterday.

After suggestions have come back from those agencies, a revised draft is expected to be sent to the President for approval on his return from China.

The National Security Council draft is the result of a year's work by a special interagency committee headed by William H. Rehnquist, formerly an assistant attorney general and now a Justice of the Supreme Court.

National Security Council sources said yesterday that Rehnquist's contributions to the revision were "very important. . . . He did yeoman work."

Rehnquist resigned from the inter-agency committee when he was sworn in as a member of the high court last month, and he has not been replaced.

If adopted in its current form, the NSC draft would freeze the existing secrecy stamps on thousands of documents now in special categories exempt from automatic declassification over a period of 12 years.

The exempt documents now include "information or material originated by foreign governments or international organizations," "extremely sensitive information or material" singled out by the heads of agencies and "information or material which warrants some degree of classification for an indefinite period."

The NSC draft abolishes special categories and introduces a "30-year rule" setting the time limit for declassification of all future secret government information.

The time period over which some documents would be automatically down-graded in security classification and eventually declassified would be reduced from 12 to 10 years.

Documents originally stamped "top secret" could be made public after 10 years. Those marked "secret" could be declassified after 8 years, and those with a "confidential" stamp after 6 years.

But before that time has passed, the NSC draft suggests, "classified information or material no longer needed in current working files" may be "promptly destroyed, transferred or retired" to reduce stockpiles of classified documents and cut the costs of handling them.

A House subcommittee investigating the availability of classified information has estimated the cost of maintaining secret government archives at $60 to $80 million annually.

Although the special review of classification procedures was commissioned by President Nixon long before the top-secret Pentagon papers on the war in Vietnam were disclosed to the public last summer, the NSC draft reflects a number of the problems debated during the Pentagon papers episode.

Among the recommendations in the NSC draft are:

Creation of an "interagency review committee," whose chairman would be appointed by the President, to supervise all government security classification activity and handle complaints from the public about overclassification.

An annual "physical inventory" by each agency holding classified material to be sure that security has been strictly preserved.

Establishment of a requirement that everyone using classified material not only have a security clearance, but also demonstrate his "need for access" to particular items "in connection with his performance of official duties or contractual obligations."

Tighter control over "dissemination outside the Executive Branch" to such organizations as the Rand Corp. in California, which performs defense research under government contracts.

Establishment of safekeeping standards by the General Services Administration to assure that all classified material is appropriately locked up and guarded.

Markings on every classified document to make it possible to "identify the individual or individuals who originally classified each component."

Establishment of its own rules by every government agency on when and how it will make classified information available to Congress or the courts.

The NSC draft lists 41 government agencies which would have the authority to put classification stamps on documents and other materials. They range from the White House and Atomic Energy Commission to the Panama Canal Co. and the Federal Maritime Commission.

Several agencies which previously did not have such authority are added to the list, such as the White House Office of Telecommunications Policy and the Export-Import Bank.

Only two agencies—ACTION, successor to the Peace Corps, and the Tennessee Valley Authority—are to be restricted to the use of "classified" stamps, and banned from classifying documents "top secret" or "secret."

Except for its final pages, which are stamped "For Official Use Only," the copy of the NSC draft obtained by The Post bears no security marking itself.

It is in the final pages that the National Security Council makes its recommendations for revising criminal statutes to deal with unauthorized disclosure of classified information. The President is offered three options:

Leaving existing law unchanged.

Revising one section of the federal espionage act to omit the requirement that disclosure, to be considered criminal, must be "to a foreign agent." The revision would make it a crime to disclose classified information to any unauthorized person.

Seeking legislation like the British Official Secrets Act, which severely punishes those who disclose and receive classified information.

Touching on an issue that was repeatedly raised during the court cases involving the Pentagon papers, the NSC draft also instructs:

"In no case shall information be classified in order to conceal inefficiency or administrative error, to prevent embarrassment to a person or agency, to restrain competition or independent initiative, or to prevent for any other reason the release of information which does not require protection in the interest of national security."

Several judges ruled last summer that publication of the Pentagon papers, a history of American involvement in Vietnam, might cause embarrassment to government officials but would not endanger the national well-being.

The draft also substitutes the term "national security" wherever "national defense" was used in the previous regulation controlling the classification of information.

One expert on security classification said yesterday that national security is generally considered a broader term which permits the classification of more material.

The NSC draft also provides for classification of anything whose "unauthorized disclosure could reasonably be expected to result" in damage to the nation, a less stringent condition than was previously imposed.

The preamble to the draft states that "it is essential that the citizens of the United States be informed to the maximum extent possible concerning the activities of their government," but adds that it is "equally essential for their government to protect certain official information against unauthorized disclosure."

The draft, says the NSC, is intended "to provide for a just resolution of the conflict between these two essential national interests."

[From the Washington Post, Feb. 12, 1972]

PENTAGON FIGHTS SECRETS PLAN

(By Sanford J. Ungar)

The Defense Department is opposing a National Security Council recommendation that all classified government information be made public after being kept secret for a maximum of 30 years.

Criticizing an NSC draft revision of government security regulations, the Pentagon has appealed for a "savings clause" that would permit agency heads to designate material affecting foreign relations which they believe must remain secret indefinitely in the interest of "national security."

But the Defense Department also questions some sections of the NSC draft as unduly restrictive and has suggested changes that might have the effect of reducing the number of classified documents in government archives.

The Pentagon suggestions are contained in a memorandum to the National Security Council from J. Fred Buzhardt, general counsel of the Defense Department.

The Washington Post has obtained a copy of that memorandum, one of several that will be considered by the National Security Council before submitting the draft for presidential approval.

Meanwhile, members of Congress and other experts on security classification attacked the NSC draft for cutting back on public access to government information rather than expanding it.

Rep. John E. Moss (D-Calif.), the author of the Freedom of Information Act, said that "no more stringent regulations are needed. They are the antithesis of a free society."

Commenting on details of the NSC draft as revealed in The Washington Post yesterday, Moss was especially critical of the suggestion that the President seek legislation, similar to the British Official Secrets Act, which would severely punish anyone who receives classified information as well as those who disclose it.

Such legislation, Moss said, "would be an outrageous imposition upon the American people. I will fight it, and I would hope that every enlightened American will fight it."

Rep. William S. Moorhead (D-Pa.), whose House Subcommittee on Foreign Operations and Government Information will open new hearings next month, complained yesterday that the NSC draft was "aimed only at closing information leaks in the executive branch rather than (making) more information available to the public and in Congress."

Moorhead said he had requested a copy of the NSC draft from the White House.

Earlier in the day, the Office of Legal Counsel at the Justice Department declined to provide a copy to the staff of the Moorhead subcommittee, saying that it was only "a working draft."

The Jan. 11 letter of transmittal which accompanied the NSC proposal when it was sent to the Departments of State, Defense and Justice, the Central Intelligence Agency and the Atomic Energy Commission, however, called it "the final draft."

The Defense Department recommendations concerning the draft, sent to the NSC on Jan. 21, were the product of a review by the three military departments and "a working group composed of classification specialists, intelligence experts and lawyers," according to Buzhardt's memorandum.

Buzhardt observed in the memo that the Pentagon found so many problems with the draft that it should "be substantially reworked before submission to the President."

Among other matters, the Defense Department urged an updating of the definitions of the three security classifications as follows:

"The test for assigning 'Top Secret' classification shall be whether its unauthorized disclosure could reasonably be expected to cause exceptionally grave damage to the nation or its citizens."

As examples of such damage, it cited a range of situations from "armed hostilities against the United States or its allies" to the compromise of cryptologic and communications intelligence systems."

"Secret" is to be used to prevent "serious damage" such as "endangerment to the effectiveness of a program or policy significantly related to the national security" or "jeopardy to the lives of prisoners-of-war."

"Confidential" refers to national security information or material, the unauthorized disclosure of which could reasonably cause damage to the national security." No examples were listed in this category.

The Pentagon also said that "it is imperative that these restrictions be imposed only where there is an established need."

The Defense Department objected, however, to the NSC's proposed requirement that every classified document be marked to indicate who had declared it secret. Buzhardt's memo called this condition "both unrealistic and unworkable."

Its strongest objection appeared to involve the NSC suggestion for a 30-year rule guaranteeing that all secret documents are released eventually.

"A savings clause to provide for exceptions to be exercised only by the agency head concerned is essential to prevent damage to national security," the Pentagon recommendations said.

"There are certain contingency plans dating from the 1920s which should be exempt from the 30-year rule," the Pentagon critique added. "Release of such documents would be unacceptable from a foreign relations standpoint for an indefinite period."

William G. Florence, a retired security expert for the Air Force, complained yesterday that the NSC draft, as reported in The Washington Post, "will continue to permit hundreds of thousands of people to continue

MIAMI HERALD
27 FEB 1972

Who Owns Federal Papers?

Ellsberg Case Hangs on Answer

By JACK C. LANDAU
Miami Herald-Newhouse Wire

WASHINGTON — Who owns the Pentagon papers or any other government study?

Until recently, the answer would have been simple.

ELLSBERG

Government studies belong to the public. Therefore, according to this view, newspapers or private citizens should be free to publish any government report — if it doesn't pose "irreparable and immediate" danger to national security.

But as the indictment against Daniel Ellsberg shows, the Justice Department is developing a new legal restriction on freedom of the press.

In its view, such studies are government property. Thus, the government (like any private author) can prosecute for unauthorized use of the information.

AN OFFICIAL of the Registrar of Copyrights Office in the Library of Congress said: "I don't know what to think. No one has ever argued before that the government owns information, whether it's classified or not." (The exceptions are items such as secret code books and missile plans).

A lawyer associated with The Washington Post said:

"If they succeed in arguing that the government is the owner of government reports, then they can stop the press from publishing anything . . . reports from HEW (Department of Health, Education and Welfare) . . . anything at all except what they want to hand out.

"In many ways," he said, "this poses as much of a threat to the press as the attempt to halt the Pentagon papers."

UNTIL THE Pentagon papers case last June, no one appeared to question the philosophy of unrestricted use of government publications, providing that the newsman could get the report.

The rule appeared to be stated flatly in the 1909 Copyright Act: "No copyright (ownership right) shall subsist in the original text of any work . . . or in any publication of the United States government, or any reprint, in whole or in part."

But when The New York Times refused to stop publication of the Pentagon papers, Assistant Attorney General Robert G. Mardian argued informally:

"I don't see why we can't stop The Times. If a private corporation can stop you from using stolen information, then why can't the government?"

THE JUSTICE Department presented its view before the U.S. Court of Appeals in Washington. In asking that The Washington Post be banned from publishing the Pentagon papers, Solicitor General Erwin Griswold said that if "some enterprising paper" obtained a copy of an unpublished manuscript by Ernest Hemingway — "perhaps stolen, bought from his secretary or found on the sidewalk" — Mrs. Hemingway could enjoin its publication.

The court of appeals rejected the argument, but Griswold raised it again in the Supreme Court and received a sympathetic hearing from Chief Justice Warren E. Burger, who said:

"You (The New York Times lawyer) say a newspaper has the right to protect its sources, but the government does not."

The late Justice John Harlan noted in his dissent the Pentagon papers case that the 47-volume study apparently had been "purloined."

With this background, the Justice Department proceeded to indict Ellsberg for theft of "government studies, reports, memoranda and communications which were things of value to the United States."

Now, it's simple legal logic that the government cannot indict Ellsberg for theft of information which the government doesn't own — unless, of course, the government does own the Pentagon papers.

WASHINGTON POST
22 FEB 1972

An Appeal for a Sensible Policy on National Defense Secrecy

The Washington Post recently published news of a National Security Council recommendation that the existing secrecy policy in Executive Order 10501 for safe-guarding national defense information be reissued in a new order. Measures currently imposed to keep Congress and the people from knowing what the Executive branch is doing would be continued.

We can all be thankful for the opportunity to explore this subject with the President and express our own views. Excessive secrecy has developed into one of the most critical problems of our time. The court cases and other events of 1971 show that the more secret the Executive branch becomes, the more repressive it becomes. It has already adopted the practice of honoring its own secrets more than the right of a free press or the right of a citizen to free speech.

The NSC "final draft" revision, as obtained by The Washington Post, claims that an Executive Order is required to resolve a conflict between (a) the right of citizens to be informed concerning the activities of the government and (b) the need of the government to safeguard certain information from unauthorized disclosure. Of course, *that simply is not true.* The Constitution did not create and does not now contain a basis for any such conflict. The interests and the power of the people are paramount in this country.

The only conflict about this matter is the President's failure to recognize the citizens' rights and ask Congress for legislation, in addition to existing law, that would provide the protection he wants for information bearing on the *active defense* of this nation. The information could be called National Defense Data. A specific definition for the data could be similar to the one already recommended in the report submitted to the President and Congress last year by the National Commission on Reform of the Federal Criminal Code. The President should take guidance from the fact that the Atomic Energy Act has been quite effective in controlling Atomic Energy Restricted Data without objectionable impact on the citizens' right of access to government activities.

If the President still insists on having an Executive order on the subject of safeguarding information, here are some comments that could be helpful:

1. *Updating.* The procedures in Executive Order 10501 for classifying defense information as TOP SECRET, SECRET or CONFIDENTIAL are substantially the same as the Army and Navy used before World War II to classify military information as SECRET or CONFIDENTIAL. The policy was suitable for small self-contained military forces. All of the SECRET and CONFIDENTIAL material held by some of the large Army posts could fit in a single drawer of a storage cabinet. Circumstances are completely different today. The strength of our national defense is not limited to military effort. It stems from the vast politico-social-industrial-military complex of this country. A commensurate interchange of information is essential. Therefore, such Executive order as the President considers to be required should be *radically* updated.

2. *Definition.* A fatal defect of Executive Order 10501 was the absence of a definition of "national defense information." That comparatively narrow term was an improvement over the broader terms "national security" and "security information" which were discarded in 1953. However, it is imperative that the designation used be limited severely by specific definition to information which the President really believes would damage the national defense and which leads itself to effective control measures.

3. *Categories.* Consistent with the urgent need to narrow the scope of protection, there should be only *one category* of defense information. Internal distribution designators could be used to limit distribution of a given item, but there need by only one classification marking. Experience proves that three classifications invite serious confusion, promote uncontrollable overclassification, and reduce the effectiveness of the security system.

4. *Authority to Classify.* The President's assumed authority to impose a defense classification authority since they are not classification ought to be exercised by only a tiny fraction of the hundreds of thousands of people who are now classifying. The new definition and great importance of the information involved would permit limiting classification authority to persons designated by the President and to such others as they might designate. (Individuals who put markings on documents containing information classified by someone else do not need classifiers.) As a new procedure, anyone who assigns a defense classification to material which does not qualify for protection should be made subject to disciplinary action as a counterfeiter.

5. *Declassification.* The millions of classified papers currently gushing forth cannot possibly be kept under review for declassification on a document-by-document basis. But that is no reason for perpetuating assigned classifications as the NSC proposed. The President should take the insignificant risk and cancel the classification on historical material by appropriate order. As guidance, this writer authored DoD Directive 5200.9 in 1958 which canceled the classification on a great volume of information under the jurisdiction of the Secretary of Defense that had originated through the year 1945. As for the smaller number of items that should be produced in the future, declassification by the originating authority would be practicable and enforceable. Exceptional classified items, if any, sent to records repositories could be declassified auromatically after the passage of a period of time such as 10 years.

6. *Privately Owned Information.* It is estimated that at least 25% of the material in this country which bears unjustifiable classifications was privately generated and is privately owned. The Executive order should specifically exclude privately owned information from the defense classification system.

7. *Misrepresentation of Law.* The NSC draft revision would continue the existing misrepresentation of the espionage laws by warning that disclosure of information in a classified document to an unauthorized person is a crime. The law applies only if there is intent to injure the United States, with no reference to classification markings. Falsification of the law should be eliminated.

The President could do the country a great service if he would seek advice from Congress and others outside the Executive branch regarding Executive Order 10501. It is hoped that many concerned citizens will help influence the adoption of that course of action.

WILLIAM G FLORENCE.

Washington.

The writer retired from the Air Force in May, 1971, after 43 years of government service, including 26 years as a security policy specialist.

(See editorial, "Official Secrets.")

28 FEB 1972

Official Secrets

At least three times in the past year the administration has suffered the embarrassment of unintended leaks of classified information. *Intended* leaks are a commonplace—a form of standard operating procedure. Nothing but embarrassment, however, was entailed in the publication of files stolen from the Media, Pa., office of the FBI, or in the publication of the so-called Pentagon Papers, or in the publication of some reports of National Security Council sessions obtained and made public by columnist Jack Anderson. When we say "nothing but embarrassment" we mean: no irreparable injury to the country's security, no loss of human life, no disclosure of vital facts such as the sailing of transports or the location of troops. Nevertheless, it is easy to understand why the administration was embarrassed and why it would have preferred to keep these documents securely locked up in its own file cabinets. In fact, a great deal of what goes on in the executive agencies of the government is wisely and properly kept secret. No one with any practical sense would suggest that Cabinet meetings ought to be conducted on television or that the Pentagon publish all its war plans or that the Secretary of State's talks with ambassadors be made known to all the world. Confidentiality is a key to many kinds of policy planning, many kinds of contingency preparation, many kinds of difficult and delicate negotiation.

Nevertheless, the first responsibility for the preservation of government secrets is clearly the government's. And clearly the government isn't discharging it very well. Thanks to yet another unofficial leak, this newspaper published the other day an account of the final draft of a proposed revision of the executive order establishing security classification procedures. It would prescribe, among other things, new standards for classification and declassification of government information. A highly sophisticated criticism of this proposal is contained in a letter appearing on the opposite page today from William G. Florence, an experienced security policy specialist formerly with the U.S. Air Force.

We have no quarrel with the proposed measures for tightening the physical safeguards for preserving official documents. And we are in full accord with the philosophy of the proposal's opening statement: "It is essential that the citizens of the United States be informed to the maximum extent possible concerning the activities of their government. In order that it may protect itself and its citizens against hostile action, overt or covert, and may effectively carry out its foreign policy and conduct diplomatic relations with all nations, it is equally essential for their government to protect certain official information against unauthorized disclosure."

One proposal tentatively put forward in the draft seems to us, however, to be fraught with danger to self-government. Existing law makes it a criminal offense for any government employee or official to disclose classified information to a foreign agent; the proposal would make it a crime to disclose classified material to any unauthorized person, if the classification was "secret" or "top secret." In addition, it is suggested that legislation be enacted in imitation of the British Official Secrets Act, which would impose criminal penalties not only on the government employee who divulges classified information but on the recipient of the information as well. That seems pretty plainly aimed at newspapers.

But newspapers in America are not agents, or even allies, of the government. They are, by specific provision of a written constitution—something England doesn't have—wholly independent of governmental regulation, precisely in order to enable them to serve, in Mr. Justice Hugo Black's splendid phrase, the governed, not the governors. If they are to do this effectively, they must be free to publish, within the limits of their knowledge, what they believe the public ought to know. The very essence of press freedom, it seems to us, lies in leaving the determination of what to publish to editors, when information becomes available to them, rather than to government officials.

Under American law, the press may not publish with perfect impunity. It may be called to account and punished for publishing official information if it does so with reason to believe that the publication will do injury to the United States. But this is a standard which imposes on the government, before publication can be punished, the burden of proving injury—not merely embarrassment—and of proving intent. Thus a free press is left free, if its editors and publishers have the courage of their convictions, to publish what they think the public ought to know.

There are risks in this system—as there are risks in all forms of freedom. But these are risks that a self-governing society must run if it wants to be informed, in spite of official classification, of corrupt deals like the Teapot Dome oil leases or the fact that government agents are maintaining surveillance of persons not charged with, or even suspected, of any violation of law, or the deliberate manipulation of public opinion to take the country into war. Official secrets are sometimes disclosed because someone inside the government regards it as his patriotic duty to make the information available to a free press, some ramifications of which are discussed by Kenneth Crawford elsewhere on this page. But to foreclose the publication of such information, when it is not actually injurious to the nation, is to foreclose an essential means of keeping control of the government in the hands of the governed.

PITTSBURGH, PA
POST-GAZETTE
FEB 21 1972
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GOVERNMENT MOOD KEEPS COVER INTACT

Moorhead Sees No Secrecy Cuts

By MILTON JAQUES
Post-Gazette Washington Correspondent

WASHINGTON — The mood in Congress and in the Nixon administration at this time is probably against reducing secrecy in government.

And that is too bad, according to Rep. William S. Moorhead, Shadyside Democrat, who heads the House subcommittee dealing with government information policies.

On his own assessment, Moorhead feels it would probably be futile this year to attempt to get liberalizing legislation enacted to the 1967 Freedom of Information Act.

That leaves Moorhead facing the possibility of holding extensive hearings on the act this year, with a view toward later legislation.

Moorhead's assessment grows out of his study during the past year of government information practices. These range from the "ridiculous" as practiced by the intelligence apparatus, the Central Intelligence Agency, or the "spooks" as Moorhead calls them, to the just plain bureaucracy covering-up of goofs and political deals with a secrets label.

During the year, too, the publication of the so-called "Pentagon Papers" and the "Anderson Papers" caused shocks to race through the government over leaks in the secrecy erected around some official documents.

THE PENTAGON PAPERS dealt with an official staff study, ordered by former Defense Secretary Robert S. McNamara on the origins and background of the unpopular war in Vietnam. The other papers disclosed concerned apparent differences between the administration's public and private positions on the India-Pakistan conflict.

Moorhead, a lawyer, is deeply involved in the congressional discussions on the sensational disclosures. He's chairman of the House subcommittee on foreign operations and government information, a unit of the House Government Operations Committee.

His thinking now is that Congress should at some point assert its watchdog role more over the area of official secrets, and the process by which the government classifies its documents.

"You can't set up an executive branch institution to correct secrecy in the executive department." Moorhead figures as a point of departure for his study. If he had a proposal to make, it would be to have Congress appoint a commission dealing with the matter of secret classification of government documents.

The details of such a commission, and the legislation to create it, according to Moorhead, are "negotiable." He is inclined toward a measure (S-2965), introduced by Sen. Edmund S. Muskie (D-Me.), the presidential aspirant, which would provide Congress and the public a means for gaining access to certain information now locked in government files.

MOORHEAD INDICATES he is also impressed with the testimony given to his subcommittee by at least one former Pentagon security official who claims an excessive amount of information is stamped classified.

"There are good citizens within government and outside who think this classification has been overdone," Moorhead says. The object of the Freedom of Information Act, he believes "is to make the maximum amount of information available to the public, not the minimum.

"A Democratic society doesn't work well unless it has the maximum."

The testimony on over-classification was supplied by William G. Florence, who said that "disclosure of information that at least 99.5 per cent of those classified documents could not be prejudicial to the defense interests of the nation."

Later Florence lowered that figure, estimated that the percentage of information that should be withheld could range from one to five per cent, instead of 0.5 per cent.

Florence obviously in the Moorhead view is one of those "good citizens" who believe the classification system has gotten out of hand.

The mood in the Nixon administration, as Moorhead sees it, is toward greater secrecy, not less. Efforts within the administration are directed at stopping leaks, such as those in the Pentagon Papers and the incident involving columnist Jack Anderson.

"Of course it is a legitimate effort to try to prevent leaks," Moorhead says, "but it should have its counterpart in how to maximize the amount of information available."

ANOTHER PROBLEM facing the subcommittee, Moorhead feels, is the amount of leeway given a President in revealing secrets. During the subcommittee hearings which begin next month former presidential press secretaries have been invited to testify on this aspect of their work at the White House.

President Nixon's recent speech revealing secret negotiations carried on with the North Vietnamese about their American prisoners of war was cited by Moorhead as in this area of security.

According to Moorhead, the Nixon speech disclosing the talks "blew the cover" (revealed the identity) and disclosed the role of presidential adviser Henry Kissinger. This presents Congress with the problem that "if you only let the top elected political official blow the covers of a country, then he won't reveal all, just that which is advantageous to him and keep concealed that which isn't."

Moorhead said the memoirs of former President Lyndon Johnson also revealed secrets with a one-sided treatment toward accuracy.

Secrecy's other uses, the congressman believes, can be in "covering up for goofs in government."

"Whenever somebody has made a mistake, he may try to cover that up with a secret label" Moorhead contends.

"It took a change of administration and a whole series of coincidences" for Moorhead and Sen. William Proxmire (D-Wis.) to get the information leading to their exposing of the Air Force's problems with huge cost overruns on the C5-A aircraft.

"We never would have gotten that information otherwise," Moorhead says.

ALONG WITH other Democrats, Moorhead also suspects the Republican administration may be using secret tags to cover defense spending for what might be called political purposes. The charge grows out of the administration's call to Congress for extra funds this year for the department of defense.

The feeling in Congress is that some of the money being spent in the 1972 election year could be interpreted as for political purposes if it is directed solely toward relieving unemployment and thereby helping to reelect the president.

continued

WASHINGTON POST PARADE MAGAZIN
13 FEB. 1972

Why I Blew The Whistle

by Jack Anderson

EDITOR'S NOTE: *Newspaper columnist Jack Anderson, who exposed the U.S. role in the recent Indian-Pakistan conflict, has been with PARADE nearly 20 years and is today its Washington Bureau Chief. Readers will recall such articles in these pages as "Congressmen Who Cheat," "The Great Highway Robbery," and "Let's Retire Congressmen at 65."*

Like all investigative reporters, Anderson is provocative and controversial. Many government officials and politicians of both parties object to his ferreting out secrets they would rather keep hidden.

In this article, Jack Anderson tells why he believes the people have a right to know.

PARADE welcomes the opinions of its readers. Tell us what you think of Anderson's views and in a future issue we will present a cross-section of the comments.

WASHINGTON, D.C.

Do you feel as an American citizen that you have the right to know about an impending war?

This question is pointed up by the secret documents I got out of the White House. They tell a chilling story. While Americans sang of peace on earth last December, grim men sat in guarded rooms in Washington, Moscow and Peking making life-and-death decisions. The world might have awakened on Christmas morning, not to jingle bells, but to the roar of nuclear warfare.

When I became aware of the developing confrontation, I was determined to inform the American people. The only way this could be accomplished was to rip the secrecy labels off the details. For the dangerous drift toward Armageddon, during the second week of December 1971, was classified top secret.

Two third-class powers, India and Pakistan, were fighting over the fate of East Pakistan. Just offstage, the world's three great powers—China, Russia and the United States—began making moves in a far more dangerous game.

A tireless muckraker, Jack Anderson is responsible for important exposés.

On Dec. 7—30 years to the day after the Japanese attack on Pearl Harbor—a message was received in the situation room in the basement of the White House. It was stamped "Top Secret Umbra." Umbra means the darkest part of a shadow. In U.S. intelligence circles, it is the symbol for the darkest of secrets.

This cable warned that three Soviet ships—a destroyer armed with missiles, a seagoing minesweeper and a tanker—had passed eastward through the Strait of Malacca to join other Soviet warships in the Bay of Bengal.

China rumblings

Intelligence reports brought into the White House other evidence that the Soviets were supporting the Indian thrust into East Pakistan. There were simultaneous rumblings out of China that the Chinese might intervene on the side of Pakistan.

It was a situation that the U.S. was better equipped to observe than to alter.

On Dec. 8, Henry Kissinger, the President's foreign policy czar, told a strategy meeting grimly: "We may be witnessing a state [India], backed by the Soviet Union, turning half of Pakistan into an impotent state and the other half into a vassal." He warned the assembled policymakers that they must consider the long-range consequences.

They began planning at once to counteract the Soviet ploy. On Dec. 10, a decision was made to send an American flotilla, led by the carrier Enterprise, into the Bay of Bengal. The ships, called Task Force 74, were to make "a show of force." It was suggested the flotilla would divert Indian ships and planes from the war with Pakistan and, thereby, relieve the pressure on President Yahya Khan's beleaguered forces.

Forces alerted

The risks were apparent. On Dec. 10, the commander of the Seventh Fleet flashed the secret word that the "primary air threat would be from IAF (Indian Air Forces) aircraft . . ." The next day, Washington warned Task Force 74 that it "must be alert to the possibility of provocative and irrational acts by hostile forces."

Adm. John McCain, the Pacific commander, asked for and received permission to maintain aerial surveillance of the Russian squadron.

Not long afterward, a new Soviet squadron, including two guided-missile destroyers and a pair of submarines, set sail from Vladivostok for the troubled waters.

The scene was set for another Gulf of Tonkin incident. In the secret documents, the parallels are frequent and frightening.

Meanwhile, other moves were taking place on the ground. The White House situation room learned the Chinese were gathering weather reports along the China-India border, an unusual move indicative of military interest.

The Chinese were a worry to the Russians. In remote Kathmandu, Nepal, in the Himalayas, the Soviet military attaché warned the Chinese attaché that Chinese intervention to aid Pakistan would be met with massive Russian force.

The same day, U.S. intelligence reported: "According to a reliable clan-

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NEW RULES URGED ON SECRET PAPERS

Security Agency Proposes a Presidential Order on Law

Special to The New York Times

WASHINGTON, Feb. 10—The National Security Council has proposed an Executive order tightening regulations governing the handling of classified information and suggested the possibility that the President might seek legislation to make it a crime for unauthorized persons to receive secret documents, a White House officiial said Thursday night.

The legislative suggestion, if accepted, would result in a proposal by the President of a tough new law similar to the British Official Secrets Act, which imposes stiff penalties on those who receive as well as on those who disclose classified information.

This was one of three alternatives suggested for the President in a draft proposal now being circulated among the Departments of State, Defense and Justice, the Central Intelligence Agency, and other governmental bodies, the White House official said.

Of the two others, the draft suggested that the President might seek revision of a section of the Federal Espionage Act to make it a crime to give classified information to any unauthorized person. The law now provides penalties for disclosure to "a foreign agent."

Other Possibility

The other possibility suggested was merely that present laws be left unchanged.

These were the only legislative suggestions in the draft proposals, which were offered in response to the President's demand for a study of the handling of classifed material, made shortly after the publication of the Pentagon Papers, the Defense Department's secret study of the United States drift into the Vietnam War.

The other suggestions in the draft proposal applied primarily to the classification of Government documents, setting up regulations over how materials should be classified, the length of time certain documents could remain classified, and who would be allowed to receive them.

These, the draft proposal said, could be effected in a revision of the Executive order that now controls the handling of classified information.

The draft was being circulated to the various agencies for their comments.

WASHINGTON POST
12 FEB 1972

STAT

Pentagon Fights Secrets Plan

By Sanford J. Ungar
Washington Post Staff Writer

The Defense Department is opposing a National Security Council recommendation that all classified government information be made public after being kept secret for a maximum of 30 years.

Criticizing an NSC draft revision of government security regulations, the Pentagon has appealed for a "savings clause" that would permit agency heads to designate material affecting foreign relations which they believe must remain secret indefinitely in the interest of "national security."

But the Defense Department also questions some sections of the NSC draft as unduly restrictive and has suggested changes that might have the effect of reducing the number of classified documents in government archives.

The Pentagon suggestions are contained in a memorandum to the National Security Council from J. Fred Buzhardt, general counsel of the Defense Department.

The Washington Post has obtained a copy of that memorandum, one of several that will be considered by the National Security Council before submitting the draft for presidential approval.

Meanwhile, members of Congress and other experts on security classification attacked the NSC draft for cutting back on public access to government information rather than expanding it.

Rep. John E. Moss (D-Calif.), the author of the Freedom of Information Act, said that "no more stringent regulations are needed. They are the antithesis of a free society."

Commenting on details of the NSC draft as revealed in The Washington Post yesterday, Moss was especially critical of the suggestion that the President seek legislation, similar to the British Official Secrets Act, which would severely punish anyone who receives classified information as well as those who disclose it.

Such legislation, Moss said, "would be an outrageous imposition upon the American people. I will fight it, and I would hope that every enlightened American will fight it."

Rep. William S Moorhead (D-Pa.), whose House Subcommittee on Foreign Operations and Government Information will open new hearings next month, complained yesterday that the NSC draft was "aimed only at closing information leaks in the executive branch rather than (making) more information available to the public and to Congress."

Moorhead said he had requested a copy of the NSC draft from the White House.

Earlier in the day, the Office of Legal Counsel at the Justice Department declined to provide a copy to the staff of the Moorhead subcommittee, saying that it was only "a working draft."

The Jan. 11 letter of transmittal which accompanied the NSC proposal when it was sent to the Departments of State, Defense and Justice, the Central Intelligence Agency and the Atomic Energy Commission, however, called it "the final draft."

The Defense Department recommendations concerning the draft, sent to the NSC on Jan. 21, were the product of a review by the three military departments and "a working group composed of classification specialists, intelligence experts and lawyers," according to Buzhardt's memorandum.

Buzhart observed in the memo that the Pentagon found so many problems with the draft that it should "be substantially reworked before submission to the President."

Among other matters, the Defense Department urged an updating of the definitions of the three security classifications as follows:

• "The test for assigning 'Top Secret' classification shall be whether its unauthorized disclosure could reasonably be expected to cause exceptionally grave damage to the nation or its citizens."

As examples of such damage, it cited a range of situations from "armed hostilities against the United States or its allies" to "the compromise of cryptologic and communications intelligence systems."

• "Secret" is to be used to prevent "serious damage" such as "endangerment to the effectiveness of a program or policy significantly related to the national security" or "jeopardy to the lives of prisoners-of-war."

• "Confidential" refers to national security information or material, the unauthorized disclosure of which could reasonably cause damage to the national security." No examples were listed in this category.

The Pentagon also said that "it is imperative that these restrictions be imposed only where there is an established need."

The Defense Department objected, however, to the NSC's proposed requirement that every classified document be marked to indicate who had declared it secret. Buzhardt's memo called this condition "both unrealistic and unworkable."

Its strongest objection appeared to involve the NSC suggestion for a 30-year rule guaranteeing that all secret documents are released eventually.

"A savings clause to provide for exceptions to be exercised only by the agency head concerned is essential to prevent damage to national security," the Pentagon recommendations said.

"There are certain contingency plans dating from the 1920s which should be exempt from the 30-year rule," the Pentagon critique added "Release of such documents would be unacceptable from a foreign relations standpoint for an indefinite period."

William G. Florence, a retired security expert for the Air Force, complained yesterday that the NSC draft, as reported in The Washington Post, "will continue to permit hundreds of thousands of people to continue putting unwarranted security classifications on information."

Florence referred to the practice as "illegal censorship."

WASHINGTON POST
18 JAN 1972

The Washington Merry-Go-Round

Protesters Leak Their Own Secrets

By Jack Anderson

The planners in the White House basement, who howled in pain over our disclosure of their India-Pakistan secrets, have slipped fragments from the same secret documents to their friends in the press.

This illustrates how the White House uses official secrecy to control the flow of news to the public. Favorable facts are leaked out; unfavorable news is suppressed.

The official leakers are now spreading the word that President Nixon's pro-Pakistan policy was not the disaster it appeared but really saved West Pakistan from dismemberment.

As evidence, the boys in the basement leaked a few selective secrets to our column-writing colleague; Joseph Alsop, who has excellent contacts at the highest levels of government.

Alsop stated "on positive authority" that the U.S. government had "conclusive proof" of India's intention to crush the main body of the Pakistan army in West Pakistan. This positive proof, he wrote, was "the centerpiece of every one of the CIA's daily reports to the White House during the crisis period."

We have read the CIA's daily reports to the White House during the India-Pakistan war. They are stamped "Top Secret Umbra," a designation reserved for the darkest of the CIA's secrets.

Alsop's 'Proof'

Alsop told us he never read the CIA reports himself. He had no way of knowing, therefore, that his sources gave him only part of the story.

These CIA digests, true enough, raised the possiblity of an Indian attempt to crush West Pakistan. But the same disgests also suggested India would accept an early cease-fire.

Here is a typical excerpt: "There have been reports that (Indian Prime Minister) Gandhi would accept a cease-fire and international mediation as soon as East Bengal had been liberated ... On the other hand, we have had several recent reports that India now intends not only to liberate East Bengal but also to straighten its borders in Kashmir and to destroy West Pakistan's air and armored forces."

The strongest CIA warning was sent to the White House on December 10. "According to a source who has access to information on activities in Prime Minister Gandhi's office," declared the report, "as soon as the situation in East Pakistan is settled, Indian forces will launch a major offensive against West Pakistan."

But the CIA also took note of repeated Indian assurances to American Ambassador Ken Keating that India has no territorial ambitions and wished only to end the conflict with the least possible bloodshed.

Dubious 'Proof'

It is clear from the secret documents in our possession that the CIA had no "conclusive proof" of an Indian plan to dismember West Pakistan. The CIA had received a number of reports that a major Indian offensive might be imminent on the western front. But these were discounted by both the State and Defense Departments.

Only Henry Kissinger, the President's foreign policy czar, seemed eager to believe the worst.

Alsop's sources also told him that President Nixon intervened with the Kremlin, threatening "an ugly showdown," to stop Mrs. Gandhi's army from carving up West Pakistan.

In response, Alsop claims that the Kremlin hurriedly dispatched Deputy Foreign Minister Vasily Kuznestsov to New Delhi on December 12 to tell Mrs. Gandhi not to attack West Pakistan.

The secret CIA report on his mission, however, doesn't mention any ultimatum against attacking West Pakistan.

"Vasily Kuznestsov arrived in India on 12 December to discuss the political recognition of Bangladesh by the Soviet Union . . .," according to the CIA. "Kuznestsov has told Indian officials that the Soviet Union is not prepared to recognize Bangladesh until Dacca falls and until the Indian army successfully liberates Bangladesh from Pakistani forces."

The question of an Indian offensive against West Pakistan was brought up the next day by Soviet Ambassador Nikolai Pegov. Reported the CIA:

"Pegov pointed out that India has achieved a marvelous military victory. Pakistan is no longer a military force, and it is therefore unnecessary for India to launch an offensive into West Pakistan to crush a military machine that no longer exists.

"If India should decide to take Kashmir, Pegov added, the Soviet Union would not interfere, but India would have to accomplish this objective within the shortest possible time."

Joseph Alsop is an enterprising and conscientious columnist. He acknowledged to us that "it is possible to be lied to on the very highest level." But he assured us his source had "never lied before."

The evidence in our possession, however, suggests that the White House is playing peekaboo with CIA secrets to distort the truth.

Bell-McClure Syndicate

THE INTERNATIONAL HERALD TRIBUNE (Paris)
12 Jan 1972

In Thy Name, Oh Liberty!

By C. L. Sulzberger

PARIS.—A few years ago Maurice Couve de Murville, the eminent French statesman who has served his country both as foreign minister and premier, complained to me that it was impossible to talk confidentially with American leaders. The reason, he said, was that they immediately made memoranda of such conversations and distributed them in Washington and allied capitals. Often these subsequently leaked to the press.

Rather sadly he commented that the substance of every [illegible] almost invariably was spread beyond its designated audience. Recently Couve de Murville had had a very confidential discussion with an important American and yet, two days later, it was published in the newspapers. If the French government specifically requested that special care be taken to safeguard secrecy, reports were merely labelled "top secret" instead of "secret" when they were circulated—and often leaked.

This made it extremely hard for France to deal with the United States. At that time, there were certain pressing and sensitive issues which Paris felt required urgent review with Washington. Yet it was frustrated because even in informal conversations a man like the American secretary of state would dictate memoranda—and then these memoranda, or their substance, would be classified and sent around.

Mesmerized

This aspect of the question now obsessing the United States—when does the government have a right to keep its attitudes secret?—is infrequently considered. Many are mesmerized by the thought that the public has a right to know everything. It doesn't—and if seriously consulted on that very issue, would probably confirm as much.

Americans choose their government by free election and then freely accept its temporary rule. But they cannot expect to monitor every decision before, during and after it has been made, especially decisions affecting national security or the interests of foreign nations. In the latter case, those foreign nations will simply freeze up and cease to deal with us if all their secrets are aired.

I have no doubt that stifling bureaucratic habits of the American administrative machinery continually err by over-classifying masses of information that properly belong in the public domain. This tendency—which is observable in all governments everywhere—should be rigorously curbed.

But that does not mean the people should be in a position to debate military movements of each naval vessel or army division, the daily give and take of disarmament discussions with Russia, tentative suggestions for truce arrangements in the Middle East or all tentative travel plans of President Nixon. The exercise of such a privilege would produce administrative chaos equivalent to anarchy, would strengthen our adversaries abroad and cost us our last foreign friends.

"Oh liberty! Liberty! What crimes are committed in thy name," wrote an outraged Lamartine and this is most certainly a danger that can be extended to liberty of the press. Raymond Aron, the brilliant French professor and commentator, is much disturbed. He writes:

"As far as I am concerned, it strikes me as contrary to the duties of the citizen of a democratic country, in a normal period, to establish himself as a judge of what should or should not be published...

"The path upon which men in political life, functionaries and journalists are engaged in the United States seems dangerous to me... will journalists try to install microphones in the desk of the President in the name of the public's right to be informed?"

An excess of freedom in any form of life produces license or abuse, whether applied to eating, drinking, sex, driving automobiles or making noise. Such excesses are well recognized and generally democratic societies have built-in restraints against them, ultimately applied by servants of the community paid to enforce laws suited to the general convenience.

It seems to me that an excess of freedom can also infect the press. The proof of this, of course, is that no American journal would knowingly publish blueprints of vital secret weapons or State Department codes. But it is evident that dangerous frontiers are being trespassed when highly classified information is made public and thereby U.S. relations with foreign countries are jeopardized. This threatens confidence in the United States of those large areas abroad which depend upon our stability and discretion for their own security.

NEW YORK TIMES
9 JAN 1972

Avoiding a Cosmic Crisis

By C. L. SULZBERGER

PARIS—*The following has been sent to me through the good offices of Baron C. L. Munchausen, a secret agent whom I have found to be totally unreliable over the years.*

* * *

This is being written as a public service. Because of the shortsightedness of the Founding Fathers, who imposed on the U.S.A. a Presidential system of government that does not allow give-and-take debate between a prime minister and parliament (as in England), the press must assume that role.

In this capacity, as a newspaperman, I have been made privy to highly classified documents from SHAPE headquarters, Belgium, the seat of the North Atlantic Alliance and Gen. Andrew Goodpaster, NATO commander and top United States officer in Europe. These documents are labeled "TOP SECRET, NATO COSMIC."

They confirm a clear U.S. intention, endorsed by all North Atlantic allies save France, to stage a surprise aggression against the Soviet Union on April 9, 1972, the Russian Easter and, even under the Communist system, a day of feasting when the guard is down. Pentagon experts estimate the action may cost the lives of at least ten million people between Leningrad, Murmansk and Archangelsk.

This operation, only just approved, stirred violent debate at the top alliance echelon. Gen. Burnt Njal, chief of the Icelandic military mission, was so indignant that he sent a personal envoy to me bearing Xeroxed copies of the principal documents.

In an accompanying letter he specifically authorized me to use his name as the source. He added: "Unless the American press can halt this madcap project immediately it threatens to touch off World War III and uncontrolled holocaust. Fortunately you are not inhibited by any official secrets act prohibiting publication of classified documents."

The diabolical OPERATION LEMMING agreed on by the NATO defense ministers denies any aggressive action against the U.S.S.R. while simultaneously threatening all-out retaliatory nuclear strikes should the Russians take "protective" action.

(According to one document classified NODIS EYES ONLY SACEUR) our force estimates indicate that within eighteen months the Soviets will have surpassed our own planned defense levels when their new MIRV systems and submarine program near completion.

Therefore, it says: "For the sake of the free world we must strike now. Our optimum calculation is that this will insure such a heavy setback to Soviet planning that for two decades there will be no further threat. We

FOREIGN AFFAIRS

may then turn our attention toward China. At the very least, by destroying the population of Leningrad and the two principal White Sea ports, we will insure control of the Baltic and the North Atlantic."

"Operation Lemming" stems from two plans dating back to early cold war days. A certain U.S. Brigadier General Michela first contemplated something of this order after reading a report from Maj. Gen. Patrick Hurley, then in Chungking.

The Hurley study said Genghiz Khan, when investing the impregnable Chinese fortress of Volohai, raised his siege in return for delivery by the Volohai commander of one thousand cats and ten thousand swallows. Genghiz then had woolen tufts tied to their tails, lit these and released the creatures. They returned to their lairs and nests and burned the city down.

Hurley proposed similar tactics be used against Chinese Communist strongholds. This was refused but Michela, assigned to a special Washington study group, suggested a similar operation against Soviet Russia by infecting with deadly and communicable germs herds of reindeer.

The reindeer would be driven from northern Norway into Soviet Karelia. Selected Lapp agents had been enrolled by the C.I.A., but the project was abandoned because of fears that symbolic linking of reindeer and Santa Claus would prove too much for U.S. public opinion—should there ever be subsequent leaks.

The present plan envisions use of lemmings, small migratory rodents whose traditional westward trips often end in mass suicide by drowning in boreal waters. According to Njal, however, American scientists have discovered a method of reorienting the lemmings' sense of direction so their leaders can be turned eastward and will pour into Russia.

Camouflaged biological stations have been established at Norwegian locations. There, lemmings are being sprayed with solutions containing deadly botulism germs prepared to have no effect on rodents but unbelievably infectious and deadly for humans.

General Njal, in a personal letter, says: "It is your duty as an American journalist to report these facts before it is too late. This is the only recourse left to me. My own Government has ignored my warnings. It prefers to concentrate attention on the extension of territorial fishing limits.

"Although I have the highest regard for the people of your country it is plainly evident to me that this scheme is directly related to President Nixon's campaign for re-election."

WASHINGTON POST
9 DEC 1972

STAT

Joseph Kraft

The Anderson Papers

JACK ANDERSON achieved a journalistic coup in publishing the minutes of the secret White House meetings on the India-Pakistan crisis. But how much of a hero is the man who leaked the information?

My strong impression is that he accomplished very little public good, if any. On the contrary, his actions are almost certain to drive the Nixon administration deeper than ever into secret dealings on a restricted basis.

On the good side of the ledger, the leak has now provided unmistakable information that the President deliberately tilted American policy in favor of Pakistan and against India. But that much was known to everybody in touch with the State Department and White House at the time of the crisis.

Sens. Edmund Muskie, Edward Kennedy and Frank Church, among others, said so. Hundreds of us wrote it. Indeed, one reason Henry Kissinger held his background briefing of Dec. 7 was to take the edge off the charges the White House was biased in favor of Pakistan.

A second and more important gain from the revelation has to do with information about the way the government works. The secret minutes provide detailed, irrefutable evidence that day-to-day foreign policy is made in the White House as never before. They equally show that top officials allowed themselves to be treated as mere lackeys by the White House. Some of them — including such supposed heavyweights as the chief of naval operations — said, and apparently regularly say, things silly enough to issue from the mouth of Bertie Wooster.

Then there is the matter of truth-telling. According to the minutes released by Anderson, Henry Kissinger told a meeting of officials on Dec. 3 that "he (the President) wants to tilt in favor of Pakistan."

On Dec. 7, in a background session with reporters subsequently released by Sen. Barry Goldwater, Dr. Kissinger said: "There have been some comments that the administration is anti-Indian. This is totally inaccurate."

Seen thus starkly, Dr. Kissinger told a flat lie. My impression is that, taken in the larger context, his remarks at the secret conference were not in such flagrant contradiction with his remarks at the background briefing. Still, he was plainly trying to manipulate public opinion.

BUT SO WHAT? Does the new evidence do more than confirm a universal judgment? After the U-2 and the Bay of Pigs and the credibility gap, is there anybody not impossibly naive or ill-informed who doesn't know that the government lies? Is one more bit of evidence a noble act? Or is it just a pebble added to the Alps?

Set against these gains, there is the way the administration is apt to react. Maybe the President and Dr. Kissinger are going to say to themselves: "Golly, we sure erred in not telling the truth and nothing but the truth. Jack Anderson has taught us that honesty is the best policy."

But much more likely, they are going to feel that the minutes of the meeting were legitimately classified internal working papers of the government. Probably they are going to feel that the stuff was leaked not for any large purpose, but out of opposition to the policy. And almost certainly — and I say this as an opponent of the policy — they will be right in this surmise.

In these circumstances, the limited trust they have in the outside world is going to be even more sharply limited. The suspicion they have of the bureaucracy — a suspicion that the departments and agencies are full of crypto-Democrats out to get the administration — is only going to be intensified. And that deep suspicion is going to yield two sets of adverse reactions.

For one thing, security will be tightened. There is apt to be an end to the kind of minutes that were taken at Dr. Kissinger's meetings. They will certainly not be spread through the bureaucracy anymore.

Secondly, the limited access which experienced officials now have to White House decision-making is going to be even further curbed. The President and Dr. Kissinger are going to keep things to themselves more than ever. Important decisions which are even now made with too little consultation and with too small an input from the outside are going to be made by an even more narrowly circumscribed group of men.

No doubt Anderson gets high marks for his acumen and industry and courage as a journalist. But his source, the man who leaked the stuff, is something else. Whatever his motives, he has done this country a disservice.

EDITOR & PUBLISHER
8 JAN 1972

Anderson scoop a challenge to secrecy system

Played originally in its customary spot on the comics page in the *Washington Post*, Jack Anderson's Merry-Go-Round column based on secret/sensitive White House notes burst into front page headlines in that newspaper on Wednesday (January 5).

Anderson said he intended his revelation of India-Pakistan war policy memos to challenge the government's security classification system. He declined to identify his sources but suggested they hold high places in the Nixon Administration.

"To name the sources," the columnist said, "would embarrass the Administration and make a very funny story."

Taking him up on his televised offer to make the documents available to members of the press and officials, a Washington Post representative inspected them and then obtained typewritten copies of photocopies of the documents in Anderson's possession. Later, Anderson gave copies of his material to other newspapers, the AP and UPI.

More than column gave

Post reporter Sanford J. Ungar said the full texts provided substantially more details of discussions of the National Security Council's Washington Special Action Group than Anderson had given in his column which was distributed by Bell-McClure syndicate to about 700 newspapers for publication Monday, January 3.

The documents substantiated Anderson's story that Dr. Henry Kissinger, the President's adviser on foreign policy, had directed administration spokesmen to support the anti-India policy. Kissinger asserted his remarks had been quoted "out of context."

Initially, Anderson told the Post, his sources provided only a few documents, written on the stationery of the Joint Chiefs of Staff and of a Defense Department officer, G. Warren Nutter. Eventually he said he talked them into compiling for him what he considered to be a complete set. Then he decided it would be a good opportunity to force a showdown on the system of classifying government information.

The FBI reportedly was trying to determine the source of the leak.

Anderson said he also had copies of cables from U.S., ambassadors to India and Pakistan, as well as numberous other documents bearing on American policy, but he decided to protect them lest they be useful to cryptographers.

Ellsberg arraigned

The columnist's coup coincided with the arraignment of Dr. Daniel Ellsberg on a new set of charges related to his leaking of some of the Vietnam war policy papers to the press last summer. Federal Judge Matthew Byrne Jr. in Los Angeles set trial for March 7 for both Ellsberg and his co-defendant, Anthony J. Russo, but indicated it may have to be postponed.

Ellsberg, who has admitted giving the documents to news media, declared in court, "I am not guilty for any of the offenses charged." He pleaded "not guilty" to each of 12 counts in an indictment, charging theft of official documents and conspiracy.

His attorney, former U.S. Senator Charles Goodell, (R-N.Y.), told newsmen the indictment "charges Ellsberg and Russo with stealing the truth and telling it to Americans." Ellsberg said he "decided to give the Pentagon papers to the American people" more than two years ago when Goodell introduced a bill to end U.S. involvement in Vietnam by the end of 1970.

CHICAGO, ILL.
TRIBUNE

M - 767,793
S - 1,016,275
JAN 6 1972

FBI Probes Leak of Secret U.S. Papers on India War

BY JOHN MACLEAN
[Chicago Tribune Press Service]

WASHINGTON, Jan. 5—The Federal Bureau of Investigation today investigated leaks of secret memoranda of high-level White House consultations during the India-Pakistan War.

Jack Anderson, whose syndicated column Washington Merry-Go-Round appears in 700 newspapers, released the text of the secret papers.

Anderson has been writing columns from the material and has concluded "that Presidential braintruster Henry Kissinger lied to reporters when he told them the Nixon administration wasn't anti-India."

Why Papers Released

Anderson released the papers because Kissinger, President Nixon's chief adviser on national security affairs, said Anderson "took out of context" remarks indicating the administration was against India in its recent war with Pakistan.

The FBI investigation reportedly has narrowed down to the National Security Council after checks in the Departments of State and Defense.

Spokesman for the White House, State Department, and Pentagon used nearly identical phrases as they declined to answer all questions on the subject. The response of Charles Bray, State Department spokesman, was typical when he told reporters: "I won't discuss the issue." Asked why he wouldn't, he said, "because I won't."

The documents are minutes of three meetings of a special action group of high level officials of the National Security Council.

Some of Highlights

Excerpted from the text, here are some of the highlights:

"Kissinger: I am getting hell every half hour from the President that we are not being tough enough on India. He has just called me again. He does not believe we are carrying out his wishes. He wants to tilt in favor of Pakistan. He feels everything we do comes out otherwise."

"Dr. Kissinger said that whoever was putting out background information relative to the current situation is provoking Presidential wrath. The President is under the 'illusion' that he is giving instructions; not that he is merely being kept appraised of affairs as they progress. Dr. Kissinger asked that this be kept in mind."

"Dr. Kissinger said . . . 'it is quite obvious that the President is not inclined to let the Paks be defeated.' "

"Dr. Kissinger then asked whether we have the right to authorize Jordan or Saudi Arabia to transfer military equipment to Pakistan." [Anderson said this morning on the television program Today that he has additional memos which show that fighter planes were among the things being considered in a scheme to "sneak" aid to the Pakistanis. A cutoff of military aid to Pakistan was ordered early last year].

"Dr. Kissinger also directed that henceforth we show a certain coolness to the Indians. The Indian ambassador is not to be treated at too high a level."

From High Sources

Anderson indicated the documents came from high sources within the Nixon administration.

"If the sources were identified, it would embarrass the administration more than it would me," he said. "It would make a very funny story." Anderson said his sources for the story consider United States handling of the Indian-Pakistan affairs a "colossal blunder."

Anderson released the documents to newsmen with the urging that they compare them with Kissinger's remarks during a briefing of newsmen on Dec. 7.

Kissinger held a lengthy and unusual briefing on that day detailing what he said were the Nixon administration's actions regarding the India-Pakistan conflict.

He disclosed that India had attacked Pakistan even tho the United States has informed India that Pakistan was willing to make concessions.

'India a Great Country'

"There have been some comments that the administration is anti-Indian," Kissinger said. "This is totally inaccurate.

"India is a great country . . . when we have differed with India, as we have in recent weeks, we do so with great sadness."

The memoranda released by Anderson deal with meetings held before this briefing, the last one on the day before the briefing, Dec. 6.

The sessions were attended by heads of the Joint Chiefs of Staff, Central Intelligence Agency, and representatives of the Defense and State Departments.

Kissinger was chairman of the meetings, which typically involved an appraisal of the situation in the India-Pakistan conflict followed by discussion of U. S. policy and possible actions.

All the Anderson documents were marked "secret/sensitive," but it is doubted the federal government will take any action to stop publication.

The Supreme Court's decision last June in the Pentagon Papers dispute ruled in favor of newspapers publishing the secret Pentagon study. The high court cited a 1963 decision that "any system of prior restraint of expression comes to this court bearing a heavy presumption against its constitutional validity."

The Supreme Court said then that government had failed to meet the "heavy burden" needed to justify such a move.

A typical exchange involved Kissinger and Maurice Williams, of the State Department staff.

During the Dec. 6 meeting, Kissinger asked if there already had been a massacre of Bihari people living in East Pakistan. Williams said he expected there would be killing of these people in reprisal for their support of West Pakistan.

"Mr. Williams states that perhaps an international humanitarian effort could be launched on their behalf. Dr. Kissinger asked whether we should be calling attention to the plight of these people now. Mr. Williams said that most of these people were centered around the rail centers . . . and that some efforts on their behalf might now well be started thru the United Nations.

"Dr. Kissinger suggested that this be done quickly to prevent a bloodbath. Mr. Sisco [Joseph ... of Far Eastern af-

continued

NEW YORK DAILY NEWS
6 JAN 1972

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White House Hunts a Leak

Washington, Jan. 5 (NEWS Bureau) — Disturbed Nixon administration officials admitted today, after a two-week intensive manhunt, that they have failed to uncover the source of the most sensational leak of White House secrets in modern history.

The secrets, revealing in now painful detail the inner debates of the National Security Council's Washington Special Action Group at the peak of the Indo-Pakistan war, were wrapped up in three long memoranda for the record.

White House Silent

Syndicated columnist Jack Anderson released texts of the memos to the press generally today. He has been quoting segments of them in occasional columns for two weeks.

The White House, which is directing the search for the leak, refused comment on the case. But in private officials expressed grave concern that sensitive government information distributed only on a "need to know" basis could become public so swiftly.

There was no denial of the authenticity of the documents.

Anderson, amused at the administration's discomfort, said the papers came from high sources, and added, "If the sources were identified, it would embarrass the administration more than it would me."

FBI Makes Check

An official close to the manhunt denied that a "high source" was involved with the leak but would not amplify the statement.

The FBI, asked to assist the search, has made a cursory check but because of the small number of top level officials who were present at the Special Action Group meetings, has not launched an intensive investigation — yet.

The case is considered of vastly greater importance than that of Daniel Ellsberg and the Pentagon papers, because it is undeniable evidence that someone with a pipeline to innermost White House consultations has other than the interests of President Nixon at heart.

However, because of the nature of the documents, and despite their super - sensitivity, it was suggested by some officials that the individual concerned probably would not be prosecuted, but merely fired, if his identity became known.

The memos were records of notes of the Special Action Group meetings on Dec. 3, 4 and 6, not official transcripts. While the papers were stamped "secret sensitive," they did not include, as did the Pentagon papers, copies of cables, orders, directives and official recommendations.

The administration was caught flat-footed with no warning of a leak on Dec. 14 when the first Anderson column appeared, quoting notes about meetings held barely a week earlier. The quotes were authenticated quickly and the hunt for the source was begun.

One official said that to date, the case has been regarded as an "administrative" affair and not a cause for criminal action.

There were 11 officials at the first meeting and 19 at each of the next two. Henry Kissinger, foreign affairs adviser to the President, presided at all three meetings, and Central Intelligence Agency Director Richard Helms was present at all of them, but representatives from the State Department and the Pentagon varied.

NEW YORK TIMES
6 JAN 1972

STAT

Anderson Ready for Battle With Government, but Appears Unlikely to Get One

A 'Low-Key' U.S. Inquiry On Disclosures Foreseen

By JACK ROSENTHAL
Special to The New York Times

WASHINGTON, Jan. 5—The columnist Jack Anderson said today that he was ready, if necessary, for a battle with the Government over his disclosure of secret India-Pakistan papers, but he appeared unlikely to get it.

The Justice Department conceded that the matter was under investigation but would say no more. And officials of three agencies, speaking privately, left the impression that the Administration regarded the disclosures more as an embarrassment than as a damaging security breach.

One official said that "measured, low-key analysis" might even be a more accurate description than the word "investigation," in contrast to prior extensive inquiries by the Justice Department into security leaks.

It is widely felt that these have often been undertaken more for deterrent effect than out of real hope of discovering reporters' sources. But this time an official said: "There's no banging of cymbals. Right now, we're assessing where we are."

Reflecting the same relative calm, senior Pentagon sources said the disclosures primarily affected diplomatic sensitivity rather than military security.

Lower-Level Source Seen

And some officials, noting that as many as 25 persons in the Pentagon alone had access to the documents, which dealt with United States policy toward the Indian-Pakistani conflict, expressed belief that Mr. Anderson's source was not a trusted senior official but possibly a junior assistant.

This was at odds with Mr. Anderson's view, expressed in an interview today. "My sources—and they are plural—are some of their own boys," he said. "And if they want to finger them, they're going to wind up with bubble gum all over their faces."

"These sources are no Ellsbergs who left the Government two years ago," he continued, referring to Dr. Daniel Ellsberg, the former Defense Department official indicted for his role in the Pentagon papers case. In fact, Mr. Anderson said, the flow of documents to him is continuing.

Today, his office distributed copies of three of the documents, secret internal accounts of White House strategy sessions during the Indian-Pakistani war, to 17 newspapers, the Associated Press and United Press International.

The impression of apparent Government calm appeared to differ from the reaction Mr. Anderson said he had experienced. "I've had no overt, direct threats," he said, but he told of receiving telephone calls from two officials, also friends, saying that he risked being indicted.

"And there are more subtle, sophisticated pressures you learn to sense," the columnist said.

He said he understood that the Federal investigation of the disclosures was being coordinated by Robert C. Mardian, head of the Justice Department's Internal Security Division.

"If Mr. Mardian is going to investigate me, I guess I should investigate him," Mr. Anderson declared. "I expect I'll find out more about him than he will on me. I don't think the Government has as much right to investigate reporters as they do to investigate the Government."

In any event, he added, he is sure no investigation can uncover his sources—"unless the sources themselves are careless." He said no previous investigation, including one last summer that reached the grand jury stage, had succeeded in doing so. The investigation last summer concerned an article Mr. Anderson had written about plans for bombing in Vietnam.

The view within the Government that the disclosures were more embarrassing [illegible] aging squared with Mr. Anderson's own assessment.

"When I first starting getting them," he said, "I felt very strongly that these documents should not have been classified 'secret,' but 'censored.' The security stamp is being used as promiscuously as a stapling machine."

Mr. Anderson has presided over Washington Merry-Go-Round, a Washington exposé column with more than 700 newspaper subscribers, since the death in 1969 of Drew Pearson, its founder. Five other reporters work for Mr. Anderson, but it was he himself who obtained the documents in the current controversy.

Through its 35-year history, the column has developed a reputation for pursuing tips and leads from Government employes, often anonymous.

Mr. Anderson today offered the following guarded chronology of how he had obtained the current set of documents.

"During the India-Pakistan war, one of my sources told me we were bungling. Here was a conflict between a military dictatorship and the world's second largest democracy, and whose side did we—the largest democracy—come out on? The dictatorship."

His sources became even more troubled, he recounted, when American warships were sent into the Bay of Bengal. They feared that the Soviet Union might react. "It sounded like another Gulf of Tonkin situation, but much hairier," Mr. Anderson said.

Documentation Requested

He said he had persuaded his sources that if they wanted him to write about their fears he would have to have access to documents to authenticate his reports.

"They gave me a dozen representative documents," Mr. Anderson said. But he insisted that he could not rely only on selected papers, he explained.

"In time, they let me see a whole massive file of documents," he said. "Then I, not [illegible]"

Ultimately, he used secret passages in a total of seven articles prior to releasing the full documents to other newspapers, he said.

At first, he declared, he was "cautious, even timid." The fighting was still going on and he had determined that he would print no military secrets, he declared.

It became evident to him, he went on, that there were no military secrets involved, only potential embarrassment.

"And if something is classified 'Secret' just because it could be embarrassing, then secrecy no longer means anything," he asserted. "I said to my staff, 'Let's publish all we can get until the Government adopts a sensible policy on classification.'"

NEW YORK TIMES
6 JAN 1972

STAT

STAT

U.S. Discussions of Indian-Pakistani Wai
Texts of Secret Documents on Top-Level

Special to The New York Times

WASHINGTON, Jan. 5—Following are the texts of three secret documents made public today by the columnist Jack Anderson describing meetings of the National Security Council's Washington Special Action Group on the crisis between India and Pakistan:

Memo on Dec. 3 Meeting

Secret Sensitive
ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D. C. 20301
Refer to: 1-29643/71
International Security Affairs
Memorandum for Record

SUBJECT

WSAG meeting on India/Pakistan participants.

Assistant to the President for national security affairs—Henry A. Kissinger
Under Secretary of State—John N. Irwin
Deputy Secretary of Defense—David Packard
Director, Central Intelligence Agency—Richard M. Helms
Deputy Administrator (A.I.D.)—Maurice J. Williams
Chairman, Joint Chiefs of Staff— Adm. Thomas H. Moorer
Assistant Secretary of State (N.E.E.A.R.)—Joseph J. Sisco
Assistant Secretary of Defense (I.S.A.)—G. Warren Nutter
Assistant Secretary of State (I.O.)—Samuel De Palma
Principal Deputy Assistant Secretary of Defense (I.S.A.)—Armistead I. Selden Jr.
Assistant Administrator (A.I.D/N.E.S.A.)—Donald G. MacDonald

TIME AND PLACE

3 December 1971, 1100 hours, Situation Room, White House.

SUMMARY

Reviewed conflicting reports about major actions in the west wing. C.I.A. agreed to produce map showing areas of East Pakistan occupied by India. The President orders hold on issuance of additional irrevocable letters of credit involving $99-million, and a hold on further action implementing the $7-million P.L. 480 credit. Convening of Security Council meeting planned contingent on discussion with Pak Ambassador this afternoon plus further clarification of actual situation in West Pakistan. Kissinger asked for clarification of secret special interpretation of March, 1959, bilateral U. S. agreement with Pakistan.

KISSINGER: I am getting hell every half-hour from the President that we are not being tough enough on India. He has just called me again. He does not believe we are carrying out his wishes. He wants to tilt in favor of Pakistan. He feels everything we do comes out otherwise.

HELMS: Concerning the reported action in the west wing, there are conflicting reports from both sides and the only common ground is the Pak attacks on the Amritsar, Pathankot and Srinagar airports. The Paks say the Indians are attacking all along the border; but the Indian officials say this is a lie. In the east wing the action is becoming larger and the Paks claim there are now seven separate fronts involved.

KISSINGER: Are the Indians seizing territory?

HELMS: Yes; small bits of territory, definitely.

SISCO: It would help if you could provide a map with a shading of the areas occupied by India. What is happening in the West—is a full-scale attack likely?

MOORER: The present pattern is puzzling in that the Paks have only struck at three small airfields which do not house significant numbers of Indian combat aircraft.

HELMS: Mrs. Gandhi's speech at 1:30 may well announce recognition of Bangladesh.

MOORER: The Pak attack is not credible. It has been made during late afternoon, which doesn't make sense. We do not seem to have sufficient facts on this yet.

KISSINGER: Is it possible that the Indians attacked first and the Paks simply did what they could before dark in response?

MOORER: This is certainly possible.

KISSINGER: The President wants no more irrevocable letters of credit issued under the $99-million credit. He wants the $72-million P.L. 480 credit also held.

WILLIAMS: Word will soon get around when we do this. Does the President understand that?

KISSINGER: That is his order, but I will check with the President again. If asked, we can say we are reviewing our whole economic program and that the granting of fresh aid is being suspended in view of conditions on the subcontinent. The next issue is the U.N.

IRWIN: The Secretary is calling in the Pak Ambassador this afternoon, and the Secretary leans toward making a U.S. move in the U.N. soon.

KISSINGER: The President is in favor of this as soon as we have some confirmation of this large-scale new action. If the U.N. can't operate in this kind of to an end and it is useless to think of U.N. guarantees in the Middle East.

SISCO: We will have a recommendation for you this afternoon, after the meeting with the Ambassador. In order to give the Ambassador time to wire home, we could tentatively plan to convene the Security Council tomorrow.

KISSINGER: We have to take action. The President is blaming me, but you people are in the clear.

SISCO: That's ideal!

KISSINGER: The earlier draft for Bush is too even-handed.

SISCO: To recapitulate, after we have seen the Pak Ambassador, the Secretary will report to you. We will update the draft speech for Bush.

KISSINGER: We can say we favor political accommodation but the real job of the Security Council is to prevent military action.

SISCO: We have never had a reply either from Kosygin or Mrs. Gandhi.

WILLIAMS: Are we to take economic steps with Pakistan also?

KISSINGER: Wait until I talk with the President. He hasn't addressed this problem in connection with Pakistan yet.

SISCO: If we act on the Indian side, we can say we are keeping the Pakistan situation "under review."

KISSINGER: It's hard to tilt toward Pakistan if we have to match every Indian step with a Pakistan step. If you wait until Monday, I can get a Presidential decision.

PACKARD: It should be easy for us to inform the banks involved to defer action inasmuch as we are so near the weekend.

KISSINGER: We need a WSAG in the morning. We need to think about our treaty obligations. I remember a letter or memo interpreting our existing treaty with a special India tilt. When I visited Pakistan in January, 1962, I was briefed on a secret document or oral understanding about contingencies arising in other than the SEATO context. Perhaps it was a Presidential letter. This was a special interpretation of the March, 1959, bilateral agreement.

Prepared by:
/S/ initials
JAMES M. NOYES
Deputy Assistant Secretary for Near Eastern, African and South Asian Affairs

Approved:
(illegible signature)
For G. Warren Nutter Assistant Secretary of Denfense for International Security Affairs

Distribution: Secdef, Depsecdef, CJCS, ASD(ISA), PDASD(ISA), DASD: NEASA & PRNSCA, Dep Dir NSCC & PRNSCA, CSD files, R&C files, NESA.

continued

NEW YORK TIMES
6 JAN 1972

U.S. ENVOY IN INDIA DISPUTED POLICIES BACKING PAKISTAN

Keating Said Explanation of Nixon's Stand Was Hurting Americans' Credibility

FACTS ALSO QUESTIONED

Ambassador's Cable Bared by Columnist, Who Also Replies to Kissinger

By BERNARD GWERTZMAN
Special to The New York Times

WASHINGTON, Jan. 5—Kenneth B. Keating, United States Ambassador to India, complained in a secret cablegram to Washington during the Indian-Pakistani war that the Nixon Administration's justification for its pro-Pakistan policy detracted from American credibility and was inconsistent with his knowledge of events.

The secret message to the State Department was made available to The New York Times at its request by the syndicated columnist Jack Anderson, who says he has received from unidentified United States Government informants "scores" of highly classified documents relating to the conflict last month.

Today Mr. Anderson—asserting that he was irked by a comment from Henry A. Kissinger, President Nixon's adviser on national security disputing the accuracy of some of his recent columns—released the Defense Department's record of three top-level White House strategy sessions held at the start of the two-week war.

'Secret Sensitive' Reports

The reports of the meetings of Dec. 3, 4 and 6, were classified "secret sensitive." A low-key investigation is underway to ascertain who leaked the documents to Mr. Anderson. He said today that he was ready, if necessary, for a battle with the Government. [Details on Page 17.]

The documents provide an unusual look into the thinking and actions of Mr. Nixon and his advisers on national security affairs at the start of the crisis, which eventually led to the Indian capture of East Pakistan and the establishment of a breakaway state there under the name Bangladesh.

Because the White House Security Action Group, known here as WSAG, did not have a formal structure, the language of Mr. Kissinger and the other participants was often looser, more piquant and franker than that in public statements by Mr. Kissinger and other Administration spokesmen at the time.

On Dec. 3, the day that full-scale fighting broke out, Mr. Kissinger told the White House strategy session, according to one document:

"I am getting hell every half-hour from the President that we are not being tough enough on India. He has just called me again. He does not believe we are carrying out his wishes. He wants to tilt in favor of Pakistan. He feels everything we do comes out otherwise."

The group included John N. Irwin, under secretary of state; Richard Helms, Director of Central Intelligence, and Adm. Thomas H. Moorer, Chairman of the Joint Chiefs of Staff.

The next day, Dec. 4, the United States called for a meeting of the United Nations Security Council to discuss the war and to press India for a withdrawal. Joseph J. Sisco, Assistant Secretary of State for Near Eastern and South Asian Affairs, told newsmen that the United States believed that India bore "the major responsibility" for the fighting.

The decision by the Administration to attach blame to India came as something of a surprise in Washington since most diplomats and officials had expected a more neutral stance.

Disagreed With 'Tilt'

Critics of the Administration such as Senator Edward M. Kennedy, Democrat of Massachusetts, and Senator Frank Church, Democrat of Idaho, had been complaining about Mr. Nixon's failure to criticize Pakistan for her bloody repression of the East Pakistani autonomy movement and the arrest of its leader, Sheik Mujibur Rhaman.

Mr. Anderson has indicated that the documents in his possession were leaked by officials who disagreed with the Administration's "tilt" toward Pakistan. Ambassador Keating is also understood to have argued since March, when the repression began, for a statement against Pakistan.

Mr. Keating's cable, dated Dec. 8, was in response to the United States Information Agency's account of a briefing given by Mr. Kissinger at the White House on Dec. 7, setting forth the Administration's justification for its policy.

That briefing also became a source of contention between Mr. Kissinger and Mr. Anderson. In it Mr. Kissinger said that the United States was not "anti-Indian" but was opposed to India's recent actions. Mr. Anderson, seizing on the denial, sought to prove that the Administration was "anti-Indian," and therefore lying.

Dispute Over Relief

In his briefing Mr. Kissinger said, among other things, that the United States had allocated $155-million to avert famine in East Pakistan at India's "specific request."

Mr. Keating said that his recollection from a conversation withtion with Foreign Minister Swaran Singh was that India "was reluctant to see a relief program started in East Pakistan pribr to a political settlement on grounds such an effort might serve to bail out" Gen. Agha Mohammad Yahya Khan, then President of Pakistan, who was displaced after the loss of East Pakistan.

The Ambassador noted that the briefing said that the Indian Ambassador in Washington, L. K. Jha, was informed on Nov. 19 that the United Sttates and Pakistan were prepared to discuss a precise schedule for political autonomy in East Pakistan but that India had sabotaged the efforts by starting the war.

"The only message I have on record of this conversation makes no reference to this critical fact," Mr. Keating said.

Mr. Kissinger said at the briefing, that when Prime Minister Indira Ghandi was in Washington in early November, "we had no reason to believe that military action was that imminent and that we did not have time to begin to work on a peaceful resolution."

"With vast and voluminous efforts of intelligence community, reporting from both Delhi and Islamabad, and my own decisions in Washington, I do not understand statement that Washington was not given the slightest inkling that any military operation was in any way imminent,'" Mr. Keating responded. He said that on Nov. 12 he sent a cable "stating specifically that war is quite imminent."

The record of the White House strategy sessions indicated that intelligence information on the situation in South Asia was quite thin, at least in the early stages.

Mr. Helms and the Joint Chiefs of Staff—while agreeing that India would win in East Pakistan — disagreed on the time it would take. Adm. Elmo R. Zumwalt Jr., Chief of Naval Operations, came close by saying it would take one to two weeks, but there is no sign yet that he was correct in predicting that the Russians would push for permanent use of a base at Visag, on India's east coast.

Often Mr. Helms simply read rival claims by Pakistan and India, without making any judgment on their accuracy—indicating that the United States had no independent information.

Fears for West Pakistan

By Dec. 6, when it was clear that the Indians would win in East Pakistan, Mr. Sisco said that "from a political point of view our efforts would have to be directed at keeping the Indians from extinguishing West Pakistan."

After the war was over Mr. Nixon said in an interview in Time magazine that the American intelligence community had reason to believe that there were forces in India pushing for total victory but that under pressure from the United States the Soviet Union convinced India to order a cease-fire once East Pakistan surrendered.

This version of events has been officially denied by New Delhi, which said it had no plans to invade West Pakistan.

But in the period covered by the documents made public by Mr. Anderson there seemed considerable confusion in the Administration. At one point Mr. Kissinger said that Mr. Nixon might want to honor any requests from Pakistan for American arms — despite an American embargo on arms to India or Pakistan.

It was decided at the Dec. 6 session to look into the possibility of shipping arms quietly to Pakistan. But the State Department said today that no action was taken.

Carrier Sent to Rejoin

"It is quite obvious that the President is not inclined to let the Paks be defeated," Mr. Kissinger said, apparently referring to the possibility of the loss of West Pakistan.

Later on in the crisis the United States sent the nuclear-powered aircaft carrier Enterprise into the Indian Ocean, apparently as a show of force to deter any attack on West Pakistan, as was said at the time.

continued

WASHINGTON POST

6 JAN 1972

House Committee Will Probe Classification of Documents

By Sanford J. Ungar
Washington Post Staff Writer

Rep. F. Edward Hebert (D-La.), chairman of the House Armed Services Committee, yesterday announced "a major inquiry into the problem of proper classification and handling of government information involving the national security."

He said it was "a coincidence" that the investigation would come on the heels of the release by syndicated columnist Jack Anderson of secret government documents concerning American policy in the Indo-Pakistani war.

Nonetheless, the disclosure of the top-secret Pentagon papers on the history of Vietnam war last summer, and now Anderson's release of current documents, appeared to have focused new concern throughout the government over the troubled security classification system.

Hebert assigned the new probe, which will begin shortly after Congress reconvenes Jan. 18, to a subcommittee headed by Rep. Lucien Nedzi (D-Mich.), a critic of the Pentagon and of administration policy in Vietnam.

In a telephone interview last night, Nedzi said that "it is not my intent to investigate the leak" of documents to Anderson.

"What we what to go into are the general problems of classification and security, how much is required and how it is handled and what kind of new legislation may be necessary," Nedzi said.

He acknowledged, however, that the Anderson documents, three of which appeared in full in The Washington Post yesterday, would "almost necessarily" come up during the probe.

Meanwhile, government investigators pressed their efforts to locate the source of Anderson's documents.

A report circulated yesterday among high-level administration sources that the investigation had already pinpointed offices in the Pentagon as the probable source of memoranda describing meetings of the National Security Council's Washington Special Action Group.

The sources stressed that the memoranda, prepared for the Joint Chiefs of Staff and for G. Warren Nutter, assistant secretary of defense for international security affairs, had been circulated only within the Pentagon.

They said they were especially surprised by the leak of the memoranda, because it would be relatively easy to trace their limited distribution.

Other government officials, however, pointed their fingers elsewhere.

One White House official said he suspected that the State Department was the source of the security breach. "You know that place leaks like a sieve," he said, especially in instances that might make Henry A. Kissinger, President Nixon's national security adviser, look bad.

At the Pentagon, on the other hand, attention was diverted to the National Security Council.

The Justice Department continued to decline comment on the continuing FBI investigation.

Anderson continues his battle against government secrecy today, switching from the Indo-Pakistani war to secret White House documents used by President Nixon in preparation for meetings at San Clemente with Japanese Prime Minister Eisaku Sato.

In a column distributed to 700 newspapers, including The Washington Post, Anderson discloses the contents of briefing papers prepared for the President.

Those papers, Anderson says, indicate that Sato has been dismayed with American policy in the Far East and is considering an independent Japanese aproach to China.

Anderson quotes a cable from Armin Meyer, U. S. Ambassador to Japan, which said that "whereas heretofore anti-Americanism was pretty much special vehicle for opposition parties and Japan's tendentious press, developments of past few months have fostered seeds of doubt within normally American-oriented community."

Meyer also told Washington that the Japanese have the "impression that Japan is being asked to maintain cold-war confrontation posture while President's mission to Peking gives (the U.S. government) advantage of appearing to be more progressive and peace-minded."

In San Clemente, one Japanese diplomat in the Sato party told Washington Post reporter Stanley Karnow that it was "alarming" to learn the content of the secret American papers.

"I must pay my compliments to the White House," he added, however. "They understand Japanese attitudes very well." The diplomat said he was especially concerned by references in today's Anderson column to growing interest in Japan in a revision of the American-Japanese security treaty.

Assistant White House press secretary Gerald Warren continued to refuse comment on any of the disclosures in the Anderson columns, and Kissinger, who is in San Clemente with the President, refused to discuss them.

In response to a question about Kissinger's earlier comment to reporters that Anderson had taken comments about India and Pakistan "out of context," Warren said, "I am sure Dr. Kissinger stands by what he said. . . . The President is aware of the matter."

Anderson said Tuesday that he was releasing the full texts of the three documents to refute Kissinger's claim.

There was a run on Anderson's Washington office yesterday for copies of the secret documents which had appeared in The Washington Post.

By day's end, a member of his staff said, 18 news organizations had picked up copies of the three memoranda and another nine had asked that they be sent in the mail. The New York Post, The Chicago Sun-Times, The San Francisco Chronicle and The Boston Globe all published the texts of the memoranda in yesterday's editions after they received them from the Los Angeles Times-Washington Post News Service.

The widespread appearance of the documents in newspapers throughout the country appeared to obviate the possibility of any action in court by the Justice Department, as in the case of the Pentagon papers.

The New York Times said it would publish the documents in today's editions.

Responding to Anderson's suggestion Tuesday that the secret documents and others in his possession could be made available to Congress as the basis for an investigation of American policy toward India and Pakistan, a high-ranking aide for the Senate Foreign Relations Committee said, "I think that's fine."

Sen. J. W. Fulbright (D-Ark.), chairman of the committee, was in the Caribbean on vacation and could not be reached for comment.

Fulbright staff aides directed attention, however, to a report issued by the Foreign Relations Committee on Dec. 16, which said, "The problem for Congress in the foreign affairs field . . . goes beyond reducing unnecessary classification."

The report added, "It involves finding a way for Congress to make certain that it receives the full information necessary for exercising its war and foreign policy powers, including information which most people would agree should be kept secret from potential enemies.

"It may also involve finding a way for Congress to share in determining what information is classified and thus kept secret from the American people."

That appeared to be the focus of the upcoming investigation by the House Armed Services Subcommittee. Nedzi said that it might not be "appropriate" to look into Kissinger's activities, but said the probe would focus on the way information is handled within the government.

Continued

WASHINGTON STAR
6 JAN 1972

No Media Curbs Seen On Pakistan Papers

By LYLE DENNISTON
Star Staff Writer

The government apparently will take no legal steps to stop further disclosures in the newspapers of secret documents describing White House meetings on foreign policy.

An official investigation of the leak of classified papers to Washington columnist Jack Anderson is aimed primarily at stopping the leak, government sources said.

It is possible, they added, that the person or persons who passed out the documents could face criminal prosecution. There is no sign of an early move on a criminal case, but it has not been ruled out.

However, neither Anderson nor any newspaper which published documents he had supplied to them is in legal trouble now, and probably will not be later, it was indicated.

Anderson has been publishing materials out of the minutes of White House strategy sessions — mainly dealing with the India-Pakistan war — for more than a week. The passage of that much time without a government court challenge was interpreted as a strong sign that there will be no such challenge.

Anderson published material today from other documents showing deterioration of U.S. relations with Japan.

Official sources recalled that the Justice and Defense departments acted within a matter of hours in June to try to stop the New York Times from disclosing the contents of the so-called Pentagon papers — the 47-volume study of the origins of the Vietnam war.

At that time, officials were asked to make quick assessments of the possible threat of disclosure to national security, and research was done swiftly on the legal remedies available if such a threat were deemed to exist.

There is no indication that any such activity is now going on about Anderson's disclosures.

Court Ruling Cited

Part of the reason for this, officials indicated, was the difficulty the Supreme Court has posed for any atttempt by the government to stop news media disclosures of classified documents. By a 6-3 decision on June 30 permitting publication of the Pentagon Papers, the court said:

"Any system of prior restraints of expression comes to this court bearing a heavy presumption against its constitutional validity . . . The government thus carries a heavy burden of showing justification of the enforcement of such a restraint."

Apparently, officials have made up their minds that the kinds of disclosures being made by Anderson do not raise enough of a threat to security to justify a court challenge.

The main threat officials apparently see at this point, it was indicated, was to the secrecy of White House meetings on sensitive issues of diplomacy and military policy.

First Objective

Thus, the first object of the current investigation is to find out how the minutes of those sessions could get past the controls the government maintains over classified documents.

If that leak is not shut off, one source suggested, it could force officials holding strategy sessions to alter the way such meetings are conducted and the method of communicating their results to other officials who need to know what was discussed or decided.

Viewed in that light, the investigation appeared to be primarily a security study, rather than an attempt to lay the basis for criminal action against the source of the leak.

However, officials said it would be wrong to conclude that the government has given up the option of starting a criminal case like the one it is pressing against Daniel Ellsberg, who admitted leaking the Pentagon papers, and against Ellsberg's close friend, Anthony Russo Jr.

Revisions in Works

The disclosure of the new set of secret papers came after the government had begun taking a series of steps to revise its document-classification procedures.

It is clear, however, that the altered system of security classification is far from fully developed at this point.

For example, an interagency committee which has been meeting since last January to plan a complete overhaul of classification methods is still at the job, but has recently lost its chairman — Asst. Atty. Gen. William H. Rehnquist, who is about to become a Supreme Court justice. He has not been replaced yet.

In addition, a long-dormant Pentagon board which gave guidance on classification has been "revitalized," and has started taking some action, but apparently has not issued broad new directives.

Efforts to keep up the pressure on the government to reduce the number of documents that are classified are expected to resume in Congress this year.

A House Government Operations subcommittee, which last year took seven days of mostly critical testimony about the extent of classification, is planning to hold three or four months of hearings starting in March on the over-all issue of "freedom of information" in the government.

Rep. F. Edward Hebert, D-La., chairman of the House Armed Services Committee, said yesterday that soon after Congress reconvenes a subcommittee of his panel will open an inquiry into the classification of government secrets.

Existing law needs revision, Hebert said, to "strike a proper balance between the right of the public to know and the indispensable ability of our government to function effectively." But abuse of the classification system doesn't give individuals the right to ignore classifications, he said.

WASHINGTON DAILY NEWS
5 JAN 1972

STAT

Jack Anderson: A funny story

FBI probes policy leak

By TED KNAP
Scripps Howard Staff Writer

The Justice Department has directed the FBI to investigate who leaked highly embarrassing classified documents detailing White House policy meetings on the India-Pakistan war to columnist Jack Anderson, administration sources said today.

A Justice Department spokesman ended several days of "no comment" by admitting for the first time that the matter was "under investigation."

Earlier reports were that a search for the source of the leak was being conducted only within each of the departments which had officials at the secret meetings. Government sources said the probe now has moved to a higher level with the calling in of the FBI and also the Internal Security Division of the Justice Department, which would handle any prosecution.

NO MUZZLE

But the government has not tried to suppress further publication of the Anderson columns, as it did after initial publication of the Pentagon papers last year.

The Washington Post today said Mr. Anderson gave it the full texts of three of the secret documents. The Post, which carries Mr. Anderson's column, said the three documents were on the letterhead of the Joint Chiefs of Staff and of Warren G. Nutter, assistant secretary of defense for international security affairs.

The Post quoted Mr. Anderson as saying his sources for the papers hold high positions in the Nixon administration.

"If the sources were identified," the Post quoted Mr. Anderson, "it would embarrass the administration more than it would me. It would make a very funny story."

Mr. Anderson said the documents show that, contrary to the administration's professions of strict neutrality, Mr. Nixon sided strongly with the military dictatorship in West Pakistan against the world's largest democracy in India.

'GETTING HELL'

Dr. Henry Kissinger, Mr. Nixon's chief adviser on national security, was quoted as saying in a Dec. 3 strategy session, "I am getting hell every half hour from the President that we are not being tough enough on India."

Jack Anderson, left, and Henry Kissinger.

Mr. Anderson said the documents disclose that Dr. Kissinger sought to get around the ban on U.S. arms shipments to Pakistan by having them sneaked in thru Jordan or Saudi Arabia

"Dr. Kissinger asked whether we have the right to authorize Jordan or Saudi Arabia to transfer military equipment to Pakistan," Mr. Anderson quoted from the Dec. 6 minutes. "Mr. (Christopher) Van Hollen (State Department Asia expert) stated that the United States cannot permit a third country to transfer arms which we have provided them when we, ourselves, do not authorize the sale direct to the ultimate recipient."

'OUT OF CONTEXT'

Dr. Kissinger said yesterday in San Clemente, Calif., that Mr. Anderson quoted "out of context" from the documents, but refused to elaborate. In response, Mr. Anderson told Scripps-Howard newspapers he would make the full memoranda available to the public.

Mr. Anderson wrote that a cable from Kenneth Keating, U.S. ambassador to India, warned that "any action other than rejection (of the plan to ship planes to Pakistan by way of Jordan) would pose enormous further difficulties in Indo-U.S. relations."

The documents indicated the United States was considering sending eight F104s via Jordan to resupply the Pakistan air force, which had been crippled by initial Indian attacks. The war was over in two weeks, before any such shipment was made. Mr. Anderson said the documents indicate that a final decision had not been reached.

Mr. Anderson said the President overrode the advice of State Department senior officials to appeal to the West Pakistan government to atop persecuting Bengalis in East Pakistan, and to remain neutral between West Pakistan and India. One of those participating in the secret meetings wrote this report, according to Mr. Anderson:

Dr. Kissinger said that we are not trying to be even-handed. The President does not want to be even-handed. The President believes that India is the attacker. . . .

"Dr. Kissinger said that we cannot afford to ease India's state of mind. "The Lady' (Mrs. Indira Gandhi, India's prime minister) is cold-blooded and tough and will not turn into a Soviet satellite merely because of pique. We should not ease her mind. He invited anyone who objected to this approach to take his case to the President."

STATE LEAK

Speculation here is that the leak came from the State Department, which has had its ego bruised lately by Dr. Kissinger's emergence as the dominant foreign policy figure in the administration. Mr. Anderson refused to pinpoint his source.

The minutes described meetings in early December of the Special Action Group, comprised of State, Defense, CIA, and White House officials. The papers were variously classified, including "secret sensitive." Mr. Anderson said he has received two calls from "friends" in the government warning that he could be indicted.

Government officials said that altho classifications were violated, the substance of the reports indicates they would not be covered by laws against sabotage or espionage.

When several newspapers published excerpts of the secret Pentagon papers last year, Atty. Gen. John Mitchell asked the courts to surpress further publication. His request was rejected by the U.S. Supreme Court. Following an FBI investigation, the government is prosecuting Daniel Ellsberg for having leaked the papers to the press.

WASHINGTON POST
5 JAN 1972

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Kissinger: 'I Am Getting Hell...From the Presidem

Following is a typescript of the secret documents turned over to The Washington Post yesterday by Syndicated columnist Jack Anderson.

SECRET SENSITIVE
ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301
Refer to: I-29643/71
DOWNGRADED AT 12 YEARS INTERVALS
(Illegible)
Not Automatically Declassified
INTERNATIONAL SECURITY AFFAIRS
MEMORANDUM FOR RECORD
SUBJECT: WSAG Meeting on India/Pakistan

Participants: Assistant to the President for National Security Affairs—Henry A. Kissinger
Under Secretary of State—John N. Irwin
Deputy Secretary of Defense—David Packard
Director, Central Intelligence Agency—Richard M. Helms
Deputy Administrator (AID) Maurice J. Williams II
Chairman, Joint Chiefs of Staff—Admiral Thomas Moorer
Assistant Secretary of State (NEA)—Joseph J. Sisco
Assistant Secretary of Defense (ISA)—G. Warren Nutter
Assistant Secretary of State (IO)—Samuel DePalma
Principal Deputy Assistant Secretary of Defense (ISA)—Armistead I. Selden jr.
Assistant Administrator (AIDINESA)—Donald G. MacDonald
Time and Place: 3 December 1971, 1100 hours, Situation Room. White House.

SUMMARY:

Reviewed conflicting reports about major action in the West Wing. CIA agreed to produce map showing areas of East Pakistan occupied by India. The President orders hold on issuance of additional irrevocable letters of credit involving $99 million, and a hold on further action implementing the $72 million PL 480 credit. Convening of Security Council meeting planned contingent on discussion with Pak Ambassador this afternoon plus further clarification of actual situation in West Pakistan. Kissinger asked for clarification of secret special interpretation of March 1959 bilateral U.S. agreement with Pakistan.

KISSINGER: I am getting hell every half hour from the President that we are not being tough enough on India. He has just called me again. He does not believe we are carrying out his wishes. He wants to tilt in favor of Pakistan. He feels everything we do comes out otherwise.

HELMS: Concerning the reported action in the West Wing, there are conflicting reports from both sides and the only common ground is the Pak attacks on the Amritsar, Pathankat, and Srinagar airports. The Paks say the Indians are attacking all along the border; but the Indian officials says this is a lie. In the East Wing, the action is becoming larger and the Paks claim there are now seven separate fronts involved.

KISSINGER: Are the Indains seizing territory?

HELMS: Yes; small bits of territory, definitely.

SISCO: It would help if you could provide a map with a shading of the areas occupied by India. What is happening in the West—is a full-scale attack likely?

MOORER: The present pattern is puzzling in that the Paks have only struck at three small airfields which do not house significant numbers of Indian combat aircraft

HELMS: Mrs. Gandhi's speech at 1:30 may well announce recognition of Bangla Desh.

MOORER: The Pak attack is not credible. It has been made during late afternoon, which doesn't make sense. We do not seem to have sufficient [illegible]

KISSINGER: Is it possible that the Indians attacked first, and the Paks simply did what they could before dark in response?

MOORER: This is certainly possible.

KISSINGER: The President wants no more irrevocable letters of credit issued under the $99 million credit. He wants the $72 million PL 480 credit also held.

WILLIAMS: Word will soon get around when we do this. Does the President understand that?

KISSINGER: That is his order, but I will check with the President again. If asked, we can say we are reviewing our whole economic program and that the granting of fresh aid is being suspended in view of conditions on the Subcontinent. The next issue is the UN.

IRWIN: The Secretary is calling in the Pak Ambassador this afternoon, and the Secretary leans toward making a U.S. move in the U.N. soon.

KISSINGER: The President is in favor of this as soon as we have some confirmation of this large-scale new action. If the U.N. can't operate in this kind of situation effectively, its utility has come to an end and it is useless to think of U.N. guarantees in the Middle East.

SISCO: We will have a recommendation for you this afternoon, after the meeting with the Ambassador. In order to give the Ambassador time to wire home, we could tentatively plan to convene the Security Council tomorrow.

KISSINGER: We have to take action. The President is blaming me, but you people are in the clear.

SISCO: That's ideal!

KISSINGER: The earlier draft statement for Bush is too evenhanded.

SISCO: To recapitulate, after we have seen the Pak Ambassador, the Secretary will report to you. We will update the draft speech for Bush.

KISSINGER: We can say we favor political accommodation but the real job of the Security Council is to prevent military action.

SISCO: We have never had a reply either from Kosygin or Mrs. Gandhi.

WILLIAMS: Are we to take economic steps with Pakistan also?

KISSINGER: Wait until I talk with the President. He hasn't addressed this problem in connection with Pakistan yet.

SISCO: If we act on the Indian side, we can say we are keeping the Pakistan situation "under review."

KISSINGER: It's hard to tilt toward Pakistan if we have to match every Indian step with a Pakistan step. If you wait until Monday, I can get a Presidential decision.

PACKARD: It should be easy for us to inform the banks involved to defer action inasmuch as we are so near the weekend.

KISSINGER: We need a WSAG in the morning. We need to think about our treaty obligations. I remember a letter or memo interpreting our existing treaty with a special India tilt. When I visited Pakistan in January 1962, I was briefed on a secret document or oral understanding about contingencies arising in other than the SEATO context. Perhaps it was a Presidential letter. This was a special interpretation of the March 1959 bilateral agreement.

Prepared by:
/s/initials
James H. Noyes
Deputy Assistant Secretary for Near Eastern, African and South Asian Affairs
Approved:
Illegible signature
for G. Warren Nutter
Assistant Secretary of Defense for International Security affairs

Continued

WASHINGTON POST
5 JAN 1972

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Secret U.S. Papers Bared

By Sanford J. Ungar
Washington Post Staff Writer

Syndicated columnist Jack Anderson, in a major challenge to the secrecy surrounding U.S. policy in the Indo-Pakistani war, last night gave The Washington Post the full texts of three secret documents describing meetings of the National Security Council's Washington Special Action Group (WSAG).

The documents indicate that Henry A. Kissinger, President Nixon's national security adviser, instructed government agencies to take a hard line with India in public statements and private actions during last month's war on the Indian subcontinent.

Anderson released the documents after Kissinger told reporters Monday during an airborne conversation en route to the Western White House in San Clemente that the columnist, in stories based on the materials, had taken "out of context" remarks indicating that the administration was against India.

Among the significant statements bearing on U.S. policy in the documents were the following:

• "KISSINGER: I am getting hell every half hour from the President that we are not being tough enough on India. He has just called me again. He does not believe we are carrying out his wishes. He wants to tilt in favor of Pakistan. He feels everything we do comes out otherwise."

• "Dr. Kissinger said that whoever was putting out background information relative to the current situation is provoking presidential wrath. The President is under the 'illusion' that he is giving instructions; not that he is merely being kept apprised of affairs as they progress. Dr. Kissinger asked that this be kept in mind."

• "Dr. Kissinger also directed that henceforth we show a certain coolness to the Indians; the Indian Ambassador is not to be treated at too high a level."

• "Dr. Kissinger . . . asked whether we have the right to authorize Jordan or Saudi Arabia to transfer military equipment to Pakistan. Mr. (Christopher) Van Hollen (deputy assistant secretary of state for South Asian affairs) stated the United States cannot permit a third country to transfer arms which we have provided them when we, ourselves, do not authorize sale direct to the ultimate recipient, such as Pakistan."

• "Mr. (Joseph) Sisco (assistant secretary of state for Near Eastern and South Asian affairs) suggested that what we are really interested in are what supplies and equipment could be made available, and the modes of delivery of this equipment. He stated from a political point of view our efforts would have to be directed at keeping the Indians from 'extinguishing' West Pakistan."

• "Mr. Sisco went on to say that as the Paks increasingly feel the heat we will be getting emergency requests from them . . . Dr. Kissinger said that the President may want to honor those requests. The matter has not been brought to Presidential attention but it is quite obvious that the President is not inclined to let the Paks be defeated."

After getting the documents from Anderson, The Post decided to print the full texts in today's editions.

Anderson said he would make the documents available to other members of the press today, and he invited Sen. J. W. Fulbright, chairman of the Senate Foreign Relations Committee, to use them as the basis for an investigation of U.S policy in South Asia.

Fulbright, out of Washington during the congressional recess, could not be reached for comment.

The columnist also suggested that other members of Congress might wish to investigate government security classification policy.

Most of the significant statements in the three documents released last night had already appeared in Anderson's column, which is distributed to 700 newspapers, including The Washington Post.

The Justice Department acknowledged yesterday that the FBI is investigating the nature of the security leak that led to the disclosures.

But Anderson, who said he will write several more columns based on the documents, pointed out that no government agent had visited him and that he had received no request to halt publication. The Post has not received any such request either.

Pentagon sources said another investigation is underway by military security agents. They said the scope of their investigation would be narrow because "very few people" have access to minutes of the meetings.

Anderson, in an interview with The Post, said he also had copies of cables to Washington from the U.S. ambassadors to India and Pakistan, as well as numerous other documents bearing on American policy.

He showed this reporter a briefcase with about 20 file folders, each containing some of the documents.

Anderson declined to name his sources, but suggested that they occupy high positions in the Nixon administration.

"If the sources were identified," he said "it would embarrass the administration more than it would me, It would make a very funny story."

Since the controversy last year over release of the Pentagon Papers, a top-secret history of U.S. policy in Vietnam, Anderson said, his sources had become more, rather than less, willing to disclose classified material.

The texts obtained by The Post provide substantial details of the back-and-forth at Special Action Group meetings among representatives of the White House, State and Defense departments, Central Intelligence Agency, National Security Council, Joint Chiefs of Staff and the Agency for International Development.

The three texts are:

• A "memorandum for record" about a WSAG meeting in the Situation Room of the White House on Dec. 3, by James H. Noyes, deputy assistant secretary of defense for Near Eastern, African and South Asian affairs. It was approved by G. Warren Nutter, assistant secretary of defense for international security affairs, and was printed on his stationery.

• A memorandum for the Joint Chiefs of Staff, on their stationery, concerning a meeting on Dec. 4, by Navy Capt. Howard N. Kay, a JCS staffer.

• Another memorandum by Kay on JCS stationery about a meeting on Dec. 6.

The first of the three meetings was held on the opening day of full-scale hostilities be-

WASHINGTON STAR

6 JAN 1972

Anderson Releases Papers On Secret U.S. Policy Sessions

By ORR KELLY
Star Staff Writer

Syndicated columnist Jack Anderson has made public "SECRET SENSITIVE" minutes of three White House meetings dealing with the India-Pakistan War.

The documents show the government was secretly favoring Pakistan in the war while saying publicly that it was not taking sides.

Anderson used extensive quotations from the documents in recent columns and then released the dull text as a deliberate challenge to the government's system of classifying information.

After the Anderson columns appeared, the White House began coordinating a broad-scale investigation to learn who leaked the documents to him.

Material Confirmed

The White House today refused to say whether the published material is authentic. But a State Department official who asked not to be identified said there is no question of the authenticity of the documents.

Anderson released the documents after Henry A. Kissinger, presidential adviser for national security affairs, told newsmen yesterday he was quoted out of context in excerpts from the documents printed earlier by Anderson.

Anderson gave the documents to the Washington Post last night, and the paper printed them today. The Star obtained its own copies of the documents.

Anderson said in an interview last night that his column prepared for release tomorrow would carry excerpts from secret documents dealing with relations between the United States and Japan. The column will appear on the same day President Nixon meets with Japanese Prime Minister Eisaku Sato in San Clemente, Calif.

"I Am . . . Getting Hell"

One of the documents released by Anderson quotes Kissinger as telling a White House meeting on Dec. 3 that:

"I am getting hell every half hour from the President that we are not being tough enough on India. He has just called me again. He does not believe we are carrying out his wishes. He wants to tilt in favor of Pakistan. He feels everything we do comes out other wise."

The documents provide more detail on the meetings than had been made public previously, but many of the essential details had already been used by Anderson in his syndicated column.

He did not release what he said were "dozens" of other documents giving what he called a complete picture of the government's decision-making process during the India - Pakistan War.

Meetings of WSAG

The papers released by Anderson covered meetings of the Washington Special Action Group at the White House oon Dec. 3, 4 and 6. The WSAG is a top advisory committee to the National Security Council.

All the documents are marked "SECRET SENSITIVE" and one paper, covering the Dec. 4 meeting, says: "In view of the sensitivity of information in the NSC (National Security Council) system and the detailed nature of this memorandum, it is requested that access to it be limited to a strict need-to-know basis."

The documents appeared to have come from two different offices in the Pentagon—although it is quite possible that copies of the minutes also would be available in the other areas of the government.

Anderson says he has even more such documents. The disclosures amount to a major leak of sensitive government papers—in some way even more disturbing to high government officials than the release of the Pentagon Papers earlier this year.

In that case, the documents covered essentially a period of history ending about 1965. The papers published by Anderson, on the other hand, cover a current international crisis.

The minutes of the meeting of Dec. 3 were made by James H. Noyes, deputy assistant secretary of defense for Near Eastern, African and South Asian Affairs, and approved by his boss, G. Warren Nutter, assistant defense secretary for international security affairs.

The minutes of the Dec. 4 and 6 meetings were prepared by Navy Captain H.N. Kay, who works in the office of the Joint Chiefs of Staff at the Pentagon.

Government sources said an investigation of the source of the apparent leak to Anderson was being coordinated from the White House and involved security agencies at the State and Defense Departments as well as the Secret Service. Contrary to earllier reports, the Federal Bureau of Investigation has not been called into the case so far.

Officials at the State and Defense Departments seemed to be most concerned about two aspects of the case.

The Concern

Several officials called attention to a column published by Anderson on Dec. 28 describing a secret intelligence report in which Emory Swank, U.S. ambassador to Cambodia, gave an unflattering assessment of top Cambodian officials. Publication of the report, the U.S. officials said, will greatly complicate Swank's task in dealing with the Cambodian government.

Anderson acknowledged that an argument could be made that the cables of an ambassador to his government should be classified.

"But I think I had a duty to report his warning that the country (Cambodia) is about to collapse," he said.

Two Key Discrepancies

The other concern raised about the Anderson papers is that a pattern of leaks now may make government officials reluctant, in the future, to offer proposals that might be embarrassing if they were published, or to be candid in their comments on policies under consideration.

The Anderson documents reveal what appear to be two major discrepancies between what the administration was doing — or thinking about doing — at the height of the India - Pakistan crisis and what it was telling the public.

Anderson suggested a comparison be made between the minutes of the sessions — particularly Kissinger's comment that he was getting hell from the President for not being tough enough on India — and a Kissinger "background" briefing for the press on Dec. 7. Anderson said the comparison would show the government "lied" to the public.

In that backgrounder, Kissinger denied the administration was "anti-Indian."

Arms Transfer Suggested

The other major discrepancy noted by Anderson arises from the minutes of the Dec. 6 meeting in which Kissinger is said to have asked whether the United States could authorize Jordan or Saudi Arabia to transfer American military equipment to Pakistan.

Two State Department officials responded that such a transfer would be illegal and that the Jordanians would probably be grateful if the United States "could get them off the hook" by denying authority for such a transfer.

The government said publicly at that time that it was not providing aid to either country.

Assistant Secretary of State Joseph Sisco said that "as the Paks increasingly feel the heat we will be getting emergency requests from them."

"Dr. Kissinger said that the President may want to honor those requests," the minutes went on. "The matter has not

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