PRESIDENTIAL DIRECTIVE ON THE USE OF POLYGRAPHS AND PREPUBLICATION REVIEW

HEARINGS

BEFORE THE

SUBCOMMITTEE ON
CIVIL AND CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

NINETY-EIGHTH CONGRESS

FIRST AND SECOND SESSIONS

ON

PRESIDENTIAL DIRECTIVE ON THE USE OF POLYGRAPHS AND PREPUBLICATION REVIEW

APRIL 21, 28, 1983, AND FEBRUARY 7, 1984

Serial No. 114

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These hearings were held jointly with the Subcommittee on Civil Service, Honorable, Patricia Schroeder, Chairwoman, of the Committee on Post Office and Civil Service.

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PRESIDENTIAL DIRECTIVE ON THE USE OF POLYGRAPHS AND PREPUBLICATION REVIEW

THURSDAY, APRIL 21, 1983

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS, COMMITTEE ON THE JUDICIARY; AND THE SUBCOMMITTEE ON CIVIL SERVICE, COMMITTEE ON POST OFFICE AND CIVIL SERVICE,

Washington, D.C.

The subcommittees met in joint session, pursuant to call, in room 2226, Rayburn House Office Building, commencing at 9:06 a.m., Hon. Don Edwards (chairman of the Subcommittee on Civil and Constitutional Rights) presiding.

Present: Representatives Edwards, Schroeder, Kastenmeier, Sikorski, Sensenbrenner, Wolf, and DeWine.

Staff present: For Judiciary, Helen Gonzales, assistant counsel, majority; Phil Kiko, minority counsel; for Post Office and Civil Service, Andrew A. Feinstein, subcommittee staff director; and Steve Hemphill, minority counsel.

Mr. EDWARDS [presiding]. The subcommittees will come to order.

This morning we convene the first of two hearings regarding the March 11 Presidential directive on safeguarding national security information. Both of these hearings are jointly sponsored by the House Judiciary Subcommittee on Civil and Constitutional Rights and the House Post Office and Civil Service Subcommittee on Civil Service, which is chaired by our colleague from Colorado, Mrs. Schroeder.

The President's directive appears to be yet another administration step toward curtailing the free flow of information in this country. In this morning's newspaper I noticed something new. The administration is considering making all leaks of classified information by Government employees a Federal crime punishable by up to 3 years in prison and $10,000 fine. It occurs to me that President Nixon pointed out that the menues at the White House were classified in his time—I presume they still are—so you can go to jail for 3 years for telling what you had for breakfast at the White House.

This morning we are going to hear from a number of witnesses who have expressed concern regarding the general thrust of the President's directive, as well as the specific provisions regarding polygraphic examinations and prepublication review agreements. Then on next Thursday, April 28, we are going to hear testimony from a number of administration witnesses, including someone from the Justice Department.

Before I introduce our first witness, I will defer to the cochair of this mornings meeting, Congresswoman Pat Schroeder, who chairs the Civil Service Subcommittee.

[The statement of Mr. Edwards follows:]

OPENING STATEMENT OF CONGRESSMAN DON EDWARDS

This morning we convene the first of two hearings regarding the March 11 Presidential Directive on Safeguarding National Security Information. Both of these hearings are jointly sponsored by the House Judiciary Subcommittee on Civil and Constitutional Rights and the House Post Office and Civil Service Subcommittee on Civil Service, which is chaired by Congresswoman Schroeder.

The President's Directive appears to be yet another Administration step toward curtailing the free flow of information in this country. For example, last year the President issued a new Executive Order on classification and secrecy which reversed a 30 year bi-partisan, trend to greater openness. Last month, this Administration became the first Administration, since the death of Chile's former President Salvadore Allende, to prohibit his widow from speaking in this country. This Administration has made repeated attempts, especially in the Senate, to amend the Freedom of Information Act to make it more difficult for the public to have access to information on how governmental decisions are made. A few weeks ago, my Subcommittee held a hearing regarding the proposal by the Office of Management and Budget to restrict even privately funded political activity by organizations which receive federal grants.

Now we have before us a Directive by the President which will greatly expand the use of polygraph tests by the federal government, as well as increase the number of current and former employees compelled—for the rest of their lives, apparently—to submit any writings or speeches to the government for prior approval even if the subject matter of the speech or writing is not classified.

This morning we will hear from a number of witnesses who have expressed concern regarding the general thrust of the President's Directive, as well as the specific provisions regarding polygraph examinations and pre-publication review agreements.

Next Thursday, April 28, we will hear testimony from a number of Administration witnesses, including a representative of the Justice Department.

Before I introduce our first witness, I will defer to the co-chair of this morning's hearing, Congresswoman Schroeder, who chairs the Civil Service Subcommittee.

Mrs. SCHROEDER. I thank you very much.

I thank the gentleman from California.

I am delighted we are holding joint hearings on the Presidential directive on safeguarding national security information, issued on March 11, 1983.

This order was allegedly issued because, as the Justice Department claims, "Unlawful disclosures of classified information damage national security by providing valuable information to our adversaries, by hampering the ability of our intelligence agencies to function effectively, and by impairing the conduct of American foreign policy." This sounds reasonable, but since the order restricts the exercise of first amendment rights, it also seems reasonable that the administration give us an example or two of the damage. So, I turned to the report on which this order is based and find the following: "This report has been kept unclassified, and as a result specific examples of harmful unauthorized disclosures have not been included." In other words, the administration wants to limit the right of the public to information about governmental policies and not tell them why it is doing so.

As I see it, the order contains five troubling provisions. First, it tells agencies to require individuals with access to classified information to sign a nondisclosure ageement and to require individuals with access to Sensitive Compartmented Information [SCI] to sign a

nondisclosure agreement which includes a provision for prepublication review. After the *Snepp* case, it's hard to figure out why the later provision is needed. It's noteworthy that this provision covers, I assume, contractors as well as Federal employees.

Second, agency regulations are supposed to "govern contracts between media representatives and agency personnel." If this section works, it will insure that proadministration policy leakers get to the press while critics and whistleblowers are cut off.

Third, the directive mandates investigations of unauthorized disclosures. The investigations can include the use of polygraphs against any employee, whether or not that employee has access to classified information, so long as the employee works in an agency where some employees have access to classified information. The Government doesn't have very many polygraph examiners, so the administration of polygraph exams will have to be selective. If we have learned anything from the first 2 years of this administration, it is that this selectivity will be used against troublemakers, dissenters and the like, with little regard to the likelihood that they were the sources of leaks.

Fourth, employees can be fired or otherwise disciplined for failing a polygraph and can be fired or otherwise disciplined for refusing to take a polygraph. This hardly allows for voluntary polygraph examinations, as provided in the current Government-wide regulations and as recommended in professional guidelines for polygraph examiners.

Fifth, a new study group is established to look at the Federal personnel security program. This is the operation which, up to a few years ago, used to disqualify people for jobs based on previous organizational membership or association. I would hate to think that this directive could lead to the old guilt by association program of the fifties and sixties.

I hope your examination of this directive will convince the administration to pull it back and establish some more reasonable method of safeguarding national security information.

[Prepared statement of Mrs. Schroeder follows:]

PREPARED STATEMENT OF REPRESENTATIVE PAT SCHROEDER

Chairman Edwards, I am delighted we are holding joint hearings on the Presidential Directive on Safeguarding National Security Information, issued on March 11, 1983.

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As I see it, the order contains five troubling provisions. First, it tells agencies to require individuals with access to classified information to sign a nondisclosure agreement and to require individuals with access to Sensitive Compartmented Information (SCI) to sign a nondisclosure agreement which includes a provision for prepublication review. After the *Snepp* case, it's hard to figure out why the latter provision is needed. It's noteworthy that this provision covers, I assume, contractors as well as Federal employees.

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I hope your examination of this directive will convince the Administration to pull it back and establish some more reasonable method of safeguarding national security information.

Mr. EDWARDS. Thank you.

Does the gentleman from Ohio, Mr. DeWine, have a statement?

Mr. DEWINE. No, Mr. Chairman.

Mr. EDWARDS. Our first witness this morning is Floyd Abrams, a noted first amendment attorney, currently with the New York firm of Cahill, Gordon & Reindel. Mr. Abrams represented the New York Times in the Pentagon papers case.

Mr. Abrams, we welcome you, and you may proceed.

TESTIMONY OF FLOYD ABRAMS, ESQ., OF THE FIRM OF CAHILL, GORDON & REINDEL, NEW YORK, N.Y.

Mr. ABRAMS. Chairman Edwards, Chairwoman Schroeder, and members of the subcommittees. I have provided the committee with a text of my statement and I would like to ask it be incorporated.

Mr. EDWARDS. Without objection, so ordered.

Mr. ABRAMS. I appreciate that you have a number of witnesses this morning. As a result, what I would like to do is summarize what I consider the salient points contained in my statement.

What I tried to do was to summarize three things: First, I tried to make an effort to put these new regulations in some kind of context, even outside the area of the classification system, the use of polygraph tests, and the like.

The reason I do that is because it seems to me that it is now possible to make some valid generalizations about the information policies of the administration in a wide range of areas. It seems to me, Mr. Chairman, that those policies are unique in recent history. They are coherent, they are consistent, and unlike those of some recent administrations, they are not a bit schizophrenic. They are also in my view consistently at odds with the notion that widespread dissemination to the public of information from diverse sources is in the public interest. It is almost as if information were

in the nature of a potentially disabling contagious disease which must be feared, controlled, and ultimately quarantined.

I cite in my statement a number of examples. I will simply cite to you now the areas which I cite. One is the efforts of the administration significantly to contract the use of the Freedom of Information Act, a point of high priority since the time the administration took office.

Another is the use by the administration of the Export Administration Act to permit governmental interference by the Department of Commerce to unclassified university research.

A third is the use of the Foreign Agents Registration Act so as to require films made in Canada—as everybody knows, including the Academy Award winning documentary "If You Love This Planet"—to be preceded by a statement saying that they are political propaganda.

Another is the use of the McCarran-Walters Act to ban from our shores a variety of foreign individuals, including the widow of Salvadore Allende, and spokesmen from a variety of groups in northern Ireland.

Another is the use of our customs laws, at least to try to keep materials sold freely on the streets of Iran from coming into this country.

Another is a switching position, from the position of the Department of Justice in the Carter administration with respect to pending cases before the U.S. Supreme Court.

Then there is the adoption on the part of the administration of the Intelligence Identities Protection Act last year, the law described by University of Chicago Professor Philip L. Kurland as "the clearest violation of the first amendment attempted by Congress in this era."

I don't suggest for a moment that what I believe to be the consistently antagonistic views of this administration to the widespread dissemination of information is unique in the sense that none of these acts existed before or that none of them were ever used before. The McCarran-Walters Act has been on the books for a long time and has been used. The Intelligence Identities Protection Act was drafted under the Carter administration.

What is new, it seems to me, is the across-the-board rejection of the values of information reflected in the totality of acts and positions taken by this administration. What is also new, I believe, is the disdain with which the values of information have been viewed, the ease with which those values have been overcome in the service of other interests.

The second thing that I wish to bring to the committee's attention is my views as to the background of the specific new Presidential directive. That has really come in three parts. First, the administration revoked, in 1981, guidelines put into effect by Attorney General Civiletti to limit the potentially harsh effects of the case entitled *Snepp* v. *United States.* The *Snepp* case, as you will recall, upheld as against first amendment challenge, the enforceability of a CIA requirement that its current and former employees agree to prepublication review process similar to that which the Government is now seeking to enforce by this new Presidential directive.

The Supreme Court upheld the directive as applied to the CIA and held Mr. Snepp, who is in this room today, responsible under a constructive trust theory whereby all the profits he made from the book he wrote had to go to the Government. And so they have.

Now, as the committee is aware, the *Snepp* decision was a very controversial one for a lot of reasons, not the least that it was considered by many, at least, a risky decision, even if one agreed with it—as I did not—a risky decision in terms of its potential for application to other areas of Government outside the CIA, other individuals who do not hold sensitive positions.

It was a result of that that Attorney General Civiletti issued guidelines designed to assure that the Attorney General at least took a very close look before using the *Snepp* case to impose any kind of constructive trusts in the future on any other Government employees, or indeed, even went to court with respect to it.

Those guidelines were revoked on September 3, 1981. The only reason offered was to avoid any confusion as to whether the United States will evenhandedly and strenuously pursue any violations of confidentiality. No example was offered of any harm actually caused by the Civiletti guidelines. I may say that no example has ever been offered of any harm which genuinely exists, which has required the adoption of any of the new administration policies which I will refer to today, including the March 11 Presidential directive that brings us here today.

The second step taken by the administration was to revise the classification system itself. Basically what was done was to revise, by an executive order entered in April 1982, the entire system so as, in general, to make more material classified, to make it harder for the public to gain access to some material that it had otherwise gained access to. Standards became harsher. Repealed, for example, was a regulation, in effect, which said that at least people that classified material ought to consider the public's right to know as they went through the classification process. That was repealed, as were a number of other requirements.

One of those requirements was the one which had said that if a classifier wasn't sure whether something should be classified at a higher or lower level, he should make it at the lower level. That was explicitly repealed and now he is obliged to make it at the higher level. So our current situation is that we have deliberately more material classified than ever before, and now, as of March 11, 1983, having revoked the Civiletti guidelines, having expanded the category of information which is classified, the *Snepp* ruling cited as a basis for a Government-wide adoption of prepublication censorship.

The sweep of this new order is that it at least applies to all senior officials in the Departments of State and Defense, all members of the National Security Council staff, senior White House officials, and senior military and foreign service officers. All of these individuals are subject to what the new Presidential directive characterizes as sensitive compartmented information. They will, if I read it correctly, remain so for the rest of their lives. Indeed, as I read the directive, although there may be a little leeway here, so will everyone else who has access to classified information if the Presidential directive is implemented.

In practice, this means one of two things—it will either be enforced or it will not. If it is enforced fairly and equitably across the full range of individuals subjected to it, it will mean necessarily that some of the most important speech that occurs in our society would be subjected first to governmental scrutiny and then, perhaps, to judicial scrutiny if the Government decides it cannot be said. If it is not enforced evenhandedly, it will be enforced either politically or capriciously.

I pass in silence the bureaucratic prcblem of trying to enforce this across-the-board. In the last year I understand we have figures for the amount of documents classified in one year, 1980, and the recent estimates were that 16 million pieces of information were classified. Consider with me, however, just the speech involved, assuming that the Government can really enforce this. It would mean specifically—and I have annexed three articles to my statement to illustrate this to the committee—that the op-ed article published in the New York Times by McGeorge Bundy on April 17, 1983, with respect to the MX missile could not have been published by Mr. Bundy without prior approval by the administration. Nor could the pro and con pieces on the MX published by the Times on April 12, 1983, by James Woolsey, a member of President Reagan's Commission on Strategic Forces, or Jerome Wiesner, formerly the science advisor to Presidents Kennedy and Johnson.

I cite MX articles—and it was very easy to find them; I could have found articles on anything else, for two reasons: One is it seems to me that it makes the point that the very people most knowledgeable about subjects of overriding national concern are those who would be most likely subject to prepublication review procedure. The other is that it simply will not do to say that the speech can wait until the Government and perhaps the courts complete their review of it. If, as the Supreme Court has indicated, the pendency of the case is the precise moment when public interest in the matters discussed would likely be at its height, that is surely all the more true of public policy.

Nor need one linger on subjects such as the MX missile. When President Reagan leaves office, if he writes any articles on current affairs after his retirement, let alone his memoirs, he will be obliged under this new directive to first submit it for prepublication Government clearance.

Now, he may view this as acceptable and tolerable as regards memoirs if there is a reasonably prompt response. But what of commentary on fast-moving news events, or of the risk that later administrations will tilt their bureaucratic windmill against their predecessors? Can we really accept the scenario, as suggested by the Los Angeles Times last week, that if a succeeding administration intends to sign an arms control agreement with the Soviet Union, that Secretary of State Schultz believes is unwise, that he must first submit his comments to that administration for their prior approval?

It seems to me, Mr. Chairman, that the new Presidential directive strikes at the heart of the public to be informed about their Government, and it does so without a single example being publicly cited by the administration as to any harm to national security brought about by the absence of the new rules.

I think it is fair to ask some questions about that. I urge the committee, if I may, to put this to administration witnesses who may follow me at later sessions.

It seems to me the committee may want to ask what genuine harm to national security the Civiletti guidelines did, and what general harm to national security the Executive order previously in effect has done which would require the Government to at least consider the public's right to know when it classified information. Of course, most specifically for your inquiry, what genuine risk to national security led to the enactment of the March 11, 1983, Presidential directive. As to each matter, there has never been any articulate public statement by the administration as to what specific harm has occurred, what actual risks were so great as to require the adoption of new information-limiting policy.

It is as if the only answer were that any potential threat to national security, however amorphous or however far-fetched, outweighs any benefits to the public of widespread dissemination of information. One can make a case for this, but it is not a case consistent with our history or our Constitution.

Thank you, Mr. Chairman.

[Prepared statement of Floyd Abrams follows:]

PREPARED STATEMENT OF FLOYD ABRAMS

Chairman Edwards, Chairwoman Schroeder and members of the subcommittee, I am honored by your invitation to testify today. Although I do so to offer my views on the Presidential directive of March 11, 1983 which requires all government employees with access to classified information of any sort to sign standardized nondisclosure agreements subject to judicial enforcement as a precondition to their access and which authorizes polygraph tests of such employees with respect to suspected leaks, I would like first and perhaps primarily to attempt to put the new directive in some form of historical context. To do so, I will refer as well to other aspects of the information policies of this Administration.

It is not difficult to generalize about those policies. They are unique in recent history. They are coherent, consistent and (unlike those of some recent Administrations) not a bit schizophrenic. They are also consistently at odds with the notion that widespread dissemination to the public of information from diverse sources is in the public interest. It is almost as if information were in the nature of a potentially disabling contagious disease which must be feared, controlled and ultimately quarantined.

Let me tick off for you a few examples in related areas before turning to the new Presidential directive:

The Administration, from its first days in power, has viewed as a matter of high priority the enactment of major amendments to the Freedom of Information Act. Some of the proposals, such as those which affected the CIA, would have resulted in total exemptions of entities now covered by the Act; others would have significantly narrowed the scope of the Act or made it more difficult or more expensive to use. No proposal of this Administration would have made it easier to use the FOIA; no proposal would have expanded, in any area, the scope of FOIA; no proposal would have made it less expensive to use FOIA. In the last category, by way of example, the Administration in early 1983 explicitly reversed the policy of former Attorney General Civiletti of being "generous" in waiving the payment of fees under FOIA to public interest organizations in favor of sternly phased legalistic tests barring waiver of fees unless the government itself decides that, among other things, "the information released meaningfully contributes to the public development or understanding of the subject."

The Export Administration Act (50 App. U.S.C. § 2401, et seq.) has been interpreted by the Department of Commerce to permit governmental interference into unclassified university research. American universities have been warned that the statutory ban on the exporting of American technical data bars an American professor from reading an academic research paper containing unclassified information at a scholarly conference attended by non-U.S. nationals.

The Foreign Agents Registration Act (22 U.S.C. §§ 611, et seq.) has been interpreted to require documentary films made by the National Film Board of Canada (including the Academy Award winning documentary "If You Love This Planet") to be preceded by a statement saying the films were "political propaganda." Efforts were made, as well, by the Department of Justice to learn which groups and individuals asked to see the films. The action by the Department was taken notwithstanding that the statute itself excepts from its coverage films "not serving predominantly a foreign interest."

The McCarran-Walter Act (8 U.S.C. §§ 1101, et seq.) has been interpreted to bar a wide range of individuals from our shores by denying them visas. The widow of Salvadore Allende has been denied a visa as have the Reverend Ian Paisley and Owen Carron, spokesmen of radical Protestant and Catholic groups in Northern Ireland.

Efforts of an American writer, William Worthy, to bring into this country books sold freely on the streets of Teheran which allegedly contained copies of documents seized from the American embassy were met first by impoundment by the FBI and Customs officials and then by threats of the Justice Department to file criminal charges. Only when a lawsuit was filed did the Department agree to return the already public books and to pay damages to those involved.

The Department of Justice, reversing the refusal of the previous Administration based on First Amendment grounds to defend in the United States Supreme Court the ban on editorializing by noncommercial education television and radio stations which receive funds from the Corporation for Public Broadcasting (47 U.S.C. § 399) is now seeking reversal of a lower court ruling holding the section unconstitutional, (*FCC* v. *League of Women Voters,* No. 82-912)

The Intelligence Identities Protection Act (50 U.S.C. §§ 421, et seq.), the law described by University of Chicago law professor Philip L. Kurland as "the clearest violation of the First Amendment attempted by Congress in this era," has been adopted at the urging of the Administration. Under the new law, it may be possible to prosecute journalists for identifying individuals involved in some fashion or other with the CIA who have committed criminal acts under the laws of our country.

While I cite those examples of what I believe to be the consistently antagonistic views of this Administration to the dissemination of information, I do not mean to suggest that no prior Administration has done any of the things I have referred to. The McCarran-Walters Act, by way of example, long predated this Administration; the Intelligence Identities Protection Act was drafted under the Carter Administration. What is new is the across-the-board rejection of the values of information reflected in the totality of acts and positions taken by this Administration. What is also new is the disdain with which the values of information have been viewed, the ease with which those values have been overcome in the service of other interests.

When, for example, protests were voiced against the action of the Justice and State Departments in keeping hundreds of foreigners from attending a United Nations disarmament session, Kenneth Adelman, then deputy UN delegate, said "we have absolutely no legal obligation to let Tommy Bulgaria or anyone else from Soviet-front groups" enter the country. And when Assistant Attorney General Jonathan C. Rose, on a panel before the American Bar Association last year with respect to granting a total exemption to the CIA from the Freedom of Information Act was referred to one example of the working of the Act on a campus—the fact that the William and Mary College newspaper had obtained documents under FOIA disclosing CIA use of college administrators and local police as informants to monitor students and dissident activity—he responded by characterizing the example as "trivial" and the ability of the college newspaper to write its article about the subversion on its campus as merely "nice" since other articles had previously been written about campus surveillance.[1] I think it was far more that "nice" and, in any event, of far more consequence than did Mr. Rose. But in those words—"trivial" and "nice"—Mr. Rose nicely summed up what appears to be the view of the Administration with respect to the values of information in our society.

These examples are ones of mood and tone. They help to set the background for the changes effected by the Administration with respect to classification of information. Those changes have occurred in three stages.

The first was the revocation in 1981 by Attorney General Smith of Guidelines relating to the decision of the United States Supreme Court in *Snepp* v. *United States,* 444 U.S. 507 (1980) promulgated the year before by his predecessor Attorney General Civiletti. The *Snepp* case, as you will recall, upheld as against First Amendment challenge, the enforceability of a CIA requirement that its current and former em-

[1] The Business Lawyer, Vol. 38, Feb. 1983, p. 721.

ployees agree to prepublication review by the Agency of their writings so as to insure that no classified material was released. The Supreme Court concluded that the failure of someone subject to such an agreement to submit his writings, even of unclassified materials, breached the agreement, subjecting the offending former agent to the imposition of a constructive trust upon all proceeds received by him. *Snepp* was a controversial ruling for a number of reasons For one thing, although the United States had proclaimed itself content with the decision below which had ruled in its favor but had rejected the imposition of so draconian a punishment as a constructive trust, the Supreme Court held that the United States was entitled to the greater penalty. For another, the Court's action was one which raised procedural hackles of many people otherwise unsympathetic with Snepp's actions. On the petition for certiorari and the responsive written papers alone, the Court decided the case for the government without first either having received briefs on the merits or having heard oral argument. It was a judicial performance which led Justice John Paul Stevens, in dissent, to observe that "[t]he Court's decision to dispose of this case summarily . . . is just as unprecedented as disposition on the merits." *(Id.* at 524) And most important of all, *Snepp* contained language which suggested that in hands insensitive to First Amendment rights, the pre-publication review procedure approved for CIA employees might be applied, as well, to the thousands of non-CIA employees who also have access on some occasions to classified information.

Given the risks inherent in the opinion for easy and potentially dangerous extension to other less sensitive areas than those involving CIA agents, Attorney General Civiletti issued Guidelines designed to assure that the Government carefully and sensitively studied a variety of actions before rushing to Court to obtain injunctions against publication of unintentional and possibly meaningless disclosures of information. They included such factors as whether the information at issue had already been made widely available to the public, whether it has been properly classifiable in the first place, and the like. (45 Fed. Reg. 85529).

On September 3, 1981, Attorney General Smith revoked the Civiletti Guidelines. The only reason offered was that of avoiding "any confusion as to whether the United States will evenhandledly strenuously pursue any violations of confidentiality obligations." (46 Fed. Reg. 45052) No example was offered of any harm actually caused by the Civiletti Guidelines.

The second step taken by the Administration related to the classification system itself. Under 1978 Executive Order (E.O. 12065) government officials were required at least to consider the public's right to know in classifying information, to use the lowest level of clearance when in doubt and to classify information only on the basis of "identifiable" potential damage to national security.

By Executive Order 12356 signed on April 2, 1982, President Reagan reversed each of the critical components of the procedures adopted four years earlier. Government officials were thereafter not required even to consider the public's right to know as they classify information. When in doubt, government officials were thereafter required to classify material at the highest, not lowest level of secrecy. The requirement that potential harm to national security be "identifiable" was abandoned. And, as a not unintended side effect, the little used but theoretically meaningful power of the judiciary under the Freedom of Information Act to determine whether information had been correctly classified was eviscerated. Again, no effort was made to demonstrate that the classification system previously in effect had harmed national security.

The third step was the Presidential directive of March 11, 1983. Having revoked the Civiletti Guidelines which had been adopted to assuage concern about the potential overbreadth of the *Snepp* ruling, *Snepp* itself was cited as authority for a government-wide adoption of pre-publication review agreements. The sweep of the new order is such that it *at least* applies to all senior officials in the Departments of State and Defense, all members of the National Security Council staff, senior White House officials and senior military and foreign service officers. All of these individuals are privy to what the new Presidential directive calls Sensitive Compartmented Information. Indeed, from the language and purport of the directive, they would be subject to prepublication governmental review for the rest of their lives. So, as I read the directive, would all others who had had access to classified information.

In practice, this would mean one of two things. If enforced fairly and equitably across the whole full range of individuals subject to it, it would mean that some of the most important speeches that occurs in our society would be subjected first to governmental scrutiny and then, if the government in power decided that something would not be written or said, to judicial review. If not enforced even-handedly, it will lead to politically motivated or, at best, capricious enforcement.

I will pass in silence the bureaucratic morass any such system would create. Given the fact that in 1980, the last year for which we have statistics, the government placed secrecy classifications on 16 million pieces of information (N.Y. Times, April 19, 1983, p. B6), it will surely be all-but-impossible to enforce. Consider, however, the speech affected by the directive. If the directive had been in effect in past Administrations, it would mean that the Op-Ed article published in the New York Times on April 17, 1983 written by McGeorge Bundy, formerly Special Assistant for National Security Affairs to President Kennedy and Johnson, with respect to the Scowcroft Commission's recommendations regarding the MX missile could not have been published without pre-publication scrutiny by the government. Neither could the pro and con pieces on the MX published by the Times on April 12, 1983 by R. James Woolsey, a member of President Reagan's Commission on Strategic Forces, or Jerome B. Wiesner, formerly science advisor to Presidents Kennedy and Johnson.

I cite articles on the MX[2]—innumerable others on other subjects could have been cited—for two reasons. One is that these citations correctly suggest that the very people most knowledgeable about subjects of overriding national concern are those who would most likely be subject to pre-publication review by the government. The other is that it simply will not do to say that such speech can "wait" until the government and perhaps the courts complete their review of it. If, as the Supreme Court has observed, "the pendency of a case" is "the price time when public interest in the matters discussed would likely be at its height," [3] that it is surely all the more true of discussions of public affairs.

Nor need one linger on subjects such as the MX missile. When President Reagan writes any articles on current affairs after his retirement, let alone his memoirs, he will be obliged first to submit it for pre-publication governmental clearance. He may view this as tolerable as regards memoirs if there is a reasonably prompt response. But what if commentary on fastbreaking news events such as the MX? Or of the risk that later Administrations will tilt the bureaucratic decision-making processes against their predecessors? Can we really accept the scenario, as perceptively suggested by the Los Angeles Times (April 6, 1983, p. 4), that if a succeeding Administration intends to sign an arms-control agreement with the Soviet Union that Secretary of State Shultz believes is unwise that he must first submit his comments to that Administration for their prior approval?

The effect of the new Presidential directive is thus to strike at the heart of the ability of the public to be informed about their government. And yet, here again not a single example has been publicly cited by the Administration of any harm to national security brought about by the absence of the new rules.

I referred earlier to the possibility that the new Presidential directive will be enforced capriciously. It is, I fear, more than a possibility. Consider what has already occurred in the area of CIA prepublication review. When, for example, the CIA undertook to review prior to publication the book "The CIA and the Cult of Intelligence" by Victor L. Marchetti and John D. Mark, it initially concluded that 339 separate portions of the book—words, lines or paragraphs—contained classified information. As the trial date drew closer, the CIA withdrew from scores of the deletions they had previously ordered, until by the morning of the trial (six months after the submission of the manuscript), 168 rather than 339 deletions were at issue. William Colby, Director of the CIA, when asked about the decision to cut down the number of deletions, testified that while all 339 deletions were "technically classified," the Agency had decided not "to object to things which really aren't that important, even though they are technically classified." [4]

As Mr. Colby's language suggests, there is enormous leeway available to censors of what may or may not be classified information. It is difficult to believe that leeway might not be exercised either politically or capriciously. Or, at the very least, that the granting of any such authority to any governmental official is so threatening to the ability of the public to receive information relevant to self-government that it should be granted in the absence of an overwhelming showing of need.

Yet, that is precisely what has been constantly lacking as the Administration has taken each of the actions I have referred to. What genuine harm to national security had the Civiletti Guidelines done? Or the provisions of Executive Order 12065 which had required the government at least to consider the public's right to know

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[2] Copies are annexed to this Statement.

[3] *Bridget* v. *California*, 314 U.S. 252, 268 (1941).

[4] Appendix, Volume II, at pp, 1129-30, *Knopf* v. *Colby*, 509 F.2d 1362 (4th Cir.), *cert. denied*, 421 U.S. 908 (1975).

as it classified information? What genuine risk to national security led to the enactment of the Presidential directive of March 11, 1983?

As to each matter, there has never been an articulate public statement by the Administration as to what specific harm had occurred, what actual risks were so great as to require the adoption of new information-limiting policy. It is as if the only answer were that any potential threat to national security, however amorphous or far-fetched that supposed threat might be, outweighs any benefits to the public of widespread dissemination of information. One can make a case for this, but it is not a case consistent with our history or our Constitution.

I will offer only a few comments on the provisions in the new directive with respect to polygraph tests. I do not as an expert on polygraph tests but simply as one who, like most attorneys, is well aware of the enormous resistance on the part of our courts to their use.[5] As phrased by one court:

"In applying the scientific acceptability standard to polygraph tests, all United States courts of appeals addressing the issue have excluded the results of unstipulated polygraph tests. These courts reason that the polygraph does not command scientific acceptability and that it is not generally believed to be sufficiently reliable in ascertaining truth and deception to justify its utilization in the trial process. Consequently, they have held that the results of an unstipulated polygraph examination are either per se inadmissible or that the trial court did not abuse its discretion in refusing admission of the test results." *United States* v. *Alexander,* 526 F.2d 161, 164 (8th Cir. 1975).

The twin premises of this rejection have been the unreliability of these tests in detecting lies and the fear that inherently ambiguous results would lead juries to ignore other evidence—that the administrator of the test would end up being the ultimate judge of guilt or innocence. Both premises gravitate against the massive introduction of polygraph tests into this sensitive area.

I conclude with a single observation. It was President Kennedy, I believe, who once observed that the ship of state is the only vessel that leaks from the top. It is ironic that the March 11, 1983 Presidential directive about which we meet today was itself announced by a "Reagan administration spokesman" who "briefed reporters on the condition that he not be named." (*New York Times,* March 12, 1983, p. 11). I cannot help but wonder what risks that individual will run in the future.

Mr. EDWARDS. Thank you very much, Mr. Abrams.

The cochair, Mrs. Schroeder.

Mrs. SCHROEDER. Thank you.

Mr. Abrams, we really thank you for leading this off. I think you have done an excellent job of framing what the problem is.

The first amendment is important. I think your dealing with the op-ed pieces you see in the press really frames why this prepublication thing is so serious. If you want to carry on a discussion criticizing policy, you really need somebody who is considered an expert. What would happen if you enforce and carry the prepublication thing out? You would have silenced all experts who may be against you. Someone who stand up and says, "Well, I was a tourist visiting there and I see it differently" would have no credibility. You have really effectively silenced the opposition.

Mr. ABRAMS. One of the things that strikes me, Congresswoman Schroeder, is that I don't even know what the administration's answer would be if you were to put to them the question of whether Mr. Bundy's article would or would not be subject to this order. I don't understand how it could not be if he had been in an administration that had adopted this provision, and I would urge on you

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[5] *See, e.g., United States* v. *Skeens,* 494 F.2d 1050 (D.C. Cir. 1974); *United States* v. *Winter,* 663 F.2d 1120 (1st Cir. 1981); *United States ex rel. Sadowy* v. *Fay,* 284 F.2d 426 (2d Cir. 1960), *cert. denied,* 365 U.S. 850 (1961); *United States* v. *Webster,* 639 F.2d 174 (4th Cir. 1981), *cert. denied,* 456 U.S. 915 (1982); *United States* v. *Martino,* 648 F.2d 367 (5th Cir., 1981), *cert. denied,* 102 S. Ct. 2006 (1982); *United States* v. *Fifer,* 573 F.2d 369 (6th Cir. 1976), *cert. denied,* 430 U.S. 933 (1977); *United States* v. *Rumell,* 642 F.2d 213 (7th Cir. 1981); *United States* v. *Early,* 657 F.2d 195 (8th Cir. 1981); *United States* v. *Eden,* 659 F.2d 1376 (9th Cir. 1981), *cert. denied,* 455 U.S. 949 (1982); *United States* v. *Hunter,* 672 F.2d 815 (10th Cir. 1982).

that if they tell you for some reason it is not subject to it, that what they are saying is the order is meaningless.

I assume he had the highest—I speak from freedom since I was not in the Government; a Government official would not even be able to tell you what I am saying—I assume he had the highest level of clearance in the U.S. Government and, that being so, he is precisely the sort of person that the order is directed at, most clearly and specifically, and I would think intendedly.

Mrs. SCHROEDER. But you're an attorney. Suppose you represent him, right, under this order as a hypothetical.

Mr. ABRAMS. OK.

Mrs. SCHROEDER. He comes to you and says, "The MX issue is hot. The New York Times wants me to put this out." As you read the order, and as his attorney, what would you tell him?

Mr. ABRAMS. I would like to answer that in two parts, because I want to keep him as a client. First I would tell him, as a legal matter, it seems to me the order clearly applies to him, that he is obliged to submit it for pre-publication clearance.

Then, I suppose, we would have a sort of semipolitical chat, which is will this administration really enforce it against him. That was my point about capriciousness. I understand that in real life they may say "Oh, we really don't mean that, we don't really mean that." The legal answer is clear—it applies.

If they mean it across the board, if they mean to enforce it across the board, and if they do enforce it across the board, it will necessarily include an op-ed piece such as Mr. Bundy's. If the answer is that the political realities are such that they wouldn't really enforce it against him, then we're not talking law any more at all. All we're saying is some people can do it and some people can't.

I can't predict in advance who they will be. I assume they will likely be under any administration, any administration, not unique to this one, more likely people who are friendly to the administration will be able to say more more quickly.

Mrs. SCHROEDER. Couldn't there be a tremendously long delay——

Mr. ABRAMS. Oh, yes.

Mrs. SCHROEDER [continuing]. In the preclearance, so that by the time the MX article finally comes out, it comes out 4 years after the debate is over. I see a chance for unacceptable delay. I see a chance for an attorney, if you shift to the political line of saying, "I don't think they really mean it, George, go ahead," if he gets caught in this web and they decide to enforce it against him you could be liable for malpractice.

Mr. ABRAMS. That is why I would try to make it very clear what was legal advice and what was not. But the legal advice, it does seem to me, is really clear. It seems to me to violate both the spirit and text of the agreement as I read it, to say for any reason that it does not apply to a person who had the highest security clearance in the United States, speaking on a matter which he had classified information.

Bear in mind that Mr. Snepp's case involved unclassified information. The Department of Justice conceded that throughout the case. Nonetheless, the CIA was able to enforce the requirement of prepublication clearance even as to unclassified material. That is a

way of saying that if that applied to Mr. Bundy, Mr. Bundy couldn't decide for himself and I couldn't advise him as a lawyer "Look, it is really not classified, so go right ahead and do it." The thrust of it is that it is the Government which must decide first whether it is classified. If you lose there, you have judicial review.

Now, I won't go into the problems of judicial review, but I will simply say that the courts have a tendency in this area—it may or may not be appropriate—but they have a tendency to defer to the executive branch's decisions about what is classified and what is not based on their own institutional sense that it is the executive branch which really knows what is classified and what is not.

So it is not even as if you had the most probing sort of judicial review in these matters. You are really resting almost entirely with the administration in power to make its decision.

Mrs. SCHROEDER. So selective enforcement, or the potential of selective enforcement, you see as having a phenomenal potential impact on the first amendment?

Mr. ABRAMS. I do, indeed. I do, indeed. In fact, it seems to me—and this is now a practical guess rather than a legal conclusion—that the enforcement must be selective because there is too much classified information.

Mrs. SCHROEDER. Either that, or they're going to have to quadruple the number of people reviewing documents.

Mr. ABRAMS. Right.

Mrs. SCHROEDER. Thank you very much.

Mr. EDWARDS. Mr. Sensenbrenner.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

Mr. Abrams, in looking over your biography, I see that you have represented the news media on several occasions during the course of your distinguished legal career. I would assume, as a matter of philosophy, that the news media would like to see as much classified material as possible because classified material is perceived more newsworthy than nonclassified material. Do I have a correct assumption on that?

Mr. ABRAMS. I think it is probably true that the news media is interested in everything, and I think you are really right, that classified information probably tends to be more newsworthy.

Mr. SENSENBRENNER. Given your complaints about the fact that this Executive order is so sweeping that it would result in selective enforcement because the Government simply does not have the personnel to enforce every alleged breach of classification, let me ask you a philosophical question, not as a lawyer, but as a citizen.

Do you believe that each Government employee should be able to decide unilaterally whether or not a piece of classified information should be made public?

Mr. ABRAMS. No, I don't. I don't think the law either allows or has ever allowed government employees to decide that. I have not made either a legal or a policy argument to you today there is a constitutional right to leak every piece of information that an employee has.

Mr. SENSENBRENNER. Given that statement, do you think the Government had an effective program for investigating leaks of classified information under the old guidelines?

Mr. ABRAMS. I don't have a very firm answer to give you on that. I would have to answer it in two ways, if I may.

One, it is true that I think, as a reader of newspapers—not as a lawyer—as a reader of newspapers, and as a citizen, that some serious amount of classified information seems to have become public. Two, I think that that is in part true because almost everything is classified. It seems to me that one priority one might have would be to reduce the amount of information that is classified, rather than expanding it, and to find a way through law, not through leaks, to make more information rather than less information available to the public.

Mr. SENSENBRENNER. Say for the sake of argument that the body of classified information is substantially restricted from what it is now. I agree with you, that the executive agencies of Government, whether it is this administration or previous administrations, have operated under the maxim of "when in doubt, classify it." But say that we had a substantially smaller pool of classified information, but that something that was very sensitive, that was picked up by the intelligence community in a foreign country involving the national security of the United States from an undercover source, we wouldn't quarrel about any of those conclusions being leaked.

What kind of a guideline or proposal would you suggest to punish the person who leaked something that everybody agrees should have been classified and should not be in the public domain?

Mr. ABRAMS. It seems to me there are two kinds of things that can be done, both of which are proper if they are done right. One is to fire him, and the other is, under some circumstances, to commence criminal prosecution against him. There is some type of information which by everyone's definition it seems to me is genuinely secret, as opposed to the classification designation of "secret."

Mr. SENSENBRENNER. But as we know in other areas of organized crime, there are some people who are willing to plead guilty or no contest to crimes and, one, receive even a substantial fine, and laugh all the way to the bank with the profits of what their criminal activity has accrued to them.

Given what you said, and given the fact that I am sure you disagree with the constructive trust that was imposed upon Mr. Snepp by the Supreme Court of the United States, how do you get around the case where somebody commits a crime that breaches the security of the Government, that hurts the public, writes a book about it, makes several millions of dollars because of the brouhaha that is aroused as a result of this person committing what everybody agrees is a crime, pays a $20,000 fine to the Government, and sticks the rest of the money in his pocket? How do you get at that kind of a person?

Mr. ABRAMS. I think you do it in a few ways. One is, you have to make a philosophic decision. The law makes it in part, but Congressmen certainly have to make it and we, as citizens, have to make it, and that is the general philosophic legal decision of the degree to which we are willing to rely on prior restraints to enforce regulations, to enforce the viability, even, of the system which you describe.

My view on that is that prior restraints are not only the most restrictive but the most harmful and the most threatening——

Mr. SENSENBRENNER. But sometimes it is the only effective method.

Mr. ABRAMS. Well, there are some times when there is no effective method. The usual way that we turn is to our criminal law. We usually say, if you really believe that certain types of things are outside the area of what is constitutionally protected, and you want to punish it, you look to the criminal law to deal with it. That gives the defendant all the procedural rights of a defendant in a case; it makes whoever the prosecutor is really go through a very serious process of deciding whether he wants to prosecute or the like.

I don't have any constitutional problem or philosophic problem with the notion that, under some circumstances, it is appropriate to prosecute people for leaking information, for the public disclosure of information. We have espionage laws. We can change espionage laws. What we can't do, it seems to me, is either to have a Government-wide system of prior restraint, or, as I read in the New York Times is being suggested, a Government-wide system of criminal law enforcement with harsh penalties for any leak of any information, however low the level of classification, at a time when we have a classification system which is out of control.

If we could do a deal, if you could promise me that we would limit the amount of documents which are classified to such an extent that we're really talking about seriously secret documents, then I would say go after them; have some criminal law which has some meat to it. But I just can't agree, in our society as it exists today, that we can start criminalizing the leaks of anything which is classified, which is to say the leaks of anything.

Mr. SENSENBRENNER. I think the score in the classification game is the executive branch 16 million, the legislative branch zero, at the present time. So I think you are shooting your cannon at the wrong branch of Government.

Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you, Mr. Sensenbrenner.

The gentleman from Wisconsin, Mr. Kastenmeier.

Mr. KASTENMEIER. Well, I rather agree with that last comment. At least I think it was suggested that when the President last made a presentation using secret photos and the like, that he may have been violating the laws just as anybody else. Whether he is entitled to do so may yet be a question.

I am interested, and apparently it is rather fuzzy, as to what standard should be applied. I gather that in the *Marchetti* case the court asserted that the Government has a right and duty to strive for internal security in the conduct of governmental affairs in areas which disclosure may be reasonably thought to be inconsistent with the national interest.

Would you comment on this as a general standard to be applied? Is that a fair statement?

Mr. ABRAMS. I think it is a fair statement of the law as it currently exists. It is a congressional determination—at least I believe it is a congressional rather than an executive determination as to what that law ought to be. But the courts have basically adhered to

the standard that you have set forth, which comes from the *Marchetti* case.

One of the problems, Congressman Kastenmeier, is that, by necessity, the words are so vague that you have read from *Marchetti.* It is very hard to know what it is we are talking about. That is one of the reasons why I so object to the whole process of expanding rather than contracting the categories of classified documents, which we have been going through in recent years.

Mr. KASTENMEIER. You have suggested that one thing we might do, both the executive and legislative branches, is to provide a much more narrow definition of what is, in fact, secret or confidential, some meaningful definition which would limit the number and sheer bulk of such material. Then we could at least hopefully have some reliance on the fact that it is needfully applied, rather than as it is today.

Apart from that, and given the lack of definition or lack of preciseness in terms of the standards we are dealing with, what other advice would you give us?

Mr. ABRAMS. I suppose if I had to try to leave you with something, I would suggest this: what occurred on March 11 was a change of policy. I believe it was a major change of policy in the Government. It has yet to be justified to the slightest degree by the administration. There is not a word—I mean, when they released it they said what they were doing, and there was no deception about what they were doing, but there was no basis for what they were doing. They made no case.

Now, I appreciate the fact that the tendency on the part of the advocates of that sort of change is to say what they have said already, which is "well, that's classified." You pointed that out earlier to us, Congresswoman Schroeder. It seems to me that it really won't do in a situation of a major change in American public policy, with immense first amendment implications, and immense implications in terms of the quality and nature and amount of information the American public can receive, to say, in effect, "I've got reasons, but I can't tell you." That is the beginning of it.

It seems to me, if instead of an Executive order, for example, they had come to the Congress and said "We want a law; let's make some sense out of all this; we want to pass a law to deal with what we perceive as a national problem, and the problem is there is too much leaking by Government employees, so let's pass some kind of statute," you would naturally, as about your first question, say "What's the problem? How bad is it? Tell us about it." They haven't even begun to do that. So it seems to me that is the first step of analysis, long before you get any legal analysis or any first amendment analysis or anything else. If what they're going to say is—at least as I read the order—that "we're going to lose the benefit of the op-ed pieces by Mr. Bundy and the other people," I at least want them to start out by telling you what it is we are going to gain. I don't think they have begun to do that. It seems to me that that is the first step.

If they can't meet that burden, again law aside, then—I don't know how helpful it is to say this, but it seems to me the answer is the Presidential directive of March 11 should not have been issued,

and to the extent that Congress has any say in it, it should urge the administration to withdraw it, or it should disapprove it.

Mr. KASTENMEIER. Do you think we had any real problem in this area, quite apart from the Executive order of March 11, prior to that time?

Mr. ABRAMS. My sense is this: there is no doubt that there is a good deal of leakage. I quoted in the last paragraph of my statement that nice line from President Kennedy, where he said the American ship of state is the only vessel that leaks from the top. We live in a country where there is leakage and leakage out of the Government. Most of it tends to be from this or any administration in power.

There is also contraleakage. I can accept the notion that leakage can get out of hand. One could wind up in a situation, agruendo, where you couldn't run a government because you couldn't write anything down. I don't think we're there; I don't think we're anywhere near there. I don't know the examples that they have in mind, if they have examples in mind, of what has happened which leads them to this. If it is a few things, then I would say you're probably not going to stop them anyway. You are going to wind up stopping a lot of things which you shouldn't stop, and it isn't worth the effort and the social and first amendment price to the country for enacting these new guidelines.

Mr. KASTENMEIER. I would certainly agree. Actually, that wasn't what I was referring to in terms of the problem. I don't frankly think the leakage is that much of a problem. I don't think our adversaries gain that much from it. I think we perhaps gain a little more as a free society, about knowing a few things. The fact is we know incredibly little apparently, at least officially, about what we are doing in Nicaragua and other places at this very point in time. That, to me, is a scandal, that much of our policy is cloaked in secrecy.

So my question was directed even before this Executive order, did we have a problem in the sense of either the implementations of existing law or either with some of these cases, in terms of prior restraint, that suggest to us about freedom of information in our society.

Mr. ABRAMS. I think so, Congressman Kastenmeier. I think for one thing that, both as an institutional matter in terms of the relationship of this body to the executive branch, and as a first amendment matter in terms of assuring the most widespread dissemination of information that we can have, that it should be the Congress and not the President who starts this process of deciding when, if ever, we should have prepublication clearance. And I include the CIA in that.

There is nothing inconsistent with that and the *Snepp* case. The basis, after all, of the *Snepp* case was that legislation already existing by Congress had given the Director of Central Intelligence the authority to protect sources and methods, and that inherent in that was the prepublication review procedure to which Mr. Snepp was subject. So it starts with Congress, it seems to me, and it seems to me that what Congress could do well to do would be to look into the question of whether in any area of Government it is justified at this time in our national life to have prepublication review by gov-

ernmental agencies. My sense is it does so little good, and does so much harm, it risks so much harm, that whatever good it does can be handled in other ways, that we probably shouldn't have it anywhere in the Government.

Surely my sense is that if the executive branch is going to proceed in this fashion with a directive in March of this year, that Congress could serve the public well by attempting to call a halt to it.

Mr. KASTENMEIER. I compliment you on your testimony and thank you for your comments.

Mr. ABRAMS. Thank you.

Mr. EDWARDS. My colleagues have asked about all the questions that I had in mind, Mr. Abrams.

We just had an avalanche of these runaway directives that closely resemble laws, where from the White House come laws that, without consultation with the Congress, without hearings, without anything else, we have the CIA permitted to operate within the United States, the FBI with new authority to do domestic security investigations in violation of the old 1980 guidelines, and NCIC changed without asking Congress—it is just like they have a new toy over there that they have discovered. It is very distressing. We intend to do what we can to bring it under control.

On the 28th, when the Justice Department comes up here to testify, I hope they can make a case. They had better describe what the problem is because so far they have not, except that we understand there have been some embarrassing leaks of nonclassified information that are more embarrassing than actually cause any threat to national security.

Mr. ABRAMS. I would suggest to you, if I may, Chairman Edwards, that the case they make has got to be an overwhelming case to justify the enormity of what they have done. This directive is not a little thing. It sweeps across the Government. And it just doesn't do that. It impacts necessarily the quality and nature of information that every American can receive. Anecdotes can't serve to justify that. Even if they can cite something to you—and they haven't yet—of some example of some leak that genuinely harmed national security, it would seem to me they have to do a lot more than that.

Mr. EDWARDS. There is also a sense of deja vu about this, because a few years ago we were sitting in room 2141 trying to discover what the Nixon administration was doing with their attempts to stop leaks in manners the Judiciary Committee felt was illegal.

Well, thank you very much for your excellent testimony.

Mr. ABRAMS. Thank you, sir.

Mr. EDWARDS. We now have a panel presentation by Mark Lynch and Irwin Karp. Mr. Lynch is with the American Civil Liberties Union and has represented a number of former CIA employees who have gone through the CIA's prepublication review process. Mr. Karp is counsel to the Authors League of America, which submitted amicus briefs in the *Snepp* and other cases dealing with the CIA's review process.

We are delighted you are both here. Mr. Lynch, are you first?

Mr. LYNCH. I will defer to Mr. Karp.

Mr. EDWARDS. All right. Without objection, the full statements will be made a part of the record.

TESTIMONY OF IRWIN KARP, COUNSEL TO THE AUTHORS LEAGUE OF AMERICA, INC.; AND MARK LYNCH, ON BEHALF OF THE AMERICAN CIVIL LIBERTIES UNION

Mr. KARP. Mr. Chairman, I have submitted a statement which I ask be included in the record, and which I will not read.

The Authors League is the national society of professional authors, and as you indicated, is deeply concerned with the issue of prepublication review and nondisclosure agreements.

We think that the requirement under the Executive order that agencies and departments adopt the CIA's apparatus for prior restraint is even more objectionable than the CIA's system itself because it is going to, without doubt, impose crippling restraints on freedom of expression of employees, former employees, authors and others who will be affected by it, and obviously, as has been pointed out already, it will drastically restrict the public's right to have information and opinion about the conduct of Government affairs from one of the most valuable sources of information from which it can be obtained, particularly prior Government employees and officials.

We have cited in the statement several obvious examples of important contributions to the public's knowledge of how our Government is run, contained in books by a number of highly placed Government officials, Presidents, heads of departments, CIA Directors and so forth.

Actually, I am more concerned about the Frank Snepps and the Marchettis and the others who function at a somewhat less illustrious level but have as equally an important contribution to make to the public's knowledge, because I think that the enforcement of this order, as was the case with the CIA order, will be selective, not merely because of the great mass of material that will be affected by the orders in each of these agencies, and the impossible task of applying the order and the process if it were done impartially across-the-board, but I think that by the nature of the process it will prove to be selective for other reasons.

One of the most important is how important was the person who submitted the material. A President's work is not going to be reviewed in the same way that Frank Snepp's were or Marchetti's were, and the results aren't going to be the same.

Prepublication review, we believe, cannot be justified on the ground that it is necessary to prevent disclosures of classified information. The standard in the Executive order of "reasonably could be expected to cause damage to the national security" is, of course, a vague one. But beyond that, let me just tick off a few points briefly.

First of all, spies don't convey information by publishing books. It takes much too long, it is hard work, and he may even have the publisher reject the book under the satisfactory manuscript clause after the spy has gone to all that difficulty in writing it. The telephone, the radio, and the mail are a much better way to communicate, even for agents of the most backward countries.

Second, the Turner testimony, that failure to comply with the order diminished our credibilities, is a little hard to stomach. Mr. Lynch really didn't have a fair opportunity to test that testimony. And I would submit that we still rely on British intelligence, despite much greater leaks than anything that has occurred here. We haven't had CIA officials defecting to Moscow. The British have, and we still cooperate with them.

Third, criminal statutes are available—and I won't belabor that point. Mr. Abrams has gone into it already, as, indeed, have Justices Stevens and White in their opinions in the New York Times in the *Snepp* case.

Another consideration is that any former official seriously intent at all costs on publishing material without submitting to the prepublication review can avoid this whole civil process—and it is a civil process—simply by going abroad. One CIA agent has done that and published two or three books in the manner and can't be touched by this order or the orders that will be extended to other agencies.

Also, if the author has independent means and isn't concerned with preserving his royalties, which would be a luxury enjoyed only by the most affluent, they, too, can publish, because if the Snepp remedy is applied, the worst that a rich author and former employee would have to face would be the loss of his royalties. And despite the example of the millions of dollars, that isn't a great risk for most authors. The average income of an American author is $4,000 a year. It wouldn't affect op-ed page pieces if that were the remedy, because—I don't know whether the Times pays anything, but if they pay anything, it won't buy you a round trip ticket to Washington on the shuttle.

What it is going to affect is books by people like Frank Snepp, who take 2 or 3 years to do that hard job of writing the book, don't earn huge fortunes—Snepp's income averaged out over the time he took to write the book, which made a valuable contribution to our knowledge of American policy in Vietnam, came to about $30,000 a year. There are a lot better ways of getting richer quicker than publishing information that an author really believes the public should have.

The disclosure of some classified information we think is much less damaging than the effects of this system of prior restraints, spread across the boards of other Government agencies. That is the whole fundamental premise of the first amendment which struck a balance, and Jefferson and Madison continually emphasized that abuses will occur and danger and damages will arise occasionally, but in balance the benefits of pre-expression far outweigh the occasional abuses and damages they cause.

The vice of prepublication review is the vice of all prior restraints on freedom of expression. It permits the Government to suppress not just classified information, or even really important classified information; it permits the suppression of information that is not classified and that the public is entitled to have and that the author is entitled to communicate.

It does it by the very nature of the process. First of all, you don't submit just those piece of material that you think are classified or might be classified. It is a terrible judgment to have to make with

the huge mass of classified material already in existence. You have to submit the whole works. The burden of the clearance system, the sheer grinding oppressiveness of it, provides the censor with leverage to bargain for the deletion of material that isn't classified and shouldn't be prohibited from publication.

Second, the process is time-consuming. The more it drags out, the harder it is for the author and the publisher and the more ready they are to make concessions, so they give up and they give in on particular passages.

The burden and the time factors also inhibit the editorial process to a great extent. You have to remember that before the author, the former Government employee, can even show a book to the publisher and the editor, he has to have had it completely cleared, so that if deletions are required by the Government agency and the author goes back and rewrites, he then has to take the book back to the agency. That can go on and on and on until that process is finished, then for the first time he can take the book to the publisher. If the publisher and the editor in the usual course of editorial work request other changes, he has to go back to the agency and say that the book has changed and start all over again.

Next is the cost of resisting this type of censorship. The Government has a great advantage. The taxpayers are financing the cost of clearance and the cost of fighting the author and the publisher in court. The author and the publisher have to bear their own expenses. Again, that creates great leverage for giving up on particular points.

Lastly, as Justice Stevens pointed out, the very process of requiring a former Government employee, like any author, to submit to prior censorship creates self-censorship. There is a natural tendency to begin to cut back and to begin to censor what you are going to put in the book before the manuscript is even completed, and to withhold material that you truly believe should reach the public and that you think is not subject to classification simply for fear of causing more trouble for yourself.

As we pointed out in our statement, there are a number of first and fifth amendment safeguard problems created by the Executive order as well as by the present CIA apparatus for prior censorship. First of all, how long should the restraint of prepublication review apply? Should it be for the life of the author, or should it be for some brief reasonable time? If common law doctrine applied, this is a restrictive covenant. No court would enforce a lifetime restrictive covenant.

One of the reasons pointed out in *Marchetti,* where Judge Haynesworth said that Marchetti had first amendment rights, he had the right to publish unclassified information and he had the right to function as an author and to earn his living as an author.

What prepublication review does to the former Government employee author is, first of all, to prevent him from functioning as other authors function. Second, because the scope of the order is so great, it could actually cost him the opportunity to earn his livelihood in other areas—for example, as a journalist. If the CIA takes the position that an ex-employee who goes to work as a correspondent for a television network has to submit every story that has the

slightest relationship to the CIA, he can't work as a journalist. The network won't accept that condition.

If a former employee is offered a teaching opportunity, as are many Government employees, and is subject to prepublication review, he may not be able to get the position because most universities will not accept as a member of the faculty somebody who has to submit to the CIA, the State Department or anybody else, his notes, his outlines, and his other teaching materials. Jobs, at least in one instance, have been lost because of that.

If an employee wants to submit a statement to this committee expressing his views on the clearance procedure, or a former employee, does he have to get clearance from the agency? He probably does right now. He can't submit it to you unless the agency has cleared him.

Does the employee have to submit novels, poetry, motion picture scripts? Some are doing that, at least in the case of fiction and films.

We think that in addition to clarifying these areas of difficulty—and I would like to emphasize that I don't think that's the solution. I think the solution is not to extend the order to begin with. Once you start proposing refinements on a system that is basically wrong, I think you help that system exist. In any event, were the system to be adopted, it is glaringly lacking in these and other safeguards.

For example, a former Government employee should have an uninhibited right of counsel right from the start in the whole review procedure and in court. He shouldn't have to, as I gather is the case, get some sort of clearance from the agency for the counsel he selects.

Remedies should be specified. One of the great problems with the *Snepp* case was that the remedy had no relationship to the wrong, if it were wrong, involved in that instance, because Mr. Snepp did not publish classified information. The Government conceded that. The royalties he earned were not earned by betraying trade secrets, which is where the doctrine was borrowed from by the court. The only relationship between the damages and the act involved was that he didn't submit the manuscript for review, and that had nothing to do with the profits he earned from the book. The court really made a jump without any basis, from betraying trade secrets to simply not submitting a manuscript, that that did not contain trade secrets, and imposed a remedy borrowed from another area.

I think it is important that, if an order were adopted, it require that the Government take the initiative, that if on completion of clearance the Government felt that anything that had been submitted violated the order, it would have the burden of going to court, not the employee.

I think that the order would have to be refined considerably to indicate what material had to be submitted. It is ridiculous to ask a former employee to submit a novel, a script for a motion picture, that is not documentary dealing with the agency but really is entertainment, or statements to congressional committees or other Government agencies.

I think that in the whole procedure the employee should have the right to challenge the classification if there is classified materi-

al. I think it is specious to argue that the courts cannot make that determination. They have to do it in much more sensitive and complex areas than this, and if other material has to be introduced for the Government to sustain the burden, which it should have to sustain, that could even be done in camera. There are ways of dealing with that problem without permitting an employee or former employee to be prevented from publishing material that should have been declassified 20 years ago.

I think, lastly, that the order, and whatever legislation Congress were to enact, should require that the Government pay the attorneys' fees and costs of a former employee who successfully sustains the right to publish material. I think these are some of the areas in which a very vague and intensely restrictive regulation would have to be improved before it even began to approach the minimum requirements of the first amendment.

Thank you.

[The statement of Irwin Karp follows:]

STATEMENT OF THE AUTHORS LEAGUE OF AMERICA, INC. ON SECRECY AGREEMENTS AND PREPUBLICATION REVIEW

The Authors League of America, the national society of professional authors and dramatists, is grateful for this opportunity to participate in your Committee's discussion of the President's recent Executive Order which will require employees in various government agencies to sign nondisclosure agreements and to submit for review, prior to publication, books and articles they have written, during or after their government service.

The Executive Order will thus require several departments and agencies to adopt the procedures of the Central Intelligence Agency, whose secrecy agreements and prepublication review procedures were enforced in the courts against former employees Victor Marchetti and Frank Snepp . . . authors of books published by *Alfred Knopf* and *Random House*. It appears that the Order envisions use of the penalties applied in those cases, including injunctive relief and judgments compelling payment to the government of any royalites or other compensation earned by employee-agents who do not submit manuscripts for prepublication review.

The Authors League, on behalf of its 11,000 members, wishes to express its deep concern with this policy, and to again state its opposition to nondisclosure agreements and prepublication review, and to the pervasive system of prior restraint on freedom of expression, which they inevitably impose.

In the *amicus curiae* briefs it filed in the *Snepp* and *Marchetti* cases, the League contended that the CIA's secrecy contracts and process of prepublication review imposed crippling restraints on freedom of expression for government employees, their co-authors and for other writers who obtained information in interviews and conversations with those employees. This apparatus of censorship will also restrict the public's right to have the information and opinions about the conduct of government affairs, indeed about much of current history, which these employees alone can provide. Two sets of First Amendment interests are thus threatened: those of employee-authors and other writers, and publishers; and those of the public. The guarantees of the First Amendment, the Supreme Court reminds us, "are not for the benefit of the press so much as for the benefit of all of us. A broadly defined freedom of the press assures the maintenance of our political system and an open society." (*Time Inc.* v. *Hill*, 385 U.S. 374)

The public is entitled to the fullest information about the operations and policies of its government's departments and agencies. One of the most effective sources of this information, and of informed opinion and criticism, are former government employees: Presidents who have published their memoirs (e.g. Eisenhower, Nixon, Ford, and Carter); former Cabinet officials and heads of Departments whose books have added to our insights about the affairs of government (e.g. Secretaries of State Vance and Kissinger, National Security Adviser Brzezenski, CIA Directors Dulles and Colby); and many other highly placed officials who have written books and articles about defense, foreign affairs, intelligence and other matters—disclosing enormous amounts of information that had not previously been made known to the public. It is equally important that the public be able to receive the same kinds of

information, opinion and criticism from equally devoted public officials and employees in lower echelons of the government. And it is this valuable source of information that is most threatened by the process of prepublication review—much more so than highly-placed and more influential officials and former officials.

The Executive order would apply the prepublication review procedure to employees who have access to classified information, and it is rationalized with the suggestion that it will simply prevent the disclosure of information which "reasonably could be expected to cause damage to the national security" if disclosed in a book or article without authorization. But prepublication review imposes far greater restraints, at an intolerable cost to freedom of expression and the public's right to know.

At the outset, it should be emphasized that spies don't convey information to the enemy by publishing it in books. Writing a book takes time; it's hard work; and the spy, like many more licit authors, may not even be able to find a publisher willing to issue his work—secrets and classified information notwithstanding. Too, the process of publication is much too slow, compared to the mails, telephone, and other media of communication available to agents of even the most backward countries.

There are, moreover, less damaging means than prepublication review to deal with unauthorized publication of classified information. In *New York Times* v. *U.S.*, Justices White and Stewart pointed to Sections 797 and 798 of Title 18, as did Justices Stevens, Brennan and Marshall in *Snepp* v. *United States.* The Administration argues that there have not been any successful criminal prosecutions under these sections, one reason for this may be that former government officials do not violate these and other applicable criminal provisions when they write books. Moreover, any ex-employee intent on revealing classified information in a book or article can do so regardless of a prepublication requirement in a secrecy contract by taking himself and his information abroad, and publishing in another country.

More important, the vice of prepublication review and secrecy agreements is the vice of all prior restraints on freedom of expression. It permits the government to suppress directly—or through the inherent coercive effect of the system—much information the public is entitled to have. In the *Snepp* case, the government conceded that no classified information was disclosed in the book.

The prepublication review requirement is not limited to "classified" information . . . the entire book, article or other work must be submitted for review, even though the government employee is certain it does not contain classified information, and even though—in fact—it does not. As with all systems of prior restraint, the requirements for submission creates the apparatus for suppression of material the censor has no right to restrain:

(i) Prior censorship is burdensome, and the burden provides leverage which enables the censor to force deletions of material the author and publisher are entitled to publish. By the sheer mass of objections, the censor can compel the author to surrender on many passages and items of information. In a March column on the President's Order, Anthony Lewis refers to the experience of former CIA employee Ralph W. McGehee in trying to obtain clearance of his book "Deadly Deceits: My 25 Years in the C.I.A." (N.Y. Times, March 17, 1983; p. A23):

"Officials demanded that Mr. McGehee delete from his manuscript critical passages that he was sure included no classified material. When he showed them that the facts had already appeared in books generally supporting the agency—by such former officials as Allen Dulles and William Colby—they withdrew. Then others would renew the objection."

This pattern is endemic to prior restraint. Censors seek the leverage. Also, they don't take chances. If they have the slightest doubt, they censor . . . rather than take the risk of being criticized later for passing something that might displease higher authority. The same pressures lead to classifying as "confidential" much material which is not, and in failing to declassify material that long since has ceased to be confidential, and indeed has been published.

(ii) Prior censorship is time-consuming, by the nature of the process . . . and because delay works in the censor's favor. The longer clearance takes, the more likely the author and publisher will make concessions, accept unwarranted deletions, to release the book for publication. McGehee lost two years.

(iii) Resisting prior censorship is too costly for most authors and publishers to afford. Legal fees and expenses make it difficult to oppose restraints at the prepublication review level, and almost impossible to carry the fight to the courts. Few publishers could afford to undertake even a District Court challenge, no less appeal to the Court of Appeals and Supreme Court. This gives clearance officials even greater bargaining power; well aware of the publisher's financial burden, they can expect that, with persistence, they can obtain deletions a Court would not allow. Financial

constraint is no problem for them: the taxpayers are financing the cost of the prior restraint, and the defense of its censorship in the courts.

(iv) Prepublication review induces the most pernicious form of prior censorship—self-censorship. Mr. Justice Stevens (with Justices Brennan and Marshall concurring) said, in the *Snepp* case, "The mere fact that the agency has the authority to review the text of a critical book in search of critical information before it is published is bound to have an inhibiting effect on the author's writing. Moreover, the right to delay publication until the review is completed is itself a form of prior restraint that would not be tolerated in other contexts." (444 U.S. 507)

In *Near* v. *Minnesota*, 283 U.S. 697, Chief Justice Hughes—in ruling that the "main purpose" of the First Amendment was "to prevent all such prior restraints upon publications as had been practiced by other governments . . ."—stressed that for "approximately almost one hundred and fifty years there has been an almost entire absence of attempts to impose previous restraints upon publications relating to the malfeasance of public officials. . . ." It is now approximately 200 years, and the Republic has survived without any requirement that employees of the State, Defense, Justice or other departments or agencies sign nondisclosure agreements or compel themselves to submit to the prior restraint of prepublication review. The CIA apparatus for such censorship has thus far been an aberration, not the accepted procedure for other areas of the executive branch. The Authors League submits that Congress should not allow the practice of prepublication review to be thus expanded.

We also note that the Executive Order offers not even the slightest hope of respect for due process. Will the restraint of prepublication review bind former employees for the rest of their lives, or only for a brief period after termination? Will the agencies be required to establish procedural due-process safeguards, or be permitted the free-wheeling power traditionally exercised in prior censorship? Will agencies be compelled to make their decisions within a reasonable, brief period of time (e.g. 30 days), or will they be permitted to drag out the prepublication review of a book for months or years? Will the burden be on the agency to go to court to prevent publication if it claims the book contains classified material, or must the author and publisher commence a proceeding to challenge the decision? Must the author and publisher shoulder the heavy financial burden of resisting improper demands for deletions and changes, or will the United States pay their legal fees and expenses for defending their's and the public's First Amendment right? Will Congress have the power to determine which agencies are subject to the prior censorship procedure? And what specific critieria will determine which agencies and classes of employees are affected? Will employee-authors be entitled to establish that particular items of information were improperly classified as "confidential", or improperly retained that classification after the point when they should have been declassified?

We would propose answers to these questions if we believed the prepublication review procedure should be extended beyond the CIA. The Authors League, however, does not believe it should be applied to other agencies and departments, and we urge Congress to take action to prevent this dangerous expansion of a system of prior censorship which is so inimical to the interests safeguarded by the First Amendment. The risk that an occasional item of classified information may be published is far less damaging than would be the impact of prior censorship on those First Amendment interests.

Mr. EDWARDS. Thank you, Mr. Karp. That was really very creative and helpful testimony.

Mr. Lynch.

Mr. LYNCH. Thank you, Mr. Chairman, Madam Chairwoman. I appreciate the opportunity to be invited here today to testify in behalf of the American Civil Liberties Union. I concur with virtually all of what has been said by Mr. Abrams and Mr. Karp.

I have submitted a statement which I would ask be included in the record, and I will proceed from here to summarize some of the points in there and try not to repeat ground that has already been covered.

Mr. Abrams pointed out very well the fact that no showing been made of a problem that needs to be solved by extending prepublica-

tion review from the CIA to the rest of the national security establishment. I made that point as well in my testimony.

Since I prepared my testimony I have received from Mr. Richard Willard, the Deputy Assistant Attorney General who chaired the interdepartmental group that did the staff work for this order, a copy of the report of the interdepartmental group on unauthorized disclosures of classified information. I would request that this be made a part of the record as well.

Mr. EDWARDS. Without objection, so ordered.

Mr. LYNCH. This report demonstrates even more clearly that there is no basis that has been developed in fact for the extension of the prepublication review order. The Willard report is, when read in its totality, a discussion of leaks by current Government officials and only in passing mentions problems created by generally inadvertent disclosures by former officials when they write op-ed pieces, magazine articles, give speeches or write their memoirs. So, in fact, there is not even, so far as I can tell, a classified annex to the staff work that underlies this order that demonstrates there is any kind of significant, persistent problem or detriment to the national security which has been caused by permitting former State Department officials, Defense Department officials, White House officials, NSC officials, to participate in public debate through their speeches and periodical writing, and to contribute to history by writing their memoirs.

Consequently, it seems to me that unless the administration can make a compelling showing—and it is something that they have to begin doing now because it appears they haven't done it yet—to justify this incredible extension of censorship, then Congress really ought to step in. I would urge this committee and other committees relevant to step in and legislate in this area and put a stop to the regime that this order will create.

I would just like to hit a couple of points on how this order is going to affect the quantity, the quality, and the timeliness of information which is available for public debate on matters of current issues.

First of all, you have to understand that people will not be penalized for disclosing classified information. They will be penalized if they fail to submit anything which is based on information they have learned in the course of their employment without getting clearance beforehand. That is the clear lesson from the *Snepp* case. You can get clobbered not for disclosing classified information but for failing to get the publication review.

Even if you are not writing for any substantial amount of money, as in the case of the New York Times or Washington Post op-ed pieces, or even writing for no money, the Government can proceed against you for punative damages, so there is a deterrence as well in situations where the author is writing without any economic motive. So the deterrent, or the necessity to comply with this order, is going to be very, very great indeed.

I think it is worthwhile to name some names, just to bring home who will be covered by this order, and the kinds of effects it will have on the way things are done in this Nation in terms of informing the public. Richard Perl, for example, currently the Assistant Secretary of Defense for International Security Committees, a long-

time staffer for Senator Henry Jackson, if he returns to Senator Jackson's staff, he will have to clear, before he gets to Senator Jackson, any speeches he may write which relate to the matters he has been concerned with while in the Government.

Had this been in effect during the last administration, former Vice President Mondale and his circle of foreign policy advisors, like David Aaron and Tony Lake, Richard Holbrooke, all of these people would have to clear anything they write before they give it to each other, and certainly before they issue any position papers or speeches on behalf of the Mondale campaign. That does not happen to those people because they weren't under this regime, but had this been in effect at the time, this would be the case.

Richard Burt, currently Assistant Secretary of State for European Affairs, in my judgment will not be able to return to the New York Times as foreign affairs reporter because this order will require him to submit for preclearance anything he writes relating to national security matters.

Leslie Gelb, currently on the staff of the New York Times, and before that a long-time Government official in several administrations, would not be able to function as a reporter for the Times he had been under this regime.

A good many people who have served in the Government are now consultants, investment bankers and lawyers who advise clients on matters which have some relation to the things they were responsible for while they were in the Government. Richard Helms, for example, is in the consulting business. Henry Kissinger is in the consulting business. David Aaron is an investment banker. Cyrus Vance is a lawyer. These people would not be able to submit documents to their clients until they were cleared.

Mr. Karp also mentioned the problem with academics. I think one of the side effects of this order is that it is likely to be a very severe deterrent to academics who are contemplating temporary Government service, because it means a great deal of their writing will be subject to prepublication review if they go back into teaching. I think while not all academics are unprepared to pay that price, many are.

The timeliness of contributions to public debate is one of the things that concerns me the most. If we take the administration at its word for the moment—which in the end we probably shouldn't do—that they will only insist on the deletion of genuinely classified information, the problems of delay that are involved in making that determination are very, very great, indeed. And let me give you a recent example of how this could have a serious impact.

On Wednesday evening, March 23, the President gave his "Star Wars" speech. On Sunday, March 27, on the back page of the Outlook section of the Washington Post three articles appeared responding to the President's Star Wars speech. One was by current Undersecretary of Defense Fred Ikle, one was by former Secretary of Defense Harold Brown, and the third was by a former Undersecretary of Defense in the Carter administration, William Perry. They all responded to the President's speech. Mr. Ikle, predictably, was supportive; Mr. Brown and Mr. Perry raised some doubts. It was a lively exchange of views getting these three articles in juxtaposition.

Now, getting clearance for an article, which is presumably written on Thursday or Friday after a speech made on Wednesday night in time for publication on Sunday, is going to be very, very difficult. It is true the CIA has in some cases turned articles around in a very short timeframe, sometimes within a day, but even assuming that the reviewers are cooperative and can resist the temptation to use the manipulation of the timing of the review process, I have great doubts whether the bureaucracy which is going to have to be put in place to implement this order is going to be able to respond in a timely fashion to satisfy the needs of outlets of public opinion. The Washington Post, I think we can safely assume, would not have been interested in Mr. Brown's or Mr. Perry's articles 10 days after the President's speech. They wanted them 4 days after the President's speech. That's the nature of journalism.

I mentioned the bureaucracy and the process, and I think it might be useful for me to run through with the committee the way things work at the CIA, where I have represented a number of former officials who have had to submit their writings for prepublication review.

The Agency has set up an office called the Publication Review Board, which serves as a central clearing point for submission of articles. Since it began keeping records about 4 years ago, this Board has processed some 800 manuscripts, totally about 70,000 pages. And while I don't have the figures, I can safely venture that that involved thousands of man-hours of effort by the CIA.

Now, you have to remember that the people who go into the CIA are not for the most part as likely to anticipate or desire to participate in public policy debates after they leave. A good many people who leave the Agency do so under cover and for that reason alone can't participate. They are much less political people. They are much less likely to speak out than people who serve with the Defense Department, the State Department, the White House and national security staff.

So if the CIA has had 800 submissions over 4 years, I think we can expect that figure to be magnified by a factor of four, five, or six when you apply this requirement to the rest of the national security establishment.

Now, the CIA does have a relatively good record in clearing manuscripts within 30 days. There are some horror story exceptions which I will mention in a moment. But it would be unfair and disingenuous for me to suggest the CIA has not been relatively good in meeting their time limits.

There are a couple of reasons for that, though, which are not likely to be duplicated throughout the Government. First of all, the CIA process is relatively self-contained. Very seldom do they need to consult with other agencies in order to make their determinations. If you contrast that to the situation that will arise if the National Security Council staff were to submit a paper, say, on U.S. policy toward Latin America in the current period, that document will be received by the NSC. It will then have to be referred to the Defense Department, the State Department, within the Defense Department, the National Security Agency, and other components as

well, and it will also have to go out to CIA. So you're going to have a very, very large problem of interagency consultation.

Bureaucracies being what they are, I think it is fair to anticipate that the 30-day time limit is going to be very, very hard to meet, indeed, with this level of consultation required.

Second, the prepublication review is very, very similar to a Freedom of Information Act request review. I am sure the members of this committee are fully aware that most agencies of the Government, and particularly the State Department and the CIA, have found it impossible to meet the time limits which are prescribed by the Freedom of Information Act. Very few Freedom of Information Acts get processed within 30 days. So it is going to be very difficult to process manuscripts, frequently numbering far more many pages than an average FOIA request, within 30 days.

The CIA has managed to meet the requirement by giving prepublication reviews a much higher priority than they give to FOIA requests, but again, I doubt that that will hold up when this is applied across the board.

Another difference between the CIA and, let's say, the State Department or the White House, is that again, while there are some very, very unfortunate exceptions, the people of the CIA I think are, for the most part, concerned about looking for information that will reveal intelligence sources and methods. As I say, there are some terrible examples where they have gone beyond that, particularly with people who are critical of the agency. But by and large they are looking for sources and methods.

The State Department, on the other hand, is inevitably going to be concerned with a much more complex set of political considerations as to whether they want the former Secretary of Defense or Secretary of State in this very administration commenting on General Rouney's conduct at Geneva, for example. That is going to be a much more sensitive and complex determination than whether a particular intelligence source is identified. I think inevitably, when you get into the more political branches of the national security establishment, the decisions on prepublication review are going to be even more political than those that are made at the CIA.

Finally, lest I appear to be too commendatory with respect to the CIA, I would like to express my very firm conviction that, to the extent the Agency has performed well with respect to prepublication review, it is because people in key positions out there at the moment are acutely sensitive to the breadth of the power that they have been given to exercise by the Supreme Court decision. Again, bureaucracies being what they are, I am relatively confident that over a number of years, as the Agency becomes more accustomed to the extraordinary power that it has, it will begin to exercise that power more arbitrarily and capriciously than it has in the first few years after the *Snepp* decision.

Finally, I must also point out that people who are critics of the CIA have a much, much rougher time out there in the prepublication review process than do friends of the Agency. Annexed to my testimony is the appendix to Mr. Ralph McGehee's book "Deadly Deceits," in which he recounts a 2-year horrendously frustrating ordeal in getting his book cleared through the Agency. Mr. McGehee is a person who served with the Agency for 20 years and

became deeply disillusioned with the Agency and his book is bitterly critical. His career, for the most part, revolved around Thailand and Vietnam, parts of the world where Agency activities have been publicly disclosed to a far greater extent than other parts of the world. I think had it not been for that fact, and for Mr. McGehee's extraordinary persistence, patience, and determination, his book never would have seen the light of day. I would commend that appendix to the committee for your consideration.

[The statement of Mark Lynch follows:]

STATEMENT OF MARK H. LYNCH, AMERICAN CIVIL LIBERTIES UNION

I appreciate the invitation to appear before these two subcommittees on behalf of the American Civil Liberties Union, which is a non-profit, non-partisan organization of over 200,000 individuals throughout the nation, dedicated to defending the Bill of Rights. As an ACLU staff attorney, I have been involved in a number of court cases involving prepublication review, including *Snepp* v. *United States,* 444 U.S. 507 (1980), and I have also represented former CIA employees in negotiations with the Agency's Publications Review Board.

President Reagan's new order on secrecy, issued on March 11, 1983, is a serious assault on the First Amendment because it creates a censorship system which will drastically affect the quantity, quality, and timeliness of the information available to the American public on national security issues. Moreover, this order appears to have been issued without any evidence that unreviewed op-ed pieces, magazine articles, speeches, and memoirs by former government officials—which make invaluable contributions both to current public policy debates and to history—are causing any national security problems which might justify a system of censorship over those who are in the best position to inform the public.

The order requires that all Executive Branch employees who have access to classified information must sign a nondisclosure agreement as a condition of employment. With respect to all persons who have access to sensitive compartmented information (SCI), the nondisclosure agreement must include a provision requiring prepublication review.

There has been some confusion over the number of people who will be covered by this order and particularly whether employees who have access to classified information, but not SCI, will be subject to prepublication review. The order leaves agencies free to include prepublication review provisions in the agreements signed by persons who do not have access to SCI. Moreover, the courts have stated that a nondisclosure agreement without an explicit prepublication review requirement or mere access to classified information—even without any written agreement—creates an enforceable duty to submit to prepublication review. *United States* v. *Snepp,* 444 U.S. at 511 n.6; *United States* v. *Marchetti,* 466 F. 2d 1309, 1316 (4th Cir.), *cert. denied,* 409 U.S. 1063 (1972).

Thus, the Reagan order clearly imposes the burden of prepublication review on officials with access to SCI material, who number in the thousands and include all of the policy makers in the national security field. Even if the prepublication review requirement is limited to officials with access to SCI, it will extend to every senior official in such agencies as the Departments of State and Defense, as well as to all members of the National Security Council staff, many senior White House officials, and all senior military and foreign service officers. The order also leaves the scores of thousands of employees with access to non-SCI classified information in a limbo where, under prevailing judicial precedents, they dare not publish any information based on their employment without submitting it for prepublication review, regardless of whether their nondisclosure agreements contain an explicit provision for prepublication review.

The Reagan secrecy order will make it extremely difficult for any former official to function as a newspaper columnist, radio or TV commentator, or to participate in political debate since anything they write will be subject to a time delay while it was being cleared. The full impact of the order can be glimpsed by listing some of those now writing and speaking who would be required to clear material based on any information which they learned through their government employment if this program had been in affect in the past the speeches and writings of Richard Allen, Alexander Haig, and Eugene Rostow would be subject to censorship by their successors; political candidates such as Walter Mondale would have to clear political speeches and position papers with the White House; the memoirs of Henry Kissin-

ger, Zbigniew Brzezinski, Hamilton Jordan and Jimmy Carter would be subject to censorship by their successors; columns by Jody Powell, Patricia Darien, Elmo Zumwalt and others would be subject to review with time delays that would make it almost impossible for them to function as columnists; testimony by Paul Warnke, Melvin Laird, or David Jones would have to be cleared making timely presentation to Congressional Committees difficult; reporters such as Leslie Gelb and Richard Burt would have to submit many of their articles for clearances; professors such as Anthony Lake and Roger Hilsman would have to clear lectures which they prepare in advance; consultants, investment bankers and lawyers such as Cyrus Vance, Brent Scowcroft, Richard Holbooke and David Aaron could not submit reports to their clients before they were cleared.

In each of these cases the time delays themselves would be very serious, and in addition the government would often be able to prevent former officials who it viewed as hostile from making their case by arguing that the information they wanted to present was classified. A vivid example of how prepublication review could effect timely debate on issues of public importance recently appeared in the Outlook Section of the Washington Post. On the evening of Wednesday, March 23, 1983, the President gave his "Star Wars" speech. On Sunday, March 27, the back page of the Outlook Section carried three articles discussing the issues raised by the President's speech written by current Undersecretary of Defense Fred Ikle, and two officials who served in the Carter Administration, former Secretary of Defense Harold Brown and former Undersecretary of Defense, William J. Perry. Mr. Ikle supported the President; Mr. Brown and Mr. Perry raised doubts about the new defense policies the President had proposed.

Under the regime imposed by the Reagan secrecy agreement order, Brown and Perry would have had to clear their articles. Getting clearance for articles written on Thursday or Friday for publication on Sunday will be difficult even if the reviewers are cooperative. However, the temptation to use the clearance process at least to delay, even if not suppress, negative commentary will be irresistable. Indeed, the reviewer in this case quite possibly could have been Mr. Ikle himself. Should a government official involved in a policy debate have the power to delete a telling point or piece of information from his opponents' articles? This is obviously a treacherous path which surely will delay, deter, and suppress the flow of information on national security issues from those qualified most inform to the public.

Individuals who fail to comply with the prepublication review requirement can be severely penalized simply for the failure to clear even if the manuscript contains no classified information. Frank Snepp has had to pay all of the proceeds of his book, Decent Interval, to the government even though the government never alleged that he disclosed any classified information. The legal theory for this draconian penalty is the constructive trust doctrine which can be applied not only to one who breaches a fiduciary duty but also to any third parties who also benefit from the breach. Thus, the government could have used this doctrine not only to recover all of Mr. Snepp's profits but also all the profits of his publisher. The government has not yet gone this far in any case, but the opportunity is there as a legal matter, and this threat can be used to deter publishers from publishing uncleared writings of former government officials. In a case where an author earns no money for his writings and a constructive trust would be meaningless, the government can seek to impose punitive damages. Thus, there are formidable deterrents to publication even by authors who write without any profit motive.

The order does not spell not the precise scope of the obligation that will be imposed by the prepublication review requirement, and this important question has yet to be addressed in implementing directives or model agreements. However, it is useful to look at the CIA's current positions on these issues. CIA regulations require submission of "all writings and scripts or outlines of oral presentations intended for nonofficial publications, including works of fiction, which make any mention of intelligence data or activities, or contain data which may be based upon information classified pursuant to law or Executive Order." The regulations further state that "[t]he responsibility is upon the employee or former employee to learn from the Agency whether the material intended for publication fits the description set forth in this paragraph." The regulations define "publication" as "communicating information to one or more persons."

The injunction which was entered against Frank Snepp and upheld by the Supreme Court requires him to submit all material relating to the CIA and intelligence matters generally which he "gained during the course of or a result of his employment with" the Agency. This limitation was consistent with the statement in *Alfred A. Knopf* v. *Colby,* 509 F.2d 1362, 1371 (4th Cir.), *cert. denied,* 421 U.S. 992 (1975), that "[t]he agreement, of course, covers only information learned by [employ-

ees] during their employment and in consequence of it. It does not cover information gathered by them outside their employment or after its termination."

The Agency, however, recently has sought to abandon the "course-of-or-as-a-result-of-employment" limitation and expand obligation to submit to all information concerning intelligence matters. Indeed, in a recent settlement agreement with Mr. Wilbur Crane Eveland, the Agency, backed by the Justice Department, refused to abide by the limitation contained in the *Snepp* injunction and the *Knopf* opinion and insisted that the prepublication review obligation includes all writings mentioning the CIA or intelligence activities.

Under the Agency's current position, the extent of what must be submitted is staggering broad. For example, if a former employee writes a letter to a newspaper or to his Congressman endorsing or opposing legislation concerning the CIA, he must submit that letter because it concerns intelligence activities even though it doesn't include any information which the employee learned through his employment. A former employee who becomes a columnist must submit anything about his former employer's current activities, no matter how remote the writing may be from the individual's responsibilities while employed by the government. Whether the Administration adopts the CIA's former position that the obligation is limited to information learned throught employment or its new position that no such limitation applies is a very important issue which will dramatically effect the amount of material which will have to be submitted and cleared.

Even under the former approach, the scope of the prepublication review obligation is enormous. Anything which is written—a book manuscript, a column, the text of a speech or a TV or radio commentary—must be submitted if the writer is certain that it does not include any classified information; the government of the day can remove anything which it believes is classified. The writer then may try to persuade a court that the disputed information is not properly classified, but litigation is extremely difficult, burdensome, expensive, and lengthy.

First, courts are sympathetic to the government's argument that the government alone is qualified to determine what is classified and that courts should not overturn these determinations. Second, the standard for classification under current Executive Order 12356, as under its predecessors, is vague—whether disclosure can reasonably be expected to cause damage to the national security. Indeed, we are currently contending in court that even under the system of censorship sanctioned in *Snepp*, this standard is constitutionally deficient. *McGehee* v. *Casey*, No. 81-2233 (D.C. Cir.). Third, even if meaningful judicial review is available, it is very time consuming. In the *McGehee* case, the plaintiffs filed suit on March 27, 1981, challenging CIA deletions from an article which *The Nation* magazine wished to publish. The author and the magazine lost in the district court and due to delays for which they were not responsible, the case was not set for oral argument until May 18, 1983. Throughout these two years important information which a magazine wishes to publish has remained suppressed.

The bureaucracy and expense required to implement the Reagan order will be immense. Each agency will have to establish a censorship board to review and clear hundreds of books, articles and speeches each year. The operation of the new system can be discerned by examining the current system maintained by the CIA to review the manuscripts of its former officials. The CIA has set up a special office to review these manuscripts. Agency personnel have devoted thousands of hours to reviewing more than 800 manuscripts since 1977. This system has benefited from the fact that the CIA usually does not have to consult with other agencies and that its employees, many of whom maintain their cover after retirement, are less political and less likely to want to publish and participate in public policy debates than former officials of the State Department, the Defense Department, the NSC, and the White House. If the CIA has had to screen 800 manuscripts over four years, we can anticipate that Reagan order will lead to the review of many times that number.

The need for inter-agency consultation will also be more time-consuming than the CIA's self-contained review process. For example, a manuscript submitted by an NSC staffer will in many cases have to be referred to the State Department, the Defense Department, the National Security Agency, and the CIA. Agencies which have found it impossible to comply with time limits of the Freedom in Information Act are not likely to do any better with manuscripts which require classification reviews that are very similar to processing an FOIA request. Because judicial review is such a long and cumbersome process the government will, by and large, be able to impose its view of what is classified.

The CIA experience has also demonstrated that the clearance process can be excruciatingly difficult when the Agency and the author disagree over whether particular information is classified. In this regard, I refer the Subcommittees to the ex-

perience of Mr. Ralph McGehee, a former CIA official who has recently published a memoir of his career with the Agency, *Deadly Deceipts*. Mr. McGehee is deeply disillusioned with the Agency and his book is bitterly critical. It took Mr. McGehee over two years to get his book cleared. Most people, I believe, are not as determined and persistent as Mr. McGehee and would have thrown in the towel rather than endure the frustrations he did. The Agency in numerous instances deleted information which it had permitted other friendlier former officials to publish or which had appered in the Pentagon Papers. Had Mr. McGehee's career revolved around a part of the world other than Southeast Asia, where an unusual proportion of the Agency's activities have been officially acknowledge, I doubt that his book could have been published at all. In one instance, the reviewers reclassified several chapters which they had originally cleared. Fortunately, this capricious decision was overturned through an appeal to then Deputy Director of Central Intelligence, Admiral Bobby Inman, who apparently realized that reneging on a prior clearance was to dubious a proposition to defend in court. Mr. McGehee has described his ordeal with the clearance process in an appendix to his book, and I would like to submit that appendix for the inclusion in the record.

The CIA experience has also demonstrated that the enforcement of the prepublication review requirement inevitably discriminates between critics and supporters of the Agency. Although there are a number of friendly former employees who have failed to comply with the prepublication review requirement, the Agency has sued or extracted pre-litigation settlements from six former employees for failing to comply with the prepublication review requirement: Victor Marchetti, Frank Snepp, John Stockwell, Phillip Agee, William Colby, and Wilbur Crane Eveland. All but Colby are critics in varying degrees of the Agency. Indeed, United States District Judge Gerhard Gesell held that Agee's lawyers made a prima facie showing of discriminatory enforcement and refused to impose any financial penalties unless the Agency rebutted Agee's evidence. *Agee* v. *CIA*, 500 F. Supp. 506 (D.D.C. 1980). The Agency declined Judge Gesell's invitation to rebut this prima facie showing, but shortly thereafter moved against Mr. Colby. The Agency now points to its action against Mr. Colby as proof that it is even-handed, but a five-to-one ratio of critics to supporters does not, in our judgement, rebut Judge Gesell's finding.

Needless to say, the ACLU believes that the system of censorship imposed by prepublication review requirements is unconstitutional. However, the Supreme Court in *Snepp* disagreed, and it is unrealistic to expect an early reversal of that decision. Thus, the burden is on Congress to stop the extension of the censorship sanctioned by *Snepp*.

The policy issue before the Congress is whether there is any evidence that the unrestrained publication of op-ed pieces, magazine articles, speeches, and memoirs by former government officials has caused a measure of harm to the national security that justifies the imposition of a burdensome system of censorship. So far as we have been able to determine, the Reagan order was not based on any compilation of evidence that the national security has been harmed by such publications. The President may be up to his kiester in leaks—which for the most part come from his closest lieutenants and other highly placed officials—but he has not complained, much less demonstrated, that publications by former officials are undermining his national security policies. On the other hand, these publications make a vital and unique contribution to public debate on issues of the greatest national importance and to history. Even if it can be demonstrated that former officials commit occasional indiscretions in their writings—either purposefully or, most likely, inadvertantly—it is still incumbent on the Administration to demonstrate that the harm caused by such disclosures justifies the creation of a vast, burdensome, and expensive system of censorship which will delay, inhibit, and suppress the flow of useful information to the public. The Administration should be required to make this showing to the Congress, and if it cannot—as we are confident it cannot—Congress should prohibit the imposition of the prepublication review requirement.

Thank you for this opportunity to testify.

Mr. EDWARDS. Mr. Lynch, I will interrupt you just for a moment because Mrs. Schroeder has to leave in a minute and she has some questions.

Mrs. SCHROEDER. I think you have both done an excellent job.

Let me ask my question for the record because I know there are a number of other witnesses and we're moving against an early starting time for the session today. Originally there was no session, so that is squeezing us, also.

My question is: How often is the 30-day rule of the CIA been met in your experience? I understand your broader problem when you have other agencies, but how many times can one agency meet it? Then the next thing is, What is the tendency of the bureacracy if they can't get to it? Is it just easier to say "No," than to go through it? I think you addressed that indirectly by saying the ones who were critics tend to be turned down more than the ones who are not critics.

But if you would provide that for the record, with the experience you have had on the whole thing, I think it would be helpful. I do want to compliment both of you because I think you gave us some excellent background for when we deal with the administration witnesses.

Mr. EDWARDS. Mr. Lynch, did you want to wind up?

Mr. LYNCH. I was finished. That was the end of what I had to say, Mr. Chairman.

Mr. EDWARDS. The gentleman from Virginia, Mr. Wolf.

Mr. WOLF. No questions, Mr. Chairman.

Mr. EDWARDS. I have a couple of questions here.

When this kind of a system is set up, preclearance, so to speak, wouldn't this put the agency in a bind? Because if they approved a book or a speech or something, that would mean they approve of it, so they are not going to be very happy about approving material that is critical of their own agency because they would approve something that is critical.

Mr. LYNCH. That is a big problem. For example, the agency has publicly acknowledged that we have a relationship with the intelligence service of Great Britain. If someone wanted to write that the British Intelligence Service was deficient in various respects, the agency would be in a very difficult position because they have acknowledged that relationship. I think they would very quickly and artfully identify certain security problems in order to avoid the embarrassment that would inevitably arise from the agency approving a book which was critical of the British Intelligence Service as an example. So they are in a bind, and that bind frequently is involved in favor of suppression.

Mr. KARP. I think there is another problem which is comparable to the difficulty in classification. If you have the responsibility of making the decision and you make the wrong decision, you're going to get blamed, so it is much easier to classify. If you have the problem of clearing, here it becomes even a political problem, and you clear something that either may turn out to be classified or turn out to be embarrassing, there may be repercussions. So I think, as this expands beyond the CIA, which has become a more sophisticated censor, I gather, I think you're going to see more of that pressure having an effect.

Mr. EDWARDS. Will the decision as to whether or not material would be classified be clear cut? Are there rules and regulations that anybody can understand as to what kind of material should be classified?

I read somewhere quoting an experienced person in one of the security agencies that said 90 percent of the material that is classified shouldn't be classified.

Mr. LYNCH. Well, the definition for classification established by Executive order, and the current Executive order provides that information is classified if its disclosure reasonably could be expected to cause damage to the national security. That is so vague a standard as to be no standard, in my view. In fact, we are involved with some pending litigation right now challenging the classification order as an adequate standard for conducting these reviews. So the agencies have enormous discretion of the standard that currently is applied.

Mr. EDWARDS. The Presidential directive seems to clearly limit the applicability of this prepublication review requirement to current and former employees with access to sensitive compartmented information, SCI. Yet you witnesses and Mr. Abrams seem to have raised the issue that you feel other classified information would be subjected to the same kind of preclearance, or polygraph test.

Mr. LYNCH. Yes. I read that a little differently, Mr. Chairman, particularly in light of current judicial precedent. The order says that everybody with access to classified information is going to have to sign a nondisclosure agreement. If you have access to sensitive compartmented information, the nondisclosure agreement must include a provision for prepublication review.

It is my understanding—and I think the administration would confirm this—that it is up to the agencies, on an agency-by-agency basis, to decide whether those employees who have access to classified but not SCI material will also have prepublication review provisions inserted in their nondisclosure agreements. But in any event, the courts, in the *Marchetti* case and in the *Snepp* case, found that a duty to submit to prepublication review was inherent in a nondisclosure agreement. Indeed, in both cases they held that, and in both cases intimated fairly directly that mere access to classified information, even without any written agreement, would create a fiduciary duty which included a duty to submit to prepublication review.

So unless the administration foreswears application of prepublication review to people with non-SCI access to classified information, I think we lawyers are going to have to advise them that they are all acting at their peril if they don't submit to prepublication review. This is an area, though, which the administration certainly could limit the scope of the order and make us all a lot more comfortable.

Mr. EDWARDS. So if the menu at the White House were classified, the chef could never write a book about what went on in the kitchen?

Mr. LYNCH. At least not without clearance.

Mr. EDWARDS. Now, did Mr. Brzezinski and Mr. Kissinger submit their writings to the Government based on the access that they had to highly sensitive material?

Mr. LYNCH. My understanding—and this is not firsthand information—is that the first volume of Mr. Kissinger's book was not cleared but the second volume was, as was Mr. Brzezinski's book. But they only submitted those sections which they thought might be sensitive.

The lesson of the *Snepp* case, of course, is that that is not the employee's decision to make. Again, if the administration were to

interpret this requirement so that responsible people could make responsible judgments as to what ought to be reviewed, as it seems Mr. Kissinger and Mr. Brzezinski did, it wouldn't be so horrendous and it probably would be great, but not as great as it appears on the face of the order.

Mr. EDWARDS. Do you know about that, Mr. Karp?

Mr. KARP. I have heard pretty much the same thing.

I would like to come back to the point I made before. I think the bearableness of the order, even under those circumstances, is going to depend on who you are. If you are a former Secretary of State, life may go one way; if you're Frank Snepp or somebody at that level, life will go a different way.

Mr. LYNCH. Could I comment on that discriminatory aspect, Mr. Chairman?

The CIA has moved against six people for violation of their prepublication reviews. They are Victor Marchetti, Frank Snepp, John Stockwell, Phillip Agee, Wilbur Crane Eveland, and William Colby. Five of those people, all except Mr. Colby, are critics of the Agency. A 5 to 1 ratio of critics to friends is I think a very significant showing of discriminatory enforcement. And there are a good many friends who have neglected to comply with the agreement.

There is absolutely no doubt that the Agency has enforced the agreement in a discriminatory fashion. Indeed, Judge Gesell held that there was a prima facie showing of discriminatory enforcement and the CIA chose not to attempt to rebut that prima facie showing.

Mr. EDWARDS. Thank you.

Mr. Wolf.

Mr. WOLF. What was the situation in the *Agee* case? Did he release the names of known agents——

Mr. LYNCH. He did in some of his writings. The book that the CIA sued on was not one of the naming-name books. It was Mr. Agee's commentary on intelligence activities.

Mr. WOLF. Do you think they were valid in moving against any of the six?

Mr. LYNCH. Well, you know, if the standard is you commit a violation by not submitting for prepublication review, it is true that all of these people had failed to submit to prepublication review. My point is there were a good many other people who failed to submit for prepublication review but were not penalized.

Mr. WOLF. You made some good points on the prepublication. I just wondered what would you do, what would your recommendations be? Assuming that most fair-minded people would acknowledge that potentially there can be problems in the country on something like this, what would you recommend?

Mr. LYNCH. Like Mr. Abrams, I feel strongly that our system of free expression and law rests on the principle that you set standards for kinds of speech that are so dangerous they must be deterred, and you set up criminal penalties for the disclosure of that kind of information. If a sensible law dealing with genuine, serious secrets could be crafted, with criminal penalties, and set that up as a deterrent, and then rely on the good judgment and prudence of former Government officials not to publish that kind of information, or to seek guidance when they think they are in a grey area, I

think that would perhaps be a sensible way of proceeding. But that is an awful lot different from the current review.

Mr. WOLF. Are you suggesting, then, that what there should be is clear standards that everyone understands and accepts, fair standards, and then if somebody violates them, you come down and you prosecute them?

Mr. LYNCH. That's right.

Mr. WOLF. This is a loaded question. Do you think there have been any violations, from your knowledge—and you have been very much involved in this—whereby fair standards could have been abused in any of the cases?

Mr. LYNCH. You mean——

Mr. WOLF. Where prosecution could have been successful.

Mr. LYNCH. Well, if you had a statute that I was satisfied with in terms of defining real secrets, there would be very, very few indiscretions, I think, because I think people in the Government understand that certain kinds of intelligence matters, certain kinds of nuclear weapons matters, are not the sort of things you put into your memoirs. So if you had an adequate statute, there perhaps are some examples that could be shown, but not very many.

On that score, and the challenge that I think all of us have laid down to the administration—that the administration ought to come up with a showing—I am sure they are going to be able to come up with some occasional indiscretions and say there is something in Jimmy Carter's book they weren't happy about, or there was something in Dean Atchison's book that they weren't happy about, or all of the 200 or 300 memoirs that have been written since World War II.

But as Mr. Abrams said, it has got to be more than the anecdotal, and they have got to show—in my view, they have to show a persistent serious pattern of undermining our national security policies. A moment's heartburn at the State Department or Defense Department is not enough to justify its regime.

Mr. WOLF. If I could ask one additional question—and I ask you this because you are experienced in this area—if there is an identification of CIA operatives, you would acknowledge that that is something that should be prosecuted and, therefore, that would meet the rule?

Mr. LYNCH. That, of course, has already been dealt with in the Identities Protection Act, so——

Mr. WOLF. But you would acknowledge that that would be one——

Mr. LYNCH. Yes; you know, I think the CIA is satisfied with what they have got now on that. This order does not deal with that problem. They got what they wanted on that problem.

Mr. WOLF. Thank you very much.

Mr. LYNCH. Thank you.

Mr. EDWARDS. Does counsel have any questions? All right, thank you very much.

Mr. LYNCH. Thank you, Mr. Chairman.

Mr. EDWARDS. Our next witness is Kenneth Blaylock. Mr. Blaylock is chairman of the Public Employees Department of the AFL-CIO, and president of the American Federation of Government Employees.

We welcome you, Mr. Blaylock. Without objection, your entire statement will be made a part of the record and you may proceed, and you may introduce your colleague.

TESTIMONY OF KENNETH T. BLAYLOCK, NATIONAL PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, AND CHAIRMAN, PUBLIC EMPLOYEES DEPARTMENT, AFL-CIO, ACCOMPANIED BY STEVE PRUITT, LEGISLATIVE ASSISTANT, PUBLIC EMPLOYEES DEPARTMENT, AFL-CIO

Mr. BLAYLOCK. Thank you very much, Mr. Chairman.

I have with me Steve Pruitt, who is legislative assistant from the Public Employees Department, AFL-CIO.

We are pleased to have the opportunity to present the views of our union and the mainstream of Federal employees in regards to the recent directive, entitled "Safeguarding National Security Information." We appreciate your interest and your concern in this matter, Mr. Chairman.

While we heartily support the need to safeguard properly classified national security information, it is our belief that this directive is not designed to protect national security interests. Rather, it is designed to suppress Federal employee disclosure of governmental operations, waste, inefficiency, and fraud and those things that may be politically embarrassing to certain officials in the Government.

First, let me say the directive we think is very poorly written, and I would concentrate primarily today on that portion of it dealing with the use of polygraphs and truth devices.

While the directive begins by citing the fact that only national security information should be classified, it goes on to state that each agency shall develop procedures governing disclosure which "the agency considers to be seriously damaging to its mission." Accordingly, under the language of the directive, any agency manager could consider disclosure of agency corruption, mismanagement, fraud, inefficiency, waste, and so forth, damaging to the agency's public image, public confidence, and so forth and, therefore, the ability of the agency to accomplish its mission would be damaged.

In proper context, most agency missions have nothing to do with national security. Nevertheless, the directive mixes the two concepts as if they were interchangeable.

In 1978 Congress enacted the Civil Service Reform Act and declared that whistleblowing is legitimate, lawfully protected, and should be encouraged. The President's directive would have a very chilling effect on Federal employee whistleblowing and the right of the Federal taxpayers to know what their Government is doing.

The President's directive for the first time provides that employees outside of national security agencies shall be subject to polygraph tests. While the factsheet issued with the Presidential directive praises the test as a legitimate investigatory technique already utilized by intelligence agencies, we all know that such polygraph tests have been consistently rejected by Federal and State courts as inadmissible for lack of scientific foundation. In addition, implementation of such a procedure would cost the taxpayer untold dol-

lars as the Government develops the machinery and personnel to administer these inadmissible tests.

The directive fails to acknowledge that it establishes a whole new basis for firing Federal employees. The directive specifically provides that agencies shall develop rules by which employees may be fired if they refuse to take a polygraph test, or once having been hooked up to the machine, wish to assert their fifth amendment rights. Indeed, not only is this a new basis for firing Federal employees, it contradicts existing civil service regulations which prohibit nonnational security intelligence agencies from firing Federal workers for refusing to take polygraph tests.

The White House factsheet issued with the directive states, "although unauthorized disclosure of classified information potentially violates a number of criminal statutes, there has never been a successful prosecution." While we find that extremely hard to believe, we believe that the assertion is evidence that the intent of the directive is scare, rather than substance. If the factsheet's assertion regarding the lack of successful prosecution of security violations is correct, this directive is clearly an attempt to end-run, rather than address existing legitimate criminal procedures necessitated by the due process clause of our Constitution.

We object to directives which would, without amending the law, pose a threat of legal action over the heads of Federal employees in cases where the Department of Justice did not have any legitimate basis for criminal action. We believe it is appropriate to ask why Federal employees should be required to sign quasi contractual documents which could later be used as a basis for termination if their actions would not otherwise constitute a violation of existing law governing disclosure of classified material. If there is a deficiency in the existing laws, we believe that such statutory deficiency should be addressed by Congress and not by administrative directives.

Our concern that the directive is designed to have a chilling effect on legitimate employee whistleblowing rather than improve national security is augmented by the fact that the White House factsheet again states that the FBI will be used to investigate violations of the directive, even where there is absolutely no intention or foundation for bringing criminal cases.

At a time when an increasing number of States have passed laws restricting the use of polygraph tests in connection with employment because such tests are unreliable, unfair, and an invasion of privacy, the President has ordered the Director of OPM—who has already turned OPM into a shambles—to undo present Government regulations against polygraph tests. Director Devine has been told to create regulations which, "as a minimum * * * shall permit an agency to decide that appropriate adverse consequences will follow an employee's refusal to cooperate with a polygraph examination."

Mr. Chairman, we see a very dangerous trend in this, and as a citizen of this country, I have been embarrassed that the President's State Department, over the objection of our Canadian neighbors, required that Canadian films regarding acid rain and nuclear war not be shown unless preceded by a declaration that they are foreign propaganda with which the administration does not agree.

It should be noted that the second of those films, "If You Love This Planet," recently won an Oscar for best documentary.

As a citizen, I am embarrassed that the President, who is called "The Great Communicator," would attempt again to write changes in the law without going through the legislative process.

I am also embarrassed that the President of the United States, sworn to uphold the first, fourth, and sixth amendments, would callously subject Federal employees to harrassing, humiliating, unreliable, and unscientific polygraph tests in order to stop leaks that really having nothing to do with national security, and which the White House admits don't really warrant criminal investigation and prosecution.

In our Bill of Rights, the fourth amendment guarantees "The right of people to be secure in their persons, houses, paper and effects against unreasonable searches and seizures." It would be ironic if under the fourth amendment we limited an employer's rights to search workers' desks, purses, and homes, but not their minds for political affiliations and so forth.

The right to remain silent and protection against self-incrimination are assured by the fifth amendment to the constitution. Yet lie detector tests would compel individuals to disclose information about themselves. Often it is not the physiological test data that prejudices an employee; rather, it is confused statements made under the duress of an exam that are misinterpreted as incriminating.

The sixth amendment secures the right to confront one's accusers, but as former Senator Ervin, an expert on constitutional law, observed about polygraphs, "it is hard to cross-examine a machine." Lie detectors are banned from courtrooms precisely because judges and juries cannot question the devices and because they are scientifically unreliable.

If this directive is implemented as proposed, Federal workers would not even have the dignity of protections routinely guaranteed to indicted suspects in the criminal courts.

Eighteen States currently have outright prohibitions on employers requiring the polygraphic testing of their employees. In the absence of Federal legislation, a mere Presidential directive cannot preempt these existing State laws. Furthermore, the directive would have a disparate impact on Federal employees, depending on the State in which they worked.

The FBI and the various intelligence agencies have personnel designated to administer polygraph tests. However, under this directive, given its Government-wide effect, OPM and the employer agencies would find it necessary to develop staff capabilities or contract out to implement this effort. Currently, in the private sector less than 1 percent of polygraph testers have had any scientific training. Fewer still have received any education in the behavioral sciences. In fact, certain polygraphers have estimated that fully 80 percent of their own colleagues are incompetent.

There are 20 different State laws regarding polygraph operator standards, all of which have a long history of abuse. State licensing of polygraphers is not reliable. The standards set by these various laws are much too low. Even the model statute, which is Illinois, demands no more than a bachelor's degree in any subject—and

that can be modern art, literature, and so forth. No psychological or scientific training is required.

Is the Federal Government going to step in and establish nationwide polygraph operator standards so that its employees who would be designated to give the tests would do so in some standardized manner? Or will OPM set up its own mechanism?

In 1974, with the passage of the Privacy Act, Congress created a Privacy Protection Study Commission. That Commission's final report took a very strong stand against the use of truth verification devices, calling their use an unreasonable invasion of privacy that should be summarily proscribed. The Commission recommended that a Federal law be enacted to forbid an employer from using these devices.

In conclusion, Mr. Chairman, it is clear to me that the President took this unprecedented step of issuing this directive for petty political reasons. I take him at his word when he said he had it up to his "keister" with all the press leaks which were occurring at and around the time this directive was conceived and issued. History tells us that every leader has had his problem with leaks. However, it is also true that every leader has, on occasion, created his own leaks. Yet, no previous President let his frustration with leaks lead to such a dangerous proposal which threatens the civil liberties of Federal employees.

We believe this Nation should be governed by rules of substantive law and not through the administrative utilization of fear, threats, or chilling directives. If a disclosure is illegal, it should be prosecuted. If it is not illegal, but merely embarrassing to some partisan political interest, employees should not be threatened with a morass of investigatory techniques and contractual civil suits.

I would like to urge this committee to get the administration off the backs of Government workers. The Presidential directive on safeguarding national security information places an unfair and improper abuse on the backs of Federal workers. All we ask is that we be paid for the work we do, compensated when we retire, and treated like decent human beings. If Federal employees break the law, the existing criminal investigatory procedures should be applied to them like any other American citizens.

Thank you again, Mr. Chairman, very much. There are some attachments to my statement that I would like to have entered for the record.

[Prepared statement of Kenneth T. Blaylock follows:]

PREPARED STATEMENT OF KENNETH T. BLAYLOCK, NATIONAL PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES AND PUBLIC EMPLOYEES DEPARTMENT (AFL-CIO)

Madam Chairwoman and Mr. Chairman, my name is Kenneth T. Blaylock, I appear here today in my dual roles, President of the American Federation of Government Employees and as President of the Public Employee Department, AFL-CIO. I am pleased to have the opportunity to share with you our views, apprehensions and reservations concerning one of the more troubling proposals being promoted by the Reagan Administration.

On March 11, 1983, President Reagan issued a directive entitled "Safeguarding National Security Information", While AFGE heartily supports the need to safeguard properly classified national security information, it is our belief that this directive is not designed to protect national security interests. Rather, it is designed to

suppress Federal employee disclosure of governmental corruption, waste, inefficiency, and fraud.

While the directive begins by citing the fact only national security information should be classified, it goes on to state that each agency shall develop procedures governing disclosure which "the agency considers to be seriously damaging to its mission." Accordingly, under the directive, agency managers could consider disclosure of agency corruptions, mismanagement, fraud, inefficiency, waste, etc., damaging to the agency's public image, public confidence, etc., and, therefore, to the ability of the agency to accomplish its mission.

In proper context, "agency mission" has nothing to do with national security. Nevertheless, the directive mixes the two concepts as if they were interchangeable.

In 1978, Congress enacted the Civil Service Reform Act and declared that whistleblowing is legitimate, lawfully protected, and should be encouraged. The President's directive would have a chilling effect on Federal employee whistle-blowing and the right of the Federal taxpayers to know what their government is doing.

The President's directive for the first time provides that employees outside of national security agencies shall be subject to polygraph tests. While the fact sheet issued with the Presidential directive praises the test as a legitimate investigatory technique already utilized by intelligence agencies, we all know that such polygraph tests have been consistently rejected by Federal and state courts as inadmissible for lack of scientific foundation. In addition, implementation of such a procedure would cost the taxpayer untold dollars as Uncle Sam foots the bill for the machinery to administer these inadmissible tests. *See,* The Use of Polygraphs and Similar Devices by Federal Agencies. Hearings Before the Committee on Government Operations, 93rd Congress, June 4 and 5, 1974.

While the White House fact sheet asserts that "existing procedural safeguards for personnel actions involving Federal employees remain unchanged", the directive fails to acknowledge that it is establishing a whole new basis for firing Federal employees. The directive specifically provides that agencies shall develop rules by which employees may be fired if they refuse to take a polygraph test, or once having been hooked up to a polygraph machine, wish to assert their Fifth Amendment right against self-incrimination. Indeed, not only is this a new basis for firing Federal employees, it contradicts existing civil service regulations which prohibit non-national security intelligence agencies from firing Federal employees for refusing to take polygraph tests. *See,* FPM Chapter 736, Appendix C (attached).

The White House fact sheet issued with the directive states, "although unauthorized disclosure of classified information protentially violates a number of criminal statutes, there has never been a successful prosecution". While AFGE finds this extremely hard to believe, we believe that the assertion is evidence that the intent of the directive is scare, rather than substance. If the fact sheet's assertion regarding the lack of successful prosecution of security violations is correct, this directive is clearly an attempt to end-run, rather than address existing legitimate criminal procedures necessitated by the due process clause of our Constitution.

The directive also references the establishment of non-disclosure agreements as a basis for potential civil suits against Federal employees. AFGE objects to a directive which would, without amending the law, pose a threat of legal action over the heads of Federal employees in cases where the Department of Justice did not have any legitimate basis for criminal action, even though a violation of the existing law governing unauthorized disclosure of classified material constitutes a present basis for criminal action. We believe it is appropriate to ask why Federal employees should be required to sign quasi-contractual documents which could later be used as basis for their terminations if their actions would not otherwise constitute a violation of existing law governing disclosure of classified materials. If there is a deficiency in the existing laws, we believe that such statutory deficiency should be addressed by Congress and not by new Administrative directives.

Our concern that the directive is designed to have a chilling effect on legitimate employee whistle-blowing rather than improve national security is augmented by the fact that the White House fact sheet states that the FBI will be used to investigate violations of the directive even where there is absolutely no intention or foundation for bringing a criminal case.

The use of FBI in administrative personnel matters such as these, if not illegal, is certainly overkill which cannot help but have a chilling effect on federal employees and the rights of our citizens in general.

As noted earlier the White House Fact Sheet issued with the President's Directive stated:

"The directive establishes a new approach to investigating unlawful disclosures to replace the past practice of treating such matters as purely criminal investigations.

Although unauthorized disclosures of classified information potentially violate a number of criminal statutes, there has never been a successful prosecution. There are a number of practical barriers to the successful criminal prosecution in most of these cases."

Yet the President has never come to this body for legislation. Rather, by a stroke of the pen he has ordered his Director of Office of Personnel Management to develop new regulations authorizing the Federal government's use of polygraph tests for all federal employees who could have access to classified documents or documents which could be politically embarrassing to the Administration. At a time when an increasing number of states have passed laws restricting the use of polygraph tests in connection with employment because such tests are unreliable, unfair, and an invasion of privacy, the President has ordered the Director of OPM (who has already turned OPM into a shambles) to undo present government regulations against polygraph tests. Director Devine has been told to create regulations which, "as a minimum . . . shall permit an agency to decide that appropriate adverse consequences will follow an employee's refusal to cooperate with a polygraph examination. . . ."

As a citizen of this country, I have been embarrassed that the President's State Department, over the objection of our Canadian neighbors, required that Canadian films regarding acid rain and nuclear war not be shown unless preceded by a declaration that they are foreign propaganda with which the Administration does not agree. (It should be noted that the second of these films "If You Love This Planet" recently won an Oscar for best documentary.)

As a citizen, I am embarrassed that the President who is called "The Great Communicator" would attempt, again and again, to write changes in the law without going to this legislative branch of government.

As a citizen, I am embarrassed that the President of the United States sworn to uphold the First, Fourth, and Sixth Amendments would callously subject federal employees to harassing, humiliating, unreliable, and unscientific polygraph tests in order to stop leaks that really have nothing to do with national security—and which the White House admits don't really warrant criminal investigation and prosecution.

In our Bill of Rights, the Fourth Amendment guarantees, "The right of people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures . . ." It would be ironic if under the Fourth Amendment we limited an employer's rights to search workers' desks, purses and homes, but not their minds for political affiliations, etc.

The right to remain silent and protection against self-incrimination are assured by the Fifth Amendment to the Constitution. Yet lie detector tests would compel individuals to disclose information about themselves. Often it is not the physiological test data that prejudices an employee; rather, it is confused statements, made under the duress of an exam that are misinterpreted as incriminating.

The Sixth Amendment secures the right to confront one's accusers, but as former Senator Ervin, an expert on constitutional law, observed about polygraphs, "it's hard to cross-examine a machine." Lie detectors are banned from courtrooms precisely because judges and juries cannot question the devices and because they are not scientifically reliable.

If this directive is implemented as proposed, Federal workers would not even have the dignity and protections routinely granted an indicted suspect in the criminal courts.

As a citizen I am appalled that a President who asserts that he is in favor of employee solidarity and human rights abroad proposes to subject his fellow federal employees to the sort of harassment that has already been condemned in the private sector.

It is with great satisfaction and hope that I note that even before the President's directive was issued, Members of Congress were expressing concern and writing to the Secretary of Defense and elsewhere objecting to DoD practices involving polygraph tests. Attached are copies of letters from Congressman Brooks to Secretary Caspar Weinberg, and the Honorable Morris J. Udall as Chairman of the Technology Assessment Board.

In his letter to Secretary Weinberg, Congressman Brooks stated,

"The Defense Department's proposed plan to expand greatly its use of polygraph is of great concern to me."

Polygraph evidence is generally reviewed with skepticism because of its questionable reliability. The Committee on Government Operations raised this concern in reports issued in 1964 and 1976 and recommended that the device not be used at least until such time as objective studies demonstrate its reliability. DoD has not

proven the validity and reliability of the polygraph prior to development of the proposed new guide lines, which broaden its use even further.

The proposed use could well affect the concept of individual privacy; indeed, several states prohibit even private corporations from using the polygraph as an employement screening device. Of great concern is the fact that the proposed guidelines would allow for adverse actions to be taken against employees that refuse a polygraph examination. . . ."

Our saftisfaction that Congress recognizes the abuses inherent in the government's use of polygraph testing for employees is shaken only by our concern and amazement that the President would issue his directive in the face of such Congressional concern, and do so in a manner which flagrantly attempts to by-pass this body's legislative authority.

STATE LAWS AND THE ADMINISTRATION OF POLYGRAPH TESTS

Eighteen states currently have outright prohibitions on employers requiring polygraph testing of their employees. In the absence of Federal legislation a mere Presidential Directive cannot preempt these existing state laws. Furthermore, the directive would have a disparate impact on Federal employees, depending on the state in which they worked.

The FBI and the various Intelligence agencies have personnel designated to administer polygraph tests. However, under this directive, given its government-wide effect, OPM and the employer agencies would find it necessary to develop staff capabilities or contract out to implement this effort. Currently, in the private sector less than one percent of polygraph testers have had any scientific training; fewer still have received any education in the behavorial sciences. In fact, certain polygraphers have estimated that fully 80 percent of their own colleagues are incompetent.

There are 20 different state laws regarding polygraph operators' standards, all of which have a long history of abuse. State licensing of polygraphers is not reliable. The standards set by these various laws are much too low. Even the model statute (Illinois) demands no more than a bachelor's degree in any subject: Any diploma, be it in Modern Art, Literature or even Egyptology, satisfied that criteria. No psychological or scientific training is required.

Is the Federal Government going to step in and establish nationwide polygraph operator standards so that its employees who would be designated to give the tests would do so in some standardized manner? Or will OPM set up its own truth squads who would burst into an employee's office like storm troopers and administer polygraph tests?

In 1974, with the passage of the Privacy Act, Congress created a Privacy Protection Study Commission. The Commission's final report in 1977, took a very strong stand against the use of "truth verification" devices, calling their use an "unreasonable invasion of privacy that should be summarily proscribed." The Commission recommended that a Federal law be enacted to forbid an employer from using these devices to gather information from an applicant or employee. The Commission also asked the Congress to implement this recommendation by a statute that bans the manufacture and sale of truth verification devices.

Congress has, over the years, demonstrated that there are limits to the harassing conditions that employers can impose on employees. Assaults on constitutional rights, on fundamental human dignity, should not be tolerated at any time. They spread too easily.

Former Supreme Court Justice Louis Brandeis, said "(the) most comprehensive of rights and the right most valued by civilized men" is the simple right to be left alone. Lie detector tests deny workers the right to be left alone.

CONCLUSION

It is clear to me, that the President took this unprecedented step of issuing this directive for petty political reasons. I take him at his word when he said he had it up to his "keister" with all the "press leaks" which were occurring at and around the time this directive was conceived and issued. History tells us that every leader has had his problems with leaks. (However, it is also true that every leader has on occasion created his own leaks.) Yet, no previous President let his frustration with leaks lead to such a dangerous proposal which threatens the civil liberties of Federal employees.

AFGE believes that this nation should be governed by rules of substantive law and not through the administrative utilization of fear, threat, or chilling directives. If a disclosure is illegal, it should be prosecuted. If it is not illegal, but merely embarrassing to some partisan political interests, employees should not be threatened

with a morass of investigatory techniques and contractual civil suits as part of a broad program to undo the whistle-blowing protections of the Civil Service Reform Act.

I would like to urge this Committee to get the Administration off the backs of government workers. The Presidential Directive on "Safeguarding National Security Information" places an unfair and improper burden on the backs of Federal workers. All we ask is that we be paid for the work we do, compensated when we retire and treated like decent human beings. If Federal employees break the law, the existing criminal investigatory procedures should be applied to them just like other American citizens.

Mr. EDWARDS. Mr. Blaylock, thank you for your testimony. Without objection, they will be made a part of the record.

Does Mr. Pruitt have a statement?

Mr. PRUITT. No, sir.

Mr. EDWARDS. How many Federal employees are there who would have access to classified information?

Mr. BLAYLOCK. I don't have that answer, Mr. Chairman. It would be a very small percentage of the 2.5 million Federal workers.

Mr. EDWARDS. They do not now have to sign nondisclosure agreements?

Mr. BLAYLOCK. No, sir.

Mr. EDWARDS. Except, I guess, if they work for the CIA.

Mr. BLAYLOCK. Right.

Mr. EDWARDS. Contractors that deal with the Government, industrial contractors, manufacturers of strategic weapons and so forth, they certainly have access to classified information. Would they be covered by the polygraph requirement here?

Mr. BLAYLOCK. We're not sure the way this is written now. One of the problems with the directive, Mr. Chairman, is that it is so loosely written it can be interpreted a lot of ways. They could, theoretically, the way it is written, apply it to contractors, but there is no mention for the requirement of it.

You know, we ran into a situation not too long ago on the west coast, where we found a security function contracted out. We happen to represent the INS people, also. We found eight illegal aliens working for the contractor in a function of guarding a security area for the Department of Defense. Normally, very little criteria is applied to the contractors.

Mr. EDWARDS. This is a very radical proposal. It is something, if you think about it, that is very shocking. Has anybody described to you the crisis or the series of crises and the leaking of information that would require this directive be issued?

Mr. BLAYLOCK. I would support some of the testimony given by previous witnesses. We know of no serious crisis or of no large problem that is going on anywhere that has been brought to our attention, you know, as far as leaks that involve national security. You're as familiar as we are with the internal leaks that go on in this town. I know for the 10 years I have been here I think we have only had two or three incidents where it was considered a national security situation, and even that was challenged in the court and I think only one of those wound up in prosecution.

I don't know where the problem is, other than the politically embarrassing leaks that seem to drift out of any administration. That is what we think this is designed to do. The way this directive is written, we would not have had an Ernie Fitzgerald with a $3 billion override on the C5-A, and I could go down that line. We think

Federal workers have a right to let the American public know, and we think the American public has a right to know what is going on in their Government. If there are legitimate security issues that need to be protected, we support protecting those.

Mr. EDWARDS. What you are saying, then, you think that this directive conflicts with the whistleblower protection statute?

Mr. BLAYLOCK. We think it was written with that exactly in mind, Mr. Chairman.

You know, it has already been abused to a degree. The business we're in, we represent Federal workers, and that includes representing them in adverse actions, removals or whatever, classifications and so on. It is not uncommon, Mr. Chairman, for a shop steward, in in a nonsecurity agency, in representing the rank-and-file Federal worker, to not be able to get access to that worker's personnel file or other information because they classify it. It will be classified confidential or sensitive. We have even had very frivolous information classified as top secret and it wasn't made available. We wound up through the courts getting the material and it deals with how the guy goes home, you know, and he's not even in a security agency to start with. So it is abused at this point anyway, and we see this as just shoring it up.

Mr. EDWARDS. Thank you.

The gentleman from Minnesota, Mr. Sikorski.

Mr. SIKORSKI. Thank you, Mr. Chairman.

Mr. Blaylock, you briefly touched on the incident in California. Could you describe that more fully, about the illegal aliens being employed by——

Mr. BLAYLOCK. Yes, sir. You know, one of the areas that there has been an increase in contracting out in the last few years has been in security—building guards, area guards, and so on. In that particular case, which was about 3 years ago, a contractor got the security for the Defense activity out there.

Mr. SIKORSKI. Do you know where specifically that was and what kind of——

Mr. BLAYLOCK. Yes, sir, I can provide the committee all the details because we got pretty deeply involved in it. Of course, they removed the aliens and what have you, but the contract still goes on today at about four times the cost and four times the personnel that the Government had when we handled it in-house with military and civilian personnel. But we would be glad to provide the committee with the specifics on the case.

Mr. SIKORSKI. I would appreciate it.

Mr. EDWARDS. Without objection, it will be made a part of the record upon receipt.

Mr. SIKORSKI. Second, are you suggesting that Dr. Devine can't be relied upon to issue fair regulations concerning the use of polygraphs for Federal employees?

Mr. BLAYLOCK. Yes, sir.

Mr. SIKORSKI. Would you elucidate your feelings a little better?

Mr. BLAYLOCK. First, the machines themselves are unreliable, and that has been proven many times.

Mr. SIKORSKI. Do you have specific instances that can support that? I think you made reference to one or two in your testimony.

Do you have others you would like to supply us with more detailed information on?

Mr. BLAYLOCK. Yes, sir, we will be glad to.

We have done a great bit of research in the area, obviously, ourselves. It is not a new issue. It has been around—Congress has dealt with it, to my knowledge, since 1974, off and on.

Mr. SIKORSKI. My State has a particular statute that prohibits the use of polygraph, or even the recommendation of a polygraph to prosecute an employee. I am wondering if you have looked at those statutes that my State and other States have to see their application to this type of instance, with this type of directive?

Mr. BLAYLOCK. Yes, sir, I would be glad to. Of course, we developed our testimony from an awful lot of data that we had for research and our own experiences. I would be more than glad to provide you those files.

As an example, of the 20 States that have language prohibiting the use of them, they don't all prohibit it carte blanche. There are exclusions in there. Again, in some cases they have their security people or employees involved in security work, so it is all over the park. Some of them just flat won't allow the use, and others allow them conditionally. Some of them let it be encouraged to be used and so on.

For example, the State of Maryland has a prohibition against the use of the machines. Yet employers in the private sector in Maryland require their potential employees to come here to D.C. and take a test. You know, there are all kinds of ways to get around it out there. I really think it is time the Congress dealt with the issue of the polygraph machine. That is one of our strong recommendations to the committee.

After the Commission reported in 1977, there was really no strong action by the Congress to deal with it in a uniform way. That's really the problem. The whole issue of standards for polygraph operators, in most cases the standards are almost nil.

Mr. SIKORSKI. I am wondering, Mr. Chairman, if Mr. Blaylock would comment on your conclusion that you just don't trust Dr. Devine to come up with fair standards with regard to their use.

Mr. BLAYLOCK. Let me first address that by saying I have dealt with Dr. Devine since he was on the transition team. In my capacity as president of my union, we deal with OPM on all personnel action matters. I and other representatives of the unions sit on the pay council. We have watched the appointments of Dr. Devine.

Over the years we have had our problems with the Civil Service Commission or the Office of Personnel Management, but we always had a lot of respect for the people over there who were implementing and operating the career merit personnel system, whether it was people who headed up the classification department or benefit department or retirement, pay and so on. But most of the people who have been appointed by Dr. Devine—and you can check the background yourself—they have no background, no professional qualifications in the career field for which they have been appointed.

Mr. SIKORSKI. Did any of them receive polygraph tests prior to their——

Mr. BLAYLOCK. I don't know whether any of them have any expertise in that area, or whether they took it. I doubt that they took it.

To answer your question, Dr. Devine has made the statement two or three times that the professional qualifications is not the prerequisite for appointment to political office. It is the person's loyalty to the President's political philosophies and their ability to carry those ideological philosophies out. That, in itself, is enough for me to say that Dr. Devine does not care about the career merit system and in his other actions has definitely attempted to destroy the system set up by the Pendleton Act over 100 years ago. So we could take up a lot of your time talking about and justifying my feelings about Dr. Devine. I think we have other members of the committee who have had experiences in that area, too.

Mr. SIKORSKI. Thank you, Mr. Chairman.

Mr. EDWARDS. Mr. Kiko.

Mr. KIKO. I have one question.

On page 6 of your testimony in the last paragraph relating to polygraphs, you state:

> It would be ironic if under the Fourth Amendment we limited an employer's rights to search workers' desks, purses and homes, but not their minds for political affiliations.

Is there anything in any current polygraph examination that requires one to list what their political affiliation is, or what is the source of this particular comment on political affiliations?

Mr. BLAYLOCK. That's the problem, there are no guidelines. And when you review the experiences in the private sector of the polygraph test, they get into such things as sexual positions—you know, you name it, they have gone up and down the line, political affiliations, religion, sexual preferences——

Mr. KIKO. How about in the Government?

Mr. BLAYLOCK. Political affiliation would be, especially taking into consideration Dr. Devine's position on qualifications for appointment, I assume political affiliation is very important to them.

Mr. KIKO. But that is different than having access to security information, political affiliation. I mean, that is——

Mr. BLAYLOCK. That's what we are saying. There is nothing in the guidelines right now that sets any standards for the type of questions that would go on with this test. That's one of our problems.

Taking into consideration the politicalization that is going on in the career system, it seems to me that that would be one of their very heavy concerns. I don't think they have appointed any Democrats in OPM at this point in time, for example.

Mr. KIKO. I just wondered if previous administrations, Democratic or Republican, have used political considerations to fill jobs.

Mr. BLAYLOCK. You see, the thing that bothers us, there are a certain number of positions in Government, established by Congress, that are set aside for political appointment, and that is to make sure that any President does have people at the top level who believe in his program and work with him. But then the career system is set up below that. This comes down into the career system, so I don't think it is an unreal world to be fearful that po-

litical affiliation could be one of the issues that is brought forward in this kind of testing, especially without clear-cut guidelines prohibiting that.

Mr. KIKO. I have no further questions.

Mr. EDWARDS. Miss Gonzales.

Ms. GONZALES. Thank you, Mr. Chairman. I have two questions. First let me follow up on your discussion that you just completed.

It is correct, isn't it, that the problem you are referring to is that under this directive every single Federal agency will have to draft its own guidelines and its own regulations to implement both the prepublication review requirements and the polygraph requirements, and that is where your concern is aimed?

Mr. BLAYLOCK. Yes.

Ms. GONZALES. You're saying that right now we don't know what every Federal agency will do because every single agency will have to draft its own regulations?

Mr. BLAYLOCK. It requires that each agency do that now. That is one of our concerns. One, the expertise, and two, the rationale behind it, and then how it would be used. That's our problem.

Ms. GONZALES. My other question is, evidently what the Government is saying right now is that the use of polygraphs will be for those employees with access to classified information. However, if you read the language of the directive itself, it says that every agency that has employees with access to classified information may draft regulations so that employees in that agency can have polygraph tests.

Is that the same thing? Are they still saying in this particular language only those employees with classified information access?

Mr. BLAYLOCK. You're right. The directive begins by citing the fact that only national security information shall be classified, the way it addresses that. But then the language of it goes into each agency shall establish, and that is written throughout. It says each agency—and that could be the Veterans Administration, it could be EPA—of course, EPA may have some access to some classified information, I'm not sure. The Department of Energy probably would have access to some as you get into the Nuclear Regulatory Agency.

But this sets it up for every agency. It is written too vague and too loose and it can be interpreted in any way. The experiences we have had, not only with this administration but with previous administrations, is Federal workers' concerns elevate about the fact that in many cases they are not able to do a proper job because of agency policy and program implementation. They have been able to come to the Congress and go to the press and say, "Look, this is the reason we can't do our job. Money is being spent, there are nine supervisors and five workers" and so on. We see this being applied in that manner and we think it is dangerous.

Ms. GONZALES. Thank you.

Thank you, Mr. Chairman.

Mr. EDWARDS. Unless there are further questions, I believe this is an appropriate time to recess for a vote in the Chamber of the House of Representatives.

Thank you very much, Mr. Blaylock, Mr. Pruitt, for your very helpful testimony.

Mr. BLAYLOCK. Thank you so much, Mr. Chairman.

Mr. EDWARDS. We will recess for 5 minutes.

[Whereupon, the subcommittees were in recess.]

Mrs. SCHROEDER [presiding]. Our next witness this morning is Mr. Dennis Hayes, president of the American Foreign Service Association. We are awfully glad to have you with us this morning, so you can tell us why you represent all those "leakers."

We appreciate your being here and look forward to your testimony. If you would like to put it in the record and summarize it that would be fine.

Mr. HAYES. Yes, I would like to submit my statement for the record later on.

TESTIMONY OF DENNIS K. HAYES, PRESIDENT, AMERICAN FOREIGN SERVICE ASSOCIATION

Mr. HAYES. Madam Chairwoman, Mr. Chairman, members of the committee, first off, one of the disadvantages of going fifth, all of my good lines have already been used up, so I will try to briefly state our objections.

Actually, in its most brief form, our objections can be summed up in three words—it won't work. We feel that the directive as it has been published and as it has been explained will not add anything to the process of protecting national security, but it will have a severe cost on the public debate of issues before the country.

First off, I would like to say that as members of the Foreign Service, we recognize there is a legitimate need to keep some classified material classified. There is no question but that some information, if released, if published, could damage the U.S. national interests and may, in fact, jeopardize the fortunes, the prestige, or even the lives, of America's allies overseas.

Having said that, though, we are somewhat perplexed as to why, with all the effort that has gone into this subject, the committee that was formed and the work that was done, why it has chosen to focus on the areas that they have. We feel this committee seems to have started out with a very narrow predisposition, and that is, to find out how to stop certain leaks. They have not looked at the bigger problem, the bigger question, which is what are we doing about all this classified material out there and how can we effectively control it.

The questions that we would like to have seen come out of this committee are an explanation of what problems have arisen in the past, why is it that the existing legislation is not sufficient to control this, what affect these new proposals are going to have on the free flow of information, and also, if polygraphs and predisclosure statements are the way to go, why is it that each agency has been given such wide leeway in determining exactly what will be covered?

To go back to my initial point, which is we feel these new directives will not work, I would like to expand on that a little bit.

The first question that comes to mind is how much is classified and who classifies it. The answer there basically is that almost everybody in certain agencies has the authority to classify. In most offices, any material that is produced is automatically given a cer-

tain classification. I think there are good reasons for this; people are working, the world is constantly changing, there is new information coming in all the time, and if each officer were to sit down and carefully examine each piece of paper that is produced to determine what the appropriate classification is, they would add 6 to 10 hours on to every day and the Government foreign policy institutions would come to a complete standstill. So I don't feel the question of how things are classified can be easily answered and there is no simple answer in saying that a certain percent should be dropped or not.

The next one is who sees the classified material. Again, the answer is "just about everybody." Any major document that comes out of the State Department, or I assume any other agency, is usually signed off on by at least 20 or 25 people. Each of those 20 or 25 principals has his or her own office where there is an untold number of additional people who see this. You start with the officer who drafts it, the secretary who types it, the communicator who transmits it, the people at the posts who read it, the distribution throughout the building. I feel that in most cases the type of information we are talking about is going to be seen by 100, 200 people at a minimum.

Therefore, when a leak comes up, following along, the next question is which leaks warrant being investigated. Several of the people who have been up here today have commented that they feel there is no way to do this fairly and nonpolitically, and we tend to agree. Obviously, the decision of what leaks will be investigated will be determined by the embarrassment or the pain that someone has caused by it and, therefore, motivated to bring in this cumbersome operation.

Further, the next question along the line is who gets investigated. It is very easy to say we will focus on a particular office, but as I mentioned earlier, there is a lot of people who see these things. Where does the line stop? It is one thing to say I may be investigated or asked to take a polygraph; does it follow, then, that the Assistant Secretary, who is my boss, will also be asked? How about the Under Secretary, or how about the Secretary himself? We feel there is a line that comes along here at a certain level that the likelihood of someone being asked to submit to a polygraph will occur, and that that line will be fairly low down along the way.

Last, how many times will someone have to take a polygraph? It is one thing if there's a leak on Monday and everyone gets polygraphed on Tuesday and passes, presumably. There is another leak on Wednesday so we polygraph everybody again on Thursday, and so on down the line ad infinitum. I think somewhere along the line people may get tired of getting strapped up to the machine.

Another point I would like to make, in addition to lending my support to just about everything I have heard from the witnesses today, is the area of media contacts. In the State Department we are often accused of being out of touch with the American public. I don't believe this is so. I think, after spending the last three weekends apartment hunting, I can assure you I am not out of contact with the American people. But the fact remains, we get a lot of our information that we work on from the newspapers, from the nightly news. For instance, I don't work specifically on Central America.

It happens that one of my carpool members does, so I am daily briefed on Central America. But were my carpool to change, I would not have access to that information and in the normal course of my work I would not receive information on Central America because that is not what I do. Where I get this from is the daily newspapers.

I feel that to be an effective representative of the United States, it is important that the Foreign Service be fully briefed. There is no mechanism inside the Department to keep our people fully briefed on the events of the world and we benefit from having a free flow of exchange with the media.

In summation, I would like to go back to our basic point and ask a few key question. Will these directives be applied uniformly? I think the answer is clearly "No." Do we know exactly what these directives will entail? Again, the answer is "No." And will they be effective and will they accomplish what they are set out to do? The answer is clearly "No."

Thank you very much.

Mrs. SCHROEDER. Thank you very much, Mr. Hayes, for your marvelous and terse statement. I think you have covered a lot of ground.

Congressman Edwards, do you have any questions?

Mr. EDWARDS. Thank you, Madam Chairman.

Do you have the resources over there to do this prepublication review and within 30 days or so?

Mr. HAYES. No, sir, I don't believe we do. I think the magnitude of the task would be overwhelming. Again, it would become a matter of putting priorities on to items, and then the question of who determines what the priority is.

Mr. EDWARDS. I was talking to a Foreign Service person the other night and he or she said that there would practically be a revolt in the Foreign Service if they were strapped in and put under polygraph testing.

Mr. HAYES. I would hope so, I would expect so. I think it would seriously impede our ability to serve as effective representatives of the United States.

Mr. EDWARDS. I understand that.

Do you know of cases where the Foreign Service has been accused of damaging the national security of the United States by unauthorized disclosure of secrete information?

Mr. HAYES. I think we get accused daily. I think, as far as actual damage to the United States that has come out of information gotten out of the State Department, I don't believe that has really happened.

Mr. EDWARDS. Thank you very much. I certainly appreciate your testimony.

Mrs. SCHROEDER. Do any of the counsels have questions?

Mr. KIKO. Do you feel that equivalent security standards should apply to employees who have access to highly classified information regardless of whether they work for intelligence agencies or elsewhere?

Mr. HAYES. I think that classified material needs to remain classified if there is a threat to the national security, no question. Whether someone is at an agency that originates the information

or whether they work for an agency that handles that information, I think the standard should be the same because the damage would be the same.

In State there is already a mechanism for investigating leaks or problems that arise from disclosure of information. Our understanding is that it has worked well. We don't understand why we need something different.

Mr. KIKO. Could you explain that, what that is?

Mr. HAYES. We have a Security Office as part of the State Department, and there is an office in there that works to do investigations. At the moment, employees are given the opportunity to submit to a polygraph. It is voluntary at this point. We are in favor of that because it can go both ways. It can also exonerate employees where circumstancial evidence may point to guilt where, in fact, they are not. So it is the employees' option on whether they wish to do this or not. We are in favor of preserving that, but we don't think it should go further.

Mr. KIKO. No other questions.

Mrs. SCHROEDER. First of all, it begins to look as if this is a jobs bill. Maybe we could interpret it this way because everybody keeps saying how many more people it is going to take to do all of this.

I think your testimony about what this does for your professionalism is something we should take very seriously, because the Foreign Service has gone through an awful lot, especially in the last decade, and to add this one more thing really is an affront to your professionalism.

I guess we hear about the numerous leaks in foreign policy, and this is one of the areas that White Houses of both parties scream about. I guess the question is whether those leaks come from career Foreign Service officers or whether they come from National Security Advisers or some other such thing. When we ask the Foreign Service people, they say it is the National Security Adviser; when we ask the National Security Adviser in the White House, they say it is the Foreign Service people.

How many leaks has the Foreign Service really looked into that you know of, and how many serious leaks have you heard about that come from the Foreign Service officers?

Mr. HAYES. That is a difficult question. I do not believe I could specifically tell you how many instances there were of cases that involved Foreign Service officers leaking information. There is a conserted effort in State, as in most agencies, to keep what is truly classified, what truly would be damaging to the interests of the United States if it were to go public, to hold that information very tightly. By holding it very tightly, that usually means it is limited to the very top levels of the Department. Therefore, if information does come out, it is most likely going to come from the very highest levels.

Mrs. SCHROEDER. In the State Department?

Mr. HAYES. I think in the entire Foreign Service apparatus, yes.

Mrs. SCHROEDER. Those very high levels are very often political appointees.

Mr. HAYES. Very often, yes.

Mrs. SCHROEDER. The stuff that you hold very tightly—I assume you are not in that very tightly held ring—but for those who are in

the tightly-held ring, they would be sharing it also with the National Security Adviser; they don't withhold it from him?

Mr. HAYES. That's correct. A lot of this information is shared among the various agencies.

Mrs. SCHROEDER. Is there any kind of a chart this committee could see of what level Foreign Service officers would be in that tight ring, and how many of those are political appointees?

Mr. HAYES. We could probably come up with something that would show the basic organization and how it is spread out and what the different areas of responsibility, either geographical or functional, would be. I think it would be, unfortunately, very difficult—for exactly the same reasons that we feel these directives won't work—to try to focus and say in this case only these 10 people or 15 people knew this information.

More likely, it is going to be, by the time it filters out to all the different levels, it is going to be a much higher number, including political appointees, career officers, you name it, that received this access. So it would be almost an impossibility to tightly focus on the question.

Mrs. SCHROEDER. If you are a political appointee and you leak something and you find the President is most dismayed about the leak, are you apt to blame a career officer?

Mr. HAYES. That is one of our biggest fears, that leaks are fine as long as they accomplish what the leaker wanted and the leaker isn't found out by someone who is unhappy about that leak. When a leak occurs and it gets the wrong reaction, or somebody is in trouble, I feel that——

Mrs. SCHROEDER. You look for a professional head.

Mr. HAYES. Well, yes. You look for somebody who happens to be standing around and not too busy at that moment and see if you can direct the ire at them.

Mrs. SCHROEDER. As I understand your description of the process, it really becomes one person's word against the other.

Mr. HAYES. Yes, it boils down to that—I'm sorry, it does not boil down to that, because I don't think it can ever get to that point where it is just one or the other.

This is where the voluntary use of polygraphs might come in and is acceptable to us, that if someone has been unjustly accused, it may come down to circumstantial evidence or one word against another, and a polygraph might be useful in determining who is responsible.

Mrs. SCHROEDER. Are you aware of any leaks from National Security Advisers?

Mr. HAYES. I think it is common knowledge that a lot of people in national security agencies, the State Department and all the different agencies, have excellent relations with the press and that a lot of information is transmitted in both directions.

Mrs. SCHROEDER. Your diplomacy training is showing.

[Laughter.]

Mr. EDWARDS. I have a question, Madam Chairwoman.

Who over in the State Department or the Foreign Service is responsible for classifying information as SCI, sensitive compartmented information? I mean, at what level? Would there be several people who could do this and have a special stamp?

Mr. HAYES. On that, I think it would be at least at the Assistant Secretary level for various areas. Usually the determination of what classification a document is given, it is tried to be held at the working level on the theory that they are the ones who know how sensitive a piece of information is and what damage could occur.

Mr. EDWARDS. But your testimony is that hundreds or even thousands of pieces of paper are classified automatically without any real examination being made as to see whether or not it should be classified.

Mr. HAYES. That's correct. But there are a lot of different levels of classification that go out in all directions. What we are concerned about primarily is the broad range of just the confidential, secret, top secret classifications, which just about everything is labeled as.

Mrs. SCHROEDER. You now publish a high-quality journal. Is that submitted for prepublication at this point?

Mr. HAYES. No, it is not.

Mrs. SCHROEDER. As you read this directive, would it have to be?

Mr. HAYES. I think there are quite a few issues, quite a few articles, that we publish that would fall under this directive, yes, ma'am. We would not be happy about that.

Mrs. SCHROEDER. Counsel, did you have a question?

Ms. GONZALES. Thank you, Madam Chairwoman.

One of the claims that has been made about the directive is that there is provision for adverse consequences that might be suffered by an employee if they refuse to take a polygraph examination. One of the adverse consequences would be the loss of access to classified information.

How important is that? Is that equivalent to the loss of a job for some people?

Mr. HAYES. Yes; that is like being banished into the darkness. Again, everything we deal with is classified. First off, all members of the Foreign Service have to have a top secret clearance; that is one of the conditions of service. So the loss of the right to have access to classified material is basically the loss of your job. There are no jobs that are out there that anyone would particularly be interested in that you don't need a security clearance for.

Ms. GONZALES. Thank you.

Mrs. SCHROEDER. Thank you very much. We really appreciate the light you have shed on this subject this morning.

Mr. HAYES. Thank you.

Mrs. SCHROEDER. Our final witness this morning is Norman Ansley, who is the Chief of the Polygraph Division at the National Security Agency. We have asked him to testify as an individual expert on polygraphs and will limit our questions to the art of lie detection and not to the policy behind the order.

We thank you for coming, since most of us don't know that much about all the technical aspects of this. We appreciate having your testimony.

TESTIMONY OF NORMAN ANSLEY, CHIEF, POLYGRAPH DIVISION, OFFICE OF SECURITY, U.S. NATIONAL SECURITY AGENCY

Mr. ANSLEY. Thank you for inviting me.

I am Norman Ansley and I am Chief of the Polygraph Division of the National Security Agency, which is part of the Department of Defense. I understand you would like me to describe polygraph instruments, polygraph techniques, and discuss validity.

The current instrument used by the Federal agencies is a product of 85 years of cooperative research between scientists and the practitioners. The physiological channels they now record are the product of that lengthy research, and the instruments are of scientific quality. We record respiration, electrodermal response, and cardiovascular responses. The information is recorded on a moving chart which moves at 2½ millimeters per second. That's about 6 inches a minute.

In each of the polygraphic examinations there are at least two polygraph charts of several minutes each. In more complex situations, there may be as many as six or seven charts. The minimum time for an interview is about 1 hour, sometimes 1½ to 3 hours, occasionally longer.

In the pretest interview the subject of the examination is read a full statement of his rights. In all cases, that includes mention of the fifth amendment right to avoid self-incrimination. It is mentioned that the subject may refuse to answer any questions, and that the subject may terminate the interview at any time. In a criminal case, the Miranda warning is included, or article 31 of the Uniform Code of Military Justice if they're in the military service.

When the polygraph is used in the determination for clearance and access to classified information, we advise the person of the Privacy Act of 1974, which includes a discussion of the principal purposes for which the information will be used, and mentions that the disclosure of the information to us is voluntary and that the information will be considered confidential. It warns a person that any information provided relating to the violation of criminal laws may be disseminated to law enforcement agencies.

Following the explanation of the subject's rights, there is a review of the subject's general health and fitness to take the polygraph examination. After that the examiner reviews the issues that are to be resolved during the polygraph examination, which includes an opportunity for the subject to explain in detail their views of the matters under consideration. Working with the examiner, the subject and the examiner arrive at mutually acceptable questions to resolve those issues.

When the technique involves control questions, these questions are also reviewed in discussion with the subject and they must be agreeable to the subject. This is also true of irrelevant questions and other questions that are a part of the technique.

The testing technique is then explained in detail to the subject. The attachments which are placed on the subject are also explained in detail. The subject is asked to sit still, pay attention to the questions, answer the questions with a definite "yes" or "no," as appropriate. Upon completion of the test series, the examiner makes an initial examination of the charts and the results are given to the subject.

If those results indicate deception, the subject is told that and the specific questions are discussed. The subject is given every op-

portunity to explain his reactions to those questions and to make any admissions he chooses to make.

Now, just as there are several standardized intelligence tests and standardized aptitude tests, there are also a number of standardized polygraph test formats. Each of these has its own name, its own format, and specific applications. Within the Federal Government, these techniques include general comparison, read control question technique, positive control question technique, relevant or irrelevant technique, building knowledge technique, eco-tension technique, and there are some standard variations of these. I am prepared to discuss these in greater detail if the committee so desires.

The validity of polygraph techniques has been the subject of research over a period of more than 85 years, involving scientists in over a dozen countries. Lengthy research projects have been conducted in the United States, Japan, Israel, Czechoslovakia, Canada, Poland, all of them arriving at rates of validity significantly above chance, and high enough to indicate the positive value of the technique.

There are two kinds of polygraph research. One involves the followup of real criminal cases in which the polygraph results are compared with either the final outcome of the case or an independent adjudication of the facts in the case file. More than 1,900 criminal cases have been followed up in the United States, Israel, Poland, Canada, and Japan, and the average agreement of the polygraph test results with the final conclusion of the case is 96 percent. More than a dozen such research projects have been conducted, with the largest one being by the Commonwealth of Virginia, in which the validity of the 959 cases they followed up was 98.3 percent.

The other methods of research has been to conduct mock crimes in laboratory settings and conduct polygraph examinations to determine the frequency with which these crimes can be detected. Some of these lab methods are intended to experiment with techniques, some to test types of equipment, and some to look at the variables among subjects. For example, quite contrary to our expectation, two lengthy studies of psychopaths indicated that they are just as readily detected by the polygraph as is the normal population. However, in testing illusional psychotics, they produce a much higher rate of inconclusive and incorrect results.

Approximately 30 laboratory studies involving a total of more than 1,000 subjects have arrived at an average validity in excess of 93 percent. These studies also indicate that polygraph is efficient in a variety of cultures.

Such studies have also been used to validate the specific channels of physiological information that we now rely on; that is, respiration, electrodermal response, and cardiovascular response. The difference between the validity and 100 percent is not entirely a matter of error. In practice, unlike the laboratory experiments, the examiner always has the option to call the test results inconclusive. That option is extremely important and it is frequently exercised, as it is the strongest protection we have against making errors.

In addition, in Federal agencies all polygraph examinations and polygraph reports are reviewed by supervisors to be sure that the polygraph charts support the conclusion of the examiner.

That concludes my introduction. I am here to answer any technical questions you have. I am not prepared to answer questions of policy, as these will be answered by other witnesses from the Defense Department, I believe, next week.

Mrs. SCHROEDER. Thank you very much.

Congressman Edwards?

Mr. EDWARDS. Thank you.

Mr. Ansley, I was reading in "Dear Abby's" column the other day where somebody said they had "beat the machine." This person was addicted to drugs and alcohol and a wayward way of life, and had lied all the way through and the machine didn't catch it. Can that happen?

Mr. ANSLEY. Possibly. I think what they suggested in that column was that they had practiced dissociation by thinking of something else. In a proper polygraph test, the person really has to think about the questions, and particularly since some are answered yes and some are answered no, they really have to pay attention.

Of course, I have no knowledge of the facts in that case, I really don't.

Mr. EDWARDS. Do the operators vary quite generally throughout the United States? I am sure where you work you have expert operators, well-trained, isn't that correct?

Mr. ANSLEY. Yes.

Mr. EDWARDS. But we have heard—and we have had some connection with the subject and some witnesses before us—that you could just as well get an operator who doesn't know how to work a machine and the results will be all out of whack; is that correct, also?

Mr. ANSLEY. I can't speak for the whole profession or everyone in the United States, but from what I see, I don't think the situation is anywhere near as bad as that described. There may be some incompetent examiners in the field, but most of them are well trained, properly trained, and have served internships. Many of them also are retired from Federal service that are in private practice.

Mr. EDWARDS. Are there national standards, State standards?

Mr. ANSLEY. Yes; the American Polygraph Association has set national standards which are closely followed. Many of those are reflected in state legislation or in the issuances of licensing boards, so that they become formalized. There are principles of practice set up by the American Polygraph Association.

They also accredit the polygraph schools. There are more than 30 schools in the United States, and some in foreign countries have been accredited and are regularly inspected by the American Polygraph Association. They set up standards for the teaching of physiology, psychology, polygraphic technique, and chart interpretation.

Mr. EDWARDS. Your tests indicate the reliability is about 95 percent day in and day out?

Mr. ANSLEY. Yes; I believe it is that, perhaps a little higher.

Mr. EDWARDS. Thank you very much.

Mrs. SCHROEDER. Thank you.

Counsel, do you have any questions?

Mr. KIKO. Following up on one question, could you explain the qualifications that one has to have in your agency to be a polygraph examiner?

Mr. ANSLEY. We are part of the Defense Department and the Defense Department establishes standards. Those standards not only include the appropriate clearance, a minimum age of 25, a baccalaureate degree, and also specify that we take a polygraph examination as part of understanding it before we are sent to school. It also involves 3 months of intensive polygraph training at a Federal school, which is at Fort McClellen, Ala., and then a year of intensive internship in which their work is closely supervised.

Mr. KIKO. And how many polygraph examiners do you have in your particular agency?

Mr. ANSLEY. About 28 in our agency.

Mr. KIKO. How long does a particular polygraph examination take?

Mr. ANSLEY. A minimum time of about an hour, as long as is necessary. An average perhaps is 1½ to 3 hours, occasionally longer. Whatever time it takes to work with a person.

Mr. KIKO. The individual knows the questions that are asked ahead of time?

Mr. ANSLEY. Absolutely, and has discussed them, too. He is not just told what he is going to be asked, but it is a matter of discussion and agreement.

Mr. KIKO. I have no further questions.

Mr. EDWARDS. I have one more question to follow up what Mr. Ansley said to me.

I believe you said, Mr. Ansley, that one could beat the machine with a process called dissociation?

Mr. ANSLEY. I would say if the examiner was incompetent, that is possible. But it is not with regular techniques used in the Federal service where they are widely taught. You know, that would not be an appropriate countermeasure, not a very effective countermeasure.

Mr. EDWARDS. Thank you.

Mrs. SCHROEDER. The procedures that you describe, that are for the Defense Department or are those Government-wide?

Mr. ANSLEY. Well, I think they are generally Government-wide. Because of the discussions with the Federal Interagency Polygraph Committee, we all discuss the same kinds of techniques. Moreover, almost all Federal examiners are trained in the same school, the same Federal school——

Mrs. SCHROEDER. Are you sure they are Government-wide, or you think they are Government-wide?

Mr. ANSLEY. I'm sorry?

Mrs. SCHROEDER. Are you sure they are Government-wide, or do you think they are Government-wide, because I notice you kept saying it was your agency.

Mr. ANSLEY. There may be minor differences between different agencies, in the Treasury Department or Justice Department. But basically we all use the same polygraph techniques and the same equipment.

Mrs. SCHROEDER. And you could contract out to have this done, is that correct?

Mr. ANSLEY. We have not done so.

Mrs. SCHROEDER. But you could?

Mr. ANSLEY. It hasn't occurred to me, but I suppose that's possible. There would be problems, though, with the handling of classified information and with clearances, and the requirement that they be experienced Federal investigators which is always a prerequisite in all the agencies.

Mrs. SCHROEDER. And that means they have to be licensed?

Mr. ANSLEY. Yes, or certified in the Federal service, licensed in state circumstances, which amounts to pretty much the same thing.

Mrs. SCHROEDER. How long does it take to train a person?

Mr. ANSLEY. There is 3 months of classroom work and practice testing, and then a year of internship.

Mrs. SCHROEDER. Tell me what you look like when you take one of these tests. What do they attach to you?

Mr. ANSLEY. There are rubber tubes placed around the chest and abdomen; there is a blood pressure cup which everybody is familiar with——

Mrs. SCHROEDER. Through your clothing?

Mr. ANSLEY. No, over the clothing. And two small electric plates that are placed on the fingertips. That is the extent of the attachments.

Mrs. SCHROEDER. And it is attached to a machine that is about how big?

Mr. ANSLEY. The instrument can be placed in a briefcase.

Mrs. SCHROEDER. And can the person who is being tested watch needles go back and forth?

Mr. ANSLEY. No, because they then will react to their own reactions, so they don't watch the test but they may see the charts afterward.

Mrs. SCHROEDER. Are you trained on how to watch the test? I mean, do you have to have a poker face?

Mr. ANSLEY. Yes.

Mrs. SCHROEDER. So you "know when to hold' em, know when to fold' em" type of thing?

Mr. ANSLEY. Yes. You keep an even tone, since the person isn't watching you during the test. The one exception is where they may be deaf. The examiner conducts all the questions in a monotone so as not to create a response.

Mrs. SCHROEDER. Do you tape it so that you know what he or she is doing?

Mr. ANSLEY. Yes; we do. All of our polygraph examinations are taped.

Mrs. SCHROEDER. When you are giving one of these tests, do you watch the needle go back and forth at the same time that you're talking, or is that recorded and you look at it later?

Mr. ANSLEY. It is recorded, but I can watch it while it is going on. I am usually watching the person who is taking the test, but I do have to look down and make marks on the chart.

Mrs. SCHROEDER. If an employee refuses to take the test he or she loses their job. How can you say taking the test is voluntary?

Mr. ANSLEY. I think that is a little out of my department. All I can tell you about voluntariness is that we can't test somebody who will not cooperate. I'm saying not only do you cooperate with the test, but you physically have to cooperate——

Mrs. SCHROEDER. I see. You're talking about physically cooperating rather than——

Mr. ANSLEY. And mentally, too, because they have to discuss with us the questions and they have to agree that the questions are acceptable and that the questions are limited to the issue under investigation, so that the questions are appropriate.

Now, when a person goes through all that procedure with you, not only do they sign a legal statement, but they have actually gone through all these procedures with you. They have discussed the questions with you. They voluntarily cooperate during the testing. I have to think that it's voluntary.

But if you are talking about policy with respect to whether or not they take the test, I think that is really out of my line.

Mrs. SCHROEDER. So when you said voluntary, you were meaning in that sense?

Mr. ANSLEY. Yes.

Mrs. SCHROEDER. Congressman Edwards.

Mr. EDWARDS. But you're still sitting there with Uncle Sam, and the majesty and the power of the Federal Government is asking you these questions in this monotone you described.

If you were the subject, with your expertise and with your background, and you were determined to disassociate every question all the way through—you really aren't listening because you are training yourself not to listen—how do you think you would come out? Do you think the machine would catch you?

Mr. ANSLEY. No; and I think they would probably use a technique that would make it impossible for me to do that. If I don't know the sequence of the questions and I do know that some are answered yes and some are answered no, I had better pay attention so I give the right answer.

Also, in someone dissociating, they generally have a delayed answer. It isn't responsive to the question. They are trying to listen only to the sounds and not to the content of the question. So it is very difficult for the person to answer yes or no if he doesn't know what the content of the question is. If he listens to the content of the question, he is no longer dissociating.

Mr. EDWARDS. Have you run into people who have been able to successfully use this method of dissociation?

Mr. ANSLEY. No; that hasn't been a practical problem for polygraph examiners.

Mr. EDWARDS. And you don't think you could beat the machine yourself with all the experience you have had?

Mr. ANSLEY. I don't think so. I have taken a number of tests.

Mr. EDWARDS. Do you know anybody that works with you that has and could?

Mr. ANSLEY. No; except to just refuse.

Mr. EDWARDS. A hundred percent of your operators would not be able to deceive the machine?

Mr. ANSLEY. I don't know of any practical manner for an examiner or psychologist to use that would assure him with certainty

that he is going to pass a test when he is, in fact, deceptive. Of course, nondeceptive people have no reason to engage in countermeasures. They want you to succeed. They want that examiner to be accurate. It is only the deceptive person that is hoping the examiner will not succeed. So the mere presence of countermeasures itself is somewhat indicative, although we don't make a conclusion——

Mr. EDWARDS. Or the person who is just in a funk?

Mrs. SCHROEDER. Tranquilized.

Mr. EDWARDS. Thank you.

Mrs. SCHROEDER. If there is a story in the newspaper that is a leak of highly classified information, and let's say that information was in three or four departments cables, different cables, different departments and so forth, you are given the mission to find out who leaked it. How do you do that? How do you narrow down the kind of questions?

Mr. ANSLEY. First, the polygraph never stands alone. There is always an investigation first to narrow the number of people to be examined, to narrow the issues. If it involves more than one agency, one agency would be in charge of the direction of that investigation and the circumstances, probably the Federal Bureau of Investigation. Then they would ask for the cooperation of other agencies. So you don't work in a vacuum. You have to look at the particulars of the case.

Then when you talk to the indivdual person and their experience and precisely what role they have in it, you have to rephrase those questions so that they are appropriate. So there isn't any way that I can give you a general answer to that.

Mrs. SCHROEDER. I guess what I am digging at, you don't use this for a "fishing expedition"?

Mr. ANSLEY. No. It is not used at the onset of an investigation. In fact, the regulation in the Defense Department prohibits that. There must be an investigation. People must be interviewed before they are given a polygraph exam.

Mrs. SCHROEDER. Do you know if that is just a Defense requirement?

Mr. ANSLEY. That is a Defense Department requirement. I really can't speak whether that exists in the other agencies. But as a matter of practice, I know that polygraph examinations are given as an adjunct to the investigation, not in place of it.

Mrs. SCHROEDER. Counsel, do you have a question?

Ms. GONZALES. Thank you.

One of the concerns that has been raised about polygraph tests is that while it is true the machine may accurately register or measure stress of the subject, it is incapable of discriminating or determining the source of that stress; is that correct?

Mr. ANSLEY. Yes.

Ms. GONZALES. Do I then take it that the role falls to you to determine what the source of the stress is, you as the operator?

Mr. ANSLEY. No. The testing format designed by psychologists and psychophysiologists is designed to take account of the physiological responses and give you a basis for statistical comparison, so it is not just a subjective review of charts.

Ms. GONZALES. But you are still determining from whatever factors those are, you are trying to determine what it was that caused the stress to register on your machine based on those different guidelines that you mentioned?

Mr. ANSLEY. By having the test given in isolation, where there is the absence of outside influences, we are looking to the question content to be the cause of the response. So that is why there is a variety of different kinds of questions in a testing format, as there are in all psychological tests.

In other words, the adjudication of the chart is purely an arbitrary thing. That is done on a statistical basis.

Ms. GONZALES. The last question I have, one point that was made in earlier hearings on this—I can't remember whether it was on the Senate or House side—earlier hearings on this issue, their sense was that any well-trained investigator and interviewer who spends as much time as a polygraph operater does with an individual, interviewing them, asking the same kind of questions you ask in your pretest, having access to the same kind of files or information that you do, asking—without using the machine, but asking the same kinds of questions that you do, repeating them over and over, if necessary, and just having that kind of lengthy, maybe 2-hour discussion or whatever, that they would probably get about the same type of—they would at least get more than a 50-percent right assessment of an individual and probably much higher than what your regular interviews find.

Therefore, the question really is, How much more does a polygraph machine itself add? How would you respond to that?

Mr. ANSLEY. I think two things are lacking there. Experience is certainly a good teacher but there is no precision involved. It may lack the cooperation of the subject, where the person may not have that opportunity to clarify the issues——

Ms. GONZALES. In the discussion of——

Mr. ANSLEY. You don't have the same controls over that interview that you would in a polygraph interview.

Ms. GONZALES. But if the person had the same training as you did, in terms of how to clarify those kinds of questions, would they then be in the same situation that you are?

I guess my last point would be, in fact, what you are saying is that the lie detector machine is a scientifically reliable instrument; yet, at least in criminal cases, the courts have found that they will not accept it on a par with other scientific information such as fingerprints and voiceprints and all that; is that not correct?

Mr. ANSLEY. I believe that 26 States admit polygraph evidence under stipulation, and at least 3 States over objection of opposing counsel, and over half the U.S. Circuit Court judges have the discretion to admit polygraph evidence if they choose to do so.

Ms. GONZALES. So it is left on an individual basis?

Mr. ANSLEY. It is usually up to the discretion of the trial judge.

Ms. GONZALES. Thank you.

Mrs. SCHROEDER. Thank you very much. With that, we will close today's hearing. We thank everybody who was here to participate, and we thank you, Mr. Ansley.

[Whereupon, at 12:05 p.m., the subcommittees were adjourned.]

PRESIDENTIAL DIRECTIVE ON THE USE OF POLYGRAPHS AND PREPUBLICATION REVIEW

THURSDAY, APRIL 28, 1983

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS, COMMITTEE ON THE JUDICIARY; AND THE SUBCOMMITTEE ON CIVIL SERVICE, COMMITTEE ON POST OFFICE AND CIVIL SERVICE,

Washington, D.C.

The subcommittees met, pursuant to call, at 9 a.m., in room 2141, Rayburn House Office Building, Hon. Patricia Schroeder (chairwoman of the Subcommittee on Civil Service) presiding.

Present: Representatives Schroeder, Edwards, Kastenmeier, Sensenbrenner, Pashayan, and Gekas.

Staff present: Helen C. Gonzales, assistant counsel; Philip Kiko, legislative assistant; and Andrew A. Feinstein, staff director, Subcommittee on Civil Service.

Mrs. SCHROEDER. The subcommittee will come to order. I think it may be the busiest morning on the Hill, so we are off and running at a rapid pace. I want to thank everyone for being here.

I would like to recognize the cochairman, Congresssman Edwards from California, at this time.

Mr. EDWARDS. I thank the chairwoman.

I am looking forward to the testimony from the expert witnesses that we have today. I hope that some of the witnesses will direct their testimony to the allegation that there has been this tremendous increase in leaks of classified information. If there has been, it is something that Congress doesn't know very much about. So I hope that we will hear more about that from the witnesses today. I look forward to the testimony.

I thank you.

[The statement of Mr. Edwards follows:]

OPENING STATEMENT BY CONGRESSMAN DON EDWARDS

Today we convene our second hearing on issues raised by the March 11th Presidential Directive on Safeguarding National Security Information. These hearings are jointly sponsored by the Judiciary Subcommittee on Civil and Constitutional Rights and the Post Office and Civil Service Subcommittee on Civil Service, chaired by Congresswoman Schroeder.

Last week our witnesses expressed concern regarding the scope of the Directive. More disturbing, however, to them and to the Subcommittees sponsoring these hearings is the thrust of the Directive especially when taken in the context of other Administration actions to stem the free flow of information in this country.

The President's Directive was based on recommendations contained in an interdepartmental report on Unauthorized Disclosure of Classified Information. The Report, and the President's Directive, rationalize the broad requirements in the Directive on the fact that there has been a tremendous increase in leaks of classified

information. However, neither the Report or the President's Directive provide evidence of how leaks have damaged the national security.

While there is a recognized need to restrict the release of potentially dangerous and sensitive information, that needs for public access to information which is central to a free and open society.

This morning we will hear testimony from a number of Administration witnesses on the issues raised by the President's Directive, and the Report upon which it was based must be balanced against the equally legitimate need.

Mrs. SCHROEDER. Thank you.

Congressman Sensenbrenner?

Mr. SENSENBRENNER. I have no opening statement.

Mrs. SCHROEDER. I am going to put my opening statement in the record in the interest of time. We will put all of the witnesses' statements in the record and, if they could summarize, that would be very helpful, because at about 11 o'clock we are anticipating all sorts of chaos breaking out around here as we go into session.

[The statement of Mrs. Schroeder follows:]

STATEMENT OF REPRESENTATIVE PAT SCHROEDER

Chairman Edwards, since we last convened these hearings a week ago, there have been a couple of significant developments relevant to this issue.

First, we learned in yesterday's paper that Dr. John F. Beary III, acting Assistant Secretary of Defense for health affairs, wrote Defense Secretary Weinberger last December to say that polygraphs are an unreliable instrument which "misclassifies innocent people as liars." This devastating memorandum, which I ask be made part of the record, suggests that there is little scientifically acceptable analysis of the polygraph and that analysis which exists does not support the validity of the lie detector. As you know, the Presidential Directive we are looking at would greatly expand the use of the polygraph in the Federal government.

Second, we learned that a group of lawyers, administrators, and investigators in the Office of Civil Rights of the Department of Education have had their positions reclassified as "critical-sensitive" and are now required to undergo rigorous security clearances, which include full field investigations covering the last five years of their lives. Those employees of the Department of Education who are subject to the investigations, as well as many of us who read the story, wondered what defense plans or intelligence information was possessed by these lawyers and investigators. In reviewing the underlying Executive order and regulations, we learned that "national security" is defined so broadly that virtually any Federal worker could be subject to a lengthy and potentially embarassing fishing expedition into their lives. Section 6 of the Presidential Directive tells the Attorney General to toughen up this vague and frightening security program.

These two events reinforce and supplement what we learned at last week's hearing. We learned that prepublication review is quick and painless if you are a former Cabinet official or an advocate of Administration policy and is lengthy and nitpicking if you are not. We learned that the government does not have enough polygraph examiners to conduct all the polygraph examinations which the directive mandates and so the process of giving polygraph exams will, of necessity, be selective. We learned that this directive is really only one aspect of the multi-faceted war against public information being waged by this Administration.

Virtually every aspect of this directive—prepublication review, polygraph examinations, limitations on access to the media, loyalty security screening of employees—is certain to be applied selectively. The consequences of this selectivity are foreseeable and frightening. This directive will breed a new level of timidity into Federal workers. Their willingness to speak out, even internally, will vanish. This directive will cut off the public from much of the information it needs to make informed decisions. A democracy just cannot function without free flow of information.

I call on the President to reconsider and withdraw this directive. Its cost to our government is too high.

Mrs. SCHROEDER. Our first witness this morning is Mr. Richard Willard, Deputy Assistant Attorney General in the Civil Division in the Department of Justice. Mr. Willard was chairman of the

interdepartmental group which issued the report on unauthorized disclosures of classified information. Since the President's directive was based on the recommendations in that report, we look forward to your discussing with us this report, Mr. Willard. The floor is yours.

TESTIMONY OF RICHARD K. WILLARD, DEPUTY ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION, DEPARTMENT OF JUSTICE

Mr. WILLARD. Thank you, Madam Chairwoman.

Since my prepared statement is being submitted for the record, I will not read it at this time.

In addition to the prepared statement that was submitted to the committee, we have also supplied, at your request, numerous documents, including the report of the interdepartmental group which I chaired and which formed the basis for the President's directive, as well as other background information and memorandums on these subjects.

I believe that we have provided the committee with a cross-section of information upon which the President relied in deciding to issue his directive on this subject.

Mr. SENSENBRENNER. Pardon me, Madam Chairwoman. If that report of the interdepartmental group has not been included in the record, I would ask unanimous consent that it be so at this time.

Mrs. SCHROEDER. Without objection.

[The information follows:]

[See, Willard Report, Appendix 2]

[The statement of Mr. Willard follows:

STATEMENT OF RICHARD K. WILLARD, DEPUTY ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION

Thank you, Madam Chairwoman and Mr. Chairman. I appreciate the opportunity to describe for you the background and purpose of President Reagan's March 11, 1983, directive on safeguarding national security information.

Unlawful disclosures of classified information damage national security by providing valuable information to our adversaries, by hampering the ability of our intelligence agencies to function effectively, and by impairing the conduct of American foreign policy. The President's directive requires that additional steps be taken to protect against unlawful disclosures of classified information.

This directive is based on the recommendations of an interdepartmental group convened by the Attorney General. I served as chairman as this group, which also included representatives designated by the Secretaries of State, the Treasury, Defense, Energy and the Director of Central Intelligence. Copies of the report of this group, which is unclassified, have been furnished to the Committee.

SCOPE OF DIRECTIVE

The directive deals only with disclosures of classified information. By Executive Order, the only information that can be classified is information which "reasonably could be expected to cause damage to the national security" if released without proper authorization. The Executive Order prohibits the use of classification to conceal violations of law, inefficiency or administrative error, or to prevent an embarrassment to a government agency or employee.

The unauthorized disclosure of classified information has been specifically prohibited by a series of Executive orders dating back to 1940. Such disclosures also violate numerous more general standards of conduct for government employees based on statutes and regulations. Moreover, in virtually all cases the unauthorized disclosure of classified information potentially violates one or more federal criminal statutes.

SUMMARY OF PROVISIONS

The directive imposes additional restrictions upon government employees who are entrusted with access to classified information, and upon government agencies that originate or handle classified information.

More employees will be required to sign nondisclosure agreements, including provisions for prepublication review, such as were approved by the Supreme Court in *United States* v. *Snepp* (1980).

Agencies will be required to adopt policies concerning contacts between journalists and persons with access to classified information, so as to reduce opportunities for unlawful disclosures. However, no particular policies are mandated in the directive.

Agencies will be required to adopt new procedures so that unlawful disclosures of classified information will be reported and analyzed more efficiently.

The directive also establishes a new approach to investigating unlawful disclosures to replace the past practice of treating such matters as purely criminal investigations.

FBI's authority is clarified to permit unlawful disclosures of classified information to be investigated, even though it is anticipated that a successful investigation will lead to administrative sanctions (such as demotion or dismissal) rather than criminal prosecution.

All agencies with employees having access to classified information will be required to assure that their policies permit use of polygraph examinations under carefully defined circumstances.

There will be no change in the current practice of targeting investigations at employees who are suspected of unlawfully disclosing classified information, rather than at journalists who publish it.

The directive provides that employees found by their agency head to have knowingly disclosed classified information without authorization or to have refused cooperation with investigations will be subject to mandatory administrative sanctions to include, as a minimum, denial of further access to classified information. Existing procedural safeguards for personal actions involving federal employees remain unchanged.

CONCLUSION

Unlawful disclosure of classified information is a long-standing problem that has increased in severity over the past decade. This problem has resisted efforts at solution under a number of Administrations.

This directive is not expected to solve the problem overnight. It is designed to improve the effectiveness of our present program and, over time, to reduce the frequency and seriousness of unlawful disclosures of classified information.

Thank you very much, Madam Chairwoman and Mister Chairman. This concludes my statement. I would be happy, of course, to answer any questions you or the committee members may have.

Mr. WILLARD. In view of the fact that we have provided already the committee these materials, I have nothing further to say by way of an opening statement, and I am prepared to answer any questions that you or the other members have.

Mrs. SCHROEDER. As you know, we had a day of hearings on this before in which we asked lawyers how they they would interpret them and what would they do if they had clients who were in this position, and so forth. To these committees I think it was really rather frightening what they were saying. It worried us very, very much.

The problem we have had is understanding what evidence there has been other than a few anecdotal stories that the panel really had the hard evidence of unauthorized disclosures that really moved you to go this far in the direction that you went.

Mr. WILLARD. Madam Chairwoman, the group that I chaired was mostly a legal group that looked at measures that could be taken to solve the problem. Those of us who participated in the group

were aware of numerous instances of unauthorized disclosures of classified information.

Mrs. SCHROEDER. We are not. Could we have those? We are not aware of those. All we are trying to do is find out what has caused this response.

Mr. WILLARD. I understand. We cannot provide examples of those unauthorized disclosures publicly, because that would require getting into classified information.

There are two reasons for that. One is that, although information may leak out in the press, for the Government to officially acknowledge that that was classified information would confirm its accuracy and compound the damage to the United States caused by the disclosure itself. This is a principle that has been recognized by the courts supporting a basis for continued classification of this information, even after it has already come out.

The second reason we can't disclose examples, and more important, is that, in order to describe how a piece of information harmed the country's interests when it was disclosed, we would have to disclose additional classified information. For example, the fact that there are 100 B-15 bombers in Patagonia may be classified information and, if that gets out, it could harm the country. But to explain how that compromised our intelligence network operating in Patagonia would further compound the damage, because to explain that would require disclosing a lot more classified information. So, for those two reasons, we can't publicly give examples.

We did receive a letter from Chairman Edwards 2 days ago asking us to provide these examples to the committee. We responded yesterday that we would be pleased to provide those examples to the committee in an executive session. We would be pleased to meet with your staff to arrange security precautions so that they can be provided.

Mrs. SCHROEDER. I guess that is really all that is left to us. As I say, from our prior hearings, there appears to be very serious harm, I think, in as broad and as comprehensive a restriction as you are putting on people. I think it is terribly harmful to the public.

It just seems to me that it is incumbent to make the case to the public as to why you need to do that. But you are saying that you cannot do that, you can only do that secretly.

Mr. WILLARD. That is correct, Madam Chairwoman.

This is not a new problem. It has been studied by congressional committees in the past. In 1978 and 1979, the House and Senate Intelligence Committees did hold hearings on the subject of leaks of classified information and did prepare reports. We have never suggested that it is a problem that has greatly increased in severity in recent years. It is a problem that has always been serious and has continued, and it has been studied by Congress in the past.

Mrs. SCHROEDER. Our concern is to make sure that the leaks that you are talking about have truly harmed the national interests rather than political interests.

As you know, there are things that can be embarrassing and, as the author of the whistleblower legislation that we passed a couple of years ago, we know that some of the most stringent reprisals have been against whistleblowers who have blown the whistle on

things that people should have known about. The very strong concern I have is that this type of thing will really inhibit whistleblowers at one end; the other end is people who have left the administration or left the Government, I think, will have incredible restrictions put upon them when it comes to writing op-ed pieces or any other such thing.

In other words, it really appears that there will be one party line and it will be very difficult to deviate from that. You can't have whistleblowers and you can't have people who have retired criticize, and it is all in the name of some national security problem, but I really question whether it isn't more a political problem.

Mr. WILLARD. Madam Chairwoman, you mentioned a couple of aspects of the directive.

With regard to whistleblowers, as I am sure you are aware, the whistleblower law draws a clear distinction between people who blow the whistle on unclassified matters and people who disclose classified information. The Whistle-Blower Act does not protect Government employees who disclose classified information to the public. It provides instead that they can be protected if they disclose the information to an inspector general or to the special counsel of the Merit Systems Protection Board.

We think that represents a very sound judgment on the part of Congress that classified information deserves protection, and that just because someone thinks that he may be uncovering wrongdoing does not justify any Government employee citing unilaterally to make that classified information public.

Mrs. SCHROEDER. I hear what you are saying, except, once again, we haven't even seen that whistle-blower protection being extended. There has been tremendous trouble. We thought we wrote the law well, but we don't see it being administered well. That may be part of the suspicion that I have when I see this, and once again, trust in big brother, we are going to be fair as we look at all of these things, and so forth.

I have taken much too much time. Chairman Edwards, did you have some questions?

Mr. EDWARDS. I would first like to yield to the gentleman from Wisconsin.

Mr. SENSENBRENNER. Thank you very much.

First of all, I appreciate your willingness to disclose chapter and verse to this committee in an executive session. I think that this has been an unusual willingness to level with the committee in a manner which does not compromise classified information, and which allows the committee members to reach their own conclusions on whether the leaks were in fact severe enough to require the new regulations that are being proposed.

I would like to elaborate a little bit more on the questions that Congressperson Schroeder has stated. The regulations very clearly apply only to Reagan administration officials. They do not apply to officials of previous administrations. It is my understanding that—even though I was out of town last weekend—there were op-ed pieces that appeared on the press highly critical of the administration from both former CIA Director Turner and former Secretary of State Vance.

Could you tell us if you know whether these pieces were voluntarily submitted by Mr. Turner and Mr. Vance for prepublication review?

Mr. WILLARD. I understand that Admiral Turner submitted his piece for review. I think CIA will be having a witness later this morning who can probably provide more details as to how it was accomplished.

I understand that former Secretary Vance did submit his book for prepublication review voluntarily, although he was not subject to this kind of a requirement as a matter of contract. I am not sure what the story was on his article that appeared in the paper.

Mr. SENSENBRENNER. Have you heard of any rousing, that there has been a delay in accomplishing the prepublication review that has been voluntarily submitted to by former Carter administration officials?

Mr. WILLARD. To the contrary. The former officials who have submitted their materials for review have generally been quite complimentary about the manner in which it was performed.

Former National Security Adviser Brzezinski in a forward to his book expressed his appreciation to the Reagan administration officials who conducted the prepublication review for the careful and expeditious manner in which they handled that. Also, former Attorney General Griffin Bell submitted portions of his book which dealt with intelligence matters to the Reagan Justice Department for prepublication review, and he also was complimentary about the manner in which that review was conducted.

Mr. SENSENBRENNER. As I recall, even though the former Carter administration officials were complimentary of the way the review was conducted, their articles and books were not complimentary of the Reagan administration.

Mr. WILLARD. That is correct, Congressman.

Mr. SENSENBRENNER. I think that that speaks for itself. Here we have Carter administration officials who have been doing this voluntarily, the review has taken place expeditiously, and the material has been very critical of the Reagan administration and its policies and, yet, somehow, this censor's net that has been portrayed as being all-encompassing and tight has allowed those things to leak out into the press. I think that perhaps some people have overstated the scope that is being proposed.

I yield back my time.

Mrs. SCHROEDER. I am not too sure they were too complimentary to the Carter administration either.

I would just like to follow up on one thing, though. My understanding was Brzezinski only submitted the first chapter of his book for review; do you know?

Mr. WILLARD. Madam Chairwoman, I do not know which portions he submitted. I understand he did submit portions of his book, but I don't know which portions.

Mrs. SCHROEDER. He did not submit the entire book.

Mr. WILLARD. I am not sure of that.

Mrs. SCHROEDER. Under this order, he would have to submit the whole book, though; is that correct?

Mr. WILLARD. Not necessarily. The order only requires submitting material if it bears some relationship to classified information.

For example, under CIA's policy currently in effect, only if a former CIA employee writes about intelligence activities or information that is based upon classified information does the material have to be submitted for review.

If the employee wanted to write simply about general subjects of foreign policy or something totally unrelated to his work at the CIA, that would not have to be submitted.

Mrs. SCHROEDER. Whenever you say that, though, I always remember the wonderful small town postman who told me one time that he hated summer because everybody started using postcards and he had such trouble knowing when he could talk about because he could never remember what he read and what he heard. I think that is one of the problems we have.

Congressman Edwards, I am sorry.

Mr. EDWARDS. Thank you.

The people who are in the administration now, Secretary Weinberger, Hinton, George Bush, President Reagan, Enders, the whole group that are running this administration, all have access to various strategic information, secret information, classified information. Does that mean that when they write their memoirs, they are going to have to submit these memoirs to the current people running the Government?

Mr. WILLARD. Yes, Mr. Chairman.

Mr. EDWARDS. That doesn't bother you?

Mr. WILLARD. We think that that is a sensible precaution.

As Mrs. Schroeder just said, people who hold high positions like this have access to a lot of sensitive information. They might not necessarily remember what is classified and what isn't. We think it is a sensible precaution for these officials, as many officials have voluntarily done in the past, to submit their materials for review to make sure that no classified information gets out inadvertently.

Mr. EDWARDS. Do you really think that President Eisenhower should have submitted his extensive memoirs, or Abraham Lincoln?

Mr. WILLARD. I am not sure what President Eisenhower did or didn't do prior to publication.

Mr. EDWARDS. Did you have witness after witness that came before your panel to certify to you and bring you horrible examples of why this rather radical proposal is necessary?

Mr. WILLARD. Mr. Chairman, our group was not a fact-finding body. We didn't proceed by having hearings or formal proceedings. It was a working group. People who had participated had been involved in this problem for some period of time. We were all aware of the kinds of examples that had occurred in the past.

Mr. EDWARDS. Did you document them in the notes and in the records of the panel?

Mr. WILLARD. No, Mr. Chairman. Our panel was not designed to create a factual record on this problem.

Mr. EDWARDS. It was just a general understanding amongst the people that it was out of control?

Mr. WILLARD. This was not a new understanding. People in the Government had been aware of this problem for many years.

Mr. EDWARDS. I have been here for 21 years and I haven't seen any articles written about it, examples—aren't you asking the

American people to take this on faith? You are making a simple statement, your panel is, that this is a very, very serious problem and, yet, you won't even in general tell the American people what the problem is, except that there are leaks, that there are leaks of strategic information, of secret information.

There are 18 million pieces of information classified every year, even the menus at the White House. Any of that information, too, being released bothers you?

Mr. WILLARD. Mr. Chairman, this is not a new problem that the Reagan administration needs addressing. It has been a problem for many years. Many Presidents have been concerned about it. The House Intelligence Committee was concerned enough to have hearings on the subject in 1979. The Senate Intelligence Committee was concerned enough to have hearings and issue a report on the problem in 1978 after being provided with classified examples of leaks of national security information.

We are not suggesting that the problem has suddenly grown in proportions. It has been a problem and has continued to be one.

Mr. EDWARDS. I appreciate the fact that the Intelligence Committees looked into the matter. Can you furnish us with their recommendations? Are you acting because of their recommendations or in support of their recommendations?

Mr. WILLARD. Mr. Chairman, many of the steps taken in the President's directive and recommended in our report were consistent with recommendations made by these committees. The Senate Intelligence in its report—which actually is the subcommittee chaired by Senator Biden—concluded that there had been a major failure on the part of the Government to take action in leak cases, and thought that this was a serious problem.

Mr. EDWARDS. Some agencies already use these preclearance contracts or agreements; isn't that correct?

Mr. WILLARD. That is correct, Mr. Chairman.

Mr. EDWARDS. Which ones do and which ones do not?

Mr. WILLARD. The prepublication review agreements were initially used by CIA. The National Security Agency also has a prepublication review program in place.

In addition, for about a year, employees throughout the Government with access to sensitive compartmented information, SCI, have signed an agreement which included a form of prepublication review in that agreement.

Those are the primary examples that I am aware of where this program has been in place to date.

Mr. EDWARDS. The report also says that one of the problems that we have with the Federal personnel security program is that the data base no longer exists because the FBI no longer collects information about subversive organizations due to uncertainty regarding legal constraints and Attorney General guidelines, the Levy guidelines.

Do you think that the FBI—is that your recommendation—should start to collect information on radical subversive organizations, and so forth?

Mr. WILLARD. No, Mr. Chairman, that is not a recommendation of the group.

Mr. EDWARDS. It said that the problem with the Federal personnel security program is the fact—I believe what I said is out of the report.

Mr. WILLARD. That is correct, Mr. Chairman. We noted that there had been a problem in the reduced data base to be used in personnel clearances and recommended that a group be assigned the task of studying the entire Federal personnel security program. That was part of the President's directive which was issued in March, and I understand that a group will be formed and will begin to study the problem. We did not recommend any particular solutions to the problem.

Mr. EDWARDS. The consensus, apparently, of your group was that the FBI should collect more information and make it available.

Mr. WILLARD. Not necessarily, Mr. Chairman. There are other ways to assure that personnel security matters are taken care of. We were simply noting that there had been a deterioration of this data base and nothing else had come up to take its place. It may be that more careful attention in background investigations could counterbalance this loss of the data base.

There may be other steps that could be taken in the program. We recommend studying all alternatives and not any particular approach.

Mr. EDWARDS. But you noted the deterioration—to use your own words—of these data banks of alleged subversives.

Mr. WILLARD. That is correct. This is not a new observation. It has been made many times over the last few years.

Mrs. SCHROEDER. Congressman Kastenmeier, do you have any questions?

Mr. KASTENMEIER. I guess I just have one question.

Some of the prior witnesses who were critical of this referred generally to an age-old problem, that is overclassification, as being at least tangential to this question. I wonder whether in the deliberations that gave rise to this directive if it was considered that perhaps some review should be made of what really is classified information or that information which could reasonably be expected to cause damage to the national security. That is one of the criticisms, that altogether too much information falls in that area, and there is a tendency for persons to disregard it almost or not to think it was discriminating enough.

Do you have any comment on that question?

Mr. WILLARD. I agree that overclassification and improper classification are problems that the Government should be vigilant in trying to solve. I do not think, however, that overclassification is a cause of leaks of classified information That is, the kind of classified information that is leaked and causes us concern is information that is quite properly classified and quite properly sensitive.

If information is improperly classified and is leaked, then it would be our policy not to conduct an investigation. We are only concerned with information that is disclosed that is properly classified and causes real or likely damage to national security when it is released.

Mr. KASTENMEIER. I can see that point, and I say that the point is not central. But the fact is if you have literally a government that is overclassified, there is the tendency, I think, for people to

disregard classification even those elements of classification they should know are sensitive.

Mr. WILLARD. I certainly agree, Congressman, that overclassification can erode respect for the classification system. President Reagan's Executive order on classification has continued the limitations and the prohibitions on improper use of the classification system.

Mr. Garfinkel, who will be appearing later this morning, from the Information Security Oversight Office is the Government official who is charged with responsibility for supervising the classification system, and I think he might also have some comments to add on the subject.

Mr. KASTENMEIER. I thank the witness.

Mrs. SCHROEDER. Thank you.

You mentioned the Biden report. It didn't say that there wasn't government authority against people who leak classified information.

Mr. WILLARD. That is correct.

Mrs. SCHROEDER. It was saying that they had not been enforcing.

Mr. WILLARD. That is correct. It talked about many of the problems that our group found still in existence—for example, the unwillingness of intelligence agencies to declassify information to support a criminal prosecution.

Mrs. SCHROEDER. Certainly, the unwillingness to declassify, I think, is certainly the point that Congressman Kastenmeier was making. The volume of classified information makes the kind of thing that you are proposing an incredible burden, unless you also figure out how you declassify it as you move along.

I want to make it clear that the Biden committee did not recommend what you are doing, they just said that they had problems with classified leaks and the Government had not moved against them and that this had been a continuing problem.

Mr. WILLARD. Some of the steps taken by the President's directive were echoed recommendations in the Biden report.

Mrs. SCHROEDER. But not all.

Mr. WILLARD. Not all, certainly not, and I didn't try to claim that.

Mrs. SCHROEDER. OK.

Mr. WILLARD. But some of the measures we did take were measures that were recommended in that report.

Mrs. SCHROEDER. I just want to say that having served on the Armed Services Committee for 10 years, one of the things that scares me so much about this is I remember Congressman Harrington getting in trouble for this, and there was a real brouhaha about what was going to transpire.

In the last couple of years, we had another Member get in trouble for releasing classified information on television, and nothing happened. When I asked why the difference in treatment, someone said it is because he has red, white and blue underwear.

Those kinds of comments scare me a lot, as we see that transpiring.

Mr. WILLARD. Madam Chairwoman, could I comment on that point?

Mrs. SCHROEDER. Sure.

Mr. WILLARD. I think it is a very good point.

If our program is not pursued evenhandedly and impartially, it will surely fail. A dual standard for enforcement in this area will just breed disrespect for the entire classification program.

Mrs. SCHROEDER. I am only saying we have it now, apparently.

Mr. WILLARD. We believe that enforcement should be taken against people who leak classified information, whether it is friendly or unfriendly, if they do not have the authority to do so.

Mrs. SCHROEDER. I guess my response is that it is better to enforce it now evenly with the tools that we have rather than do the big blanket thing that you are talking about.

I wanted to ask that when you put in the provisions about employees and the lie detector tests. Did you have anybody from the Office of Personnel Management or with civil service experience on your panel?

Mr. WILLARD. Our recommendations were based on legal memoranda prepared by the Office of Legal Counsel at the Justice Department under Attorney General Civiletti with regard to use of the polygraph. Those memorandums were provided to this committee at your request.

We did not work with OPM in preparing our recommendations, although they were consulted before the President's final decision was made.

Mrs. SCHROEDER. But they were not at the table talking about the impact that could have on them.

One final thing I wanted to ask about is section D of No. 1 where it says that appropriate policies shall be adopted to govern contacts between media representatives and agency personnel. Could you tell me what that means? That means current employees, right?

Mr. WILLARD. That is correct. Some agencies have policies in this area and some do not. The directive does not require agencies to adopt any particular kind of policy, but it does ask each agency to examine this problem and to formulate a policy.

For example, at CIA where all of the employees deal with classified information virtually all of the time, they may be justified in having—as I think they do—fairly restrictive policies. Contacts with the media are supposed to take place through their public affairs office.

Other agencies, such as the Justice Department, have many employees who rarely, if ever, deal with classified information. We would probably not be justified in having as restrictive a policy. But even so, there should be some policies that would be useful in reducing the opportunity for disclosures of classified information. At the very least, for example, allowing reporters free access to offices where classified information is used and stored may be a bad idea.

Mrs. SCHROEDER. So you are saying that if someone from Health and Human Services was talking to the media about their disagreement with say, the squealer rule or some other such thing, that would be perfectly all right because that is not national security; however, if someone in Treasury were talking about maybe banks or the economic status of El Salvador or something, that could be classified. You are going to have a real problem as to what is classified, aren't you?

Mr. WILLARD. I think, as you are suggesting, the policies are going to have to vary within the Government. That is why the President's directive does not set any uniform policy. At a Department like HHS where they have little, if any, classified information, there would be no need for policies of this nature, and the directive doesn't require them. On the other hand, at agencies—the Department of the Treasury is a good example—that have access in some portions of it to very sensitive information, there may be a need for them to have policies.

Mrs. SCHROEDER. I guess the problem is that intermediate zone that is so worrisome. It seems to be so healthy—and the wonderful thing about the Jeffersons of the world is they understood how healthy it was to have a free press and have access to Government types who could get you into that debate. There are an awful lot of things that I have seen that have been declared national security that I really wish had not been, because I thought it would be much healthier if we could have had a free and open debate with the experts who disagreed in those positions being able to speak out. I think it would have helped national security rather than hindered it.

I guess it is that intermediate range that I worry about the most. There clearly are definite secrets that you don't want out, but there are other things that are also policy, not that far off from HHS except they may not be domestic, they are more international, where we can't have that debate. We are seeing all of that now in the Central American discussion that is going on.

Mr. WILLARD. Madam Chairwoman, I agree that this is a problem of balancing interests and something of a continuum, and there is a gray area.

It is our view, though, that over the past few years, the balance has tilted too far one way, too much information that should be kept secret has been getting out by leaks or other kinds of disclosures. This directive is an effort to improve our ability to enforce these restrictions to some extent. We certainly do not to interfere with the free flow of unclassified information to the public. But there no, in our view, right of public access to classified information, and that is what the directive is designed to deal with.

Mrs. SCHROEDER. I have no problems with your conclusions. It is who classifies and how broad the classification is.

Congressman Sensenbrenner, do you have any further questions?

Mr. SENSENBRENNER. I have no questions, thank you.

Mrs. SCHROEDER. Congressman Edwards, do you have any further questions?

Mr. EDWARDS. I have one more question, thank you, Madam Chairman.

You have some employees and contractors who do not have access to SCI but they have signed a nondisclosure agreement. Are they required to submit writings, and so forth, for preclearance?

Mr. WILLARD. Those people would not be required to do so unless their contract or agency regulations required it.

Mr. EDWARDS. These are contractors or employees who have signed agreements, but they have never had access to classified material. They still have to submit their writings.

Mr. WILLARD. If they have signed agreements for access to SCI that included provision for prepublication review, then they would have to submit anything for review that fell under the agreement. If they never had any access to classified information, not withstanding signing an access agreement, then it is hard for me to see how they would write anything that would have to be reviewed. By and large, employees don't sign these agreements until they are actually going to obtain access to classified information.

Mr. EDWARDS. Probably under the *Snepp* decision, they would have to get clearance.

Mr. WILLARD. In our view, the *Snepp* decision allows the government to impose prepublication review requirements either by contract or by regulation, but it has to be one or the other. Thus, either the contract you sign has to specifically say prepublication review is authorized or there have to be agency regulations that clearly impose that requirement on employees as a condition of their access to classified information.

With regard to the vast majority of employees with access to classified information but not SCI, they would not be required to submit to prepublication review.

Mr. EDWARDS. You are going to recommend that any employees who have access to classified information sign these agreements; is that correct?

Mr. WILLARD. We are talking about two kinds of agreements, Mr. Chairman. One kind of agreement is a simple nondisclosure agreement in which the employee promises not to disclose classified information in the future. Most agencies already have some form or another of those agreements. Some of them call them secrecy odes, some of them call them agreements. They are in various forms. The President's directive tries to standardize that approach and makes sure that the forms are legally enforceable and are as consistent as possible.

But that is not a requirement of prepublication review. That prepublication review requirement is only required by this directive to be included in secrecy agreements for employees with access to SCI, which is a very small fraction of Government employees who have access to classified information generally.

Mr. EDWARDS. Thank you.

Mrs. SCHROEDER. Thank you.

Mr. Willard, thank you very much.

We will leave the record open in case counsel have written questions. In the interest of time, I think we have to move along.

Our next two witnesses will be appearing as a panel, and they will be having the responsibility to implement these mandates that are outlined in the directive.

First is Mr. Arch Ramsey, who is the Associate Director for Compliance and Investigations at the Office of Personnel Management. I think that recent events at the Department of Education's Office of Civil Rights have highlighted some of OPM's related responsibilities in implementing the Federal personnel security program.

We look forward to hearing from Mr. Ramsey on this issue, as well as from our second panelist, Mr. Garfinkel, the Director of the Information Security Oversight Office at the General Services Administration. We welcome both of you.

Again, we will put your statements in the record as they are written. If you want to just summarize or whatever, we are glad to have you and we will proceed however you would like.

TESTIMONY OF ARCH S. RAMSEY, ASSOCIATE DIRECTOR FOR COMPLIANCE AND INVESTIGATIONS, OFFICE OF PERSONNEL MANAGEMENT; AND STEVEN GARFINKEL, DIRECTOR, INFORMATION SECURITY OVERSIGHT OFFICE, GENERAL SERVICES ADMINISTRATION

Mr. RAMSEY. Mrs. Schroeder, I am Arch Ramsey. We have agreed that I will go first.

In the interest of time, I will dispense with a summary of our written statement and simply it be submitted for the record. I am ready to proceed with any questions the committee may have.

Mrs. SCHROEDER. Thank you, Mr. Ramsey.

[The statement of Mr. Ramsey follows:]

STATEMENT OF ARCH S. RAMSEY, ASSOCIATE DIRECTOR, COMPLIANCE AND INVESTIGATIONS GROUP, U.S. OFFICE OF PERSONNEL MANAGEMENT

Madam Chairwoman, Mr. Chairman, I appreciate the opportunity to appear on behalf of the United States Office of Personnel Management (OPM) concerning the President's directive of March 11, 1983, on safeguarding national security information.

As you know, OPM and all other agencies with employees having access to classified information are directed to revise their existing regulations under the directive. The revised regulations will require employees to submit to polygraph examinations in connection with investigations of unauthorized disclosure of classified information. I trust that it is well understood that the focus of the President's directive is on unauthorized disclosure of information that is lawfully classified for national security purposes.

OPM's guidance on use of the polygraph is a legacy from its predecessor, the United States Civil Service Commission. The origin of this guidance can be traced to a report issued in 1965 by the House Committee on Government Operations entitled "Use of Polygraphs as 'Lie Detectors' by the Federal Government." The report included a recommendation that the President establish an interagency committee to study use of the polygraph by Executive Branch agencies. A study was duly made under the direction of John W. Macy, Jr., who was then the Chairman of the United States Civil Service Commission. Based on this study, instructions concerning the use of polygraphs for employment screening and personnel investigations of applicants for, and appointees to, competitive service positions were issued as a Federal Personnel Manual letter on October 25, 1968. These instructions were incorporated into the Federal Personnel Manual at Chapter 736, Appendix D. They were last revised on July 9, 1973.

The instructions allow an Executive agency with a "highly sensitive intelligence or counter-intelligence mission directly affecting the national security" to use the polygraph for screening and investigation of competitive service applicants and appointees. However, the agency must first obtain the approval of OPM by submitting a statement of its mission and a copy of its current regulations and directives governing polygraph use. The regulations and directives must meet certain criteria set forth in the Federal Personnel Manual instructions. Approval is granted only for periods of one year in duration.

The President's directive is based on the recommendations of an inter-departmental group under the direction of the Attorney General. The group was composed of representatives of the Departments of State, Treasury, Defense, Energy, and the Director of Central Intelligence. The directive calls upon the Director of OPM and the Attorney General to consult in establishing an interdepartmental group to study personnel security programs in the Executive Branch.

As part of its responsibility under the directive, OPM representatives will meet with the inter-departmental group to carry out this part of the directive. Any further developments concerning OPM's role in this process will await consultation with the representatives of the appropriate Executive Branch agencies. We believe

this will be a constructive opportunity to review our various programs and to see if any improvements or adjustments are needed.

I would also like to take this opportunity to address a complaint about the manner in which the President's directive was issued. One of the employee unions has suggested that it should have been consulted before the directive was issued. The statutory scheme governing labor-management relations in the Executive Branch does provide for consultation with employee unions when an agency issues Government-wide rules or regulations that result in a substantive change in any condition of employment. However, it is plain that this provision does not apply to directives or issuances by the President. Furthermore, when the rule or regulation involves national security matters, the statutory scheme clearly excludes collective bargaining or union consultation. Needless to say, if the implementation of any of the eventual recommendations of the forthcoming interdepartmental study groups requires the promulgation of regulations through the formal implementing process, then public scrutiny and comment and appropriate union consultation will take place.

Thank you again for this opportunity to appear on behalf of OPM. I would be happy at this time to answer any questions you may have concerning OPM's role in connection with the President's directive.

Mrs. SCHROEDER. Mr. Garfinkel, you may proceed.

Mr. GARFINKEL. Good morning, Madam Chairwoman, Mr. Chairman and others.

I also will dispense with reading my statement. I would just reiterate something that Richard Willard said. The Information Security Oversight Office is responsible for overseeing the information security or classification program throughout the executive branch. Our particular involvement with respect to the directive issued by the President on March 11 deals with the preparation of the standardized nondisclosure agreements that employees would be expected to sign.

I also am available to answer questions.

Mrs. SCHROEDER. Thank you. We appreciate that.

[The statement of Mr. Garfinkel follows:]

STATEMENT OF STEVEN GARFINKEL, DIRECTOR, INFORMATION SECURITY OVERSIGHT OFFICE, U.S. GENERAL SERVICES ADMINISTRATION

Madam Chairwoman, Mr. Chairman, and members of the subcommittees, I appreciate the opportunity to appear before you today to explain the role of the Information Security Oversight Office in implementing the National Security Decision Directive issued by the President on March 11, 1983, entitled, "Safeguarding National Security Information." Before I address this particular matter, however, I feel it is worthwhile to explain briefly the history and functions of the Information Security Oversight Office, or ISOO.

President Carter established the ISOO in 1978, through the issuance of Executive Order 12065, and President Reagan retained it in Executive Order 12356, issued last year. ISOO is responsible for overseeing the information security program of all executive branch agencies that create or handle national security information and for reporting annually to the President on the status of the program. ISOO is an administrative component of the General Services Administration, but receives its policy direction through the National Security Council. The Administrator of General Services appoints the ISOO Director, who must be approved by the President. The ISOO staff is small, numbering under fifteen persons. ISOO's purpose is, through effective oversight, to achieve improved protection for national security information while promoting public access to that information that does not meet the criteria of the Order for classification.

ISOO seeks to accomplish its mission by conducting on-site compliance inspections of the approximately 65 executive branch departments, agencies or independent offices that create or handle national security information: by gathering and analyzing statistical data related to agency implementation of the Order; by developing and sponsoring information security education and training programs and materials; by issuing implementing directives and other guidance; by considering and taking action on suggestions and complaints from persons within or outside the Gov-

ernment with respect to any aspect of the administration of the program; by conducting special studies related to the function and improvement of the information security program; and by maintaining liaison on an informal basis with each agency that creates or handles classified information. As recently added in E.O. 12356, one of ISOO's specific tasks is the development and issuance of standardized forms in the information security area. The National Security Decision Directive draws upon this function.

Among its provisions, the Directive requires that all persons having access to classified information, including Sensitive Compartmented Information (SCI), enter into a nondisclosure agreement with the United States as a condition of receiving access. It further directs me to develop standardized forms that meet enforceable standards for the nondisclosure agreements, including the requirement that the agreement for access to SCI contain a prepublication review provision. To fulfill this responsibility, I have been chairing an interagency working group that is assisting me in developing draft forms to submit to the Attorney General for a review of their legality and enforceability. We have based our work on existing forms, approved by the Justice Department, that currently perform a similar function for particular agencies. To date we have made significant progress in drafting these forms, and I anticipate submitting them to the Attorney General for review very shortly. Upon receiving the concurrence of the Justice Department, ISOO will commence the printing and distribution of these forms through regular channels. Our goal is to have them operational sometime this summer.

Mrs. SCHROEDER. Mr. Garfinkel, the first question we have is how many employees Government-wide have access to classified information?

Mr. GARFINKEL. I have been asked that question about 200 times, and I haven't given a satisfactory answer yet.

No one knows how many employees actually have access to classified information.

Mrs. SCHROEDER. Don't you find that shocking to begin with?

Mr. GARFINKEL. I think that the problem of coming up with an exact number has been considered not cost effective. It would take a tremendous effort. We know that the number is very large. Each agency is responsible for its own personnel security program.

The Information Security Oversight Office [ISOO] is concerned with what is known as the information security program, which is obviously closely related to the personnel security program. One of the differences though, is that there is no comparable centralized oversight body that governs the personnel security program. That is left to each agency head, and there has been no effort, to my knowledge, of late to try to formulate what the exact number is.

We certainly know that the numbers are in the hundreds of thousands, at least, for employees. When you add contractors, you expand that number considerably.

Mrs. SCHROEDER. Does anybody rate which agencies do a better job than other agencies on monitoring this? In other words, I see us getting into this position because, like so many things, someone says they are not enforcing the law that is on the books now so we will make a bigger and better law that may be even more difficult and complex and expensive to enforce. Are you telling me that there is no one now who looks at all agencies to see how well they are doing?

Mr. GARFINKEL. We certainly look at all agencies to see how well they are doing in their information security program. As far as trying to determine who is doing best in their personnel security program, you can really divide the Government between one agency and all of the rest. The Department of Defense with its contractors is so large in terms of the numbers of persons and contrac-

tors who are involved in classified matters, that they really stand alone, both in terms of controlling their numbers and in terms of the problems that would be involved to gather any meaningful statistics about those numbers.

So I think that when you are talking about, "Let's get a number," you would first be saying, "Let the DOD come up with a number," and that would be a mammoth task.

Mrs. SCHROEDER. What we have heard is the reason we have to have this new system is because things aren't going well, the laws aren't being enforced that are on the books now. So my question is who do we look to? Who is messed up? Who is the one who is letting all these leaks occur in the Federal Government? Who do we point to?

Mr. GARFINKEL. Obviously, the gross numbers of persons who have access to classified material are not all involved in leaking classified material. The numbers of leaks are infinitesimal compared to the number of persons who actually have access to classified information.

Mrs. SCHROEDER. So you do feel there is this big a problem as they are telling us?

Mr. GARFINKEL. I think that we have to look at it as a qualitative problem and not a quantitative problem. There is some effort afoot in terms of the President's directive to look at the personnel security system to see if that system can be improved to help the matter of leaks. But I don't believe anyone suspects that simply reforming the personnel security system is, by itself, going to accomplish all that needs to be done to control leaks. That is merely one aspect of the thing, and perhaps not as important an aspect as the idea of trying to control those qualitative leaks, that mind set that a person may have to leak information.

Mrs. SCHROEDER. We haven't seen it, but have you seen all of the very serious leaks that have transpired?

Mr. GARFINKEL. I certainly haven't seen all of them. I have been made aware of several.

Mrs. SCHROEDER. But you are in charge of overseeing all of this.

Mr. GARFINKEL. Our responsibility with respect to leaks does not go to investigating individuals involved in leaks and punishing them. We are not an investigative body.

Our role with respect to leaks is to determine if the leak is a product of some systemic problem. Is the information security system in place at fault for the leaks and if, in fact, it is at fault, how can we change it? To that extent, we are involved in this directive in looking at some of the systems that are involved.

However, as you may very well be aware, most leaks are not systemic problems, they are individual problems. Individuals decide that they are going to release information, and the system in place has nothing to do whatsoever with whether or not they do or they don't—at least the information security system.

Mrs. SCHROEDER. I think that is a very important statement that you just made.

How many employees work at agencies—roughly, because I realize you don't have it down to the final number. How many employees work at agencies where they have access to classified information but they don't use polygraphs?

Mr. GARFINKEL. Again, the numbers there would be in the hundreds of thousands or millions, as far as use of polygraphs right now is concerned. Again, those are statistics that our office does not even attempt to——

Mrs. SCHROEDER. I guess I am looking to you for some systemic direction, because if we are being told that this is a systemic solution to put everybody under polygraph—do you have any evidence that if you work in agencies where they are giving polygraphs there is less leaking than if you don't?

Mr. GARFINKEL. Our office does not collect any statistics about the use of polygraphs. Perhaps Mr. Ramsey has some information on that, or others who may testify here.

Mrs. SCHROEDER. Do you have anything that could help us with that?

Mr. RAMSEY. Mrs. Schroeder, going back to an earlier point, the Office of Personnel Management and its predecessor, the Civil Service Commission, do have an oversight responsibility under Executive Order 10450 for reviewing agencies' personnel security programs. The Executive order makes it clear that the agency head has the basic responsibility for administering the personnel security program within his agency.

In 1965, a House report was issued regarding the use of polygraph in the Federal Government. One of the recommendations of that report was that an interdepartmental committee should be set up to establish standards for that use. Standards were developed and were published. They are presently published in the Federal Personnel Manual. The uses at the present time are limited to agencies that are engaged in intelligence and counter-intelligence kinds of operations. They came to the Civil Service Commission and now to the OPM to request authority to use the polygraph in certain very limited situations. The authorizations to use polygraph in those situations is granted on a year-by-year basis.

I should make one point clear, that the OPM's authority is basically limited to the competitive service and not to the accepted service or to the military services.

Mrs. SCHROEDER. Thank you.

Congressman Sensenbrenner, do you have any questions?

Mr. SENSENBRENNER. No questions, Madam Chairwoman.

Mrs. SCHROEDER. Congressman Edwards, do you have some questions?

Mr. EDWARDS. Thank you, Madam Chairwoman.

The President's directive, Mr. Garfinkel, says that leaks of unauthorized disclosure of classified information shall continue to be reported to the Justice Department and to your office. Do you have statistics on the number of such reports that you have received over the years?

Mr. GARFINKEL. Regrettably, I don't think the agencies have reported as many leaks as have occurred to our office. We have had probably a half dozen reported situations in the last couple of years.

There is one problem that comes to mind in terms of reporting leaks quickly to our office. Frequently, agencies are very concerned about not disseminating information about the existence of a leak

until such time as they have had an opportunity to do some sort of internal investigation.

Again, our role is not to investigate the individual concerned or to try to punish any individual; our concern is simply to see if the leak resulted from some failure in the information security system.

Mr. EDWARDS. Thank you, Mr. Garfinkel.

I think you can understand the problem that this committee has. We asked Mr. Willard to tell us about the avalanche, about the epidemic of leaks that is causing this very radical change in procedures—I think you both would agree that this is a big change in procedures for Federal employees, it is a mammoth change—and Mr. Willard says that we got them, but we will have to go into executive session, and we told the Intelligence Committee about them.

You, sir, Mr. Garfinkel, say that you are under direction to receive reports of these leaks by Presidential order and, yet, you have maybe a half a dozen or so. You, of course, can't tell us about them except in executive session also.

So where do the American people come out on this or the hundreds of thousands of Federal employees? Everything is going to be secret, insofar as the people are concerned and the Federal employees and, yet, we are going to be privy apparently to some classified information that we can't disclose, of course. What is that going to do?

I will ask you, Mr. Ramsey, what is that going to do to the morale of the Federal office force?

Mr. RAMSEY. At the present time, Mr. Edwards, there are certain conduct regulations which apply to Federal employees which cover their use of information which is not available to the general public and require that, if they are going to use that information in any writing or public disclosures, particularly for private gain, they have to gain the approval of their agency head before they can do so.

Essentially, what the directive applies to is classified information. It, of course, applies to many people in the Defense Department who handle classified information, and in many other agencies, the number of classified information is relatively small. I would not believe that the impact on employee morale would be that great.

Mr. EDWARDS. But thousands of Government employees are facing polygraph tests if this order is implemented and the regulations are issues; isn't that correct?

Mr. RAMSEY. If there are allegations that there has been a disclosure of classified information.

Mr. EDWARDS. Right. And Mr. Willard's testimony is to the effect that it is a very serious problem, and we must read into that that there are many, many leaks, contrary to Mr. Garfinkel's testimony.

Mr. RAMSEY. We have no particular information on the number of leaks since we are not involved in that aspect of that matter.

Mr. EDWARDS. What is a Government employee going to think, a Foreign Service officer or somebody, when he reads in the paper yesterday that the Pentagon's Health Director says that the polygraph misclassifies innocent people as liars and says that they are reliable 62 to 72 percent of the time?

Mr. RAMSEY. We have within OPM no independent expertise on the polygraph or the accuracy of the polygraph. We do not use it at the present time. We would defer to those Federal agencies which have greater expertise in that area. I understand that the National Security Agency did testify before this committee earlier.

Mr. SENSENBRENNER. Would the gentleman yield?

Mr. EDWARDS. Sure, I yield.

Mr. SENSENBRENNER. Perhaps the gentleman from California does not watch F. Lee Bailey's show as I do. The gentleman from California might be interested in knowing that the President's barber appeared on F. Lee Bailey's show and underwent a polygraph examination, and F. Lee Bailey pronounced that he was telling the truth when he said the President doesn't use hair dye.

Mr. EDWARDS. Maybe I was watching "Love Boat" that night.

Mr. Ramsey, what role did OPM play in the recent action by the Department of Education to upgrade the classification of its civil rights attorneys and investigators to critical sensitive?

Mr. RAMSEY. I would be happy to talk about that, Mr. Edwards.

This is a matter aside and apart from the national security directive. The Office of Personnel Management does have the responsibility under the Executive order to review and appraise the personnel security programs of agencies with employees in the competitive service. We conduct those appraisals on a regular and routine manner.

During the course of those appraisals, we make recommendations to the agencies about how those programs can be improved. For example, if agencies have failed to include positions in a particular designation of sensitivity that should have been included in that category, we make a recommendation that they be so included.

I believe it was in 1980 that the then Department of Education, which was still being serviced on personnel security matters by HEW and HHS came to OPM and asked their advice in establishing their own personnel security program. The then Chairman of the Civil Service Commission, Alan Campbell, agreed in a letter to the Secretary that we would provide such service. We did so. We made several recommendations about inclusion of positions in the various sensitive categories.

At one point, the Director of Security for the agency sent a letter to the Office of Personnel Management and asked for our comments on whether or not three particular positions met the criteria for inclusion in critical sensitive. I think those were equal employment opportunity adviser, advisory equal employment opportunity adviser and attorney adviser. The Director of our investigations group responded that he believed that the positions did meet the criteria for inclusion in critical sensitive. That was the advice furnished to the agency.

Mr. EDWARDS. What is the difference between critical sensitive and classified? Are these 17 people working in civil rights—they are critical sensitive—does that mean they are going to have access to classified material?

Mr. RAMSEY. In 1965, when an interdepartmental group reviewed the personnel security program, the designation of critical sensitive was expanded to include not only positions which had access to classified information, but it also included positions which were

policymaking, policy-determining, were investigative in nature, had fiduciary responsibilities, public contact responsibilities or other responsibilities involving public trust.

Mr. EDWARDS. Thank you.

Mrs. SCHROEDER. I have a few more questions, Mr. Ramsey on this area of critical sensitive.

Under Executive Order 10450, they talk about sensitive positions being defined by their impact on national security. I guess the problem is how do you get from national security to these critical sensitive areas? Aren't you expanding it way beyond foreign policy?

Mr. RAMSEY. The definition of national security which is in the Federal Personnel Manual at the present time and which is used in this context, talks about the recruiting and employment of people whose employment would be compatible with protecting the military, industrial or commercial interests of the United States. Those decisions were made several years ago, Mrs. Schroeder, and have been in effect for——

Mrs. SCHROEDER. If they are not in the Executive Order—didn't OPM expand the Executive order? Where did it come from?

Mr. RAMSEY. The expansion took place as a result of the deliberations of an interdepartmental group. This was not done by the Civil Service Commission on its own initiative at that point?

Mrs. SCHROEDER. Who was in that interdepartmental group?

Mr. RAMSEY. I would be glad to furnish that for the record, Mrs. Schroeder. I know there representatives of several agencies, and I believe one of the members at that time was the then Chairman of the Civil Service Commission, John Macy.

Mrs. SCHROEDER. I think the thing that disturbs us is that all we can find in the executive order which clearly talks about national security and this whole critical sensitive thing seems to be something that has been grafted onto that executive order and it really has expanded to the list of policymaking and policy-determining positions regardless of the agency; is that right?

Mr. RAMSEY. That is correct.

Mrs. SCHROEDER. And all positions with investigatory duties and all positions with public contact or duties demanding the highest degree of public trust; is that right?

Mr. RAMSEY. Those are included in the expanded criteria.

I should make it clear that the agency head does have the responsibility for administering the program within his agency, and he or she makes the final determination about the inclusion of particular positions.

Mrs. SCHROEDER. And that agency head, though, is a political appointee, a Schedule C.

Mr. RAMSEY. In most cases, a presidential appointee, yes.

Mrs. SCHROEDER. So, if they foulup, you can let them go and OPM isn't going to protect them.

I guess my concern is you have taken an executive order dealing with national security and then grafted this in. So we would really like to know who was on that group that decided to do it and how they got to the point where all these other people should be labeled critical sensitive. It sounds like critical sensitive for political survival and not national survival, and that worries me.

Mr. RAMSEY. We will be glad to provide that information for the record.

[See, Willard Report. Appendix 2, at 132.]

Mr. RAMSEY. I should point out that we have thousands of employees in the Federal Government who undergo background investigations because they are going to be handling sensitive matters. Those investigations are updated on a 5-year basis. These background investigations are inquiries, personal inquiries, into the previous employment, education and reputation of these individuals.

I am one of those employees who have undergone such an investigation, and I think it is perhaps more threatening in appearance than it really is. It is simply the establishment—a determination by the Federal Government that the people who are going to be put in those positions are the kinds of people who meet the standards which have been established for Federal employment.

Mrs. SCHROEDER. The gentleman from California.

Mr. EDWARDS. Are you saying, Mr. Ramsey, that these 17-odd civil rights attorneys and investigators were not investigated? Didn't they give you a resume and recommendations, and so forth, before they were hired? I am sure the Office of Education just doesn't hire people right off of the street.

Mr. RAMSEY. I can't tell you what happened specifically with those people, Mr. Edwards.

Ordinarily, when employees come into the Federal service, if they are not going into sensitive positions, we conduct what we call a national agency check and inquiry, post-employment. That is we check the police records and the like to see whether or not there is anything in the background that would present a suitability problem.

I would assume that, for most of those people, if they came into the Federal Government in non-sensitive jobs, that kind of preliminary investigation was created.

Of course, if a person is in a non-sensitive job in the Federal Government, and then they move to a sensitive position, a critical sensitive position, then there is a requirement that a background investigation, a personal investigation, be conducted.

Mr. EDWARDS. Thank you.

I guess the key question is why would OPM recommend that 17 or 18 civil rights investigators and attorneys be reinvestigated and upgraded, insofar as sensitive information, when those people are supposed to be critical here and there of the Government and of the hiring practices and the civil rights enforcement of education, civil rights laws, and so forth?

Were you a part of the decisionmaking in that recommendation?

Mr. RAMSEY. The particular decision was made through correspondence between the security officer for Education and the head of our Personnel Investigations Division. I was not a part of it.

I would say, though, that in reviewing that correspondence, Mr. Edwards, the same question had been raised with me as to whether or not these positions met the criteria for critical sensitive, that I would have agreed with the opinion that was rendered by the Director of our Investigations Division.

Mr. EDWARDS. You mean they have national security information?

Mr. RAMSEY. No, sir. As I told you earlier, the criteria includes such things as policymaking, policy-determining, fiduciary, investigative, public contact, other matters relating to public trust, and a review of the job descriptions for those positions indicates that those jobs do deal with those aspects of the Federal Government's operation.

Mr. EDWARDS. Then that would include in the Department of Education hundreds and hundreds of people in addition to the civil rights people.

Mr. RAMSEY. I don't know what determinations have been made by the Department of Education finally. They did issue their directive governing their personnel security program in December 1982, and I am not aware at this time of what final decisions they made about the designation of positions as critical sensitive.

Mr. EDWARDS. Do they only issue the order on civil rights people?

Mr. RAMSEY. They only asked for our particular opinion on those three items. We did have people working with the Department in helping set up their personnel security program, and they may have, during the course of those discussions rendered advice on other positions. The only ones that I have specific information on are the three that they asked for our comments on.

Mr. EDWARDS. You don't think it is intimidating?

Mr. RAMSEY. No, sir, I don't find it intimidating. I have been subjected to several background investigations. Perhaps I don't find it intimidating because I know the process and know what it involves.

But as I say, this is a fairly routine activity. We conduct security appraisals of Federal agencies and we make recommendations about improvement in those programs. We make recommendations about the designation of positions in those agencies.

We would be glad to provide to the committee a list of the agencies in which we have conducted such security appraisals.

Mr. EDWARDS. What will the security appraisal consist of with these civil rights investigators and attorneys? Who will make the investigation and what will the procedure be? Will they go to their neighbors? Will they check past employment, and so forth?

Mr. RAMSEY. The Department of Education would ask the Office of Personnel Mangement to conduct those investigations. Investigators would be going out to various locations to check on previous employment, previous or claimed education, and also would be talking to people in neighborhoods where they lived to check on their reputations.

Mr. EDWARDS. These are people who have been working for the office a year or two or three or four or perhaps more?

Mr. RAMSEY. That is right.

Mr. EDWARDS. All of a sudden, investigators are going to be brought into their neighborhoods asking their neighborhoods about their habits, their loyalty, and so forth; is that correct?

Mr. RAMSEY. That is right.

That is not unusual, Mr. Edwards. As I pointed out, when a person enters the Federal service, if they enter a nonsensitive position, a national agency check and inquiry is conducted. If that person at some later point in their employment either moves into a position which is critical sensitive or which is subsequently desig-

nated as critical sensitive, then an investigation would be conducted at a later point?

Mr. EDWARDS. Are you going to give him a raise, too?

Mr. RAMSEY. That is not in my jurisdiction.

Mrs. SCHROEDER. So you don't know if there is anyone else at the Office of Education who has been classified as critical sensitive? You are not into at OPM deciding whether everybody in that definition must be, it is that they can be if the director wants them to be; is that right?

Mr. RAMSEY. When we do our security appraisal, we try to make as complete a review of the positions as we can and come up with the recommendations regarding all of the positions which we think should be included in critical sensitive.

Mrs. SCHROEDER. But it still is the agency head having the determination——

Mr. RAMSEY. It still is the agency head's final determination.

Mrs. SCHROEDER. And if they want to select the Office of Civil Rights and make them critical sensitive but not the others, that is within their authority?

Mr. RAMSEY. Yes, ma'am.

Mrs. SCHROEDER. Let me ask you about section 6 which says you will be studying this. Is that going to be going on?

Mr. RAMSEY. You are talking about the section of the security directive that says that the Attorney General, in consultation with OPM?

Mrs. SCHROEDER. Yes.

Mr. RAMSEY. Yes, we will be part of that study. We have not had any meetings on that matter yet in which OPM has been involved, so I have no information on that point to provide.

Mrs. SCHROEDER. Do you know when the meetings will start?

Mr. RAMSEY. No, ma'am, I do not.

Mrs. SCHROEDER. Congressman Gekas, do you have any questions?

Mr. GEKAS. Not at the moment, thank you.

Mrs. SCHROEDER. Congressman Sensenbrenner?

Mr. SENSENBRENNER. No.

Mrs. SCHROEDER. Congressman Edwards?

Mr. EDWARDS. No, thank you, Madam Chairwoman.

Mrs. SCHROEDER. Again, we will leave the record open for counsel because of the time constraints this morning.

I want to thank both Mr. Ramsey and Mr. Garfinkel for being here this morning. We appreciate your time.

The next witness we have this morning is Mr. Charles Wilson, Director of the Office of Public Affairs and Chairman of the Publications Review Board at the Central Intelligence Agency.

Accompanying Mr. Wilson is Mr. Ernest Mayerfeld, Deputy General Counsel at CIA.

Gentlemen, we welcome you. We are glad to have you here this morning. Again, we will put your entire testimony in the record and, if you want to summarize, fine. If you want to just proceed, fine. We will turn it over to you at your discretion.

TESTIMONY OF CHARLES WILSON, DIRECTOR OF THE OFFICE OF PUBLIC AFFAIRS AND CHAIRMAN OF THE PUBLICATIONS REVIEW BOARD, CENTRAL INTELLIGENCE AGENCY, ACCOMPANIED BY ERNEST MAYERFELD, DEPUTY GENERAL COUNSEL, CENTRAL INTELLIGENCE AGENCY

Mr. WILSON. In the interest of time, we agree with your advice.

I would, however, like to mention that attached to our statement are several important documents which I commend to your attention which are basic to the reason that we are here today. One is a copy of CIA's secrecy agreement from which the prepublication review process derives; secondly, a copy of the internal CIA regulation which governs prepublication review; and third of all, a copy of CIA's guidelines which it makes available to both current and former employees to assist them in the prepublication process.

Mrs. SCHROEDER. Without objection, we will put those into the record.

[The statement of Mr. Wilson with attachments follow:]

STATEMENT OF MR. CHARLES E. WILSON, CHAIRMAN, PUBLICATIONS REVIEW BOARD, CENTRAL INTELLIGENCE AGENCY

Good morning, Chairman Edwards, Chairwoman Schroeder and members of the Subcommittees. My name is Charles Wilson. I am Chairman of the Central Intelligence Agency's Publication Review Board. I am pleased to appear before you here today to testify on the Central Intelligence Agency's experience in administering its prepublication review process. With me is Mr. Ernest Mayerfeld, the Agency's Deputy General Counsel and Legal Advisor to the Publications Review Board.

My testimony today will be confined to the period after 1977 when the system currently in place was first established.

The case of *Snepp* vs *United States.* 447 U.S. 507 (1979), is, of course, the decision in which the Supreme Court validated the Agency's prepublication review process. In this case the Court held that the secrecy agreement which requires the submission of writings for prepublication review was enforceable and does not infringe on First Amendment rights. The Agency recognizes the significance of the role which has been assigned to it in this process and takes very seriously its responsibilities not only to safeguard the classified information but also to protect an author's First Amendment rights. The Agency withholds permission to publish only that material which is classified.

Since its establishment in 1947, the Central Intelligence Agency has required its employees, as a condition of employment, to enter into a Secrecy Agreement with the Agency. A copy of that Agreement is appended to the printed copies of my statement (Appendix A). As the prepublication review process flows from the Secrecy Agreement, let me begin with that Agreement.

The Agreement is a legal instrument in which the two parties to the employment relationship, the Agency and the employee, set down their rights, duties and expectations. The agreement implements the statutory responsibility of the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure. 50 U.S.C.A. § 403(d)(3).

The Agreement documents the special relationship of trust between the employee and the Agency. In the *Snepp* decision the Supreme Court characterized this trust as a fiduciary relationship. In that case, the Court held that such a relationship is created when an individual enters onto duty with the Agency and is given access to information which constitutes some of the most sensitive secrets of our nation.

In the Secrecy Agreement, the employee makes a number of solemn prmises in consideration of employment and being granted access to classified information. One is a promise not to divulge classified information.

More important to our purposes today, though, is another promise: the promise to submit to the Agency for prepublication review any writings on intelligence matters the employee may prepare anytime thereafter for unofficial publication. This is often called the "prepublication review" obligation. It is on this promise that the Agency's system of prepublication review is established.

Let me pause here and address for a moment what sort of information prepublication review seeks to protect. That information is, of course, classified information.

Unfortunately, the term "classified information" is so bandied about these days that often its seriousness is ignored. Thus, I think it's important every so often to step back and remind ourselves of exactly what sort of information classified information is.

The current Executive Order on classification, E.O. 12356, and its predecessors, all have had one thing in common in this area. Each has defined classified information as that information which, if disclosed, will cause damage to the "national security". The "national security", in turn, is defined as the "national defense" or the "foreign relations" of the United States. In other words then, classified information is that information which, if revealed, will do harm to our nation. I think that we must keep this simple yet important concept in mind at all times when discussing the prepublication review process.

Returning now to that process, in 1977, the Agency promulgated a regulation, HR 6-2 (Appendix B), which created the Publications Review Board and vested it with the function of conducting prepublication review of manuscripts submitted by current and former employees.

The Board is chaired by me in my capacity as Chief of Public Affairs. I have held that position since January 1982 and for four years prior to that time I was Executive Secretary to the Board. On the Board sit six individuals, senior representatives from each of the Agency's four Directorates, with two representatives each from the Directorate of Operations and the Directorate for Administration. In addition, the Board has a Legal Advisor, currently the Agency's Deputy General Counsel, Mr. Ernest Mayerfeld. He attends Board meetings and works with the Board throughout all stages of the prepublication review process, advising it as to the legality and propriety of its decisions.

The actual review process is depicted on the chart entitled "Publications Review Board—Review Process" (Appendix C). While you are referring to that chart, let me take you briefly through the process.

It begins for former employees when they submit a manuscript to the Office of General Counsel, which has been designated by HR 6-2 as spokesman for the Agency in these matters. That office immediately forwards the submission to the Board noting any time constraints under which the author may be operating. The Board then establishes a review schedule consistent with any such constraints and forwards copies of the submission to each of the components represented on the Board. When they receive it, the components then disseminate it to those persons or subcomponents having expertise in the subject matter involved. The submission is then reviewed. If no classified information is found in the submission, the author is immediately informed.

If a component notes any classified information, it so advises the Board. The Board then meets to review these classification determinations and the Legal Advisor examines them for legal sufficiency. Once the decision is made, the Office of General Counsel immediately advises the author.

This is perhaps, a good point to address the issue of timeliness. In meeting its responsibilities under HR 6-2, the board recognizes that often time is of the essence in the review process. Thus, it strives in all cases to complete its review in a timely fashion. HR 6-2 and the relevant court cases in this area impose a 30-day time limit for completion of reviews. This standard has been met in virtually all cases but a very few. The length of a review obviously depends upon the length of the submission involved and the amount of classified information which is identified. In 1982, the average review took 13 days. The Board always seeks to work with an author to meet his publishing deadline. In fact, a number of reviews have been completed in a matter of hours to accommodate authors writing for short deadlines.

There have been very few instances in which more than 30 days have elapsed from submission of a book to clearance for final publication. Those rare cases occur most often because of the revision process. An author will frequently choose to rewrite his material and indeed may add substantial new material, all of which must also be reviewed.

Depending on the degree of the revision involved, the entire process can take longer than 30 days. The Board, however, recognizes that any delay can be troublesome to authors and therefore seeks to work with them to minimize delay.

In 1977, the Board reviewed a total of 43 books and articles. This number has risen steadily since that time as indicated by the Chart "Total Manuscripts by Form" (Appendix D). Since its inception, the Board has reviewed a total of 836 manuscripts amounting to about 62,000 pages (Appendix E). Of these 836, 612 were approved outright and 182 were approved with some required changes, most of these quite minor. Eleven were withdrawn by their authors. Fourteen (10 current employees, 4 former) of the 836 were found to contain so much objectionable information

that when the information was deleted, the remaining material did not make sense nor could it be rewritten to make sense. These were disapproved. Seventeen manuscripts are currently in the review process for a total of 836.

When classified information is identified in a manuscript, the court decisions in this area indicate that the Board can require the deletion only of those words which are necessary to protect the classified information. The Board adheres strictly to this standard. In most cases, an author can rephrase the material in question so that his message can be communicated without disclosing classified information. In fact, the Board affirmatively seeks to work with an author in such cases so as to accommodate his literary goals while, at the same time, ensuring that the final product does not contain classified information.

An administrative appeal mechanism is built into the review process. This mechanism enables authors to challenge decisions of the Board by appeal through the Agency's Inspector General to the Deputy Director of Central Intelligence. A chart depicting the appeal process is attached as Appendix F. Since 1977, there have been some appeals. The Board's initial decisions have been sustained in some but the Board also has been overturned on appeal. I believe that the appeal process serves as an additional force to ensure that the Board's initial decisions are fair and proper.

The policies which guide the Board are set forth in the leaflet "Agency Policies on Prepublication Review Provisions of Secrecy Agreements" (Appendix G). This leaflet is routinely made available to former employees. A paramount principle guiding the Board since its creation has been one of evenhanded and fair treatment to all authors, regardless of their expressed or implied friendliness or unfriendliness towards the Agency. I must emphasize that as subsection (b)(4) of our regulation H.R. 6-2 states, the Board will never deny publication of material solely "because the subject matter may be embarrassing to, or critical of, the Agency." Now in its seventh year, the Board has become a highly organized and efficient review mechanism. The ultimate test of its efficacy has been its ability to work with authors to preserve their rights of free expression while at the same time safeguarding the classified information which has been entrusted to the Agency. Storage of review material is currently undergoing automation. This will enable the review process to become even more efficient in the years to come.

I will now be happy to answer, together with Mr. Mayerfeld, any questions you may have.

APPENDIX A

SECRECY AGREEMENT

1. I, _____ (print full name), hereby agree to accept as a prior condition of my being employed by, or otherwise retained to perform services for, the Central Intelligence Agency, or for staff elements of the Director of Central Intelligence (hereinafter collectively referred to as the "Central Intelligence Agency"), the obligations contained in this agreement.

2. I understand that in the course of my employment or other service with the Central Intelligence Agency I may be given access to information which is classified in accordance with the standards set forth in Executive Order 12356 as amended or superseded, or other applicable Executive Order, and other information which, if disclosed in an unauthorized manner, would jeopardize intelligence activities of the United States Government. I accept that by being granted access to such information I will be placed in a position of special confidence and trust and become obligated to protect the information from unauthorized disclosure.

3. In consideration for being employed or otherwise retained to provide services to the Central Intelligence Agency, I hereby agree that I will never disclose in any form or any manner any of the following categories of information or materials, to any person not authorized by the Central Intelligence Agency to receive them:

a. information which is classified pursuant to Executive Order and which I have obtained during the course of my employment or other service with the Central Intelligence Agency;

b. information, or materials which reveal information, classifiable pursuant to Executive Order and obtained by me in the course of my employment or other service with the Central Intelligence Agency.

4. I understand that the burden will be upon me to learn whether information or materials within my control are considered by the Central Intelligence Agency to fit the descriptions set forth in paragraph 3, and whom the Agency has authorized to receive it.

5. As a further condition of the special confidence and trust reposed in me by the Central Intelligence Agency, I hereby agree to submit for review by the Central Intelligence Agency all information or materials including works of fiction which contain any mention of intelligence data or activities, or contain data which may be based upon information classified pursuant to Executive Order, which I contemplate disclosing publicly or which I have actually prepared for public disclosure, either during my employment or other service with the Central Intelligence Agency or at any time thereafter, prior to discussing it with or showing it to anyone who is not authorized to have access to it. I further agree that I will not take any steps toward public disclosure until I have received written permission to do so from the Central Intelligence Agency.

6. I understand that the purpose of the review described in paragraph 5 is to give the Central Intelligence Agency an opportunity to determine whether the information or materials which I contemplate disclosing publicly contain any information which I have agreed not to disclose. I further understand that the Agency will act upon the materials I submit and make a response to me within a reasonable time. I further understand that if I dispute the Agency's initial classification determinations on the basis that the information in question derives from public sources, I may be called upon to specifically identify such sources. My failure or refusal to do so may by itself result in denial of permission to publish or otherwise disclose the information in dispute.

7. I understand that all information or materials which I may acquire in the course of my employment or other service with the Central Intelligence Agency which fit the descriptions set forth in paragraph 3 of this agreement are and will remain the property of the United States Government. I agree to surrender all materials reflecting such information which may have come into my possession or for which I am responsible because of my employment or other service with the Central Intelligence Agency, upon demand by an appropriate official of the Central Intelligence Agency, or upon the conclusion of my employment or other service with the Central Intelligence Agency.

8. I agree to notify the Central Intelligence Agency immediately in the event that I am called upon by judicial or congressional authorities to testify about, or provide, information which I have agreed herein not to disclose.

9. I understand that nothing contained in this agreement prohibits me from reporting intelligence activities which I consider to be unlawful or improper directly to the Intelligence Oversight Board established by the President or to any successor body which the President may establish. I recognize that there are also established procedures for bringing such matters to the attention of the Agency's Inspector General or to the Director of Central Intelligence. I further understand that any information which I may report to the Intelligence Oversight Board continues to be subject to this agreement for all other purposes and that such reporting does not constitute public disclosure or declassification of that information.

10. I understand that any breach of this agreement by me may result in the Central Intelligence Agency taking administrative action against me, which can include temporary loss of pay or termination of my employment or other service with the Central Intelligence Agency. I also understand that if I violate the terms of this agreement, the United States Government may institute a civil proceeding to seek compensatory damages or other appropriate relief. Further, I understand that the disclosure of information which I have agreed herein not to disclose can, in some circumstances, constitute a criminal offense.

11. I understand that the United States Government may, prior to any unauthorized disclosure which is threatened by me, choose to apply to any appropriate court for an order enforcing this agreement. Nothing in this agreement constitutes a waiver on the part of the United States to institute a civil or criminal proceeding for any breach of this agreement by me. Nothing in this agreement constitutes a waiver on my part of any possible defenses I may have in connection with either civil or criminal proceedings which may be brought against me.

12. In addition to any other remedy to which the United States Government may become entitled, I hereby assign to the United States Government all rights, title, and interest in any and all royalties, remunerations, and emoluments that have resulted or will result or may result from any divulgence, publication or revelation of information by me which is carried out in breach of paragraph 5 of this agreement or which involves information prohibited from disclosure by the terms of this agreement.

13. I understand and accept that, unless I am provided a written release from this agreement or any portion of it by the Director of Central Intelligence or the Director's representative, all the conditions and obligations accepted by me in this agreement apply both during my employment or other service with the Central Intelligence Agency, and at all times thereafter.

14. I understand that the purpose of this agreement is to implement the responsibilities of the Director of Central Intelligence, particularly the responsibility to protect intelligence sources and methods, as specified in the National Security Act of 1947, as amended.

15. I understand that nothing in this agreement limits or otherwise affects provisions of criminal or other laws protecting classified or intelligence information, including provisions of the espionage laws (sections 793, 794 and 798 of Title 18, United States Code) and provisions of the Intelligence Identities Protection Act of 1982 (P. L. 97-200; 50 U. S. C., 421 *et seq*).

16. Each of the numbered paragraphs and lettered subparagraphs of this agreement is severable. If a court should find any of the paragraphs or subparagraphs of this agreement to be unenforceable. I understand that all remaining provisions will continue in full force.

17. I make this agreement in good faith, and with no purpose of evasion.

_____
Signature

_____
Date

The execution of this agreement was witnessed by the undersigned, who accepted it on behalf of the Central Intelligence Agency as a prior condition of the employment or other service of the person whose signature appears above.

WITNESS AND ACCEPTANCE:

_____
Signature

_____
Printed Name

_____
Date

APPENDIX B

PUBLIC AFFAIRS HR 6-

2. NONOFFICIAL PUBLICATIONS AND ORAL PRESENTATIONS BY EMPLOYEES AND FORMER EMPLOYEES

SYNOPSIS. This regulation reflects establishment of the Publications Review Board and sets forth policy, responsibilities, and procedures that govern the submission and review of nonofficial publications and oral presentations by current and former employees.

a. GENERAL

(1) The National Security Act of 1947, as amended, and Executive Order 12333 require the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure. Executive Order 12356 requires protection of classified information from unauthorized disclosure. Agency employees are required to sign a Secrecy Agreement whereby they assume a contractual obligation to protect certain categories of information from unauthorized disclosure. The fact that an employee or former employee has had access to information whose unauthorized disclosure can harm the national security imposes special obligations upon these persons.

(2) Based on the above obligations and responsibilities, this regulation requires that all Agency employees (as defined by HR 20-2) and former employees submit for prior review by the CIA all materials (defined in paragraph b(2) below) intended for nonofficial publication or oral presentation. This regulation also establishes standards for approval by the Publications Review Board.

b. POLICY

(1) The Publications Review Board (hereafter the Board) was established to facilitate the review of nonofficial writings and oral presentations to determine whether or not they contain information as defined in paragraphs b(3)(a) through (d) and b(5) below. The Board consists of the Chief, Public Affairs Division (Chairperson), and representatives from the Directorate of Operations, the Directorate of Administration, the Directorate of Science and Technology, the Directorate of Intelligence, the Office of Security, and the cover unit. The Office of General Counsel provides a legal adviser. The Board will meet as required at the call of the chairperson to ensure that the provisions of this regulation are met.

(2) Agency employees and former employees under the terms of their Secrecy Agreements must submit for review by the Board all writings and scripts or outlines of oral presentations intended for nonofficial publication*, including works of fiction, which make any mention of intelligence data or activities, or contain data which may be based upon information that is classified or classifiable pursuant to law or Executive order. Submission to the Board will be made prior to disclosing such information to anyone who is not authorized by the Agency to have access to it. The responsibility is upon the employee or former employee to learn from the Agency whether the material intended for publication fits the description set forth in this paragraph. No steps will be taken toward publication until written permission to do so is received from the Agency.

(3) For current employees, the Board may deny approval for nonofficial publication or oral presentation of any information obtained during the course of employment with the CIA which has not been placed in the public domain by the U.S. Government, and which is in any of the following categories:

(a) That which is classified pursuant to law or Executive order.

* "Publication" means communicating information to one or more persons.

(b) That which is classifiable pursuant to law or Executive order but which, because of operational circumstances or oversight, is not formally classified by designation and marking.

(c) That which identifies any person or organization that presently has or formerly has had a relationship with a United States foreign intelligence organization, which relationship the U.S. Government has taken affirmative measures to conceal.

(d) That which reasonably could be expected to impair the employee's performance of duties, interfere with the authorized functions of the CIA, or could have an adverse impact on the foreign relations or security of the United States.

(4) Approval will not be denied solely because the subject matter may be embarrassing to or critical of the Agency.

(5) In the case of former employees, the Board will be governed in each case by the provisions of a former employee's Secrecy Agreement in applying the criteria in paragraphs b(3)(a), (b), and (c) above.

(6) The Board will attempt to have the review and classification of manuscripts of writings and oral presentations completed within 30 calendar days.

(7) Authors who are directed to delete material in accordance with this regulation are required to submit their revisions to the Board for final approval.

(8) Authors may appeal the final classification decision approved by the Board to the Deputy Director of Central Intelligence (DDCI) (see paragraph c(6) below).

(9) Approval for publication or oral presentation does not represent Agency endorsement or verification of, or agreement with, the subject matter. Consistent with cover status, authors are encouraged (current employees are required, unless waived by line authority) to use the following disclaimer: "This material has been reviewed by the CIA to assist the author in eliminating classified information, if any; however, that review neither constitutes CIA authentication of material as factual nor implies CIA endorsement of the author's views."

c. RESPONSIBILITIES AND PROCEDURES

(1) Present employees may submit writings and scripts or outlines of oral presentations to the Board through the responsible Deputy Director or Head of Independent Office who may determine that review by the Board is unnecessary and that public release is authorized based on paragraph b(3) above. A Deputy Director or Head of Independent Office also may approve publication with deletions and/or changes or disapprove publication based on paragraph b(3) above. Employees may elect to make submissions directly to the Chairperson of the Publications Review Board for determination of the necessity for Board review.

(2) Former employees will submit writings and scripts or outlines of oral presentations to the Office of General Counsel, which will forward them to the Board and subsequently notify the former employee of the Board's findings. The General Counsel or designee will act as spokesperson for the Board in all communications with former employees.

(3) Should a present employee learn that a present or former employee is preparing a writing or an oral presentation that may contain information requiring Agency approval for public release, he or she is requested to advise the Board, which will be responsible for reminding the individual of the obligation to submit the material for Agency review.

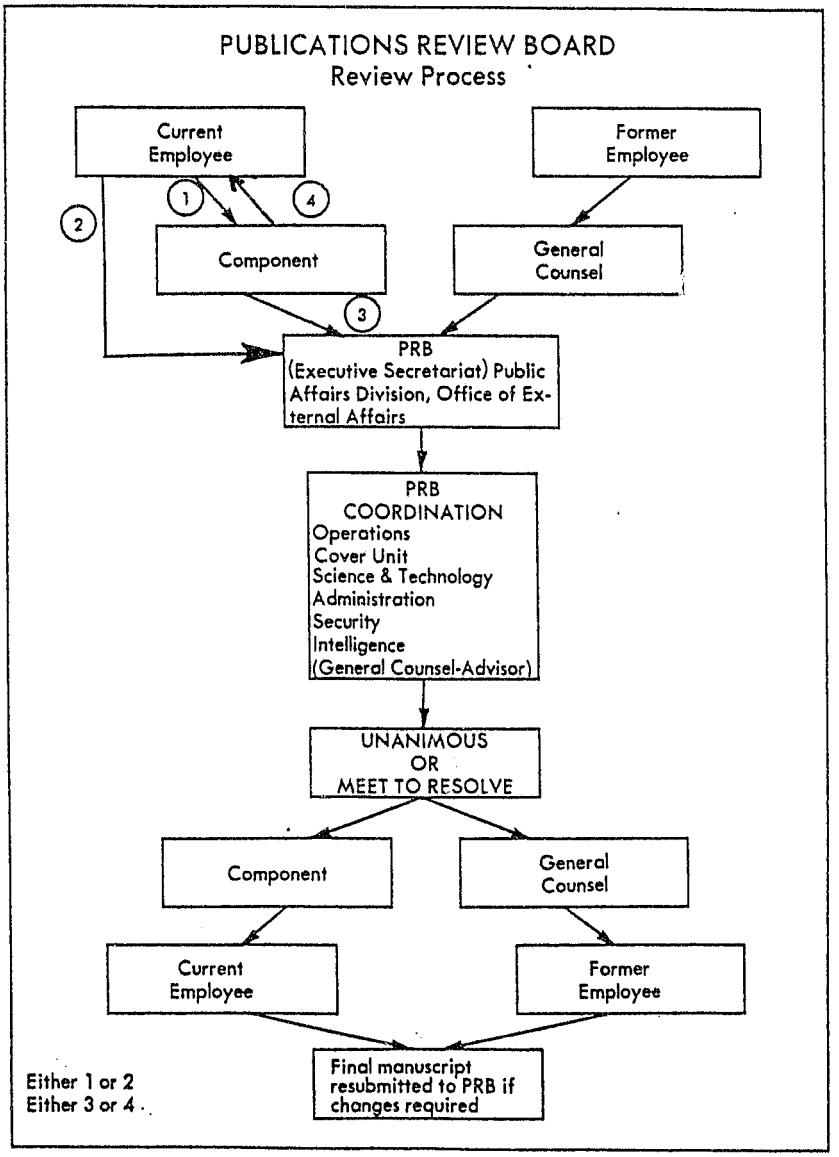
(4) The chairperson will ensure that each member of the Board has reviewed one copy of the submission and that appropriate individuals are designated to make a classification determination and return it to the chairperson with comments. If the Board unanimously

decides that it is unobjectionable under the standards and criteria listed above, the chairperson will notify the author through the appropriate channels. If any member of the Board objects to publication or oral presentation, the matter will be resolved at a Board meeting.

(5) The chairperson is authorized unilaterally to represent the Board when time constraints or other unusual circumstances make it impractical or impossible to convene or consult the Board.

(6) Authors who wish to appeal decisions should address such appeals in writing to the DDCI, accompanied by the manuscript the author wishes the DDCI to consider and any supporting materials. Appeals are to be submitted through the Inspector General or, in the case of former employees, to the General Counsel, who will forward them to the Inspector General. The Inspector General will review the data provided by both the author and the Board and will forward the material and his recommendation to the DDCI or designee, who then will issue a final determination. Every effort will be made to complete the appeal process within a 30-calendar-day period.

APPENDIX C


PUBLICATIONS REVIEW BOARD
Review Process
Current Employee
Former Employee
1
2
3
4
Component
General Counsel
PRB
(Executive Secretariat) Public Affairs Division, Office of External Affairs
PRB
COORDINATION
Operations
Cover Unit
Science & Technology
Administration
Security
Intelligence
(General Counsel-Advisor)
UNANIMOUS
OR
MEET TO RESOLVE
Component
General Counsel
Current Employee
Former Employee
Final manuscript resubmitted to PRB if changes required
Either 1 or 2
Either 3 or 4

APPENDIX D

NUMBER OF PUBLICATIONS REVIEW BOARD SUBMISSIONS BY FORM

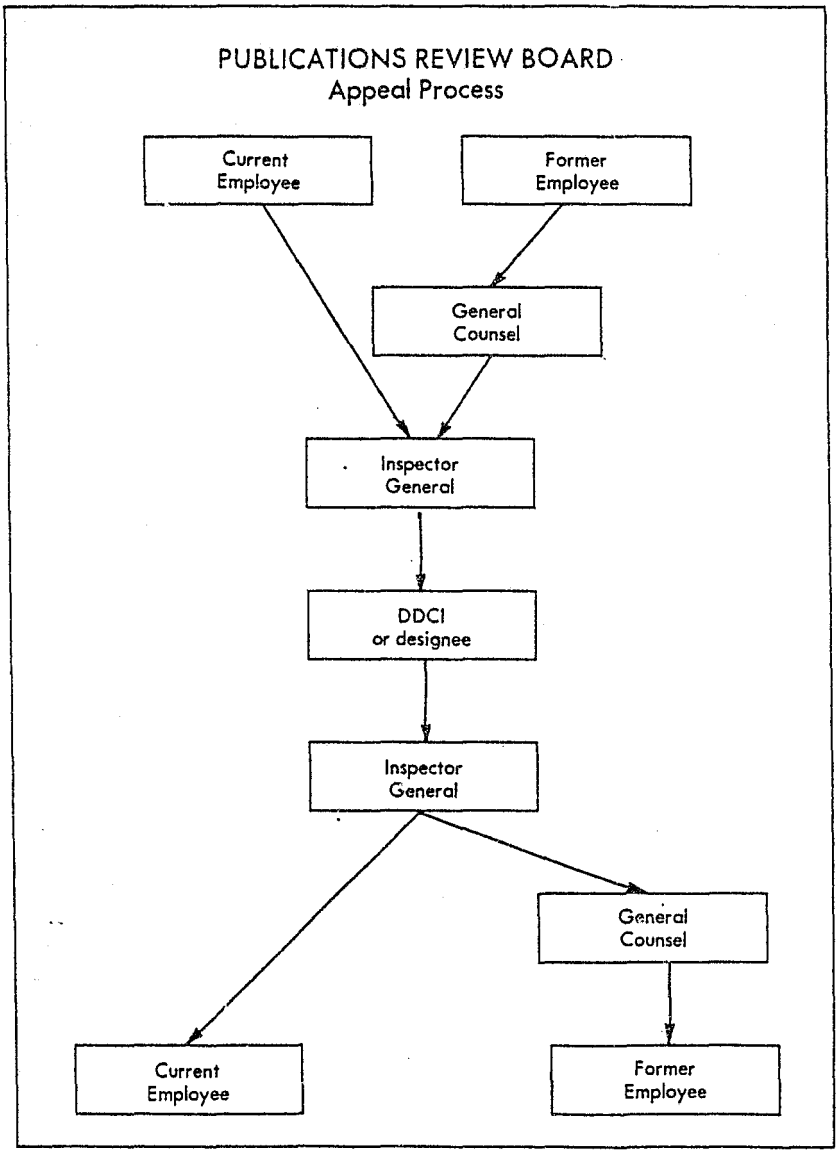
PUBFORM	IDYEAR 77	78	79	80	81	82	83	TOTAL
ARTICLE	26	28	63	81	127	123	53	501
BOOK	14	18	29	30	22	22	11	146
BOOKREVIEW	1	7	0	7	14	26	5	60
CHAPTER	0	1	0	9	16	20	5	51
LETR TO ED	0	1	0	2	0	2	1	6
OTHER	0	4	0	5	1	3	3	16
OUTLINE	1	2	1	4	6	6	1	21
SCRIPT	1	1	2	2	0	0	0	6
SPEECH	0	1	0	8	7	11	2	29
TOTAL	43	63	95	148	193	213	81	836

APPENDIX E

TOTAL PAGES REVIEWED BY YEAR

YEAR	TOTAL PAGES
77	5340
78	5725
79	10176
80	13705
81	10232
82	13227
83	3837
TOTAL	62242

APPENDIX F


PUBLICATIONS REVIEW BOARD
Appeal Process
Current Employee
Former Employee
General Counsel
Inspector General
DDCI or designee
Inspector General
General Counsel
Current Employee
Former Employee

APPENDIX G

AGENCY POLICIES ON PREPUBLICATION REVIEW PROVISIONS OF SECRECY AGREEMENTS

A. POLICY ON ENFORCEMENT OF SECRECY AGREEMENTS RELATED TO PREPUBLICATION REVIEW

1. Subsequent to the Supreme Court's decision in *U.S. v. Snepp*, numerous inquiries have been received concerning the Agency's policy on enforcement of its secrecy agreement. The purpose of this notice is to set forth information concerning the Agency's policy, for purposes of assisting persons subject to secrecy agreements to comply in good faith with the requirements of those agreements.

2. The purpose of the prior review requirement in the secrecy agreement is to determine whether material contemplated for public disclosure contains classified or classifiable information and, if so, to give the Agency an opportunity to prevent the public disclosure of such information. Prior review means that written materials are submitted to the Agency before being circulated at each stage of their development to publishers, reviewers, or to the public. The reason for this prior review requirement is to prevent comparison of the material which would then reveal which items had been deleted by the Agency. For this reason, post-review of the materials, i.e., after they have been submitted to the publishers, reviewers, etc., does not comply with this policy. However, the Agency reserves the right to review any such material for purposes of taking necessary protective action to mitigate damage caused by disclosure of classified information it may contain, but such review and action shall be entirely without prejudice to the legal rights of the United States Government and the Agency under the secrecy agreement.

3. Persons bound by the secrecy agreement should understand that the Agency cannot determine unilaterally what action in court will be taken in the case of a breach of the agreement. The Agency's recommendations in this regard are subject to the decision of the Attorney General. The Agency Office of General Counsel will be notified in all cases when a known breach occurs. The expressed or presumed attitude of a person toward the United States Government or the Agency is not a factor in determining what recommendation may be made by the Agency to the Department of Justice.

4. The authors of material submitted to the Agency are expected to cooperate with and assist the review process. In particular, they may be called upon to identify any public sources of information which, in the Agency's judgment, appear to originate from classified sources and to cite the source when their confirmation of the information would, in the eyes of the Agency, cause damage. Failure or refusal to identify such public sources by itself may result in refusal of authorization to publish the information in question.

5. Persons subject to a secrecy agreement are invited at any stage to discuss their plans for disclosures covered by the agreement. The views of the Agency can only be given by an authorized representative specifically designated for this purpose by the Director in regulation or otherwise. No one should act in reliance on any position or views expressed by any person other than such authorized Agency representative.

B. POLICY ON MATERIAL TO BE SUBMITTED FOR PREPUBLICATION REVIEW

1. It is not possible to anticipate each and every question that may arise. It is the policy of the Agency to respond, as rapidly as possible, to specific inquiries raised by persons subject to an Agency secrecy agreement as to whether specific materials require submission for review. Procedures for submission are contained in HR 6-2. Further questions should be referred to the Publications Review Board. Former employees should address all questions concerning secrecy agreements to the Office of General Counsel.

2. The Agency considers the prior review requirement to be applicable whenever a person bound by the secrecy agreement, express or implied, actually has prepared material for public disclosure which contains any mention of intelligence data or activities or which may be classified or classifiable pursuant to law or Executive order. The Agency views it to be that

person's duty to submit such material for review in accordance with the secrecy agreement. A person's obligation under the agreement remains identical whether such a person prepares the material himself or herself or causes another person, such as a ghost writer, spouse, friend or associate to prepare the material.

3. The provisions of the secrecy agreement requiring submission of information or materials for review are not limited to any particular category of materials or methods of disclosure. In the view of the Agency, these provisions apply to both oral and written materials. With respect to written materials, the provisions apply not only to books but to all other forms of written materials intended for public disclosure, such as (but not limited to) newspaper columns, magazine articles, letters to the editor, book reviews, pamphlets, and scholarly papers. Because alleged fictional treatment can be used as a subterfuge to convey factual information, fiction about the CIA or about intelligence activities is covered by the agreements.

4. Oral statements constitute one of the most difficult areas in application of the secrecy agreement. The agreement applies to material that the person contemplates disclosing publicly or actually has prepared for public disclosure. It does not, in the Agency's view, require the preparation of such material. Thus, a person bound by the agreement is not in breach of the agreement if that person participates extemporaneously and without prior preparation in an oral expression of information (e.g., news interview, panel discussions, extemporaneous speech) and does not submit material for review in advance. This does not, of course, exempt such person from liability for any unauthorized disclosure of classified or classifiable information that may occur in the course of such extemporaneous oral expression.

5. The requirement under the secrecy agreement is only to submit materials on the subject matter of intelligence or the Agency and its activities or material which may be based upon information classified or classifiable pursuant to law or Executive order. Current employees must submit information which reasonably could be expected to impair the employee's performance of duties or interfere with the authorized functions of the Central Intelligence Agency, including information which could have an impact on foreign relations. The prepublication review requirement does not apply to topics that are totally unrelated to intelligence matters, such as a manuscript of a cookbook, a treatise on gardening, or writings on domestic political matters. Nor does the prepublication review requirement extend to discussion of foreign relations not purporting to contain or be based upon intelligence information.

6. Material that consists solely of personal views, opinions, or judgments on matters of public concern and does not contain or purport to contain any mention of intelligence data or activities or contain or purport to contain data which may be based upon information classified or classifiable pursuant to law or Executive order is not subject to the prepublication review requirement. For example, a person bound by the secrecy agreement is free, without prior review, to submit testimony to the Congress or make public speeches or publish articles on such topics as proposed legislation as long as the material prepared by such person does not directly or by implication constitute a statement of an informational nature about intelligence activities or substantive intelligence information, or in the case of current employees, impair the employee's performance or the authorized function of the Central Intelligence Agency, including information which could have an impact on foreign relations. It should be obvious that in some circumstances the expression of what purports to be an opinion may in fact convey information subject to prior review under the secrecy agreement. For example, a former intelligence analyst's opinion that the U.S. can or cannot verify SALT compliance is an implied statement of fact about Agency activities and substantive intelligence information, and would be subject to prior review. This does not mean that such a statement necessarily would be classified and require deletion, but merely that the subject matter required review by the Agency before publication. A discussion of the desirability of the SALT treaty based on analysis of its provisions and without discussion of intelligence information or activities would not. It should be clear that descriptions of an employee's Agency activities can be expected always to require prior review under these principles. At the other extreme, it is clear that a person subject to the secrecy agreement, who writes or speaks about areas of national policy from the perspective of an observer outside the Government and without purporting to rely on classified or classifiable information, intelligence information, or information on intelligence activities, does not have to submit such materials for prior review. While some "gray areas" may exist, persons subject to the secrecy agreement are expected to err on the side of voluntary prepublication review in keeping with the spirit and intent of the agreement.

Mr. WILSON. Thank you.

We are prepared to answer questions.

Mrs. SCHROEDER. Congressman Sensenbrenner, do you want to kick off the process? We will rotate this around.

Mr. SENSENBRENNER. Let me come back later.

Mrs. SCHROEDER. OK.

Mr. SENSENBRENNER. My friend, Mr. Edwards, has had the last word with the two previous witnesses. I will ask for the last word this time.

Mrs. SCHROEDER. OK.

Congressman Edwards, would you like the first word?

Mr. EDWARDS. I guess it would be helpful—and we welcome you gentlemen today—to explain to the committee the prepublication review process that the CIA goes through. Would you tell us about it, please?

Mr. WILSON. Tell you about the process?

Mr. EDWARDS. Yes. Tell us about the program, how it works.

Mr. WILSON. As I mentioned earlier, the prepublication process at CIA derives from the secrecy agreement, which is a basic contract that Mr. Willard described earlier very briefly, that determines as a condition of employment that each CIA employee agrees never to divulge classified information that he may be exposed to during the course of his employment, and more specifically goes on to say that there will be a prepublication review requirement.

For many years, this was not a serious problem at CIA. There was little inclination for employees or former employees to write. Something occurred in the late 1970's which caused us to take a good hard look at the possibility that there would be an increasing inclination on the part of employees to write, and we decided that, in the interest of good, tight security procedures, it was necessary to formalize our prepublication review system.

We did that by devising a regulation and by constituting a publication review board. That is the board that I chair and which every major component at CIA has a member who serves on it. Mr. Mayerfeld on my left is the Agency's officially appointed legal adviser to that board.

The system is simple, Mr. Edwards. When the board receives a manuscript for prepublication review, it is reproduced, sent out to the various members of the board, the clock is set and a deadline established for completion of the review. The various members of the board then, in turn, place the manuscript in the hands of those people who are most qualified to deal with the review. The review is accomplished. If any, the classified material in the manuscript is identified, it is returned to me and, in the event there are trouble spots in the manuscript, the board convenes to discuss those. On the advice of counsel, if classified material holds up, the author is so advised and, at that point, we either negotiate with him the necessary changes or, on the other hand, there is no classified material, he is given written authorization to proceed to publish.

Mr. EDWARDS. Suppose a former employee is writing a novel like Howard Hunt. Were all of Mr. Hunt's novels and detective stories precleared?

Mr. WILSON. We have reviewed several of his fictitious——

Mr. EDWARDS. All of them?

Mr. WILSON. No; not all of them. I can't say that with certainty. I am sorry.

Mr. EDWARDS. Why not all of them?

Mr. WILSON. What you have to understand here is that there is a specific reason for reviewing works of fiction. That reason is when those works of fiction get too close to fact—Mr. Hunt has voluntarily submitted several of his novels for our review, and I have to assume it is because he wanted to be absolutely certain that his fictitious accounts were not getting too close to fact. I can't really tell you other than that what motivated him to submit his material.

Mr. EDWARDS. If he didn't submit them, then he would be violating his agreement with you.

Mr. WILSON. He wouldn't violate his agreement unless the material that he wrote about fit the guidelines under which the publications review board operates, which is that people who write about material to which they were exposed during the course of their employment at CIA or which relates to classified material or intelligence matters, that material must be submitted.

Mr. EDWARDS. In other words, the only material that you are authorized to delete would be classified material?

Mr. WILSON. Precisely.

Mr. EDWARDS. Is that a firm rule?

Mr. WILSON. That is it.

Mr. EDWARDS. That classified material must be deleted.

Mr. WILSON. I might add that, in our internal governing regulation, just to make that point abundantly clear, we have written in an express prohibition against deleting other materials such as material which would be critical of CIA or otherwise embarrassing to the agency.

Mr. EDWARDS. But if a former employee writes a book like Mr. Snepp wrote a book and he didn't preclear it and it was found to have no classified information in it?

Mr. WILSON. That was never at issue in the *Snepp* case, no. Classification was not an issue. His secrecy agreement and violation of his obligation for prepublication review was the issue.

Mr. EDWARDS. Howard Hunt did the same thing and you didn't go after him.

Mr. WILSON. I am not sure I understand.

Mr. EDWARDS. He wrote books that weren't precleared. How do you know if he didn't preclear them that they didn't contain information about his former employment, classified information?

Mr. MAYERFELD. I defer to Mr. Wilson on the question of whether Mr. Hunt submits all his material or not. It has been my impression that, since we formalized the process, he does.

Mr. EDWARDS. I think I would like to yield to Mr. Sensenbrenner.

Mr. SENSENBRENNER. I thank the chairman for yielding.

It seems to me, listening to the way this hearing unfolds, is that sometimes there are complaints if everything has got to be submitted for preclearance, and now there are complaints that some things don't have to be submitted for preclearance. I am a little bit puzzled at that, but that is not for you to answer.

It appears that some of the Government agencies covered by the directive will be looking at CIA procedures for prepublication review since your review procedures have been in place for several

years and are in compliance with the Supreme Court's decision in the *Snepp* case. In view of this, I have several questions.

Several witnesses last week testified that the CIA process is slow and cumbersome. They specifically mentioned the *McGehee* case, in which it is alleged that it took the author 2½ years to get prepublication clearance. The majority in this committee has Xeroxed off the appendix to Mr. McGehee's book entitled "This Book and the Secrecy Agreement," which is seven pages long and which outlines Mr. McGehee's frustration in the preclearance process.

Could you give this committee some background and state the agency's side of the story?

Mr. WILSON. Of course, sir.

It is not an accurate characterization for anyone to suggest that Mr. McGehee's book took 2 years to be cleared. Over the course of 2 years, Mr. McGehee made several submissions to the CIA for clearance. As a matter of fact, that involved three lengthy manuscripts, each of which was yet another attempt to end up with a successfully reviewed and authorized publication that he could then take to a publisher.

Also during the course of that time, he submitted a chapter at a time, a few chapters at a time, revisions of previous chapters, and it was a very complex process.

I should also add that the publications review board, in the instance of each of those several submissions, tried very hard to complete the review within that 30-day standard which we impose upon ourselves. To the best of my knowledge, I believe—and I can certify this—that the standard was met in each case.

But we really are not talking about one review, we are talking about numerous reviews. I have a chronology of that entire process, which I would be pleased to provide for the record if you are interested.

Mr. SENSENBRENNER. I would appreciate that.

[The information follows:]

RALPH W. McGEHEE SUBMISSIONS TO
THE PUBLICATIONS REVIEW BOARD

	Date Submitted	Date Author Notified	Manuscript Title	Description/Comments
1.	26 Feb 80	21 Mar 80	Reality Transformed: CIA, Vietnam, Third World Intervention, Multi-national Corporations, and the American Political Process (212-80)	13 Chapters Classified Information Identified. Proposal that Author and PRB Representative Work Together to Arrive at a Mutually Agreeable Text; Proposal Accepted by Author.
		11 Apr 80		No Classified Information Identified in the Revised Text.
2.	16 Apr 80	2 May 80	Honorable Mention: My Life in the CIA (243-80)	Article No Classified Information Identified.
3.	2 May 80	9 May 80	CIA's Prior Review Under the Secrecy Agreement (253-80)	Article No Classified Information Identified.
4.	13 Nov 80	9 Dec 80	Reality Transformed: Introduction (328-80)	1 Chapter, (Rewrite of 26 Feb Submission) No Classified Information Identified.
5.	9 Dec 80	6 Jan 81	The Beginning (342-80)	Article No Classified Information Identified.

Date Submitted	Date Author Notified	Manuscript Title	Description/Comments
6. 30 Dec 80	27 Jan 81	Evolution of the Covert Action and Intelligence Roles of the CIA (346-80)	Article No Classified Information Identified.
7. 23 Jan 81		Untitled Book	3 Chapters
		Policy Versus Intelligence--Operations in Soviet Bloc Countries (351-82)	No Classified Information Identified.
		Policy Versus Intelligence--Representative Samples (351-81)	Classified Information Identified.
		Policy Versus Intelligence--The Iranian Model (351-81)	No Classified Information Identified.
	20 Feb 81		Author Notified of Security Objection. Open Source Citation /Footnote Provided by Author.
	2 Mar 81		No Classified Information Identified. Open Source Footnote Required
8. 4 Feb 81	3 Mar 81	Reality Transformed: My Diem	Chapter, (Rewrite of 26 Feb Submission) Classified Information Identified.
	4 Mar 81		Security Objections Reviewed and Withdrawn

Date Submitted	Date Author Notified	Manuscript Title	Description/Comments
9. 17 Feb 81	9 Mar 81	Reality Transformed: Pacifying the Countryside (362-81)	Chapter No Classified Information Identified.
10. 4 Mar 81	2 Apr 81	Reality Transformed: The United States Fights the War (374-81)	Chapter No Classified Information Identified.
11. 20 Mar 81	24 Mar 81	Reality Transformed: CIA Operations in El Salvador (387-81)	Article Classified Information Identified.
	26 Mar 81		Litigation Proceedings Initiated (to Restore Deletions); Deletions Upheld by Federal Court.
12. 14 Apr 81	17 Apr 81	The El Salvador White Paper--a C.I.A. Forgery? (397-81)	Article Classified Information Identified.
	20 Apr 81		Revised Text Submitted by Author
	21 Apr 81		No Classified Information Identified in the Revised Text
13. 22 Apr 81	24 Apr 81	El Salvador: Which Vietnam? (402-81)	Article No Classified Information Identified.
14. 20 May 81	20 May 81	Rebuttal to William Colby's Rebuttal on El Salvador: Which Vietnam (415-81)	Article No Classified Information Identified.

Date Submitted	Date Author Notified	Manuscript Title	Description/Comments
15. 3 Aug 81	5 Aug 81	The CIA's New Leadership: What it Portends (445-81)	Article Classified Information Identified.
16. 14 Aug 81	17 Aug 81	Interview of Ralph McGehee by Thomas Powers (453-81)	Interview Text Classified Information Identified
17. 6 Oct 81	9 Oct 81	Untitled Speech about CIA (486-81)	Speech No Classified Information Identified.
18. 4 Dec 81	31 Dec 81	Reality Transformed: Outline for Revised Version (523-81)	Outline Author Notified that Manuscript Contained Classified Information
19. 22 Jan 82	5 Feb 82	Reality Transformed: Revised Chapter 1 (553-82)	Chapter Classified Information Identified.
	19 Feb 82		Deletions Appealed
	8 Mar 82		PRB Decisions Reversed on all but One Objection
	16 Mar 82		Author Provides Open Source Documentation Citing Information in the Remaining Deletion
	25 Mar 82		Security Objection Withdrawn in Light of Provided Citations

Date Submitted	Date Author Notified	Manuscript Title	Description/Comments
20. 5 Feb 82	23 Mar 82	Reality Transformed: Revised Chapter 2 (565-82)	Chapter Classified Information Identified.
			Author Notified that Manuscript Contained Classified Information
	24 Mar 82		Author Meets with PRB Representative to Discuss Deletions. Provides Open Source Citations for Classified Information
	29 Apr 82		Author Notified that Manuscript Still Contains Classified Information
Circa 25 May 82			Author Submits Revised Text; Author and PRB Representative Worked Together to Arrive at a Mutually Agreeable Text
	27 May 82		No Classified Information Identified in the Revised Text.
21. 23 Mar 82	29 Mar 82	Mr. David Phillip's Decision to Retire (601-82)	Article No Classified Information Identified.

Date Submitted	Date Author Notified	Manuscript Title	Description/Comments
22. 23 Mar 82		Reality Transformed: Revised Chapters 3, 4 and 5 (602-82)	Chapters Author Agrees to Work With PRB Representative to Arrive at a Mutually Agreeable Text on Chapters Currently Under Review as Well as Remaining Chapters.
30 Apr 82		Reality Transformed: Revised Chapters 6-10 (631-82)	
10 May 82		Reality Transformed: Revised Chapters 11-14 (636-82)	
2 Jun 82		Reality Transformed: Glossary (649-82)	
	15 Jun 82		No Classified Information Identified in the Revised Text.
23. 2 Apr 82	2 Apr 82	Revised Mr. David Phillip's Decision to Retire (601-82)	Article No Classified Information Identified.
24. 15 Jun 82	30 Jun 82	CIA's Prior Review Under the Secrecy Agreement (656-82)	Article Classified Information Identified.
25. 2 Aug 82	16 Aug 82	Reality Transformed: Miscellaneous Revised Pages (680-82)	Pages No Classified Information Identified.

Mrs. SCHROEDER. As you know, in last Sunday's Washington Post, Admiral Turner, the former CIA Director, wrote an article on stopping the "covert operation in Nicaragua." Was that article submitted for prepublication review, and how long did it take for you to review that and approve it?

Mr. WILSON. Yes, sir, it was submitted for review, and it took 2 days.

Mr. SENSENBRENNER. The gentleman from California has alleged that there are different strokes for different folks applied, and that articles by former CIA employees that are friendly to the Agency and state the Agency's side of the story get through quickly and those that are hostile do not. Is this true?

Mr. WILSON. No, sir.

Mr. SENSENBRENNER. How do you go about the review process if you have several that come in at the same time? Are they reviewed in the order which they have been submitted to the Agency all within the 30-day deadline or what?

Mr. WILSON. Normally, the standard is first in, first out. Let me be quick to add onto that. That is the normal standard. We do, however, take into account the extraordinary circumstances imposed by publisher deadlines, the nature of the work, the workload that is currently out for review by the publications review board, and other circumstances such as that.

Mr. EDWARDS. In other words, if somebody comes with a case saying that the publisher is breathing down his neck and could you do this quickly, you give him a break?

Mr. WILSON. Yes. Especially so in the case of short pieces where they can be reviewed very quickly.

In the case of a 400- or 500- or 600-page, very complex book manuscripts, that is a different story.

Mr. SENSENBRENNER. With respect to works of fiction—and I think there are some around here that say that anything that came from a CIA employee or former employee is a work of fiction, but irrespective of that personal opinion—I have before me a secrecy agreement which is attached as appendix A to your statement. It does agree to submit for review by the CIA all information or materials including works of fiction which contain any mention of intelligence data or activities or contain data which may be based upon information classified pursuant to Executive order.

How do you draw the dividing line on whether a novel about a guerrilla war in a foreign country is based upon classified information or not?

Mr. WILSON. Admittedly, it is a difficult problem. One might ask how can fiction be classified; it is fiction and, therefore, only facts can be classified?

Let me give you an example that is a real one that troubled our review process at one point. We reviewed a submission by a former operations officer who was involved in clandestine part of our business for many years, in which he recounted a story that was such a thinly veiled autobiographical account purporting to be fiction that it was quite clear to us that it would not have taken a professional in a hostile intelligence service very much effort at all to actually pinpoint times, places and people who were currently in a classi-

fied status and could have led directly to the identification of sensitive sources.

In that one instance, we negotiated with the author and caused him to, in effect, fuzz up those sensitive areas sufficiently so that he was eventually able to publish it. Does that help your understanding?

Mr. SENSENBRENNER. Let's talk about the Howard Hunt instance where some books were submitted and some books were not.

Again, I think the chairman is attempting to lay groundwork for a different strokes for different folks scenario.

Mr. EDWARDS. Would the gentleman yield for just a minute.

Mr. SENSENBRENNER. Sure.

Mr. EDWARDS. I appreciate you rephrasing my question.

Mr. SENSENBRENNER. OK.

How do we make the determination in that particular instance on whether the book does have to be submitted or doesn't?

Mr. WILSON. Mr. Hunt has been fairly faithful to his agreement to submit his material for review since 1979. My recollection is that he has submitted five of his novels. Prior to that time——

Mr. SENSENBRENNER. How many do you know were not submitted?

Mr. WILSON. I am not a follower of Howard Hunt's material, so I can't answer the question.

Mr. SENSENBRENNER. Neither am I.

Mr. MAYERFELD. We could make that available for the record if you would like.

Mr. SENSENBRENNER. I would appreciate that.

[The information follows:]

Central Intelligence Agency

Washington, D.C. 20505

7 JUN 1983

Ms. Helen Gonzales
Assistant Counsel
Subcommittee on Civil &
Constitutional Rights
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Ms. Gonzales:

Enclosed you will find the following items which were requested in the course of the pre-publication review hearings:

a. Chronology of Ralph McGehee submissions;

b. List of E. Howard Hunt's manuscripts reviewed by CIA; and,

c. List of E. Howard Hunt's published works, including those published under nom de plume. Published works reviewed by the Agency are denoted by upper case.

Robert J. Winchester
Chief, House Liaison
Legislative Liaison Division
Office of External Affairs

Enclosures

RALPH W. McGEHEE SUBMISSIONS TO
THE PUBLICATIONS REVIEW BOARD

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	11 Apr 80		No Classified Information Identified in the Revised Text.
2. 16 Apr 80	2 May 80	Honorable Mention: My Life in the CIA (243-80)	Article No Classified Information Identified.
3. 2 May 80	9 May 80	CIA's Prior Review Under the Secrecy Agreement (253-80)	Article No Classified Information Identified.
4. 13 Nov 80	9 Dec 80	Reality Transformed: Introduction (328-80)	1 Chapter, (Rewrite of 26 Feb Submission) No Classified Information Identified.
5. 9 Dec 80	6 Jan 81	The Beginning (342-80)	Article No Classified Information Identified.

Date Submitted	Date Author Notified	Manuscript Title	Description/Comments
6. 30 Dec 80	27 Jan 81	Evolution of the Covert Action and Intelligence Roles of the CIA (346-80)	Article No Classified Information Identified.
7. 23 Jan 81		Untitled Book	3 Chapters
		Policy Versus Intelligence--Operations in Soviet Bloc Countries (351-82)	No Classified Information Identified.
		Policy Versus Intelligence--Representative Samples (351-81)	Classified Information Identified.
		Policy Versus Intelligence--The Iranian Model (351-81)	No Classified Information Identified.
	20 Feb 81		Author Notified of Security Objection. Open Source Citation /Footnote Provided by Author.
	2 Mar 81		No Classified Information Identified. Open Source Footnote Required
8. 4 Feb 81	3 Mar 81	Reality Transformed: My Diem	Chapter, (Rewrite of 26 Feb Submission) Classified Information Identified.
	4 Mar 81		Security Objections Reviewed and Withdrawn

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9. 17 Feb 81	9 Mar 81	Reality Transformed: Pacifying the Countryside (362-81)	Chapter No Classified Information Identified.
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11. 20 Mar 81	24 Mar 81	Reality Transformed: CIA Operations in El Salvador (387-81)	Article Classified Information Identified.
	26 Mar 81		Litigation Proceedings Initiated (to Restore Deletions); Deletions Upheld by Federal Court.
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	20 Apr 81		Revised Text Submitted by Author
	21 Apr 81		No Classified Information Identified in the Revised Text
13. 22 Apr 81	24 Apr 81	El Salvador: Which Vietnam? (402-81)	Article No Classified Information Identified.
14. 20 May 81	20 May 81	Rebuttal to William Colby's Rebuttal on El Salvador: Which Vietnam (415-81)	Article No Classified Information Identified.

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16. 14 Aug 81	17 Aug 81	Interview of Ralph McGehee by Thomas Powers (453-81)	Interview Text Classified Information Identified
17. 6 Oct 81	9 Oct 81	Untitled Speech about CIA (486-81)	Speech No Classified Information Identified.
18. 4 Dec 81	31 Dec 81	Reality Transformed: Outline for Revised Version (523-81)	Outline Author Notified that Manuscript Contained Classified Information
19. 22 Jan 82	5 Feb 82	Reality Transformed: Revised Chapter 1 (553-82)	Chapter Classified Information Identified.
	19 Feb 82		Deletions Appealed
	8 Mar 82		PRB Decisions Reversed on all but One Objection
	16 Mar 82		Author Provides Open Source Documentation Citing Information in the Remaining Deletion
	25 Mar 82		Security Objection Withdrawn in Light of Provided Citations

Date Submitted	Date Author Notified	Manuscript Title	Description/Comments
20. 5 Feb 82	23 Mar 82	Reality Transformed: Revised Chapter 2 (565-82)	Chapter Classified Information Identified.
			Author Notified that Manuscript Contained Classified Information
	24 Mar 82		Author Meets with PRB Representative to Discuss Deletions. Provides Open Source Citations for Classified Information
	29 Apr 82		Author Notified that Manuscript Still Contains Classified Information
Circa 25 May 82			Author Submits Revised Text; Author and PRB Representative Worked Together to Arrive at a Mutually Agreeable Text
	27 May 82		No Classified Information Identified in the Revised Text.
21. 23 Mar 82	29 Mar 82	Mr. David Phillip's Decision to Retire (601-82)	Article No Classified Information Identified.

Date Submitted	Date Author Notified	Manuscript Title	Description/Comments
22. 23 Mar 82		Reality Transformed: Revised Chapters 3, 4 and 5 (602-82)	Chapters Author Agrees to Work With PRB Representative to Arrive at a Mutually Agreeable Text on Chapters Currently Under Review as Well as Remaining Chapters.
30 Apr 82		Reality Transformed: Revised Chapters 6-10 (631-82)	
10 May 82		Reality Transformed: Revised Chapters 11-14 (636-82)	
2 Jun 82		Reality Transformed: Glossary (649-82)	
	15 Jun 82		No Classified Information Identified in the Revised Text.
23. 2 Apr 82	2 Apr 82	Revised Mr. David Phillip's Decision to Retire (601-82)	Article No Classified Information Identified.
24. 15 Jun 82	30 Jun 82	CIA's Prior Review Under the Secrecy Agreement (656-82)	Article Classified Information Identified.
25. 2 Aug 82	16 Aug 82	Reality Transformed: Miscellaneous Revised Pages (680-82)	Pages No Classified Information Identified.

E. Howard Hunt Manuscripts Reviewed By CIA

Apr 52	Appointment with Yesterday	Approved
Dec 50	The Judas Hour	Approved
Jan 52	Paris VIII	Approved
May 52	Whisper Her Name	Approved
Sep 52	Lovers Are Losers	Approved
May 53	Darkness on the Land	Approved
Jan 54	Streets of the Night	Approved
Oct 74	Autobiography of E. Howard Hunt (Published as Undercover)	Changes
Jul 79	Hargrave Deception	Approved
May 80	The Gaza Intercept	Approved
Mar 81	REBU$	Approved
Jan 82	Quarry	Changes
Nov 82	Oval Office	Approved

Published Works of E. Howard Hunt*

Howard Hunt, except as indicated: East of Farewell, Knopf, 1942; Limit of Darkness, Random House, 1944; Stranger in Town, Random House 1947; Maelstrom, Farrar, Straus, 1948; Bimini Run, Farrar, Straus, 1949; The Violent Ones, Fawcett, 1950; GIVE US THIS DAY, Arlington House, 1973; The Berlin Ending: A Novel of Discovery, 1973; JUDAS HOUR, Pinnacle Books, 1973; WHISPER HER NAME, Pinnacle Books; LOVERS ARE LOSERS, Pinnacle Books.

E. Howard Hunt: UNDERCOVER: MEMOIRS OF AN AMERICAN SECRET AGENT, Berkley, 1974; THE HARGRAVE DECEPTION, Stein & Day, 1980; GAZA INTERCEPT, Stein & Day, 1981; Science Fiction in the Cinema, A.S. Barnes 1970.

John Baxter: A Foreign Affair, Avon, 1954; Unfaithful, Avon, 1955: A Gift for Gomala, Lippincott, 1982; Hollywood in the Thirties, A.S. Barnes, 1968.

Gordon Davis: I Came to kill, Fawcett, 1953; House Dick, Fawcett, 1961, published under real name as Washington Payoff, Pinnacle Books, 1975; Counterfeit Kill, Fawcett, 1963, reprinted under real name, Pinnacle Books, 1975, Where Murder Waits, Fawcett, 1965.

Robert Dietrich: The Cheat, Pyramid Books, 1954; Be My Victim, Dell, 1965; Murder on the Rock, Dell, 1957; The House on O Street, Dell, 1958; End of a Stripper, Dell, 1959; Mistress to Murder, Dell, 1960; Murder on Her Mind, Del, 1960; Angel Eyes, Dell, 1961; Calypso Caper, Dell, 1961; Curtains for a lover, Lancer Books, 1962; My Body, Lancer Books, 1963; Ring Around Rosy, Fawcett, 1964.

David St. John: On Hazardous Duty, Signet, 1965; Return from Vorkuta, Signet, 1965; The Towers of Silence, Signet, 1966; Festival for Spies, Signet 1966; The Venus Probe, Signet, 1966; The Mongol Mask, Weybright, 1968; The Sorcerers, Weybright, 1969; Diabolus, Weybright, 1971; One of Our Agents Is Missing, Signet, 1972; The Coven, Weybright, 1972.

Play

Howard Hunt

Calculated Risk: a play, 1948.

*NOTE: Title in all caps indicates the work was reviewed by CIA.

Magazine Articles

Harper's, October 1974: "Misunderstanding Secrecy"

National Review, April 29, 1977: "The Night Watch" (book review)

National Review, July 8, 1977: "CIA's Secret Operations" (book review)

National Review, June 13, 1980: "Castro's Worms"

Newsweek, April 4, 1977: "How America Looks to Me Now"

Mr. SENSENBRENNER. Continue, please.

Mr. WILSON. All right, sir.

Prior to 1979, my record shows that Mr. Hunt submitted one of his novels, in 1974. That was before time, before my involvement in the prepublication review process, and I can't testify as to why he happened to have submitted that particular one.

Mr. SENSENBRENNER. Thank you very much. I yield back.

Mrs. SCHROEDER. Thank you.

Congressman Gekas?

Mr. GEKAS. Thank you.

I would like to hone in a little bit on the body of the secrecy agreement itself. As a practical matter, do the employees who sign the agreement have counsel with them? Do you observe that? Have they submitted their secrecy agreement to their private counsel or bring in counsel at the time of negotiations, so to speak?

Mr. MAYERFELD. Routinely, this does not happen.

Mr. GEKAS. In the *Snepp* case or any other case, was the secrecy agreement itself attacked as being null and void by the former CIA agent?

Mr. MAYERFELD. Yes, that was, in effect, his theory of the case. That was his defense.

Mr. GEKAS. Obviously, the material was not classified, but that the agreement was null and void. What was the basis? I am not familiar with the case. What did they say about the agreement? Was it a violation of the first amendment?

Mr. MAYERFELD. That was their major argument. There were some additional defenses that he had, that we broke our part of the agreement insofar that we did not permit him to air his grievances in-house. All of those various defenses were ruled inadequate.

Mr. GEKAS. Was he an attorney himself?

Mr. MAYERFELD. No.

Mr. GEKAS. Are many of the people who sign secrecy agreements who become agents also attorneys?

Mr. MAYERFELD. Not many.

Mr. GEKAS. I am just wondering. I have seen cases, at least in Pennsylvania jurisdications, where, without clauses in it that indi-

cated that the document has been reviewed by counsel or that they waive that right and fully understand—say that they fully understand that even though they have that right to submit it to counsel—that that kind of situation has allowed an agreement to be voided.

How old is the craftsmanship of this secrecy agreement?

Mr. MAYERFELD. It is quite recent. This particular version which is in the record is—well, it is not noted here. As I recall, it is February 1983.

Mr. GEKAS. Of 1983?

Mr. MAYERFELD. Yes.

Mr. GEKAS. That is pretty modern.

Do you know whether or not it was just a copy of a previous secrecy agreement?

Mr. MAYERFELD. No. There were some minor changes.

Mr. GEKAS. There is another thing I would like to ask you with respect to that. It seems to be not a simultaneously executed bilateral agreement. That is, it doesn't seem to be the type of case where the agency agrees to pay *x* amount of dollars under employment conditions; and on the other side, the individual pledges himself to secrecy. It seems to be a routine agreement or form that the applicant has to sign, and then later it is decided whether or not he is going to be hired. Is that correct? Or has there been determination ahead of time throughout the application process that this man is a good man, we are going to hire him, now we have to make sure that he signs a secrecy agreement?

Mr. MAYERFELD. It is the latter, Congressman. The agreement is signed upon entrance on duty. So that agency's obligation that we enter into is to give the man a job.

Mr. GEKAS. But you are saying for the record that the efficacy of the agreement itself has not been attacked as being null and void on grounds other than first amendment rights?

Mr. MAYERFELD. That is correct. That is the only challenge to that agreement since Snepp, as I recall, other than Mr. Snepp's various defenses that we did not live up to it.

Mr. GEKAS. My cursory review as an attorney yields no defects at this moment.

I thank the Chair.

Mrs. SCHROEDER. Thank you.

Congressman Pashayan?

Mr. PASHAYAN. Thank you.

I wasn't here earlier, and I apologize. I guess I have one or two questions, and forgive me if they turn out to be repetitious.

You would extend the notion to other agencies than the CIA that an employee or a prospective employee can be bound by an agreement not to disclose information without the prior approval of the agency; is that what you are here to say?

Mr. MAYERFELD. That is correct, Congressman. I was one of the signatories of the so-called Willard report, and I do agree with it, yes.

Mr. PASHAYAN. Is that information that would fall under this provision the kind that would be related to the national security of the United States?

Mr. MAYERFELD. Yes, that is the total limits of President Reagan's directive. It only is concerned with national security classified information.

Mr. PASHAYAN. Of course, the CIA has a great amount of this kind of information. Other agencies would have very little or none.

I suppose the concern—and I haven't been here to hear—but my guess is the concern of some of the people here would be that this be used as an excuse—the fear would be that this be used as an excuse to withhold the publication or utterance of information not really related to the national security, of which other agencies would have more of than the CIA.

Mr. MAYERFELD. Congressman, it is hard for me to answer that question as to what other agencies would do. But I believe that CIA's experience in this prepublication review process—I think probably ours is the largest of the existing programs and the most active—provides some evidence that this is a process that can be very carefully done and great care can be taken that indeed nothing is ever disapproved for publication unless a clear, convincing case is made that damage to the national security would result from the publication of such information.

Mr. PASHAYAN. Are you familiar with the *Snepp* case?

Mr. MAYERFELD. Indeed, I am.

Mr. PASHAYAN. Is it your interpretation that the Supreme Court relied on the fact there was national security information involved?

Mr. MAYERFELD. No. In fact, the way we presented the case is that we said, for the purposes of this litigation, we concede that there is nothing classified in the book. What the Government tried to establish in the *Snepp* case is that it is necessary to have the prepublication obligation honored in order to protect the national security.

Mr. PASHAYAN. The *Snepp* case then talked about a relationship between an employee and the agency more than about the information; is that correct?

Mr. MAYERFELD. That is quite correct.

Mr. PASHAYAN. What relation, in your opinion, is between the *Snepp* case and what you are trying to do? Is there any relationship between the two? You are talking about information and the *Snepp* case was talking about an agreement, so we are putting the two together to the extent you are saying the *Snepp* kind of agreement certainly ought to apply to your kind of information.

Mr. MAYERFELD. That is right.

Mr. PASHAYAN. But you are not attempting to extend—once again, you are only talking about national security information; is that not right?

Mr. MAYERFELD. That is all that——

Mr. PASHAYAN. Whereas, the *Snepp* case leaves it open as to what kind of information is being talked about.

Mr. MAYERFELD. I am not sure it does, Congressman. I think the *Snepp* case was in the context of the trust relationship that the Supreme Court found between the employee and the Agency was founded on the fact that the employee had access to national security information.

Mr. PASHAYAN. That was my first question to you on the *Snepp*, what the relationship was.

Mr. MAYERFELD. It was essential to the case. I misunderstood the question. I thought you asked me whether we in fact contended that he disclosed classified information. He did not.

Mr. PASHAYAN. No.

Mr. MAYERFELD. But the issue of national security, the issue of what was the nature of the trust relation, that the Government provided him with the most sensitive information was essential to the case.

Mr. PASHAYAN. Let me just make a general statement. When I served in the U.S. Army for 2 years, I served in an intelligence unit, and I was subjected to taking a lie detector test. I had to sign similar papers. Once having done that, I had access to all sorts of information. After I left the Army, I had a restriction on my travel, where I could travel, and even some flights I was prohibited from taking and others, if I took them, I was to notify for a period of 2 or 3 years thereafter.

I have had the experience of seeing the kind of information that would be subject to this kind of a rule. Some of it really can be quite sensitive. Some of it, if revealed, can be injurious in two respects. First of all, it might be injurious to the national interest just to reveal the information or whatever substance the information itself has. Second of all, and perhaps more important, the improper revealing of information, it can be deduced from that that we have certain abilities to gather the information, and that, in a national security context, can certainly be injurious.

I suppose what we are here to balance is first amendment rights versus the applied police power of the state to contain information really for the benefit of all. I would say that, personally, I felt no impingement on my first amendment rights because of the kind of information that I personally saw 10 or 12 years ago in the Army that we are dealing. At least the vast majority of information that I personally came across, I felt was properly classified and properly withheld.

Mrs. SCHROEDER. I would like to ask some questions because I think the issue now becomes—I would like to follow forward on what Congressman Edwards was saying.

In the *Snepp* case, you stipuated there was no national security problem. So, therefore, we are not talking about somebody who revealed it. The issue is the contractual relationship or that trust relationship between employer and employee, which I have no problem with either. The question is why was he selected versus other people who also were in that trust relationship but put books out and you didn't go after them? I think that is the issue. I think that nobody here is defending anybody's to put out classified information, and the stipulation was he wasn't putting out classified information. We are just doing it on the theory that everybody has to bring it in to make sure. I understand that. Why one, why not the other?

Mr. MAYERFELD. The *Snepp* case was not really one of a whole lot from which we had to pick and choose—and we say we pick Mr. Snepp because he is saying beastly things and we don't pick on Mr. Hunt because his novels are harmless. We knew that Mr. Snepp was writing a book. Mr. Snepp made no effort to conceal it. Mr. Snepp had frequent discussions with senior people in the Agency

about whether he was going to submit to his legal obligation and submit the book for prepublication review.

Mr. Snepp repeatedly told us that he would do so. Mr. Snepp made a personal promise to the then Director, Admiral Turner, that he would submit the manuscript for prepublication review.

Mrs. SCHROEDER. Would you say that it was kind of a macho thing, that he dared you to do it, whereas Hunt didn't bother and others didn't bother—I mean was this mutually assured machoism?

Mr. MAYERFELD. I don't know if I would characterize it as macho, Madam Chairwoman. I think he was, in fact, trying to test this.

Mrs. SCHROEDER. When he is not the only violator, why do you select one versus the other, and there wasn't sensitive information revealed? I think that is a big concern when we are talking about something as serious as first amendment rights.

I wanted to ask how much all of this costs.

Mr. WILSON. There is an important point left out there. No one said that there was not sensitive information revealed.

Mrs. SCHROEDER. You stipulated that there was no——

Mr. MAYERFELD. We stipulated it for purposes of that litigation.

Mrs. SCHROEDER. Do you think there was sensitive information revealed?

Mr. MAYERFELD. We know in fact that there was. But that was not what we——

Mrs. SCHROEDER. But you don't know if there was sensitive information revealed in other books that haven't been preclassified?

Mr. MAYERFELD. Yes, we do. If some publication slips by the process, it is indeed reviewed thereafter to determine whether there was any.

Mrs. SCHROEDER. But it is the selective prosecution that is distressing.

Mr. MAYERFELD. I think the decision was made to recommend to the Department of Justice to proceed against Snepp before anyone had a chance really to digest the book to determine whether it was critical or not. We did not see the manuscript beforehand. It was indeed in this case a matter of great principle. He did flout his obligations. He violated his repeated promises to submit the book and he surreptitiously went about publishing it. I think that we, in that case, had no options. If you would call that selective prosecution, so be it.

Mrs. SCHROEDER. With others, it could be equally as harmful in the books that they print. I guess what it does is just be mellow and don't tell everybody what you are going to do and it may slip through.

Mr. WILSON. There are other bases for that selectivity, I submit. There are occasions where conscious decisions have been made, and the author and his identification and personality, and so on is not part of that decision at all. What is the basis of the decision is the material involved and the disclosure.

I am talking in general terms about other decisions that have been made not to prosecute an author. The simple overriding fact is that the prosecution would then go on to entail the disclosure of more information than the disclosure already made.

Mrs. SCHROEDER. It doesn't if you do it on the same relationship because you stipulate and you go after him on the contract. I don't

see how you could possibly say that that leads you into more classification by your own terms.

How many people are involved in this? How many people are there in this class subject to this prereview in the CIA, some kind of overall estimate? What do you think it costs every year to maintain this service for those people?

Mr. WILSON. The numbers of people involved in the review process?

Mrs. SCHROEDER. Yes.

Mr. WILSON. There are, in addition to myself, six senior officers at CIA who are the principal component representatives, who are the representatives to the board. In addition, I would characterize Mr. Mayerfeld as being a senior official who spends a reasonable amount of his time advising the board. It is not a full-time duty on the part of any of us.

I can't give you a precise answer on how many people might be involved in any given review. It depends upon the extensiveness and complexity of the material how it has to be fanned out among various agency components for review.

I am not trying to beg the question, Madam Chairwoman, I just can't really pinpoint the quantifiable resource number.

Mrs. SCHROEDER. Are contractors covered?

Mr. WILSON. Yes.

Mrs. SCHROEDER. So if the CIA is doing independent contracting with contractors, they then cover their employees with the same kind of trust agreement that would be enforceable?

Mr. WILSON. That is correct.

Mrs. SCHROEDER. Thank you.

Congressman Edwards, did you have another question?

Mr. EDWARDS. I have one more question, thank you, Madam Chairwoman.

The selective enforcement—I know you understand it—is a very big subject because, if there is selective enforcement, then this enlarged program that we are looking at today that is going to be throughout the Federal Establishment is very important. That is why we are really asking the questions of you in such depth.

For example, William Buckley worked for the CIA in the 1940's and 1950's, and he admits that he signed prepublication agreements. He wrote three spy novels, none of which were submitted for prepublication review. He says this in magazine articles. Would that be selective enforcement?

Mr. WILSON. Mr. Buckley worked for CIA many, many years ago for a very, very brief period of time, less than a year. My understanding of his employment at that time, and I am not intimately acquainted with it, is that he was exposed to very little, and that long ago. Any material that he writes about in his fictitious books are not the kind of thing that would be of particular interest to us.

Mr. EDWARDS. I see.

Mr. Mayerfeld, you are part of the Willard task force and you are acquainted then with the Biden report that Mr. Willard referred to. It is my understanding of the Biden report that the conclusion was that most of the leaks they reviewed fell into three categories: No. 1, so many people had access to the information that the leak couldn't be traced; No. 2, the leaks were traced to high-

level policy people in the White House or at State—for example, Secretary Kissinger himself, and the investigation had to stop, of course—and No. 3, the leaks were official, as with the Stealth bomber case when Carter announced it on TV.

Is that an accurate description or semiaccurate description of the Biden report?

Mr. MAYERFELD. I don't have the Biden report in memory, but I would assume it is, yes.

Mr. EDWARDS. Thank you.

Mrs. SCHROEDER. Thank you both. We appreciate it.

We will keep the record open for questions from counsel because of the time constraints this morning. We appreciate your being here.

Our final witness—and we are almost going to make it, I think—is Maynard Anderson, the Director of Security Plans and Programs at the Department of Defense. Mr. Anderson, we appreciate your being here.

We will use the same ground rules. We will put your testimony into the record. You are welcome to summarize or, if you want, just fire off. We are all set for whatever you want to do.

TESTIMONY OF MAYNARD ANDERSON, DIRECTOR, SECURITY PLANS AND PROGRAMS, DEPARTMENT OF DEFENSE

Mr. ANDERSON. Thank you, Madam Chairwoman and Mr. Chairman and members of the subcommittee.

By way of introduction, just let me say that, as Director for Security Plans and Programs, I report to the Deputy Under Secretary of Defense for Policy, Gen. Richard Stilwell, and I am responsible for policies concerning personnel security, physical security, industrial security, and some elements of the information security program in Defense. I am General Stilwell's principal adviser on special programs as well, so I deal in matters relating to sensitive compartmented information in that capacity.

I know you want to ask some questions about the nondisclosure agreement and our implementation of it this morning, as well as our use of the polygraph examination. I have just gotten the statistical data on last year's use of the polygraph in Defense which I provided to your counsel this morning. If you are interested, she can pass that out to you.

Mrs. SCHROEDER. Thank you. That will be very helpful to us.

Mr. ANDERSON. On that basis, I am available.

Mrs. SCHROEDER. Congressman Pashayan, do you want to open with questions?

Mr. PASHAYAN. Not at this time, Madam Chairwoman.

Mrs. SCHROEDER. I guess what I would like to do is start with the polygraphs then on competive service employees and criminal cases. How do you do that legally under the Federal Personnel Manual.

Mr. ANDERSON. We are obligated under the Federal Personnel Manual to obtain the permission of the Office of Personal Management to conduct such polygraph examinations on competitive service employees of the Department of Defense. We do submit such a request annually to the Director of OPM. He has responded in the

past favorably to us and, on an annual basis, given us permission to do that.

Mrs. SCHROEDER. Do you use any resources to devote research into the validity and reliability of the polygraphs? We had prior testimony—you may have heard it—about the barber and the hair dye.

Mr. ANDERSON. Well, Mr. Ansley tesfied last week for us from NSA. I understand that there were questions asked as to the reliability and the validity of the instrument. Congressman Brooks, as you may know, has requested the Office of Technology Assessment in support of the Congress to do a study of that. I would like to defer comments on that pending results of that study.

Mrs. SCHROEDER. There was a GAO report, I think, last year—I am not sure—but it said that DOD had fishing expeditions with polygraphs last year for the source of leaks and came up empty. What utility do you find in polygraphs in investigating leaks?

Mr. ANDERSON. The policy of the Department of Defense is that a polygraph examination is used as an investigative technique only. It is not used in the manner of a fishing expedition. If the evidence in the case does not support a conclusion and it is the only means available that remains, and there is perhaps a suspect identified where circumstantial evidence or other evidence indicates he might be guilty, a request for polygraph at that time may be made—on a voluntary basis, I might add.

Mrs. SCHROEDER. We keep running up against this stone wall, and that is that the directive was required by all of the leaks that have gone on, that all of the leaks are classified. How many of those leaks have come out of the Department of Defense?

Mr. ANDERSON. I don't have statistics on recently reported leaks, either to the Information Security Oversight Office or the Department of Justice. Those are reported by Defense components and Defense elements. Military departments report directly, as do Defense agencies.

I know that GAO looked into, I think, 68 investigations of leaks classified material in the last 10 years. That would have been going back from October 1982. That may be a representative number, but I am not certain of that.

Mrs. SCHROEDER. Do you also oversee and use the polygraphs and everything on DOD contractors?

Mr. ANDERSON. Yes, ma'am.

Mrs. SCHROEDER. Have you any breakout for us on leaks from contractors versus in-house employees?

Mr. ANDERSON. I do not.

Mrs. SCHROEDER. Is there any way we can get that information?

Mr. ANDERSON. I am not personally aware that we have had any recent cases involving contractor employees, but I will question the components and make that availble to you.

Mrs. SCHROEDER. Can we get numbers or any general feeling for, not contracted employees, but Federal employees in DOD? Can we get any numbers on that?

Mr. ANDERSON. Who have been investigated?

Mrs. SCHROEDER. Yes, or of leaks—who have been found to be leakers. I hate that word.

Mr. ANDERSON. Surely, I can attempt to get that for you.

[The information follows:]

OFFICE OF THE UNDER SECRETARY OF DEFENSE,
Washington, DC, June 1, 1983.

Mr. ANDREW A. FEINSTEIN,
General Counsel, Subcommittee on Civil Service,
Cannon House Office Building, Washington, DC.

DEAR MR. FEINSTEIN: As a follow up to my testimony, I am attaching herewith a list identifying various unauthorized disclosures. The attached list was prepared in cooperation with the U.S. Army Intelligence and Security Command, the Naval Investigative Service, the Air Force Office of Special Investigations, and the Defense Investigative Service.

In addition, the Defense Intelligence Agency reported 20 "leaks" in 1982. Each "leak" was investigated, resulting in only one report to Justice. None of these "leaks" involved contractors or consultants.

If you have any further questions or I can be of further service, please call.

Sincerely,

MAYNARD C. ANDERSON,
Director, Security Plans and Programs.

Attachment.

UNAUTHORIZED DISCLOSURES

(The following cases were investigated and prepared by the U.S. Army Intelligence and Security Command.)

1. Case # CE 79-136-02: Secret and Confidential information concerning Army signals intelligence capabilities was published in the Defense Electronics Magazine in 1979. An investigation was opened on 10 September 1979, and is still pending.

2. Case # SO 80-020-02: Secret information concerning an Army communications jammer was published in the Defense Electronics Magazine in 1979. An investigation was conducted, during which the purported source, a DoD employee, was polygraphed with negative results. The case was closed on 21 May 1981, due to lack of leads.

3. Case # SO 80-070-01: In 1979, technical Secret and Confidential information was published in the Microwave Systems News Magazine. Investigation was begun on 24 March 1980. The publisher denied that he used classified information as source material for the article. The case was closed with no further leads on 11 August 1981.

4. Case # SO 80-089-03: Secret intelligence information involving reports of chemical warfare by Soviet forces in Afganistan was published in the Baltimore Evening Sun in 1980. An investigation, opened on 8 April 1980, determined that the leak originated at the NSC or Department of State. The case was closed 16 September 1980 because the leak was determined to be outside of Army investigative jurisdiction.

5. Case # SO 81-017-02: Top Secret intelligence information concerning new Soviet missile capabilities was published in International Defense Review in 1980. Investigation disclosed that the information was derived from two NSA documents. The investigation was closed on 1 July 1981 because the magazine was published in Switzerland and there were no tangible CONUS leads.

6. Case # SO 81-200-02: Secret information concerning Army force expansion was found published in Army Times in 1981. The investigation, which was begun on 14 July 1981, revealed that the same information had appeared in numerous unclassified internal Army Staff memos and on an unclassified page of the draft Program Objectives Memorandum (POM). The case was closed on 5 October 1981.

(The following cases were prepared and investigated by the Navy Investigative Service (NIS). Case Numbers were not assigned by NIS.)

7. An article believed to contain Secret compartmented information appeared in Electronic Warfare magazine in 1974. Investigation revealed that the article may have been drawn from official unclassified data. Investigation stopped as DoD officials did not desire contact with magazine.

8. Sea Technology magazine contained Confidential information about a nuclear powered submersible. Investigation was closed 23 January 1975 due to lack of leads and minimal damage to national security.

9. In 1975, a radioman assigned to the USS CORAL SEA disclosed a Confidential message to his dependents concerning personnel problems aboard his ship. Contents of the message appeared in the San Francisco Examiner. Action is still pending.

10. An article appeared in Aviation Week Magazine in 1975 containing information classified Confidential. Investigation was closed after it was discovered that the information had been developed from an open source, The Congressional Record.

11. In 1977, the London Economist published an article containing Top Secret intelligence information. A retired Navy Commander, the author of the article, was considered a principal suspect. The matter, however, has never been successfully resolved.

12. An article appeared in the Stars and Stripes concerning Confidential messages found in trash in Subic Bay. The investigation, opened on 1 November 1979, identified suspects who provided the media with a copy of a Confidential message. The case is still open.

13. In 1979, an edition of Aviation Week carried an article which was determined to contain Top Secret intelligence information. The investigation was closed without establishing culpability.

14. The Defense Electronics magazine contained an article in a 1979 issue which disclosed Secret information concerning computers. The investigation cancelled (for unspecified reasons).

15. In 1980, a retired Navy Captain working with the Copley News Service wrote an article for the San Diego Union concerning boost in combat ships. The article contained Confidential information. An investigation was conducted.

16. In 1980, an article appeared in Aviation Week concerning undersea weapons. The information was classified Secret/WNINTEL. NIS investigation determined that the unauthorized disclosure resulted from a briefing given to members of the Senate Armed Services Committee's Staff on 26 November 1980 by the Navy Intelligence Support Center. Only six staff members were determined to have attended the briefing and the investigation was referred to the FBI. All six attendees were interviewed by FBI Special Agents. All denied culpability and agreed to undergo polygraph. The Department of Justice decided to forgo polygraph examinations.

17. In 1981, the Boston Herald American published an article on Russian submarines that contained Confidential information. Investigation was cancelled due to minimal national security damage.

18. In 1980, a petty officer assigned to the USS RICHARD E. BYRD disclosed classified information pertaining to the BYRD's operations in the Mediterranean to a writer for the Virginian Pilot. That information subsequently appeared in a newspaper article. As a result, the petty officer received a letter of reprimand and a reduction in rate under Article 15 of the Uniform Code of Military Justice.

(The following cases were investigated by the U.S. Air Force Office of Special Investigations.)

19. 75HQD34-8682: In 1975, articles appeared in the Rocky Mountain News and Baltimore Sun which contained information on possible Soviet violations of SALT agreements. The information most probably came from a widely disseminated SECRET document.

20. 7669D34-85: In 1976, a USAF NCO pending court-martial for other offenses sent a letter containing a description of his job to Stars and Stripes newspaper. That information was evaluated as Confidential. The letter was retrieved without publication.

21. 76HQD34-8686: In 1976, an article in Commerce Business Daily identified the specific site of a construction project involving a sensitive weapons security system. The information was classified Confidential/Formerly Restricted Data, but had been provided along with other unclassified data due to administrative error.

22. 78HQD34-8690: In 1978, a syndicated reporter asked a senior USAF officer for information regarding capabilities of Soviet vs. U.S. missiles and aircraft. The content of the reporter's questions revealed specific knowledge of classified information, including material classified Top Secret plus special accesses required. It is not known whether the reporter actually published his classified knowledge.

23. 78HQD34-740: In 1978, articles in the Austin American-Statesman and San Antonio Express News contained information on the location of a USAF unit with a classified mission. While the classification of the material was Secret/Formerly Restricted Data, the same information had also appeared in other news publications as early as 1975.

24. 7804D34-1153: 780D34-888—Articles in several 1978 issues of Electronics Warfare—Defense Electronics magazine contained information regarding electronic warfare capabilities and countermeasures of the U.S. and other nations. Data apparently came from a Secret document which had been inadvertently mailed to the publisher.

25. 8013D34-522: In March 1980, in a television interview for the "Jack Van Impe Presents" show, aired in San Diego, CA, a USAF member allegedly disclosed classi-

fied information regarding Strategic Air Command alert procedures in case of nuclear attack. Investigation revealed that the information was not classified.

26. 8004D34-1158: In 1980, an RKO-TV reporter produced one Secret and two Confidential Air Force films during an interview with a senior Department of Defense official. The films had been improperly released to the reporter on a telephone request. Established procedures at the releasing activity were not followed.

27. 8013D34-525: In 1980, a newspaper reporter submitted several Freedom of Information Act (FOIA) requesta to various Air Force and Department of Defense officials. Some FOIA requests contained Secret correspondence and actual excerpts from Congressional testimony by the Commander-in-Chief, Strategic Air Command, regarding mission, capabilities and future plans.

28. 8018D93-13: In 1980, a freelance reporter and aviation author asked a senior USAF officer by telephone for information on a joint Navy-Air Force flying training program. The reporter revealed specific knowledge of material classified SECRET. The reporter made a personal pledge to the officer not to publish the material, a pledge he apparently honored.

29. 8162D34-396: In a 1981 interview with a foreign newspaper reporter, a USAF member disclosed information on a U.S. nuclear weapons location, classified Secret/Formerly Restricted Data. The USAF member was already awaiting discharge for an unrelated offense. The reporter's interview was not published.

(The following cases were investigated by the Defense Investigative Service.)

30. 75009-DO5-4529-3C9: In 1974, Aviation Week and Space Technology printed information concerning the production figures of the Condor Missile. The information was classified Confidential.

31. 75184-DO5-4535-3D9: In 1975, a newspaper disclosed the payload of the Poseidon Missile. The information concerning its accuracy, and explosive yield were classified Secret/Restricted Data.

32. 75259-DO5-4501-3B9: Confidential Naval position paper data dealing with force level of Navy aircraft was printed in 1975.

33. 75328-DO5-4527-3D9: Secret information concerning Trident Missile capabilities and fuels appeared in the print media in 1975.

34. 76335-DO5-4601-3C9: Top Secret/Code Word information was released to the news media. The information related to the threat to NATO posed by the Soviet military build up in 1976.

35. 76336-DO5-5114-3C9: Information marked Secret (NOFORN) Sensitive Sources was released by the Associated Press. The information concerned the shipment of military equipment to another country.

36. 76336-DO5-5115-3C9: News articles released by the Associated Press contains information relating to arms for Rhodesian nationalists and to Soviet and Cuban involvement in South Africa. The information was classified Secret/NOFORN WINTEL.

37. 77292-DO4-4701-3C9: Top Secret Code Word information concerning Soviet charged particle beam weapon capabilities appeared in the print media in 1977.

38. 78041-DO4-4701-3B9: In 1977, media published classified information concerning high altitude large optics project. The information was classified Secret/Code Word.

39. 78165-DO4-4701-3B9: DoD employee furnished a Secret document to an uncleared Senate staffer in 1978.

40. 79184-DO4-5401-3B9: In 1979, media published information concerning the SALT II monitoring documents. The information was Top Secret intelligence.

41. 80244-DO4-3101-3E9: Information classified Secret appeared in the print media in 1980 concerning Stealth technology.

42. 81118-DO4-3202-3C9: Secret information concerning reloading capability of SS-18 silos was used by a broadcaster in 1981.

43. 81134-DO4-3201-3C9: Top Secret/Code Word information concerning Russian troop movements around Poland was published in the press in 1981.

44. 81166-DO4-3201-3E9: Secret/Special Access information concerning Stealth technology appears in media in 1981.

45. 81224-DO4-3101-3C9: Secret information was published by the local press. The information was regarded as highly sensitive because it concerned meetings of the ongoing SALT talks.

46. 81247-DO4-3001-3E9: In 1980, the print media disclosed Top Secret information concerning some phases of the rescue mission in Iran.

47. 81342-VO1-0002-3B9: In 1981, the print media disclosed Secret information concerning the alleged Libyan plot to assassinate the President.

48. 82027-VO1-0001-3C9: Print media carried Secret intelligence photo of Russian aircraft in 1981.

49. 82027-VO1-0002-3C9: Print media carried Secret information concerning Defense Resources Board meeting.
50. 82027-VO1-0003-3C9: Print media published Secret information concerning the location of MIG-23's in Cuba in 1982.
51. 82049-VO1-0004-3C9: In 1982, the print media disclosed Secret information concerning a military exercise. The case is still pending.
52. 82049-VO1-0005-3C9: In 1981, the CIA requested DoD investigative assistance concerning print media release of information concerning "Laser Battle Stations."
53. 82049-VO1-0006-3C9: In 1982, the Department of State requested DoD investigative assistance concerning news release of classified/sensitive diplomatic information.
54. 81009-DO4-3301-3B9: In 1980, a reporter possessed and printed excerpts from classified document.
(The following cases were investigated by the Defense Investigative Service. These cases deal with unauthorized disclosures to a contractor.)
55. 76281-DO5-5614-3B9: In 1975, Top Secret intelligence was disclosed concerning Soviet chemical warfare; doctrine and capabilities to a contractor.
56. 77080-DO5-5601-3B9: In 1977, Confidential information was provided to a private contractor concerning foreign sales of military equipment.
57. 78082-DO4-4701-3Z9: In 1977, Secret and Confidential documents were released improperly to a contractor concerning DoD budgetary information.
58. 78026-DO4-6301-3B9: In 1977, Confidential information was released to a contractor concerning a study of guns/ammunition.
(The following cases were investigated by the Defense Investigative Service. These cases deal with unauthorized disclosures by a contractor.)
59 76096-DO4-4701-3B9, also reopened as 78096-DO4-4701-3B1: A Top Secret draft message from SECDEF to the President concerning the MX missile illegally obtained by contractor and sent to their corporate HQ via nonsecure means.
60. In 1979, a DoD contractor was alleged to have made unauthorized disclosure of Secret information which was contained in a draft GAO report concerning F/A-18 fighter.

Mrs. SCHROEDER. Do you find that your tools are adequate at the moment if there is a leak in the Defense Department or among contractors to find them?

Mr. ANDERSON. Investigation of unauthorized disclosures of classified information are terrible cases. The dissemination of the information is extraordinary. The ubiquitous Xerox machine is in evidence. It really is difficult to pin it down.

From an investigative capability standpoint, yes, I think we are capable of investigation. Whether or not we are capable of prosecuting or taking action against someone who intentionally leaks classified information is questionable.

Mrs. SCHROEDER. Congressman Pashayan, do you have any questions?

Mr. PASHAYAN. Do you feel that the polygraph test is effective?

Mr. ANDERSON. I think so, yes, sir.

Mr. PASHAYAN. Explain to me how you feel it is effective.

Mr. ANDERSON. I think that in a case in which an individual is suspected and there is not enough evidence from other sources to draw a conclusion, it is effective from two standpoints. We use the polygraph not convice, but we use the polygraph in an objective sense to determine whether someone is innocent as often as guilty.

As a matter of fact, I was told yesterday that a great number of our cases run no deception indicated. If we have done that, we have solved the case just as readily as if we have obtained a conviction.

Mr. PASHAYAN. Let us take a hypothetical 100 people to whom you have given each a polygraph test. Of those, how many would you say are found, to use your word, "innocent," and how many are found guilty, in your experience?

Mr. ANDERSON. Hypothetically, and based on conversations yesterday with some professional examiners, I recall—and I think the figure is accurate—about 40 percent were no deception indicated.

Mr. PASHAYAN. Does that mean 60 percent were found deception indicated?

Mr. ANDERSON. Or no reaction or no conclusion.

Mr. PASHAYAN. Then there are three categories. I am probing for the category of how many of that 100 would be found deception indicated?

Mr. ANDERSON. I could not answer that.

Mr. PASHAYAN. We know, according to your numbers, that it could not exceed 60 percent.

Mr. ANDERSON. Right.

Mr. PASHAYAN. But could you venture an educated guess?

Mr. ANDERSON. I would venture in that case close to 60.

Mr. PASHAYAN. Close to 60.

Mr. ANDERSON. Surely.

Mr. PASHAYAN. The one or two that are neutral, that you can't tell, is very small?

Mr. ANDERSON. Yes, that is right. I would think so.

Mr. PASHAYAN. We shall not subject you to a polygraph test.

Mr. ANDERSON. Thank you.

Mrs. SCHROEDER. Thank you.

Congressman Edwards?

Mr. EDWARDS. Thank you, Madam Chairwoman.

Did shockwaves go through the Pentagon yesterday when Dr. Beary's recommendation was made public?

Mr. ANDERSON. I don't think so, sir.

Mr. EDWARDS. That Beary memo was dated December 16, 1982, and was classified. Why in the world would that be classified?

Mr. ANDERSON. Classification is the prerogative of the originator. In this case, I would say Dr. Beary exercised good judgment when he declassified it.

Mr. EDWARDS. But if somebody declassified it, it would be subjected to all of the penalties of the agreements that they had signed, somebody other than Dr. Beary.

Mr. ANDERSON. If it was contrary to the national interest, yes, sir.

Mr. EDWARDS. We had witnesses come over from the Pentagon and they testified, not under oath, about the announced plan several months ago to increase the number of polygraph examinations to 30,000 or 40,000 a year or something. They either did not know about the classified Beary memo or they elected not to tell the committee.

Mr. ANDERSON. I think, Mr. Chairman, that memorandum was submitted the day after the testimony or very nearly at that time.

Mrs. SCHROEDER. We didn't get them, but that is neither here nor there.

How does your process, your prepublication review process, differ from that of the CIA?

Mr. ANDERSON. For persons indoctrinated for sensitive compartmented information who have signed nondisclosure agreements—and ours happens to be substantively the same as that used by the Central Intelligence Agency—anyone who anticipates or contem-

plates publication would submit to the Security Control Office in the military department of the defense component—principally the Defense Intelligence Agency in Defense—such manuscript for review.

We operated under the same constraints. We are obliged to turn that around in 30 days and give an answer to the individual submitting it. If there is information that originates from another agency, then we provide that information to the other agency and ask them for determination as to whether or not it should be removed or it may be published. That generally is the case with this kind of information, as a matter of fact.

Mr. EDWARDS. Thank you very much.

Mrs. SCHROEDER. I want to thank all of the witnesses.

We apologize—our timing is correct. We were told that very shortly after 11 there would be a vote and fun and games would break out—so while we would like to do more questioning, it looks like we have to go to the floor and it looks like we better just keep the record open so counsel can ask more questions.

Mrs. SCHROEDER. Mr. Anderson, we appreciate your patience and your openness in the study. Thank you very, very much.

Mr. ANDERSON. Thank you.

Mrs. SCHROEDER. The hearing is adjourned.

[Whereupon, at 11:05 p.m., the subcommittees were adjourned.]

PRESIDENTIAL DIRECTIVE ON THE USE OF POLYGRAPHS AND PREPUBLICATION REVIEW

TUESDAY, FEBRUARY 7, 1984

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS, COMMITTEE ON THE JUDICIARY JOINT WITH SUBCOMMITTEE ON CIVIL SERVICE, COMMITTEE ON POST OFFICE AND CIVIL SERVICE,

Washington, DC.

Following is the unclassified transcript of the closed hearing held by the subcommittees on February 7, 1984. Where words have been deleted, brackets appear. Where the typeface within the brackets is the same as the main text, the material within the brackets is an unclassified summary of what was said. Where the material within the brackets is in italics, the material within the brackets is a description of what was said or a notion that words were deleted. The name of the witness from the National Security Agency has been deleted and he is referred to throughout as "NSA Witness."

The subcommittees met, pursuant to call, at 9:35 a.m., in room 2235, Rayburn House Office Building, Hon. Don Edwards (chairman of the Subcommittee on Civil and Constitutional Rights) presiding.

Present: Representatives Kastenmeier, Edwards, Schroeder, Sensenbrenner, Gekas, DeWine, Pashayan, and Wolf.

Also present: Department of Justice: Richard K. Willard, Acting Assistant Attorney General for the Civil Division.

Central Intelligence Agency: John H. Stein, Deputy Director for Operations; Clair George, Director, Legislative Liaison; Ernest Mayerfield, Deputy Director, Legislative Liaison; Edmund Cohen, Associate General Counsel; David Pearline, Legislative Liaison.

National Security Agency: [Name deleted], Chief, Intelligence Staff, Operational Directorate; John Anderson, General Counsel.

Department of Defense: Maynard Anderson, Director, Security Plans and Programs; John F. Donnelly, Director, Counterintelligence and Investigative Programs; and Roger Pitkin, Commander, U.S. Navy.

Mr. EDWARDS. The subcommittees will come to order.

At our last hearing on the subject of the Presidential Directive on Safeguarding National Security Information, we were told by Mr. Willard that the directive was needed because of numerous instances of unauthorized disclosures of classified information in the past.

The witnesses declined to publicly provide examples of those unauthorized disclosures because classified information would be involved. Accordingly, this executive session was scheduled.

I would like to stress at the outset that our purpose today is very limited; we are concerned solely with the impact the directive would have had on the unauthorized disclosures you are about to describe.

The question is, Would it have made any difference if you had a comparable prepublication review system or polygraph requirement in place? If so, how?

Thus, the details of the leaks and their effect on national security are but tangentially of interest and should not be the focus of our deliberations. Furthermore, because this session is being held behind closed doors, I hope we can contain ourselves to examples and facts which are classified, and leave all other matters for public discussion.

Finally, because highly sensitive information will be disclosed today, I would just remind those present that we must be particularly cautious in discussing these matters in the future.

This is a joint hearing with the Subcommittee on Civil Service, chaired by the gentlewoman from Colorado, Mrs. Schroeder. I yield to her.

Mrs. SCHROEDER. Well, Mr. Chairman, I will be very brief.

Basically, the Subcommittee on Civil Service is very interested in underlining what the chairman said. That is, we want to make sure that if these things are put into effect, they really would make a difference.

Second, the subcommittee will be having hearings on the Brooks bill which has been introduced on this, and there will be a follow-through.

Mr. EDWARDS. Thank you.

Mr. Sensenbrenner.

Mr. SENSENBRENNER. No comments, Mr. Chairman.

Mr. EDWARDS. Do any members of either subcommittee desire to make a comment?

I recognize the gentlewoman from Colorado.

Mrs. SCHROEDER. Mr. Chairman, I regret we have to do this, but I guess we do, so I guess I have to move to close the hearing at this time and on that, we have to have a rollcall vote.

Mr. EDWARDS. Is there a second?

Mr. SENSENBRENNER. I second.

Mr. EDWARDS. Is there discussion on the motion? If not, the Chair notes a quorum being present. All in favor signify by saying aye; a rollcall is required. The clerk will call the roll. The Civil Service Subcommittee will be first.

The CLERK. Mr. Udall.

[No response.]

The CLERK. Mrs. Hall.

[No response.]

The CLERK. Mr. Sikorski.

[No response.]

The CLERK. Mr. Pashayan.

Mr. PASHAYAN. Here.

The CLERK. Mr. Wolf.

[No response.]
The CLERK. Mr. Conyers.
[No response.]
The CLERK. Mr. Kastenmeier.
[No response.]
The CLERK. Mrs. Schroeder.
Mrs. SCHROEDER. Aye.
The CLERK. Mr. Schumer.
[No response.]
The CLERK. Mr. Sensenbrenner.
Mr. SENSENBRENNER. Aye.
The CLERK. Mr. Gekas.
Mr. GEKAS. Aye.
The CLERK. Mr. DeWine.
Mr. DEWINE. Aye.
The CLERK. Mr. Edwards.
Mr. EDWARDS. Aye.

The motion is carried by a rollcall vote and the two subcommittees will resolve themselves into a closed hearing.

Mr. Richard K. Willard, Acting Assistant Attorney General for the Civil Division, representing the Department of Justice, and you are in the middle, Mr. Willard, and do we have from the CIA?

Mr. WILLARD. Mr. Chairman, from CIA, to my left, is Mr. John Stein.

Mr. EDWARDS. Deputy Director for Operations. Welcome, Mr. Stein.

Mr. STEIN. Good morning.

Mr. WILLARD. To my right is [name deleted], who is in charge of the NSA's Operations Directorate Intelligence Staff.

My preface will be very brief, before I introduce the two substantive witnesses this morning.

I think it is really unnecessary to give much by way of security introduction to the classified information that will be described because I think it will be apparent to the members of the committee after hearing the information why it is classified and why it is sensitive.

As I stated before the open hearings were held last year on this subject, sometimes the examples of unauthorized disclosure are more classified when you explain them than the disclosure itself was because you not only repeat the information that was disclosed, thus confirming the accuracy of that information, but you also explain how it damaged our intelligence operations, and that explanation itself usually goes far beyond what the disclosure disclosed and may expose the vulnerabilities of our intelligence apparatus even more graphically. That is why this hearing had to be a closed hearing and why these examples are classified and very highly classified.

The overall classification level of information that we will be presenting at this briefing is top secret, [code word, including] various compartments, [which include], signals intelligence from NSA, [and] refer to our primary aerial reconnaissance compartments.

In addition, just the level of classification is not really descriptive of what is involved here because this is a compilation of a group of sensitive secrets and when you put them all together it makes the

sensitivity of the information greater than it would be if you took one item and talked about it in isolation.

In other words, to put it simply, you take this information together and it creates a roadmap for an adversary to see many of the vulnerabilities of our intelligence community and how they have been compromised. That is why this hearing had to be held in closed session.

We have convinced the intelligence agencies represented here to present this information to the committee because we think it is important for you to do your job in assessing national security decisions and whether it makes any sense. For that reason, we have overcome some initial high reluctance, I would say, to present this large amount of highly classified information in this kind of a setting.

The intelligence community has established a practice of providing this kind of information to the House Permanent Select Committee on Intelligence and to the Senate Select Committee on Intelligence because they have the ongoing facilities to deal with that kind of information. These committees have not had that experience in the past. We recognize the legitimacy of the importance of your concerns and your inquiries, that is why we are here today and we are willing to present this information.

I would like to introduce first, John Stein, who is as we said earlier Deputy Director for Operations at CIA. That is the component of CIA that conducts all clandestine operations. Mr. Stein is a graduate of Yale University, served in the U.S. Army, and beginning in 1955 has been employed by CIA. [*Mr. Willard summarized Mr. Stein's background with CIA*].

Mr. STEIN. Good morning, Chairman Edwards, Chairman Schroeder, members of the subcommittees.

Today, as Mr. Willard explained, I am here in closed session to provide you a briefing on certain specific examples of unauthorized disclosures. The examples I will discuss fall into three categories. The first will be examples of leaks. By a leak, I mean the unauthorized disclosure of classified information to the media by a person with authorized access to that information.

The second category will be examples of unauthorized disclosures of classified information contained in books which did not undergo prepublication review, but which were written by persons with authorized access to the information.

The final category will be examples of items of classified information saved by the prepublication review process, that is, examples of items of classified information identified in manuscripts submitted for prepublication review which, as a result of that identification, were deleted from the manuscript before publication.

These few examples will be illustrative to you of the damage which results from leaks. Some concern intelligence provided by human sources, others intelligence provided by technical collection systems. They run in time from the early 1970's to the present day, thereby illustrating that the underlying problem is not a new one, but one which has been with us for a number of years.

The unauthorized disclosure of classified intelligence information presents special problems. When intelligence information is revealed, an intelligence source or an intelligence method may be

compromised. Compromise may mean that the source or method is foreclosed to the Agency; and thus one of the Agency's principal functions, the gathering of intelligence, is thwarted. This, in turn, means that the United States is deprived of information necessary to conduct its national defense or foreign relations.

In addition, by compromising an intelligence source or method, the revelation may place the life of a human source in jeopardy or render an expensive technical collection system ineffective. For these reasons, the Agency views unauthorized disclosures which reveal, or help to reveal, intelligence sources and methods as particularly pernicious.

Let me turn to the first category, examples of leaks.

My first example is a leak which threatened to place [certain] sources in jeopardy and which significantly reduced the ability of the Agency to gather certain key intelligence from [a] region. It occurred in articles which were published in [a newspaper]. These articles [words deleted] contained direct quotations from a series of Directorate of Operations intelligence reports. The articles contained classified information on [military operations of a foreign country].

All told, these articles contained information which had been obtained from a [sizeable number] of separate sources [in foreign countries].

Many of these sources had provided information to us at great personal risk. In one instance, this leak resulted in extinguishing the usefulness of an important source of information on [military operations of an unfriendly foreign country]. For this particular individual, who routinely traveled to and from [that country], the publication of these articles tended to identify him so closely as a CIA source that he cannot safely step foot in [that country] again without fear of swift retaliation from [that country's] Government. The loss of this source resulted in permanent and serious damage to our ability to monitor [military operations in that region].

Another individual source had left [a foreign country] just days before the publication of these articles due to other risks to his security. However, even if these other, unrelated, threats to his security would be neutralized, the publication of these articles made it a virtual certainty that this source could not return to [that country] under the current regime.

We do not know to what extent these articles may have compromised the security of the other sources whose information was used. However, one of these sources who was himself implicated by these leaks, has given us detailed eyewitness accounts of [a country's] efforts to closely monitor U.S. media, to isolate leaked intelligence reporting, and to identify the person who provided the information. In addition, such leaks have made [certain countries] more acutely aware of our intelligence requirements so that they now take countermeasures to prevent us from gathering such information; the result is that our ability to gather intelligence in [the region] has been sharply curtailed.

[*Mr. Stein told how, as a result of the leaks, access to information about foreign military operations of a certain country has been restricted.*]

Let me give you another example. After one leak, an Agency source reported that [the] Intelligence Chief [of a foreign country] issued a thinly veiled warning to delegates to a secret meeting [words deleted] that [they] were aware of leaks about past meetings. He flatly told the delegates that the U.S. Government was being apprised of these proceedings. This comment by [name deleted] followed interrogations by intelligence officers of delegates to the meeting regarding previous leaks. We know from our sources that their fear of swift, certain, and deadly retaliation if discovered is very real.

In summary, although the full extent of the damage caused by the [word deleted] articles may never be fully known, what we do know is bad enough. A unique and sensitive source was compromised with little hope for replacement. For another source, unable to return for many reasons, these articles stand as a final and perhaps absolute bar to any future operational use in [that country].

The net result of these leaks was to further drain the pool of available information regarding [military] activities in [that region], and to impair the ability of the U.S. policymakers in both the executive and legislative branches to engage in informed deliberation and debate on [that region's] affairs. The leaks which occurred in these articles vividly display the perils of unauthorized disclosures of classified information. Although these articles were, no doubt, published with the best of intentions to contribute to public debate and to the store of public knowledge on [that region], their effect was quite to the contrary.

By placing sources in potential jeopardy and by alerting the other side to their ongoing intelligence-gathering activities, the publication of these articles significantly obstructed the flow of information and thereby created new areas of darkness for policymakers and legislators to contend with. For the intelligence community, the publication of these articles meant that additional resources would have to be devoted, not to brightening new areas with additional information, but to regaining, if possible, lost ground.

Another example of a damaging leak, and one which relates to an important CIA [activity also appeared in a newspaper] article. [Words deleted.] The article, after detailing U.S. and CIA support [of the activity], also discussed the involvement of [other countries].

The result: an angry President and Foreign Minister [of one country]. Our Chief of Station was advised of the Government of [that country's] great unhappiness over "another example of how the U.S. Government could not keep a secret to protect its friends."

At the same time, the Chief of [another country's] intelligence service after noting U.S. agreement to maintain total anonymity, stated that "the disclosure is detrimental to any future efforts between us." [This country was providing assistance to] the effort and asking in return that we not disclose their assistance so that they would not be attacked by [other countries] for being a tool of U.S. interests. Not too much to ask in return for their assistance.

[*Mr. Stein described the first country's fear of retaliation.*] They only asked that their role in providing assistance to the CIA program be protected. Again, not too much to ask.

These [foreign countries] did not stop their cooperation based on this article, but their concern that the United States was not living up to its promise of confidentiality was palpable. Sparse in detail as this article was, it provoked a stiff reaction and, in the opinion of our experts, had the [second country] felt that their [assistance] was becoming a foreign policy risk, they simply would have withdrawn, with very serious consequences to the program.

Similarly, if sufficient information linking [the first country] to the CIA program is surfaced, then [that country's] participation also will become untenable. All the CIA needs to maintain the cooperation of its friends is for it to be able to honor its promise of confidentiality.

[*Mr. Stein then proceeded to provide examples concerning technical collection systems costing millions of dollars that have been compromised by leaks and as a result the effectiveness of these systems as technical collectors have been reduced or rendered worthless. Because these collection systems are highly classified, it is not possible to provide further details.*]

I will now turn to the category of books written by persons with authorized access to classified information which were not reviewed prior to publication but which did contain classified information.

The most egregious example of books in this category are the works of Mr. Philip Agee. As you may know, Mr. Agee is a former Agency employee who resigned in 1968 and went on to write and/or edit several books about the Agency, the early ones of which were not submitted for republication review. These include "Inside the Company: CIA Diary" and "Dirty Work: The CIA in Western Europe."

In addition, Mr. Agee participated in the writing and publication of the newsletter "Covert Action Information Bulletin." In these publications, most especially "Covert Action Bulletin", Mr. Agee revealed the identities of U.S. intelligence personnel and of persons who cooperated with U.S. intelligence agencies.

Recognizing the significant damage done to our foreign relations and intelligence operations by Mr. Agee and those of a similar bent, the Congress passed and the President signed the Intelligence Identities Protection Act. As you know, that act makes it a crime to reveal the identities of intelligence personnel and intelligence agents in a systematic fashion as Mr. Agee did.

In various of his unreviewed works, Mr. Agee revealed the names and identifies of numerous officers and agents. Rather than repeat here all of which he has said and done, let me just give one example which I think will illustrate the damage caused.

At the time "Inside the Company" was published, 1975, there were two individuals, members of [an organization in a foreign country], who had volunteered their services to the Agency in the 1950s. Prior to the publication of the book, both of these sources had provided a great deal of intelligence information on [the organization's] activities.

Among its other uses, this information had been used to help frustrate the [organization's] attempts at guerrilla warfare and efforts to mount terrorist attacks. Each of the individuals was mentioned by name in the book "Inside the Company". As a result, the

Agency had to sever its relationships with both sources and this, of course, deprived the United States of intelligence information to which it previously had access.

The next example of an unauthorized disclosure contained in an unreviewed book is an example taken from the book written by a former Agency employee, [words deleted]. In this book, [this employee] detailed his activities as an Agency employee [abroad].

One of the unauthorized revelations of classified information in [the book] concerned a politician [in a certain country; *herein after Mr. "A"*]. In the book, [the author] notes that he, as an Agency employee, met clandestinely on several occasions with Mr. ["A"] who was, at the time, [a high official of that country]. The fact that a relationship existed between Mr. ["A"] and the Agency was, of course, classified information. At the time of the book's publication, the incidents described by [the author] were over 20 years old and Mr. ["A"] was no longer a high official. Mr. ["A"] is, however, currently a leader of a [political] party. [words deleted] The revelation of Mr. ["A's"] previous clandestine relationship with the Agency obviously exposes him to charges that he is an agent of the United States, thereby lessening his influence. Moreover, if he were to be returned to power, it is unlikely that he would again have confidence in CIA's ability to keep secret any confidential relationship.

A third example of an unauthorized disclosure contained in an unreviewed book can be found in [a book by a non-Agency author]. [The author described his involvement in a U.S. Government activity abroad.] In describing [this operation the author] indicates that he received very useful intelligence [words deleted] from a CIA employee inserted into [a certain country]. In describing this CIA employee, [the author gave a vivid physical description].

[The author's] characterization of the CIA employee is quite accurate. We did, in fact, insert him into [that country]. This individual was instrumental in making arrangements to [conduct this operation]. From the descriptions of our employee given in [the author's] book, [this country] will probably be able to identify our employee. Since we must assume that [this country] and probably the Soviets are aware of the CIA affiliation of our man, we will probably be precluded from using this extraordinary individual for other sensitive projects. In addition, this leak would have endangered the [foreign nationals] who cooperated with our man if we had not already exfiltrated them after the [operation].

I do not think it would have been too much to ask for [the author] to submit his book for prepublication review. If he had done so, the sentence regarding the description of our case officer would have been deleted and the identity of our officer would have remained secure. I do not believe [that public] debate would have been seriously affected by whether [the author's] book contained physical description of our man. Surely any titillation a reader may get from reading this passage cannot justify foreclosing forever the use of a valuable case officer.

Another example of classified information contained in [the same] book can be found in the portion of the book describing how the U.S. Government was able to gather useful information based on [a particular intelligence method]. [words deleted] Because of this revelation of how U.S. intelligence agencies can use [this intel-

ligence method], we anticipate that in future situations forces hostile to the United States will take precautions to ensure that information that would be useful to [us] will [no longer be made available]. This will, of course, make any [similar operation] that much harder.

The last category of examples concerns secrets which were not lost but rather those that have been saved. Specifically, it is examples of classified information which have been identified through the prepublication review process and which, as a result thereof, were deleted from the final manuscript.

The first example comes from Henry Kissinger's book "Years of Upheaval". Mr. Kissinger submitted portions of his book to the National Security Council, NSC, for review. The NSC, in turn, submitted those portions concerning the CIA to the Agency for review. That review identified several items of classified information. To cite one example, in the version submitted to the Agency for review, Mr. Kissinger in discussing a particular incident, [made a statement that would have revealed the existence of a technical collection system]. This item was identified to Mr. Kissinger and it was deleted from the book as finally published. The system is still in use today.

The second example concerns a manuscript written by a former Agency operations officer who retired years ago. The manuscript was styled as a work of fiction but the fictional veil was simply transparent. The story was centered around the attempted recruitment by Agency officers of an [foreign] official stationed in [a certain country]. In recounting the operation, the officer revealed a great deal about the Agency's presence and operations in [that country]. This included certain events which would have greatly antagonized the [people of that country].

In addition, the author included information concerning the fact and nature of the cooperation between the Agency and the intelligence services [of that country]. As you know, although that [foreign] Government publicly denies the fact of cooperation with the Agency and, indeed, denies there is an Agency presence in [that country], that Government does, in fact, cooperate with CIA. Were this cooperation to be revealed by a present or former CIA officer, however, there would be significant diminution in such cooperation and significant damage to intelligence relations [with that country].

Even more damaging, the manuscript revealed a number of what are known as unilateral operations, that is, intelligence operations conducted without host-country knowledge, and in fact, directed against the host country. Obviously, it could not help [American] relations [with that country] if it had been revealed that CIA has a component within the CIA Station in [that country] devoted to penetrating [that country's] Government.

The classified portions of the manuscript were identified to the officer and he agreed not to publish the original manuscript until it could be rewritten in such a way as to make the fictional veil less transparent. To the Agency's knowledge he has not, as of this date, undertaken a revision.

In addition to the examples of secrets saved that I just discussed, there is one additional example of a secret saved. This secret pertains to a current source that has provided the U.S. Government

with very valuable information that is of unique value. Because of the source's value and the probability that the source would be killed if his collaboration with CIA were revealed, the DCI has authorized me to discuss this example with members only.

In addition, there are five other examples of information that were leaked to the media which I am authorized to discuss with members only.

Four of these examples involve current operations and the fifth, a future technical collection system costing hundreds of millions of dollars. The restrictions are necessary because standard security practices require that we confine this type of information, which is tightly held, even within the Agency, to the fewest number of individuals possible. If you wish to hear this testimony, I respectfully request that at the time of your choice the room be cleared of all staff and non-CIA personnel so that I can discuss these examples.

In conclusion, I would like to point out that the examples that I have given today are merely illustrative of the leak problem.

From the fiscal years 1979 through 1983, we have counted 370 intelligence leaks. We are not talking about any items which are picked up and replayed after the initial leak. We are not counting leaks of U.S. foreign or defense policy, we are not talking about leaks concerning U.S. weapons or military operations. All we are counting is first-time leaks of intelligence information and information relating to intelligence sources and methods.

We consider this to be a very serious problem. Not only is 370 a large number, but our analysis has revealed that year by year the number of leaks has been increasing. In addition, the lag between the date of the classified source document and the revelation of the classified information in the media is decreasing. In other words, not only is more intelligence information being compromised, more and more recent information is being exposed.

This identifies a serious erosion of security discipline and cannot fail to diminish the effectiveness of your intelligence service and mine. The issue goes considerably beyond a paper exercise of trying to show a direct cause-and-effect relationship between this leak and that source, this disclosure and the loss of that collection system. Instead, what must be self-evident to you all is that there are certain matters which a Government must be able to keep secret. At a minimum, if we are to remain a world-class Nation and have an effective intelligence service, we must protect our sources, our liaison relationships, and the capabilities of our technical collection systems. But, as my testimony has shown, in all too many cases we are not adequately protecting our vital intelligence secrets and frankly we need your help.

This concludes this portion of my testimony.

Mr. WILLARD. [The NSA witness] has a statement. We are willing to proceed at the committee's pleasure. As Mr. Stein indicated, he had several matters that he was only cleared to discuss with the members only, not even with the rest of us in the room from outside of CIA.

Mr. GEKAS. I move that the meeting now become closed to members only for the purpose of hearing the testimony of Mr. Stein as to the matters which he says could be disclosed to the members only.

Mr. EDWARDS. Do we want to do that before [NSA witness] testifies?

Mr. GEKAS. I thought it might be appropriate since it is fresh in our minds the testimony that he has just given.

Mr. SENSENBRENNER. I would just as soon have the CIA do all theirs at once.

Mr. KASTENMEIER. Are we going to have the room cleared on other occasions, too?

Mr. WILLARD. Mr. Kastenmeier, this is the only information like that. All of NSA's testimony is cleared for members and staff as well, and so, we can either take a break now and present the balance of Mr. Stein's examples, or we can do that at the conclusion of the rest of the hearing.

Mr. EDWARDS. We will want to ask Mr. Stein some questions. That won't mean he will leave?

Mr. WILLARD. No.

Mr. EDWARDS. It will probably be more orderly to have Mr. Stein finish his testimony and, without objection, we will clear the room.

[*Discussion off the record.*]

[*Mr. Stein then provided in restricted testimony to members only examples of certain other highly damaging leaks. CIA provided the following summaries of some of these examples.*

[*Example A. This example concerns a newspaper article describing a new method by which a foreign power hostile to the United States has been collecting intelligence. As a result of this leak, the agent who had provided us this information became extraordinarily concerned that his collaboration with the CIA would be uncovered. He, therefore, informed us that he was terminating his cooperation with us. This decision was of particular concern to CIA since we did not want to lose a source who had provided us unique intelligence.*

[*Example B. This example concerns a newspaper article describing a CIA agent in the highest levels of a particular foreign government. As a result of this leak, this source was questioned by the internal security forces of his country and he abruptly ceased his relationship with CIA. This decision has an adverse effect on the ability of CIA to supply specific intelligence to policy makers as the source provided unique information and was considered irreplaceable.*

[*Example C. This example concerns two newspaper articles describing certain military developments in a particular country. The articles were based on secret intelligence estimates prepared by CIA. These estimates were in turn based on intelligence provided by a foreign government and a CIA agent who had access to information on these military developments. Both the foreign government and the agent recognized the information contained in the newspaper article as information they provided to the CIA. As a result of this leak, the agent expressed fear that his collaboration with CIA would be revealed and the foreign government made a rare formal protest to CIA.*]

Mr. EDWARDS. The subcommittee will come to order again. We will have to operate under the 5-minute rule, because we have quite a number of us here.

Mr. WILLARD. Mr. Chairman, I think [the NSA witness'] presentation will be somewhat shorter than CIA's presentation.

Mr. EDWARDS. We welcome you.

Mr. WILLARD. I wanted to mention that [NSA witness] is, as I said, in charge of NSA's Operations Directorate Intelligence Staff. He has 30 years of experience in the Signals intelligence and communications security business, having had analytical, technical and supervisory assignments at NSA Headquarters and overseas, and [NSA witness] is a member of the Senior Cryptologic Executive Service.

[NSA WITNESS.] Madam Chairwoman, Mr. Chairman, distinguished members, I hope this is not going to be anticlimatic what I have to say, but I have some examples for you.

Before getting into the actual examples, I would like to give you a brief background on NSA and its particular security concerns so that perhaps that will provide useful perspective for you.

NSA employs a signal intelligence technology known as signals intelligence, or Sigint. This technique involves the collection of signals, both radio signals and radar signals, intentional signals and unintentional signals, both communications and noncommunications signals.

These are used for the exploitation of these signals to provide foreign intelligence. Today, Sigint is probably the single most prolific and wide-ranging intelligence discipline employed by the United States. [Words deleted.]

At the same time, Sigint is very fragile. By that, I mean Sigint targets can easily deny us continued success. [Words deleted.]

NSA specially understands this fragility because it is also responsible for providing communications security for United States communications. So, we work both sides of the street.

In this role, we are constantly alert to indications that other governments are exploiting our communications.

Unfortunately, our principal adversaries don't provide us with the benefit of their unauthorized disclosure. As is generally true for all intelligence techniques, the information produced by Sigint is classified to protect the sources and methods rather than necessarily the information itself.

Because our concern is focused on sources and methods, the unauthorized disclosure we most fear is the one that attributes the information to [specific intelligence sources; for example, Sigint].

As several of my examples have demonstrated, disclosing the source of the information is often gratuitous and serves only to elicit greater interest in the disclosure.

It tends to take on additional validity when you attribute the source to Sigint, and that raises the level of validity in the minds of the people reading or looking at the leaked information.

The five examples of leaks which I will discuss were drawn from over the past 12 years. They are illustrative of the range of Sigint success which unauthorized disclosure have compromised.

Many more disclosures have occurred in this period. For example, the agency has requested investigation for at least 20 leaks over the past 5 years. Even in the cases which I have selected, it is not usually possible to demonstrate conclusively that because of a particular unauthorized disclosure, a foreign government has improved its communications security.

Let me explain that; that is, that once a disclosure occurs and a source is compromised, our time is really borrowed at that point.

Whether corrective action is taken quickly or is delayed by the adversary, the target knows it has a weakness. [Words deleted.]

Advances in communications and computer technology make it far easier for even Third World countries to enjoy secure telecommunications.

Even if we could recover the source, that process may be time consuming and excessively expensive, thus driving the cost of our intelligence efforts higher and higher.

Notwithstanding that these examples that I am going to give you have already been disclosed in the media, I must emphasize that my discussion of them is classified top secret.

One of the examples relates to up-to-date signals intelligence, and its disclosure in particular would compromise the damage already suffered.

[*The NSA witness then provided examples of leaks of signal intelligence information. NSA provided the following summaries of some of these examples.]*

[*Example 1 must be deleted in its entirety.*

[*Example 2: The second example concerns the U.S. intelligence gathering capability with regard to certain clandestine intelligence operations of a foreign power. A press disclosure revealing the nature, scope and level of success of the foreign intelligence operation caused the foreign power to tighten its security practices.*

[*Example 3 must be deleted in its entirety.*

[*Example 4: The fourth example involves an incident that happened during a tactical military conflict. Public disclosure of our effort to provide intelligence support to one of the two opponents caused the other to take countermeasures to thwart us.*

[*Example 5: During a period of widespread terrorist activity some of our intelligence successes in charting the terrorists actions were leaked in the press. While the source of our information remained, the quality of what was reported deteriorated so that there was a concern about the validity and completeness of the information subsequently received.*

[Although not of the same consequence as the other examples, there has been a spate of books on Sigint techniques in recent years. In highlighting the success of certain techniques, these books alert targets to the need for increased communications security.]

In summation, Sigint is simply no longer the secret that it once was. Gratuitous disclosure of sources and methods of information is in large part responsible for discussing just how successful Sigint can be.

Advanced technology has made good communications security equipment available to any country that is willing to pay the price to obtain it.

So you add these two together, awareness plus technology, and the task of producing quality Sigint on targets of intelligence concern to U.S. national security is becoming more and more difficult and expensive.

Leaks of the successes we do enjoy only serve to further complicate our task.

I thank you for your kind attention, and if there are any questions, I will be happy to answer them.

Mr. EDWARDS. Thank you, [NSA witness], and I am going to yield to Mrs. Schroeder in a moment.

I would like to point out I understand both the CIA and NSA already have polygraph and preclearance procedures, and yet these leaks still took place. So, the chief point that we are going to want to concentrate on is to find out what difference it would have made on these very serious matters that you have discussed if the Presidential directive had been in place.

Mrs. Schroeder.

Mrs. SCHROEDER. Well, I want to underline what the chairman said because that is what we are commissioned to do, to look at that Presidential directive and see if it really and truly would make a difference.

I think we are moved by your testimony. Your plea to us to try and help, we certainly hear.

One of the greatest problems I think we have, from my vantage point, it is not the professionals as much that are leaking as it is maybe some of the political people, maybe more in the White House. I don't really know, but that is the intimation we get, that ——— to be ingrained in professionals more than it does sometimes in the people who are in the political trade where talk is their tool, and they talk too much before they realize.

I had heard that ——— [one of the cases you mentioned] the leak supposedly was by a prominent political person in the White House. So if that is true, how does the Presidential directive help that, because it is really geared to the professional and not the politicals that you have to give this top secret information.

Mr. Stein, do you have any response to that?

Mr. ———. I think, Madam Chairman, I am going to end up being the one to talk about the directive since I was involved in preparing it, and the two witnesses from the agencies have not been involved in the directive directly at all.

I think you are right that the problem tends to be not the career intelligence professionals in terms of leaks; that is, although there have been some bad eggs—people like Philip Agee, who caused great damage—by and large the people who work in the intelligence agencies know how sensitive and fragile the information they have is. They know how damaging it would be to make disclosure.

I think you are right that it tends to be the intelligence consumers, not the producers, who are the problem; that is, it is the people at the White House, if you will, or the State Department, or the Justice Department, who are in policy-type positions, who receive the intelligence information and don't fully appreciate how sensitive and how damaging it is to disclose it.

They may have their own axe to grind politically. They may think they are helping the administration when they leak information or may think they are shooting down a program they disapprove of by leaking information.

That is why the Presidential directive applies across the board. That has been a source of criticism in a lot of the congressional hearings, that people have said it is OK, they have these security measures for intelligence, because that is the kind of people they are, they deserve to have polygraphs and prepublication review.

Mrs. SCHROEDER. They have already got it.

Mr. WILLARD. Don't do it to the policymakers at the State Department or the White House because that chills the free flow of information to the public.

I heard a number of officials, former officials testify, George Ball testified before the Brooks Committee hearings last fall, other witnesses have said, well, the pernicious thing about that, it applies to the policymakers, upper echelon, the people who write books and articles for Foreign Affairs magazine.

But I think for the reasons we have said, that is where the problem is. As President Kennedy said, the ship of state leaks from the top, and I am convinced basically on my work in this field for the last 3 years that is where most, if not all, of the problem is.

Mrs. SCHROEDER. So, you are telling us that the Presidential directive will apply to everybody in the White House, the President's very own people?

Mr. WILLARD. The directive applies, for example, prepublication review, to everone who has access to SCI.

Mrs. SCHROEDER. What about polygraphs?

Mr. WILLARD. That applies to everyone who is involved in an investigation of classified information, and that could include anyone at the White House.

Mrs. SCHROEDER. But the other thing that disturbs me is we are still talking about chasing down the horse after it got out of the barn. I really think a very serious problem is that when you bring the information, when you explain that, have you looked at all at whether or not when new people come into the White House, there isn't some way to do this kind of briefing for them to ——— what they are walking into?

I think 99.9 percent are innocent and then you are going to go around and track them all down, but it is gone and it is already costing the taxpayers money.

Mr. WILLARD. I agree that the best thing to do is to keep the horse in the barn. That is one reason we have the prepublication review system.

Some critics have said if people disclose classified information, prosecute them under the Espionage Act. That is the horse out of the barn.

Mrs. SCHROEDER. The prepublication is for somebody who is going to write a book, what about Secretary of State Kissinger, who talks to the press 24 hours a day? You cannot prepublication review Mr. Kissinger.

Mr. WILLARD. I understand the problem of the verbal leaks, someone who talks to the press is very serious, and it is not solved by prepublication review. There is to some extent a difference when things appear in print in books by former officials. That gives it more authority.

When things leak out anonymously from the press, sometimes you don't know whether they are true or not. I have learned that not everything you see reported in the newspapers is true.

Mrs. SCHROEDER. I think part of it is we heard clearly the kind that came out.

Mr. WILLARD. That certainly is true. That is where I think that prepublication review can help. We have tried to make an effort in

the last few years to improve the security awareness program for senior officials in terms of giving them a briefing like this.

The SCI gave a briefing within the last year to the Cabinet, in the Cabinet room, exactly like this, and someone leaked the details about the briefing to the press.

Now, I agree that we need to do a better job on security awareness. In my view, the problem is a seamless web. You have to attack all sides of it. You have to have good protective security; that is, documents have to be kept safe, you have to do a good job on clearance and background investigations and make sure the right people get access.

You have to do a good job on security awareness. Then you have to be able to have a deterrent impact when people do leak or make an unauthorized disclosure something has had to happen.

Mrs. SCHROEDER. I also worry about contractors. I sit on Armed Services—I notice you nodding—and I think when we talk about this magazine, the Soviets can't wait to get their hands on it, and a lot of that is beyond anything you are talking about.

Mr. WILLARD. Well, the directive applies to contractors as well. For example, prepublication review would apply to contractors who have access to SCI.

Mrs. SCHROEDER. They talk. They don't write. Martin Marietta doesn't write the article to submit it.

Mr. STEIN. May I say a word about leaving prepublication review aside and say a word about something I shouldn't; namely, the use of the polygraph, having lived a life of being aware of the polygraph.

I think the knowledge that the polygraph can be used in investigating a leak will have a deterrent effect. I do that on the basis of my experience not only with staff officials of CIA, but also with our agents overseas.

The knowledge that someone, and the fear of the polygraph is enough to keep people from—I think it might cause them to mind their P's and Q's. I don't think that NSDD says that with the use of polygraphs we are going to catch everybody who leaks everything, but it certainly will cause someone to have second thoughts, the thought that an investigation could include the use of the polygraph. The reason is essentially the American public in general is afraid of the polygraph.

Mr. EDWARDS. Mr. Pashayan.

Mr. PASHAYAN. I have the impression that the directive might not block all the leaks but that it will block up some of them. We have had two or three examples of printed materials, primarily had they been submitted, the information would have been sifted out.

I would like to get your judgment on this. Of a hypothetical 100 leaks, how many do you think the Presidential directive would prevent?

Mr. WILLARD. Mr. Pashayan, it is hard to say. I think if we can reduce the number of leaks by 10 or 20 percent even, then that will be, I think, a significant victory because what we have had up to now is a problem that is becoming increasingly out of control with no end in sight.

If we could turn the corner, so to speak—that is, to have leaks becoming less of a problem every year rather than more of a problem—that would be a significant accomplishment.

Mr. PASHAYAN. You feel polygraph and prepublication review would achieve that?

Mr. WILLARD. I think that is one way to achieve it. I am not here to say NSDD-84 is the only solution to the problem; maybe not the best solution. In fact, I seriously regret this has become such a controversial and political issue over the last year.

We would like to find a way to solve the problem that is not controversial that doesn't cause us to have to come up and have hearings every couple of months to be denounced as people who want to squelch the first amendment and terrorize Government employees.

I don't like being called the John Dean of the Reagan administration by William Safire. If there is a better solution to the problem, we would like to hear it. If there is a different solution to the problem, we would be willing to consider it.

Mr. STEIN. You asked for judgmental, and I would answer the same way. I don't know how many of these 100 would be stopped by the polygraph. I do know that somehow one has to restore some degree, and a big degree I would hope, of discipline, and I do know that the polygraph has a deterrent effect.

Mr. PASHAYAN. Let me ask you this question.

Mr. STEIN. If I may, I think slightly amusing, I had two tickets, I am an avid Redskin fan.

Mr. PASHAYAN. I am a Raider fan.

Mr. STEIN. You are better off than I am this year. I had two tickets to the Superbowl. Someone said, why don't you go. I said I could if I could find a way ——— the polygraph next time around, and he giggled and said, the only way I could figure to get there was to misuse government property, misuse an agency airplane and boat to get there. In fact, it was on my mind. I could have misused my position to get someone to fly me down there.

Mr. PASHAYAN. Well——

Mr. STEIN. That is what I mean by the deterrent. There is a deterrent effect.

Mr. PASHAYAN. Despite the fact it is no secret what the Raiders did to the Redskins, let me ask you this. Your employees now at CIA all are subject to the polygraph, are they?

Mr. STEIN. On entrance, yes, sir, and periodically.

Mr. PASHAYAN. Do you feel that that has had an effect on the ability of the agency to control the information?

Mr. STEIN. I do indeed.

Mr. PASHAYAN. Talk about that.

Mr. STEIN. I am not really competent to talk about it because I am not in the Office of Security and don't see the totality of it. But I can give you some examples of things that have happened because of the polygraph.

We had some very sensitive documents that had to be translated. We sought translation assistance from the Defense Department. They sent a gentleman to do those translations. On the polygraph he indicated he had been in touch with a foreign intelligence service. He was to start with us, but after this revelation, he had to

leave. I don't know whatever happened to the case, but he went back to the military and was unemployed.

I know of the 250,000 applications that we get per year, and of the 60,000-odd who are asked to send in resumes, it very quickly gets from the 60,000 down to the 2,000 that we employ.

On entrance now there are—I am not suggesting in our case—we also test for lifestyle, lifestyle or security or pot or what have you, or drugs. The polygraph does a great deal of this weeding out, not just polygraph, but it is an excellent investigative tool in large measure because the Americans who are tested on the polygraph react.

Mr. PASHAYAN. Are you saying Americans?

Mr. STEIN. Well, polygraph works less well with [certain cultures].

Mr. PASHAYAN. Really?

Mr. STEIN. It works less well in a culture where—and here I am getting out of my depth. I don't know the totality of the Office of Security holdings, but my own personal experience has been that the polygraph works less well with [certain ethnic groups], for example, who are in a culture where telling someone what you think they want to know is an accepted norm. Lying is not accepted in the United States and, therefore, the polygraph works somewhat better.

Mr. EDWARDS. Mr. Kastenmeier

Mr. KASTENMEIER. Mr. Chairman, I have a question, but I would like to hold back since I had an opportunity——

Mr. EDWARDS. Mr. DeWine.

Mr. DEWINE. No questions.

Mr. EDWARDS. Mr. Gekas.

Mr. GEKAS. No questions.

Mr. EDWARDS. Mr. Wolf.

Mr. WOLF. Thank you. I want to thank you for your testimony. I think you have made a very compelling point as to the problem and seem very willing to be open as to solutions. I would just like to second or agree with what Mrs. Schroeder said with regard to—maybe it isn't often that I agree with what Mrs. Schroeder says, but on this point about the political appointees being sensitive perhaps you could demonstrate within the administration, then—I worked for a Cabinet officer for a number of years, for 5 years. During that period of time, nobody ever came over and really emphasized the security matters.

Perhaps the administration could bring in all the political appointees and schedule C's and people like that to give them this type of briefing to indicate how important this was to be sensitive to national security.

I think that would demonstrate on your part Mrs. Schroeder's legitimate concern that many times you do have a Mr. Kissinger or someone else like that who feels they are above it and they can speak whenever they want to without being punished, whereas an employee or a career person would be very hesitant to do that because of all the inhibitions built in.

So, I would encourage you to take her comment at heart and maybe ask the President or somebody like that to bring all the political appointees together to make this point, the way I think you

have done it today, and to sort of stigmatize these political appointees that that would be frowned upon if they do that, and looked down upon.

Then I guess the real ultimate test is when this administration finds somebody who is a political appointee who abuses that, that they act quickly and perhaps even by reprimand or by firing that person.

Again, I thank you very much.

Mr. WILLARD. If I could respond to that, where we have caught people in this administration, we have taken decisive action. A political appointee was fired by the President about a week after he publicly disclosed information about a confidential CIA relationship with [foreign government official].

There have been at least one or two other instances that I know of not by name where individuals have been allowed to resign after these disclosures had been determined.

Now, in my view I think there should be a public pillaring of these people for the deterrent effect. However, there are also security concerns for the very reason that our examples are classified. It is difficult for us. For example, I have never publicly acknowledged the firing of this [appointee] as being because of a particular leak because that confirms the accuracy of the information that he disclosed.

It would be similar to my stating that this particular [foreign] official had a relationship with the CIA. So, we have this tension between the desire to create a deterrent impact, which we want to, and the need to continue to try to protect that confidential relationship. But where we have been able to catch people, we have done that.

In terms of security awareness, in addition to the Cabinet level briefings that the DCI gave that I mentioned, the CIA has put together a program of briefings on this damage, giving some of these kinds of examples, not quite as high level a classification as this, but still a top secret, code word level briefing that has gone around to the top officials of the various departments.

When I came to the Department of Justice, for example, the Attorney General sent an invitation to the top officials to attend. They did attend. They had a videotaped presentation from the DCI included, as well as a briefing.

Finally, on August 30 of last year, the President sent out a letter, a memorandum to all Federal employees on unauthorized disclosure, to my knowledge the first time any President has ever taken this step, a two-page memo in which he reiterated his concern.

So, we have been trying to emphasize protective security. We don't come to the polygraph because it is our idea that ought to be our first tool of defense. It is really sort of the last resort in these cases.

But it is one that we have felt is necessary if we are going to make some progress in solving the cases, but the real frustration here is that 99 percent of leaked cases are never solved and can't be solved by any reasonable investigative method, and I could explain in some way why that is the case.

But until we can do a better job of catching people, then we are going to have a hard time adding the stick. We can use the carrot,

we have been trying to use the carrot, but the problem is so serious we have to try to have a stick there, too.

Mr. PASHAYAN. You mean that under the Presidential directive that Ed Meese would be subject to the polygraph?

Mr. WILLARD. That is correct, Mr. Pashayan.

Mr. EDWARDS. I suppose that the disclosures made by the Justice Department after the 007 tragedy included more releases of classified information than I can remember in my two decades here.

I am sure that it was very distressing that everyone in the world learned as much as they did about what was going on in the skies over that island. I don't know how you can resolve that. When you get politics into something where a Democrat or Republican is concerned, politics are very important and perhaps security will suffer.

Mr. Stein, did polygraph examinations solve any of the serious leaks that you described?

Mr. STEIN. In one of the cases that I described, for members only, the fear of the polygraph kept the gentleman from trying to get rehired by the agency. He told his folks that he was not about to go through that. He could not pass it. In that case, it has a deterrent effect only.

There are examples that I have in my head which were not described in the hearing, or either of these hearings, of leaks in the sense of inadvertent or willful revelation of classified material to unauthorized recipients. Yes, sir, that happens within the agency by use of polygraph, yes, sir, it does, but none of those were described in our testimony, in my testimony. [Words deleted.]

Mr. EDWARDS. Maybe the Russians knew about it. I assure you I didn't know what was going on over there to the extent that it was.

Mr. WILLARD. Mr. Chairman, I would also like to add that we have always recognized that the President or other designated officials have the authority to declassify information that otherwise properly could be classified in the overall national interest.

In a situation like this, a conscious decision was made to release some information that was otherwise classified because it was felt that would further U.S. foreign policy interests by bringing to bear world opinion in the incident with regard to the Soviet Union's conduct.

That is the kind of judgment that sometimes has to be made in the overall interest of national security, and that is a part of, in our view, the constitutional authority of the President to make those kinds of decisions.

Can that power be abused? Certainly it can. If so, the President should be held politically accountable if he declassifies and releases information for partisan political purposes rather than because it is in the overall national interest.

I know there were during the last administration accusations made about the release of information about the Stealth bomber program, and I think there was a political fallout from that.

The point is that there is nothing illegitimate about declassifying information if it serves an overall national purpose as long as that is made on a good faith basis. But the decision ought to be one of proper authority to make the President or other designated officials and not anyone in the Government who happens to have

access to information to appoint himself as the declassifying authority.

Mr. STEIN. To reinforce that point, we are in constant negotiation with the State Department in the sense that diplomatic demarches, what can an ambassador say to the government are oftentimes based upon intelligence information, what we know from intelligence.

We are in constant negotiation with the State Department on various issues, rewriting the material, sanitizing it, downgrading it, so it can be used as pointed out. That is a very legitimate function of the foreign policy establishment.

Mr. EDWARDS. Well, thank you.

My last question really has to do with the polygraph again. I can see the intimidation value. I think that is the stronger point you have made.

With regard to the polygraph, I was talking to some Foreign Service officers one evening—and they said they would quit before they would be strapped into a polygraph apparatus because they viewed themselves as highly qualified professionals and so forth and so on.

But, Mr. Stein, I am interested in [a certain individual], you know my connection with [this individual] goes back a long time, and I was wondering why he couldn't have brought in—I don't ask you to confirm or deny his connection with the CIA, [*words deleted*] we have been through that with the CIA.

Let's assume that [he] was a CIA employee at one time, why couldn't he be asked to submit to a polygraph test and say where did you this information?

Mr. STEIN. Well, had he been an employee at one time, and had he retired or resigned and so forth——

Mr. EDWARDS. He would have been subject.

Mr. STEIN. He is not subject.

Mr. EDWARDS. He is subject, Mr. Snepp was subject.

Mr. STEIN. Mr. Snepp was subject to the polygraph before resignation.

Mr. EDWARDS. He was subject to preclearance.

Mr. STEIN. Once he resigned [he] is not subject.

Mr. EDWARDS. Preclearance he would be like Mr. Snepp?

Mr. STEIN. Preclearance. [I am not aware he ever was.]

Mr. EDWARDS. [I am not saying he was.] So perhaps assuming what I said is true, he should have prepared that article. Well, how about [the former military official] why didn't he preclear?

Mr. WILLARD. The [former military officer] is one who was not subject to a prepublication review requirement because he was not CIA or NSA. He falls in the category of people who would be covered under the new directive as someone who has access to SCI. At the time he was in, the military prepublication requirement was limited to NSA and CIA and did not apply to him.

In fact, I understand he was asked specifically by the Department of Defense to submit his book for review and refused to do so, claiming he had not signed an agreement.

Mr. STEIN. Mr. Chairman, also [the man you are discussing is a foreign national] which makes it even less likely.

Mr. KASTENMEIER. Actually, I do not know that I have any questions. Some of the questions have cleared up concerns I had about people, officials in the highest level, with regard to someone at such a level being able, as a matter of judgment, disregarding what otherwise would be a directive to the contary to, in their judgment, make statements with respect to U.S. policy and possibly by implications run afoul of what for others might have been an impediment.

But I think the discussion was somewhat on this purpose. I do think that there is a question of competing values sometimes.

[*Mr. Kastenmeier then proceeded to discuss a case involving a conflict between criminal prosecution and intelligence.*]

Mr. WILLARD. I agree, Mr. Kastenmeier, and in fact our Criminal Division is frequently, I will not say at odds, frequently has lengthy discussions with the intelligence community about particular criminal cases.

I am not saying who is right or who is wrong, whether we should have prosecuted or investigated the case or not, but I think, as indicated, the mistake [that some employees make is that once they are] frustrated because they do not get their way internally within the government, they go public to the newspapers with the information about that confidential intelligence relationship.

Mr. Stein is more qualified, but not everyone we do business with around the world is a Boy Scout. Some people are involved in unsavory activities, and yet it is essential to be able to promise confidentiality in order to obtain cooperation, which may be vital for the national interest.

If the concern were if anyone is ever accused of an illegal activity around the world, who has ever cooperated with the CIA, that that relationship would be made public, it may be a lot harder for us to get people to cooperate.

Mr. KASTENMEIER. Thank you, Mr. Chairman.

Mr. EDWARDS. Thank you very much. I am relieved that the Brooks' bill has not been assigned to the subcommittee I chair and it will be in the skilled hands of Chairwoman Schroeder, Mr. Wolf, and Mr. Pashayan, and the rest of them.

Mrs. SCHROEDER. We will let you come to testify, Mr. Chairman.

Mr. EDWARDS. On the 31st of March.

Thank you very much. We really appreciate your coming here today. It has been very helpful to us, and there will not be any leaks out of these two subcommittees.

[Whereupon, at 11:45 a.m., the hearing was adjourned.]

APPENDIXES

APPENDIX 1.—"THE CIA AND THE CULT OF INTELLIGENCE," BY RALPH MCGEHEE

APPENDIX.—THIS BOOK AND THE SECRECY AGREEMENT

The secrecy agreement that I signed when I joined the CIA allows the Agency to review prior to publication all writings of present and former employees to ensure that classified information relating to national security is not revealed. This provision seems logical and necessary to protect legitimate secrets. However, my experiences in getting this book approved show that the CIA uses the agreement not so much to protect national security as to prevent revelations and criticisms of its immoral, illegal, and ineffective operations. To that end, it uses all possible maneuvers, legal and illegal. Had I not been represented by my attorney, Mark Lynch of the American Civil Liberties Union (ACLU), and had I not developed a massive catalogue of information already cleared by the Agency's publications review board (PRB), this book could not have been published. The review of my manuscript came in two basic stages, first on an initial manuscript that I wrote without editorial assistance, and second on a revised manuscript written following an editor's advice.

On February 26, 1980, I submitted the first version of the manuscript to the Agency for review and on March 21, several days before the mandatory 30-day review period expired, John Peyton, a lawyer of the Agency's general counsel staff who served concurrently as the PRB's legal adviser, called and asked that I come to a meeting on March 26. He moaned audibly when I advised him that Mark Lynch of the ACLU would accompany me to the meeting. At the meeting, held in the general counsel's office on the seventh floor of the Headquarters building in Langley, the government's side was represented by five attorneys—three from the general counsel's office and two from the Justice Department. Had I come to the meeting alone, I would have been the lamb ready for slaughter. Because of his participation in other sensitive Agency cases, Lynch had earlier been granted a high-level "Q" clearance, but even so the Agency required him to sign an agreement before he could participate in that meeting. Peyton then explained that the publications review board had made 397 deletions in my manuscript. I was surprised, because I had been extremely careful not to use classified information in the manuscript. Those 397 deletions exceeded even the 339 passages excised from *The CIA and the Cult of Intelligence,* a book by John Marks and Victor Marchetti that deliberately set out to expose Agency secrets. I later learned that the 397 deletions represented only a fraction of those initially demanded by the Agency's Directorate for Operations. When I notified Peyton that I would be represented by the ACLU, the Agency had quickly retracted its more capricious deletions, resulting in the final list of 397 items.

Lynch suggested that he and I first be permitted to adjourn to a private room to review each item. When we finished the review, the full group reconvened. I said that almost all deletions appeared in some form in the *Pentagon Papers.* Ernest Mayerfeld, deputy general counsel, said if that was true he could not object to their inclusion in the book. The lawyers said that I should get together the next day with the Agency's freedom of information officer, Bob, to consider specific deletions.

After lunch and later at home I reviewed the Agency's deletions and matched each item with my source documents. I was overjoyed: all significant deletions were covered by supporting public data. My joy was premature.

Early the next day I met Bob, who during my last few years with the Agency had served as my boss once removed. A dedicated cold warrior, Bob was a tall, stocky, impressive man in his late fifties who had achieved supergrade status in the Agency and had served as chief of station [19 words deleted].

Bob seemed as agitated as I, and it was obvious that he felt he was soiling himself by dealing with me. In less civilized circumstances we probably would have been happier fighting rather than talking. Early on Bob set the tone. "It's too bad you didn't work for the Israeli intelligence service," he said. "They know how to deal with people like you. They'd take you out and shoot you."

Bob then launched into a long monologue covering the vagaries of the secrecy laws, including details of the Carter administration's Official Disclosure Law, the Freedom of Information Act, and the various problems in their application. I impatiently endured this speech. I was most anxious to get on with the review, to produce my public documents, and to get the hell out of there.

We finally moved to the review of the specific deletions. The very first item caused trouble. Inexplicably the publications review board had deleted a reference indicating that the CIA conducted joint operations with Thai authorities. That relationship was so well known that books had been written about it, academic studies discussed it, pictures of CIA station chiefs appeared in the Thai press, and high-level Thai officials openly bragged in the media about CIA support for their organizations. Needless to say, I had not anticipated that the CIA would consider that relationship secret. If I could not admit that such a relationship existed, there was no point to the book since most of my observations were based on my six years with the Agency in Thailand. Fortunately I recalled a document from The New York Times edition of the Pentagon Papers entitled "The Lansdale Memorandum for Taylor on Unconventional Warfare," which discussed specific CIA operations conducted jointly with Thai organizations.

When I told Bob about the Lansdale memorandum being in the Pentagon Papers, he appeared to be surprised. But he recovered quickly and said there was only one official version of the papers—the Department of Defense's 12-volume editions. After numerous phone calls, a secretary brought in 11 of the volumes—the one missing volume, according to the index, was the one that most likely would include the Lansdale memo. This really shook Bob. He suspected that someone had removed the critical volume. Later we did get that volume, but the Lansdale memo was not in it. I argued that the Supreme Court's decision in the Pentagon Papers case had placed that information in the public domain, and it certainly could no longer be considered secret. We argued back and forth and finally agreed to postpone decisions on this and other items relating to CIA joint operations with Thai organizations.

Many deletions caused little problem. In some cases, where an ex-CIA official's affiliation with the Agency was well known, I had used that person's true name. The Agency objected. I felt the point was unimportant and agreed to substitute titles or aliases.

At one point I really became worried. Bob said that I must produce the document from which I had taken a direct quote. If I could not produce it, he warned that I would be accused of stealing secret documents. I had not deigned to steal any of the Agency's classified fantasy, but I was not sure that I could relocate that precise quote. Luck was with me that day, and a short scan of the research materials I had brought with me produced that quoted passage.

We referred the question of joint operations with the Thai police to the general counsel's office, which conceded that such information was probably not deletable. We continued our review based on the premise that I could discuss joint intelligence and counterinsurgency programs with the Thais. Even so, I could not mention my participation in programs with specifically named Thai organizations although I could substitute phrases to describe them. Also I was allowed, via footnoting, to replace a deleted item with information from a source document. By juxtaposition I hoped my meaning would be clear.

The next day I objected to the deletion of my very negative assessment of the Agency's long-term operations against mainland China. I produced a book, Sub Rosa, in which a former Hong Kong station chief, Peer de Silva, set forth his own lengthy, negative evaluation of those operations. I said Peer's book had been approved by the PRB and it had permitted him to state his opinion; therefore, I should be given the same privilege. Bob agreed and my critical comments, in modified version, were reinstated. From that point on I searched through books written by former Agency officials and cleared by the CIA, to locate items similar to deletions made in my book. By this tactic I was successful in reinstating numerous deletions.

We had a problem over naming specific CIA stations and bases—other than those already acknowledged—even though those installations were well known. The Agency's objection had nothing to do with secrecy. It instead applied to administering the Freedom of Information Act. Whenever the Agency acknowledged the existence of a station or base, the public could, under the act, demand documents relating to the facility. Although it seldom releases documents in response to such appeals, the Agency must by law physically check all such documents. By not allowing anyone to admit that a station or base exists, it avoids those requests.

Bob and I agreed to a modified version of my book. That weekend I made all the changes. On Monday moring I reviewed those changes with Mark Lynch and sub-

mitted the book to the deputy general counsel, Mayerfeld. In the interim Mayerfeld's office had reversed itself. He said The New York Times' Pentagon Papers had not been officially released, that the Supreme Court only ruled that it could not enjoin publication of those documents. Therefore, my discussion of liaison programs with Thai organizations might again encounter opposition.

That night I searched through the edition of the Pentagon Papers that Senator Mike Gravel of Alaska had entered in the official records of the Senate. I found that it included the Lansdale memorandum and therefore supposed that that constituted official disclosure. The next morning I happily relayed the news to Bob. He said members of Congress could say anything, so the Gravel edition did not count. Official disclosure only occurs when a member of the executive branch of government performs that function. But how finely the Agency interpreted that statement I was yet to find out.

I immediately went to the Reston Regional Library to look for statements made by members of the executive branch relating to CIA operations with Thai organizations. I spent the day going through The New York Times Index, reviewing all entries under Thailand from the present back to 1954. The index mentioned one well-publicized incident, allegedly caused by the CIA, that generated riots in Thailand. Because of the furor, numerous American officials were forced to comment on CIA operations in Thailand. Some press accounts sourced their information to CIA officials in Langley and the United States Embassy. I felt those references constituted executive branch disclosure of CIA activities in Thailand. I called Bob. He asked if the articles named specific American officials—a mere reference to a CIA official in Langley did not count. I said that Ambassador William Kinter had made a statement. He asked if the statement was in quotes. He said reporters could write anything, and if the statement was not in quotes it did not constitute official disclosure. (Later after completing the review process I found a reference to a high-level CIA official making a direct statement concerning CIA operations in Thailand. I called Bob and asked if that did not constitute that ever-elusive official disclosure. He said no. That person had probably spoken unofficially and could be prosecuted for violating his secrecy agreement.) But as I continued to accumulate public evidence of the CIA's relationship with Thai organizations, Bob began to concede that I might retain relevant items in my book.

On Tuesday, April 8, I went to the Agency to rework the items deleted from my resubmitted version. I was not surprised to see that the Directorate for Operations had reversed itself in several key areas. Where its original deletions did not hold up, it merely changed its objections to apply to previously approved information.

China desk had changed its objection to my negative evaluation of its operations. The desk now claimed that the technique itself was classified. That technique, recruiting persons from the other side, was just slightly newer and less well known than prostitution. Of course if I could not discuss the technique, my evaluation would be meaningless. That night I went back to the Reston Library and cleaned out its shelf of books written by ex-Agency officials. Those books, some undoubtedly written at the behest of the CIA, discussed that "forbidden" technique in detail. By adding footnotes to those books, I was allowed to retain my discussion of that technique.

The Thai desk had also changed its position on material not initially marked for deletion—namely, the rural village survey program that I directed with Thai officials. The desk's original objection pertained only to my mention of working in liaison with Thais. When it became apparent it could not maintain that objection, the desk then claimed the technique itself was classified and must be deleted. This was ridiculous. Over the years I had lectured and passed out unclassified handouts describing the method. When documents reporting on those training sessions were located, the Thai desk had to drop its objection.

Forty-six days after I submitted the book, the Agency returned the manuscript with a letter saying that it had no security objections to the publication of that version. Throughout the review one central issue had been in question: reference to CIA operations with Thai organizations. What terrible secret was the CIA so vehemently attempting to hide? On October 6, 1976, Thai security forces overthrew the civilian, democratically elected government in a violent bloodbath. A study by Dr. E. Thadeus Flood published by the Indochina Resource Center said of that bloodbath: "This activist agency [CIA] took the lead in developing a strong apparatus in Thailand. . . . It should be mentioned that in their training, the CIA placed special stress on the Thai Border Patrol Police (BPP). News reports from Bangkok during and after the recent coup indicate that it was the Thai BPP who levelled their heavy weapons at unarmed Thai students, boys and girls, waving white flags, and raked them with fire."

Thomas Lobe describes what happened in more detail: "On that horrible day in October 1976, then the CIA/OPS-trained Border Patrol Police, with some units of the OPS-trained riot squads of the Metropolitan Police, burst into Thammasat University to crush the unarmed students and their fury knew no bounds . . . in meting out humiliations, in mutilizations brutally inflicted, in burning a student alive, and in simple wholesale murder. Thousands of unarmed students were killed, injured, or arrested, and a few days later, most of the liberal to left journalists, scholars, and intellectuals were also rounded up and put in prison or 'rehabilitation camps.'"

After receiving the approved version of the manuscript, I signed a contract with a publisher who wanted extensive rewrites.

I began rewriting the manuscript and submitting each chapter as it was completed. On February 4, 1982, Paul Schilling, a young lawyer on the general counsel's staff, called and asked me to come to the Agency the next day for a meeting to discuss the first chapter. I was annoyed because everything in the chapter had either been approved before, was quoted from the Senate's Church Committee report, or was personal. I prepared myself with documents and met with Paul in one of the little anterooms off the main reception area. Some of the objections were to information that the Agency had declassified and released to the Church Committee, which I easily documented. But the other objections concerned details of my training in espionage and paramilitary operations and details of psychological tests the Agency uses to help identify a specific personality type for possible employment. I was not prepared to rebut those arguments. Paul and I agreed that I would return home and call in the appropriate references.

The rest of the day I phoned around to all Fairfax County libraries to get copies of books by William Colby, Ray Cline, Allen Dulles, Lyman Kirkpatrick, David Phillips, and other pro-Agency authors whose works had received formal CIA approval if not sponsorship. Almost all discussed information that the PRB now claimed was classifed. I phoned the citations in to Paul Schilling. I thought that would take care of the matter. A few days later Paul called and asked if I would come in for another meeting. On February 11 we met again in one of the cubbyholes off the packed main reception area. Paul apologized for asking me in again and said that the PRB has agreed that the information I had taken from the Church Committee report was not classified. I relaxed. The PRB was merely recognizing reality.

Paul then said, "But the other material on your training and the psychological test is classified. The board said it had made a mistake earlier when it had approved that information."

To the shock of the people in the reception area I bellowed, "That's tough shit. It can't reclassify information." After calming down, I pointed out that the Agency had cleared similar information on training for its friendly former officers such as Colby, Phillips, Cline, Dulles, Kirkpatrick, and others.

"Yes," Paul said, "but the PRB made mistakes."

I noted that in at least one case the CIA had helped a former officer write his book, and the book contained numerous references to training.

Paul responded, "The Agency's relationship with an author is that the PRB reviews material written by the author, nothing else."

"That's not the case with [the book in question]. It was written as a covert action project by the Agency. I know it was."

Paul continued, "That Agency's relationship with an author. . . ."

I then cited facts relating to the writing of that book.

Paul retorted, "The Agency's relationship with an author. . . ."

Schilling recommended that I consider an appeal to the deputy director of the CIA, Admiral Bobby Inman.

That weekend I called Paul at home and advised him that Executive Order 12065 on classification, Section 1-607, reads: "Classification may not be restored to a document already declassified and released to the public under this order or prior orders." Paul said, "Oh, we're operating under a new order." What Paul was referring to was a draft executive order then being proposed by the Reagan Administration. That order, only later put into effect, allows officials to reclassify information previously declassified and disclosed if it is determined in writing "that the information requires protection in the interest of national security and if the information may be reasonably recovered." The manuscript obviously could not be "reasonably recovered," since I had sent copies to my publisher, my editor, and numerous others.

Paul quickly realized he had jumped the gun on the new executive order and shifted instead to the position that Agency officials had again and again made mistakes in declassifying information in my original manuscript and in other books.

After consultation with Mark Lynch, I prepared and submitted my 35-page appeal on February 19, 1982, noting that many of the delected items had been approved in the first manuscript, had appeared in the approved writings of other pro-Agency officers, or were available in numerous other publications. On March 12, 1982, I received a letter from the general counsel's office saying, "The DDCI [deputy director of central intelligence] has reversed the board with respect to all . . . passages contested in the appeals," except that, "the DDCI has upheld the board's decision to delete five sentences . . . unless Mr. McGehee can show the Agency has previously cleared such information."

I immediately scanned four approved books and found 24 references to equivalent or identical material as contained in the five sentences. I sent these references to the general counsel. The PRB acted quickly and, rather embarrassed, acknowledged that my five sentences were not classified.

I thought, well, now I have been vindicated and my problems are over. But this was not to be. On March 23, I received another letter informing me that chapter two was so sensitive that it was impossible to identify specific items and the PRB had rejected the entire chapter. I had had enough and contacted George Lardner, Jr., a journalist with The Washington Post. He wrote a long article entitled "CIA Veteran Decries Effort to Reclassify Material for His Book." This public embarrassment forced the Agency to reconsider its actions. On April 29, I received a registered letter offering me the services of Bob—my old antagonist—to work together to produce an approved version of the manuscript.

I accepted the offer. We held three long sessions at my office, so we would have instant access to my books and files. The battle over chapter one had been completed, so we concentrated on the remaining chapters that I had turned over in the preceding months. Chapter two, dealing with my tours in Japan and the Philippines, according to the earlier PRB decisions could not be used, but in the interim I had stumbled upon one of the lesser-known books by ex-CIA officials, Howard Hunt's Undercover. In it, to my joy, was a chapter dealing with his assignment as a case officer to Japan; the same chapter also discussed the Agency's base at Subic Bay in the Philippines. His book had been approved by the Agency and when I pointed this out to Bob he agreed that I should also be permitted to discuss my activities in those countries. Even so, I was not allowed to include details of my work. I could only give information no more explicit than that given in Undercover.

Chapter three also presented major problems. Many of my special designations for places were deemed classified, but by making minor changes I was allowed to retain some points. The discussions of my work at Headquarters processing clearances and file tracers were marked classified and many sentences had to be deleted. Although the Marchetti-Marks and Colby books had discussed the requirements for clearances and traces, they had not gone into details. Unable to locate other coverage of these procedures, I could not retain my material. But I was allowed to quote information on that topic given in Philip Agee's book, Inside the Company.

Chapter four, about my tour on Taiwan, gave information in general terms of an agent operation directed at mainland China. Someone had objected to this major element of the chapter. I protested that other approved Agency authors had been allowed to discuss agent operations, some with a great deal more specificity than my account. This argument was finally accepted.

Bob and I reviewed each of the many points in the remaining chapters. In this process I conceded a number of points where the law was clearly on my side. I did this to speed the clearance process and to avoid a long, time-consuming lawsuit.

John Marks and Victor Marchetti's book The CIA and the Cult of Intelligence, published in 1974, was the last approved critical book written about the Agency by an ex-employee. In light of my own experiences the reason is obvious: the secrecy agreement and the way it is abused by the Agency. It is virtually impossible to write in an atmosphere where everything is secret until it is deemed otherwise. The PRB, taking its responsibilities seriously, labels just about everything secret until an author who is critical of the Agency can prove this not to be the case. But the situation for ex-employees who are advocates of the CIA is the opposite. They are given almost carte blanche to discuss operations and techniques, and in some instances they are assisted in the research and writing of their works.

Does the secrecy agreement work to protect legitimate classified information? Probably to some small degree it does. But the price we pay for this minor protection is enormous. The Vietnam War is a prime example. This Agency-produced disaster was sold to the American people through massive disinformation operations. Would it not have been better if we had known the truth at an early stage? Similarly, would the American people not be better off knowing the truth about the CIA's current secret war in Latin America? Don't we deserve to know about reckless and

phony covert operations, including Agency-planted "Communist" documents, that help determine our foreign policy?

It is clear that the secrecy agreement does not halt the flow of information to our enemies, for it does not affect the CIA employee who sells information. Look, for example, at England, which has a strict official secrets act and probably the most porous security service in the western world. What the CIA's secrecy agreement does quite effectively, however, is to stop critics of the Agency from explaining to the American public what the CIA is and does. It is sad to say, but the truth is that the primary purpose of the secrecy agreement is to suppress information that the American people are legitimately entitled to. For this reason, I am opposed to the secrecy agreement as it is now written and administered.

Because the major portion of my CIA career revolved around Southeast Asia, where CIA operations were well publicized and even officially disclosed, the Agency could not stop release of much of the information in this book. But my experience should sound a warning. Agency officials show no hesitation in trying to censor embarrassing, critical, or merely annoying information. I cannot speak for the legal aspects of the various laws, but it is obvious that national security has little to do with how the Agency administers the secrecy agreement. As the CIA becomes more adept at applying the law under President Reagan's executive order on classification that went into effect August 1, 1982, all critical information about the Agency will probably be forbidden.

I do not expect that the executive branch or the Supreme Court will be upset by the Agency's attempts to censor information that the public is entitled to. The American people, however, should be worried. Once the Agency is unleased and the iron curtain of official disclosure falls, we will all suffer its consequences.

Appendix 2.—The Willard Report

Report of the Interdepartmental Group on Unauthorized Disclosures of Classified Information—March 31, 1982

Chairman.—Richard K. Willard, Deputy Assistant Attorney General, Department of Justice.

Members.—Daniel W. McGovern, Deputy Legal Adviser, Department of State; Jordan Luke, Assistant General Counsel, Department of the Treasury; Kathleen A. Buck, Assistant General Counsel; L. Britt Snider, Director for Counterintelligence and Security Policy, Department of Defense, James W. Culpepper, Deputy Assistant Secretary for Security Affairs, Department of Energy, and Ernest Mayerfeld, Deputy General Counsel, Central Intelligence Agency.

Executive Summary

Unauthorized disclosure of classified information is a longstanding problem that has increased in severity over the past decade. This problem has resisted efforts at solution under a number of Administrations. Yet the protection of national security information remains a fundamental constitutional duty of the President. The continuing large number of unauthorized dislosures has damaged the national security interests of the United States and has raised serious questions about the government's ability to protect its most sensitive secrets from disclosure in the media. We must seek more effective means to prevent, deter, and punish unauthorized disclosures. At the same time, we must recognize that this complex problem is unlikely to be solved easily or quickly.

The scope of this report is limited to unauthorized disclosures of classified information where there is no apparent involvement of a foreign power. Such disclosures primarily occur through media "leaks" by anonymous government employees, or in publications and statements by former employees. Beyond the scope of this report are the following kinds of disclosures: Clandestine disclosures of classified information to foreign powers or their agents, which is espionage in the classic sense; authorized disclosures of classified information by government officials who are not publicly identified; leaks of unclassified information; and compromise of classified information through negligence.

Although the foregoing kinds of disclosures also present serious problems, we have limited the scope of this report in order to produce a more comprehensible set of recommendations.

It should be noted that some high ranking officials erroneously believe they have the authority to leak classified information in furtherance of government policy. Such disclosures may only be made by persons with declassification authority under Executive Order 12065 or otherwise from the President. Without such authority,

"friendly" leaks are just as unlawful as any other unauthorized disclosure of classified information.

LAWS PERTAINING TO UNAUTHORIZED DISCLOSURES

The unauthorized disclosure of classified information has been specifically prohibited by a series of Executive orders (1) dating back at least to 1951. Such disclosures also violate (2) numerous more general standards of conduct for government employees based on statutes and regulations. It is clear that any government employee may be discharged or otherwise disciplined for making unauthorized disclosures of classified information. Moreover, in virtually all cases the unauthorized disclosure of classified information potentially violates one or more federal (3) criminal statutes.

However, there is no single statute that makes it a crime as such for a government employee to disclose classified information without authorization. With the exception of certain specialized categories of information, the government must ordinarily seek to prosecute unauthorized disclosures as violations of the Espionage Act or as the theft of government property. Such prosecutions have not been undertaken because of a variety of legal and practical problems.

Therefore, it would be helpful if Congress enacted a law providing criminal penalties for government employees who, without authorization, disclosure information that is properly classified pursuant to statute or Executive order. Such a law would be appropriate in view of the substantial body of criminal statutes punishing unauthorized disclosure of other kinds of sensitive information by government employees, such as banking, agricultural and census data. Classified national security information deserves at least the same degree of protection.

A promising development in recent years has been the judicial recognition that the government may enforce secrecy agreements through civil litigation. Many government employees sign secrecy agreements as a condition of employment with intelligence agencies or to obtain access to classified information. In a series of cases culminating in the Supreme Court's 1980 decision in *United States* v. *Snepp*, the Justice Department has obtained injunctions and monetary remedies from individuals who seek to publish classified information in violation of their secrecy obligations. Such civil litigation avoids many of the procedural problems that would be encountered in criminal prosecutions. The effectiveness of this program would be increased by greater use of properly drafted secrecy agreements.

PROTECTIVE SECURITY PROGRAMS

The overall effectiveness of the government's programs for safeguarding classified information undoubtedly affects the frequency of leaks. Tight security measures—including limiting access to classified information to those with a real "need to know"—reduce the opportunities for unauthorized disclosure. By contrast, lax security measures may encourage leaks by causing employees to believe that classified information does not really require protection.

As a general rule, protective security programs serve a number of objectives besides prevention of unauthorized disclosures, and therefore this report does not consider these programs in great detail. The following observations are made: Greater emphasis should be given to security education programs for senior officials; Better controls on copying and circulation of classified documents would reduce dissemination and aid the task of investigating leaks; and The federal personnel security program under E.O. 10450 and implementing regulations should be revised and updated.

We also considered whether there should be a government-wide program to regulate contacts with media representatives by government officials with access to classified information. Such contacts, especially when they occur on a frequent and informal basis, may give rise to deliberate as well as negligent disclosures of classified information. However, the operational considerations among the agencies vary greatly. Therefore, each agency should be required to develop its own policy regarding contacts between journalists and employees who have access to classified information.

PAST EXPERIENCES WITH LEAK INVESTIGATIONS

Leaks are extremely difficult to investigate because they involve a consensual transaction. Both the leaking official and the receiving journalist have a strong incentive to conceal the source of the information.

Leak investigations do not focus on the receiving journalist for a variety of reasons. Rarely is there sufficient probable cause to justify a search or electronic surveillance of the journalist. The use of some kinds of investigative techniques may raise First Amendment concerns to which we should be sensitive. Finally, journalists are unlikely to divulge their sources in response to a subpoena for documents or testimony before a grand jury, and contempt sanctions against journalists in other types of cases have not been effective.

Therefore, leak investigations generally focus on government employees who have had access to the information that is leaked. In most situations, hundreds or thousands of employees have had access to the informaiton, and there is no practical way to narrow the focus of the inquiry. Also, the leaking official is unlikely to confess his offense in response to a simple inquiry. The polygraph can be an effective tool in eliciting confessions, but existing regulations do not permit compulsory use of the polygraph for many employees.

Leaks of classified information constitute a potential violation of the espionage laws and other statutes that fall within the FBI's investigative jurisdiction. (By contrast, many agencies that originate classified information are not authorized to go beyond their own employees in investigating leaks.) However, FBI has been reluctant to devote its resources to leak investigations. The burden of such investigations falls almcst entirely on the Washington Field Office. Such investigations frequently involve high ranking government officials, who may be uncooperative. Sometimes a time-consuming investigation is undertaken, only to reveal that the source of the leak was a White House or Cabinet official who was authorized to disclose the information. Finally, it is very rare for an investigation to identify the leaking official, and even rarer that a prosecutable case is developed or that administrative action is taken against a leaker.

The Criminal Division of the Justice Department has developed the practice of screening leak cases before referral to FBI, for the purpose of eliminating those that are unlikely to lead to criminal prosecution. This practice involves the frequently criticized "eleven questions" that agencies are expected to answer when they report leaks to the Criminal Division and that include an advance commitment to provide and declassify such classified information as may be required to support a prosecution.

In summary, the past approach to leak investigations has been almost totally unsuccessful and frustrating to all concerned. There have been frequent disputes between the Justice Department and agencies complaining about leaks. This ineffectual system has led to the belief that nothing can be done to stop leaks of classified information.

PROPOSED NEW APPROACH TO LEAK INVESTIGATIONS

Unless new criminal legislation is enacted, we should recognize that leak investigations are unlikely to lead to successful criminal prosecutions. However, the present system would be greatly improved if employees who leak classified information could be identified and fired from their jobs. Therefore, we should recognize that the likely result of a successful leak investigation will be the imposition of administrative sanctions except for cases in which exacerbating factors suggest that criminal prosecution should be considered.

We should also recognize that resources are available to investigate only a small fraction of leaks. All leaks should be evaluated in light of criteria developed through consultation between the Justice Department and affected agencies. These criteria would include: the level of classified information disclosed; the resulting damage to national security; the extent to which the information had been disseminated at the time it was leaked; and the presence of specific "leads" to narrow the focus of investigation.

Agencies should be encouraged to conduct more extensive preliminary investigations before referring leaks to the Department of Justice for investigation. Affected agencies shoud be consulted by the Department of Justice in determining which leak cases warrant investigative priority. A decision to undertake criminal prosecution would *not* be required as a prerequisite to FBI investigation. FBI should be specifically authorized to investigate unauthorized disclosures that potentially violate federal criminal law, even though administrative sanctions may be sought instead of criminal prosecution.

The polygraph is an investigative technique occasionally used in leak investigations. By regulation, most federal agencies are not permitted to take adverse actions against employees who refuse to be polygraphed. However, there is no constitutional or statutory bar to requiring federal employees to take a polygraph examination as

part of an investigation of unauthorized disclosures of classified information. We recommend that existing regulations be changed to permit greater use of the polygraph in leak investigations.

Use of the polygraph is a controversial technique, but security specialists believe it can be effective in situations where a leak investigation turns a limited number of suspects. Under this approach the polygraph is used sparingly and as a last resort. Such polygraph examinations can be limited to the circumstances of the disclosure being investigated, and need not involve questions of a personal nature that some employees find offensive.

Finally, when investigations identify employees who have disclosed classified information without authority, they should not be let off with a slap on the wrist. The full range of administrative sanctions—including discharge—is available. Most employees have certain procedural rights, including notice, hearing and administrative appeal. However, an agency head who follows proper procedures should have no difficulty in disciplining or discharging leakers. It would be helpful for the Merit Systems Protection Board and other administrative bodies to adopt "graymail"—type procedures to protect classified information that may be involved in such situations.

SUMMARY OF RECOMMENDATIONS

1. The Administration should support new legislation to strengthen existing criminal statutes that prohibit the unauthorized disclosure of classified information.

2. All persons with authorized access to classified information should be required to sign secrecy agreements in a form enforceable in civil actions brought by the United States. For persons with access to the most sensitive kinds of classified information, these agreements should also include provisions for prepublication review.

3. Agencies should adopt appropriate policies to govern contacts between media representatives and government officials, so as to reduce the opportunity for negligent or deliberate disclosures of classified information.

4. Each agency that originates or stores classified information should adopt internal procedures to ensure that unauthorized disclosures of classified information are effectively investigated and appropriate sanctions imposed for violations.

5. The Department of Justice, in consultation with affected agencies, should continue to determine whether FBI investigation of an unauthorized disclosure is warranted. The FBI should be permitted to investigate unauthorized disclosure of classified information under circumstances where the likely result of a successful investigation will be imposition of administrative sanctions rather than criminal prosecution.

6. Existing agency regulations should be modified to permit the use of polygraph examinations for government employees under carefully defined circumstances.

7. All agencies should be encouraged to place greater emphasis on protective security programs. Authorities for the federal personnel security program should be revised and updated.

NATURE OF THE PROBLEM AND SCOPE OF REPORT

Unauthorized disclosure of classified information has become an increasingly common occurrence. It is not a new phenomenon, but its severity has inceased greatly over the past decade. The theft of the "Pentagon Papers" and their publication by the *New York Times* in 1971 ushered in an era of heightened media interest in the exposure of classified information. Many of these disclosures occurred in the context of revealing improper government activities. After a time, however, disclosures continued while revealing no wrongdoing. Indeed, a few journalists seem to believe that quoting from "highly classified" documents is an appropriate means of entertaining, as well as informing the public. Today the unauthorized publication of classified information is a routine daily occurrence in the United States.

The harm caused by these frequent unauthorized disclosures is manifold.

Particular items of information appearing in the press provide valuable intelligence for our adversaries concerning the capabilities and plans of the United States for national defense and foreign relations.

Unauthorized disclosures interfere with the ability of our government effectively to carry out its policies. This "veto by leak" phenomenon permits a single bureaucrat to thwart the ability of our democratic system of government to function properly.

Disclosures about U.S. intelligence programs are particularly damaging, because they may causes sources to dry up. Lives of human agents are endangered and expensive technical systems become subject to countermeasures.

In particular, foreign governments are reluctant to cooperate with the United States because we are unable to protect confidential information or relationships.

This report has been kept unclassified, and as a result specific examples of harmful unauthorized disclosures have not been included. Such examples can be provided spearately.

The scope of this report is limited to unauthorized disclosures of classified information where there is no apparent involvement of a foreign power. Such disclosures primarily occur through "leaks" by anonymous government officials to the media, or in publications or statements of former officials.

Officials who make unauthorized disclosures may persuade themselves that they are serving the larger national interest by disclosing information that the public has a right to know. Such officials may seek to advance their personal policy objectives by leaks of classified information, on the assumption that there will be no serious harm to national security. Because leaks are so prevalent and leakers rarely caught, some officials may believe there is nothing wrong with leaking classified information and that everyone does it.

Similarly, many journalists appear to believe they have a duty to divulge virtually any newsworthy secret information that can be acquired by whatever means they choose to employ. To their way of thinking, leaks are part of a game in which the government tries to keep information secret and the media tries to find it out. Some journalists are unwilling to assume responsibility for damage to the national security in situations where they win this "game."

Under these circumstances, only a fundamental change in prevailing attitudes will alleviate the problem of unauthorized disclosures. We must seek to develop a sense of discipline and self-restraint by those who work with or obtain classified information. This goal will not be achieved easily or quickly. But without a change in attitudes, no program to deal with unauthorized disclosures can possibly be effective.

Certain kinds of disclosures are beyond the scope of this report, but should be described briefly for purposes of comparison.

1. Classic espionage.—Clandestine disclosures of classified information to foreign powers or their agents is espionage in the classic sense. Investigating such matters is primarily the responsibility of FBI's foreign counterintelligence program. The threat in this area increasing because of the increasing number of known or suspected hostile intelligence agents in the United States. President Reagan's recent Executive Order 12333 and now implementing guidelines will strengthen FBI's ability to deal with this serious problem.

2. Authorized disclosures.—High ranking officials often, believe they are authorized to disclose otherwise classified information to the press in furtherance of government policies. Since the classification system is established on the authority of the President, he certainly has the power to authorize disclosures that amount to a de facto declassification of such information. However, only the President can authorize the declassification of information other than as provided in Executive Order 12065. A high ranking official who discloses classified information without authorization under that Executive Order or otherwise from the President violates the law. Such disclosures should be investigated and penalized in the same manner as other unauthorized disclosures of classified information. Applying a double standard that overlooks "friendly" leaks of classified information breeds disrespect for the law and can undermine the effectiveness of any enforcement program.

3. Unclassified leaks.—Some of the most embarrassing leaks do not involve classified information at all. We believe that leaks of classified information cause more serious an long-lasting damage, and thus warrant separate treatment as provided in this report. That is not to say that nothing can or should be done about leaks of unclassified information. The government is entitled to protect a variety of information from disclosure, including law enforcement investigatory information, proprietary data, predecisional memoranda and other information pertaining to internal government deliberations. Depending upon the circumstances, disclosure of such information may be unlawful, unethical, or a violation of applicable standards of conduct for government employees.

4. Negligent disclosures.—The compromise of classified information through negligence violates regulations and, depending upon the circumstances, may constitute a criminal offense. Such disclosures involve sufficiently different causes and considerations as to fall beyond the scope of this report. It is worth noting, however, that many of the apparent media leaks involve inadvertent disclosures. High ranking officials are particularly susceptible to such disclosures because they have access to a large volume of sensitive classified information and are required to deal with the press on a frequent basis. The compromise of classified information would be re-

duced if officials would exercise greater care in their dealings with media representatives.

LAWS PERTAINING TO UNAUTHORIZED DISCLOSURES

1. Executive orders

The protection of national security information is a fundamental constitutional responsibility of the President. This responsibility is derived from the President's powers as Chief Executive, Commander-in-Chief, and the principal instrument of United States foreign policy. The courts have recognized the constitutional dimension of this responsibility. *Chicago & Southern Air Lines, Inc.* v. *Waterman Steamship Corp.*, 333 U.S. 103, 111 (1948); *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 320 (1936); *United States* v. *Marchetti*, 466 F.2d 1309, 1315 (4th Cir.), *cert. denied*, 409 U.S. 1063 (1972).

In a number of civil and criminal statutes, Congress has also recognized the President's authority to safeguard national security information by adopting Executive orders providing for a system of classification. *E.g.*, 5 U.S.C. 552(b)(1) (Freedom of Information Act); 5 U.S.C. 552b(c)(1) (Government in the Sunshine Act); 5 U.S.C. 2302(b)(8)(A) (Whistleblower Statute); 18 U.S.C. 798; 50 U.S.C. 783(b).

In a series of Executive Orders dating back at least to 1951, Presidents have provided for a system of classification to safeguard national security information. Since these Executive Orders are issued in fulfillment of the President's constitutional responsibilities, they have the force and effect of law.

The present Executive Order on National Security Information, Executive Order 12065, prohibits the unauthorized disclosure of classified information. It provides that officers and employees of the government shall be subject to appropriate administrative sanctions if they knowingly, willfully and without authorization disclose properly classified information or compromise such information through negligence. Sanctions may include termination of classification authority, reprimand, suspension and removal.

The new draft executive order on national security information provides for similar prohibitions and sanctions and applies to government contractors, licensees and grantees as well as government officers and employees.

2. Criminal statutes

In analyzing whether an unauthorized disclosure of classified information constitutes a criminal violation, it is necessary to consider three categories of criminal statutes: (a) those explicitly prohibiting the disclosure of "classified information"; (b) the so-called "espionage" laws, which prohibit the disclosure of "national defense" information; and (c) the statute prohibiting theft of government property.

(a) Classified information statutes.—There is no general criminal penalty for the unauthorized disclosure of "classified information" as such; however, several criminal statutes prohibit unauthorized disclosure of classified information in particular situations. Section 783(b) of Title 50 prohibits government employees from disclosing any classified information to agents of foreign governments or members of communist organizations. It is unlikely that this statute would be construed to apply to unauthorized disclosures of classified information to the media, even though the information could find its way into the hands of an agent of a foreign government or a member of a communist organization as a consequence of its publication.

Section 2277 of Title 42 prohibits government employees and contractors from knowingly communicating "Restricted Data" to any person not authorized to receive such information. "Restricted Data" constitutes classified information concerning atomic weapons and nuclear material. Section 2274 of Title 42 prohibits anyone having possession, access or control over Restricted Data from disclosing it with the intent or reason to believe it will be used to injure the United States or secure an advantage to a foreign nation.

In addition to these provisions, 18 U.S.C. 798 prohibits any person from disclosing to any unauthorized person "classified information" concerning communications intelligence and cryptographic activities.

These three sets of provisions are the only criminal statutes that punish the unauthorized disclosure of "classified information" as such.

(b) Espionage laws.—Certain provisions of the espionage laws may also be violated by unauthorized disclosures of sensitive information. The two provisions that would most likely be violated by an unauthorized disclosure of classified information to the media would be 18 U.S.C. 793(d) and (e). Section 793(d) prohibits any person having authorized possession of materials such as documents or photographs "relating to the national defense" or "information" relating to the national defense, if there is

"reason to believe" that this information can be used "to the injury of the United States or to the advantage of any foreign nation," from transmitting such materials or information to "any person not entitled to receive it." Similarly, section 793(e) prohibits any person having unauthorized possession or access to such materials or information from transmitting them to other unauthorized persons or failing to deliver them to an authorized government officer or employee.

These provisions have not been used in the past to prosecute unauthorized disclosures of classified information, and their application to such cases is not entirely clear. However, the Department of Justice has taken the position that these statutes would be violated by the unauthorized disclosure to a member of the media of classified documents or information relating to the national defense, although intent to injure the United States or benefit a foreign nation would have to be present where the disclosure is of "information" rather than documents or other tangible materials. These laws could also be used to prosecute a journalist who knowingly receives and publishes classified documents or information.

One category of classified information that would probably not be covered by these provisions is information that could not fairly be characterized as "relating to the national defense." In *Gorin* v. *United States,* 312 U.S. 19, 28 (1940), the Supreme Court stated that in the context of this statute "national defense" is "a generic concept of broad connotations, referring to the military and naval establishments and the related activities of national preparedness." Currently information may be classified under Executive Order 12065 if it relates either to "the national defense" or to "the foreign relations" of the United States. Because the term "national defense" was so broadly defined in *Gorin,* it is likely to cover most information relating to "foreign relations" that is properly classified. However, it is possible that the two terms do not overlap completely, and if so, only the disclosure of information relating to the national defense would be covered by sections 793(d) or (e).

(c) Theft of Government property.—18 U.S.C. 641 provides criminal penalties for the unauthorized sale or disposal of "any record, voucher, money, or thing of value of the United States," or the knowing receipt of the same "with intent to convert it to his use or gain." Convictions under this statute have been upheld in cases where government documents or information have been taken. *United States* v. *Friedman,* 445 F.2d 1076 (9th Cir.), *cert. denied,* 404 U.S. 958 (1971) (conviction for receipt of copy of secret grand jury transcript); *United States* v. *Lambert,* 601 F.2d 69 (2d Cir. 1979), *cert. denied,* 444 U.S. 871 (1979) (convictions for selling information derived from Drug Enforcement Administration computer).

There has been no definitive court test of the applicability of section 641 to unauthorized disclosures of classified information.[1] The Department of Justice has taken the position that prosecution under this statute would be warranted in cases of unauthorized disclosure of classified information. Of course, the substantive applicability of this statute remains to be established. In addition, many of the procedural barriers to successful criminal prosecution would remain.

(d) Practical barriers to successful prosecution.—Although there are numerous unresolved questions about the substantive applicability of the foregoing criminal statutes, it is clear that most unauthorized disclosures potentially violate one or more of these statutes. Yet the fact remains that no criminal prosecution has been attempted since Daniel Ellsberg and Anthony Russo were indicated for leaking the "Pentagon Papers." (Prosecution in that instance was dropped because of governmental misconduct in investigating the case.)

One problem is that leak cases are hard to solve. But even when a suspect is identified, there are numerous practical barriers to criminal prosecution. These barriers may be summarized as follows.

First, criminal prosecution serves to confirm the accuracy and sensitivity of the information that has been disclosed. For this reason, many agencies do not want cases prosecuted, in order to maintain doubt as to the accuracy of the disclosed information.

Second, criminal prosecution generally requires the Government to prove that the disclosures in question were damaging to national security, which may require further public disclosures of classified information. Such proof is often required under the espionage statutes and, as a practical matter, is extremely helpful in giving any prosecution jury appeal.

Third, criminal trials are normally conducted before a jury and open to the public. Defendants can threaten to require disclosures of sensitive information in

[1] Compare *United States* v. *Truong,* 629 F.2d 908, 927 (4th Cir. 1980) with id. at 932; see *United States* v. *Boyce,* 594 F.2d 1246, 1252 (9th Cir.), *cert. denied,* 444 U.S. 855 (1979).

the course of trial—the so-called "graymail" problem. The Classified Information Procedures Act of 1980 alleviates this problem to some extent but does not solve it entirely.

In summary, the courts of criminal prosecution in terms of harm to national security are likely in many cases to outweigh the benefits of deterrence and respect for the law. Of course, the availability of criminal sanctions is important and should be considered in appropriate cases. New legislation could reduce the practical barriers to successful prosecution. But the primary focus of the effort to enforce the laws against unauthorized disclosure should involve administrative and other civil remedies.

3. Civil remedies

There is no general statute providing for civil penalties or injunctive relief in cases of disclosure of classified information. The absence of such an authorizing statute was noted by several members of the Supreme Court in the "Pentagon Papers" case. However, it appears that a majority of the Court in that case would have permitted the Government, even absent a statute, to enjoin the disclosure by the media of classified information that threatened "direct, immediate, and irreparable damage to our Nation or its people." *New York Times Co.* v. *United States,* 403 U.S. 713, 730 (1971) (Stewart, J., concurring). As applied in the Pentagon Papers case, this is an extremely difficult standard to meet. It is not clear that, as a practical matter, the First Amendment would permit a statute authorizing injunctions against the media under a significantly lower standard.

There are specific statutes providing civil remedies for unauthorized disclosure of atomic energy information. 42 U.S.C. 2167, 2168, and 2280. The latter statute was successfully relied upon in obtaining a district court injunction against disclosure of H-bomb information. *United States* v. *Progressive, Inc.,* 467 F. Supp. 990 (W.D. Wis. 1979), *appeal dismissed,* 610 F.2d 819 (7th Cir. 1979).

Government employees who engage in unauthorized disclosures of classified information are subject to discipline or discharge for misconduct pursuant to 5 U.S.C. 7513 or equivalent statutes governing specialized employment systems. Applicable standards of conduct are found in Executive Order 12605 and implementing agency regulations prohibiting unauthorized disclosure of classified information, as well as the criminal statutes discussed previously. In addition, unauthorirzed disclosure of classified information would violate a number of general standards of conduct for government employees. *See, e.g.,* 5 C.F.R. 735.201a(c) (impeding government efficiency); *id.* 735.201a(e) (making a government decision outside official channels); *id.* 735.201a(f) (affecting adversely the confidence of the public in the integrity of the government); *id.* 735.206 (misuse of information not made available to the general public); *id.* 735.209 (conduct prejudicial to the government).

In addition to the normal adminstrative sanctions for misconduct, 5 U.S.C. 7532 provides for suspension or removal of certain employees if such action is found to be "necessary in the interest of national security." This statute is implemented in Executive Order 10450 and various agency regulations. These authorities are part of the federal personnel security program and are designed to ensure that persons who are "security risks" do not serve in sensitive positions.

Executive Order 10450 was promulgated in 1953 and seriously needs revision to take into account subsequent court decisions and changes in government organization. These shortcomings do not prevent the government from disciplining or discharging employees for unauthorized disclosure of classified information, since such disclosures constitute misconduct for which normal administrative sanctions are available. However, revision of Executive Order 10450 would be helpful in streamlining the authority of agencies to revoke security clearances and take other personnel actions in the interest of national security.

In addition to standards imposed by regulation, many present and former government employees are bound by contractual or fiduciary obligations not to disclose classified information in an unauthorized manner. The Department of Justice has had considerable success in enforcing such obligations in civil litigation against former government employees. Since such persons no longer work for the government, the possibility of administrative sanctions is not a deterrent to their making unauthorized disclosures.

Nondisclosure agreements typically have one or both of the following key provisions. First, the employee agrees never to disclose classified information to an unauthorized person. Second, the employee promises not to publish any material related to classified activities without the express prior approval of the agency. This second provision is implemented through a mechanism for prepublication review of manu-

scripts submitted by present or former employees for deletion of classified information.

Key judicial decisions have held that the government is entitled to an injunction against former employees who seek to publish without obtaining clearance pursuant to their obligations to comply with prepublication review programs. Once an agency conducts such prepublication review, it is entitled to deleted classified information, subject to judicial review under the same general standards as applied in litigation under the Freedom of Information Act. Finally, a person who publishes in violation of his prepublication review obligations forfeits the right to any profits from his publication, which can be impressed with a constructive trust for the benefit of the Government. *United States* v. *Snepp,* 444 U.S. 507 (1980); *Knopf* v. *Colby, 509 F.2d 1362 (4th Cir.), cert. denied. 421 U.S. 992 (1975); United States* v. *Marchetti,* 466 F.2d 1309 (4th Cir.), *cert. denied,* 409 U.S. 1063 (1972). In addition, persons who violate injunctions to comply with nondisclosure obligations risk sanctions for contempt of court, which can include both civil and criminal penalties.

The present policy of the Justice Department, as stated by Attorney General Smith on September 3, 1981, is vigorous and even-handed enforcement of nondisclosure obligations under the *Snepp* guidelines. This policy statement revoked guidelines issued under the Carter Administration that suggested the *Snepp* doctrine would be invoked only under limited circumstances.

The availability of civil remedies under the *Snepp* doctrine suggests that greater attention should be paid to the use of nondisclosure agreements for persons with authorized access to classified information. At a minimum, all such persons should be required to agree never to disclose classified information without authorization. In addition, persons with access to the most sensitive kinds of classified information should be required to agree to a system of prepublication review.

4. Recommendations for new legislation

As indicated above, criminal sanctions for unauthorized disclosure of classified information as such apply only in limited situations involving information concerning the national defense, nuclear weapons and materials, and communications and crytopgraphic intelligence. Moreover, there are a number of substantive and procedural barriers to successful criminal proescution in most cases of unauthorized disclosures to members of the media.

To close the gaps in the present law, we recommend the introduction of legislation imposing a criminal penalty for all unauthorized disclosures of classified information by government employees. Such a statute should be simple and general in order to cover all situations, and might provide as follows:

Whoever, being an officer or employee of the United States or a person with authorized access to classified information, willfully discloses, or attempts to disclose, any classified information to a person who is not an officer or employee of the United States and who is not authorized to receive it shall be fined not more than $10,000, or imprisoned not more than three years, or both.

In addition, there should be appropriate definitions of the terms employed. It would be helpful to have a specific procedure for establishing that information forming the basis for prosecution was in fact properly classified, which does not require public disclosure of additional classified information. A similar statutory provision could be drawn to apply to former employees who disclose classified information.

An alternative approach to filling the legislative gap would be to amend 18 U.S.C. 641 to make it clear that classified information is a "thing of value" subject to the penalties of that statute.

Enactment of these or similar provisions would clarify current criminal prohibitions, close the loopholes in these statutes, and give notice that all unauthorized disclosures of classified information are sufficiently serious to warrant criminal sanctions. They would also alleviate—but not solve entirely—certain of the practical problems likely to be presented in criminal prosecutions.

Present civil statutes and regulations permitting disciplinary action for unauthorized disclosures by government employees are generally adequate, except that they apply only to persons who disclose classified information, not to those who receive it. A person who solicits and receives classified information may be no less responsible for an unauthorized disclosure of such information than the government employee who transmits it, but his conduct is not prohibited by any civil statute. Although we make no recommendation with respect to introduction of legislation providing for civil penalties or other remedies against persons who receive classified information, we believe the subject merits further study as an effective, though probably controversial, method of deterring unauthorized disclosures.

PROTECTIVE SECURITY PROGRAMS

Careful attention to the fundamental elements of a sound security program will undoubtedly discourage leaks—and have a number of other beneficial effects on the safeguarding of national security information. Among these elements are the following:

Security clearances should be given only to individuals who have been determined to be trustworthy on the basis of adequate background information.

National security information should be clearly identified with the proper classification and stored in a physically secure manner.

Access to classified information should be given only to persons with the proper clearances and requisite "need to know."

These principles seem obvious—and yet they are frequently ignored in many government agencies. Violations of these rules is often most common at the highest levels of government.

To be sure, adherence to these security principles will not stop the deliberate leaker. But disregard for these principles may encourage leaks by causing employees to believe that it is not really important to protect classified information. Good security practices constantly remind people who handle classified information of their obligations for its safekeeping.

Protective security programs are generally outside the scope of this report. The Security Committee (SECOM) established by the Director of Central Intelligence in DCID 1/11 has responsibility for security programs involving intelligence and intelligence sources and methods. SECOM is composed of the directors of security for all agencies represented on the National Foreign Intelligence Council. In addition, the Information Security Oversight Office (ISOO) of the General Services Administration has responsibility for the government-wide program of safeguarding national security information under Executive Order 12065. Finally, the Office of Personnel Management is responsible for implementing the federal personnel security program. These organizations deserve support in their efforts to strengthen the government's protective security programs.

Two particular aspects of protective security deserve emphasis because of their impact on the problem of unauthorized disclosures. First, security education programs for senior officials deserve greater emphasis. Such officials are often too busy to receive detailed briefings on proper security procedures, yet they generally have access to the most sensitive kinds of information. In particular, senior officials need to be aware of potential pitfalls of dealing with journalists in areas where classified information is involved. SECOM has produced a security orientation especially designed for senior officials, who should be encouraged to avail themselves of this briefing.

Second, better controls on the copying and circulation of classified documents would reduce unauthorized disclosures by restricting dissemination of classified information. Such controls can also assist in leak investigations by identifying persons who had access to the information that was disclosed. A recent study ("APEX") demonstrated that there are insufficient resources to permit better controls on the tremendous volume of classified information that must be circulated within the government. This problem should be reconsidered in the context of implementing the successor to Executive Order 12065.

Another problem that deserves attention is the federal personnel security program. This program is governed by Executive Order 10450, which was adopted in 1953. The order has not been revised to take into account subsequent court decisions and changes in government organization. The FBI no longer collects information about subversive organizations so as to provide a data base for this program because of uncertainty regarding legal constraints and Attorney General guidelines. Because of these and other shortcomings, the federal personnel security program is largely defunct. It is unlikely that improvements in this program would reveal persons who are likely to leak classified information to the media, but a better effort would reduce our vulnerability to clandestine infiltration of sensitive positions.

Finally, consideration should be given to rules concerning contacts between media representatives and government officials who have access to classified information. Such contacts—especially when they occur frequently and on an informal basis—may lead to neglect or deliberate disclosures. Therefore, programs to regulate media contacts could serve to reduce unauthorized disclosures. Possible approaches would include one or more of the following elements: Requiring prior approval of a senior official before discussing official matters with a journalist; requiring all media contacts to be arranged through the agency's public affairs office; requiring a record to be kept of all media contacts; requiring reports to be prepared describing all matters

discussed with journalists; and restricting access of journalists to areas where classified documents are stored and used.

It would be difficult to develop a program in this area to apply throughout the government. Each agency has its own particular organizational and functional characteristics. However, each agency should be required to consider this problem and develop a specific program to reduce the opportunities for negligent and deliberate disclosures to the media. We recommend that each agency be directed to promulgate appropriate regulations (if it does not already have them) and ensure that its policy is communicated to all employees with access to classified information.

PAST EXPERIENCES WITH LEAK INVESTIGATIONS

Leaks of classified information to the media over the past twenty years have been so numerous that only a small fraction could be investigated. These investigations have rarely been successful in identifying the sources of such disclosures. In a number of the cases that were solved, no adverse action was taken against the government employee found to have leaked classified information. There has never been a successful criminal prosecution for leaking classified information.

The Government's dismal record in leak investigations has a number of explanations. By their nature, leaks to the media are difficult to investigate. Leaks are consensual transactions in which both parties—the leaking official and the receiving journalist—have a strong incentive to conceal the source of the information. Self-imposed limitations on the use of certain investigative techniques have made the task even more difficult. The development of more productive approaches to leak investigations has been hampered by misunderstandings between the Justice Department and agencies whose information is leaked. We cannot expect to do better in the future without understanding these problems encountered in the past.

Agencies whose classified information is leaked have limited powers to conduct investigations. Since most leaks of classified information potentially violate criminal statutes, leak investigations are viewed as involving a law enforcement function. The National Security Act of 1947 provides that the CIA "shall have no police, subpoena, law-enforcement powers, or internal security functions."[1] Similar limitations apply to the military services and the Department of Energy.[2] Executive Order 12333, § 1.7(d), requires agencies in the intelligence community to report crimes such as leaks of classified information to the Justice Department. Implementing procedures for this provision limit agency authority to conduct preliminary investigations of such matters generally to interviews of current employees and examination of agency premises. And, as a practical matter, most government agencies do not have the capability to conduct investigations outside their own areas of programmatic responsibility.

CURRENT DEPARTMENT OF JUSTICE POLICY

These legal and practical limitations have caused the burden of leak investigations to fall on the FBI. Current Justice Department policy in this regard dates back to the early 1960's. At that time, the FBI was inundated with numerous requests for investigation regarding possible violations of the espionage laws as they relate to "media leaks" and other mishandling of classified information.

Espionage investigations that have no apparent foreign connection are investigated as "Espionage-X" matters by the FBI. Those investigations regarding the mishandling of classified information, loss of classified information through negligence, or other violations unrelated to media disclosures, are investigated upon receipt by the FBI. In these types of investigations, the subject is generally known and the scope of investigation limited. Although the Criminal Division is notified at the inception of these investigations and is kept advised of their status, it does not initiate these investigations.

Media leaks, however, pose different problems, require more investigation, and are far more numerous. Current policy regarding media leaks requires that prior to any investigation by the FBI, eleven questions must be answered by the injured agency. These questions are utilized to the Criminal Division to determine which cases should be investigated by the FBI. Such screening is necessary due to the vast amount of media leak investigation requests and the often large number of inter-

[1] 50 U.S.C. 403(d)(3). However, the Director of Central Intelligence is given specific responsibility for protecting intelligence sources and methods. *Id.* Therefore, the DCI is appropriately concerned with leaks that endanger intelligence sources and methods.

[2] 18 U.S.C. 1385 (Posse Comitatus Act); 42 U.S.C. 2271(b).

views to be conducted in this type of case. The responses to the eleven questions are also crucial in targeting the early stages of any investigation that is undertaken. These questions can be dissected into three categories.

Questions 1 through 3 pertain to the identification of the article(s) contained in the media and the nature of the classified information contained therein. These questions are:

1. The date and identity of the article or articles disclosing the classified information.

2. Specific statements in the article which are considered classified and whether the data was properly classified.

3. Whether the classified data disclosed is accurate. This information is necessary to determine whether a violation has occurred and to assist the FBI in the investigation, if a violation has occurred.

Responses to questions 4 through 8 serve to identify the sources of the classified information disclosed. These questions are:

4. Whether the data came from a specific document and, if so, the original of the document and the name of the individual responsible for the security of the classified data disclosed.

5. The extent of official dissemination of the data.

6. Whether the data has been the subject of prior official releases.

7. Whether prior clearance for publication or release of the information was sought from proper authorities.

8. Whether the material or portions thereof, or enough background data has been published officially or in the press to make an educated speculation on the matter possible.

Responses to these questions are a prerequisite for FBI investigations in that they furnish initial leads and may give direction toward the person or persons responsible for the disclosure. Some of these questions further assist in determining if a violation has occurred or if the information could have been obtained from some unclassified source or prior publication.

Questions 9 through 11 pertain to the prosecutive future of the investigation. These questions are:

9. Whether the data can be declassified for the purpose of prosecution and, if so, the name of the person competent to testify concerning the classification.

10. Whether declassification had been decided upon prior to the publication or release of the data.

11. What effect the disclosure of the classified data could have on the national defense.

The responses to these questions are used by the Criminal Division to determine if a successful prosecution can be made, should the perpetrator be identified.

If the responses to the "eleven questions" indicate it is not likely that the perpetrator will be identified due to extensive dissemination of the material and/or that successful prosecution cannot be mounted, the Criminal Division will not request that the FBI conduct an investigation. There is, however, an exception to this policy. The Criminal Division will request an FBI investigation, if, in spite of the responses to the above questions, it can be demonstrated that: (a) the disclosure constitutes a very serious compromise of classified information and it is imperative that the person responsible be identified so as to preclude further disclusures; (b) there is a real possibility that the investigation will be fruitful, *e.g.,* the information had very limited distribution; and (c) the originating agency has not finally decided against declassification for prosecutive purposes.

PROBLEMS WITH THE CURRENT POLICY

Although current Justice Department policy requests that complaints concerning media leak matters be forwarded to the Criminal Division for their review, often the complaint is initially forwarded to the FBI. Also, agencies that report leaks occasionally omit the responses to the eleven questions or furnish incomplete information. This practice causes delay while the Criminal Division corresponds with the agency and requests responses to the eleven questions or more detail regarding the responses that may have been furnished. When the initial complaints are furnished in a complete package, FBI investigation can generally be completed in a reasonable period of time depending on the number of interviews to be conducted and other investigative considerations.

The Criminal Division receives numerous complaints requesting investigation in media leak matters which are never referred to the FBI, based upon the above criteria. If all of these complaints were fully investigated, the manpower used would be

substantially higher. Leak investigations are manpower-intensive and the burden falls primarily upon FBI's Washington Field Office. Investigating a larger number of leak cases would necessarily divert FBI's resources from other important priorities such as foreign counterintelligence and terrorism investigations.

Moreover, a number of legal and policy restrictions limit the ability of FBI to conduct effective leak investigations in cases that are referred. In most cases, the principal "lead" is the published media account of the leaked information. But investigations are generally not permitted to focus on the journalist who published the information. Rarely is there sufficient probable cause to justify use of Fourth Amendment techniques, such as searches or electronic surveillance. Current Department of Justice regulations strictly limit the circumstances under which journalists can be questioned or subpoenaed, and require express prior approval by the Attorney General in each case. 45 Fed. Reg. 76436 (Nov. 19, 1980), to be codified at 28 CFR 50.10. Current informal policies also preclude physical surveillance of journalists or the use of informants directed at the media in leak cases. Use of these and other investigative techniques is appropriately limited because of First Amendment concerns.

Since FBI cannot investigate journalists who receive the classified information, they must focus on government employees who have had access to the information that has been leaked. Often hundreds or thousands of employees have had access to the information in question. Unless the information received more limited distribution or there are other "leads" that permit narrowing the scope of inquiry, there is no practical means to conduct an investigation.

Even where the inquiry can be limited to a manageable number of employees, FBI has very little ability to conduct a successful investigation. The leaking official is unlikely to confess in response to a simple inquiry. The polygraph can be an effective investigatory technique, but most government employees can be polygraphed only if they volunteer for the examination.

Present policy of the Office of Personnel Management (OPM) sharply limits use of the polygraph for employees in the competitive service. Federal Personnel Manual, chapter 736, appendix D; see memorandum from Llewellyn H. Fischer, Acting Associate General Counsel of OPM, to Lawrence A. Wooby, Security Appraisal Officer of DEA, September 30, 1981. This policy requires, among other things, that employees must voluntarily consent to be polygraphed and that a refusal to consent cannot be made part of their personnel file. Other agencies, including the Department of Defense and Department of State, have similar policies regarding some or all of their employees who would not otherwise be covered by the OPM policy.

Certain intelligence agencies, including NSA (for civilian employees) and CIA, regularly use the polygraph to screen candidates for employment as well as in investigations of employees. Department of Justice policy generally permits use of the polygraph in investigating unauthorized disclosure cases, and an adverse inference may be drawn from an employee's refusal to be examined. FBI policy permits an employee to be discharged for refusing an order from the Director to take a polygraph examination; an adverse inference may be drawn if the employee declines a request to be examined. See Memoranda from Attorney General Civiletti to William H. Webster and Michael E. Shaheen, dated May 4, 1980. See also Memorandum of John M. Harmon, Assistant Attorney General, Office of Legal Counsel, May 1, 1980.

In addition to limitations upon the techniques that can be employed, FBI often finds that high-ranking government officials are uncooperative with leak investigations. FBI does not have the authority to compel government employees to give interviews, sign affidavits, or—even if agency regulations are not a bar—take polygraph examinations. Such compulsion can only be exercised by agency heads who may be reluctant to discipline high-ranking officials who refuse to cooperate with leak investigations.

In summary, past experience with leak investigations has been largely unsuccessful and uniformly frustrating for all concerned. Agencies have been unable to conduct investigations outside their own organizations, and yet Justice has been unwilling to permit FBI to investigate most cases. FBI has been asked to investigate a number of leaks without being permitted to use adequate techniques to solve cases. There have been frequent disputes and misunderstandings. On the rare occasions that leaking officials are identified, they often escape even administrative sanctions. This whole system has been so ineffectual as to perpetuate the notion that the government can do nothing to stop leaks of classified information.

PROPOSED NEW APPROACH TO LEAK INVESTIGATIONS

We should recognize that the threat of criminal prosecution is so illusory as to constitute no real deterrent to the prospective leaker. A more promising approach

involves better efforts to identify leakers and the resolve to impose administrative sanctions. For most government employees, a realistic prospect of being demoted or fired for leaking classified information would serve as a deterrent. An effective administrative enforcement program would also reverse the common perception that the Government is powerless to stop leaks of classified information.

The authority and responsibility of agencies that originate classified information should be clarified. All serious leaks should be evaluated and investigated internally by the agency that originated the information. Agencies should adopt procedures to assure that these steps are taken in a timely manner.

Agencies whose classified information is the subject of an unauthorized disclosure should assume greater responsibility for conducting preliminary investigations. All agencies are authorized to conduct preliminary internal investigations of such matters, including interviews with current employees and contractors and the examination of agency premises. Agencies are also authorized to make inquiries of other agencies to which the information had been disseminated to determine the extent of further dissemination and the present location of the documents in question. Such preliminary investigations at recipient agencies may be conducted either by the recipient agency or by the originating agency with the recipient's consent.

The purposes of such preliminary investigations are: (1) to gather sufficient information for the Justice Department to decide whether FBI investigation is warranted, and (2) to provide the originating agency with data necessary to assist in properly safeguarding classified information. At any point that a preliminary investigation develops information indicating that a particular person is responsible for the unauthorized disclosure, then the matter should be immediately referred to the Department of Justice. Otherwise, unauthorized disclosures should be reported to the Department of Justice only after the preliminary investigation is completed, unless there are exigent circumstances.

Current requirements for reporting unauthorized disclosures, as reflected in the "eleven questions," should be revised so that prosecutive potential is no longer a decisive factor. FBI's authority should be clarified to include investigation of unauthorized disclosures of classified information under circumstances where the likely result of a successful investigation will be imposition of administrative sanctions rather than criminal prosecution. As a consequence, agencies would no longer be required to make a commitment to declassify information at the time of referral.

In consultation with affected agencies, the Department of Justice should develop new standards for reporting and evaluation of unauthorized disclosures for possible investigation by FBI. There is a general consensus that the following basic criteria must be considered: The level of classified information disclosed; the extent of resulting damage to national security; the extent to which the information had been disseminated at the time the disclosure occurred; and the presence of specific "leads" to narrow the focus of investigation.

For example, it would ordinarily be an inappropriate use of FBI's resources to investigate the leak of a "confidential" level document of which thousands of copies had been disseminated throughout the government. Timeliness is also an important factor, as leak investigations are more difficult to conduct when the trail is cold.

Even if properly evaluated and screened, there are likely to be too many leaks for FBI to investigate each one. Again in consultation with affected agencies, the Department of Justice must decide on priorities for the use of available FBI resources. Even if cases cannot be investigated, however, the process of reporting and analyzing them can provide a useful data base for developing protective security measures and investigating future leaks.

The foregoing proposals requiring consultations between the Department of Justice and affected agencies should be implemented through an interagency advisory panel. One possibility is to use an existing group such as the Security Committee (SECOM), established by the Director of Central Intelligence. However, the authority of SECOM is limited to the protection of intelligence and intelligence sources and methods. Therefore, a new advisory panel should be established, although SECOM could certainly be included in the new group.

FBI's approach to investigating unathorized disclosure cases should be reviewed by the Department of Justice in order to remove unnecessary restrictions on the use of certain techniques.

The polygraph can be a useful tool in leak investigations under certain circumstances. It should be used selectively and its results considered within the context of a complete investigation. The polygraph should not be used for dragnet-type screening of a large number of suspects or as a substitute for logical investigation by conventional means. It is most helpful when conventional investigative approaches have identified a small number of individuals, one of whom is fairly certain to be

culpable, but there is no other way to resolve the case. A polygraph examination in this situation can be limited to the unauthorized disclosure that is being investigated and should not include questions about life style that many employees would find offensive. Moreover, polygraph results should not be relied upon to the exclusion of other information obtained during an investigation.

There is no constitutional or statutory prohibition on use of the polygraph to investigate unauthorized disclosure of classified information by government employees. An employee may be discharged for refusal to cooperate with an investigation of his fitness for continued employment. *See, e.g.,* 5. C.F.R. 735.201a(c), 735.201a(f) and 735.209; *Lefkowitz* v. *Turley,* 414 U.S. 70, 84 (1974). Statements that an employee is compelled to make in this fashion cannot be used as evidence in a criminal prosecution. *Garrity.* v. *New Jersey,* 385 U.S. 493 (1967). However, such statements may be used in an administrative proceeding to discipline or discharge the employee. *Lefkowitz* v. *Turley, supra.* This authority also supports requiring government employees to submit to polygraph examinations in connection with investigations of unauthorized disclosures. *See Memorandum* of Larry A. Hammond, Acting Assistant Attorney General, Office of Legal Counsel, February 22, 1980.

OPM and other agencies with more restrictive policies on use of the polygraph should be directed to amend their regulations if necessary to permit adverse consequences to follow an employee's refusal to cooperative with polygraph examinations used to investigate unauthorized disclosures of classified information. Such polygraph examinations could be limited to the circumstances of the unauthorized disclosure being investigated, and would not include unrelated questions. The employing agency would be permitted to deny security clearances, to draw adverse evidentiary inferences, or to take other administrative action, as appropriate, against an employee who refuses to cooperate with such a polygraph examination.

Finally, agency heads should be directed to impose appropriate administrative sanctions in situations where employees fail to cooperate with investigations or are found to have disclosed classified information without authorization. This will provide assurance to all involved in the investigatory process that their efforts will be worthwhile. There is clear authority to discipline or discharge employees for the failure to cooperate with an investigation. What is required is the determination to use this authority in appropriate cases.

Association of American Publishers, Inc.

2005 Massachusetts Avenue, N.W.
Washington, D.C. 20036
Telephone 202 232-3335

July 27, 1984

JUL 31 1984

The Honorable William D. Ford, Chairman
Committee on Post Office and Civil Service
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Association of American Publishers (AAP), together with the Association of American University Presses (AAUP), wishes once again to go on record in support of legislation to curb what has now been revealed as a widespread practice of the Reagan Administration: to impose upon Federal Government employees life-time censorship on writings that bear upon the government experiences of those employees.

Both of our organizations have previously informed the Congress of the devastating impact that the pre-publication review requirements of the Presidential Directive on Safeguarding National Security Information (March 1983) would have on the free speech traditions of this Nation and on the vitality of the book publishing process. AAP and AAUP members were, accordingly, heartened by the February 1984 memorandum from the White House indicating that the Administration was suspending the pre-publication review provisions of the Directive pending discussions with Congress; we nevertheless expressed our conviction at that time that legislation permanently barring such requirements should proceed.

Having in any event assumed, along with most other observers, that the threat of massive imposition of pre-publication requirements had been at least postponed, we were stunned by the June 11, 1984 General Accounting Office Report revealing that, notwithstanding the White House statement, pre-publication review requirements had already been systematically imposed on thousands upon thousands of government employees.

The GAO report makes starkly clear that the March 1983 Directive was merely one tentacle of an octopus-like censorship program spreading through the Administration. The latest GAO revelations -- that hundreds of thousands of Federal employees have signed lifetime pre-publication agreements; that more than three million employees are potentially covered by such procedures; that numerous agencies of the Federal Government have become self-appointed "publishers" (more than 15,000 books and articles reviewed during 1983 alone); and that all of the foregoing measures are being implemented in the virtual absence of evidence of any injury to the national security arising out of

unauthorized disclosures of classified information -- lead to the inexorable conclusion that legislation such as H.R. 5866 is both appropriate and critically necessary. Our two organizations, representing between them the vast preponderance of all traditional and scholarly book publishing, hold to the view that this pernicious censorship program should be totally and unequivocally withdrawn in all respects by the Administration, thus obviating the need for legislation. However, the latest disclosures --- revealing as they do not merely the vast scope of the program but also the Administration's lack of candor in dealing with the Congress and the public --- make clear that there is no alternative but to proceed with curative legislation.

Thank you for giving consideration to the views of our two publishing organizations.

Sincerely,

Townsend Hoopes, President
Association of American Publishers

Frances Gendlin, Executive Director
Association of American University Presses

cc: Committees on Armed Services,
Judiciary and Intelligence

AAUP THE ASSOCIATION OF AMERICAN UNIVERSITY PRESSES, INC.
One Park Avenue, New York, N.Y. 10016 (212) 889-6040

as at: 706 Ogden Avenue
Teaneck, New Jersey 07666
April 21, 1983

The Honorable Peter W. Rodino, Jr.
2462 Rayburn Building
Washington, D.C. 20515

Dear Congressman Rodino:

It is my understanding that the subcommittee on civil and constitutional rights of the House judiciary committee, of which you are chairman, has been conducting hearings on President Reagan's Directive of March 11 on "safeguarding national security information."

May I, on behalf of the 80 American scholarly publishers who constitute our membership, express the most serious objections to a blanket Directive of this kind? Its effect on current government officials with access to classified information is to attempt to restrain them from expressing themselves without citation on any sensitive issue, however remote from the national security. Its effect on former officials is more dire than that: prior censorship, in effect, of any of their writings, under the pretext of protecting the national security. While no one, perhaps, is a First Amendment absolutist, surely Justice Holmes's dictum about crying fire in a crowded theater ought to apply here.

Coming closer to our neck of the woods, the university presses depend on archival and direct disclosure, both in original manuscripts and in attributions and footnotes, for their work in contemporary or recent history and in political science. Public diplomacy, which is too high and subtle an art to survive the kind of censorship necessarily entailed in so vague a Directive, which is an affront to intelligence (in the several senses of that word) and a violation of the Constitutional rights of government employees as authors, cannot be conducted in the atmosphere that such a secrecy order creates. Nor should Congress allow public diplomacy, or what passes for it, to be the sole prerogative of the policy-makers in the Executive branch at any historical juncture in the life of this Republic.

I cannot provide you or Congressman Edwards yet with a list of books that would not have appeared had the Directive then been in force. (I understand that such a list is forthcoming from the Association of American Publishers.) Let me defer, instead, to two older voices, both humanists, both political men. One is Thomas More's, who said of himself, "the King's good servant, but God's first." The other is John Milton's, who did not wish for the "fugitive and cloistered virtue" of the censor, and opted instead for unfettered truth. These are good political guides in the current situation.

I would be grateful to hear your Committee's recommendations as to what to do about this appalling situation.

Yours truly,
s/s
Richard Koffler, Executive Director

cc: Rep. Don Edwards

Congress of the United States

Washington, D.C. 20515

January 25, 1984

Name
Address
City, State

Dear <Name>:

President Reagan, on March 11, 1983, issued National Security Decision Directive 84 (copy enclosed) which seeks to reduce the unauthorized disclosure of classified information. Among other things, the Directive requires that employees with access to certain types of restricted information sign non-disclosure agreements containing a requirement that the employee submit for prepublication review all writings "which contain or purport to contain" any restricted or classified information or "any information concerning intelligence activities, source, or methods." This requirement applies for the rest of the employee's lifetime.

The Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary and the Subcommittee on Civil Service of the Committee on Post Office and Civil Service held joint hearings in April to explore the Directive and the need for it. Our joint investigation into this matter continues.

As part of this effort, we are writing to request your assistance. As a former government official who has published articles or books concerning the issues you confronted while serving your country, you can provide us with valuable insight into the need for, value of, and problems with prepublication review. Therefore, we request that you respond to the questions below. Your answers will be valuable in the preparation of our report on this issue.

1. Please indicate the type of publication(s) in which your writing has appeared since you first left government service -- i.e., in books, newspaper articles, or works of fiction -- and whether the writing was related to your former government employment.

2. What position(s) did you hold in the Federal government? For what periods of time? Did you have access to classified information in such position? Did you have access to sensitive compartmented information (SCI) in such position?

3. What steps did you take to ensure that your publication(s) contained no classified information? Did you submit your entire publication for prepublication review or did you submit parts for review? If you submitted only a portion of your writing for prepublication review, on what basis did you decide which portions to submit?

AAUP THE ASSOCIATION OF AMERICAN UNIVERSITY PRESSES, INC.
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as at: 706 Ogden Avenue
Teaneck, New Jersey 07666
April 21, 1983

The Honorable Peter W. Rodino, Jr.
2462 Rayburn Building
Washington, D.C. 20515

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I would be grateful to hear your Committee's recommendations as to what to do about this appalling situation.

Yours truly,
s/s
Richard Koffler, Executive Director

cc: Rep. Don Edwards

4. If you have submitted any writings for prepublication review, what was your experience? To whom did you submit your material? Were you requested to delete material from your work? Were you permitted to show that the material was not classified? How long did it take to review the material?

5. Based on your experience with the prepublication review process, do you believe that expanding its use is the most appropriate and effective means of preventing disclosure of classified information?

6. The Directive requires all former government officials with access to SCI information to submit all publications, including speeches and lectures, for prepublication review. Do you believe that requiring such officials to submit only those portions of writings which might contain classified information would be equally effective?

We are, of course, cognizant of the fact that this is a very hectic time for everyone. However, your earliest assistance in responding to this request will be most appreciated since the Committees believe it is important to conclude their inquiry.

Please indicate in your response if you prefer that your comments be kept confidential; otherwise, they will be made a part of our public record.

Helen Gonzales of the Judiciary Committee staff (226-7680) and Andrew Feinstein of the Post Office and Civil Service Committee staff (225-4025) are available to answer any questions you might have about this request.

With kind regards,

Sincerely,

DON EDWARDS
Chairman
Subcommittee on Civil and Constitutional Rights
Committee on the Judiciary

PATRICIA SCHROEDER
Chairwoman
Subcommittee on Civil Service
Committee on Post Office and Civil Service

Enclosure

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January 30, 1984

Dear Congressman Edwards and Congresswoman Schroeder:

In response to your letter of January 18th, I am pleased to provide answers to the questions which you have posed.

1. My writings have appeared in books, newspaper articles and my views have also appeared extensively in interviews, divided almost equally between print and electronic media. Nearly all of my comments have been related to matters of substance during the period of my government service, although there is natural linkage between what I did then and the present. My published views have been almost exclusively concerned with foreign policy, national security, intelligence policy and international economic policy and trade matters.

2. Over the years I have held the following positions in government. 1969, Principal Associate and Senior Staff Member at the National Security Council; 1971-1972, Deputy Assistant to the President for International Economic Affairs and Deputy Director, Council on International Economic Policy; 1981-1982, Assistant to the President for National Security Affairs.

In these positions, I had access to classified information at virutually every level, including compartmentalized (SCI) information.

3. As to the steps I took to ensure that publications contained no classified information, I can say that the rule of common sense applies. It is often difficult to distinguish lower-level classified material from that which is available in the public domain, but in no instance did I submit anything for prepublication review.

4. This question is not applicable, in that I did not submit any materials for prepublication review.

5. I have been involved with the prepublication review process from the standpoint of a government official reviewing the works of others. I believe that it is indeed an appropriate and effective means of preventing disclosure of classified information, if only because individuals find it difficult to recall whether that which is contained in their manuscripts of the materials is in fact classified.

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However, I also believe in (and practice) always giving the benefit of the doubt to the writer submitting his work for clearance; I think it is entirely possible that too much "nitpicking" goes on in the process, and it is certainly too slow.

6. If the Presidential Directive requires all former government officials with access to SCI information to submit all publications, then I would oppose the Directive. I do indeed believe that only those portions of a writing which might contain highly classified information ought to be submitted.

If I may be of further assistance, please do not hesitate to contact me.

Yours sincerely,

Richard V. Allen

The Honorable
Patricia Schroeder
2410 Rayburn House Office Building
Washington, D.C. 20515

The Honorable
Don Edwards
2307 Rayburn House Office Building
Washington, D.C. 20515

A.ARNOLD
19 HAYES STREET
NOVATO, CA 94947

January 24, 1984

Committee on Post Office and Civil Service
Subcommittee on Civil Service
122 Cannon House Office Building
Washington, D.C. 20515

Dear Madam/Sirs;

The following answers are keyed to your questions to me in your letter of January 18:

1. I have written two books and numerous newspaper articles since leaving government service. All have dealt directly or indirectly with Afghanistan, which was one of my posts while in government service. Part of my duties there involved keeping track of Soviet relations with the host government; another part was attempting to follow Afghan communist party activities. My two books written after retirement (Afghanistan - The Soviet Invasion in Perspective and Afghanistan's Two-Party Communism - Parcham and Khalq) dealt with a history of Soviet-Afghan relations and a history of the communist party, respectively. They were thus related to my duties while at this post. The newspaper articles were similarly oriented.

2. From 1953 to 1979 I served with CIA in various capacities. In Afghanistan [

] I had access to classified materials [

]. I am not familiar with the term "sensitive compartmented information (SCI)."

4. I submitted my manuscripts to the Publications Review Board of the Central Intelligence Agency, which is attached to the Office of General Counsel. They made no request of me to delete material. They reviewed the material very promptly, returning it to me within a week of its receipt.

5. This is an extremely difficult question on which to generalize. My own experience has been very good, but I had absolutely no ill-will toward my former employer. If I had had such ill will and had expressed it in the book, it is possible that the review board would have looked at it much more closely (I would have in their place), to detect any possible leaks. This is an only natural defensive reaction. Moreover, no review board made up of Washington-bound attorneys is qualified to pass judgment on possible security breaches concerning classified information about obscure corners of the world like Afghanistan. To do a proper job they would have had to call on help from both the Department of State and the appropriate CIA desk, therebye detracting from those units' abilities to fulfill their more-than-demanding regular functions. -- Perhaps one alternative to the requirement that all materials be submitted to a publication review board would be to leave this open to the discretion of the author -- but with such heavy penalties for the unauthorized revelation of classified material that no prudent man or woman would take the risk of publishing borderline materials without official approval. An Official Secrets Act with real fangs to it, such as exists in Britain, might aid in this process. If nothing else, such a philosophy would permit the responsible author to get on with his work without delay; it would cut back on what promises to be a new layer of bureaucracy in many agencies; it would facilitate prosecution of transgressors (presumably in closed courtroom circumstances, to avoid further pinpointing of the classified information in question); and it would probably not bring on any worse leakage than already exists: a thoroughly embittered ex-employee with classified information he wishes to publish has probably revealed that information at least orally far and wide before sitting down at a typewriter anyway.

6. After writing the above I realize that your question 6 shows you have already invented this wheel. In short, my answer is a qualified Yes, the qualification being that the penalties for slippage by the author/speaker be severe enough that he has a profound incentive to take his responsibilities for safeguarding classified information seriously.

I am taking the liberty of forwarding a copy of this reply to the Office of General Counsel at CIA, which informed me some time ago that you might be getting in touch with me. For the time being I would prefer that those parts of paragraph 2 of this letter that are in brackets and the paragraph that follows be deleted from any public record.

If I may be of further assistance, please do not hesitate to get in touch. As an author I am aware of the frustrations of not being able to have material released that in my own view could be declassified without jeopardy to sources or methods (in one case last year the Department of State would not even let me see the full text of one of my own airgrams from Kabul, for example). On the other hand, as an ex-CIA officer I am even more keenly aware of the penalties that can result from the careless or malicious release of classified data. The valuable techniques rendered useless when the other side learns of them are bad enough, but they can be replaced. The human lives lost through similar slips cannot.

Sincerely,

Anthony Arnold

FEB 13 1984

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February 9, 1984

Mr. Don Edwards
Chairman
Subcommitte on Civil and
Constitutional Rights
Committee on the Judiciary
House Annex #1
Room 806
New Jersey and C Streets, SE
Washington, D.C. 20515

Dear Chairman Edwards:

In response to your letter of January 18, 1984 below are my answers to your questions:

1. Since leaving government service as of October 31, 1983 I have only published two articles in the Journal of Commerce. They are related to what I was doing in the NSC to the extent that they were on economic topics. I enclose copies.

2. I was Senior Director of International Economic Affairs and Special Assistant to the President for National Security Affairs. I was on the NSC Staff from April 1981 to October 31, 1983. Prior to joining the NSC staff I was a consultant to the Office of Policy Development for about a month. I had access to classified information.

3. As you will see, precautions were unnecessary. I did not submit the articles for review.

4. Not applicable.

5. Not applicable.

6. Yes.

You may use these answers publicly if you wish. I hope they have been helpful in yourimportant work.

Yours very truly,

Norman A. Bailey
Senior Advisor

cc: Patricia Schroeder

CHAIRMAN
Peter A. Bradford

COMMISSIONERS
Ralph H. Gelder
Cheryl Harrington

STATE OF MAINE
PUBLIC UTILITIES COMMISSION
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January 24, 1984

Patricia Schroeder
Chairwoman
Subcommittee on Civil Service
Committee on Post Office and Civil Service
and
Don Edwards
Chairman
Subcommittee on Civil and
Constitutional Rights
Committee on the Judiciary
U.S. House of Representatives
122 Cannon House Office Building
Washington, D.C. 20515

Dear Representatives Schroeder and Edwards:

Thank you very much for your letter regarding National Security Decision Directive 84. My answers to your specific questions are as follows:

1. I have written several speeches and newspaper articles regarding nuclear regulation since leaving the Nuclear Regulatory Commission. Some of the speeches have since been published as part of conference proceedings.

2. I was a Commissioner on the Nuclear Regulatory Commission from 1977 until 1982. I did have access to sensitive compartmented information during that time.

3. I never submitted anything for prepublication review, either while I was on the NRC or since. I simply avoided using any information that had the slightest possibility of being classified. It is really not difficult to avoid such disclosures in prepared remarks. The only context in which disclosure seems to me to be even remotely likely is in question and answer or debate-type formats in which prior review is impossible anyway.

Questions 4 and 5 are not applicable.

6. I think that all prepublication review is a ridiculous mistake. It will cost far more than it is worth. Abuse by censors determined to further the interests of the administration in power or their own personal predilections is virtually certain. The entire concept seems to me to be inconsistent with basic American principles. Indeed, I think it may be a clever Communist plot to discredit security through overzealous pursuit of counterfeit security. The Administration has already fallen victim to a similar plot with regard to its efforts to promote nuclear power.

I would urge that you prohibit this entire ill-considered venture. Please let me know if I can be of any further assistance.

Sincerely,

Peter A. Bradford

PAB/mm

THE MIDDLE EAST INSTITUTE
1761 N STREET, N. W.
WASHINGTON, D. C. 20036

L. DEAN BROWN
PRESIDENT

January 26, 1984

The Honorable
Patricia Schroeder
Chairwoman, Subcommittee on Civil Service
Committee on Post Office and Civil Service
U.S. House of Representatives
122 Cannon House Office Building
Washington, D. C. 20515

Dear Mrs. Chairwoman:

This letter is in response to your letter of January 18 concerning NSDD 84. The answers are keyed to the questions.

1. Newspaper articles via interviews or pieces for OP-ED pages, book reviews, speeches at conventions, seminars, discussions groups, etc., which were carried by media or reproduced for distribution, articles for corporate publications. Much of what was written was based on 30 years service as a Foreign Service Officer. Subjects have been primarily Mid-East oriented.

2. 1973-1975 Deputy Undersecretary for Management in State Dept. Earlier Ambassador to Jordan, Senegal and Gambia. Since retirement in 1975 called back for special assignments; for example, Director of the President's Task Force for Indochina (1975) and Special Envoy to Lebanon (1976). I was a consultant to the State Department 1975-1983.

   I had the usual top clearances including SCI.

3. In public lectures or meetings I have cited only already published material. There's a wealth of that. I have never believed it necessary to seek prepublication reviews.

4. As noted, I do not believe I have ever written anything that required prepublication clearance.

5. No comment.

6. It would be impossible to create a bureaucracy which could, in timely fashion, screen lectures, articles, and comments. Such a requirement levied on ex-holders of SCI clearances would force them to cease all activities of a topical nature. It would rule out, for example, OP-ED articles which usually have a deadline of less than 24 hours. Former public servants have to be trusted enough so that they -- mindful of their responsibilities -- self-screen infractionsof a sensitive nature.

You may use this material as you wish.

Sincerely,

L. Dean Brown

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January 23, 1984

The Honorable Patricia Schroeder
Chairwoman
Subcommittee on Civil Service
Committee on Post Office and
Civil Service
122 Cannon House Office Building
Washington, D.C. 20515

Dear Pat:

This is in response to your letter of January 18, 1984, concerning National Security Decision Directive 84. While I have written articles and books about my government experiences, I have never been involved in the pre-clearance process (although I worked in the Department of Defense from 1961 to 1965).

Sincerely,

Joseph A. Califano, Jr.

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EDWARD W. BROOKE
CARL E. HEILMAN
COUNSEL

April 18, 1984

Honorable Patricia Schroeder
Chairwoman
Committee on Post Office and Civil Service
Subcommittee on Civil Service
122 Cannon House Office Building
Washington D.C. 20515

Dear Pat:

I am sorry that I have been so slow to reply to your request of February 29. It has been an unusually hectic season.

Let me try to answer the questions that your letter poses.

1) The only publications I have had have been Op Ed pieces in the Christian Science Monitor. However, I have been doing research for a scholarly article, and I have been teaching a course in the law doctrine and politics of nuclear weapons management for three years at Harvard, and I need to rely on materials that I worked on in the government.

2) I was the under secretary of the Air Force from 1979 until the end of the Carter administration in 1981. I was assistant secretary of the Air Force from 1977 to 1979. I had access to classified information, including SCI in both positions.

3) I have used my own good judgement in dealing with classified information. I did not take any classified information with me, and I know quite well what information I may use and otherwise. I have not submitted any publication for review nor do I think that, except in case of the authors doubt, this is a very good idea.

4) Not applicable.

5) I don't think that expanding the use of prepublication review is a very good idea. If the government feels it is necessary to require former government officials with SCI previous classifications to submit publications, there have to be clear standards that all that will be censored is actually classified information. There can be no censorship of policy issues, or criticisms of policy. The problem I have with such review, is that it tends to get into grey areas where, in an excess of zeal, the censors are likely to go beyond the very limited mandate. There should be an administrative review and a chance to appeal any matters of disagreement between the author and those people performing the prepublication review.

There have been a number of very eloquent and critical editorials on the subject, and I tend to agree with them. While I believe that we have to preserve the security of information, I think that any prior censorship raises serious constitutional questions. Nor does it prevent the leaks about which the administration is so concerned.

Please let me know if I can be of any further help. And if this letter actually gets to you, Pat, a very warm hello.

With all best wishes.

Sincerely,

Tobi

Antonia Handler Chayes

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February 17, 1984

The Honorable Don Edwards
Chairman
Subcommittee on Civil and Constitutional Rights
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

The Honorable Patricia Schroeder
Chairwoman
Subcommittee on Civil Service
Committee on Post Office and Civil Service
House of Representatives
Washington, D.C. 20515

Dear Chairman Edwards and Chairwoman Schroeder:

I am responding to your letter of January 31, 1984 concerning National Security Decision Directive 84. My own experience is unlikely to be entirely representative of the normal pattern since I spent so many years in government and write extensively on intelligence subjects. I would therefore prefer you to keep my comments confidential.

My answers can be very brief.

I write a great deal and have published books, newspaper columns, and scholarly articles. Specifically I wrote Secrets, Spies, and Scholars, updated several times -- the last edition being entitled The CIA: Reality Versus Myth. Obviously these books related to my government experience, which included duty as Deputy Director for Intelligence, CIA (1962-66) and Director of Intelligence and Research, State Department (1969-1973). In my 31 years in government I had access to classified information most of the time and during a great part of it access to the most sensitive compartments.

Since I worked in classified fields so much, I think my judgment on classified content is about as good as any. Nevertheless my books were submitted for prepublication review to CIA. Naturally I had almost no problems and easily adjusted a few pieces of terminology which troubled my reviewers.

Despite my generally happy experience with the review and clearance process, I think the new procedures are too extensive and likely in practice to be so cumbersome that they break down and tie up the system. I think the present more liberal requirements for review are quite adequate and should not be extended in ways that will jeopardize the good will and sense of responsibility for security that most former employees have.

Cordially,

Ray S. Cline

Ray S. Cline
Senior Associate

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February 22, 1984

The Honorable Patricia Schroeder
Chairwoman
Subcommittee on Civil Service
Committee on Post Office and Civil Service
122 Cannon House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Pat:

I am glad that your subcommittee, and that of Don Edwards in the Committee on the Judiciary, are looking into the Reagan Administration's proposed Directive on the unauthorized disclosure of classified information.

I have served in the federal government in several incarnations, most recently during the 60s as Assistant Secretary of State for International Organization Affairs and as U.S. Ambassador to N.A.T.O.; in the 70s as Chairman of the U.S. Weather Modification Advisory Board. All of these assignments have stimulated a good deal of writing, and everything from op-ed articles to books. No fiction, though; the reality was interesting enough.

I did of course have access to classified information, particularly in the State Department and N.A.T.O. assignments. Several years ago I was asked by the CIA to give a public lecture to CIA employees and other members of the intelligence community in Washington. What I then said on the subject is an attachment to this letter.

It is not easy to judge whether information contained in one's writings would still be regarded as classified some years after the fact. But the reason for this uncertainty is not the difficulty of deciding what should still be kept secret. It is the fact that the government classification system is regularly used to cover up information which might be potentially embarrassing to senior bureaucrats or political appointees, or even to elected officials, and that therefore the writer has to make a distinction between information that is classified for reasons other than national security, and information which is truly national security-sensitive. Under these circumstances, I have used my own judgment, which I regard as at least as accurate as that of the people hired to protect the classification system, and most probably better, since I know more about the sensitiveness of the issues I am writing about than they do. I have deliberately withheld a number of facts (and opinions expressed while I was a government official) on the basis of the judgment that to write about these matters might, even later, damage the U.S. international posture, international security, arms control, and other diplomatic relationships.

From:

Minneapolis Star and Tribune
Saturday, February 18, 1984

A welcome retreat from censorship

President Reagan has backed away from a proposal to plug national-security leaks by means that were more likely to intimidate civil servants than to enhance security. But the retreat seems inspired less by concern for openness than by hopes that a reluctant Congress will accept a softened version of the plan. Congress should not be swayed.

In a directive last March, Reagan proposed two new tactics to safeguard government secrets: The first would impose lifetime censorship on federal employees with access to classified information, requiring them even after leaving office to submit anything they write for prepublication government review. The second would force any employee suspected of leaking secrets to take a lie detector test; those who refused could be fired.

The directive's supposed purpose was to protect national security. But lawmakers who studied it found little logic in the plan. They realized that the order would cover fiction, satire and opinion articles as well as secrets. And they asked what harm the plan was intended to prevent — something the administration has been unable to explain.

Congress recognized the president's directive to be censorship in security's clothing. By forcing thousands of past and present federal employees to seek permission before speaking out, the plan would grant considerable power to a sitting administration to determine what citizens can read and hear. Such a system would subvert the open government essential to democracy.

Alarmed, Congress voted last fall to suspend the plan while reviewing its constitutional implications. Now the president has decided to forgo a losing battle in favor of negotiation. A reasonable opening — and concluding — congressional negotiating position would be: Junk the March proposal entirely.

I emphatically do not believe that the ponderous judgment of security officials with (inevitably) a limited sense of history can make those judgments as well as responsible former officials, now become authors, can do. This is obviously a matter of opinion. But I would invite anyone wishing to test the proposition to read four books of mine, and then testify whether there is anything in them which constitutes a damaging revelation of a secret which still needed to be kept secret. The books are: The Obligations of Power (Harper and Row, 1966), written while I was in government employ; NATO: The Transatlantic Bargain (Harper and Row, 1970); The Future Executive: Guide for Tomorrow's Managers (Harper and Row, 1972); and The Third Try at World Order: U.S. Policy in an Interdependent World (Aspen Institute for Humanistic Studies, 1977).

My views on prepublication review are not really printable in a family magazine such as the Congressional Record. The answer to questions about prepublication review are almost always bound to be, "don't publish it." People who would review such manuscripts are rewarded for prevention of publication, not for exercising their discretion to permit publication. The dynamics of such a system would indeed constitute the kind of censorship which is contrary to the very purpose of the United States, as expressed in the Declaration of Independence and many documents thereafter. If the Directive is seriously intended to apply to people who served in the government in earlier administrations, I can only express opinion that such a retroactive Bill of Retainer is clearly unconstitutional, in the absence of a showing it would damage our present security -- as differentiated from the comfort of whomever happened to be in power at the moment.

I hope these comments are helpful. It is a subject on which I would be glad to testify.

I am sending a copy of this letter to Representative Don Edwards, the co-signer of the letter that asks for them.

Warmest regards.

Sincerely,

Harlan Cleveland

HC:je

cc: Representative Don Edwards

P.S. A recent editorial in the Minneapolis Star and Tribune captures very well my own view of the matter. It reports that President Reagan is retreating from the Directive referred to in your letter, and "has decided to forgo a losing battle in favor of negotiation." The principle involved is not very negotiable, I hope that Congress retains both its skepticism and its sense of humor in getting the proposals of March 1983 discarded altogether.

H.C.

THE ANTIDOTE TO SECRECY

by

Harlan Cleveland

Director, Aspen Institute for Humanistic
Studies, Program in International Affairs

Delivered as a Guest Lecture

to Employees of the

Central Intelligence Agency

Langley, Virginia

May 10, 1977

NOTE

This lecture adapts to the CIA audience a line of thinking developed at greater length in two previous writings by Harlan Cleveland:

- The Future Executive (New York: Harper & Row, 1972), especially Chapter 8.

- "The Limits of Obsession: Fencing in the 'National Security' Claim" (Stuart Gerry Brown, co-author), Administrative Law Review, Summer 1976 (Volume 28, No. 3).

THE ANTIDOTE TO SECRECY

I.

The sponsors of this extraordinary lecture series asked me only two questions. One was whether they should address mail to my home -- in case I didn't want my colleagues in the office to know that I was doing business with the CIA. For reasons that will be clear from what I am about to say to you, I replied with some version of Ralph Waldo Emerson's dictum: "If you would not be known to do anything, never do it."

The other question was what I should talk about this afternoon. To that question, the CIA provided not only the question but the answer: Would I address myself to the ethics of secrecy? What an irresistible invitation -- to speak of ethics in the citadel of secrecy!

So here I am, to air some doubts and analyze some dilemmas that every one in the intelligence community shares, whether you know it or not, with public servants in hundreds of other professions in public and private employ.

I come to you as a sometime practitioner but mostly a consumer of intelligence. During World War II, as a young recruit in the Board of Economic Warfare, I was told that we were about to invade Sicily but that someone had forgotten to calculate the food requirements of the population after we (hopefully) had conquered them. As an enthusiastic sailor I had always assumed that the Office of Naval Intelligence was the most dependable source of secret information, so I hurried to ONI and asked to see the file on "Sicily-Food". Such a file did exist. But the latest entry -- this was in 1943 -- was an unclassified consular report, dated 1923. The rest of the intelligence community

was not much better prepared. What you collect depends on what you think will be important, and the invasion of Sicily had not been among the long-term objectives of U.S. foreign policy.

As a consumer of intelligence, I have much more experience, but it has left me with equivalent doubts. I was Assistant Secretary of State and Ambassador to NATO for more than eight years, and privy to the product of countless clandestine operations, including large numbers of intercepts. Reading other people's mail and listening in on their party lines are among the most titillating of human activities; that's why peep shows and sex shops are such a thriving addition to our Gross National Product. But I have to confess in retrospect that I do not recall a piece of clandestine information that made such a big difference in my perception of international politics, gained from other sources, that it was worth the risk of getting caught procuring it.

I am quite prepared to concede -- indeed, to hope -- that the game is worth the candle more often than my limited consumer survey would indicate. It is on this assumption, in fact, that I will discuss, first, the nature of public secrecy, and second, what standard of personal ethics you and I can depend on in an environment of public responsibility, where not everything can be open and some secrets have to be kept, at least for a time.

II.

I don't know anyone, in or out of the intelligence community, who would not agree that Federal secrecy is now overdone. On August 21, 1973, a few days before he resigned as Secretary of State, William P. Rogers said it in his gentle way: "It is very important for the United States not to become so obsessed with security matters that laws are freely violated." (When I read that in the newspaper the next morning, I confidently predicted over breakfast that those were the words of a man about to resign from the Nixon Administration.) But earlier, in a less philosophical mood, Secretary Rogers had told the Senate Foreign Relations Committee what to expect from executive agencies. "It would be very helpful," he earnestly said to the Senators, "if you would ask yourself what it is that you would do differently than we are doing, keeping in mind that you may not know what we are doing."

The latest estimate I have seen, a 1975 guess by the Interagency Classification Review Committee, is that 20 million government documents bear classified markings -- and that more than 15,000 government employees possess the authority to classify.

This massive structure of official secrecy rests on two dubious propositions: (a) the fewer the people who know, the greater the security; and (b) only those should know who "need to know". The trouble is simple: The crucial determinations -- who is in the know and who is out -- are made by the first possessor of the secret, on his essentially unreviewed judgment about the requirements of national security.

One consequence is to deprive the national legislature of its policy function on whatever the President and his advisers decide to handle alone. Congress is said to

be much too large a body to be trusted to keep secrets -- though the White House staff is larger. To maintain a show of cooperation the Executive keeps a few members of Congress informed, especially those who control the funding of the intelligence agencies. If most members of Congress do not know the facts, it follows that they cannot be meaningfully consulted on policies derived from analysis of the facts. That makes the Executive less accountable on precisely those issues most likely to be matters of life and death for Americans at large. "Separation of powers" in national security matters means separating Congress from the power to make policy.

Within the Executive Branch, secrecy also redistributes the power to affect policy. The "intelligence community" produces facts which are closely held. They can be interpreted -- and consequent policy recommendations made -- only by those who know the facts. Since the intelligence people are among those in the know, they can come to have a disproportionate influence on policy as compared with "policy-makers".

The doctrine of "the fewer who know the greater the security" is seductive. On its face it makes sense, but decision-making about complex national security matters produces grotesque results so often that there must be something wrong with the picture. Some examples from recent history show how badly the principle works in practice:

> The Bay of Pigs fiasco resulted directly from insufficient candor in too small a group -- some members of which, according to a former member of the Joint Chiefs of Staff, thought that in the presence of the new young political hero they "should speak only when spoken to." . . . At the U.N. General Assembly, Ambassador Adlai Stevenson was defending the U.S. non-involvement in the "refugee" raids on Cuba. He asked Washington for

the true story, and the CIA provided the State Department with a false "cover story" which Stevenson used his global credibility to trumpet as the truth.. The cover blew off in less than 24 hours.

During the first few days of the Cuban Missile Crisis, only fourteen people were let in on the secret. During this period proposals to overreact by "surgical" air strikes were taken seriously in the small in-group. It was no accident that a more moderate (and certainly more effective) policy prevailed after a second tier of staff people had been brought in to sift the options and illuminate the risks, costs, and benefits.

In the period after 1965 the circle of trusted Presidential advisors running the war in Vietnam was progressively narrowed, and the war policy got progressively more out of touch with public and Congressional opinion, or even with staff-level reactions in the Executive Branch. Only when President Johnson, in early 1968, rather suddenly widened the circle of consultation, even seeking the views of known opponents, did he sharply alter course.

A matter so vital to the conduct of foreign policy as the decision to deploy anti-ballistic missiles was decided without consultation with NATO allies or even the U.S. Department of State; together they learned about a new American policy from news dispatches of a speech by a Secretary of Defense in San Francisco.

In the Nixon years, the damage caused by failures of presidential consultation -- on Cambodia (3,630 secret air raids between March 1969 and

May 1970), on the tactics of rapproachement with Peking, and on the world-wide military alert in 1973 -- is still fresh in the memory of Americans, and of Japanese and European allies as well.

During the Kissinger era, the delegation head responsible for negotiating strategic arms limitations with the Soviet Union apparently did not "need to know" that the White House had already agreed to a fallback position. He continued to bargain hopelessly for what had already been surrendered, while his opposite number on the Russian side of the table already knew that a deal had been made at higher levels.

III.

The notion that secrets should be limited to those with a "need to know" has at least three defects. One, as I have suggested, is that those who already know make the need-to-know determination. They can scarcely be expected to welcome to their charmed circle potential heretics within the Executive Branch, or potential critics and opponents in Congress and the country.

A second defect is that the "need to know" doctrine is extremely corruptible. Once the system permits the President and his agents to decide who should know what about executive intelligence and operations, it is overwhelmingly likely that government officials will use the system to hide their mistakes and their debatable judgments from colleagues, subordinates, inspectors, controllers, Congressmen, courts, and constituents by deciding that none of those have a "need to know". The opera bouffe of the White House tapes bears witness.

A third defect of the "need to know" doctrine is even more basic: it inhibits asking the underlying question whether secrecy in a particular case serves the national interest anyway.

Being let in on a secret is a status symbol -- in small-town gossip, in international diplomacy, or in Washington politics. If you are favored with a confidence, you are likely to be among the last to question whether the confidence really needs to be confidential, since your "inness" depends on its confidentiality. Those to whom the secret is not whispered are much more likely to call for openness, candor and participatory process.

Yet in our most famous cases of crisis management, even some of the crisis managers now question procedures that automatically equated national security with the need for secrecy. "Unhappily," says Nicholas Katzenbach, "secrecy in foreign affairs -- and particularly in the atmosphere we have lived in for the past 25 years -- is easily rationalized. Yet the reasons seldom have much to do with the rationalizations. In recent years, at least, the real motive has been precisely to avoid the difficulties inherent in our political system and hopefully to present the public with triumphant faits accomplis."

In retrospect it appears that the insistence on secrecy in crisis management has often been the product not only of presumed military necessity but also of the desire of a president or his staff to avoid being scooped on an important policy announcement -- a natural human motivation, but not to be confused with the nation's security. In three of the cases mentioned above -- the discovery of Russian missiles in Cuba in 1962, the President's intent to visit Peking in 1971, and the U.S. effort to prevent a possible unilateral Soviet intervention in the Middle East in 1973 -- it is now doubtful that elaborate measures to maintain secrecy until the President was ready to go on television served any higher purpose than to enhance and personalize the drama of the President of the United States in action. They served that purpose very well indeed. But from whom were the secrets kept? In 1962 the Russians knew the misssiles were there. In 1971 the Chinese knew that Nixon was coming to call. In 1973 the Russians had been told that we did not favor their apparent intent to send armed forces to the Mideast. Those kept in the dark until a television drama could be arranged included, respectively, our Western Hemisphere allies in 1962, our Japanese and Korean allies in 1971, our NATO allies in 1973 -- and, in all three cases, the governed in America.

In the 1962 case, the drama was so great that it induced almost immediate hemispheric and domestic support for the President's policy. Yet without secrecy that support might well have been available from the start. In 1971, the drama was very costly in U.S.-Japan relations. In 1973, the President's decision to call a global military alert with no Atlantic consultation drove a wedge into NATO unity which was then further pierced by European unwillingness to coordinate with Washington on Arab oil policy. Were the histrionics of personal presidential diplomacy worth the transpacific, transatlantic and hemispheric heartburn they caused -- and are still causing?

If the costs of secrecy in the name of national security can so readily outweigh the benefits even in crisis situations, it is even more important in the day-to-day politics of domestic and international policy-making to make sure, as Katzenbach suggests, that rationalizations of secrecy are not substituted for the reasons. One of the lessons from Watergate is, surely, that public officials are well advised to apply even to their secret actions the test of how they would look if scrutinized in public; so many secret actions do become widely known sooner or later anyway. The cautionary principle is: if the validity of your action depends on its secrecy, watch out! Perhaps this warning should be inscribed on the wall of the White House Cabinet Room where the National Security Council meets in times of tranquility and ad hoc advisors to the President gather in times of crisis.

IV.

But perhaps it should also be engraved on our own personal and nontransferable hearts. Maybe it's too easy for us to sit here and feel superior to the high officials who somehow thought they were invisible, even as they were recording on tape the highly visible sentiments that would bring them down and throw them out.

Let us therefore consider a more difficult question: how you and I, in our secret personal decisions from day to day, can tell whether we are acting as ethical human beings, and not as robots responding to an organizational ethic we have not presumed to review. And don't tell me that you're not interested because you don't work at the policy level. Remember, instead, Paul Appleby's definition of policy as "the decisions that are made at your level and higher."

Consider, for the illumination it casts on the ethics of secrecy, this fragment of American cultural history:

During the time when Charles Van Doren was pretending to be an intellectual giant on a rigged TV quiz show, and before he was caught in the act, he and his legitimately famous father, Mark Van Doren, were chosen as "The Father-and-Son Team of the Year" by the National Father's Day Committee. The grateful remarks that father and son made in accepting the award, read through the hindsight of Charles' later confession that his televised brilliance was a hoax, take on the quality of prophetic wisdom.

Father was the first to speak. Our later knowledge leaves his words untarnished:

> I claim no credit for [Charles'] being what he is . . . people make their own intellectual and moral characters. If he was helped in making his by me . . . it was he who decided to accept the help. The decision in such matters is finally with ourselves. To say that responsibility begins at home should mean, I think, that it begins -- and ends, too -- in the individual. Sooner or later he must help himself. There are no alibis.

Charles Van Doren then rose to accept his public's accolade, and spoke of his father.

> . . . He has been able to move me, to laughter and to tears, for as long as I can remember.
>
> Both in public and in private -- and that's of the greatest importance. For my father has been, to me, both a public and a private man. Oh, perhaps not as public a man as I have become recently. We have laughed about this, he and I . . . .
>
> But, my experience has reminded me of something that he taught me -- not consciously, I'm sure, but as an example. For the extraordinary thing about my father is that his public face and his private face have been the same. He has been the same man to the world as he has been to his family. And that [said Charles Van Doren] is harder than it sounds. It is the very definition of integrity, I suppose.

The quality of public ethics in our time and place rests in the first instance on the moral sensitivity, the political antennae, and the internalized standards of hundreds of thousands of public servants in thousands of public and "private" organizations. We are all, in some sense, responsible to the general public.

This is a hard doctrine. Each of us is already carrying around a wide assortment of tugs and pulls on his or her conscience -- family ties, loyalty to many organizations (neighborhood, church, commune, volunteer agencies, schools, professional associations, as well as "the job"), professional ethics, personal ambition, personal health, and personal convictions about life styles. Now we add to this already complex moral burden an elusive responsibility to an often apathetic general public. And we say that in consequence the public interest must be first defined for each person by that person, for each situation in that situation.

I observe that in facing practical problems many people still think there must be some formula, some overriding principle, some universal criterion of judgment and action which is objective and ascertainable: "Didn't he know that what he did was against the public interest?" But you know that there is no ethical realm, let alone a book about ethics, from which the individual faced with complex judgments can pluck the answers to the questions with which he faces himself. And paradoxically, the more complex things become, the more personal the ethical judgments have to be. Cultural pluralism, diffusion of power, and horizontalness of decision-making require us to think of the public interest not as a code of ethics for the world, or for the nation, or even for a single organization, but as a nontransferable way of thinking developed by each public servant for his or her own use.

In practice this way of thinking is compounded of the perceived standards of others, molded to fit one's own experience in trying to apply those standards to real-life problems. We start by deriving our "deep-down" feelings about public responsibility from our early environment -- from family and school and church, from the organizations with which we are perforce associated, from heroes and friends and villains and enemies. Then as we gain more experience, we develop our personal notions of what is right and wrong from the injustices we see practiced or find we are practicing ourselves, from the examples we see of social and antisocial behavior, from reading and listening, from experimenting with personal leadership. After a while, each person's ethical system is at least a little different from anyone else's. (The disagreements we call politics; if they are violent, we call them revolutions.)

As in the evolution of law, precedent and precept are some help. An analysis of the exercise of public responsibility in some historical situation, where we now think we know most of the relevant facts, may aid in solving tomorrow's similar (but never identical) problems for ourselves; hence the heavy use of "case method" teaching in law schools, business schools, and schools of public affairs and administration.

Wise sayings from Mencius and Aristotle, the Bible and the Founding Fathers, not to mention our own parents, may likewise be useful but hardly controlling; with a little help from a concordance of the Bible or Bartlett's Familiar Quotations, it is all too easy to find some pseudo-scriptural basis for whatever one really wants to do. New principles do not need to be written, by the public servant or his ghost writer; they all seem to have been uttered already by Old Testament prophets, Chinese and Indian sages,

the teachers and saviors of the world's great religions, the ancient Greeks and the early Christians. But they do not of course provide much guidance on what to do next -- how to cope with riots and poverty and discrimination, whether to deploy an ABM system or build another office building, what to do and who should do it in Berkeley and Newark and Angola and Vietnam, whether to tap someone's phone or rifle his files if the White House tells you it's all right. They are even less helpful in deciding how to chair a committee meeting or whether to hire Miss Smith. Some of our forefathers' wisdom may even be part of the problem. Pollution, urban decay, and the weapons of frightfulness are pretty directly traceable to the Age of Enlightenment.

Each of us, ethically independent individuals, thus has to apply to the reality around us the notions about procedure which we have gleaned from our own study and experience. But the most conspicuous component of that reality is the presence of other ethically independent individuals who are applying their differing criteria to our behavior. This requires us to develop judgments about the motivations of the publics in whose interests we presume to act, those same publics which will ultimately judge whether we measured up to a minimum standard of public responsibility for our time, place, and function.

In these circumstances a written code of ethics can never be comprehensive enough or subtle enough to be a satisfactory guide to personal behavior as a public servant. Louis Hector, a lawyer who served on the Civil Aeronautics Board, put it succinctly: general prescriptions, whether in the form of do's or don't's, are bound to be "so general as to be useless or so specific as to be unworkable."

V.

Lacking an affirmative code of ethics, I developed while I was working in the Federal Government a key question to ask myself just before getting committed to a line of action. The question was designed to reflect both the judgment which people-in-general might later make on my behavior and my own reaction in the face of that judgment. The question still seems to me well designed to compel me to project my own feelings in the dramatic rehearsal of imagined public scrutiny of my actions, and the procedures by which they are decided.

The question is not "Will I be criticized?" If I am operating in the area of public responsibility, the answer to that question is quite likely to be "Yes". The (to me) illuminating question is this:

> "If this action is held up to public scrutiny, will I still feel that it is what I should have done, and how I should have done it?"

I won't insult your intelligence, or your cultural memory, by applying the lesson to the Watergate affair. Suffice it to say that if Nixon, Haldeman, Ehrlichman, Mitchell and Co. had asked themselves the "will I still feel" question, they would not now be in the trouble they are in.

Indeed, if those involved had asked themselves this question and answered it honestly, most of the famous instances of public corruption which enliven and debase our political history might never have happened.

Sometimes the issues are large -- incestuous relations between the military services and their contractors, major diversions of public monies to private purposes. Teapot Dome and Dixon-Yates come readily to mind. But the human drama and pathos are not in the cases of international profiteering, but in ethically opaque behavior by upright men so confused by public complexity that the distinction between right and wrong gets blurred along with the line between "public" and "private".

If General Harry Vaughan in the Truman White House had asked himself whether the transaction depended for its acceptability on its not becoming public, he would never have accepted the deep-freeze that helped defeat the Democrats in 1952. If Sherman Adams in the Eisenhower White House had not considered his relations with Bernard Goldfine an untouchable private affair, he surely would not have stained his image of New England rectitude by accepting the gift of a vicuna coat. When Bobby Baker was trading Senatorial influence for business opportunities, did he think his powerful sponsorship made him invisible? When Harold Talbott wrote endorsements for his private management firm, using his official stationery as Secretary of the Air Force, only the public outcry and his consequent dismissal seemed to illuminate for him the ethical issue involved. Supreme Court Justice Abe Fortas, whose reputation as a lawyer was built by purveying sound and sensitive advice to clients operating in the no-man's land of public/private enterprise, could not have banked a fee from a stock manipulator if he had asked himself the "will I still feel" question. Vice President Agnew might have reached less eagerly for that plain envelope full of greenbacks if he had asked himself, "I wonder how this transaction would look on the 6 o'clock news tonight?"

Until the Watergate affair surpassed all previous records, the limiting case of ethical opacity was recorded shortly before an Assistant Attorney General, T. Lamar Caudle, drew a jail sentence for corruption in a former job as United States District Attorney in North Carolina. Caudle, according to Senator Paul Douglas of Illinois, "testified that he used to leave the side window of his automobile open when he parked it, and that he was always surprised by the wide variety of presents which were generously and anonymously thrown into the back seat by unknown admirers and friends."

"If this action is held up to public scrutiny, will I still feel that it is what I should have done, and how I should have done it?" If a TV cameraman had been taking pictures at My Lai that day, would Lieutenant William Calley have killed those Vietnamese civilians huddled in the ditch? War diffuses the responsibility for life-and-death decisions, and the central ethical question left by Calley's trial -- Calley was guilty of the murders, but who was responsible? -- was never resolved. In part Calley has to be adjudged responsible. In the field the local commander has considerable discretion.

The "will I still feel" question is intentionally two-edged. It is designed to prevent me (and anybody else who cares to use it) from playing God, taking the full ethical responsibility for a judgment which can ultimately be validated only by some relevant public. But it is also designed to avoid the equal and opposite danger: that an action about which I have doubts becomes all right if others -- my colleagues in an organization, my professional peers, my family, my friends and neighbors -- can be counted on not to object. Judging your actions by what others would think is as risky as judging them by what you alone think. William Attwood once reported on "an extreme and ironic case

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of neo-moral conformity in Colorado, where a man who did not chisel on his income tax boasted that he did. To be well regarded by his friends, he pretended to be doing what he assumed the group considered smart." The case of young Charles Van Doren, who cheated to make a TV quiz program successful, was only an especially dramatic instance of a person who thought he could transplant organizational ethics wholesale, without marrying them to a public responsibility concept of his own.

In another famous instance of the corruptive power of the mass media, Sam Snead found on the fourteenth hole of a televised golf tournament that he had one extra club in his bag and was therefore automatically disqualified. Instead of saying so forthwith, Snead finished out the match, but contrived to putt so badly that he lost. The show must go on, he must have felt, and the National Broadcasting Company thought so too: in full knowledge of Snead's unusual way of disqualifying himself, the network later aired the match without warning the television audience that Snead had deliberately "taken a dive" during the last few holes.

It is not clear that the television industry has yet learned the lesson. Just the other day it was revealed that a tennis match between Jimmy Connors and Ilie Nastase, presented by CBS as a "winner take all" contest for $250,000, was in fact an arrangement by which Connors got $500,000 and Nastase got $150,000, no matter who won.

VI.

People caught in ethical thickets such as these are often heard to blame their troubles on the System — the corruption of the mass media or the oppressive weight of the institution they serve. In the same way, the records of the Nuremburg trials are full of claims that higher authority had taken the ethical responsibility for action -- and the Watergate defendants kept suggesting that if the White House and the nation's chief law officer seemed to think their actions were all right, who were they to suppose those actions were illegal?

But what makes Americans free is precisely our freedom to go and do something else if -- in the only relevant judgment, which is inside each of us as ethical men and women -- we are asked to do something we regard as immoral or illegal. If we do not go and do something else, others have the right to presume that our moral discomfort is offset by the more tangible comforts of the positions we hold. We cannot claim to be <u>both</u> ashamed <u>and</u> oppressed — for that would relieve us of the private responsibility for our public actions which is, as Mark and Charles Van Doren agreed, the very definition of integrity.

Is there a CIA exception to this definition of integrity? I do not think so. I do not argue for universal openness; in fact I have frequently argued against it. There are many transactions and relationships which work better if they stay out of the newspapers. What I do argue is that even in those transactions and relationships which must be secret, it is essential to ask yourself whether, if and when the cover blows off, you

will still feel all right about your part in them. Quite pragmatically, that's a good question to ask because most secret actions will sooner or later leak out anyway. But even if you knew your secret action would be airtight forever, the imaginative projection of openness can help you decide whether you want to engage your personal responsibility by taking part. Always remember that your decision to take part is more your decision than anybody else's. Mark Van Doren was right. "There are no alibis."

A young professor named Woodrow Wilson recommended in 1887 that government administrators should "combine openness and vigor . . . with ready docility to all serious, well-sustained public criticism." It is still good advice. I have only added a cadenza -- that even in cases where the public cannot criticize because it doesn't know what goes on, those of us who do know should provide in our hearts what is missing on our desks -- by asking ourselves how we would feel if serious, well-sustained public criticism were suddenly to appear.

That makes each of our actions a choice. Choosing is often uncomfortable. But freedom is the power to choose, and the continuous exercise of our personal power to choose is the price of our personal freedom.

THE END

4560 Indian Rock Terrace, N.W.
Washington, D.C. 20007
202-338-5231

February 28, 1984

The Honorable Patricia Schroeder
Chairwoman
Subcommittee on Civil Service
Committee on Post Office and
Civil Service

Mr. Don Edwards
Chairman
Subcommittee on Civil and
Constitutional Rights
Committee on the Judiciary
122 Cannon House Office Bldg.
Washington, D.C. 20515

Dear Ms. Chairwoman and Mr. Chairman:

Thank you for inviting my comments with respect to National Security Decision Directive 84. I am pleased to contribute what I can to your understanding of this problem even though, as you know, the Administration seems to have withdrawn from its original approach.

My comments can largely be seen in the attached copy of testimony I gave to the Senate Committee on Governmental Affairs on September 13, 1983. This expresses the conclusions that I came to on the basis of my experience operating under a prepublication review system pursuant to my agreement with the Central Intelligence Agency. My testimony does not, however, specifically answer some of your questions, which I am very happy to do in the attached memorandum.

I have no objection to these comments being made a part of your record.

With respect and appreciation for the opportunity to present these views,

Sincerely,

William E. Colby

MEMORANDUM:

William E. Colby Responses

1. I have published one book, a number of newspaper and magazine articles and have been quite free in my comments on television, in interviews and radio. While I am responsible for protecting classified information in these activities, prepublication review is only required for items which I deliberately put to writing before publication. i.e., articles or books. It does not apply to spontaneous answers, interviews, participation in conferences, etc., provided there is no prior published text. On some occasions I have sought approval for matters in which I was requested to produce a text.

2. I was employed in the Central Intelligence Agency from 1950-1976 with one period of leave without pay from 1968-1971. As you know, I eventually became Director of Central Intelligence from 1973-1976. In this situation I had access to much sensitive compartmented information, although even in my senior role I did not require access to the technical details of some of the overall projects, which might be in separate compartments.

3. When I submitted material for prepublication review I submitted the entire text. In some situations, I made a judgement that the material that I was producing did not refer in any way to intelligence activities, and therefore did not require submission under my contract. This distinction is clearly drawn in the regulations of the Agency which cover the prepublication review process.

4. I submitted a number of writings for prepublication review and found the experience generally understandable, if a minor nuisance. The Central Intelligence Agency requested me to delete certain matters and I did so. I was permitted to demonstrate that the material had been de-classified on occasion. The length of time of review was not burdensome, as I understand the problems of the Agency in reviewing the large amount of material that they receive. I am quite confident that the Agency did not give me any favored treatment in its review and release of my material. On one occasion, as you well know, an early draft of some material was sent to my publisher with the understanding that the final version would be changed if the Agency required it. The publisher sent the early draft for translation for a French edition, and then failed to send the corrections, although he had made them in the English and other editions. The Agency proceeded against me for this violation of my contract and we eventually settled the matter with my payment of the approximate amount of my earnings from the French edition. The interesting aspect of that experience was that I took the offending material from a published article by a former high Defense Department officer, who was not under a prepublication review requirement. The Agency took the position that I should not publish this material even though he had violated the understandings he had made when he agreed to keep that material secret. Perhaps for this reason, I find myself in sympathy with the idea of including the recipients of sensitive compartmented information under a restriction similar to that applied to those of us who produce that information.

5. Expanding the use of the prepublication review system will, in my opinion, reduce the disclosure of the most sensitive compartmented information.

6. Based on my experience, I believe that it would be appropriate to require that persons under the prepublication review requirement be required to submit only material referring to intelligence or intelligence activities, for prepublication review, as is the case in my current situation with respect to CIA. Stretching it to include it to "all" publications does sweep too far for practical results, as it would apply to material having nothing to do with the information being protected. At the same time, I believe that if something appears which is in fact classified, it would be appropriate for the Government to require its excision even though it not be sensitive compartmented information. If the material is in the Government's hands, it can hardly ignore the fact that it is there and authorize its release. Limitation of the requirement, however, to material referring to intelligence activities, or even more restrictively to intelligence activities related to sensitive compartmented information, would do the protective job but not sweep in all sorts of extraneous material which would hardly serve the end being sought.

UNITED STATES SENATE

COMMITTEE ON GOVERNMENTAL AFFAIRS

TESTIMONY OF WILLIAM E. COLBY

DIRECTOR OF CENTRAL INTELLIGENCE 1973-1976

SEPTEMBER 13, 1983

Mr. Chairman, thank you for your invitation to testify during your committee's review of the Administration's National Security Decision Directive 84. I have long had an interest in the problems of protecting our government and especially our intelligence agencies against unauthorized leaks. I have also had some experience on the other side of the relationship as I have continued to write and speak publicly on the subject of intelligence after my departure from the government in 1976.

The subject of unauthorized disclosure of classified information has a long history in the United States. Congress has on several occasions refused to adopt a broad statute which would provide criminal sanctions for the mere disclosure of classified information. In part, this has been a reflection of Congress' inability to define the subject of classified information. It has only resolved this, in certain cases, by referring to information classified under executive order. In certain specified categories of information Congress has provided for punishment of unauthorized disclosure: restricted data with respect to nuclear information, communications intelligence and, I am pleased to say, the protection of intelligence sources, just

recently. In the background there, of course, is broader legislation referring to espionage or the conscious delivery of secret information to a foreign power, which is clearly punishable.

Even in these cases, however, the prosecution of such disclosures has proved to be very difficult, as the interagency committee whose studies led up to National Security Decision Directive 84 pointed out. The Congress has been helpful in reducing one of these problems through the Classified Information Procedures Act of 1980, limiting the ability of an accused to threaten disclosure of vast amounts of sensitive information in the event he is prosecuted. There are other problems in such prosecutions, however, including the requirement that the government actually confirm that the information released is accurate, which it may not wish to do in certain situations for very good reasons.

As a result of these problems, a series of Administrations have sought tools by which to limit the unauthorized disclosure of classified information. To prevent the publication of the Pentagon papers, an effort was made to obtain a preliminary injunction, which failed although there is language in some of the justices' opinions that such a remedy might be available in the case of "clear and irreparable damage to the United States".

As one of these efforts to reduce the unauthorized disclosure of classified information, the Central Intelligence Agency some years ago developed the concept of the private

contract which would not only bind the employee who signed it not to reveal the information to which he was to become privy but in which he also agreed to submit any future publications for prior review. This arrangement was given Supreme Court approval in the case of Mr. Frank Snepp, in which the court indicated that there might not only be a contract basis for such a requirement but also that the government official in such a sensitive field might be the subject of fiduciary trust as to the information involved. It is this approach which underlies National Security Decision Directive 84, extending beyond the limited intelligence agencies the agreement for prepublication review.

In the form in which the Directive expresses it, it has my full support. You will note that there is a distinct difference between the general commitment to respect the secrecy of the material to which an employee will become privy in the case of ordinary classified information and that covering sensitive compartmented information. Only the latter provides for prepublication review of future works by the employee in question. In my experience, Mr. Chairman, the sensitive compartmented information is quite a limited category of overall information and applies only to matters of truly high sensitivity. The dilemma has been that the intelligence officer dealing with this material has long been under a requirement for prepublication review of any materials he wishes to write on intelligence. The recipient of the information elsewhere in the government, who needs the information in order to do his job at a

high policy or defense level, has not been under a similar restriction. In my own personal experience, Mr. Chairman, I used the writings of a former high official of the Defense Department who wrote a very detailed description of a particular intelligence operation that I wished to cover in my book and repeated only what he published about the operation. In my prepublication review however, the Agency took the position that I should not make these statements and they were taken out of my book. A series of mistakes led to them appearing in one particular edition for which appropriate action was taken against me. If we believe that the intelligence officer should be under the prepublication restriction it seems only right that the recipient of the same information elsewhere in the government should be subject to the same controls.

At the same time, Mr. Chairman, I must confess that it is undignified for the United States to rest upon contract law to protect its sensitive classified information. It is also somewhat illogical for us to be making this effort to protect information against public disclosure while our protections against its private disclosure to other than foreign intelligence officers are so weak. Prepublication review also has many weaknesses both in practice in terms of adhering to a consistent standard over the years and in its reversal of well-established constitutional doctrine that prior restraint should be the last of the actions taken against the publication of opinion and discussion in our free society. While a sharply limited

prepublication review can certainly be justified in the absence of any better way of protecting us against unauthorized disclosure of classified information, I still believe that a frank and direct approach to this problem would be far preferable both in the light of our open democratic society and of the difficulties of consistent prepublication review.

Thus again, I suggest the desirability of a clear criminal sanction for the unauthorized disclosure of classified information. In deference to the problems involved in this subject, and the widespread existence of classified information, it would seem that a proper statute could be drawn which would not have too broad an impact but would still have the main function of deterring some of the more outrageous leaks and disclosures that go on in our government. Thus, it would seem that instead of a broad statute punishing the release of any classified information, a series of graduated steps could be made from a very minor and possibly only administrative sanction for the disclosure of confidential material to a misdemeanor for secret material to a felony for top secret material. Again, this should require only proof that the matter was properly classified at this level and not have as an issue in the case the question of injury to the United States, which admittedly is sometimes difficult to prove in a specific case but clearly exists in the light of the widespread leakage from our Government. In such a case of course arrangements could be made for the voluntary submission of material for prepublication review, the approval of

which of course would constitute a bar to prosecution. And in recognition that much of the so-call "leakage" that goes on in Washington actually consists of background interviews by senior officials with journalists and the senior official actually has authority to declassify the material, a provision could be made that the attributed release of classified information by an authorized official would not be a basis for prosecution whereas unattributed release could potentially place him within the provisions of the statute. A requirement that material given to our press be given in an attributed form in my opinion would reduce the amount of "leakage" by many orders of magnitude.

Mr. Chairman, we have wrestled with this problem of protecting classified information in our free society for many decades. While I sympathize with the Administration in this latest attempt to limit disclosure of the more sensitive material through a requirement for prepublication review, I do believe that we are never going to solve this problem unless we frankly face up to the definitional problem of classified information and establish as a national policy that its unauthorized disclosure is a criminal act. I respectfully suggest that the above technique would be one in which we could move in that direction.

The
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February 13, 1984

Don Edwards
Patricia Schroeder
Subcommittee on Civil Service
Committee on Post Office and Civil Service
U.S. House of Representatives
122 Cannon House Office Building
Washington, D.C. 20515

Dear Reps. Edwards and Schroeder,

I respond to your letter of January 31 asking for my experience with publication and prepublication review subsequent to government employment.

I am now employed as a professor of economics, and I write extensively for newspapers, specialized publications, and professional books and journals. During the period 1977-1981 I was Undersecretary of State for Economics Affairs, and as such I had access both to classified information in general and to small amounts of Sensitive Compartmental Information.

My publications all concern economic analysis or commentary on present and past developments in various aspects of the world economy. In doing so, I draw on open sources and use no classified information, much less SCI, although of course my judgments are often influenced by my government experience. I do not write in fields involving SCI, I have not submitted any publication for prepublication review, and therefore I have no experience with pre-publication review.

Your letter suggests that all former government officials with access to SCI must submit all their publications, including speeches and lectures, for prepublication review. If that is a correct interpretation of the Directive, I would object to it strongly. As noted above, I publish extensively (and lecture even more extensively), but these publications are not on topics that involve SCI. It would be preposterous and a wholly unnecessary burden on all concerned to require prepublication review of articles on the current foreign debt crisis or the world recession or the European agricultural policy simply because in

a particular period of the past I had access to SCI, which had no bearing on any of these topics. Furthermore, in practice it would be impossible to submit for prepublication review lectures that are given from notes scribbled on the back of an envelope, which I (and many others) occasionally do.

SCI can be very sensitive indeed, and leaks of it should be treated very seriously. But prepublication review should be limited to manuscripts which run some practical risk of disclosure, and the judgment whether this condition is met should be left to authors. They can and should be held accountable if they err and do publish sensitive information. Classifications should be kept up to date; sound reasons for classifying at one moment of time often disappear with the passage of time, and that should be allowed for in assessing (before or after) subsequent publications.

Sincerely yours,

Richard N. Cooper

Richard N. Cooper
Maurits C. Boas Professor of
International Economics
Harvard University

7735 - 40th Avenue NE
Seattle, Washington 98115
February 15, 1984

Patricia Schroeder, Chairwoman
Subcommittee on Civil Service
Committee on Post Office and Civil Service
U.S. House of Representatives
122 Cannon House Office Building
Washington, D. C. 20515

Dear Chairwoman Schroeder:

This is in response to your letter of January 31, 1984 in which you asked my views on the pre-publication review requirements of National Security Decision Directive 84. I have addressed only those questions raised in your letter and have not touched on the legal or constitutional aspects of this directive. My replies can be made part of the public record if you wish.

1. The only article I have written, published or otherwise, appeared in the Summer 1983 issue (Number 51) of Foreign Policy and was entitled "Taipei's Identity Crisis". It was, like a letter to the New York Times and a short piece for one of the Seattle papers, derived from my government experience.

2. I was in the Foreign Service from 1949 to 1979, moving from the bottom to the top. Also pertinent to this study was that after I officially retired in 1979 I became the first Director of the American Institute in Taiwan (AIT) which was the entity established by Congress to conduct our unofficial relations with Taiwan. I retired from that position in 1981 Therefore, from June, 1949 to September, 1981 I had access to classified information; from 1961 on I had access to and used some of the most sensitive kinds of information in my various jobs.

3. The article I wrote did not deal with a sensitive subject. The few statistics and quotes which were used I knew to be in the public domain. The views expressed were my own; and although many of them had been put forth earlier in classified form as policy suggestions, there was no need to make that connection to add credibility to the article. Thus, I did not submit any part of the article for review by anyone except the editors of Foreign Policy.

4. Not applicable.

5. and 6. Frankly, I think the Directive itself will prove to be impractical, and extension of it would only weaken it further. I don't believe you can direct or legislate discipline and integrity; attempts to do so will only shift the responsibility from the indiv-

idual to a "system" -- in this case one which is bound to become cumbersome and slow.

Most senior State Department officials dealing with substantive matters need SCI for their work, and they see a lot of it. However, in the briefings which accompany their clearances they are usually carefully informed as to the reasons why the information must be guarded and how it is to be protected from disclosure to unauthorized persons. They rapidly become familiar with the internal gradations and nuances of the various SCI categories and the permissable circumlocutions which might possibly be employed in discussing those matters. It all becomes part of their working lives, and they carry with them a good sense of what is really classified (i.e. should always be safeguarded) when they leave government service. Therefore, the danger of inadvertent leaks doesn't seem to me to be very great -- at least of truly sensitve information.

Deliberate use in publications and speeches of classifed material is another matter. The motive, obviously, is not to pass secrets to a foreign power but to make a point -- usually related to a policy issue. People who wish to do this will argue that the information is wrongly classified or that, in any case, there is a higher morality in revealing it. They would either disregard the pre-publication requirement or circumvent it by arranging for someone else to publicize the proscribed material.

Thus, pre-publication review would be largely unnecessary to prevent mistakes and would be ineffective in deterring purposeful leaks. The regulation is ill-advised, and I doubt whether it will be observed.

Probably the committee has looked into this, but it seems to me that the Freedom of Information process of clearing documents for publication or non-governmental use might be adapted to serve the avowed purposes of a pre-publication review. The steps in such a process could be the following:

1. The information to be covered would be strictly limited to that which is extremely sensitive, or the means of acquiring it must be protected at all costs.

2. Those individuals cleared for this information would undertake <u>never</u> to reveal it to unauthorized persons. (This is the case with certain kinds of intelligence already.) However, because some information or intelligence techniques lose their sensitivity in time, a special method of checking on whether that has happened would be made available to those who have left the government service. The formula for inquiring would be given to the official when he quits.

3. If an ex-government official felt he needed to use something on a protected subject, he would employ the formula

with the appropriate FOI unit, asking in effect, "What may I say about such and such.....?" If the answer were "Nothing", that would end the discussion. On the other hand, the FOI unit could provide a sanitized version which the ex-official could refer to in his subsequent writing. This is only slightly different from the standard FOI procedure available to everyone but would assure priority attention to sensitive matters, provide advance clearance and advice rather than censorship after writing, and implement a process which was clear-cut and, therefore, enforceable.

I hope the foregoing is of some use to your committee.

Sincerely,

Charles T. Cross

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January 27, 1984

Honorable Don Edwards, Chairman
Subcommittee on Civil and
Constitutional Rights
Committee on the Judiciary
House of Representatives
Washington, D. C. 20515

Honorable Patricia Schroeder, Chairwoman
Subcommittee on Civil Service
Committee on Post Office and
Civil Service
House of Representatives
Washington, D. C. 20515

Dear Mr. Edwards and Ms. Schroeder:

This will acknowledge and thank you for your letter of January 18, 1984 concerning National Security Decision Directive 84.

I believe the best way to answer your questions is to enclose a copy of my testimony before the Senate Committee on Governmental Affairs on this subject.

Sincerely,

Lloyd N. Cutler

Enclosure

row.

#09 STATEMENT OF LLOYD CUTLER, FORMER COUNSELOR TO PRESIDENT CARTER, WILMER, CUTLER AND PICKERING

#09 STATEMENT OF WILLIAM E. COLBY, FORMER DIRECTOR, CENTRAL INTELLIGENCE AGENCY

#09 STATEMENT OF ADMIRAL NOEL GAYLER, USN, RETIRED, FORMER DIRECTOR, NATIONAL SECURITY AGENCY

Mr. Cutler. Thank you very much, Mr. Chairman.

My name is Lloyd Cutler. I have had experience that goes back some time in the intelligence production agencies, and during the last year or so of the Carter Administration I was an intelligence consumer in my capacity as Counsel to the President. In that capacity, I struggled with some of the problems to which the new Directive is now aimed.

I have not presented any prepared testimony. I do have a outline which I think has been made available to the staff and should be available to you.

I am not an extremist one way or the other on this issue. As the chairman just observed, it is a very complex and difficult one. I do think that at least for intelligence agency personnel, producers of intelligence as distinguished from consumers, that some form of prepublication review probably is desirable to ensure that national security and especially intelligence security information is not disclosed. But I think the Snepp directive goes much too far and, as any

regulation in this area of speech should, does not strike a reasonable and satisfactory balance between the government's need for review and a present or former official's, especially a policy official's, right to speak out on matters of public interest.

The critical step beyond, the one more step that this Administration has taken that has never previously been taken, to my knowledge, is to impose a prior review requirement on policymakers in the government: Secretaries and Assistant Secretaries of State and Defense, former White House and National Security people. I don't think a case has been made that prior review of the statements of such officials is necessary to prevent serious breaches of intelligence security. I don't think a factual case has been made.

Beyond that, I think there is a real question whether the Snepp case, aimed as it was at a prior disclosure agreement with an intelligence producer, someone who went to work in an intelligence agency, can automatically be extended to all of the intelligence consumers, all of the policymakers, present and past, in the government. They don't present a Snepp type of case or a Marchetti type of case.

The public interest in access to the views of policymaking officials, present and past, in the foreign policy, national defense, and national security field is much higher than the public interest in access to the views of former intelligence

personnel. That is where I part company with the new Directive.

I won't stop to go over the reasons why it is important to protect intelligence information. I think the Administration makes a very sensible and a very good case for that. I won't even debate the proposition that for intelligence producing personnel, particularly those who wish to write books, let's say, about intelligence-gathering activities, whether real or fictional, it seems to me the case for prior review for the work, for the new statements or publications those people are going to produce is a reasonable case, and Snepp certainly confirms that. Even the lower court's opinion in the Snepp case accepted that.

Prepublication review, of course, is never cost-free. All prior restraints involve some suppression of speech. The case is probably a justifiable one, in the case of intelligence producing personnel, particularly career personnel, who make that bargain when they go into the intelligence services.

It obviously has potential for abuse. I don't think anyone can make the case that there has been abuse to date; that is, censorship going beyond the censorship of intelligence information. But there is always the prospect of the chilling effect, the prevention of even speech that would not have been restrained if it had been reviewed, that exists with any form

of standing prior restraint. It is just too much trouble to go through the clearance and the clearance process can operate to prohibit speech.

But I do think the case falls down in trying to establish that policymakers, and no one suggests deliberately, but even inadvertently, ~~policymakers rarely~~ do commit serious breaches of intelligence security; and the laws that exist which would punish such breaches, and the opprobium, the disgrace a policymaker brings on himself when he commits such a breach ought to be sufficient without imposing this prior review requirement.

Furthermore --

Senator Mathias. Mr. Cutler, I don't want to be guilty of suppression of speech, and I apologize to you because before you entered the room we had agreed on a five-minute oral presentation --

Mr. Cutler. I am sorry. I will just finish up then.

Senator Mathias. It is my fault for not having advised you of the five-minute rule.

Mr. Cutler. Forgive me.

The prior review requirement, moreover, is wholly impractical when it comes to interviews with the press, when it comes to op. ed. pieces, even when it comes to short articles with very short publication times. The best proof of that is that the government, to my knowledge, even though it has had

these agreements in effect for a while, enver has invoked them in the case of interviews or even of op. ed. pieces. Nothing happens when somebody just gives that.

Beyond that, there are issues, of course, on which policymakers must speak. Let's take, for example, the issue of verification of arms control agreements through so-called national technical means. Over and over again, in the SALT 2 hearings, as one example, the issue arose -- and it was a public, debated issue -- are our means of verification adequate.

Mr. Willard has said you can speak freely as long as you don't disclose any of this type of information. But simply for a policymaker to express the opinion that our means of verification are adequate, reading these restraints literally, would require prior review, because he is dealing with sensitive compartmented information and its existence. The same would be true as to what we spend on it, what new types of satellites we have, and other things, much of which is highly classified.

I submit no real harm has been done by permitting policymakers to give statements on issues of this type, subject to the criminal laws and the orders not to disclose anything of intelligence value without imposing on them the prior restraint requirement.

Senator Mathias. Thank you, Mr. Cutler.

Admiral Gayler?

Admiral Gayler. My name is Noel Gayler. I am a Retired Admiral of the Navy, at one time Director of the National Security Agency, at one time Commander-in-Chief of U.S. Forces in the Pacific.

I want to talk this morning not specifically to the Directive but to the characteristics of the information needing protection and some practical observations on what is effective in that protection.

I think it is taken as a given, for example, that all United States codes and ciphers, and the policy is that they should be protected, is beyond dispute. I do observe, however, that large volumes purpprting to deal with inside information on this have been published in this country, and only their general inaccuracy has saved them from doing considerable damage.

More important is signals intelligence, what is derived from reading communications. For example, those having to do with the shoot down of the Korean airliner; information from other than communications; radar, telemetry; the measures and the counter-measures and support measures in this wizard war of electronics, all of that has to be protected at a very high level of classification. Clearly agents and agent operations dealing with collection of information. In that I would not personally include, however, operations in massive. They are

bound to be disclosed, or ones having to do with what we call dirty tricks, rather than the collection of intelligence. And certainly counterintelligence methods and results, the way in which spies are detected, deserves high classification.

Characteristics of this kind of information are, first, that you lose it if it becomes knowledge to the adversary; second, that lives are often at stake; third, that the national security interest is involved, not only in peacetime but particularly if there were hostilities, and some of the methods that we have should be reserved and protected against the contingency of military action. The fourth and the most difficult is that some of these things can be deduced rather readily from disclosure of product. That is to say if you know what a Soviet pilot said on a particular occasion, it is not much of a deduction to figure that you are monitoring his radio transmissions.

The further characteristic of this sort of information and these sources is that they do need careful oversight for reasons of public policy, but that that oversight should not be public. The methods used have to be consistent with our American ethos and constitutionality. This should be an appeals process, but, unfortunately, outsiders to the intelligence community are not in a position to judge the damage that will be done from a particular disclosure. Then, of course, there is the case where disclosure is in the public

interest, and it is certainly the President's right and duty to determine those circumstances.

The policy problems will be covered by other witnesses. I see that I am short on time, so I will come to my bottom line, which is that I believe protection rather than being broad should be selective and narrow, that the distribution of this material should be much narrower than it is at present, that there is a major distinction between SCI and other classified material, that long-term protection is justified only in very special cases having to do with intelligence methods, and that competent monitoring and watchdogging is necessary for these things which are protected from public disclosure. So I would rather that we protect very carefully special categories supervised at an independent level through thoughtful and carefully drawn directives and use the rifle rather than the shotgun approach.

Thank you.

Senator Mathias. Thank you.

Mr. Colby?

Mr. Colby. Mr. Chairman, thank you for inviting us today. I will not repeat my prepared testimony but merely make two overall points, Mr. Chairman.

(The statement follows:)

Mr. Colby. I have had experience on both sides of this question, enforcing these agreements and having them enforced against me, so I think I can see both sides of the problem and where it is and what it is like.

The fact is that this Directive I support. I support it because it is limited to a very critical kind of intelligence, the sensitive compartmented intelligence. This is not a broad provision. It is a very narrow category of very highly sensitive kinds of information. They are carefully controlled in the Administration. They are carefully documented in most cases. A careful inventory is kept of this material and, at a certain period, in some cases, it is moved out of the sensitive category into another category, when it becomes less sensitive. So that we are only talking about protection of a particular kind of information.

Now, in that process, the intelligence officers are under a prepublication review requirement under their Directive, under their contract. However, in my own case, for instance, I know of one particular case where I was barred from saying something about a particular activity, even though a fellow high officer in the United States Government had just written an article about it describing it in considerable detail.

Now I used his article when I wrote my material and submitted it. I have a question as to whether the government

was actually right in asking me not to. But I do understand that they have a basis for it. I understand their rationale. And I agreed a long time ago to let them make the decision. The question is why should the producer be under that restriction and the recipient of it under no controls of that nature? I think that is not quite appropriate, and I support the effort to include the recipients of this highly sensitive information in the prepublication review.

Once the material is in the government's hands, of course, it is going to be looking for all classified material. There is nothing you can do about that. But that doesn't mean that all classified material is being subjected to the prepublication review requirement. It is only recipients of the sensitive information that are covered by that requirement.

The second major point I would make, Mr. Chairman, is that this prepublication contract and the various other things are desperation efforts by the government and a whole series of administrations over the years to compensate for the fact that Congress has never adequately moved to protect our classified information. Congress has walked up to this particular trench on several occasions in the early 1900s, in the 1930s, the 1940s, various times, and each time thrown up its hands and said I can't really define classified information adequately. I can't figure out what kind of restraints and what kind of punishments we should have for the release of it,

and, consequently, left the field wide open.

As a result, the administrations, on a series of occasions, have developed these techniques, such as the contracts, the prior prepublication review and so forth, in a desperate effort to control the leakage that occurs.

Now I think the real way that our government should be protecting its classified information is by some more direct method than going through the legal gimmickry of a contract with its employees. I think there ought to be a clear criminal sanction for the release of classified information.

Now, that can be graduated by the seriousness of the information. It can be applied to various recipients of various kinds who have a particular position of responsibility. And I would think that a law could be developed which would give us a reasonable criminal sanction for the release of classified information and then obviate the need for this kind of legal gimmickry in order to protect our secrets.

Thank you, Mr. Chairman.

Senator Mathias. Thank you, Mr. Colby.

Mr. Cutler spoke of the possible chilling effect. Of course, that recalls the purposes for which the First Amendment was adopted, to promote the freest possible flow of information, of opinion, of argument, discussion, all of which was conceived by the founding fathers to be a necessary ingredient to a free government.

Let me ask, and perhaps it would be useful to ask each of you, because you were all in the same boat on this, what would you do if you were the subject to one of these agreements and you had some doubt -- Mr. Colby has in part answered this question -- but you had some doubt as to whether or not you were required to submit your manuscript? If you guess wrong, you could be facing an injunction, so you are going to be cautious about it. What would be your personal view, if you sat down in your study, took up your pen, and began to meditate on some of your personal experiences? How would you feel? Would you rather submit it for publication review or would you rather tailor the article?

Mr. Cutler. If I were writing a book, Mr. Chairman, I have seen relatively little difficulty in submitting a book or even let's say an article for The Atlantic Monthly or Harper's to prepublication review. When it comes to giving an oral interview or responding to a request to write something for the op. ed. page of The Washington Post or volunteering to write something like that for publication three or four days later on an issue of immediate importance, like the shoot down of Korean Flight 007, which almost certainly involves SCI, it seems to me it does have a chilling effect.

Thinking back, if I were back in the White House again, if there had been such an order, or such a rule in effect, in one way it would have helped me. I could have told a lot of

reporters I can't give you an interview, period. But there is a public interest in visible policymaking, public officials being accountable to the press. And I don't see how you can accommodate that with this kind of a requirement.

We can't have somebody sitting deep in the NSC basement in the White House fielding questions from the 500 presidential appointees who the press talks to every day about major international incidents. It just isn't going to work.

A much better method for the government, if it is this important to protect itself, and I agree it is, is to do what Admiral Gayler said, and that is very sharply restrict the number of people with access to SCI and much more clearly identify in the publications that circulate within the intelligence community to consumers what is and what is not SCI.

There is a sort of lust to publish and be first with the scoop among the various intelligence agencies who print daily or weekly items of one kind or another that leads to far too indiscriminate distribution of SCI material. I imagine all three of us would agree on that.

Senator Mathias. Admiral, do you want to comment on that question?

Admiral Gayler. The answer has to be personal. I wouldn't have any personal difficulty, I don't think, in distinguishing between SCI and other kinds of information.

I would certainly not write in the first instance for publication on SCI.

The other point I think has to do with the permanent nature of the disclosure, where intelligence methods or real secrets of state, if you will, are involved. One can understand a permanent restriction. The rest of it is so omniscient that it seems to me that fairly prompt declassification is usually okay.

Mr. Colby. Two items, Mr. Chairman. I have submitted material. I have submitted a book and I intend to submit another one. I have submitted articles. I have submitted short pieces, long pieces, various kinds of pieces. I have never had any real problem. I have been asked not to say certain things and I have complied, and I have tried to live up to that agreement. It has not been a limitation on my ability to operate, to talk, to cover subjects, and so forth.

I have gotten rather rapid responses from the agency to my submission. I have had sensible exceptions to the things that I have wanted to say and not arbitrary ones. There are some that I have disagreed with slightly, but I understand why they did it and I consequently haven't objected to that.

With respect to the problem of the oral leak, Mr. Chairman, there is a very simple way to solve that one. You asked how are you going to solve that in our government. It is very simple. If it is attributed and the officer has

authority to declassify it, fine. It is the unattributed one where you get the real leaks. All you have to do is make that rule and you will have an end to the problem.

Senator Mathias. Thank you very much, Mr. Colby.

Senator Eagleton?

Senator Eagleton. Mr. Colby, I am a little hard of hearing. I think I heard you say you do support this Directive.

Mr. Colby. Yes. I wouldn't support every little word in it, but in general I understand the reason for it.

Senator Eagleton. I thought I heard you say you found the categories in the Directive were clear.

Mr. Colby. I think reasonably, yes. Operating under this kind of Directive myself, I haven't had any trouble.

Senator Eagleton. But this Directive goes beyond anything that you have operated under, in my opinion. Not only does it deal with SCI -- and I guess we are unanimous on the committee that we would agree that SCI ought to be covered -- but it deals with the following kinds of materials, and I am going to quote the exact words from the Directive. Paragraph 1, it deals with materials that are "classifiable." Paragraph 5, sub C, it deals with materials that are "information concerning intelligence activities." Paragraph 7, it deals with materials "subject to classification."

Now, SCI is clear to me, and abundantly clear to you.

You dealt with it all your life. But words such as "classifiable," or "subject to classification," or "information concerning intelligence activities," that is less clear to me, much more broad, much more sweeping. Are you comfortable with that language?

Mr. Colby. We are talking, in the first place, Senator, of a group of people who are given access to highly sensitive material. When they take on that access, they take additional responsibility to protect not only that material but other intelligence activities.

The reason for the "subject to classification" or "classifiable" as a legal term is if you can find someplace that the thing had not actually been stamped, although it has the name of our principal agent in country "Y," then you would say well, it isn't classified, and still it is very important that it should be classified. That is why that phrase is in there.

But the context of the Directive I think is fairly clear. It applies basically to people who received SCI clearance and it says that they will keep their mouths shut about intelligence activities. That is essentially what it says and it is not our duty to interpret that.

Senator Eagleton. It troubles me, because I think the sweep is much broader than SCI and maybe isn't as readily discernible as you make it out to be. Do I interpret your

testimony where you were critical of Congress -- and we are subject to frequent criticism --

Mr. Colby. You haven't solved the problem.

Senator Eagleton. That is perfectly permissible.

Do you favor some sort of official secrets act similar to what they have in Great Britain?

Mr. Colby. That would be totally unconstitutional, Senator. No, I do not. But I think a reasonable kind of an act where you have to prove that the material was properly classified as part of the indictment, that we could have a statute that would protect classified information. You could have gradations of the seriousness of it, affecting whether it is a misdemeanor or felony or whatever. I think you can work it out.

Senator Eagleton. Mr. Cutler, let me ask you a similar question.

Mr. Colby. And it would eliminate the need for prior restraint, incidentally.

Senator Eagleton. I understand.

Mr. Colby. That is the benefit of it, that it puts it right smack on the criminal level. If you want to go ahead and publish it at risk, go ahead, take your chances. Today you can go ahead and nothing happens at all.

Senator Eagleton. Mr. Cutler, as a pretty distinguished attorney, are you at all troubled by some of the phraseology

in this Directive which I read to Mr. Colby: paragraph 1 referring to information that is "classifiable"; paragraph 7, material that is "subject to classification," and paragraph 5(c), "information concerning intelligence activities"? Is that language of art that is sufficiently specific as far as you are concerned?

Mr. Cutler. No, I don't think it is, Senator Eagleton. I think also it is discriminatory in the sense that, as you will notice, in the agreements signed by persons who receive classified information, not rising to the level of SCI, there is no prior review requirement. They are not subjected to prior review. They are required not to disclose it, but they have no prior review as to classified information falling short of SCI. If you have SCI information, then you have a prior restraint requirement both as to SCI information and lower levels of classified information.

I can understand why they do that, because of the difficulty the user has in discriminating between what he heard from an SCI source and what he heard from a less important but classified source. The answer to that I think is in restricting the circulation of the SCI information and not commingling it with other types of classified information, as is now done.

Senator Eagleton. Thank you very much.

Senator Mathias. Senator Bingaman?

Senator Bingaman. Let me just ask, maybe Mr. Cutler, or if either of the other witnesses want to comment, how large a group are we talking about here that are subject to this prepublication requirement? I asked General Stilwell, and I think he said that he thought maybe 100,000 people in the Defense Department would be subject to the prepublication requirement, as I understood his testimony. Is that your understanding?

Mr. Cutler. This is on SCI?

Senator Bingaman. I believe that is what he was referring to. He didn't distinguish exactly.

Mr. Cutler. I don't know, but I would imagine if it is that high, 95 percent of them must be producers of information rather than users. But this new Directive does subject certainly hundreds, and possibly thousands, of non-producers, but policymakers, in Defense, State, other departments, and the White House to a new prior review, prior restraint requirement, that was never put on them before.

Senator Bingaman. With regard to this, I think you also said, Mr. Cutler, in your testimony that there was at the present time no real enforcement of the requirement for prepublication review and that people could write letters to the editor or whatever without having them reviewed and there was really no sanction imposed.

Mr. Cutler. They do, and no one does anything about it.

The clearest case, of course, is while the Directive reads in terms of press queries and oral statements to the press, I have never heard of anyone in or out of an administration subject to this requirement who has been even chastised for giving an interview without prior clearance, unless perhaps in the rare case where he actually does disclose some SCI information. But nobody follows this requirement, and nobody will. It is just totally impractical.

Senator Bingaman. Assume that is the case, that nobody will follow it and nobody is following it. Do we have a situation where the only enforcement that might take place would have to be a very selective type of enforcement for some type of political or other reason that the matter would rise to such a profile or stature that the Justice Department would get involved?

Mr. Cutler. For the oral interview type of case, disclosure, or the short lead time op. ed. piece, it seems to me there are going to be very few cases in which this rule will be followed by persons subject to the agreement.

Senator Bingaman. Let me ask you one other question in an area that we really didn't get into and that you didn't get into in your prepared comments, but you talked about the chilling effect of the prepublication requirement. Would you have an opinion as to the chilling effect of the broadened requirement of polygraph examinations of

government officials and employees that is contemplated in this Directive?

Mr. Cutler. I have a great deal of concern about polygraph requirements, Senator Bingaman. I appreciate that they have a certain ~~interregnum~~ effect on employees and the knowledge that there may be such tests will tend to deter people from violating their commitments. But I have so little confidence in the accuracy of polygraphs -- we don't accept them in any court, you know. They are not valid under civil service regulations as a basis for discharging any employee -- that I hesitate to see polygraph usage rules extended.

I am very glad that I managed to come in and get out of the government without ever having to be subjected to a polygraph test myself. I don't know what I would have done or how I would have come out.

I did have a few cases in which I had to pass on the use of polygraphs as applied to other people, and the whole subject troubles me very much. I regret any extension of polygraph usage.

Mr. Colby. Senator Bingaman, may I comment on that?

Senator Bingaman. Certainly.

Mr. Colby. I have taken a polygraph twice. It is a miserable experience, no doubt about it. But we in CIA some years ago reported to one of the committees of I believe the House that we would have hired 150 people but for the fact of

what came out after they were put through the polygraph. In other words, we had done the other investigations on them and apparently nothing much. It is not that they flunked the polygraph, don't get me wrong. It is what came out as a result of the discussions, using the polygraph. And these people would have been hired despite very negative things in their background that we didn't know anything about.

Now this polygraph use is not that kind of a clearance. It is an investigative aid, as was clearly pointed out. It has to be supplemented by other real evidence. So I think there is a case for using it, as one can use various other kinds of investigative aids.

Senator Bingaman. I see my time is up. Thank you, Mr. Chairman.

Senator Mathias. Senator Eagleton had one question.

Senator Eagleton. Yes. I have one question for Admiral Gayler. Admiral, would you comment on the dilemma raised by Mr. Cutler in his opening statement; to wit, assume this: Assume the President at some later date comes in with an INF treaty or a START treaty. Assume that you think the treaty is very adverse to our national interests, because of inadequate verification. Would this Directive constrain you from speaking out vigorously and with specificity as to why you were alarmed by what you deemed to be inadequate verification techniques called for in the treaty?

Admiral Gayler. I don't think it would be proper to have a public discussion of verification techniques which fall into the category of SCI. In an instance like that, I think that the degree of verification possible should be ascertained, if necessary, independently by appropriate committees of the Congress in classified sessions where they could make an independent judgment as to their adequacy. I do not think that it falls within this category of public advocacy, however.

Senator Eagleton. Would you feel free to write an article expressing your reluctance to support the treaty because of inadequate verification?

Admiral Gayler. Senator, this is a tough one for me. I would never write such an article because I think the requirements for verification which most people believe are absurdly high and detailed, that's another subject, but the amount of cheating required to make any difference in a nuclear exchange is so enormous that the question is almost moot.

Senator Eagleton. Thank you.

Mr. Cutler. Could I respond just briefly to that, or comment, Senator Eagleton?

I agree with Admiral Gayler, that detailed discussion of the verification techniques that come within SCI probably should be avoided. But let me put to you a hypothetical which may not turn out to be very hypothetical. That is that the

Administration declines to go forward with a particular type of arms control agreement on the ground that it would not be sufficiently verifiable, and there are sincere people, let us say from former administrations, with experience in the field and up-to-date knowledge of what our techniques are who believe that is wrong, that verification is at least adequate, and that you should go forward with the treaty. And the central issue is the adequacy of the verification techniques.

At the very least, they ought to be able to say that in their judgment these techniques are adequate and give at least some detail. It would have to be detail that did not compromise us in any way, I recognize that, but enough to enter into the debate. This requirement, if it applied to those individuals, if they had to sign a piece of paper like this, I think would be very inhibiting.

Senator Eagleton. Would you care to comment on that, Mr. Colby?

Mr. Colby. Senator Eagleton, I have spoken out on the verification subject. I have obviously left out the kinds of data Admiral Gayler has mentioned. I have received clearance for my statements. All you have to do is submit it and they will take out something which is really something they do not want said for a good reason. But as to your policy position, you can be either for it or against it and they will send it right back to you.

Senator Mathias. That raises just one quick question of perception, the public perception. Now after this hearing, more Americans are going to be aware of this preclearance concept. Each of you have been extraordinarly articulate and vocal on a number of subjects. You have contributed to the public education, the public knowledge of a number of issues. In each case it was Lloyd Cutler or Noel Gayler or Bill Colby speaking, and the public accepted that.

What will be the perception after there is widespread knowledge of the fact that there had to be some preclearance? Is that going to change the way the public views what you say and what you write?

Admiral Gayler. In effect, you are asking if it raises a question of candor, would we be able to be candid?

Senator Mathias. Yes. It is the other end of the chilling question.

Admiral Gayler. I think I am with Mr. Colby, that generally you can talk to the policy matters without getting into intelligence details of the kind that I think should be very carefully protected. I don't think there is any difficulty in saying that this is your belief, that within the necessary limits you can verify this, that or the other, without saying publicly how you think it might be verified.

Mr. Colby. I have debated this issue with good friends like General Stilwell, publicly, during the SALT 2 discussions.

He was against it and I was for it.

Mr. Cutler. I would come back to the distinction I drew earlier between the intelligence producers and the policy-makers, the intelligence consumers in the government. But if every time Cy Vance or Warren Christopher or former President Carter or Mr. Brzezinski or Henry Kissinger got into a debate on any of these various subjects, whatever he said, even his oral statements to reporters, that he had to go through somebody sitting in the bowels of the White House, it seems to me that does detract from public credibility about the integrity of the debate.

Senator Mathias. Gentlemen, we are under some pressure of time. I am wondering if there are further questions from the committee if you would be willing to answer them in writing for the record.

Mr. Cutler. Of course.

Mr. Colby. Yes.

Admiral Gayler. Yes.

Senator Mathias. Thank you very much for being here.

Our next panel is Dr. David Lykken, Professor of Psychiatry and Psychology, Department of Psychiatry, University of Minnesota Medical School; and Mr. Norman Ansley, Chief, Polygraph Division, Office of Security, National Security Agency.

SEPTEMBER 13, 1983

OUTLINE OF TESTIMONY
OF LLOYD N. CUTLER
BEFORE COMMITTEE ON GOVERNMENTAL AFFAIRS
ON NSDD-84 AGREEMENTS

SUMMARY: SOME FORM OF PREPUBLICATION REVIEW, AT LEAST FOR INTELLIGENCE AGENCY PERSONNEL, PROBABLY IS DESIRABLE TO ENSURE THAT NATIONAL SECURITY AND INTELLIGENCE INFORMATION IS NOT DISCLOSED, BUT THE SNEPP DIRECTIVE DOES NOT STRIKE A REASONABLE OR SATISFACTORY BALANCE BETWEEN THE GOVERNMENT'S NEED FOR REVIEW AND THE PRESENT OR FORMER EMPLOYEE'S RIGHT TO SPEAK OUT ON MATTERS OF PUBLIC INTEREST.

I. DISCLOSURE OF SECURITY AND INTELLIGENCE INFORMATION IS A PROBLEM THAT DESERVES TO BE ADDRESSED

   A. DISCLOSURE IS, BY DEFINITION, HARMFUL TO U.S. INTERESTS

   B. DISCLOSURE FREQUENTLY IS INADVERTENT; MAY OCCUR DESPITE THE EFFORTS OF AUTHORS NOT TO INCLUDE OR REVEAL SUCH INFORMATION IN THEIR WORKS

II. PREPUBLICATION REVIEW MAY BE NECESSARY IN SOME CIRCUMSTANCES

A. PRESENT OR FORMER EMPLOYEES WHOSE DUTIES INVOLVE THE GENERATION OR REVIEW OF SCI ON A DAILY BASIS MAY HAVE DIFFICULTY WRITING ABOUT THEIR AGENCY AND ITS ACTIVITIES WITHOUT DISCLOSING SCI

B. THIS MAY BE PARTICULARLY LIKELY WHERE THE AUTHOR'S RESPONSIBILITIES WERE NARROWLY FOCUSSED; MAY LACK THE BACKGROUND TO SEE THE TRUE SIGNIFICANCE OF INFORMATION HE GENERATED OR REVIEWED

C. IN SOME SUCH CIRCUMSTANCES, PREPUBLICATION REVIEW MAY BE THE ONLY WAY TO ENSURE THAT SCI IS NOT DISCLOSED

III. BUT PREPUBLICATION REVIEW IS NOT COST-FREE

A. AT A MINIMUM, IT DELAYS PUBLICATION OF UNCLASSIFIED MATERIAL THAT IS OF INTEREST TO THE PUBLIC

1. SOME DELAY IS INHERENT IN THE REVIEW PROCESS

2. IF AUTHOR DISAGREES WITH REVIEWING AGENCY'S DECISION AND WISHES TO CHALLENGE IT, PUBLICATION MAY BE DELAYED FOR MONTHS OR EVEN YEARS

B. IT HAS POTENTIAL FOR ABUSE

1. NECESSARILY INVOLVES THE EXERCISE OF JUDGMENT AS TO WHETHER PUBLICATION WOULD REVEAL CLASSIFIED INFORMATION OR SCI

2. REVIEWING AGENCY MAY CONSCIOUSLY OR UNCONSCIOUSLY TAKE A MORE RESTRICTIVE VIEW OF MATERIAL THAT IS CRITICAL RATHER THAN FAVORABLE

3. GIVES GOVERNMENT ADVANCE NOTICE OF, AND OPPORTUNITY TO DISARM, CRITICISM

4. EVEN IF THE SYSTEM OPERATES NEUTRALLY, IT IS UNSEEMLY FOR THE GOVERNMENT TO PRESCREEN MATERIAL DEALING WITH GOVERNMENTAL AFFAIRS THAT IS INTENDED FOR PUBLICATION

IV. GIVEN THIS TENSION BETWEEN THE GOVERNMENT'S COMPELLING INTEREST IN PREVENTING DISCLOSURE OF SCI AND CLASSIFIED INFORMATION, AND THE PRESENT OR FORMER EMPLOYEE'S FIRST AMENDMENT INTEREST IN BEING ABLE TO SPEAK FREELY ON MATTERS OF PUBLIC INTEREST, PREPUBLICATION REVIEW MAY BE REQUIRED ONLY WHERE, AND TO THE EXTENT, NECESSARY TO PROTECT THE GOVERNMENT'S INTEREST

A. SUPREME COURT'S CASES RECOGNIZE THAT, EVEN WHEN RESTRICTIONS ON PROTECTED SPEECH ARE JUSTIFIED BY A COMPELLING GOVERNMENTAL INTEREST, SUCH RESTRICTIONS MUST BE CLOSELY DRAWN TO AVOID IMPINGING UNNECESSARILY ON FIRST AMENDMENT INTERESTS

SEE SNEPP V. UNITED STATES, 444 U.S. 507, 509 N.3 (1980) (ENFORCING SNEPP'S CONTRACTUAL AGREEMENT AS "A REASONABLE MEANS FOR PROTECTING THIS VITAL INTEREST" IN PROTECTING THE SECRECY OF INFORMATION AND THE APPEARANCE OF CONFIDENTIALITY, AND CITING CASES UPHOLDING OTHER RESTRICTIONS ON POLITICAL ACTIVITY AS LEAST RESTRICTIVE MEANS OF SERVING COMPELLING GOVERNMENTAL INTERESTS).

B. TOUCHSTONE IS REASONABLENESS; PREPUBLICATION REVIEW REQUIREMENT THAT IS MORE RESTRICTIVE THAN NECESSARY TO SERVE THE GOVERNMENT'S INTEREST IS INVALID

C. A FACIALLY INVALID RESTRICTION ON PROTECTED SPEECH IS NOT JUSTIFIED MERELY BECAUSE IT IS IMPOSED BY AN ADHESION CONTRACT

V. THE SNEPP DIRECTIVE'S PREPUBLICATION REVIEW REQUIREMENT IS UNREASONABLE IN SEVERAL RESPECTS

A. APPLIES TO ALL PERSONNEL WHO HAVE ACCESS TO SCI

1. THERE ARE VAST DIFFERENCES BETWEEN INTELLIGENCE PERSONNEL, WHOSE DUTIES CENTER ON THE GENERATION AND REVIEW OF SCI, AND POLICY-MAKING OFFICIALS, WHOSE DUTIES CENTER ON NONCONFIDENTIAL MATTERS AND ONLY INCIDENTALLY INVOLVE THE USE OF SCI AND CLASSIFIED INFORMATION

   A. POLICY-MAKERS ARE LESS LIKELY TO DISCUSS INTELLIGENCE OR NATIONAL SECURITY INFORMATION IN PRINT BECAUSE THEIR FOCUS IS ELSEWHERE

   B. POLICY-MAKERS ARE BETTER ABLE TO SCREEN OUT SCI AND CLASSIFIED INFORMATION BECAUSE IT CONSTITUTES A RELATIVELY SMALL AND READILY IDENTIFIABLE PORTION OF THE INFORMATION THEY RECEIVE, AND BECAUSE THEY CAN "WRITE AROUND" IT WITHOUT DESTROYING THE CONTINUITY OF THEIR ARGUMENTS

   C. THERE IS A HIGHER PUBLIC INTEREST IN FREE COMMENT BY POLICY-MAKERS, PRESENT AND PAST.

D. PREPUBLICATION REVIEW REQUIREMENTS TEND TO BE MORE BURDENSOME FOR POLICY-MAKERS THAN FOR INTELLIGENCE PERSONNEL BECAUSE POLICY-MAKERS FREQUENTLY ARE CALLED UPON TO SPEAK OR WRITE ON MATTERS AS TO WHICH TIMING IS CRUCIAL

2. THESE DIFFERENCES JUSTIFY TREATING POLICY-MAKING OFFICIALS DIFFERENTLY THAN INTELLIGENCE PERSONNEL

B. DIRECTIVE DOES NOT DISTINGUISH BETWEEN DIFFERENT KINDS OF MATERIAL INTENDED FOR PUBLICATION

1. PREPUBLICATION REVIEW OF SPEECHES, INTERVIEWS AND OTHER ORAL STATEMENTS IS TOTALLY IMPRACTICAL AND PLAINLY UNREASONABLE, ESPECIALLY FOR PRESENT AND FORMER POLICY-MAKERS

A. BOTH NSC AND CIA APPARENTLY RECOGNIZE THAT FACT BECAUSE THEY DO NOT REQUIRE PRIOR CLEARANCE OF ORAL STATEMENTS IN PRACTICE

B. UNTIL 1980, POLICY-MAKERS WERE NOT SUBJECT TO PRIOR REVIEW, AND NO MAJOR DAMAGE WAS DONE

C. DIRECTIVE AND IMPLEMENTING AGREEMENTS SHOULD BE CHANGED TO ELIMINATE REFERENCE TO PREPUBLICATION REVIEW OF ORAL STATEMENTS

2. PREPUBLICATION REVIEW OF LETTERS TO THE EDITOR, OP-ED PIECES AND THE LIKE IS IMPRACTICAL IN MANY CIRCUMSTANCES

A. IN MOST CASES, TIMELINESS OF PUBLICATION IS CRUCIAL

B. DELAYS INHERENT IN THE REVIEW PROCESS MAY DESTROY THE OPPORTUNITY FOR OR EFFECTIVENESS OF COMMENTARY

C. THUS, A PREPUBLICATION REVIEW REQUIREMENT THAT APPLIES TO OP-ED PRICES AND THE LIKE IS PARTICULARLY TROUBLESOME AND IS JUSTIFIABLE ONLY WHERE THERE IS A CLEAR DANGER THAT SCI WILL BE DISCLOSED

D. THERE IS LITTLE DANGER THAT POLICY-MAKERS WILL INADVERTENTLY DISCLOSE SENSITIVE INFORMATION BECAUSE THEIR COMMENTS GENERALLY CONCERN POLICIES RATHER THAN SPECIFIC FACTUAL MATTERS AND THEREFORE CAN BE PRESENTED AT A LEVEL OF GENERALITY THAT ENABLES THEM TO OMIT POTENTIALLY SENSITIVE INFORMATION

-- PREPUBLICATION REVIEW IS NOT EFFECTIVE IN PREVENTING DELIBERATE DISCLOSURES BECAUSE IT CAN BE CIRCUMVENTED - E.G. SNEPP

E. THUS, IF PREPUBLICATION REVIEW OF OP-ED PIECES AND THE LIKE IS TO BE REQUIRED AT ALL, THE REQUIREMENT SHOULD BE CONFINED TO INTELLIGENCE PERSONNEL

3. PREPUBLICATION REVIEW OF BOOKS PROBABLY IS JUSTIFIED FOR INTELLIGENCE PERSONNEL

A. BOOKS INVOLVE MORE DETAIL AND THUS HAVE GREATER POTENTIAL TO CONTAIN SENSITIVE INFORMATION

B. TIMING OF PUBLICATION OF BOOKS ORDINARILY IS LESS IMPORTANT; FOR EXAMPLE, A 30-DAY PREPUBLICATION DELAY IS LIKELY TO BE TOLERABLE

C. MANY FORMER POLICY-MAKERS SUBMITTED BOOKS FOR PREPUBLICATION REVIEW EVEN BEFORE SNEPP DIRECTIVE WAS ISSUED, AND HAD NO DIFFICULTY OBTAINING CLEARANCE

D. NEVERTHELESS, RECOGNIZING DANGERS OF PREPUBLICATION REVIEW, ADMINISTRATION SHOULD REAFFIRM PERIODICALLY ITS COMMITMENT NOT TO ALLOW THE PROCESS TO DETERIORATE INTO A MECHANISM FOR CENSORING CRITICISM

C. DIRECTIVE REQUIRES THAT PERSONNEL HAVING ACCESS TO SCI SUBMIT TO PREPUBLICATION REVIEW TO SCREEN OUT BOTH SCI AND CLASSIFIED INFORMATION, WHEREAS PERSONNEL HAVING ACCESS ONLY TO CLASSIFIED INFORMATION NEED NOT SUBMIT TO PREPUBLICATION REVIEW AT ALL

1. IF PREPUBLICATION REVIEW FOR CLASSIFIED INFORMATION IS NOT NECESSARY TO SERVE THE GOVERNMENT'S COMPELLING INTEREST IN ONE CASE, IT IS NOT NECESSARY IN THE OTHER

2. CONDITIONING ACCESS TO SCI ON AGREEMENT TO SUBMIT TO PREPUBLICATION REVIEW FOR CLASSIFIED INFORMATION THEREFORE IS UNREASONABLE AND POSSIBLY CONSTITUTIONALLY IMPERMISSIBLE.

3. THEREFORE, PREPUBLICATION REVIEW SHOULD BE REQUIRED ONLY WHEN THERE IS REASON TO BELIEVE THE MATERIAL INTENDED FOR PUBLICATION CONTAINS SCI

VI. GIVEN THE ADMINISTRATION'S POLICY OF "STRENUOUSLY PURSU[ING] ANY VIOLATIONS" OF PREPUBLICATION REVIEW AND CONFIDENTIALITY OBLIGATIONS, 45 FED. REG. 45,052 (SEPT. 9, 1981), THE SNEPP DIRECTIVE'S BROAD REQUIREMENT THAT ALL PERSONS HAVING ACCESS TO SCI SUBMIT TO PREPUBLICATION REVIEW OF VIRTUALLY ALL THEIR PUBLIC STATEMENTS UNREASONABLY BURDENS FIRST AMENDMENT RIGHTS

D. LEGITIMATE AND PROTECTED SPEECH THUS MIGHT BE DETERRED, TO THE DETRIMENT OF THE PUBLIC AND RESPONSIBLE GOVERNMENT

VII. CONCLUSION: SNEPP DIRECTIVE SHOULD BE REPLACED WITH A PREPUBLICATION REVIEW REQUIREMENT THAT IS NARROWER, LESS RESTRICTIVE AND MORE CLOSELY TAILORED TO THE PROBLEM AT WHICH IT IS DIRECTED.

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FEB 1 1984

January 27, 1984

Honorable Don Edwards, Chairman
Subcommittee on Civil and
Constitutional Rights
Committee on the Judiciary
House of Representatives
Washington, D. C. 20515

Honorable Patricia Schroeder, Chairwoman
Subcommittee on Civil Service
Committee on Post Office and
Civil Service
House of Representatives
Washington, D. C. 20515

Dear Mr. Edwards and Ms. Schroeder:

This will acknowledge and thank you for your letter of January 18, 1984 concerning National Security Decision Directive 84.

I believe the best way to answer your questions is to enclose a copy of my testimony before the Senate Committee on Governmental Affairs on this subject.

Sincerely,

Lloyd N. Cutler

Enclosure

R. T. DAVIES
3511 LELAND STREET
CHEVY CHASE, MARYLAND 20815
(301) 654-1014

February 9, 1984.

Dear Congresswoman Schroeder and Congressman Edwards:

I am replying to your inquiry of January 25.

Since I left government service, I have contributed a chapter to a book and written a number of newspaper and magazine articles related, variously, to my former employment as an officer of the American Embassy at Warsaw 1947-49, at the Embassy in Moscow 1961-63, as Deputy Assistant Secretary of State for European Affairs 1970-72, and as ambassador to Poland 1973-78. In all of these positions, I had access to classified information and, in the latter two, to SCI as well. I did not submit any of my writings, or parts of them, for prepublication review and am consequently unable to reply to questions 4 and 5 of your letter.

I do want to comment on question 6. Your suggestion that officials might submit "only those portions of writings which might contain classified information" does not address the question of who is to determine what is and what is not classified information. A large percentage of the documents that are classified at the time of origination end up being over-classified within a period of time that is much shorter than any of those specified in the automatic downgrading provisions. Technically, the material may still be classified, awaiting the advent of the downgrading deadline, but already be in the public domain. Usually, the only element of such a document which needs protection is the source.

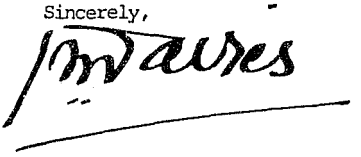
If you give the Department of Justice the half-loaf of a directive such as that which is implied in the above quotation from question 6, you will, I think, either leave the present situation unchanged, because former employees will remain the judges of what "might be classified," or, depending upon the way the directive is written and/or interpreted, give Justice the very authority it seeks under the directive as now drafted.

It comes down to whether the government can trust the people it employs to exercise discretion not only while they are employed, but thereafter, as well. So far as I am aware, the government has been well served by the overwhelming majority of its retired employees, with the obvious exceptions of former Presidents, Secretaries of State (Dean Rusk apart), and National Security Advisers. Even here, I am not aware that much damage has been done by the efforts of these worthies to capitalize upon their official positions and experience.

The Honorable
Patricia Schroeder and Don Edwards,
122 Cannon House Office Building,
Washington, D. C. 20515.

As for SCI, it is my recollection that I had to sign a nondisclosure agreement before access was given. There is no reason why such an agreement should not include a provision for prepublication review of material dealing with the subjects covered; in fact, I think the various agreements I signed had such a provision.

Sincerely,



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January 26, 1984

The Honorable Patricia Schroeder
The Honorable Don Edwards
Subcommittee on Civil Service
Committee on Post Office and
Civil Service
122 Cannon House Office Building
Washington, DC 20515

Dear Members:

In response to your inquiry of January 18, I worked in the legislative and executive branches of U.S. Government from 1965 to 1971, before joining the foreign policy research community. I had security clearances when I worked for the Bureau of the Budget and the Department of Agriculture. I did not have one when consulting for the State Department in 1976, or for the Carter reorganization program in 1977-79.

During the earlier period, I had access to classified but not SCI information.

I have written frequently on subjects I dealt with in the government: executive reorganization and international food policy are two examples. I have never published classified information obtained during government service. I've also never submitted anything for formal preclearance. I have, however, been very careful not to take unfair advantage of inside access that I had while in Government. And I have, on occasion, checked out portions of draft articles or books with responsible government officials to make sure they felt that I was not divulging privileged information, whether classified or not.

I find such informal procedures to be immensely preferable to pre-publication review, and in my case they have worked out satisfactorily. I feel strongly that former officials who had access to classified or sensitive information should respect their obligations concerning that information. I think it is ridiculous that persons who had access to SCI information are now asked to clear everything they write; certainly this should be limited to language that they feel may contain classified material. And since I personally make my living through writing about government policy and policymaking, the continuation of the current

Reagan Administration requirement would be, for me, a strong disincentive to serving in a government post where one had access to such information.

I attach my list of previous positions and publications.

Sincerely,

T. M. Destler
Senior Fellow

Enclosure

December 1983

R E S U M E

I. M. "Mac" Destler

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Institute for International Economics
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Phone: (202) 328-0583

Born: Statesboro, Georgia
August 21, 1939

Married, two children

Present Position:

From July 1983: Senior Fellow, Institute for International Economics, Washington, D.C., writing book on U.S. trade policymaking for the Twentieth Century Fund.

Previous Positions:

1977-1983: Senior Associate and Director, Project on Executive-Congressional Relations in Foreign Policy, Carnegie Endowment for International Peace, Washington, D.C.

1976-1977: Senior Fellow, Foreign Policy Studies, Brookings Institution: completed study of U.S. foreign economic policymaking with emphasis on interplay of domestic and international policy objectives and interests. (On leave, March-June, 1977).

March-June, 1977: Consultant on Reorganization of the Executive Office of the President, Office of Management and Budget: coordinated preparation of comprehensive report to the President on proposed organizational and procedural changes; served as principal analyst on economic policymaking institutions.

1972-1976: Research Associate, Foreign Policy Studies, Brookings Institution: organized and co-authored two related books on politics of postwar U.S.-Japanese relations; inaugurated foreign economic policymaking study; directed congressional staff seminar on U.S.-Japanese relations.

1971-1972: Visiting Lecturer in Public and International Affairs, Woodrow Wilson School, Princeton University: taught courses on American foreign policy and the world food problem, and graduate seminar on foreign affairs bureaucracy.

1970-1971: Consultant for Special Programs (half-time), American Foreign Service Association: helped develop program (Face-to-Face) of dialogue between foreign affairs officials and other Americans involved in international issues.

1969-70: International Affairs Fellow, Council on Foreign Relations, and Guest Scholar, Brookings Institution: wrote book on U.S. government organization for foreign affairs.

1967-1969: Program Analyst and Acting Regional Coordinator for Asia, International Agricultural Development Service, U.S. Department of Agriculture: headed office responsible for technical assistance projects; analyzed impact of U.S. aid programs on overseas economic development.

February-September 1967: Staff Associate, President's Task Force on Government Organization: did research, interviewing, wrote staff papers, etc., on foreign and domestic policy organizational issues.

1965-1967: Assistant to Senator Walter F. Mondale: wrote speeches, developed and managed legislative proposals, did general staff work in foreign affairs, education, economic policy, etc.

1961-1963: Peace Corps Volunteer (Assistant Lecturer in Political Science, University of Nigeria): taught international relations, helped organize and teach general freshman social science course.

Other Professional Activities:

Trustee, Japan-American Society of Washington, D.C., 1983-.

Coordinator, luncheon seminar series for Japanese correspondents based in Washington, 1977-.

Director, study on politics of economic disputes, Japan-U.S. Economic Relations Group, 1980.

Consultant on national security policymaking, Presidential Management Panel, National Academy of Public Administration, 1979-80.

Associated Staff, Brookings Institution, 1978-80.

Lecturer on legislative processes at seminar for legislative administrators, Enugu, Nigeria, sponsored by Nigerian Government and U.S. International Communications Agency, 1979.

Consultant on Peace Corps reorganization, Office of Management and Budget, 1979.

Professorial Lecturer, School of Advanced International Studies, Johns Hopkins University, 1976-77.

Consultant, U.S. Department of State, 1976.

Consultant, Commission on the Organization of the Government for the Conduct of Foreign Policy, 1973-75.

Senior Consultant, United Nations Association Policy Panel on "Foreign Policy Decision-Making: The New Dimensions," 1972-73.

Member: Council on Foreign Relations, 1970-; American Political Science Association, 1971- (Publications Committee, 1982-83); Arms Control Association, 1977-.

Education

Ph.D. 1971 and M.P.A. 1965, Woodrow Wilson School of Public and International Affairs, Princeton University.

B.A. magna cum laude in Government, 1961, Harvard College.

Books:

Presidents, Bureaucrats, and Foreign Policy: The Politics of Organizational Reform, Princeton University Press, 1972 (expanded paperback edition, 1974).

Managing an Alliance: The Politics of U.S.-Japanese Relations, Brookings Institution, 1976 (co-authored with Hideo Sato, Priscilla Clapp and Haruhiro Fukui).

The Textile Wrangle: Conflict in Japanese-American Relations 1969-1971, Cornell University Press, 1979 (co-authored with Haruhiro Fukui and Hideo Sato; Japanese edition by Nihon Keizai Shimbun press).

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Coping with U.S.-Japanese Economic Conflicts, Lexington Books, 1982, (co-edited with Hideo Sato; Japanese edition by Nihon Keizai Shimbun press).

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B. United States Foreign Economic Policymaking

"United States Congress and the Tokyo Round: Lessons of a Success Story," The World Economy, June 1980, pp. 53-70 (co-authored with Thomas R. Graham).

"Trade Reorganization: Leading from Strength," Testimony before House Committee on Ways and Means, September 7, 1979.

"United States Trade Policymaking During the 'Tokyo Round,'" in Michael Blaker, editor, The Politics of Trade: U.S. and Japanese Policymaking for the GATT Negotiations, East Asian Institute, Columbia University, 1978.

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C. Executive Branch: Policymaking and Organization

"State: A Department or 'Something More?'" in Duncan L. Clarke, editor, Defense and Foreign Policy: Coordination and Integration, JAI Press, forthcoming 1984.

"The Evolution of Reagan Foreign Policy," in Fred I. Greenstein, ed., The Reagan Administration: An Early Assessment, Johns Hopkins University Press, 1983, pp. 117-58.

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D. Congress and Foreign Policy

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"Congress Swings [on Central America Policy]", Foreign Service Journal, July/August 1982, pp. 19-21, 38 (co-authored with Patricia Cohen).

"Reagan, Congress, and Foreign Policy in 1981," in Norman Ornstein, editor, President and Congress: Assessing Reagan's First Year, American Enterprise Institute, 1982, pp. 66-88. (See also The Washington Quarterly, Spring 1982, pp. 3-15.)

"Unruly, Fragmented Congress Wears Down President's Foreign Policy," Los Angeles Times, October 25, 1981.

"AWACS: The Early Warning Was Loud and Clear," Washington Post, October 25, 1981.

"Dateline Washington: Congress as Boss?" Foreign Policy, Spring 1981, pp. 167-80.

"Trade Consensus; SALT Stalemate: Congress and Foreign Policy in the Seventies," in Thomas Mann and Norman Ornstein, eds., The New Congress, American Enterprise Institute, 1981, pp. 329-59.

"Executive-Congressional Conflict in Foreign Policy: Explaining It, Coping With It," in Lawrence C. Dodd and Bruce I. Oppenheimer, eds., Congress Reconsidered, second edition, Congressional Quarterly Press, 1981, pp. 296-316.

"Foreign Policy Begins at Home," AEI Foreign Policy and Defense Review, September-October 1980, pp. 8-11.

"Treaty Troubles: Versailles in Reverse," Foreign Policy, Winter 1978-79, pp. 45-65.

"A Reverse Pendulum in Executive-Congressional Relations?" 1982;
"SALT II and the Senate," 1978 and 1979;
"Congress and Foreign Policy Staffs: The Best as Enemy of the Good?" 1979;
"Learning from Panama," 1978.
—Papers prepared for the Carnegie Endowment Project on Executive-Congressional Relations.

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INDIANAPOLIS OFFICE
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INDIANAPOLIS, INDIANA 46204-2454
317-636-4535

February 17, 1984

Honorable Don Edwards
Chairman
Subcommittee on Civil and
Constitutional Rights
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Honorable Patricia Schroeder
Chairwoman
Subcommittee on Civil Service
Committee on Post Office and
Civil Service
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Edwards
and Chairwoman Schroeder:

In response to your letter of January 18, 1984, which has been forwarded to me at my new address (above), my answers to your questions are as follows:

(1) Since leaving government service, my published writings have been limited to op-ed pieces in daily newspapers.

(2) I was Chairman of the U.S. Delegation to the Strategic Arms Limitation Talks (1978-80) and Director of the U.S. Arms Control and Disarmament Agency (1980-81). I did have access to classified information, including sensitive compartmented information (SCI).

(3) The pieces which have been published were based entirely on the public record and, therefore, contain no classified information. I did not submit any of them for prepublication review.

(4) Not applicable.

(5) Not applicable.

(6) I do not believe that former government officials with access to SCI should be required to submit their publications for prepublication review. However, if I had any question as to whether a portion of my writings might contain classified information, I believe that I would make such submission voluntarily.

Sincerely yours,

Ralph Earle II

RE:gdj

SAMUEL D. EATON
INTERNATIONAL CONSULTANT
4995 GLENBROOK ROAD, N. W.
WASHINGTON, D. C. 20016

(202) 362-2077
(202) 229-5800

February 10, 1984

Patricia Schroeder and
Don Edwards
Committee on Post Office and
Civil Service
Subcommittee on Civil Service
122 Cannon House Office Building
Washington, D.C. 20515

Dear Mr. Edwards and Ms. Schroeder:

I am pleased to provide the information you requested in your letter of January 25, 1984 on my experience with pre-publication review within the governemnt.

1. My writing for publication occurred primarily while I was still in government. In early 1981 a book of mine on the political transition in Spain, entitled The Forces of Freedom in Spain, was published by the Hoover Institution. Since retirement, an adaptation of a part of that book has been published as a part of a set of documents released by the Fletcher School of Law and Diplomacy, and in the Spanish-American Chamber of Commerce Monthly. I am now attempting to arrange for publication of the book in Spanish.

2. I was a career Foreign Service Officer who held a variety of positions dealing with economic, political and program management matters for 34 years. My final two positions were Deputy Chief of Mission in Madrid from 1974 to 1978 and Deputy Assistant Secretary of State for Inter-American Affairs from 1979 to 1984. In those positions I had access to the highest classified information, including SCI.

3. Since I was personally aware of the reasons for classification of the classified material that provided background for my book, I felt qualified to judge personally what could not be used in the book. The entire manuscript was submitted for pre-publication review.

4. My manuscript was submitted for review to a designated officer in the Bureau of Public Affairs of the Department of State who also obtained the views of the Spanish desk

officer. I was not required to make any changes. The process took about two months.

5-6. I believe that expanding pre-publication review to cover publication by retired personnel of sensitive information relating to intelligence collections, living personalities, and critical foreign policy issues is logical. However, to be effective, (a) the type of information must be narrowly and carefully defined, and (b) the coverage must extend to the top political officials of our government and members of Congress who have access to sensitive information as well as to the bureaucracy.

I have no objection to these comments being made a part of the public record.

Sincerely,

Samuel D. Eaton

Samuel D. Eaton

SE:ds

Boston University

Center for International Relations
152 Bay State Road
Boston, Massachusetts 02215
617/353-9278

Office of the Director

February 13, 1984

Patricia Schroeder, Chairwoman
Subcommittee on Civil Service
Committee on the Post Office and
Civil Service
U.S. House of Representatives
122 Cannon House Office Building
Washington, D. C. 20515

Dear Chairwoman Schroeder:

Thank you for your letter of January 31, 1984, asking certain questions in connection with President Reagan's National Security Decision Directive 84 of March 11, 1983. I understand that the Subcommittee on Civil on Constitutional Rights of the Committee on the Judiciary and the Subcommittee on Civil Service of the Committee on Post Office and Civil Service are jointly exploring the Directive and the need for it. I am happy to give you my views. The paragraphs that follow are based on the numbers of the specific questions asked:

1) Since leaving the Foreign Service of the United States in June, 1979, I have been at Boston University where I hold three separate functions: Distinguished University Professor of International Relations, Director of a Center for International Relations, and Chairman of the Political Science Department. I am also on the Board of Trustees of various American colleges and universities, as well as on the Board of Governors of various professional organizations. A copy of my C.V. is attached, which may explain the range of my interests.

   In the above context, my writings since leaving the Foreign Service have fallen into two general categories: a) those dealing with the Middle East situation as it has evolved since 1979, and b) a number of purely historical works. In the first of the two categories, there have been articles on "Security Considerations in the Persian Gulf (International Security), "Camp David - Improving the Framework" (Foreign Policy), "Sadat: The Making of an American Public Image" (Middle East Insight), "A Peg-Legged Quadrille: The United States, Israel, Egypt and the Palestinians" (Middle East Insight), etc. I have also written various Op-Ed articles

in the Christian Science Monitor and elsewhere. I have also had a book in preparation on "U.S.-Egyptian Relations - 1973-79."

In addition to these published works, I have written various papers for meetings of professional organizations dealing with the Middle East and have given various speeches at such sessions. An example is "U.S. Diplomacy in the Arab World Since Camp David," which was published in The Challenge to U.S. Interests in the Arab World, by the American-Arab Affairs Council. I have also given such lectures outside the Boston University framework in as widely dispersed places as Tokyo, Cairo, Vienna, Oslo, London, Anchorage, Ann Arbor, Providence, Philadelphia, etc. - in other words, both in this country and abroad. Finally, in my University Professor context, I teach two courses each semester having to do with the contemporary Middle East.

Since most of my 32 years of government service was spent working in or on the Middle East, there is clearly a relationship between that professional experience and my writings and lectures. It is impossible for one such as me not to draw on my long experience in the Middle East when writing and lecturing. It is precisely this long experience that I would hope gives value and meaning to my comments and judgments on contemporary Middle East issues.

2) From 1942-46, I was an officer in the United States Army, serving in North Africa, Italy and the European Theater of Operations. From 1947-79, I was a Foreign Service Officer. During these years, I served in Tehran, Jidda, Aden, Yemen, Baghdad, Washington, London, Tripoli (Libya), and as Ambassador to Saudi Arabia (1965-70), and Ambassador to Egypt (1973-79). My Washington assignments, apart from a tour at the National War College, included the positions of Officer of Baghdad Pact (CENTO) Affairs, and Arabian Peninsula/Near East Regional Affairs Officer.

Throughout my government service, I had access to classified information. Indeed, I was myself responsible for classifying various information that I reported from one or another of my posts. At various times I also had access to SCI, especially in my ambassadorial capacities.

One point must be emphasized in connection with classified information. Almost anything classified at a particular point in history tends over the years to become less sensitive. This is partly because of the natural erosive quality of our classification procedures, the Freedom of Information Act and the fact that virtually every American president, secretary of state, or political ambassador writes extensively about his experience in office. What was sensitive, say, ten years ago is, with rare exceptions, no longer so. I think this is a natural phenomena which we should all recognize, but which the Reagan Directive obviously does not.

3) None of my publications or lectures was intended deliberately to reveal national secrets. I believe that I have as much concern about the security of this nation as President Reagan or anyone else in this or any other Administration. I start from that basis.

Having these considerations in mind, I wrote my articles or prepared my lectures without seeking access to classified information. I did, however, draw upon my own over thirty years of experience with United States policy in the Middle East in preparing writings or lectures. Where necessary, I have always sought to obtain collateral material from published sources. The point is, that my writings and lectures are based on my personal knowledge, not on documents. Granted, some of this personal knowledge may at one time or another been classified - by me - but it is my personal knowledge. And, if my memory does not serve me correctly, it is I who am responsible for whatever mistakes are made.

My writings and lectures have been critical of various aspects of United States policy in the Middle East and especially of the utterly inept handling of Middle East policy by the Reagan Administration. These criticisms have been based upon my deep knowledge of the area and its leaders and have deplored the apparent unwillingness or inability of the Reagan Administration to try to understand the political and social dynamics of the Middle East scene and to base policy judgments upon proper estimates rather than ideological blinders.

Prior to leaving the Foreign Service, I submitted all draft articles to the Department of State for prepublication review. Since leaving the Foreign Service in 1979, I have not submitted any of my articles or lectures for prepublication review. Instead, I have relied upon my own discretion and judgment in seeing to it that no sensitive information was disclosed.

I am considering sending my draft book, when completed, on "U.S.-Egyptian Relations - 1973-79," to the Department of State for prepublication review, but I am frankly concerned that there is no one in the Department who knows as much about the subject as I do. I say that not out of immodesty, but because much of the book is based upon six years of daily contact with the late President Sadat and his officials. I know what Sadat thought and did, not from occasional speeches of his or reports, but from almost daily conversations. I ask myself, who is there in the entire Department of State, the Secretary of State included, who is in a position to have the same knowledge?

It bothers me, therefore, that a manuscript of that sort should have to be submitted to people who lack the detailed knowledge about the subjects being discussed and could ask for changes on the basis of ignorance, capriciousness or simply Reagan ideology.

4) As indicated above, while still in the Foreign Service, I submitted various articles to the Department of State for prepublication review. They were usually submitted either to the Historical Division or to the appropriate Desk Officer. I was never asked to delete any material. As a rule, the persons to whom I sent the draft indicated that they did not know that much about it. In most instances, for an article at least, it took between four and eight weeks to get a response from Washington. From the writer's end, this is a long time. At the same time, having myself once been a Desk Officer, I know how many other things he/she has to attend to in the course of a normal frenetic day.

5) I have no objection in principle to the prepublication review process, provided it is applied in a rational manner. I believe that retired officials, at least most of

those that I have known, are sensible, sincere persons. They value the security of the United States as much as anyone in government. At the same time, they may have deep reservations about some aspects of past or present United States policy. Moreover, they often have a depth of knowledge, based on personal experience, that gives broader perspective to issues than is the case with almost any administration.

I think it would be criminal for the Reagan Administration to try to censor the expression of any dissenting views based upon a retired official's own experience, personal knowledge and judgment. Indeed, such a muzzling effect - which is the way I read the Reagan Directive - would be a disservice to this nation and to former officials who invested their lives in seeking to further the nation's fortunes.

Most retired officials are and remain responsible. They do not have to be told their responsibility toward the welfare of the nation by the Reagan or any other administration. What is more, they have a contribution to make to a better understanding of the issues involved and ought to be encouraged to make that contribution without legal restraint. Even though a president's policies may be criticized by such retired officials, the nation in the long run gains from this.

A prepublication review process, in my judgment, is <u>not</u> the most appropriate and effective means of preventing disclosure of classified information. This should be left to the retired officials concerned. If they have doubts about anything they want to say, in terms of publicly compromising classified information, I am confident that most such officials will take the time to check it out with appropriate officials still serving in government. Granted, there may be a few who do not - and I have in mind some sensationalizing ex-CIA officers - but I believe such persons are few in numbers and that this is a risk that our democratic and constitutional system warrants taking.

6) I am against the whole idea of mandating that former government officials submit all publications, including speeches and lectures, for prepublication review. For

someone such as myself, whose livelihood now depends upon my university lectures, it would practically throttle my whole teaching career. I have less problem with the idea that former government officials submit only those portions of writings that might contain classified information for prepublication review, providing that there is some assurance of a) such prepublication review being done by officials who really know something about the issue involved and do not simply censor on the basis of their own preferences or Reagan ideology, and b) that there be an expeditious reply. My preference would be, nevertheless, even to avoid this and to leave it to the discretion of former government officials as to what should be checked out before publication.

I am frankly disturbed about the Reagan Directive. I think it fires scattershot at a minor problem which could be handled more effectively in other ways. If I believed that the purpose of the Directive was a genuine effort to protect the security of the United States, I would have more sympathy for it. I suspect, however, having observed for the last three years how the Reagan Administration operates, that it represents primarily an oblique effort to muzzle criticism. That, in my judgment, should not be permitted.

I very much hope that the two Congressional committees that are studying the Directive, as well as the appropriate Senate committees doing so, will reject the Directive as unnecessary for the purposes indicated and an infringement on the constitutional rights of a particular class of American citizen.

Please let me know if I can be of further help. I am sending this identical letter to Congressman Don Edwards.

Sincerely,

Hermann Frederick Eilts
Director

HFE:cc

CURRICULUM VITAE

HERMANN FREDERICK EILTS

POSITION

Boston University

Distinguished University Professor of International Relations, 1979 - present.

Director, Center for International Relations, 1982 - present.

Chairman, Department of Political Science, 1982 - present.

PREVIOUS POSITION

Foreign Service Officer. Career Minister.

DATE AND PLACE OF BIRTH

March 23, 1922; Weissenfels/Saale, Germany.

PERSONAL HISTORY

Immigrated to the United States in 1926 with parents. American citizenship obtained in 1930 through derivation from father.

MARITAL STATUS

Married to former Helen Josephine Brew. Two sons: Conrad Marshall Eilts, Frederick Lowell Eilts.

EDUCATION

Primary and secondary schools, Scranton, Pennsylvania.

Ursinus College, Collegeville, Pennsylvania, 1939-42, B.A. (with distinction).

Fletcher School of Law and Diplomacy, Medford, Massachusetts, 1942.

School of Advanced International Studies, Johns Hopkins University, Washington, D. C., 1946-47, M.A. (with distinction).

Foreign Service Institute, Washington, D.C., 1950, Arabic and Middle East Studies.

EDUCATION (Cont.)

University of Pennsylvania, Philadelphia, Pennsylvania, 1951-52, Middle East Studies.

Dropsie College, Philadelphia, Pennsylvania, 1951-52, Middle East Studies.

National War College, Washington, D.C., 1961-62, Diploma (with distinction).

Army War College, Carlisle, Pennsylvania, 1972, Diploma (with distinction).

MILITARY SERVICE

United States Army, 1942-46, First Lieutenant, Military Intelligence, North African and European Theatres of Operation.

MILITARY DECORATIONS

Purple Heart, Bronze Star, Seven European/North African Campaign Stars.

PROFESSIONAL SERVICE

United States Ambassador to Egypt, Cairo, Egypt, 1973-79.

Deputy Commandant and Diplomatic Adviser, Army War College, Carlisle Barracks, Pennsylvania, 1970-73.

United States Ambassador to Saudi Arabia, Jidda, Saudi Arabia, 1965-70.

Counsellor and Deputy Chief of Mission, Charge d'Affaires, American Embassy, Tripoli, Libya, 1964-65.

First Secretary, American Embassy, London, England, Political Offficer handling all Middle East and Cyprus Affairs, 1962-64.

Department of State, Washington, D. C., Officer-in-Charge, Arabian Peninsula and Near Eastern Regional Affairs, 1960-61.

Department of State, Washington, D.C., Officer-in-Charge, Baghdad Pack (CENTO)/SEATO Affairs, 1957-59.

Second Secretary, American Embassy, Baghdad, Iraq, Chief of Political Section, 1954-56.

PROFESSIONAL SERVICE (Cont.)

Consul and Principal Officer, American Consulate, Aden, Arabia (concurrently accredited as Second Secretary to non-resident American Legation, Taiz, Yemen, and American Consul, British Somaliland), 1951-53.

Third Secretary, American Embassy, Jidda, Saudi Arabia, economic and political work, 1948-50.

Third Secretrary, American Embassy, Tehran, Iran, consular and administrative work, 1947-48.

Joined Foreign Service through examination process, July 1947.

Member of United States' delegations to various international conferences (UN, NATO, CENTO, SEATO, US/Egyptian/Israeli meetings, including the Camp David Summit).

PROFESSIONAL HONORS

Arthur S. Fleming Award for Distinguished Government Service, 1953.

Department of the Army, Distinguished Civilian Service Decoration, 1972.

Ursinus College, Alumni of the Year Award, 1974.

Department of State, Distinguished Honor Award, 1979.

Joseph C. Wilson Award, 1979.

Egyptian Collar of the Nile, First Class, 1979.

Johns Hopkins University, Distinguished Alumnus Award, 1980.

UNIVERSITY HONORS

Ursinus College, LL.D., 1959.

Boston University, LL.D., 1978.

Dickinson School of Law, LL.D., 1978.

Cairo University, Cairo, Egypt, Ph.D., 1979.

Juniata College, L.H.D., 1980.

Baltimore Hebrew College, L.H.D., 1983.

MEMBERSHIP IN PROFESSIONAL ORGANIZATIONS

Royal Geographic Society, Fellow.

Royal Asiatic Society, Fellow.

Royal Society for Asian Affairs, Fellow.

Middle East Institute, Member.

Pennsylvania Historical Society, Member.

Essex Institute, Salem, Massachusetts, Member.

Peabody Museum, Salem, Massachusetts, Fellow.

American Foreign Service Association, Member.

Council on Foreign Relations, Member.

Middle East Studies Association of North America, Member.

Washington Institute of Foreign Affairs, Member.

The Shaybani Society of Muslim International Law, Member.

Institute of Yemeni Studies, Member.

The American Academy of Diplomacy, Member.

PROFESSIONAL ACTIVITIES

American University in Cairo, Board of Trustees.

Middle East Institute, Board of Governors.

Brookings Institution, Steering Committee, Project on Energy and National Security (for US Department of Energy).

Ursinus College, Board of Directors.

Middle East Research Institute, University of Pennsylvania, Development Advisory Committee.

American-Arab Affairs Council, Diplomatic Advisory Committee.

Wharton Econometric Forecasting Associates, Advisory Board.

Strategic Review, Editorial Board.

PROFESSIONAL ACTIVITIES (Cont.)

Management International Consultants and Advisors, Advisory Board.

Bank of Boston, Middle East Consultant.

National Council on U.S.-Arab Relations, Advisory Committee.

Center for Middle Eastern Studies, Harvard University, Faculty Associate.

American Association of Islamic Studies, Villanova University, Advisory Committee.

Dewey F. Bartlett Program, Energy and Security Studies for the Center for Strategic & International Studies, Georgetown University, Executive Council.

Journal of South Asian and Middle Eastern Studies, Villanova University, Editorial Board.

PUBLICATIONS

Ahmad bin Na'aman's Mission to the United States in 1840: The Voyage of al-Sultanah to New York City, 1942 (third printing) in both English and Arabic.

Sayyid Muhammed bin 'Aqil of Dhufar: Malevolent or Maligned?, 1973.

"Security Considerations in the Persian Gulf," International Security, Fall 1980, Vol. 5, No. 2.

"Saving Camp David: Improve the Framework," Foreign Policy, Winter 1980-81, No. 41.

150 Years of Friendship and Commerce, A Sesquicentennial Commemoration between the United States and Oman, United States Information Agency publication, 1983, in both English and Arabic; reprinted by The Embassy of the Sultanate of Oman as Oman-U.S.A.: 150 Years of Friendship, 1983.

Numerous articles and book reviews.

LISTED IN

Men of Achievement, 6th edition, International Biographical Centre, Cambridge, England.

Community Leaders an Noteworthy Americans, American Biographical Institute.

LISTED IN (Cont.)

The Blue Book, 1976, St. Martin's Press.

The International Who's Who, 1984-85 and previous, Europa Publications, London, England.

Who's Who in the World, 6th edition, 1982-83 and previous, Marquis.

Who's Who in America, 43d edition, 1983-84 and previous, Marquis.

Who's Who in Government, 3d edition, 1977-78 and previous, Marquis.

Who's Who in American Politics, 1975-76, Marquis.

John S. D. Eisenhower
P. O. Box 278
Kimberton, Pennsylvania 19442

January 21, 1984

The Honorable Patricia Schroeder
Chairwoman
Committee on Post Office and Civil Service
House of Representatives
Washington, D.C. 20515

Dear Ms. Schroeder:

Thank you for your letter of January 18, 1984. I am complimented that you solicite my views on the subject of classified information. I was involved in that field a good bit of my official life but will confine my remarks to your questions, which deal only with my efforts as an author.

1. My publication efforts have largely involved non-fiction books, although I have written a few columns and book reviews. Only one book, STRICTLY PERSONAL, a memoir published in 1974, dealt at all with my former government employment.

2. Positions held in Federal Government:

Army Officer, 1944-1963
AC/S, G2 (Intel) 3d Inf Div, Korea, 52-53
War Plans, Army General Staff, 1957-58
White House Asst Staff Secretary 1958-61
US Ambassador to Belgium, 1969-71
Chairman, Interagency Classification Review Committee (Presidential), 1972-73.

I had access to SCI (Codeword Material) in all above assignments, especially in the White House.

3. I used my own best judgment as to what material to include and what to leave out when writing STRICTLY PERSONAL. (I passed up a couple of goodies.) And I was particularly careful to avoid any codeword material which, incidentally, was of very little interesting anyway, since the codeword documents on the U-2 had been declassified.

I did not submit any material for review because I had no need to request access to documents in governmental hands. I was managing editor for my father, Dwight D. Eisenhower, when he wrote his memoirs, THE WHITE HOUSE YEARS, and I dealt with the same subjects in far less detail than we had in writing his two volumes. Therefore, I simply used the same material, condensed, supplemented by my own observations of those years.

I realize that my experience in this case is far from typical.

4. In a previous book, THE BITTER WOODS, 1969, I requested access to a joint US-British intelligence document put out by Supreme Headquarters, Allied Expeditionary Force, just before the Battle of the Bulge, 1944. I was informed that in exchange for access to this one document, I would be required to submit my entire manuscript for review. I therefore waived access to all classified documents in governmental hands and simply interviewed the people who wrote them.

5. The prepublication review process does not seem to me to be enforceable. By and large only the conscientious people will be inhibited by it whereas irresponsible people who ignore or even flout it will probably go unpunished because of public antipathy toward even reasonable safeguarding of governmental secrets. The

prepublication review provision should probably be kept on the books, however, as a matter of general principle.

It seems to me that there should be a wider gap between the seriousness accorded to violating significant security information (such as disclosure of advanced military technology and matters of diplomatic delicacy) and the trivial revealing of merely embarrassing matters. Unfortunately, people who have the power to classify information as secret and above tend to protect themselves by stamping everything.

6. SCI should be guarded carefully and restricted to only a few people - and they should be held strictly accountable for its protection. However, to require anyone who EVER had access to SCI to submit ALL writings and speeches for the rest of his life does not seem at all feasible. The government cannot employ enough people to review all the submitted material. Furthermore, this requirement might discourage anyone with a proclivity for writing and speaking from ever taking a job in government.

I hope all this is of some remote use. Like any other citizen, I am available to help in any way I can if you desire further opinions and views.

Sincerely,

John Finnegan

GFE

Guy Feliz Erb
President

February 13, 1984

The Honorable Patricia Schroeder
Chairwoman
Subcommittee on Civil Service
Committee on Post Office and Civil Service

and

The Honorable Don Edwards
Chairman
Subcommittee on Civil and Constitutional Rights
Committee on the Judiciary

House of Representatives
122 Cannon House Office Building
Washington, D.C. 20515

Dear Chairwoman Schroeder and Chairman Edwards:

In reply to your letter of January 13, I submit the following answers to your questions concerning National Security Decision Directive 84:

1. Some newspaper op-ed pieces and monographs that I have published were related to, but did not refer in detail to, my experiences in government.

2. Member, National Security Council Staff (1977-1980) and Deputy Director of independent Federal agency, the International Development Cooperation Agency (Level III) (1981). I received all appropriate clearances.

3. No classified information was used or referred to in my publications.

4. On joining the NSC staff in 1977, I submitted publications prepared prior to my government service to the Deputy National Security Advisor for prepublication review. These materials did not draw on classified information and were quickly cleared. No materials were submitted for prepublication review after I left government service.

5. The nature of the expanded use is critically important. Any expansion should be carefully drafted to safeguard individual rights.

6. Yes.

It is my hope that these answers will be of use to you.

Sincerely,

CFE:tgb

TASC
THE ANALYTIC SCIENCES CORPORATION

1700 N. Moore St., Suite 1220, Arlington, VA 22209. tel 703-558-7400

Dr Jacques S Gansler
Vice President

8 March 1984

Congresswoman Patricia Schroeder
Chairwoman
Committee on Post Office and
Civil Service
Subcommittee on Civil Service
122 Cannon House Office Bldg.
Washington, DC 20515

Dear Congresswoman Schroeder:

In response to your letter of February 8, on President Reagan's March 11, 1983, National Security Decision Directive 84, I am pleased to respond to your questions.

As a general response, I do not object to the requirement that an employee submit for prepublication review all writings "which contain or purport to contain any restricted or classified information" since the release of such information clearly is not in the national interest (which is, of course, the purpose of having classified the information in the first place). However, it appears that an interpretation of that intent to require that former government officials with access to SCI information submit all publications for prepublication review goes well beyond the directive intent -- since it appears to include information which does not contain or purport to contain any classified information. I believe this is a particularly important distinction since the release of classified information is completely wrong while the requirement for prepublication review of all publications by an individual simply because he has at one time in his life held SCI clearances is equally wrong (and, correspondingly, the requirement that the employee sign a statement to that effect prior to receiving his SCI clearances would be similarly inappropriate).

With regard to your specific questions:

1. I have done a great deal of writing since having left the government. This includes a book (The Defense Industry, MIT Press, 1980), chapters in other books, numerous articles in professional journals (e.g., Foreign Policy, International Security), and newspaper articles e.g., New York Times, Washington Post, Los Angeles Times. I have not published any works of fiction. In general, since I was a senior defense official and since much of the material that I have published is in the general national security area, it is certainly indirectly related to my former government employment. I have not, however, published any material which contained any classified data or any data related to any classified efforts with which I was involved.

2. During my five years in the Office of the Secretary of Defense, I held the position of Deputy Assistant Secretary of Defense (Materiel Acquisition) from 1974 to 1977, and the position of Assistant Director for Defense Research and Engineering (Electronics) from 1972 to 1974. In these positions I had access to classified information and access to SCI information.

3. I did not submit any publications that I have written since leaving the government to the Defense Department for any prepublication review or approval, since I was extremely careful to be sure that all of the material which I have written was clearly unclassified. I have always made sure that at least one associate reviewed all material that I have published for both substantive content as well as the possibility of inadvertent security information, but this was done to assure more the quality of the work since I was personally acting as the censor for any possible security information. I believe that the best method for assuring that I did not publish any classified information was simply to act on the overly-cautious side and omit any information if I thought there was a possibility of it being classified.

4. Not Applicable.

5. Not Applicable.

6. As noted above, I do not believe that requiring all former government officials with access to SCI information to submit all publications, including speeches and lectures, for prepublication review would be appropriate. While I am not a lawyer, it would appear as though this is a considerable restriction of freedom of speech, and certainly, at the very least, the inconvenience of going through the process would greatly discourage people from writing. However, by contrast, I feel equally strongly that classified material should not be published -- because of its potential harmful effects to our nation's security. Thus, I do believe that if there is any question, the appropriate thing to do would be to submit it for prepublication review (and to have an appropriate requirement for relatively rapid review thereof). Thus, I would have the wording of any such requirement be clear that if there is any doubt as to whether or not the material might be classified, then it should be submitted -- placing the responsibility for such a decision on the part of the author, but making it clear that in the shaded area the appropriate action is the submittal of the material for review.

Like the President, I am concerned about the excessive leakage of national security information within the United States. However, it would appear as though restricting an individual, simply because he or she has had SCI clearances, from publication of any and all material without a prepublication release from the Federal Government is an undue restriction, and simply limiting that restriction to that material which might be potentially damaging would seem to be a reasonable compromise.

Sincerely,

Jacques S. Gansler

JSG/rlg

MASSACHUSETTS
INSTITUTE OF TECHNOLOGY

CENTER FOR
INTERNATIONAL STUDIES

Eugene B. Skolnikoff
Director

Cambridge, Massachusetts
02139

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Sent for the files

February 29, 1984

MAR 6 - 1984

Congressman Don Edwards
Congresswoman Patricia Schroeder
U.S. House of Representatives
122 Cannon House Office Building
Washington, DC 20515

Dear Congressman Edwards and
Congresswoman Schroeder:

I write in response to your letter of January 31 concerning National Security Decision Directive 84.

1. Since leaving the government in 1979, I have published articles in two journals, written a book chapter and prepared a book manuscript that will be published shortly. Some of this writing was related to my former government employment. One article and the book chapter dealt with issues for which I had major responsibility while in the government. I did have access to classified information, including SCI.

2. I was a senior policy analyst in the Office of Science and Technology Policy, Executive Office of the President from June 1977 to June 1979 and a consultant to that office until January 1981. I have also been a consultant to the Nuclear Regulatory Commission and the Office of Technology Assessment.

3. I have never submitted written material for prepublication review. One of my publications related to a subject, nuclear nonproliferation, about which I had access to classified information while I was in the government. However, the article did not deal with classified aspects of the subject.

4. Not applicable.

5. I have no experience with the prepublication review process.

6. I have carefully reviewed the Directive and other material accompanying your letter and find no language clarifying the scope of the requirement for prepublication review required of persons with authorized access to SCI. No statement is made whether this applies to:

* to all published material of such persons;

* publications dealing with subjects for which classified information or SCI exists;

* publications dealing with subjects for which classified information or SCI exists and to which the person had access;

* publications dealing with classified aspects of a subject; or

* publications dealing with classified aspects of a subject to which the person had access to the classified information or SCI.

Because no procedure or criteria are presented for how to decide whether review is needed, the most reasonable interpretation would seem to be the first and the most restrictive one.

The result of this requirement would be that someone like myself, who had access to SCI in only a few limited areas would have to submit to prepublication review of all future scholarly and popular publications. Even aside from possible constitutional issues, about which I am not expert, this would constitute a very significant and most debilitating interference with and inhibition of scholarship and public debate. Some interference and inhibition are surely warranted to protect national security, but I see no justification whatsoever for requiring prepublication review of all publications of persons who have had access to SCI.

If a more limited scope is intended, the question then becomes which of the four possibilities I have listed or other meaning is intended, what should be the criteria for deciding in each case whether prepublication review is needed, and who will make the judgment. Such critical matters are simply not addressed in the Directive and therefore it is very difficult to comment on appropriateness.

My own preliminary judgment would be that prepublication review should be required only for those portions of writings dealing with classified subjects to which the author actually had access. I see no reason why this should apply only to SCI, but might well apply to all classifications (except perhaps confidential). That leaves open whether the author or someone else decides whether, in each instance, such review is necessary. It also leaves open the criteria to be used for prohibiting publication (what if, for example, a classified fact is not asserted by the author, but rather quoted on the evidence of another publication without actually being endorsed by the author?) and whether some time limit should not be required for the review so as not to permit restraint from lasting indefinitely absent a finding of violation.

I am very happy that you have decided to take up this important matter. It is one of great importance both to national security and to the preservation of informed public debate and quality scholarship. It is also much more complicated than the President's Directive even begins to take into account. I would be pleased to provide whatever further help I can.

Sincerely,

Ted Greenwood

TG/mm

4016 Moss Place
Alexandria, Virginia 22304

March 16, 1984

The Honorable Don Edwards
Chairman
Subcommittee on Civil and Constitutional Rights
Committee on the Judiciary
U.S. House of Representatives
122 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Edwards:

I am happy to respond to your letter of February 8, 1984 regarding National Security Decision Directive 84.

Since my retirement in 1977, after 35 years' service in the United States Navy, I have devoted my time to writing and lecturing specializing in international political-military affairs and maritime history. This is not a new endeavor for me since I began writing as early as 1952 while still on active duty. My published works include books, articles, and comments on a wide variety of subjects (a list is enclosed) some of which relate to various responsibilities and experiences I had as a naval officer.

From 1957 onward, I held positions in the Office of the Secretary of Defense and the Department of the Navy while ashore and several commands at sea. During those years, I had access to various levels of classified information up to and including some which were probably compartmented. I do not recall the specifics.

Prior to retirement, all prospective publications were submitted to the Department of the Navy for clearance either by myself or by the publisher. Since retirement, they have not. To insure that classified information does not even inadvertently creep into my writings, I have studiously avoided contact with persons I know within the government relying exclusively on open sources--newspapers, magazines, et cetera--for factual information to support my statements and conclusions. In particular, I have avoided any reference to subjects encompassing either classified technical or sensitive information to which I formerly had access.

My previous experience with submission for review has generally been time-consuming, frustrating, and a waste of not only my time but the bureaucratic reviewers. Deletions were confined to matters of opinion and wholly irrelevant editorial changes. In no case was classified information encountered or

deleted. To impose upon me the requirement to submit my work--writings, speeches and lectures--for pre-review and clearance would make my current endeavors impossible.

It is not clear to me from your letter if the contemplated directive would require "all former government officials with access [currently] to SCI information" to submit everything for review or if that constraint would apply to me forever. In both cases I am opposed to the intent of the directive and, in the latter circumstances, vehemently so.

What is needed, in my judgment, are laws which would make it possible to prosecute anyone who knowingly discloses classified information without prior governmental authorization. The political considerations aside, I believe that Daniel Ellsberg's role in publication of the so-called Pentagon Papers is a perfect example. There were other means available to him for achieving the ends he sought. That he could not be held accountable in a court of law was tragic.

Our nation places special trust and confidence in those to whom its secrets are revealed, and this is the way it should be in a democracy. Rather than create a monstrous bureaucracy to sift through the works of literally tens of thousands of former government officials, consultants and others, the approach should be to fashion laws to deal adequately with those who would violate that trust.

I have no objection to the foregoing remarks and the enclosure being made a part of the public record. Please accept my appreciation for the opportunity to comment on the directive. I urge you and your colleagues to decapitate this ill-advised initiative.

Sincerely yours,

Robert J. Hanks

Robert J. Hanks
Rear Admiral, USN (Ret.)

Enclosure

33-307 O—84——11

Published Works

Robert J. Hanks
4016 Moss Place
Alexandria, VA 22304
(703) 370-8928

"The Thin Blue Line"
U.S. Naval Institute Proceedings, October, 1964

"Sea Fight at Fayal"
U.S. Naval Institute Proceedings, November, 1967

U.S. Naval Institute Annual Prize Essay Contest
1968: "The High Price of Success" 2nd Prize
1969: "The Paper Torpedo" 3rd Prize
1970: "Against All Enemies" 1st Prize

"Commodore Lawrence Kearny, the Diplomatic Seaman"
U.S. Naval Institute Proceedings, November, 1970

"A Pitiful Babe in Snowland"
The Boston Globe, 14 February 1971

"Pro Army Can Create Military Caste"
The Washington Post (Outlook), 14 February 1971

"The Treaty That Never Was"
Shipmate, November 1971

America Spreads Her Sails
Chapter One, 1973

Red Star Rising at Sea
Commentary on Chapter Five, 1974

Book Review: Soviet Naval Influence
Strategic Review, Fall 1977

"Indian Ocean Arms Talks: Rocks and Shoals"
Strategic Review, Winter 1978

"Admiral Says His Sinai Air Base Statements Twisted by Columnist"
Commentary, The San Diego Union, 23 April 1978

U.S. Naval Institute Annual Prize Essay Contest
1979: "U.S. National Strategy: Outward Bound...
With Inadequate Charts" 1st Prize

"The Strategic Tremors of Upheaval in Iran"
Strategic Review, Spring 1979
With Dr. Alvin J. Cottrell

"A Fifth Fleet for the Indian Ocean"
U.S. Naval Institute Proceedings, August 1979

"The Regional Politics of the Red Sea, Indian Ocean and Persian Gulf." Middle East Contemporary Survey, Volume Two 1977-78. With Dr. Alvin J. Cottrell

"The Future Role of Iran." The U.S. Role in a Changing World Political Economy: Major Issues for the 96th Congress. With Dr. Alvin J. Cottrell

"Conflict in Iran"
Conflict, Volume 1, Number 3, 1979

"The Geopolitical Situation in the Persian Gulf"
The Impact of the Iranian Events upon Persian Gulf & United States Security

"Commodore Jones and His Private War with Mexico"
The American West, November/December 1979

Arms Transfers and U.S. Foreign and Military Policy
Significant Issues Series, the Center for Strategic and International Studies, The Georgetown University
With Alvin J. Cottrell and Michael Moodie

Book Review: The Boer War
Strategic Review, Spring 1980

U.S. Naval Institute Annual Prize Essay Contest
1980: "The Swinging Debate" 2nd Prize

"Amerikanische Flottenpolitik in den achtziger Jahren"
Europa Archiv, Volume 16, 25 August 1980

The Military Utility of the U.S. Facilities in the Philippines
Significant Issue Series, The Center for Strategic and International Studies, The Georgetown University: 1980
With Alvin J. Cottrell

The Unnoticed Challenge: Soviet Maritime Strategy and the Global Choke Points, Institute for Foreign Policy Analysis, Cambridge, Mass.: August 1980

"Military Affairs in the Persian Gulf" Chapter 7 in The Persian Gulf States, The Johns Hopkins University Press, Baltimore: 1980

"Of Minerals, Metals, and U.S. Foreign Policy"
South Africa Journal, October 1981

Oil and Security in the Arab Gulf
Resume of paper presented at an international symposium, Arab Research Centre, London, December 1980

Oil and Security in U.S. Policy Towards the Arabian Gulf-Indian Ocean Area" Islamic Defense Review Volume 5, No. 4, Islamic Institute of Defense Technology, London, 1980

The Cape Route: Imperiled Western Lifeline, Institute for Foreign Policy Analysis, Cambridge, Mass.: 1981

"The Strait of Hormuz: Strategic Choke Point" With Alvin J. Cottrell in Sea Power and Strategy in the Indian Ocean, Center for Strategic and International Studies, Georgetown University, Beverly Hills: 1981

"Rapid Deployment in Perspective" Strategic Review, Spring 1981

"Maritime Doctrines and Capabilities: The United States and the Soviet Union" The Annals, September 1981

"The U.S. Presence in the Indian Ocean" Hoagland, MacLachlan Newsletter, December 1981

The Pacific Far East: Endangered American Strategic Position, Institute for Foreign Policy Analysis, Cambridge, Mass.: 1981

"Oil and Security in U.S. Policy Towards the Arabian Gulf-Indian Ocean Area." Oil and Security in the Arabian Gulf, London: Croom Helm in associaition with the Arab Research Centre, 1981

"Send In the Marines?" Los Angeles Times, July 8, 1982, p. 7B

U.S. Strategy at the Crossroads: Two Views, Co-author, Institute for Foreign Policy Analysis, Cambridge, Mass.: 1982

The U.S. Military Presence in the Middle East Serialized in Persian Gulf Arab newspapers. In Arabic.

"Out of Europe and Back to Sea" Los Angeles Times, September 13, 1982

"Whither U.S. Naval Strategy?" Strategic Review, Summer 1982

"Modern Principles of Maritime Strategy" Contemporary Maritime Strategy, University of Pretoria, Pretoria, Republic of South Africa, August 1982

"A Sea of Discord" Sea Power, December 1982

The U.S. Military Presence in the Middle East: Problems and Prospects, Institute for Foreign Policy Analysis, Cambridge, Mass.: 1982

"The 'Pocket' Navy Emerges"
Strategic Review, June 1983, Institute for Strategic Studies, University of Pretoria, Pretoria, South Africa

Southern Africa and Western Security, Institute for Foreign Policy Analysis, Cambridge, Mass.: 1983

The Unnoticed Challenge (Japanese language edition), Gakuyo Shobo, Publishers, Tokyo, Japan: 1983

"The Prime 'Lesson' of the Falklands War"
South Africa International, October 1983

"Political Instability, Aggression and Oil Supply Security: Threats and Scenarios"
In World Energy Supply and International Security, Institute for Foreign Policy Analysis, Cambridge, Mass.: 1983

HALLE
PLACE DE LA TACONNERIE 1
CH-1204 GENÈVE
TÉL. (022) 21 79 05

17 February 1984

Chairpersons Don Edwards and Patricia Schroeder,
Committee on Post Office and Civil Service,
Subcommittee on Civil Service,
U. S. House of Representatives,
122 Cannon House Office Building,
Washington, D. C. 20515,
USA

Dear Chairpersons Edwards and Schroeder,

What follows responds to the six numbered questions addressed to me in your letter of January 25.

1. What I have written in the thirty years since I left government service has taken the forms of books and articles. These have not been directly related to my experience in government, although they have often reflected the understanding of international problems that it gave me.

2. Except for absence on military service, I was an officer of the State Department from late 1941 until the summer of 1954. I held various positions related to Latin American affairs, and in the last two or three years was a member of the Policy Planning Staff in the Office of the Secretary. Throughout this service I had access to classified information, including "top secret." I can't answer the question about "sensitive compartmented information (SCI)" because I don't know what it is.

3. While I was with the Department I met the requirement that anything to be published by me be submitted to the publications committee of the Department, to be published only if cleared by it. Since leaving the government I have had no occasion to seek clearance for what I have written because it has not contained classified information.

4. My answer to question 3 above answers the present question in part. I recall being refused clearance by the publications committee for one article, not because it contained classified information but because it might give an unfavorable impression of the State Department. I think this was right in principle.

5. I think the prepublication review process is necessary. Not knowing the present extent of its use, I can have no

opinion on whether it should be expanded.

6. I think it impracticable to have former officials submit all publications, including speeches and lectures, for pre-publication review. (I would, as a university professor in Geneva, have had to submit all the lectures I gave day after day for clearance in Washington!) However, what might contain classified information should, I think, be submitted for clearance.

There is nothing confidential in the above.

Sincerely,

Carl J. Hallé

W. AVERELL HARRIMAN

February 20, 1984

Dear Congressman Edwards and Congresswoman Schroeder:

I have received your letter of January 25 and commend you on your Committees' investigations into the National Security Decision Directive 84.

Enclosed are my answers to your questions. I hope they will be helpful in your research. My answers are not confidential and may be made part of the public record.

With best wishes for success,

Sincerely,

W. Averell Harriman

The Honorable
Don Edwards and
Patricia Schroeder
Committee on Post Office and
Civil Service
122 Cannon House Office Building
Washington, DC 20515

Responses to questions asked by Congressman Don Edwards and Congresswoman Patricia Schroeder for their Subcommittees and Committees on President Reagan's National Security Decision Directive 84:

1. Harriman's writings have appeared in books, magazines, and newspapers, and have been related to Government employment.

2. Positions held in the Federal Government by Governor Harriman:

1934: Jan - Mar - Administrator Division II, NRA

Mar - May - Special Asst. Administrator, NRA

1934 - 1935 - Administrative Officer, NRA

1941: Jan - Mar - Chief, Materials Branch Production Division Office of Production Management

1941: Mar - 1943: Oct. Special Representative of the President in Great Britain, rank of minister

1943: Oct - 1946: Jan - U.S. Ambassador to the USSR

1946: Apr - Oct - U.S. Ambassador to Court of St. James

1946: Oct.- 1948: Apr - Secretary of Commerce

1948: May - 1950: june - U.S. Representative for Economic Cooperation Act (Marshall Plan), rank of ambassador

1950: July 1952: Jan - Special Assistant to the President

1951: Sept- 1952: Feb - US Representative on North Atlantic Treaty Organization Committee

1951: Oct- 1953: Jan - Director, Mutual Security Agency

1961: Feb - Dec Ambassador-at-Large

1961: Dec - 1963: Apr - Assistant Secretary of State for Far Eastern Affairs

1961 -62 - US Deputy Representative to the International Conference on the Settlement of the Laotian question

July 1963 - Special Representative of the President for the Negotiation of the Nuclear Test Ban Treaty

1963: Apr -
1965: Mar - Under Secretary of State for Political Affairs

1965: Mar -
1969: Jan Ambassador-at-Large

Jan. 30, 1968: Appointed by President as Chairman, The President's Commission for the Observance of Human Rights Year 1968

Mar 31, 1968 -
Jan 19, 1969 - President's Personal Representative to Peace Talks with the North Vietnamese, Paris

In almost all of these positions, Governor Harriman had access to classified information amd to sensitive compartmented information.

3. Governor Harriman's principal writing, Special Envoy to Churchill and Stalin: 1941-46, written with Elie Abel, was not submitted for review, in whole or in part. This was because the book was published in 1975, some thirty years after the events described, and many of the telegrams cited, for example, had already been published in the Foreign Relations series of the State Department.

4. N.A.

5. Governor Harriman does not believe that expanding the use of prepublication review is either appropriate or effective.

6. No. Governor Harriman believes the best protection against damaging, premature disclosure rests in the "integrity and wisdom" of the men and women appointed to high office by the President. The wise retired official knows how to balance national security interests and needs against the public's need to know.

MASSACHUSETTS
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Eugene B. Skolnikoff
Director

Cambridge, Massachusetts
02139

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Cable: MITCAM

23 February 1984

Don Edwards
Patricia Schroeder
Subcommittee on Civil Service
Committee on Post Office and Civil Service
U.S. House of Representatives
122 Cannon House Office Building
Washington, DC 20515

Dear Reps. Edwards and Schroeder,

I am writing in response to your letter of January 25 asking for my response, as a former government official, to your questions regarding the need for prepublication review.

For the past decade, I have worked intermittently in government service and in academic institutions. I am currently a Visiting Scholar at the Center for International Studies at MIT. From 1979 to January 1983, I served as an Office Director in two Bureaus in the Department of State. During that time I had access to general classified information and to sensitive information.

My publications deal with political and bureaucratic analysis in the fields of scientific and technological affairs and oceans issues and never with topics that involve sensitive information. My writings appear as books and articles in professional journals. In my writing, I draw only on information that is already publicly available. In addition, I typically send my manuscripts to my former government colleagues for criticism and suggestions. While I do this to ensure the accuracy of my writings, doubtless they would also notice anything that might be classified information. To date, that has never occurred.

Expanding the prepublication review process or requiring all former government officials with access to SCI information to submit all speeches and publications for prepublication review is neither desirable nor workable. To require officials who have had access to SCI but never speak on or publish SCI-related issues to submit all articles for review, would be a colossal waste of time and the taxpayer's dollar. Moreover, many speeches and lectures are made from notes and cannot adequately be reviewed in advance.

The best way to deal with possible disclosure is to require prepublication review only for publications that may disclose SCI-related information. It should be up to the author to determine whether this is a possibility. If any author does not do so and discloses classified information, he should be penalized appropriately as a warning to others and a

deterrent to further disclosure by the same author. There are a number of issues which are classified or sensitive at one point in time but not a few year later. Classifications on this type of information should be regularly updated to avoid the possibility that authors would get into trouble for disclosing information that, while once sensitive, has no reason to remain classified.

Sincerely yours,

Ann L. Hollick
NSF Visiting Professor

ALH/cl

BELOIT COLLEGE

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(608) 365-3391

OFFICE OF THE PRESIDENT

February 3, 1984

Ms. Helen Gonzales
Judiciary Staff
Subcommittee on Civil and
Constitutional Rights
122 Cannon House Office Building
Washington, D.C. 20515

Dear Ms. Gonzales:

In response to the letter from Don Edwards and Patricia Schroeder regarding National Security Decision Directive 84, seeking to reduce the unauthorized disclosure of classified information, my answers to the questions are as follows:

1. Type of publication - newspaper articles. Some related to former government employment; some not.

2. Access to classified information - yes.
Access to sensitive compartmented information (SCI)- no
(I am not familiar with the appelation SCI).

3. No steps taken to ensure that publication contained no classified information. Did not submit publication for prepublication review. (3rd question not applicable)

4. Not applicable

5. Not applicable

6. Yes

Sincerely,

Roger H. Hull

RHH:pl

2459 Wayfarer Court
Chapel Hill, N.C.
27514
February 10, 1984

Congressman Don Edwards:
Congresswoman Patricia Schroeder:

Dear Mr. Edwards and Ms. Schroeder:

I appreciate your invitation of January 25 to comment on NSDD 84. My answers to your six questions follow. I would be happy if they could be made public.

1. Since my retirement in 1975, I have written articles on foreign policy for four newspapers and one magazine. All related directly to my area of specialization in the government.

2. I was a Foreign Service Officer from 1946 to 1975. My last assignment was as Director of the Office of Near Eastern, North African, and South Asian Affairs in the State Department's Bureau of Research and Intelligence. I had access to Top Secret, SCI, and other categories.

3. None of my articles was submitted to Washington for prepublication review. To ensure that they contained no classified information, I applied the same criteria that I learned from 29 years of moving back and forth between highly classified official discussions and unclassified meetings with journalists and other members of the public.-- the same criteria I used in assigning classifications to my own official products.

4. Having dealt with Washington in one instance under the Freedom of Information Act to arrange declassification of one of my own products, I believe that imposition of prepublication review on submissions in the foreign policy field would take so long as to make many of them outdated if and when they were ever cleared.

5. In over eight years of close reading of commentary by former government officials in my area of specialization, I have not been aware of any serious breaches of security. For reasons cited under Comment below, I am strongly opposed to expansion of the prepublication review process.

6. I see no advantage and considerable disadvantage in adopting official guidelines for submission of questionable material. As long as it is up to the individual to determine what material "might contain classified information", he might as well be allowed to use his own judgement on when reference to Washington is indicated.

Comment:

Comment:

In the US system of government, disclosure of classified information is a continuing and inevitable phenomenon -- much less by inadvertence than by deliberate leak, motivated by personal, political, or ideological factors.

Mandatory prepublication review would damage the national interest in two ways:

1) It would drive many retired civil servants into the leakage process.

2) What is much more critical, it would deprive the nation of views of some of its better qualified commentators.

Human nature being what it is, every administration would succumb to the temptation to subvert prepublication review to stifle opposition views. Any administration that seeks to impose prepublication review is suspect of seeking this very power. In my own area of specialization, at least, official US government releases are often so inaccurate, contrived, and self-serving that they cry out for refutation.

In today's world, there is no perfect democracy, but we continue to make our own better. In this endeavor, public access to the truth is crucial. I consider NSDD 84 an unconscionable infringement of the American constitutional system, and a small but disturbing step toward totalitarianism.

Sincerely,

Curtis F. Jones

Curtis F. Jones
Foreign Service Officer, retired

Carnegie Endowment for International Peace

February 14, 1984

Congresswoman Pat Schroeder
Subcommittee on Civil Service
Committee on Post Office and
Civil Service
122 Cannon House Office Bldg.
Washington, DC 20515

Dear Ms. Schroeder,

In response to your letter of 18 January, I hope the following information is of use.

I have written numerous articles for newspapers and journals since leaving government service. These articles were on nuclear weapons and arms control, subjects I dealt with while I served at ACDA and OMB.

I directed defense program and policy reviews at the Weapons Evaluation and Control Bureau, where I served from 1978-1981. I then served as a special assistant in the National Security Division of OMB until May, 1981. In both positions, I had access to classified material, including sensitive compartmental information.

In writing my articles, I made sure that no information appeared that was not already in the public domain. In my case, this was a fairly easy task, as I have concentrated on broad policy issues rather than on details of weapon systems that are quite properly classified. No one, either in or outside of government, has raised concerns with me over inadvertent release of classified information from my writings. I have not submitted my written work in advance to government officials for prepublication review. Given the policy orientation of my writing, I would find this distasteful and inappropriate.

I cannot overstate my abhorrence with the idea of requiring former government officials to submit policy-related materials for prepublication review. Isn't this remedy more injurious than the disease?

Sincerely,

Michael Krepon
Senior Associate

sg

Center for Strategic & International Studies
Georgetown University • Washington DC

January 25, 1984

The Honorable Don Edwards
The Honorable Patricia Schroeder
U.S. House of Representatives
Committee on Post Office and Civil Service
122 Cannon House Office Building
Washington, DC 20515

Dear Chairman Edwards and Chairwoman Schroeder:

I am pleased to respond to your letter of January 18, 1984 concerning NSDD-84 which is intended to curb leaks of classified information. First, I will make a general statement. Following that, I will attempt to answer each of your questions.

Every administration becomes paranoid about leaks. The ironic thing, however, is that much of the leaking occurs at the most senior political levels of an Administration. Making the National Security Advisor, the Secretary of Defense, or even the President, sign a non-disclosure statement or take a lie detector test appears silly at best.

No matter what administrative or criminal sanctions are applied, our system is based on individual honor and not upon the vigilance of its police. We ask our public servants to sacrifice a great deal in the service of their country; restrictions which fundamentally impugn their professional integrity cannot be in the best interests of the country.

While no one can condone leaks, unless fully intended by the Administration, information is all too often highly classified to protect the incompetent rather than the national security. Although a human trait and therefore understandable, needless classification is nonetheless a great pity.

Our real strength lies in our own creativity and willingness to accept a degree of chaos -- including some leakage of classified material -- in order to maintain our freedoms. The price of trying to fully "plug the leaks" is far too high for a truly democratic society to pay.

At this juncture I will attempt to answer your specific questions:

1800 K Street Northwest, Suite 400 • Washington DC 20006 • Telephone 202/887-0200
Cable Address CENSTRAT TWX 7108229583

1. My publications and media appearances include journal articles and books, op-ed pieces, radio and television interviews, and congressional hearing appearances.

2. When I was in government I held various positions including Assistant Director for Government Preparedness in the Office of Emergency Preparedness; Deputy Assistant Director for Military Affairs, and later Chief Scientist, for the Arms Control and Disarmament Agency; a variety of government consultancies; and transition director in the Reagan Administration of the Federal Emergency Management Agency.

   In each case I have had access to classified material including SCI material. For appearances before congressional committees, I was required to get an OMB clearance as well.

3. When I was in government I was required to have all of my proposed written publications cleared by my agency. These reviews included classification and public affairs considerations. In each case I submitted the entire publication for review.

   Now that I am out of government, I have had to exercise even greater judgment. If an article contains information that I have learned specifically as a result of a government consultancy, I would submit the article for review.

4. When I was in government I had little or no difficulty getting my articles cleared for open publication. Normally, I could get clearance within a week or two.

5. Based upon my experience, an expansion of the prepublication review process would have little or no effect on preventing disclosure of classified information. In an atmosphere in which the military officer or the civil servant feels especially demeaned, it is conceivable that the new procedures may backfire.

6. The directive requiring former government officials with access to SCI information to submit all publications for review is just not enforceable. If the tactics become oppressive, many will give up their special clearances. As to the matter of submitting only those portions of writings which might contain classified information, the process would be doomed from the start. No reasonable standards could be set. One might have to rely on the judgment of former senior officials whose political commitments to the Administration in office are loose to antagonistic.

I hope that my comments are of some use to you. The subject is perplexing and in some respects not worthwhile. I believe our present security system works fairly well. To make it repressive would only further anger a great many dedicated and articulate former and present officials.

Sincerely,

Robert H. Kupperman

Robert H. Kupperman
Senior Associate

AMHERST COLLEGE
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Department of Political Science
Telephone: 413-542-2318

March 7, 1984

Don Edwards, Chairman
Subcommittee on Civil and Constitutional Rights
Committee on the Judiciary
&
Patricia Schroeder, Chairwoman
Subcommittee on Civil Service
Committee on Post Office and Civil Service
122 Cannon House Office Building
Washington, D.C. 20515

Dear Ms. Schroeder and Mr. Edwards:

I am, of course, happy to reply to your letter of January 31, although I fear I have little to contribute in the way of personal experience.

1. In answer to your first question, since first leaving the government in 1970, and again after a period of service in the State Department during 1977-81, I have written about foreign policy issues in a number of books, newspapers and journals. The writing certainly concerned issues on which I had worked in government. It rarely covered personal experiences while a government employee and never, I believe, revealed classified information. (One of my books, on U.S. policy towards Rhodesia, included new information about internal policy debates. It relied on interviews with government officials and did not draw on personal recollections.) In fact, since so much that the government does quickly becomes public knowledge through the newspapers, it is surprisingly easy to write about public policy issues without revealing classified information.

2. I was a Foreign Service Officer from 1962-1970, serving with the Embassy in Saigon (1963-65); in the Bureau of Far Eastern Affairs (1965-66); as Staff Assistant to the Under Secretary of State (1966-67); and as Special Assistant to the National Security Assistant in the White House (1969-70). From 1977 to 1980 I was Director of Policy Planning in the State Department. I had access to classified information in all these jobs, including (in some of them) SCI.

3. I used common sense to avoid revealing classified information of which I had personal knowledge.

4. I have not submitted writings for prepublication review.

5. I haven't had such experience.

6. Such a procedure might be "less effective" in the terms of the Directive since it would rely on a former official's discretion in deciding which portions might contain classified information--and the Directive seems designed to avoid reliance on that discretion. It would be more "effective" in* reducing the quantities of material submitted for review. In any case, I believe this compromise to be almost as cumbersome, chilling and distasteful as the Directive itself. Why not trust former

* an administrative sense)

officials to continue to act responsibly after they leave government--and if they act irresponsibily and illegally, pursue them under relevant laws? With equal treatment for junior officials who become journalists and very senior officials writing their memoirs?

Sincerely,

Anthony Lake
Professor of Five-College
International Relations

AL/lmd

Yale University

Joseph LaPalombara, Chairman
Department of Political Science
P.O. Box 3532 Yale Station
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Campus address:
124 Prospect Street
Telephone:
203 436-2471

February 13, 1984

Honorable Don Edwards, Chairman
Subcommittee on Civil and Consitutional Rights
U.S. House of Representatives

Honorable Partricia Schroeder, Chairwoman
Subcommittee on Civil Service
Committee on Post Office and Civil Service
122 Cannon House Office Building
Washington, D.C. 20515

Dear Mr. Edwards and Ms. Schroeder:

Here are my answers to your interesting questionnaire. I have no objection whatever to their being made part of the public record.

1. Articles in learned journals; chapters in books; newspaper articles.

2. First Secretary (Cultural Section), U.S. Embassy, Rome, Italy, September, 1980 -- August, 1981. Yes, I did have access to classified information.

3. I have never submitted any of my writings for review.

4.-6. Not relevant in my case, given my response to 3, above.

May I respectfully offer a few observations regarding the matter of review and the Presidential directive of March 11, 1983.

First, the exhortation to federal employees to refrain from unnecessary classification and to declassify information that no longer requires protection will fall on deaf ears. My brief experience at Rome suggests that the human impulse to "play it safe" is simply overwhelming. The upshot of this is that we continue to classify an astonishing amount of information that should be, and oftentimes actually is, in the public domain.

Second, the spirit of the Presidential Directive of March, 1983, is, in my view, not in keeping with the norms that should guide a free, democratic society. At a minimum, the Directive encourages an excessive bureaucratization which can only mean, in practice, the intimidation of American citizens, inside and outside the government, who may wish to use information in the interest of a) scientific or objective analysis or b) informing the general public regarding issues pertinent to its welfare.

Third, the requirement that federal employees be submitted to examination by polygraph is offensive in the extreme, in that it involves an invasion of privacy under threat of unspecified retaliations against those who fail to conform. It would seem self-evident here that the executive brance has arrogated to itself a power that appropriately belongs to the judiciary, where it is also appropriately hemmed in by existing norms.

Last, on the basis of my limited governmental experience abroad, I would have to say that additional policies aimed at restricting contacts with journalists will only serve to cripple our diplomatic operations.

Yours sincerely,

Joseph LaPalombara

JL/mca

COUDERT BROTHERS
ATTORNEYS AND COUNSELLORS AT LAW
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January 23, 1984

The Honorable
Patricia Schroeder
and
The Honorable
Don Edwards
House of Representatives
Washington, D.C. 20515

Dear Congresswoman Schroeder and Don:

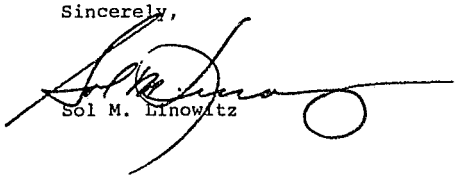
I appreciated your letter of January 18th with reference to National Security Decision Directive 84, and can answer your questions rather briefly:

Since I left government service, I have done a number of newspaper articles and occasional columns dealing with issues in the international area - particularly those in which I was involved during my government service. I had access to classified information and sensitive information in each of the three positions I held - Ambassador to the Organization of American States (1966-1969); Co-Negotiator of Panama Canal Treaties (1977-1978); and Middle East Negotiator (1979-1980).

I have never submitted any of my writings for pre-publication review and took it upon myself to assure that anything I published did not contain classified information.

My own view is that former government officials who have had access to such classified and sensitive information might be asked to submit those portions of their writings which "might contain classified information" and that this should be sufficient. The burden of having to submit any writings for pre-publication review seems to me unnecessary, unworkable and undesirable.

Sincerely,



Sol M. Linowitz

Carnegie Endowment for International Peace

February 13, 1984

U.S. House of Representatives
Committee on Post Office and
Civil Service
Subcommittee on Civil Service
122 Cannon House Office Building
Washington, D.C. 20515

Dear Sirs:

I enclose my responses to your questionnaire of January 25, 1984 relating to NSD Directive 84 on unauthorized disclosure of classified information.

1. Books and newspaper articles (see attached list). Generally related to former government employment in the larger sense, i.e., foreign and defense policy. Only occasionally related to my specific duties and fields of assignment while in government employment.

2. Director for Internal Defense, Politico-military staff of Secretary of State (Rusk) 1961-63; Special Assistant to Undersecretary of State (Harriman) and staff director of NSC Special Group (Counter-Insurgency) 1963-67. Deputy General Counsel, National Science Foundation and international legal adviser (on loan) National Academy of Sciences 1967-73. Access to classified information with top secret and other clearances, but not familiar with the particular SCI classification.

3. I did not begin to draw on my State Department experience in writing for publication until well after I left the Department. To the best of my knowledge, every topic I have written about had long been in the public domain and the subject of prolonged coverage in the press. Unlike ex-officials like McGeorge Bundy, Henry Kissinger, et. al., I did not cart away government documents and consequently made no use of classified written material. To the extent that I relied on memory to illustrate a point I used my own judgement. At no time have I submitted any article for publication review and would regard this as an infringement of my constitutional rights.

4. Not applicable.

11 Dupont Circle, N.W. Washington, D.C. 20036 / Phone (202) 797-6400 / Telex 248329 / Cable Interpeace WashingtonDC

U.S. House of Representatives
Committee on Post Office and
Civil Service
Washington, D.C. 20515
Page Two

5. My indirect experience is confined to the field of foreign policy, rather than covert operations, intelligence, etc. I totally reject any form of prepublication censorship as regards writings on international affairs and foreign policy.

6. Not really, largely because virtually all classified information either enters the public domain or becomes worthless after a relatively short lapse of time. At least in the realm of foreign policy any attempt to make this kind of segregation would be folly.

As general comment, I totally reject the idea that one set of public officials -- ex-Secretaries of State, Under Secretaries, national security advisers -- can carry away bales of classified material and use them on the financially lucrative lecture circuit or to write best-sellers, while others have to submit works for prepublication review. I also reject the idea that because a matter was once justifiably classified top secret, it remains so after the need for secrecy has passed. Finally, I reject the idea that the executive branch should be the final judge of whether pre-publication review should apply to particular writings; this should be the function of some independent board of knowledgeable ex-officials and journalists.

On the reverse side, I would be much more severe about the abstraction and removal of classified government documents, especially cables, without authorization. This practice can compromise our codes. I would prosecute violators from the top down, not merely lower grade civil servants.

Sincerely yours,

Charles Maechling, Jr.

Attachment (list of articles)

CHARLES MAECHLING, JR.

PUBLICATIONS 1969-1984

A. Professional and Literary Journals

1984 Restoring the Alliance, EUROPE (March-April 1984)

1983 The Dehumanization of Human Rights, Foreign Policy (Fall, 1983).

1983 The Credit Collapse, Foreign Service Journal (April 1983).

1982 Siberian Pipe Dream, EUROPE (September-October 1982).

1982 The Argentine Pariah, Foreign Policy (Winter 1981-1982).

1982 Emerging Mexico, Foreign Service Journal (January 1982).

1981 The Japanese Image of America, Trends (December 1981).

1981 The Pakistan Mirage, SAIS Review (Inaugural issue, March 1981).

1981 Japan-The Brittle Alliance, Virginia Quart. Review (Winter 1981).

1981 The Future of Diplomacy and Diplomats, Foreign Service Journal (Memorial issue, January 1981).

1980 The Long Arm of Anti-Trust, EUROPE (May-June 1980).

Improving the Intelligence System, Foreign Serivce Journal, (June 1980).

1979 Pearl Harbor, 1941-The First Energy War, Foreign Service Journal (August 1979)

1979 The Hollow Chamber of the International Court, Foreign Policy (Winter 1979)

1978 The Intellectual in American Foreign Affairs, Trends (September 1978); Foreign Service Journal (October 1978).

Prescription for Detente, Virginia Quart. Review (Winter 1978).

1977 The Extra-Territorial Reach of U.S. Law, ABA Journal (February 1977).

Professional and Literary Journals cont'd

The Panama Canal - A Fresh Start, ORBIS (January 1977).

1976 Systems Analysis and the Law, Virginia Law Review (May 1976).

Foreign Policy Makers: The Weakest Link?, Virginia Quart. Review (Winter 1976) (reprinted Foreign Service Journal and digested New York Times.)*

1975 Freedom of Scientific Research: Stepchild of the Oceans, Virginia Journal of International Law* (July 1975).

1973 The Sixtus Affair, History Today (November 1973).

1972 Science and the Shrinking Ocean, Foreign Service Journal* (June 1972).

1969 The Next Decade of American Foreign Policy, Virginia Quart. Review (Summer 1969).

Our Foreign Affairs Establishment, Virginia Quart. Review* (Spring 1969).

The Right to Dissent, ABA Journal* (September 1972) (Ross Essay Award).

Our Internal Defense Policy: Foreign Service Journal (January 1969).

* Reprinted in whole or in part for inclusion in course materials, casebooks and anthologies, including War College curricula.

B. Newspaper Articles (Op-Ed and Sunday Editorial Sections)

Jan. 20, 1984 Haven't We Heard This Line Before?, Los Angeles Times**

Dec. 14, 1983 West Germany's Kohl Is in Trouble, Los Angeles Times**

Nov. 17, 1983 'Intelligence' Simply Wasn't, Los Angeles Times**

Oct. 27, 1983 Excuses for Grenada Move Are Flimsy, Los Angeles Times**

Newspaper Articles cont'd

Oct. 14, 1983	KAL Flight 7 - the legal aftermath, Christian Science Monitor
Sept. 14, 1983	Reagan's Anti-Human Rights Policy, New York Times
June 10, 1983	Fighting Insurgency With No Real Strategy, Los Angeles Times**
May 3, 1983	Spain: The Missing Link?, Miami Herald
April 15, 1983	Free Trade Really Isn't, Los Angeles Times**
Feb. 13, 1983	Closer Coordination With Our Allies, New York Times
Dec. 31, 1982	America's Nonrecognition Policy Is A Nonstarter, New York Times
Dec. 17, 1982	U.S. Has Time To Ratify Sea Treaty, Chicago Sun-Times
Nov. 28, 1982	Latin American Red Ink, Los Angeles Times**
Oct. 24, 1982	Piracy on Law of the Sea, Los Angeles Times**
Oct. 3, 1982	Foreign Policy Made in Peoria, Los Angeles Times**
Sept. 1, 1982	The Pipeline Quagmire, Christian Science Monitor
Aug. 30, 1982	Making Sense of our Latin American Policy, Los Angeles Times**
Aug. 8, 1982	The Pipeline Embargo, New York Times
July 22, 1982	The Pipeline Sanctions, Baltimore Sun**
April 25, 1982	The Falklands, OAS and International Law, Miami Herald
April 9, 1982	Britain Sails into a Rough Sea, Los Angeles Times**
March 18, 1982	The Murderous Mind of the Latin Military, Los Angeles Times**
Sept. 5, 1981	Mexico, Latin Pivot, New York Times

Newspaper Articles cont'd

April 5, 1981	Private Interests Jeopardize Sea Treaty, Baltimore Sun
March 15, 1981	Can U.S. Afford to Scuttle Sea Pact?, Norfolk Virginian Pilot
Feb. 12, 1981	Counter-Insurgency-With Controls, Washington Post**
Nov. 20, 1980	Schmidt on a Tightrope, Washington Post
Oct. 14, 1980	The Shatt al-Arab - At Stake in the War, Washington Post**
Dec. 20, 1978	The China Claims Issue, Washington Post**
June 10, 1978	Africa: The Counter-Insurgency Dilemma, Washington Post
Aug. 26, 1977	A High Price for a Canal Treaty, Washington Post
Aug. 8, 1977	The Canal Treaty: Words of Caution, New York Times
March 25, 1976	Making Foreign Policy, New York Times

(also book reviews for Washington Post, Foreign Service Journal, Virginia Quarterly Review, etc.)

* Reprinted in whole or in part for inclusion in course materials, casebooks and anthologies, including War College curricula.

** Reprinted in International Herald Tribune

JOHN BARTLOW MARTIN
185 MAPLE AVENUE
HIGHLAND PARK, ILLINOIS 60035

2/9/84

Dear Mr.Edwards and Mrs.Schroeder,

In response to your inquiry of January 25, I wish to submit the following (the numbered responses correspond to your numbered questions):

1) Since leaving government service, I have published three books relating in one way or another to my government service. They are: 1) OVERTAKEN BY EVENTS: The Dominican Crisis From The Fall of Trujillo to the Civil War. (Doubleday, 1966.) This was directly related to my government work, since it was an account of my tenure as Ambassador to the Dominican Republic. 2) THE LIFE OF ADLAI E.STEVENSON. (Doubleday. 2 vols. 1976, 1978.) The second volume, which includes Mr.Stevenson's service as our Ambassador to the United Nations, was related to my government work in that I drew on my own experiences to help me understand his; furthermore, during my research I was given access to the classified documents of the State Department and the United States Mission to the United Nations for the period of his tenure as Ambassador. 3) U.S.POLICY IN THE CARIBBEAN (a Twentieth Century Fund study, pub.by Westview Press, 1978.) While not directly related to my government service, and while I did not have and did not ask access to classified documents, this book was informed and I believe benefited from my experience in government. In addition, I have published numerous newspaper and magazine articles on Caribbean affairs and other foreign policy issues; for none of this did I ask or have access to classified documents.

2) I was U.S.Ambassador to the Dominican Republic 1962-1964. I was President Kennedy's special envoy there in 1961 after the fall of Trujillo and President JOhnson's special envoy there in 1965 during the Dominican civil war and our intervention. Yes, I had access to classified materials, including, I believe, SCI (though it was not called that at that time, so far as I know).

SUMMER ADDRESS: BOX 71, L'ANSE, MICHIGAN 49946

JOHN BARTLOW MARTIN
185 MAPLE AVENUE
HIGHLAND PARK, ILLINOIS 60035

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3) When I did all this writing, I had in my possession no classified documents. In the case of OVERTAKEN BY EVENTS and U.S.POLICY IN THE CARIBBEAN, so far as I can recall, I saw no classified documents while researching and writing the books. In researching the STEVENSON biography, as I said above, I did read a great number of classified documents. In the case of magazine and newspaper articles, I had no access to, and did not ask for, classified documents,. Now as to prepublication review: 1) While I was writing OVERTAKEN BY EVENTS, an agent of the CIA called on me, said the Agency understood I was writing a book about the Dominican Republic, and asked if the Agency could review it before publication. I said of course. He said he would get back to me. But he never did. One chapter in that book covered our military intervention in 1965; it was based on my mission there; I ssked two senior members of President Johnson's staff to review it before it was published (first in LIFE then in my book); they did and, so far as I can recall, requested no changes. 2) While I was researching ADLAI STEVENSON, I asked for access to classified documents USUN-DOS and was granted access by the Undersecretary of State and the Assistant Secretary for IO. (I have the impression they cleared it with the Secretary.) They did this on condition that I submit the manuscript to them for review before publication. I did submit it; they read it and approved it; as I recall, they requested no changes. (I submitted to them only the sections of the biography relating to Stevenson's tenure at USUN; the great bulk of the book covered Stevenson's earlier life and his private life and were of no relevance to the Undersecretary and Assistant Secretary.) 4) As to the magazine and newspaper articles, I submitted nothing nor was asked to, except for the one chapter of OVERTAKEN BY EVENTS published in LIFE and noted at (1) earlier in this paragraph.

4) I have answered most of this question in 3) above. I can add that the prepublication review of the STEVENSON material took only a few days and of the chapter in OVERTAKEN BY EVENTS only hours.

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5) One way to prevent disclosure of classified information against our national interest is to rely on the author's own judgment. In my own writing, I tried to be candid with the reader but I by no means published everything I knew. Prepublication review by a competent reviewer is an excellent backstop for the author's judgment. But I emphasize a competent reviewer. To hand off this task to some low-level cautious faceless bureaucrat makes me shudder. The reviewer must be a senior officer, a person capable of rendering judgment on what may be safely made public and what may not. Were the process to become heavily bureaucratized, it would not only cause enormous delay but would result in withholding from the reading public information the public needs in order to understand the subject being addressed. A bureaucratic process also could be used to unwarrantedly protect incompetent individuals in government, to grind axes, and to make the matter in hand come out the way, in hindsight, the reviewer wishes it had come out. The power of review, or prepublication censorship, is awesome and should be hedged around with safeguards for the public's right to know. How you do this formally, by executive directive or legislation, I must say I don't know. It is this difficulty that makes me wonder if prepublication review is wise at all.

6) I certainly see no reason for prepublication review of portions of a manuscript that in no way contain classified material. This is a waste of time and an invitation to censorship having nothing to do with national security. It tends toward thought control. If, for example, an author writing on a national security subject wishes to draw conclusions that the censor doesn't like, he has a right to.

May I add a general comment,. This is, obviously, an extremely sensitive subject, approaching the heart of fundamental liberties. Certainly the government has a right, indeed an

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4

obligation, to protect its secrets if unveiling those secrets would jeopardize national security. Certainly, too, an author has a right to write freely. And certainly, too, the public has a right to know as much as possible about the conduct of the country's business. The only test here, it seems to me, is whether publication of certain material would damage our national security. This is, clearly, a matter of judgment. Entrusting censorship power to anybody must be carefully hedged about with safeguards. This does not appear to be provided for in the Directive you are addressing. For example, requiring, as the Directive does, prepublication review of any writing "concerning intelligence activities, sources, or methods" seems to me much too broad and loose. So is the requirement of review for any writings that "contain or purport to contain" any classified information---from that language it is not even clear whether what is forbidden is verbatim extracts from a classified document or a paraphrase. Beyond this, in this whole matter we run the risk of depriving the public of the experience and insight and wisdom of former government officials. Who is to say that Mr.Acheson or Mr.Kissinger--- or President Truman or President Eisenhower---cannot publish their memoirs? If they cannot, how are we, the public, to learn what happened? It is inconceivable that, when they wrote their memoirs, they did not have in their heads if not in their hands classified information. Had they been prevented from publishing it, history would be much the poorer. Finally, I have read a great many books and articles on foreign policy, including many written by former government officials. But I have never read one that harmed the national security of the United States.

You may make any use of this letter that you wish. I thank you for this opportunity.

Sincerely,

John Bartlow Martin

SUMMER ADDRESS: BOX 71, L'ANSE, MICHIGAN 49946

THE UNIVERSITY OF MICHIGAN
GRADUATE SCHOOL OF BUSINESS ADMINISTRATION
ANN ARBOR, MICHIGAN 48109

Paul W. McCracken
Edmund Ezra Day University Professor
of Business Administration

January 31, 1984

Mr. Don Edwards, Chairman
Subcommittee on Civil and
Constitutional Rights
Committee on the Judiciary
U.S. House of Representatives
122 Cannon House Office Building
Washington, D.C. 20515

Dear Mr. Edwards:

This is in response to your letter of January 18 requesting comments pertaining to National Security Decision Directive 84. Perhaps the most straightforward way to respond would be simply to comment on each of the six points you have stipulated in the letter.

1. My recent writing generally has taken the form largely of newspaper articles, papers and one book. The writing was not specifically related to my experience in government, dealing largely with economic developments and economic policy. Obviously, however, a tour of duty in government inevitably has an over-arching influence on the way one views some of these subjects.

2. My experience in government included two tours of duty as a member of the Council of Economic Advisers. The first was as one of the three members, 1956 to 1959. At the beginning of 1969, I then returned to the Council of Economic Advisers to serve for three years as its Chairman. In both cases, I had access to classified information. I presume it would have been within the ambit of the "sensitive compartmented information" concept, though I do not recall that term.

3. Since my writing has never drawn specifically on sensitive and classified information, I have had no reason to submit manuscripts to a pertinent government agency before publication. I do not recall any article or paper where the question could conceivably have arisen that something in the publication represented sensitive information.

4. Not relevant.

5. Not relevant.

6. If this requirement is to be interpreted literally--that all former government officials with access to SCI information must submit all publications--I do not see how this is at all feasible. Indeed if this literally were to be the requirement, I would strongly advise anyone in academic life further to avoid government service. I am wholly sympathetic with the need to protect sensitive and classified matters, but there must be common sense involved here. Each time I give a paper or write an article I do not want that to be stalled by what would inevitably be the cumbersome viscosities of government review. This would be particularly vexatious when for all practical purposes none of the output would have any relevance to classified information in any case.

It seems to me common sense must prevail here, with people requested to clear their writing if there is any reason on their part to wonder about the matter. Moreover, government would always have to have the right after the fact to judge that a person had breached his fiduciary responsibility by some writing if that seemed to have occurred. To require that all writing be subject to pre-publication review would be counter-productive, nonsense, impossible operationally, and therefore would make a caricature of what, properly defined, is an urgent and legitimate concern of society.

Regards,

Paul W. McCracken

PWM:dj

NINETY-EIGHTH CONGRESS

U.S. House of Representatives
COMMITTEE ON POST OFFICE AND CIVIL SERVICE
SUBCOMMITTEE ON CIVIL SERVICE
122 CANNON HOUSE OFFICE BUILDING
Washington, D.C. 20515
TELEPHONE (202) 225-4025

February 8, 1984

Dear Mr. McNamara:

President Reagan, on March 11, 1983, issued National Security Decision Directive 84 (copy enclosed) which seeks to reduce the unauthorized disclosure of classified information. Among other things, the Directive requires that employees with access to certain types of restricted information sign non-disclosure agreements containing a requirement that the employee submit for prepublication review all writings "which contain or purport to contain" any restricted or classified information or "any information concerning intelligence activities, source, or methods." This requirement applies for the rest of the employee's lifetime.

The Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary and the Subcommittee on Civil Service of the Committee on Post Office and Civil Service held joint hearings in April to explore the Directive and the need for it. Our joint investigation into this matter continues.

As part of this effort, we are writing to request your assistance. As a former government official who has published articles or books concerning the issues you confronted while serving your country, you can provide us with valuable insight into the need for, value of, and problems with prepublication review. Therefore, we request that you respond to the questions below. Your answers will be valuable in the preparation of our report on this issue.

1. Please indicate the type of publication(s) in which your writing has appeared since you first left government service -- i.e., in books, newspaper articles, or works of fiction -- and whether the writing was related to your former government employment.

2. What position(s) did you hold in the Federal government? For what periods of time? Did you have access to classified information in such position? Did you have access to sensitive compartmented information (SCI) in such position?

3. What steps did you take to ensure that your publication(s) contained no classified information? Did you submit your entire publication for prepublication review or did you submit parts for review? If you submitted only a portion of your writing for prepublication review, on what basis did you decide which portions to submit?

4. If you have submitted any writings for prepublication review, what was your experience? To whom did you submit your material? Were you requested to delete material from your work? Were you permitted to show that the material was not classified? How long did it take to review the material?

5. Based on your experience with the prepublication review process, do you believe that expanding its use is the most appropriate and effective means of preventing disclosure of classified information?

6. The Directive requires all former government officials with access to SCI information to submit all publications, including speeches and lectures, for prepublication review. Do you believe that requiring such officials to submit only those portions of writings which might contain classified information would be equally effective?

We are, of course, cognizant of the fact that this is a very hectic time for everyone. However, your earliest assistance in responding to this request will be most appreciated since the Committees believe it is important to conclude their inquiry.

Please indicate in your response if you prefer that your comments be kept confidential; otherwise, they will be made a part of our public record.

Helen Gonzales of the Judiciary Committee staff (226-7680) and Andrew Feinstein of the Post Office and Civil Service Committee staff (225-4025) are available to answer any questions you might have about this request.

With kind regards,

Sincerely,

Don Edwards — Pat Schroeder

DON EDWARDS
Chairman
Subcommittee on Civil and Constitutional Rights
Committee on the Judiciary

PATRICIA SCHROEDER
Chairwoman
Subcommittee on Civil Service
Committee on Post Office and Civil Service

Enclosure

Sacred Heart University

Fairfield, Connecticut

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Office of the President

February 16, 1984

The Honorable Donald Edwards
Chairman
Subcommittee on Civil and
Constitutional Rights
Committee on the Judiciary
U.S. House of Representatives
122 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Edwards,

Thank you for your letter of January 25, 1984. I am pleased to cooperate with your inquiry.

The articles that I have written either while serving as the Assistant Secretary for Postsecondary Education or resulting from my experiences in that position, are as follows:

The Future Federal Role Between Government and Higher Education, College and Research Libraries, March 1982, pp. 130-132.

Keeping Colleges Relevant and Solvent in Age of Austerity, Hartford Courant, July 31, 1982, p. A-17.

Defining A Worthwhile Liberal Education, Sunday Post, Bridgeport, August 3, 1982, p. B-3.

Restoring Values to Education, Sunday Post, Bridgeport, August 25, 1982, p. B-3.

The Issue: Relevance
The Sunday Post, Bridgeport, August 29, 1982.

Reflections On Going Back to College, Fairfield Citizen News, September 1, 1982, p. 18.

Campus Life is Enriched by Foreign Influx, New York Times, September 12, 1982.

Black Colleges and Universities in the '80s, The Washington Times, October 6, 1982, pp. 10-A.

The Local University: Its Time Has Arrived
The Advocate, November 14, 1982.

Working Your Way
The Hour, January 11, 1983.

I served as the Assistant Secretary for Postsecondary Education in 1981-1982 while on leave from my present position. I had access to classified information, but did not make much use of it.

All my articles were submitted to the appropriate office for review in order to assure that I was in conformity with all the regulations and guidelines.

I felt that the above procedures assured that I did not depart from any regulation and I found the appropriate office in the U.S. Department of Education cooperative. It normally took around a week for the material to be reviewed.

I believe that all citizens serving in Senior Government roles who have benefited from the knowledge and information obtained in these positions, should submit their proposed publications for review. This includes, in my opinion, articles written subsequent to their departure from Government Service. By review I mean that there is an obligation from all that have benefited from Government Service to assure that we are not benefiting from information received in a personal way and that we are not exposing classified information.

I hope that this information is helpful. Please do not hesitate to contact me if there are any further questions.

With best wishes, I am

Very sincerely yours,

Thomas Patrick Melady
President

TPM:mk
CC: Ms. Patricia Schroeder
Chairwoman
Subcommittee on Civil Service
Committee on Post Office and
Civil Service

GEORGETOWN UNIVERSITY
WASHINGTON, D.C. 20057

EDMUND A. WALSH
SCHOOL OF FOREIGN SERVICE

ASSOCIATE DEAN

February 15, 1984

The Honorable Patricia Schroeder
Chairwoman
Committee on Post Office and Civil Service
U.S. House of Representatives
122 Cannon House Office Building
Washington, D.C. 20515

Dear Congresswoman Schroeder:

I am responding to the questions in your letter of January 25 as follows:

1. Since I left government service in March of 1981 I have had articles published in Foreign Policy magazine, the Middle East Journal, the Arab-American Review, the New York Times, and the Christian Science Monitor. In each case the writing covered subjects which grew out of my experience in government service.

2. I was a member of the United States Foreign Service for 35 years. I was Ambassador to Libya, Indonesia and the Philippines, Assistant Secretary for African Affairs and, finally, Under Secretary for Political Affairs. I had access to classified information in each position and access to sensitive compartmented information as Under Secretary of State.

3. The only manuscript which I submitted for review was an as yet unpublished manuscript on the incident of the Soviet brigade in Cuba. I submitted that for review for two reasons: 1) I had had access to the files of the Department specifically to do research on this issue; and 2) the study concerned the use of intelligence information. The other articles which I wrote and which I continue to write were expressions of personal view. Any information in those writings which might have been considered classified I was careful to pick up only from published material.

4. My experience with the one case of submitting writings for prepublication review was a satisfactory one. I submitted it to the Department of State which in turn referred it to the

Central Intelligence Agency and the National Security Agency. I was requested to delete certain material even though it was already published in public sources. The reason given was that since I had been an official with access to the information when it was classified my use of it tended to confirm that it was authentic. It took approximately three months to review the material.

5. My experience with the prepublication review process was reasonably satisfactory. My concern over the new directive would be that the volume would increase to a point where the clearance process would become longer and more complicated. I doubt that a survey of the written material of former officials would demonstrate a sufficient number of cases of inappropriate disclosures of classified information to warrant the cost and inconvenience and inhibition that would result from a prepublication review process for all of the writing of all former officials with access to classified information.

6. The directive requiring all former government officials with access to SCI information to submit all publications including speeches and lectures for prepublication review would, in my view, prevent all such officials from having an effective second career in education or in writing. I believe that the most that would be appropriate and would be still fair to the processes of education and information would be a requirement to submit only those portions which contained classified information. Presumably this would not include classified information which had otherwise leaked and which was picked up in the writings of former officials. This is a point that would certainly need to be clarified.

I have no objection to this response being made a part of your public record.

Sincerely,

David D. Newsom

N/A

[illegible]

UNITED STATES ARMS CONTROL AND DISARMAMENT AGENCY
Washington, D.C. 20451

February 17, 1984

The Honorable Patricia Schroeder
Chairwoman
Subcommittee on Civil Service
Committee on Post Office and Civil Service
U.S. House of Representatives
122 Cannon House Office Building
Washington, D.C. 20515

Dear Chairwoman Schroeder:

This is in reply to the letter dated January 18, 1984 which I received from you and Congressman Don Edwards, Chairman of the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary. That letter requested certain information from me as a "former government official" who has published articles or books concerning the issues faced while serving our country.

As you probably know, I have been back in full-time government service for over two years now as Chairman of the United States Delegation to the Intermediate-Range Nuclear Forces negotiations. Under the circumstances, I feel it would be best if it was left to others who are truly "former government officials" to respond to the questions in your letter.

Sincerely,

Paul H. Nitze

Paul H. Nitze

DEPARTMENT OF THE NAVY
NAVAL POSTGRADUATE SCHOOL
MONTEREY, CALIFORNIA 93943

IN REPLY REFER TO

February 16, 1984

Rep. Don Edwards, Chairman
Subcommitte on Civil & Constitutional Rights
Committee on the Judiciary

Rep. Patricia Schroeder. Chairwoman
Subcommittee on Civil Service
Committee on Post Office & Civil Service

U.S. House of Representatives
122 Cannon Office Building
Washington, D.C. 20515

Dear Representatives Edwards and Schroeder:

I am writing in response to your letter of January 31st, requesting my views of NSDD 84.

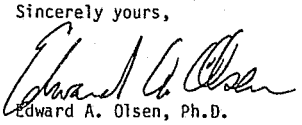
Before responding to each of your numbered questions, I should point out that my situation is somewhat unusual. I left full-time civil service status with the Department of State for six month, then returned to a Department of Defense excepted service full-time teaching/research position. In the latter I am required to engage in academic research and publication which is covered by the provisions of regional accrediting and AAUP standards. In doing so, however, I am scrupulous about never using nor implying evidence from classified sources and always inserting a disclaimer that the views I express are solely my own. Against that background, these are my responses:

1) I write academic articles, newspaper OP-ED pieces, and non-fiction books and book chapters.
2) I was an intelligence analyst (Foreign Service Reserve) for Japan/Korea, U.S. Department of State, Bureau of Intelligence and Research, Office of East Asian and Pacific Affairs, 1975-1980. Cleared for Top Secret & SCI. Presently in an academic position with the government.
3) I never use or suggest the use of classified materials. Because of that and my consistent attempt to insert a standard disclaimer (not always done by editors), I have not submitted manuscripts to pre-publication review.
4) Not applicable to me, but present and former colleagues have told me of capricious treatment and deletions which seemed to have nothing to do with security considerations.
5) Other than in instances where the topic concerns intelligence methods or draws on ones classified work experiences (as contrasted with bureaucratic experiences), I am opposed to excessive post-employment regulations. If employees can be trusted to protect the national interest while employed, they should also be trusted afterward. Punishment for those who violate this trust should be sufficient to deter other potential ex-governmental leakers.

6) I heartily concur with that modification if there has to be any pre-publication review procedure for former employees, but I prefer to trust former officials until they prove they do not deserve that trust.

I hope these responses will be of some use. Thank you for your interest in my views.

Sincerely yours,



Edward A. Olsen, Ph.D.

Associate Professor of
National Security Affairs &
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January 27, 1984

Honorable Don Edwards and Patricia Schroeder
Chairpeople
Subcommittee on Civil and Constitutional Rights
and on Civil Service
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Edwards and Congresswoman Schroeder:

I have received your letter of January 18, 1984, requesting comments on President Reagan's National Security Decision Directive 84. I commend you for opening for national debate the many issues involved in that directive and only regret that I cannot respond to those issues in as full a manner at this time as I would like or that they deserve.

Let me first respond to the specific questions in your letter, and then make a few general comments. Of course, I would be happy to respond to any additional questions as your inquiry proceeds.

Answers to Questions:

1. Since leaving office on January 20, 1981, I have written quite extensively on U.S. policy toward Latin America and the Caribbean, on immigration and refugee policy, on trade and economic development. (I enclose a list of my published articles since January 1981.) Almost all of the issues I have addressed since leaving office, I also addressed while in government. And needless to say, one of the reasons I was appointed to the National Security Council was because I had done considerable work on these issues before joining the government.

2. I was the Senior Staff Member in charge of Latin American and Caribbean Affairs on the National Security Council from 1977-81. In that position, I had access to the most sensitive classified information.

3. I intend to submit parts of the book I am writing on U.S. policy toward the Nicaraguan revolution to pre-publication review by the National Security Council because I expect to use documents which are classified. Other than that, I have not seen any reason to submit any of my other writings to pre-publication

review, and I do not believe that anything I have written could in any way be considered prejudicial to our national security. On the contrary, it is in part due to my concern for the nation's security that I have written many of the articles. But the short answer to the question of what steps I took is that I have relied on my personal judgment, and no one in the Administration or outside, to the best of my knowledge, has suggested that anything I have written has either compromised or harmed our nation's security in any way.

4. --

5. --

6. Rather than require the submission of all writings and speeches of former government officials for pre-publication review, it would be at least as effective and certainly more appropriate to only require the submission of those portions of a person's writings which contain classified information. The blanket requirement of pre-publication review by all former government officials of all their writings would not only be an infringement on their rights, but more importantly, it would reduce the capacity of our nation to intelligently debate important national security issues.

Our national security requires that people of expertise, experience, and good judgment work on national security issues in government and debate them when they are outside of government. To require the submission of op-ed articles, to take just one example, for pre-publication review is to virtually preclude their publication because they need to be timely if they are to be published and contribute to the national debate. The blanket pre-publication requirement is simply a gag order. I have no doubt that most incumbent administrations would like to have such power over those who have served previous administrations, particularly of different parties, but in the broadest sense, our national security would be jeopardized by such an order.

Every Administration has sought to control unauthorized leaks, meaning leaks which either do not come from the very top of the ship of state or leaks which tend to embarrass the Administration. Most unauthorized disclosure of information is embarrassing to Administrations; occassionally, it harms our nation's security. I can recall a newspaper report in early 1977, which alleged that a number of important foreign leaders had received payments from the C.I.A. at earlier points in their careers, and this report had a devastating, adverse impact on our capacity to pursue effective policies abroad. But this newspaper report had no obvious source; it certainly was not derived from an article or book by any former government official. Another recent, similar case was an allegation in a book by Seymour Hersh on Henry Kissinger which alleged that several named foreign leaders had received payments from the C.I.A. Again I have no doubt that this hurt our nation's relationships abroad, but

again, this wasn't disclosed by Kissinger or by any former government official, but rather by a newspaperperson.

A second related problem is that virtually every issue in the national debate is addressed in memoranda or intelligence, which is classified. Put another way, there is very little classified material, which does not emerge at one point or another in the public domain, generally in a distorted way, but sometimes accurately. Should former government officials not publicly address these national issues? Who is to judge what is classified in a national debate, and what isn't? Time and Newsweek are filled each week with classfied information. Should a former President or Secretary of State clear his comments on such articles with some pre-publication review panel before going on the Today show? What if an unanticipated question gets asked? Should a former President say he has not yet been cleared to handle it?

And who is to judge? To a considerable extent, the debate on U.S. foreign policy within the U.S. pivots around differing conceptions of what constitutes our national security, the nature and intensity of the threat to U.S. interests, and the most effective strategy for pursuing U.S. interests. By definition, critics differ with an Administration's conception of these three factors. Is it appropriate, then, that Administrations should sit in judgment on its critics?

And there is the problem of definition of what constitutes a breach of our national security. There are several levels and kinds. First, and most important, are the protection of our sources and methods of gathering intelligence. By and large, the most damaging breaches -- such as regarding our satellite capabilities -- have come from people employed by defense contractors and through Soviet spying activities rather than from indiscretions from current or former Washington officials.

At a second level are those disclosures which embarrass world leaders -- both friendly and perhaps not so friendly. These disclosures do certainly affect our relationships since these are built on confidence and violations of that confidence must necessarily affect behavior. I can recall, for example, that a memorandum of conversation between myself and a Foreign Minister from a Caribbean country was leaked to the press to the great embarrassment of both of us, and as one would expect, he did not share his most closely held views with me again, despite the fact that I apologized, and he knew that I was not responsible for the leak. These unauthorized disclosures are serious, but relatively un-studied by both scholars and policy-makers.

A third kind of unauthorized disclosure is the most typical one in Washington -- it is designed to tilt the public perception of an Administration policy. An official fearful that the Administration is moving in a dangerous direction, but uncertain

precisely what that is, will leak a document or speak to a reporter, who will speak to people on different sides of the issue, and write an article which makes the Administration -- whatever Administration -- look either dangerous, ridiculous, vacillating or just uninformed. These are the leaks which preoccupy Administrations most.

These breaches of either confidence or security generally are premised on anonymity -- on newspaper sources, or "Administration sources," rather than on the government's sources or on articles or books by named, former government officials. In this final category of articles by former government officials which is the primary target of the President's Directive, it might be quite difficult to reach a consensus on what constitutes a breach of national security. It might be a worthwhile exercise to see whether all the members of the committee could identify and agree to five separate instances of disclosures by former government officials which harmed our national security. I suspect it wouldn't be easy, but it is certainly important, and a key first step toward addressing the kinds of problems embedded in the President's National Security Decision Directive.

What should the former government official who remains dedicated to contributing to public policy do when he leaves office? Should he remain silent for the rest of his life on his area of expertise? Our nation already suffers from almost a chronically ahistorical approach to international relations. Do we really want to reduce our historical memory even shorter? If an important but classified issue has been totally distorted by a leak to the press, and the distorted interpretation is shaping the national debate, what is the responsibility of the government or former government official?

There are many other important issues raised by the National Security Directive which attempts to reduce a genuine dilemma -- between our nation's imperative of free speech and our national security -- into a rather simplistic formula, which defends national security by denying free speech, which, in short, defends our nation while forgetting why it is worth defending.

I have no objections to this letter being published by your Committee.

Sincerely,

Robert A. Pastor

Publications from January 1981 to Present

Chapters in Books

"Far From Hopeless: An Economic Program for a Post-War Central America," with Richard E. Feinberg, in Robert Leiken (ed.), Central America: Anatomy of Conflict (N.Y.: Pergamon Press, 1984).

"Puerto Rico as an International Issue: A Motive for Movement?" in Richard Bloomfield (ed.), Puerto Rico: The Need for a National Policy, Boulder, Colo.: Westview Press, forthcoming.

"Caribbean Emigration and U.S. Immigration Policy: Cross Currents," in Jorge Heine and Leslie Manigat (eds.), International Relations of the Contemporary Caribbean, forthcoming. Also published as a Working Paper by the Caribbean Institute and Study Center for Latin America (CISCLA), Inter-American University of Puerto Rico, San German, Puerto Rico, January 1984.

"The Cry and Sigh Syndrome: Congress and U.S. Trade Policy," in Allen Schick (ed.), Making Economic Policy in Congress Washington, D.C.: American Enterprise Institute for Public Policy Research, 1983.

"A Question of U. S. National Interests in Central America," in Wolf Grabendorff, H.W. Krumwiede, and Jorg Todt (eds.), Change in Central America: Internal and External Dimensions, Boulder, Colo.: Westview Press, 1983.

"Migration in the Caribbean Basin: The Need for an Approach as Dynamic as the Phenomenon," in M. M. Kritz (ed.), U.S. Immigration and Refugee Policy: Global and Domestic Issues, Lexington, Mass.: D. C. Heath, 1983.

"Cuba and the Soviet Union: Does Cuba Act Alone?" in Barry B. Levine (ed.), The New Cuban Presence in the Caribbean, Boulder, Colo.: Westview Press, 1983.

"U.S. Policies Toward the Caribbean: Recurring Problems and Promises," in Jack W. Hopkins (ed.), Latin American and Caribbean Contemporary Record, Volume I, 1981-82, N.Y.: Holmes and Meier, 1983.

Selected Articles

"The International Debate on Puerto Rico: The Costs of Being an Agenda-Taker," International Organization, Summer 1984, Vol. 38, No. 3, forthcoming.

"U.S. Immigration Policy and Latin America: In Search of the 'Special Relationship,'" Latin American Research Review, Fall, 1984, Vol. 19, No. 3, forthcoming.

"Latin America and the Marshall Plan Reflex," with Richard E. Feinberg, Vital Issues, Washington, Connecticut: Center for Information on America, forthcoming, 1984.

"Continuity and Change in U.S. Foreign Policy: Carter and Reagan on El Salvador," Journal of Policy Analyses and Management, Vol. 3, No. 1, Winter 1984.

"Spheres of Influence: Seal Them or Peel Them?," SAIS Review (The Johns Hopkins University), Winter, 1984, Vol. 4, No. 1.

"The Socialist International and the United States in Central America: Mirror Images," The New Republic, May 16, 1983.

"Sinking in the Caribbean Basin," Foreign Affairs, Vol. 60, No. 5, Summer, 1982.

"The Target and the Source: U.S. Policy Toward El Salvador and Nicaragua," Washington Quarterly, Vol. 5, No. 3, Summer, 1982.

"Our Real National Interests in Central America," The Atlantic Monthly, cover story, Vol. 250, No. 1, July, 1982.

"Reagan Diplomacy in the Caribbean: Proceedings of TransAfrica Forum," TransAfrica Forum, Vol. 1, No. 2, Fall 1982, an interview: 27-58.

"Winning Through Negotiation: Congress Has the Seed of a Better Idea for El Salvador," The New Republic, March 17, 1982.

"Ratifying Tlatelolco," Journal of the Federation of American Scientists, Vol. 34, No. 8, October, 1981.

"Remembering Omar Torrijos: Ode to Omar," The New Republic, August 15, 1981.

"Three Perspectives on El Salvador," SAIS Review 2 (The Johns Hopkins University), Summer, 1981.

"Comments" on 'U.S. Security and Latin America' by Jeane Kirkpatrick, Commentary, April, 1981.

Op-Ed Newspaper Editorials

"Grenada: Outrage Follows Outrage," Washington Post, October 26, 1983.

"A Mission for the Kissinger Panel," Viewpoint Section of Miami Herald, Sunday, July 24, 1983.

"An Eight-Point Peace Plan for Central America," Washington Post, July 5, 1983.

"Hypocrisy in World Trade: We Talk Protectionist, But We Don't M It - Fortunately," Los Angeles Times, May 17, 1983.

"Harassing Latin Intellectuals," Christian Science Monitor, M 1983.

"Central America's Real Peril," New York Times, March 17, 1

"How Not To Lose Central America: Panama Canal Experience Valuable Lessons for the U.S.," Los Angeles Times, August 5

"Let's Make Deficits A Federal Crime," The Washington Post, August 5, 1982.

"Reagan's Two Caribbean Visions," Viewpoint Section of Miami Herald, Sunday, February 28, 1982.

"U.S. Needs a Better Caribbean Policy," Newsday, February 18, 1982.

"What to do about Cuba?" Viewpoint Section of Miami Herald, Sunday, December 27, 1981.

"For a Caribbean Compact," The New York Times, December 23, 1981.

"Reagan Strategy Aids El Salvador Leftists," Los Angeles Times, November 13, 1981.

"A Time to Act on El Salvador," Washington Post, Sunday, October 11, 1981.

"The Right Way Out on El Salvador," The Miami Herald, Sunday, March 22, 1981.

"Jamaican Freedom Requires More Aid," The Washington Star, January 28, 1981.

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*NOT ADMITTED IN D.C

January 24, 1984

The Honorable Patricia Schroeder
Chairwoman
Subcommittee on Civil Service
Committee on Post Office and
Civil Service
122 Cannon House Office Bldg.
Washington, D.C. 20515

Dear Madam:

This is in response to your letter of January 18, 1984, asking me to respond to questions concerning National Security Decision Directive 84. The numbered paragraphs correspond to your questions.

1. I wrote a non-fiction book entitled "Labyrinth" which was published in hard cover form by Viking Press in 1982, and which was published in soft cover form by Penguin Press in 1983. This is the only publication that I have written since I left government service, but the book was both written about and reviewed extensively. The book concerned a political assassination case which I handled while I was an Assistant United States Attorney for the District of Columbia -- I was the chief prosecutor in the investigation and prosecution of the assassins of former Chilean Ambassador Orlando Letelier.

2. Assistant United States Attorney for the District of Columbia for the period 1972 to 1979. I had access to classified and SCI information from 1976 to 1979.

3. I submitted portions of my manuscript to the Central Intelligence Agency from which I had obtained the relevant clearances. I determined which portions should be submitted to the Agency. My determination was based upon my knowledge that only certain chapters of what I had written had the potential for containing classified information. My view was that the government was not entitled to read pre-publication anything I had written unless there was a potential that it contained classified information.

4. My experience with pre-publication review was excellent. I submitted the material to an Assistant General Counsel of the Central Intelligence Agency, who was knowledgeable about the Letelier investigation, and he reviewed it with assistance from an Agency employee in the Operations Division. I did not use the pre-publication review staff. The book is 623 pages long and the Agency asked that we delete or amend, to the best of my recollection, about 10 words. We saw no reason to challenge or refuse their requests because they did not change the substance of anything we had written. I do not recall how long it took to review the material; it was not immediate but it did not delay us in any material fashion. My review was probably somewhat easier because I had had a good working relationship with this Assistant General Counsel.

5. The pre-publication review process is useful if someone is publishing a book or other major article. I do not believe it would be particularly useful in otherwise preventing disclosure of classified information. If a person intends to submit a book for review, he will most likely comply with the decisions of those reviewing the book. Persons who intend to divulge classified information will likely do so in a fashion that will avoid the pre-publication review, such as simply passing it on to a newspaper reporter, thus shielding their identity.

6. I presume that your statement, that the Director requires all former government officials with access to SCI information to submit all publications for pre-publication review, only pertains to former government officials who have signed a pre-publication review agreement. Otherwise, it is probably unconstitutional under the First Amendment. That aside, I think the suggestion that only those portions which may contain classified information be submitted, would be equally effective to submitting the entire speech or lecture. Both proposals are faulty, however, because it is unlikely that classified SCI information will be divulged in a formal speech or a lecture. As a result of this law, it is now more likely that it will be divulged in a manner where the divulger's identity is not ascertainable.

I hope these are helpful.

Sincerely,

Eugene M. Propper

Eugene M. Propper

EMP/dlh

George E. Reedy
Nieman Professor of Journalism

MU Marquette University

Milwaukee, WI 53233
414-224-7132

January 23, 1984

Dear Mr. Edwards and Ms. Schroeder:

I have very little sympathy with the President's directive which strikes me as merely another example of the obsession with "leaks" that has characterized the occupants of the White House since World War II came to a close. In my judgment, based upon years of experience as both a Washington journalist and an official of two government branches, it will have little or no effect in preventing disclosures of classified information. It may prevent a few former employes from publishing books and articles on their experiences and it may add a new category of government bureaucrats--the official reviewers for such articles. But that will not put a stop to the flow of information--only to certain types of publication.

The directive is difficult to apply to my set of circumstances which are somewhat unique. Nevertheless, I will answer your questions to the best of my ability:

1. Since leaving government service, I have published four books, two pamphlets and innumerable articles in such publications as The New York Times, the Washington Post, the Los Angeles Times, Newsday, the Annals of the American Academy of Political and Social Science, the Journal of the American Political Science Association, the Journal of the Southern Political Science Association and other scholarly journals. With the exception of one book on the Selective Service System, all of my writing has consisted of commentary on political, governmental or communications themes and all of them drew heavily upon my experience both as a journalist and a government official.

2. My positions in the Federal government included: Staff Consultant for the Preparedness Subcommittee of the Senate Armed Services Committee, 1951-1952; Staff Director of the Senate Democratic Policy Committee, 1953-1960; Special Assistant to the Vice President of the United States, 1961-1963; Press Secretary to the President of the United States, 1964-1965; Special Assistant to the President of the United States in 1965-1966 and again in 1968. I have also served on presidential commissions studying selective service and oceanography and on presidential boards mediating labor disputes. In all of these positions, I had access to whatever classified material was essential to my duties (I believe I had a Top Secret and a Q clearance during the Preparedness Subcommittee days) but the formal clearances were somewhat irrelevant. In terms of practical procedures, I had access to any information to which Lyndon B. Johnson, my superior, had access, both as a Senator and as President.

Classification--2

3. None of my publications contained any information which by any stretch of the imagination could be considered classified. I did not submit any of my publications to anyone for review other than the appropriate editors. I am not an historian and my interests are basically in the fields of political and communications theory and in governmental structure where classified information is irrelevant. Furthermore, I am not quite certain of the appropriate office for submission of material by a former White House Assistant when the President is no longer in office.

4. This is answered in the preceding paragraph.

5. I cannot base an answer on the prepublication review process but I can respond on the basis of practical Washington experience. I repeat that there is no effective method of preventing leakage of material. The nature of the Washington community is such that nothing other than intentions or immediate military plans can be kept secret and then only if the person having the intentions or the plans discloses them to no one else. It is possible to prevent former employes from publishing which only means that the information will appear in other forms beyond the reach of any law that can be enacted under the Constitution. To stop leaks in an effective manner would require the repeal of the first 10 amendments to the Constitution and the scrapping of the procedures established by the common law.

6. Obviously, it would be much more reasonable to restrict the requirement to information that might contain classified information. In its present form the directive seems to me to be totally unreasonable and I wonder how it would stand up under a test.

May I add one thought of my own? It seems to me that this is a time for a review of the whole subject of classification procedures. It is entirely possible that modern technology plus modern methods of record keeping and modern management procedures have made the whole concept of governmental secrecy obsolete. If so, the answers to all the questions that are raised by the President's directive and posed in your letter to me are quite obvious. It is probable that information "leaks" pose no threats to the national security that do not exist already and that efforts to plug those leaks may have no impact other than chilling free discussion.

Sincerely,

George E. Reedy

George E. Reedy

Patricia Schroeder
Chairwoman, Subcommittee on Civil Service
Don Edwards
Chairman, Subcommittee on Civil and Constitutional Rights
c/o Committee on Post Office and Civil Service
122 Cannon House Office Building
Washington, D.C. 20515

George E. Reedy
Nieman Professor of Journalism

MU Marquette University

Milwaukee, WI 53233
414-224-7132

January 24,1984

Dear Mr. Edwards and Ms Schroeder:

My letter to you of January 22 was written under the conditions of stress that always characterize the opening weeks of a school term. Upon rereading it, I realize that I was not fully responsive in my treatment of Question #6. With your permission, I would like to supplement my reply.

What you asked was whether it would be equally effective, in terms of safeguarding classified information, to require the submission for review of only those portions of a publication which might contain classified information as opposed to the entire publication. My response is that I do not believe it makes any difference. I doubt whether either route will erect effective safeguards against leaks. Both are equally ineffective.

The requirement that publications be submitted in their entirety, however, does raise in a heightened form the issue of pre-publication censorship--the most sensitive area of the free speech issue. It is well established in our society (although there are dissenters) that certain types of publication invite legal retaliation--notably in such areas as libel,slander,and pornography whenever the latter can be defined. But in most of these instances (again, with certain possible exceptions in the field of commercial publication) the retaliation follows upon publication. The popular phrase in American journalism is "publish and be damned."

Obviously the President's directive does not raise the same type of pre-publication censorship which led to the Wilkes case or against which Milton inveighed in Aeropagitica. The government employee who accepts a position waives full publication rights as a condition of employment. The submission for review has been agreed upon in advance and,however much I may question the necessity or the wisdom of such agreement, it would not trouble me too greatly if it could be confined to that sector. Unfortunately, I cannot avoid a feeling of considerable dubiety over the prospects of confining the procedures to the employer-employee relationship.

Classification B--2

The rationale for this whole exercise is that the disclosure of certain types of information by former government officials and employes would do injury to the United States. If that injury is sufficiently serious to outweigh the rights of those people to free speech, why is it not sufficiently serious to outweigh the rights of journalists or other writers to disclose the same information? That question is bound to be raised sooner or later and I am afraid the answer is foreordained. As long as the type of information is only that which was classified under reasonable procedures, it might be possible to draw some kind of a line and hold it. But even that is a tenuous possibility and once the submission requirements extend to all information, then there is no logical ground upon which a stand can be made. I wonder whether the Constitution could withstand such an assault.

It seems clear to me that a very dangerous path is being opened for reasons that are inadequate. Furthermore, it also seems to me that the order can create something of an administrative nightmare. Will Presidents be required, after retirement, to submit their memoirs to security review? Was Mr. Kissinger's latest book submitted and, if so, to whom? How about the large number of people on the National Security Council Staff and the various "think tanks" of the Pentagon who quite often retire to the Groves of Academe? Must they submit their publications to the people who have succeeded them in their jobs? As an academic, I publish somewhere between 30 and 40 lectures, scholarly papers and articles a year. As I never signed an agreement, the order does not apply to me. But the numbers I am citing are par for the academic world where publishing is a way of life. Must those articles and papers be reviewed? And how will the government handle the situation at symposia where there are no advance texts and participants speak ad lib?

Even though I am skeptical of the efficacy of any classification procedure, the point at stake here is not whether disclosure of classified information can harm the United States. But I submit that the question of disclosure should be considered in a relevant context. It is whether the disclosure of the information can harm the United States more than the procedures which are established to prevent the disclosure. My response to that question is that potentially there is more harm in requiring ex-government officials and employes to submit their publications in entirety than there would be in any information that could be disclosed. There is a price to secrecy--even in those areas where it can be justified beyond a doubt. I hope someone starts looking at the price.

Sincerely

George E. Reedy

Patricia Schroeder, Chairwoman
Subcommittee on Civil Service
Don Edwards, Chairman
Subcommittee on Civil and Constitutional Rights
c/o Committee on Post Office and Civil Service
122 Cannon House Office Building
Washington, D.C. 20515

Government Censorship--An Update

by Richard C. Rhodes

April 2, 1984

In my statement of February 22, 1984, prepared for the Senate Judiciary subcommittee chaired by Senator Mathias, I noted on page 4 that there was more than a double standard concerning censorship by the government. I gave examples of how the publication of the identical "classified" information could possibly be handled with at least four different outcomes.

Additional information has come to light which I would like to share with you.

Mr. David Wise, co-author of a book about the CIA called "The Invisible Government," is credited by some with knowing more about the CIA than many who work in its bowels. He is a journalist, and having never worked for CIA, he is not under an obligation to submit his writings to CIA for prepublication review. His recent novel,"The Children's Game" published by St. Martin's/Marek, contains many passages about intelligence technology and tradecraft.

Based on my own experience with CIA reviewing my novel, "Serpent on the Hill," by Philip Eliot (pseudonym), and a careful reading of available articles and court cases on prepublication review, I suggest that the following matters would have been censored by CIA if I, or any other former employee, had written them. Even in a fictional context. I do not make any suggestion or inference that the information is factual, only that it probably would have been censored.

Re "The Children's Game" by David Wise, a novel:

On page 14 there is a reference to CIA experimenting with LSD.

Page 21: The Farm at Camp Peary Virginia is mentioned, along with a description of the type of clandestine training that takes place there.

Page 34: a reference to "KUBARK, the cryptonym for the agency."

Page 48: a discussion of how typewriter motors give off electrical impulses that can be monitored by hostile services to deduce what is being typed.

Page 51: discussion of how Soviets were circling CIA HQ with disguised ELINT trucks, picking up signals from typewriters, code machines, telephones...

(Rhodes-Censorship)

Page 80: a discussion of how CIA clandestine employees could give out a phone number at the Pentagon (for cover purposes) that would actually ring at CIA HQ.

Pages 105 and 106: a discussion of "silent bullets."

Pages 150 and 151: a discussion of intelligence satellites.

Page 156: a discussion of the chief of the CIA Technical Div., one Dr. Louis Weinberg, and some of the nefarious activities he conducted with "drugs, poisons and biological weapons." This is a very transparent reference to Dr. Sidney Gottlieb, for whom I worked at CIA. Although I had no personal knowledge that Dr. "G" was engaged in drug research et al, it is so alleged in "The Search for the 'Manchurian Candidate' "(The CIA and Mind Control) by John Marks. Had I written this page (156) in a novel, my wrists would still be bleeding from the nail holes.

Page 205: a discussion of "Covert Procurement," whose job it was to buy things with no attribution to CIA.

Page 224: a discussion of a lock-decoding device.

Again, I want to stress that I am not saying that I know the above examples to be factual; only that even if they were untrue, the CIA would have censored them as giving apparent "legitimacy" to them if written by a former employee.

There are about 50 other references in "The Children's Game," that in my opinion would have either been censored by CIA or pressures would have been brought to bear on the author to delete them,had he been a former employee.

* * *

The second area of hypocricy and double standard I want to disuss is the uneven application of review for novels written by former CIA employees.

In the May 27, 1983 issue of "Publishers Weekly," Mr. Charles E. Wilson of the CIA prepublication review board is quoted as saying that "Mr. Hunt (E. Howard Hunt) has been fairly faithful" in making submissions of his books to the Board."

In the "New Yorker" for January 31, 1983, William F. Buckley, Jr. says (p.76) "...but after about Book No. 25 Howard (Hunt) received a note from (CIA) headquarters-something on the order of 'Howard, you write books faster than our staff can review them, so let's put you on your honor... we'll let you publish your books unreviewed by us, trusting you not to reveal any information that might hurt the United States.' "

Here was a man (Hunt) who was involved in one of the poorest exercises of judgement in U.S. history, one that led to the downfall of a U.S. President- and he is only "fairly faithful" in submitting his books, or according to Buckley, CIA put him on his honor! I am outraged, incensed, nearly apoplectic at this hideous injustice to all former agents who write fiction and must play by the rules.

In the same "New Yorker" article, (p.) 77 Buckley tells us of a conversation he had with Frank Snepp. Snepp asked how it was that Buckley , a former CIA employee, could write novels about CIA and not submit them and he, Snepp, could not. Buckley replied that his stories were imagined, while Snepp wrote of factual matters.

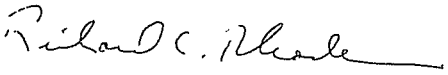
Wonderful! Except there is no such distinction in the CIA regulations as Mr. Buckely has invented. He does not have to submit his novels because he is William Buckley. I am outraged, incensed and nearly apoplectic. Or did I already say that?

The foregoing should add fuel to my already posited argument that all who write about intelligence matters should be judged by the same standard.

Since there is no short-term probability that such will come to pass, I urge all who read this to join me in seeking to have the lifetime censorship of CIA and NSA employees reduced to a period of 12 years (or less) after they leave the government.

In the long term, the inequities, the jumbled reasoning and the hypocricy that surrounds government censorship must be addressed by the Congress.

Richard C. Rhodes



Kent

ST. ANTONY'S COLLEGE,
OXFORD
OX2 6JF
TEL. 59551

11 February, 1984

Dear Congressman Edwards;

Your joint letter (with Chairwoman Schroeder) of January 18th has just reached me here, where my wife and I are spending a few months on a year's leave of absence from the University of Texas.

Your questions are easily answered; and there's nothing confidential about the answers.

The only writing I've published which raised the questions which concern your committee is: The Diffusion of Power, New York: Macmillan, 1972. It covers the period from Sputnik in October 1957 to June 1972. I was in the White House or State Department throughout the Kennedy and Johnson years and an occasional consultant during the Eisenhower Administration. The only documents I had available not open to all scholars were those in my personal files, held in a secure facility in the LBJ Library.

The draft of The Diffusion of Power raised two kinds of questions. It contained quotations from memoranda in my files not yet formally cleared; and it dealt with sensitive foreign policy issues on which I wished to say my piece without, however, damaging current U. S. negotiations or the country's relations with other governments.

I submitted, therefore, for clearance the passages I wished to quote and the draft manuscript as a whole to the Special Assistant for National Security Affairs, Mr. Kissinger. I believe he appointed a small inter-departmental committee to deal with the draft. In due time I was informed that the quotations could be used and the manuscript could be published without prejudicing U. S. national security interests. The time taken for this process was relatively short, as I remember, perhaps a month but I am not sure.

As for the policy questions you raise, I did not think it appropriate or necessary in my writing to go into intelligence information; and I would support the strictest kind of rules to prevent unauthorized disclosure, from which this country's security has suffered substantially. On the other hand, except in special cases (in which I would include a former Special Assistant for National Security Affairs like myself) I should think submission of the classified portions of a manuscript should suffice.

Sincerely yours
W W Rostow
W. W. Rostow

Andy

THE UNIVERSITY OF GEORGIA

SCHOOL OF LAW

ATHENS, GEORGIA 30602

February 13, 1984

The Honorable Patricia Schroeder
House of Representatives
122 Cannon House Office Building
Washington, D. C. 20515

Dear Patricia Schroeder and Don Edwards:

When I left the office of Secretary of State on January 20, 1969, I did not bring away with me any files, "papers," memoranda or other such records. I brought away my appointment books which are now available to anyone who wishes to see them in the LBJ and JFK libraries and the retained copies of my income tax returns. Everything else I left in the Department of State. That Department very kindly bound for me certain publications which covered my period of service, such as the State Department Bulletin, the diplomatic blue book and a complete set of my public speeches.

When I joined President Kennedy in 1961 I decided and announced that I would never write memoirs. There were many reasons for this, one of the principal ones being that I wanted foreign leaders to know that if they wished to talk to me in confidence that I would not rush out and write a book about it.

My answers to your numbered questions are given against the background provided above.

1. I have written a variety of articles on legal and political matters since leaving Washington. I have not, however, included anything that would still be classified.

2. I have served in the following positions in the federal government:

   (1) War Department General Staff (G-2), 1941-43;
   (2) Deputy Chief of Staff, China-Burma-India Theater, June 1943-45;
   (3) Operations Division, War Department General Staff, June 1945-February 1946;
   (4) Department of State generally from February 1946 to May 1952 as Assistant Secretary of State for United Nations Affairs, for Far Eastern Affairs and as Deputy Under Secretary of State.
   (5) Secretary of State, January 1961-January 1969.

During all of this service I had access to highly classified and sensitive information.

3. I have never submitted any publication for pre-publication review partly because I have never used any unpublished governmental documentary material.

4. Not applicable

5. Not applicable

6. Assuming reasonable good faith, it should be sufficient to submit only those portions of writing which might contain classified information -- but the assumption of good faith is the problem.

One relevant point which ought to be clarified by law has to do with the ownership of government documents. I believe very strongly that government documents prepared by officials relating to the public business of the United States should belong to the government and should not be hoarded away in private homes or other caches by individuals during their public service for possible use after they leave the government.

Sincerely,

Dean Rusk

Dean Rusk

Andy

J. ROBERT SCHAETZEL
2 BAY TREE LANE
BETHESDA, MARYLAND 20816
(301) 229-5316

February 16, 1984

The Honorable Patricia Schroeder
United States House of Representatives
Washington, D. C. 20515

Dear Congresswoman Schroeder:

I appreciate the opportunity to comment on National Security Decision Directive 84. You may use this letter or any information in it as you wish. The comments that follow pick up the numbering in your letter of January 31.

1. Since I left the State Department in 1972 I have written extensively. Within months of my resignation articles of mine appeared in Fortune, subsequently another in the Reader's Digest; since then articles have been published in several European publications and in Foreign Policy. I have written a number of op-ed pieces for the New York Times, Christian Science Monitor, Los Angeles Times and the Washington Post. Under the auspices of the Council on Foreign Relations I wrote a book, THE UNHINGED ALLIANCE, published by Harper and Row; it was subsequently republished in Germany. The book, articles and newspaper pieces were all related to my previous work in the government.

2. I began my career in the government in 1942 in the Bureau of the Budget, moved to the State Department in 1945 and was sequentially Special Assistant to the the Assistant Secretary for Economic Affairs (1945-1954), in the office of the Secretary of State, responsible for the peaceful uses of atomic energy (1955-1959), Special Assistant to the Undersecretary of State (1961-1962), Deputy Assistant Secretary for Atlantic Affairs (1962-1966), and Ambassador to the European Community (1966-1972). In each of the latter positions I had access to a wide range of classified material running from atomic energy Q clearance, assess to CIA material, top secret materials handled in the office of the Secretary and top secret NATO documents.

3. As I look back, I do not recall any specific steps I took to insure that I did not use classified information in my writing or lecturing after leaving the government. After 30 years in the government where one was constantly moving from the internal use of classified material to public lectures or testifying before Congress in open sessions, exchanges with journalists, an almost automatic reflex mechanism screens out sensitive material. None of my articles or the book manuscript were submitted to the State Department for pre-publication review.

4. Not applicable.

5. While this is not directly applicable to my experience, nonetheless I would like to comment. From what I know of the current process and the problems that some of my colleagues have had there is no doubt in my mind that pre-publication review would be inhibiting, tedious and of the most dubious value to the government. A key consideration is the bureaucracy that would be requied to administer any such program. First, the personnel assigned to the review process would inevitably be the least competent, less expert with respect to the subject matter being reviewed than the author. The result would be a mixture of caution and obduracy. Second, if the process should involve subsequent and higher level review of manuscripts by those people presumed to be especially competent with regard to the subject matter then other major problems arise. There is the matter of time; when will a high level officer turn to a tiresome task peripheral to his operational responsibilities? One can be sure that a senior reviewing officer presumed to have the expertise necessary would find it difficult to discriminate between questions of national security and reservations relating to policy differences or matters where possible embarrassment to the current administration might be at issue.

6. I find no saving grace in the suggestion that former officials be asked only to submit those portions of writings which might contain classified information. This would place an unreasonable burden on authors. In our own society endless amounts of so-called classified materials have been picked up by journalists and gotten into print. It would be almost impossible to isolate passages that might contain classified material other than in the improbable situation where the writer quoted directly from classified documents.

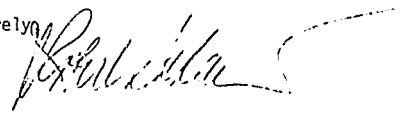
I have previously discussed this entire subject with Senator Mathias. He confirmed my uninformed judgment. There have been at best no more than a half-dozen cases where the published work of any former government official has contained material that can reasonably be construed as affecting our national security.

One overriding national interest is to have an informed public. Former government officials have an obligation to draw on their experience and bring the insights they have acquired before the public. The value of this process clearly counter-balances any slight risk of classified material having a direct and evident national security component getting into the public domain.

My experience corroborates that tired cliche: leaking of classified material has overwhelmingly come, and will continue to come, from the top levels of the White House and the major departments. Beyond the obvious flaws of Directive 84 it lacks any perspective. People are drawn to government because of the opportunity it provides for public service. Why should people so motivated, on leaving government, suddenly lose the sense of responsibility that led them into government in the first place?

Thank you for inviting my views on this unnecessary, cumbersome, probably unconstitutional and surely harmful proposal. It is more reminiscent of the thought-control processes of totalitarian political systems than of the democratic traditions of the West.

Sincerely,



W TY

HERBERT Y. SCHANDLER • 8455 BROCK ROAD • McLEAN, VIRGINIA 22101
TELEPHONE 703. 356 9888

January 30, 1984

Don Edwards, Chairman
Subcommittee on Civil & Constitutional Rights
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Dear Congressman Edwards and Congresswoman Schroeder,

This letter responds to your questionnaire of January 18 concerning National Security Decision Directive 84 which seeks to reduce the unauthorized disclosure of classified material. The following answers are keyed to the questions of the same number.

1. My major writing first appeared as a Ph.D. dissertation for Harvard University. The dissertation was later published in book form. Other articles, speeches, reviews, etc. have in large part drawn on this original body of research. The initial writing was partly related to my government employment.
2. I was an officer in the U.S. Army. My writing addresses the period of time I was associated with policy planning concerning Vietnam issues, and particularly during the period I was assigned as Assistant for Southeast Asian Affairs, Policy Planning Staff, Office of the Assistant Secretary of Defense (International Security Affairs). I held this position from January 1969 until July 1969. I had access to classified and SCI during this period, as well as before and after.
3. I submitted my entire Ph.D. dissertation for prepublication review. Since I was on active duty with the Army when it was submitted, I provided it to Army Security Review in the Office of the Chief of Information, Department of the Army, Pentagon.
4. My experience was excellent. The Army review cleared my manuscript within six weeks. Although some reviewers recommended that it be passed to other agencies for review, the chief reviewer saw no reason to do so, and cleared my manuscript without delay or delection. Since my retirement from the Army, I have submitted no subsequent writings for review.
5. No. The best method is by briefings, updates, compartmentalization, and supervision. Many people recently charged with disclosing information had access to more information than they should have.
6. Yes, the current Directive is unworkable. For example, I have been on panels discussing issues I worked on where there was no possibility of providing remarks beforehand

Sincerely,

HERBERT Y. SCHANDLER

The Graduate School and University Center
of the City University of New York

Albert Schweitzer Chair in the Humanities
Graduate Center, 33 West 42 Street, New York, N Y 10036
212 790-4261

8 February 1984

Honorable Don Edwards and Honorable Patricia Schroeder
Committee on Post Office and Civil Service
Subcommittee on Civil Service
U.S. House of Representatives
122 Cannon House Office Building
Washington, D.C. 20515

Dear Don and Pat:

In response to the questions in your letter of 18 January regarding National Security Directive 84:

1. I have written two long books (A Thousand Days: John F. Kennedy in the White House, and Robert Kennedy and His Times) as well as innumerable articles in magazines and newspapers drawing on or reflecting my government service.

2. I have served intermittently in the federal government for forty years. During the Second World War, I served in the Office of War Information, the Office of Strategic Services and the United States Army. In the Truman administration I was a special assistant to Averell Harriman in Paris during the first days of the Marshall Plan and later a consultant for the Economic Cooperation Administration. In the Kennedy administration I served as a special assistant to the President. In the OSS, the Marshall Plan and the Kennedy White House I had access to classified information. I don't remember that the SCI classification existed in those faraway days, but I was cleared for quite high intelligence categories.

3. I have never submitted any writing for prepublication review, nor shall I ever do so. I feel that my experience as an intelligence officer in the Second World War and as a presidential special assistant equips me to judge what would or would not harm national security. In general, I am sure that people deemed responsible enough to serve in high government posts are quite responsible enough to make this judgment for themselves -- indeed, are better qualified to make the judgment than timid government bureaucrats, who are inevitably more concerned with pleasing their superiors than with informing Congress and the electorate. As a candid admiral told the Moss Committee some years ago, "I have never known a man to be court-martialed for overclassifying a paper." I might add that, so far as I know, nothing I have written has been criticized for disclosing secrets injurious to the national security.

4. As noted above, I oppose prepublication review in principle.

5. I believe that the expansion of prepublication review is an effective means of denying Congress and the people information it needs to make informed and responsible political decisions. "Though secrecy in diplomacy is occasionally unavoidable," wrote Lord Bryce, who was British ambassador to Washington from 1907 to 1913, "it has its perils. ... Publicity may cause some losses, but may avert some misfortunes."

6. The whole idea of former government officials submitting their writings on public policy to frightened government clerks for prepublication review is outrageous. The effect of the secrecy system is much less than it is to enable the federal government to dissemble its purposes, cover up its mistakes, manipulate its citizens and maximize its power.

There is nothing in the above remarks that I desire to keep confidential.

For a discussion of the historical evolution of government attitudes toward secrecy, you and the staff might be interested in glancing at chapter ten of The Imperial Presidency, "The Secrecy System."

I would appreciate it if you would send me a copy of your report when your investigation is finished. And my best regards to you both.

Sincerely yours,

Arthur Schlesinger, jr.

The ARMS CONTROL ASSOCIATION
11 Dupont Circle, N.W. • Washington, D. C. 20036 • (202) 797-6450

Herbert Scoville, Jr.
President

January 31, 1984

The Honorable Patricia Schroeder and
Don Edwards
The House of Representatives
Committee on Post Office and Civil Service
122 Cannon House Office Building
Washington, D. C. 20515

Dear Ms. Schroeder and Mr. Edwards,

This is in response to your letter of January 18th asking questions relative to my publications since I left government service. I am responding to the questions in the order they appeared in your letter.

1. Since I left the government in 1969 I have written extensively for a wide variety of publications. I have had published two full books Missile Madness, Houghton Mifflin 1970 and MX: Prescription for Disaster, MIT Press 1981. In addition I have written chapters for a wide variety of additional books. I have also had articles published in many different magazines such as Foreign Affairs, Foreign Policy, Scientific American, New York Review of Books, Bulletin of Atomic Scientists, New Republic, etc. I have also written many articles for newspapers such as The New York Times, Los Angeles Times, Washington Post, and The Christian Science Monitor. I have also written articles for journals and various organizations involved in national security matters such as the Arms Control Association and the Center for Defense Information. I have occasionally written for international publications such as the SIPRI Yearbook. In addition I have testified before many congressional committees.

None of these writings purport to be works of fiction, and all are analyses of various national security issues based on my experience in the government and my studies since I left it in 1969. None describe my experiences in the government.

2. The professional positions that I held within the government and the periods of time that I held them are listed in the copy of my biography attached hereto. In all of these positions I had access to classified information, and while with the Central Intelligence Agency and the Arms Control and Disarmament Agency I had access to sensitive compartmental information (SCI). Since

shortly after I left the government in 1969 I have had no clearances or access to classified information. This was at my own choice so as to avoid any possible confusion that I might be including classified information in my writings or lectures.

3. As mentioned above I avoided any access to classified information after leaving the government to ensure that my publications would not inadvertently contain such information. I have never submitted entire or parts of any publications for prepublication review and nobody has ever raised any question that my writings contain classified material.

4. Not applicable - see above.

5. Since I have had no experience with prepublication review I cannot speak from first hand knowledge. I do not believe, however, that such review is a necessary requirement for all former government officials. Only in those cases where the writings were skirting the borderline of classified information, or where the author was uncertain as to whether the material was unclassified or not should be submitted for review. It should be the responsibility of the author to ascertain whether his writings contain classified material, and if he publishes material then he should be held responsible for such disclosure. The submission of everything that every government official who had access to classified material writes would totally saturate the system and ensure that no sound judgments would be made. It would only be an invitation for the reviewer to take the easy way out of claiming everything was classified. In the long run it might result in more release of classified information as the former government officials would become totally frustrated with the delays that such procedures would entail.

6. My answer to question 5 applies as well to question 6.

I have no objection to these comments being made public. However, I am not eager to have my name publicly associated with them. Over the years I have had no problems with the government over my writings and public statements and I am not eager to create them now.

Sincerely yours,

Herbert Scoville, Jr.

Encl.
Bio

HERBERT SCOVILLE, JR.

Born - March 16, 1915, New York, N.Y.

B.S. - Yale, 1937
Graduate work in Physical Chemistry, Cambridge University, England 1937-1939
Ph.D. - Physical Chemistry, University of Rochester, 1942

Professional Positions:

U.S. Arms Control & Disarmament Agency - Assistant Director, Science and Technology	1963 - 1969
Central Intelligence Agency - Assistant Director for Scientific Intelligence; Deputy Director for Research	1955 - 1963
Department of Defense - Technical Director of the Armed Forces Special Weapons Project	1948 - 1955
Atomic Energy Commission, Senior Scientist, Los Alamos Contract	1946 - 1948
National Defense Research Committee, Variety of research contracts related to chemical warfare	1941 - 1945

Other Positions:

Arms Control Association, Washington, President	1979 -
Council for a Livable World, Board Member	1978 -
Council A.A.A.S.	1979 -
Center for Defense Information, Board of Advisors	1975 -
Union of Concerned Scientists, Board	1980 -
Atomic Energy Commission, Advisory Committee on Nuclear Materials Safeguards	1970 - 1972
U.S. Delegations to Japan, Australia, South Africa, and Portugal to interpret the Non-Proliferation Treaty, Chairman	1967 - 1968
U.S. Delegation, NATO Disarmament Experts' Meetings, Chairman	1966 - 1968
U.S. Delegation to the Geneva Conference of Experts to Study the Possibility of Detecting Violations of a Possible Agreement on the Suspension of Nuclear Tests	1958
Air Force Science Advisory Board	1955 - 1962
President's Science Advisory Committee, Consultant	1957 - 1963

Selected Publications:

Missile Madness - co-author with Robert Osborn, Houghton Mifflin, 1970
Toward a Strategic Arms Limitation Agreement, Carnegie Endowment, 1970
Verification of Nuclear Arms Limitations: An Analysis, Bulletin of the Atomic Scientists, October 1970.

International Safeguards: Technical Capabilities, Chapter in Non-Proliferation Treaty: Prospects for Control, Willrich & Boskey, 1970.
The Limitation of Offensive Weapons, Scientific American, January 1971.
Beyond SALT I, Foreign Affairs, April 1972.
Missile Submarines and National Security, Scientific American, June 1972.
A New Look at a Comprehensive Nuclear Test Ban, Stanford Journal, Spring 1972.
The Future of the Sea-Based Deterrent, MIT Press, 1973 - Chapters
MIRV Control Is Still Possible, Survival, International Institute for Strategic Studies, March-April 1974.
Flexible Madness, Foreign Policy, Spring 1974.
SALT: The Moscow Agreements and Beyond, The Free Press, 1974 - Chapter: A Leap Forward in Verification.
Is Espionage Necessary for Our Security? Foreign Affairs, April 1976.
The SALT Negotiations, Scientific American, August 1977.
SALT Verification and Iran, Arms Control Today, February 1979.
The Monstrous MX, The New York Review of Books, March 1980.
Verification of Soviet Strategic Missile Tests, Chapter in Verification and SALT, edit. Wm. Potter, Westview Press, 1980.
MX: Prescription for Disaster, MIT Press, 1981.
witness before the Senate and House Armed Services and Foreign Relations Committees on Defense Budgets, Strategic Policies, and Arms Control.
Other writings on defense and arms control matters in the New York Times, Los Angeles Times, Washington Post, Christian Science Monitor, New Republic, etc.

Medals and Awards:

Hutchinson Medal, University of Rochester, 1981.
Rockefeller Public Service Award, 1981.

6400 Georgetown Pike
McLean, Va. 22101
(703) 356-3205

NINETY-EIGHTH CONGRESS

PATRICIA SCHROEDER, COLO., CHAIRWOMAN
MORRIS K. UDALL, ARIZ. — CHARLES PASHAYAN, JR., CALIF.
KATIE HALL, IND. — FRANK R. WOLF, VA.
GERRY SIKORSKI, MINN.

U.S. House of Representatives
COMMITTEE ON POST OFFICE AND CIVIL SERVICE
SUBCOMMITTEE ON CIVIL SERVICE
122 CANNON HOUSE OFFICE BUILDING
Washington, D.C. 20515

TELEPHONE (202) 225-4025

January 25, 1984

Dear Mr. Seelye:

President Reagan, on March 11, 1983, issued National Security Decision Directive 84 (copy enclosed) which seeks to reduce the unauthorized disclosure of classified information. Among other things, the Directive requires that employees with access to certain types of restricted information sign non-disclosure agreements containing a requirement that the employee submit for prepublication review all writings "which contain or purport to contain" any restricted or classified information or "any information concerning intelligence activities, source, or methods." This requirement applies for the rest of the employee's lifetime.

The Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary and the Subcommittee on Civil Service of the Committee on Post Office and Civil Service held joint hearings in April to explore the Directive and the need for it. Our joint investigation into this matter continues.

As part of this effort, we are writing to request your assistance. As a former government official who has published articles or books concerning the issues you confronted while serving your country, you can provide us with valuable insight into the need for, value of, and problems with prepublication review. Therefore, we request that you respond to the questions below. Your answers will be valuable in the preparation of our report on this issue.

1. Please indicate the type of publication(s) in which your writing has appeared since you first left government service -- i.e., in books, newspaper articles, or works of fiction -- and whether the writing was related to your former government employment.

2. What position(s) did you hold in the Federal government? For what periods of time? Did you have access to classified information in such position? Did you have access to sensitive compartmented information (SCI) in such position?

3. What steps did you take to ensure that your publication(s) contained no classified information? Did you submit your entire publication for prepublication review or did you submit parts for review? If you submitted only a portion of your writing for prepublication review, on what basis did you decide which portions to submit?

4. If you have submitted any writings for prepublication review, what was your experience? To whom did you submit your material? Were you requested to delete material from your work? Were you permitted to show that the material was not classified? How long did it take to review the material?

5. Based on your experience with the prepublication review process, do you believe that expanding its use is the most appropriate and effective means of preventing disclosure of classified information?

6. The Directive requires all former government officials with access to SCI information to submit all publications, including speeches and lectures, for prepublication review. Do you believe that requiring such officials to submit only those portions of writings which might contain classified information would be equally effective?

We are, of course, cognizant of the fact that this is a very hectic time for everyone. However, your earliest assistance in responding to this request will be most appreciated since the Committees believe it is important to conclude their inquiry.

Please indicate in your response if you prefer that your comments be kept confidential; otherwise, they will be made a part of our public record.

Helen Gonzales of the Judiciary Committee staff (226-7680) and Andrew Feinstein of the Post Office and Civil Service Committee staff (225-4025) are available to answer any questions you might have about this request.

With kind regards,

Sincerely,

Don Edwards Pat Schroeder

DON EDWARDS
Chairman
Subcommittee on Civil and Constitutional Rights
Committee on the Judiciary

PATRICIA SCHROEDER
Chairwoman
Subcommittee on Civil Service
Committee on Post Office and Civil Service

Enclosure

Carnegie Endowment for International Peace

FEB 24 1984

February 22, 1984

The Honorable Don Edwards
Chairman
Subcommittee on Civil and
Constitutional Rights
Committee on the Judiciary
Room 2137 Rayburn HOB
Washington, DC 20515

The Honorable Patricia Schroeder
Chairwoman
Subcommittee on Civil Service
Committee on Post Office and
Civil Service
Room 122 Cannon HOB
Washington, DC 20515

Dear Mr. Edwards:
Dear Ms. Schroeder:

Thank you for your letter of January 25, 1984.

The prepublication-review requirement in National Security Decision Directive 84 is entirely inappropriate. The purpose behind it is clear. This is an administration which consistently misrepresents the facts to the American people. For example, according to the White House spokesman recently, State Department estimates were that "leftists" were responsible for 40% of the political murders in El Salvador. State Department sources said there were no such estimates. Assistant Secretary of State Langhorne Motley told a congressional committee recently that we had had to give up efforts to evacuate U.S. citizens from Grenada by sea because the ship that was to have taken them off was fired upon. The ship's owners, however, pointed out that the ship could hardly have been fired upon; it had not even reached the area at the time the invasion was launched.

In responding to House Speaker O'Neill's call the first of February for the removal of our marines from Lebanon, President Reagan said, "he may be ready to surrender, but I'm not." But it then turned out that at the same time he was belittling the Speaker, Mr. Reagan had already made the decision to do just what the latter was suggesting and on February 7 announced that the marines would be "redeployed."

A few government employees have been so disturbed by misrepresentations of this kind that they have quit and spoken out against them. The review requirement would give the administration the weapon it needs to stop such whistleblowing. Pentagon employees who wished to write about appalling waste, kickbacks, and stupid contract policies could be prevented from doing so. Former State Department officials who wished to criticize inept policies in, say, Lebanon and Central America, could be muzzled.

Adequate laws and regulations already exist to protect information which is truly sensitive and truly related to national security. The Congress should not give the administration this new power it is requesting. There is, first of all, no need for it. The purpose, moreover, is sinister: to curtail the freedom of expression and free debate of ideas which are our national heritage.

Sincerely,

Wayne S. Smith

Wayne S. Smith
Senior Associate

AMERICAN EXPRESS COMPANY
AMERICAN EXPRESS PLAZA NEW YORK N Y 10004

JOAN EDELMAN SPERO
SENIOR VICE PRESIDENT
INTERNATIONAL CORPORATE AFFAIRS

March 9, 1984

Dear Congressman Edwards and Congresswoman Schroeder:

I am pleased to respond to your letter of January 31, 1984 requesting information about articles and books I have written covering issues I dealt with while I was U.S. Ambassador to the United Nations Economic and Social Council in 1980 and 1981.

While I was in government I had access to classified information including SCI. I have written several articles since leaving government and am now in the process of revising and updating a book I had written before my government service. While many of the articles I have written touch on issues which I dealt with in government - economic issues such as international trade, U.S. telecommunications and information policy - only one article had direct bearing on my government service. This was an article entitled "The Global Negotiation": Agenda, Progress and Problems" published in The "Global Negotiation" and Beyond: Toward North-South Accommodation in the 1980s edited by Roger D. Hansen.

The article which I have attached for your information, was an analysis of the process of negotiations between developed and developing countries. At no time did I use any classified information in preparing the article. It was my understanding that any classified information could not be used in such a form, and furthermore it simply was not appropriate or necessary for the kind of work I have been doing. Had I had any question about any of the materials I was using being subject to classification I would have submitted them for prepublication review. It is my understanding that this is a commitment that I have having received the security clearances that I did. I acknowledge that this self screening is subjective but believe the alternative is unfeasible and undesirable.

It it my strong feeling that it is unnecessary and inappropriate to extend the directive to require former government officials to submit all publications, including speeches and lectures, for prepublication review. Requiring such former officials to submit only those portions of writing which might contain classified information would be equally effective, in my view. As a former academic - I was an assistant professor of political science at Columbia University before my government service - and as a believer in an open policy debate in the United States as the most effective way to achieve a desirable foreign policy, I would argue strongly against extending unnecessarily the restrictions on the ability of former government officials to speak and write. In my view, public debate contributes to the health of our society and the effectiveness of our policy. As a business person now, I have difficulty imagining how government could organize itself to review all materials written by former government officials in a way that would avoid censorship, bureaucratic inefficiency, and extraodinarily and unjustifably high cost.

I have no objection to including this letter in the public record.

Sincerely yours,

Joan E. Spero

Congressman Donald Edwards
Congresswoman Patricia Schroeder
U.S. House of Representatives
Committee on Post Office and Civil Service
122 Cannon House Office Building
Washington, D.C. 20515

Attachment

deflation as a result of deflationary policies in some of the Organization for Economic Cooperation and Development (OECD) countries; whether we are going to have growing degrees of bilateralism rather than strengthened multilateralism; whether this is the end of Bretton Woods and whether we should seek a different institutional structure for the future; and whether issues like international monetary reform, energy, and others that are now blocked in global negotiations are legitimate issues for serious international analysis, negotiation, and attempted cooperation in the early 1980s.

In other words, at the Cancún summit, we should try to set the *political agenda* and *forums of discussion* rather than try to make specific substantive decisions. The North-South summit should itself become a process: it should meet each year to monitor progress in North-South relations. If the summit accomplishes this, we may be able to make some progress in the months ahead.

Chairman Mills: Thank you, Mahbub, for laying the foundations of the discussion so thoroughly.

And now, Joan Spero.

The "Global Negotiation": Agenda, Progress, and Problems

Joan Spero: My task today is to talk to you in some detail about the global negotiations themselves — the agenda, the progress, and the problems.

I recently ended one year at the bargaining table of global negotiations at the UN, where along with Ambassador Donald McHenry I represented the United States in the negotiations during the Eleventh Special Session in August and September of 1980; and the continuing negotiations in a group called the Friends of the President during the Thirty-fifth General Assembly.

All of these groups were charged with reaching an agreement on a format for the Global Negotiation. I would like to describe briefly for you the nature of our charge from the General Assembly, and I would also like to try to explain to you, at least in part, why we were unable to fulfill that charge.

It was the Thirty-fourth General Assembly which passed a resolution calling for the launching of global negotiations. The resolution called for simultaneous, coherent, and integrated negotiations in five fields: trade, raw materials, development, energy, and money and finance. It charged the Committee of the Whole, known affection-

ately as the "COW" at the UN, with reaching agreement on the following: first, procedures — that is, how we would organize the negotiations; second, agenda — what specific items in these five fields would be addressed; and, finally, the time frame — how long the negotiations would last.

The discussion in the Committee of the Whole began in January of 1980 and was to be completed by the opening of the Eleventh Special Session in August of 1980. The two sides — and for reasons of simplicity, I'll talk about two sides, although in fact there are more — brought very different conceptions of global negotiations to the bargaining table. Let me describe those two conceptions briefly, admittedly in simplistic terms and in their most extreme form.

The Group of 77 offered a paper on procedures, agenda, and time frame for global negotiations. The proposal of the Group of 77 on procedures can best be characterized by the concept of centralization. As Mahbub ul Haq noted, the group wanted one central body or conference with the authority to negotiate binding and detailed agreements in all the issue areas. It wanted to use trade-offs among the issues in the bargaining process. It wanted universal participation, and, finally, it wanted to avoid as much as possible the existing specialized forums, especially the International Monetary Fund and the General Agreement on Tariffs and Trade (GATT), which it proposed to offer a consultative status.

The agenda proposed by the Group of 77 can best be described as the New International Economic Order, a long and detailed list of items in the five fields. Included in the agenda were important structural reforms, such as a change in the decisionmaking procedures in the International Monetary Fund. Also included in the agenda were a variety of items of concern to the different groups within the Group of 77, ranging from a commitment to the transportation and communications decade in Africa to the guarantee of financial assets of the capital surplus oil-exporting countries.

Finally, the time frame proposed by the Group of 77 was from January to September of 1980, or nine months, which came to be the time frame that everyone accepted while recognizing that it was unrealistic.

The developed countries offered a totally different conception of global negotiations. I should note that the developed countries never presented a comprehensive proposal as did the Group of 77. Rather, different countries offered various position papers emphasizing different aspects of the proposed global negotiations.

The reason for the absence of a common developed-country pro-

posal — this is important to note and a point to which I will return — is that the developed countries in New York do not negotiate as a bloc as does the Group of 77. There is something called Group B in Geneva and in Rome, which is the caucus of developed countries (essentially countries of the OECD), but Group B simply does not exist in New York.

The developed countries, however, did have a general conception, if not a formal paper, of global negotiations. On the matter of procedures, in contrast to the Group of 77, they stressed decentralization, not centralization. They wanted to emphasize the role of the specialized forums, where those forums had legal competence and expertise. For example, monetary reform would be negotiated in the IMF, and commodity agreements in United Nations Conference on Trade and Development. They also felt that it would be unrealistic and unmanageable to try to link all of the issues, as proposed by the Group of 77.

As far as the agenda was concerned, in contrast to the Group of 77 proposals for the New International Economic Order, the developed countries took more of a problem-solving approach. They wanted to focus on priority items that in their view reflected serious problems and on which it would be possible to achieve concrete results within the time frame of nine months or a little bit longer.

For example, the United States offered what we called an "early action program" (and I must say it sounds a little bit like the program that Mahbub has just been describing). We suggested the negotiations begin by talking about energy production in developing countries, recycling, protectionism, world food security, and world food production. This general approach was viewed as insufficiently reformist and the specific agenda list as too short by the Group of 77.

We were able to move a long way from these two initial extremes. We made considerable progress in resolving our differences, but in the end, at the Committee of the Whole, the Special Session, and the General Assembly, we were unable to bridge the remaining gaps. As a result, there is to this date no agreement on the Global Negotiations. Let me describe how far we came before I suggest the reasons why I think we didn't get there.

On the issue of procedures, we developed the concept of a phased process that would combine both centralization and decentralization. The negotiations would begin with a conference, as proposed by the Group of 77, which would, by consensus, develop guidelines and objectives relating to the various items on the agenda. These

guidelines and objectives would then be given to the specialized forums or to *ad hoc* groups that would be set up to carry out the detailed negotiations. This latter procedure responded to the Northern preference for a decentralized approach.

After these groups carried out their negotiations in a decentralized fashion, the results of each separate negotiation would be returned to the conference to be assembled in a final, so-called "package agreement." Obviously, this final step represented another concession to the Group of 77 concept of linking issues and making trade-offs at the end of the day.

This, then, was our general agreement, but we still had important problems with the details of that agreement. The major problem, in my view, concerned the balance between the role of the conference and the role of the specialized forums. How could we satisfy the desire of the developed countries to preserve the autonomy and the utility of the specialized forums while also satisfying the desire of the Group of 77 to bypass the specialized forums in order to achieve their desired goals?

Another important procedural barrier related to energy. Energy, it turns out, is the one issue with no specialized forum. It is the one issue to which there was no logical venue for decentralized analysis and negotiation. Furthermore, the oil-producing and oil-exporting countries feared greatly that global negotiations might, through the process of decentralization, lead to the creation of an energy institution that they have very much opposed ever since the issue first arose in 1974.

We were able to reach some agreement on the agenda by making it more neutral. This was accomplished by emphasizing the goals of the New International Economic Order in a preamble while developing the actual working agenda in more neutral terms. Important differences remained, however, especially in the areas of energy and money and finance.

Finally, on the issue of the time frame, as noted earlier, everyone agreed that the entire process would last nine months; ironically, everyone also came to agree that this time frame was unrealistic.

The main question I want to address is why we were unable to bridge these gaps and why there has been a continuing stalemate regarding the launching of the Global Negotiation. There are many levels of explanation for the failure of negotiations. They range from the concept of disparity of power among the participants in the negotiation to the fact that an election took place in the United States during the process of the negotiations. I would like to offer a

perspective from the negotiator's standpoint, a microperspective of the problems as I saw them in the process of trying to negotiate them at the United Nations.

My main point is that the *process itself* is a barrier to agreement. Let me explain what I mean, and let me say quite frankly that I give you a slight caricature of the process in the hope that I will provoke some response from the other participants.

Let me look at this process at three levels: first, the individuals who participated in the process; second, the groups that organized the process; and, finally, the bargaining structure of the United Nations itself.

The participants in the negotiations, the key actors in this process from the North and the South, are very different. The reason they are different and bring very contrasting perspectives to a negotiation is an outgrowth, to a great extent, of the way governments are organized to make and to execute North-South policy.

In the simplest of terms, the South is represented by diplomats and representatives of foreign ministries, while the North is represented by economists who come not only from foreign ministries but also from treasuries and finance ministries. One very significant result is totally different views of reality and totally different conceptions of what the negotiations are all about.

First, the Group of 77. Again, I apologize for making rather sweeping generalizations. The activists behind the Global Negotiation are diplomats from the foreign ministries. In fact, very often the activists are diplomats based in New York, because the foreign ministries in the capitals, for a variety of reasons, are not intimately involved in the negotiations.

The diplomats from the Group of 77 are not trained economists. They adopt the economic analysis that argues that the system is fundamentally distorted from a development viewpoint and is inequitable, although they are not always able to argue the case effectively about the distortions in the market. Furthermore, the representatives of the Group of 77 distrust the International Monetary Fund, the General Agreement on Tariffs and Trade, and, dare I say, the World Bank. Although many of them, because they are not specialists in this area, do not fully understand the operation of these institutions, they are persuaded of the political argument that it is necessary to change in effect a fundamental system.

And here I want to add a brief footnote. That is, the message heard from the diplomats in the United Nations is not always and very often not at all the message that is heard in the capitals by the

representatives of the developed countries. The talk of the New International Economic Order, the talk of a multilateral approach to reform, the discussion of fundamental changes in the system — this is not the message that American officials hear in the capitals of the developing countries.

Finally, the representatives of the Group of 77 see the problem in achieving the New International Economic Order as one of inadequate political will in developed countries. Those who argue against the proposals in various dimensions of the New International Economic Order are viewed as self-serving. The Southern viewpoint is that with the proper "political will," all would be relatively easy.

The developed-country activists, on the other hand, are by and large economists. They are most often stationed in their national capitals rather than the UN, and UN diplomats from the developed countries are kept on very tight leashes. The key actors in the developed countries therefore generally see North-South issues in traditional terms of economic efficiency; that is, in terms of preservation of the market and of the existing institutions that presumably support that market. They reject the economic analysis adopted by the Group of 77. They view the system itself and its institutions as having a fundamentally positive value, not only for the developed countries but also for the developing countries. While they recognize the existence of imperfections in the international economic system, they believe quite honestly and quite seriously that all stand to lose by restructuring along the lines of the New International Economic Order.

Furthermore, the North-South dialogue is a relatively low-priority item for these foreign policy economists. They have to pay attention to a wide range of issues, from the problem of the dollar to Japanese auto imports. For them, the North-South dialogue seems "unrealistic." It attracts little of their attention and, more importantly, little of their creative thinking and creative effort. This low-priority status is reinforced by what they hear from the capitals of the less developed countries (LDCs), and by what they hear from LDC representatives in IMF and the World Bank, where there is little talk about global negotiations.

In sum, and again in caricature, they have come to view the UN as a dangerous place where diplomats have different and, from their perspective, misguided opinions concerning economics and the system which, if acted upon, can do serious damage to the world economy. Therefore, to the extent that they want to be responsive to the South, they want to be responsive to the South outside of the UN

context. Thus, their preference for decentralized, issue-specific negotiations within the IMF, the World Bank, and the GATT.

The result in the negotiations, then, is a fundamental distrust on both sides about the intentions of the other side. What did they really mean? What are they really trying to put over on us? There is a lack of communication, and there is a polarization and a rigidity in these views.

The group structures of the United Nations are also a problem in the process. The groups are important at the UN in facilitating negotiations; quite simply, it would be impossible to conduct a negotiation among 154 countries. But the groups also pose important problems and impediments in the negotiations.

The most important group is the Group of 77. It is well organized to express the economic concerns and the programs of the less developed countries, but it is poorly organized to bargain and to negotiate. Unity is the key asset of the Group of 77, and that unity is achieved by including demands of a great diversity of groups. Furthermore, the Group of 77 is a democracy in that each of the various groups with diverse viewpoints has a veto power in the system. Thus, it is difficult, if not impossible, for the group to alter its proposals without losing important support within the group and without threatening to fragment the unity of the group. But altering proposals and changing positions is the essence of successful negotiation.

The leadership of the Group of 77 is faced with an important dilemma: Can it make deals at the bargaining table which it can eventually sell to the group at the end of the day? The answer, unfortunately, is often no.

Let me mention one other special group, OPEC. It is a crucial group within the Group of 77, or at least it was during the process of planning for the Global Negotiations. The discussion of energy is a key element of global negotiations, but OPEC had great troubles in contemplating an energy dialogue.

OPEC — and it is perhaps unfair to talk about OPEC as a unit, but let me do this because of limited time — did not want energy to be discussed in an isolated forum. Because OPEC feared the isolation and the heat of discussing energy alone, it wanted energy linked to a variety of other issues.

Furthermore, OPEC did not want to discuss recycling. Recycling was, as we started to call it, a four-letter word in planning for the Global Negotiation. We were not allowed to use the term. And OPEC also did not want to talk about energy supply or energy price.

It was perfectly willing to talk about energy demand. It thus played an important blocking position within the Group of 77. Indeed, the question was raised whether OPEC wanted global negotiations at all.

Although the developed countries have similar interests, they do not negotiate as a group in New York. The result of this situation was that their positions often differed. They often spent as much time haggling and negotiating among themselves as they did negotiating with the Group of 77. They often sent confusing and different signals to the Group of 77, which led to disorganization and confusion in the negotiations.

Finally, there is the third-level problem of the structure of the negotiations themselves. The regular organs of the United Nations are rather well structured for bargaining and trying to achieve compromise. The Security Council has a regularized system of consultation. It has a method and a structure that leads to or at least encourages compromise. The same is true in various committees of the United Nations General Assembly, where there are regularized consultative processes.

None of that institutional infrastructure existed for the earlier negotiations, and the fact that the negotiations were relatively unstructured posed, I believe, terrible problems.

One of the major problems was the question of who negotiates — that is, who comes to the bargaining table. It is impossible to negotiate with 154 countries, but negotiating with any fewer is often viewed by those unrepresented as illegitimate.

A related question became whether the chairman of the Group of 77 should come alone to the bargaining table. That is acceptable, but if he does not bring some of the members of the group, it is highly unlikely that at the end of the day he will be able to sell his achievements to the rest of the members of the group. If he brings a few members of the group, who should come? If you are not invited to the bargaining table, will you pose problems? Will you cause problems for the chairman if you are left out?

The European Economic Community had similar problems. The EEC negotiates as a unit, or did so on the earlier global negotiations. But, of course, all of the ten want to be present at the bargaining table. That's understandable because they are the key economic powers, and they want to be in the room. But if they all come, then all of the Group of 77 have a right to come and, once again, you're in a large room.

The United States, I should add, has no problem. We are always invited, for obvious reasons.

All of this puts a major burden on the chairman of the negotiations. The chairman becomes responsible for, in effect, organizing, managing, and orchestrating the negotiations. He is the arbiter. He is the prodder. He determines who participates. He often assumes the risk of producing compromise papers.

If you have a good chairman, you may have a good negotiation. But a good chairman is a very weak reed on which to build a negotiating structure, for if there is no good chairman, the negotiations can rapidly and easily flounder.

Therefore, I personally conclude that the *process* is an important obstacle to the negotiations. And even if we reach agreement at Cancún or at Ottawa or elsewhere, the problem of the process at the UN will remain and will be, in my view, an important obstacle to the Global Negotiation itself.

Chairman Mills: And now, Walt Rostow.

Beyond the Official Agenda: Some Crucial Issues

Walt Rostow: As I told some of my colleagues last night, I am in a rather awkward position because my view of the New International Economic Order negotiations that have taken place since 1974 is that they have been based on the wrong intellectual conception, the wrong agenda, the wrong negotiating forum, and the wrong cast of negotiators. I think that in different ways both of the speakers this morning have illuminated why that perspective is a defensible view of the dialogue since 1974.

I perhaps should start by explaining my broad perspective, which leads me to conclusions that are quite different from those of my hard-working and responsible colleagues who have been engaged in this process.

While they were working through this difficult and important process, I was fulfilling a youthful commitment to write a history of the world economy covering the past two centuries. As I worked forward to the present and looked to the future, it became clear to me that we had entered, at the end of 1972, a new phase in the history of the world economy. This phase, parallel to four previous phases, will be marked by relatively expensive raw materials.

The list of resources differs with each of these phases, but in this case it's clear enough what the key relative shortages are. They are energy and food. And if we achieve high rates of growth, other costs

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Donald F. McHenry
William J. vanden Heuvel
James G. Lowenstein
Michael E. Sterner

February 14, 1984

Honorable Patricia Schroeder
Chairwoman
Subcommittee on Civil Service
Committee on Post Office and
Civil Service
and
Honorable Don Edwards
Chairman
Subcommittee on Civil and
Constitutional Rights
Committee on the Judiciary
U.S. House of Representatives
Washington, D. C. 20515

Dear Representative Schroeder
and Representative Edwards:

This is a reply to your letter of January 25, 1984. The numbered paragraphs below are keyed to the numbered paragraphs in your letter.

1. Since my retirement from government service in 1981, I have written newspaper articles (New York Times and Washington Post), articles in various professional journals and a chapter in a book. My output has been entirely non-fiction. Most of this writing was related to my former government employment in the sense that it dealt with foreign policy issues, and in particular U.S. Middle East policy.

2. My two most senior positions in the federal government were: ambassador to the United Arab Emirates 1974-1976; Deputy Assistant Secretary of State 1977-1981. I had access to classified information in both positions. I also had access to some sensitive compartmented information in both positions.

3. My writing has in all cases dealt with general policy questions and has not included classified information. For this reason, I have not submitted my publications for pre-publication review.

4. and 5. Not applicable.

6. In the end the government has to depend on the judgment and integrity of the former official to determine whether something he has written might contain material that ought to be cleared. However, I would think that if an article deals with classified information at all, the whole manuscript ought to be submitted for clearance.

I have no objection to making my comments above part of the public record.

Sincerely yours,

Michael Sterner
U. S. Ambassador, Retired

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Mr. Don Edwards
Chairman
House Subcommittee on Civil
and Constitutional Rights
and
Ms Patricia Schroeder
Chairwoman
House Subcommittee on Civil
Service
Washington, D.C. 20215

Dear Don Edwards and Patricia Schroeder:

In reply to your letter of January the 18th, I have written a number of newspaper articles since leaving government in 1980. These are all based on current news reporting and I did not seek any clearance from the government.

Before publishing my book "Double Talk" which covered the first SA:T negotiation I submitted the manuscript to the Secretary of State who authorized its publication. Proceeds were contributed to the ACA.

I think most of the leakage of classifed information now comes from high level administration officials while they are in office. In general, I think that pre-publication review of the writings of former government officials would be a very time consuming and expensive process, and I question whether it would improve the security of the Republic very much.

Sincerely,

Gerard Smith

Gerard C. Smith

Carnegie Endowment for International Peace

February 22, 1984

The Honorable Don Edwards
Chairman
Subcommittee on Civil and
Constitutional Rights
Committee on the Judiciary
Room 2137 Rayburn HOB
Washington, DC 20515

The Honorable Patricia Schroeder
Chairwoman
Subcommittee on Civil Service
Committee on Post Office and
Civil Service
Room 122 Cannon HOB
Washington, DC 20515

Dear Mr. Edwards:
Dear Ms. Schroeder:

Thank you for your letter of January 25, 1984.

The prepublication-review requirement in National Security Decision Directive 84 is entirely inappropriate. The purpose behind it is clear. This is an administration which consistently misrepresents the facts to the American people. For example, according to the White House spokesman recently, State Department estimates were that "leftists" were responsible for 40% of the political murders in El Salvador. State Department sources said there were no such estimates. Assistant Secretary of State Langhorne Motley told a congressional committee recently that we had had to give up efforts to evacuate U.S. citizens from Grenada by sea because the ship that was to have taken them off was fired upon. The ship's owners, however, pointed out that the ship could hardly have been fired upon; it had not even reached the area at the time the invasion was launched.

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A few government employees have been so disturbed by misrepresentations of this kind that they have quit and spoken out against them. The review requirement would give the administration the weapon it needs to stop such whistleblowing. Pentagon employees who wished to write about appalling waste, kickbacks, and stupid contract policies could be prevented from doing so. Former State Department officials who wished to criticize inept policies in, say, Lebanon and Central America, could be muzzled.

Adequate laws and regulations already exist to protect information which is truly sensitive and truly related to national security. The Congress should not give the administration this new power it is requesting. There is, first of all, no need for it. The purpose, moreover, is sinister: to curtail the freedom of expression and free debate of ideas which are our national heritage.

Sincerely,

Wayne S. Smith
Senior Associate

GENERAL MAXWELL D. TAYLOR (RET.)
2500 MASSACHUSETTS AVENUE NW
WASHINGTON, D. C. 20008

March 5, 1984

Chairwoman Patricia Schroeder,
Subcommittee, Civil Service,
Committee on the Post Office and Civil Service,
122 Cannon House Office Building,
Washington, D.C. 20515

Dear Chairwoman Schroeder:

I regret that I can respond only partially to the questions posed in your joint letter of February 8 with Chairman Don Edwards. There are several reasons for my limited usefulness. Since giving up my place on the President's Foreign Intelligence Advisory Board in 1970, I have been completely out of touch with governmental efforts to give greater protection to properly classified intelligence, a purpose which I have long supported.

As a result, I am unacquainted with the functions of such agencies as the "Information Security Oversight Office" and "The Office of Personnel Management." Likewise I have no knowledge of an official explanation of what is meant by "Sensitive Compartmented Information" (SCI) and "Information Whose Disclosure Would Harm the National Security Interests of the United States." Thus handicapped, I can undertake to answer only parts of your sets of questions, not necessarily in the sequence in which they are made.

As to the principal government positions I have held with relevance to the questions, they are the following: Army Chief of Staff and member of the JCS (1955-59); Chairman, JCS (1962-64); Ambassador to Viet Nam (1964-65); a member, later Chairman of the President's Foreign Intelligence Advisory Board (1965-70). Insofar as I know, in one or more of these positions, I had access to all forms of intelligence bearing on national security. It is possible I did not see some intelligence relating to particularly esoteric matters.

As to my literary activities outside of government, I have written four books, contributed an occasional newspaper article, and delivered many speeches and lectures, a majority of the latter being on the subjects of military policy and the Viet Nam war. These activities have extended from 1959 when I produced my first book until the present period. In this span of time, I have never submitted any book, speech or article for pre-publication review.

I felt no obligation to do so, given my long experience in national security intelligence and my prior knowledge of what was and what was not properly classified. I verified personally that there was no detectable

classified material in anything that I publicly wrote and said. No official or agency has ever raised the issue with me.

As to your questions 5 and 6, having had no experience with the pre-publication process, I have no qualified opinion as to the desirability of expanding its use. On the other hand, I think I would strongly oppose requiring all former government officials with access to SCI intelligence to submit all publications for pre-publication review. However, you recall that I mentioned earlier that I do not know what SCI intelligence consists of. Hence in my lack of knowledge I will not take sides.

Hoping to have contributed something to your investigation,

Sincerely yours,

Maxwell D. Taylor
General, U. S. Army (Ret.)

cc: Chairman Don Edwards

MDT/cb

Yale University

Cowles Foundation for Research in Economics
Department of Economics
P.O. Box 2125 Yale Station
New Haven, Connecticut 06520-2125

Campus address:
30 Hillhouse Avenue

FEB 8 1984

February 3, 1984

The Honorable Don Edwards
Chairman, Subcommittee on Civil & Constitutional Rights
Committee on the Judiciary
U. S. House of Representative
Washington, DC 20515

The Honorable Patricia Schroeder
Chairwoman, Subcommittee on Civil Service
Committee on Post Office & Civil Service
U. S. House of Representatives
122 Cannon House Office Bldg.
Washington, DC 20515

Dear Chairman Edwards and Chairwoman Schroeder, M.C.

I am replying to your inquiry of January 18.

I served as a Member of the President's Council of Economic Advisers (CFA) in 1961-62, and as a consultant to the Council for several subsequent years. After my service as a Council Member I wrote articles or books of several types that drew on my experience in the government: a) reflecting on the role of the CEA and more generally the responsibilities and effectiveness of professional advisers in the federal government, b) relating to particular issues that arose during those years and the manner in which they were resolved, c) concerning the general subjects that concerned me as a CEA Member, subjects which were in any case central to my professional and scholarly interests. These articles were in academic or professional journals or in books for similar audiences. Some pieces of type c), concerned with issues of policy after 1962, were written for lay audiences and appeared in popular media, newspapers or other periodicals.

Together with other economic advisers to President Kennedy, I taped reminiscences of our experiences at the Council for the Kennedy Library, and I deposited in the library relevant personal papers. However, I had left all files of official business in the offices of the Council when I departed. Access to the materials in the Kennedy Library is controlled by the library, subject to my consent. I have from time to time given my consent to several historians and political scientists who wished to consult the materials for scholarly purposes, on the condition that they would clear with me anything they wished to quote or paraphrase.

My duties at CEA did not involve me in matters of national security or in access to or preparation of documents classified higher than administratively confidential or restricted; for example, memoranda to the President or from

the White House on economic issues. I simply do not remember, if I ever knew, the limits of my clearance for access to classified material. The nature of my subsequent publications, or even of the Kennedy Library tape, certainly did not raise any problematic issues of disclosure. They contained no security-classified information, and I submitted none of them for prepublication review by anyone. Any policy decisions I could discuss were long since public history, and all I could add were my observations of the processes and internal debates that led up to them.

I fear, therefore, that my experience is not very relevant to the questions you are addressing. I do believe that to require prepublication review of any or every public communication by a former government official with access to SCI information is excessive and unnecessary, and will discourage valuable contributions to public debate by knowledgeable authors.

Sincerely,

James Tobin

JT:lh

James Tobin

THE CAMPAIGN FOR TUFTS

Tufts University
Packard Hall
Medford, Massachusetts 02155
617 666-3515

Malcolm Toon, A'37, F'38, H'77
National Chairman

February 16, 1984

The Honorable Patricia Schroeder
Chairwoman
Subcommittee on Civil Service
Committee on Post Office and Civil Service
United States House of Representatives
122 Cannon House Office Building
Washington, D.C. 20515

Dear Madam Chairwoman:

I submit below answers to questions posed by your letter of January 25 with regard to National Security Decision Directive 84:

1. All my writing since retirement has appeared in newspaper articles or magazine reprints of speeches I have delivered.

2. As a career Foreign Service officer, from 1946 to 1980, I served in a number of diplomatic missions, mostly in Eastern Europe, and the Department of State. I served as Ambassador to Czechoslovakia in 1969-71, to Yugoslavia in 1971-75, to Israel in 1975-76, and to the Soviet Union in 1976-79. In these capacities, I had access to classified information, including SCI.

3. I have not submitted texts of my articles for review since in no case did I use classified information in their preparation.

4. Not applicable

5. Not applicable

6. My view is that requiring former government officials to submit only those portions of writings that might contain classified information would meet all reasonable standards for safeguarding sensitive material.

Very truly yours,

Ambassador Malcolm Toon

MT:dmk

catherine

Clifford & Warnke
Attorneys and Counsellors at Law
815 Connecticut Avenue
Washington, D.C. 20006

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TELEX 248556 CLEY

TELEPHONE
(202) 828-4200

February 29, 1984

Honorable Don Edwards
Honorable Patricia Schroeder
U.S. House of Representatives
Committee on Post Office and Civil Service
Subcommittee on Civil Service
122 Cannon House Office Building
Washington, D,C, 20515

MAR 2-

Dear Chairman and Chairwoman:

This is in reply to your letter of February 8, 1984 asking certain questions relevant to your Subcommittees' consideration of National Security Decision Directive 84. My answers correspond to the numbering of the questions in your letter.

(1) Between March, 1969, when I left the Department of Defense where I served as Assistant Secretary of Defense for International Security Affairs, and my return to government service in March, 1977, I wrote numerousarticles in various periodicals as well as a number of op ed. pieces on national security issues. Similarly, since resigning as Director of the U.S. Arms Control and Disarmament Agency and Chief Negotiator at the Strategic Arms Limitations Talks, in November of 1978, I have written extensively in various publications about strategic arms policy, arms control and general security questions.

(2) From September of 1966 to August of 1967, I was General Counsel of the Department of Defense.

From August 1967 to March 1969, I was Assistant Secretary of Defense for International Security Affairs.

From March 1977 to November 1978, I was Director of the U.S. Arms Control and Disarmament Agency and Chief of the U.S. Delegation to the Strategic Arms Limitation Talks.

In each of those positions, I had access to classified information and to sensitive compartmented information (SCI).

(3) I utilized my own judgment in determining that my writings contained no classified information. I did not submit any part of any proposed publication for prepublication review.

(4) Not applicable, in view of my answer to (3).

(5) Not applicable based on my answer to (3).

(6) In my opinion, there should be no requirement that former government officials with access to SCI information submit all or any part of their publications, including speeches and lectures, for prepublication review. There has been no such requirement in the past and there is no indication that the national security has been impaired by the absence of such a requirement. Leaks of sensitive information typically occur at the time when policy decisions are being made and in an effort to influence the decision-making process. Instances of damaging disclosures by individuals months and years after they have left high government positions have been virtually non-existent. Problems such as renegade CIA agents can be handled without stifling the flow of valuable insights to the American public and without discouraging acceptance of responsible government positions.

I have no objection to having my comments made part of your public record.

Very truly yours,

Paul C. Warnke

CENTER FOR THE STUDY
OF AMERICAN BUSINESS

MURRAY L. WEIDENBAUM
Director and
Mallinckrodt Distinguished
University Professor

January 30, 1984

Honorable Patricia Schroeder and
Honorable Don Edwards
U.S. House of Representatives
Committee on Post Office and Civil Service
Subcommittee on Civil Service
122 Cannon House Office Building
Washington, DC 20515

Dear Representatives Schroeder and Edwards:

This is in response to your letter of January 18.

1. Since I left government service at the end of August 1982, I have been writing articles for economics journals and general circulation magazines and newspapers. This writing generally relates to current economic trends and future economic matters, rather than my government employment.

2. I was Chairman of the Council of Economic Advisers from January 1981 to August 1982. Previously, I had served as an Assistant Secretary of the Treasury in 1969-71. I had access to classified information in both positions, although I saw and used very little of it. I do not even recall the classification of "sensitive compartmental information."

3. Because I was convinced that my publications contained no classified information whatever -- and that they were based essentially on open sources -- I have never submitted any of them for review.

4. Not applicable.

5. Not applicable.

6. Under the circumstances, I have no comments to offer.

I trust that you appreciate that the work of an economist analyzing general economic trends and policies does not typically involve use of classified information. I hope that this response is useful to you.

Sincerely,

Murray L. Weidenbaum

MLW/mw

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314 889 5662

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UNIVERSITY
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THE UNIVERSITY OF TEXAS AT AUSTIN
LYNDON B. JOHNSON SCHOOL OF PUBLIC AFFAIRS
AUSTIN, TEXAS 78712-7450

(512) 471-4962

February 13, 1984

Don Edwards
Chairman
Subcommittee on Civil and Constitutional Rights
Committee on the Judiciary
122 Cannon House Office Building
Washington, D.C. 20515

Patricia Schroeder
Chairwoman
Subcommittee on Civil Service
Committee on Post Office and Civil Service
122 Cannon House Office Building
Washington, D.C. 20515

Dear Chairman Edwards and Chairwoman Schroeder:

You asked various questions in your letter of January 31 regarding National Security Decision Directive 84, which seeks to reduce the unauthorized disclosure of classified information.

Before answering your specific questions, I wish to make a preliminary comment. Most of my writings deal with technical economic issues, and little of the information in them is of a security nature. I have never knowingly included sensitive security information in my writings. There have been at least two occasions when I sought security clearance under the Freedom of Information Act for particular documents of which I was aware, and in some cases which I prepared, when I failed to receive the clearance. The reasons had nothing to do with security, but in my judgment refusal was based on the desire not to embarrass former government officials. This may not be the stated policy, but it seems to be the practice.

The following answers are keyed to your questions:

1. I have written books, newspaper articles, scholarly articles, parts of proceedings of conferences, and other materials dealing with a variety of subjects. Many of these articles cover issues related to those with which I dealt as a government official.

2. I was a foreign service officer for roughly 25 years. Among my more senior positions were director of the AID Mission in Chile (1966-1969), deputy assistant Secretary of State for international finance and development (1969-1974), and assistant administrator of the Agency for International Development (1974-1975). I do not know what "sensitive compartmented information" (SCI) is, but I did have access to information of all security classifications. At various times I had special security clearances for particularly sensitive information.

3. When I was a government official I meticulously submitted my publications for prepublication review. Since my departure from the government in 1976, I have never submitted anything for prepublication review.

4. Not applicable since my departure from the government.

5. Similarly not applicable.

6. Yes, I believe that requiring officials to submit only those parts of publications or writings which contain classified information would be just as effective as submitting complete publications. Indeed, I think it would be more effective, since the personnel needed for clearance purposes would be much fewer.

I must confess that I am suspicious of any prepublication review process since I suspect that one man's security apprehension is another man's public information. Most of what would be excised would be trivial, in my view, compared with the damage done to our society by censorship by whatever government was then in power.

There is no need to keep any of these comments confidential.

Sincerely,

Sidney Weintraub

Sidney Weintraub
Dean Rusk Professor

SW/lb

MAR 19 1984

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PROGRAM IN SCIENCE, TECHNOLOGY
AND PUBLIC AFFAIRS

Q-060
LA JOLLA, CALIFORNIA 92093

March 13, 1984

Representative Don Edwards
Representative Patricia Schroeder
U.S. House of Representatives
Committee on Post Office and Civil Service
Subcommittee on Civil Service
122 Cannon House Office Building
Washington, D.C. 20515

Dear Representatives Edwards and Schroeder:

The following is my response to your letter of 8 February 1984; it follows the numbering system used therein.

1) I have written two books, edited a third, plus numerous journal articles. Most of the content was related to my former government employment.

2) I was: Director of Defense Research & Engineering 1958-1961.

Chief Scientist of ARPA 1958.

Ambassador to Comprehensive Test Ban Negotiations 1979-1981.

Member, Pres. Science Adv. Committee 1957-58 and 1964-68.

Member, General Advisory Committee on Arms Control and Disarmament, 1962-69.

In all these positions I had access to SCI.

3) On the very rare occasions when I believed there might be a possibility that a paper I had written contained classified information, I checked with the relevant authorities. I based my decisions to do so on my own long and direct knowledge of what is and is not classified.

4) My experience has been satisfactory. When the classification authorities and I differed, I was usually able to persuade them that the material was, in truth, very well known and therefore should not be categorized as classified, and they approved publication. In those cases where they insisted the information was classified, I followed their wishes in the matter.

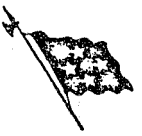
5) Probably.

6) Yes; indeed, more so.

Sincerely,

Herbert F. York

HFY/sg



E. R. ZUMWALT, JR.
ADMIRAL, U. S. NAVY (RET.)

7 March 1984

Congressman Don Edwards
Chairman
Subcommittee on Civil and Constitutional Rights
Committee on the Judiciary

Congresswoman Patricia Schroeder
Chairwoman
Subcommittee on Civil Service
Committee on Post Office and Civil Service
122 Cannon House Office Building
Washington, D.C. 20515

Dear Congressman Edwards and Congresswoman Schroeder:

I have your letter of February 9 and my replies to the questions contained therein are as follows:

1) I have authored one book since retirement called "On Watch" published by Quadrangle Press in 1976. This book was based on my former government employment. I have authored countless newspaper articles, the majority distributed in the format of "Zumwalt/Bagley Reports" by the Los Angeles Times Syndicate. These articles occasionally have referred to government service but largely are analyses based on experience accumulated in government service. I have authored perhaps a score of articles for magazines and periodicals which are commentaries based on government experience.

2) I attach a detailed resume to indicate what positions I held in the Federal Government and the periods of time. I had access to classified information in all positions. I had access to sensitive compartmented information in several of the positions.

3) To ensure that my book contained no classified information, I used my own judgment and had it reviewed informally by retired naval officers and active duty naval officers. I did not submit the entire publication for official review but did have it reviewed unofficially.

4) Other than the above, I have not submitted any writing for prepublication review.

5) The informal method that I used worked very efficiently. I have no experience with formal prepublication review.

6) I do believe that former government officials should be required to submit only those portions of writings which might contain classified information. I believe that this would be equally effective as the procedure contemplated in National Security Decision Directive 84.

All best wishes.

Sincerely,

E. R. Zumwalt, Jr.

1500 Wilson Boulevard
Arlington, Virginia 22209
703/841-8960

Attachment

ADMIRAL ELMO RUSSELL ZUMWALT, JR., USN (RET)

TRANSCRIPT OF NAVAL SERVICE

29 Nov 1920	Born in San Francisco, California
7 Jun 1939	Midshipman, U.S. Naval Academy
19 Jun 1942	Ensign
1 May 1943	Lieutenant (junior grade)
1 Jul 1944	Lieutenant
1 Apr 1950	Lieutenant Commander
1 Feb 1955	Commander
1 Jul 1961	Captain
1 Jul 1965	Rear Admiral
1 Oct 1968	Vice Admiral
1 Jul 1970	Admiral

SHIPS AND STATIONS	FROM	TO
USS PHELPS (DD-360)	Jun 1942	Aug 1943
USS ROBINSON (DD-562)	Jan 1944	Oct 1945
USS SAUFLEY (DD-465)	Dec 1945	Mar 1946
USS ZELLARS (DD-777)	Mar 1946	Jan 1948
NROTC Unit, Univeristy of North Carolina at Chapel Hill, North Carolina (Assistant Professor of Naval Science)	Jan 1948	Jun 1950
USS TILLS (DE-748) (Commanding Officer)	Jun 1950	Mar 1951
USS WISCONSIN (BB-64) (Navigator)	Mar 1951	Jun 1952
Naval War College, New Port, RI (Student)	Jun 1952	Jun 1953
Bureau of Naval Personnel, Washington, D.C.	Jun 1953	Jul 1955
USS ARNOLD J. ISBELL (DD-869) (Commanding Officer)	Jun 1955	Jul 1957
Bureau of Naval Personnel, Washington, D.C. (Lieutenant Detailer)	Jul 1957	Dec 1957
Office of the Assistant Secretary of the Navy for Personnel and Reserve Forces		
(Special Assistant for Naval Personnel)	Dec 1957	Nov 1958
(Special Assistant and Naval Aide)	Nov 1958	Aug 1959
USS DEWEY (DLG-14) (Commanding Officer)	Dec 1959	Jun 1961
National War College, Washington, D.C. (Student)	Aug 1961	Jun 1962
Office of the Assistant Secretary of Defense for ISA (Desk Officer)	Jun 1962	Dec 1963
Office of the Secretary of the Navy (Executive Assistant and Senior Aide)	Dec 1963	Jun 1965
Commander, Cruiser-Destroyer Flotilla SEVEN	Jul 1965	Jul 1966
Office of the Chief of Naval Operations (Director, Systems Analysis Division)	Aug 1966	Aug 1968
Commander, U.S. Naval Forces, Vietnam and Chief, Naval Advisory Group, Vietnam	Sep 1968	May 1970
Chief of Naval Operations	Jul 1970	Jul 1974

○