

of the CIA to perform intelligence functions relating to the national security under the direction of the National Security Council. A particularized statement of the authorities of the DCI and the CIA is set forth in sections 1.5 and 1.8 of Executive Order 12333, signed by President Reagan on 4 December 1981.

3. By virtue of my position as DCI and pursuant to section 102(a) of the National Security Act, 50 U.S.C. § 403(a), I have official custody and control of the files and records of the CIA and access to those files and records of other Executive Branch agencies as they relate to intelligence matters. With respect to such information, section 103(c)(6) of the National Security Act, 50 U.S.C. § 403-3(c)(6), and section 1.3(a)(5) of Executive Order 12333 establish the DCI's responsibility for protecting intelligence sources and methods from unauthorized disclosure. Finally, by virtue of Executive Order 12958, I have been designated by the President of the United States to exercise original TOP SECRET classification authority on the President's behalf.

4. Beyond my authority to classify information up to TOP SECRET, I am authorized by Section 4.4 of Executive Order 12958 to establish "special access programs" for that intelligence information that I assess to be so sensitive that the security requirements therefor must be even more

stringent that those required for TOP SECRET under Executive Order 12958. Section 4.4 of Executive Order 12958 provides that special access programs may be established when the vulnerability of, or threat to, specific information is exceptional, and the normal criteria for determining eligibility for access applicable to information classified at the same level are not deemed sufficient to protect the information from unauthorized disclosures. Section 4.4 further provides that the DCI is the only official authorized to establish a special access program for intelligence activities (excluding military operational, strategic, and tactical programs) or intelligence sources and methods. Under this authority, I have established a special access programs to protect certain, very sensitive intelligence collection capabilities. "Sensitive Compartmented Information" (SCI) describes those special access programs established by the DCI which pertain to classified information concerning or derived from intelligence sources, methods, or analytical processes requiring handling exclusively within special access control systems established by the DCI. Pursuant to the provisions of the National Security Act of 1947, and Executive Order 12333, I have established policies and procedures for the security, use, and dissemination of SCI. These policies and procedures are referred to as SCI control systems. To

ensure greater security and accountability of the highly sensitive SCI, intelligence community agencies are required to keep a written record of every individual who is granted access to information maintained within an SCI control system. Some of the information covered by my privilege is protected within SCI control systems.

5. Through the exercise of my official duties, I have been advised of this congressional reference litigation pending in the Court of Federal Claims. I understand the Congress expects to receive a recommendation from the Court as to whether Plaintiff should receive compensation from the United States Government (hereafter, "the United States"). See S.2274. It is my understanding that Plaintiff claims he suffered damages related to alleged violations of the Whistleblower Protection Act ("WPA"), 5 U.S.C. § 2302, by various employees of the United States. See Plaintiff's Complaint at 1-2 and Plaintiff's Motion to Compel at 19.

6. I am aware that Congress has explicitly exempted the Intelligence Community from the provisions of the WPA which Plaintiff alleges were violated by the United States.¹ Nevertheless, in response to Plaintiff's motion to compel the disclosure of classified intelligence information pertaining to Pakistan's nuclear program, agencies and

¹ 5 U.S.C. § 2302(a)(2)(C)(ii) specifically excludes from the WPA's coverage CIA and other agencies whose "Principal function ... is the conduct of foreign intelligence or counterintelligence activities."

departments of the Intelligence Community have been attempting to locate such information they prepared between 1 January 1986 and 31 December 1990.² Plaintiff has argued that this material is relevant to his allegation that, in 1989, the Department of Defense ("DoD") suspended Plaintiff's security clearance and proposed his removal from Federal employment in retaliation for Plaintiff's efforts to ensure that Congress was provided with certain information concerning Pakistan's nuclear program.³ In my capacity as DCI, I am submitting this Declaration for the purpose of asserting a formal claim of the privilege of secrets of state to protect the national security interests of the United States.

7. In addition to asserting a formal claim of the privilege of secrets of state, I am also submitting this Declaration for the purpose of asserting the statutory privilege of the DCI and the CIA to protect intelligence sources and methods. This statutory privilege is rooted in section 103(c)(6) of the National Security Act of 1947, as amended, 50 U.S.C. § 403-3(c)(6), which requires the DCI to

5 U.S.C. § 2305 states that no provision of the WPA shall be construed to impair the authorities and responsibilities of the DCI or the CIA.
² Plaintiff's Motion to Compel seeks disclosure of intelligence reports created through 31 December 1991 but Plaintiff's counsel subsequently advised that this was a typographical error and that Plaintiff is actually only interested in material through 31 December 1990. Transcript of 20 October 1999 at 13-14.

³ I understand that DoD later re-instated Plaintiff's security clearance and that he may presently hold a security clearance in connection with his current employment.

protect intelligence sources and methods from unauthorized disclosure. In furtherance of this requirement, section 6 of the CIA Act of 1949, as amended, 50 U.S.C. § 403g, explicitly exempts CIA from "the provisions of any other laws which require the publication or disclosure of the organization, functions, names, official titles, salaries, or numbers of personnel employed by the Agency."

8. Plaintiff has argued in his Motion to Compel Production that he and his lead counsel, Paul C. Warnke, possess the requisite security clearances and access approvals for the material to which Plaintiff seeks access in this litigation. Plaintiff's Motion to Compel at 25. Plaintiff also argues that, because he had access to much of this material in the past in connection with his official government duties, he should be provided access to the material again in connection with this litigation. Id. at 24.

9. It is certainly true that Plaintiff, in connection with his past Federal employment with CIA and DoD, once held the requisite security clearance and special access approvals required to receive access to the type of classified intelligence information whose disclosure he is now asking the Court to compel.⁴ However, although

⁴ In addition to requiring possession of the appropriate security clearances and access approvals, I also note that section 1.2 of Executive Order 12968 states that individuals shall not be granted access to classified information "unless they ... have a demonstrated

Plaintiff may currently possess a TOP SECRET security clearance in connection with his official duties, Plaintiff no longer possesses all the requisite access approvals required to access the material in question. Also, Plaintiff's lead counsel and his co-counsel do not possess all the requisite security clearances or access approvals for the requested information. Furthermore, even if Plaintiff and his counsel did possess the requisite security clearances and access approvals, such a situation still would not control my decision to assert the state secrets privilege and my statutory privilege to preclude the disclosure of intelligence sources and methods. My decision to preclude the disclosure of classified intelligence information to Plaintiff and his counsel for use in this litigation is not based on whether the requested material is relevant to the Court's adjudication of Plaintiff's claims against the United States. I recognize it is the Court's decision rather than mine to determine whether requested material is relevant to matters being addressed in litigation. Instead, my determination is based on my conclusion that providing Plaintiff and his counsel access to the requested information would expose fragile

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need-to-know." Section 5.1 of the Order states that a determination whether an individual has a need for access to classified information "is a discretionary determination [by the granting agency] and shall be conclusive." Invocation of the state secrets privilege and the statutory privilege to protect intelligence sources and methods makes a discussion of the need-to-know issue unnecessary.

intelligence sources and methods to serious risk of compromise without furthering the intelligence mission for which the sources and methods were utilized.

10. As a general matter, I do not dispute that, between 1 January 1986 and 31 December 1990, the departments and agencies that form the Intelligence Community, to include the CIA, used intelligence sources and methods to monitor Pakistan's nuclear program. However, it is absolutely essential, if I am to carry out my responsibility to protect these intelligence sources and methods, that I have the ability to decline to reveal information that would reveal the specific intelligence sources and methods CIA and the rest of the Community employed during this time frame to monitor Pakistan's nuclear program, and to decline to reveal information that would disclose the success or failure of these monitoring efforts.

11. Plaintiff is seeking access both to "finished intelligence"⁵ concerning Pakistani nuclear activities (i.e., documents which contain the Intelligence Community's assessment or analysis of Pakistan's program) and the

⁵ Finished intelligence is the analytic product created by professional intelligence analysts based upon their review of all-source intelligence reporting and other information. Finished intelligence products generally attempt to protect against the disclosure of the specific intelligence sources and methods used to acquire information. However, an experienced intelligence analyst can often tell the type of intelligence sources and methods used. This situation applies to the material Plaintiff is seeking regarding Pakistan's nuclear program.

underlying "raw intelligence"⁶ reporting that formed the basis for the views expressed by the Community in its finished intelligence products and briefings. Although Pakistan's nuclear program was of intelligence interest, providing unfettered access to the specific classified information Plaintiff seeks would put at risk intelligence sources and methods whose unauthorized disclosure could result in significant damage to the national security. I have concluded that, because of the sensitivity of the intelligence sources and methods at issue and the great extent to which these sources and methods permeate the requested documents, it is not possible to sanitize or redact in any meaningful way the classified intelligence information Plaintiff is seeking regarding Pakistan's nuclear program.

12. The improper disclosure of the classified intelligence information sought by Plaintiff would result in the compromise of current sources of intelligence and would necessarily cause the loss of the ability to collect additional intelligence on topics that are of continuing interest to the President and other senior United States policy makers. There also would likely be an adverse impact on US foreign relations as foreign countries and entities

⁶ The term "raw intelligence" refers to the unevaluated reports of information received from an intelligence source. Such reports often specifically identify the intelligence source and method.

would retaliate for perceived breaches of their sovereignty and diplomatic protocol.

13. As stated previously, for security reasons I cannot comment on the specific sources and methods the Intelligence Community used to monitor Pakistan's nuclear program from 1986 through 1990. However, as a general matter, the Intelligence Community has a number of sources and methods at its disposal to collect and analyze intelligence of interest to the United States. For example, intelligence analysts may rely on information derived from open sources like articles in the foreign press. In other circumstances, the Community may employ sophisticated technical platforms to collect information such as photographic imagery or signals intelligence that would otherwise be unavailable. Collectors may also recruit human sources to gain a better understanding of an intelligence target's activities and intentions.

14. If the sources and methods used to address a specific intelligence requirement are disclosed, the Intelligence Community and the policy makers it serves will quickly go deaf, dumb, and blind since the targets of US intelligence collection will immediately take steps to neutralize our collection activities. The stakes are high in such a situation. Human sources and their families may be subject to arrest, harassment, or even death on account

of their cooperation with the United States. Technical systems that represent millions or even billions of dollars of investment by American taxpayers may be rendered useless by simple countermeasures or denial and deception programs. Most importantly, without good intelligence, the United States and its people will be put at even greater risk in an already dangerous world.

15. With respect to Plaintiff's request for intelligence information related to Pakistan, given the potential damage, even years later, that an unauthorized disclosure would cause, few people in the United States Government have been authorized access to much of the material Plaintiff has requested. In fact, some of the requested material is so source-sensitive that it is subject to special security controls and handling restrictions that do not apply to most other categories of classified intelligence information. Therefore, it is my judgment, based on my personal consideration of Plaintiff's request and of the information responsive to it, that disclosure to Plaintiff and his counsel of the classified intelligence information requested during discovery in this case reasonably can be expected to pose a significant danger to the national security. The fact that classified information has already been mishandled during the course of this litigation, albeit inadvertently, reinforces my concern on

this point. See Letter from CIA/CGC to DoJ dated 3 December 1999. The stakes are simply too great.

16. Plaintiff and his counsel are seeking access to classified intelligence information in an effort to prove Plaintiff's allegation that various officials under the cognizance of the DCI either misled or actively provided false information to the House Foreign Affairs Committee ("HFAC") of the Congress during the period immediately preceding Plaintiff's proposed employment termination and the suspension of his security clearance by DoD in August 1989. In a classified 1991 report which is the subject of a separate discovery request by Plaintiff in this action, the CIA's Office of Inspector General (OIG) exhaustively analyzed Plaintiff's claims as they related to CIA personnel, to include personnel assigned to the National Intelligence Council ("NIC").⁷ The Office of Inspector General's investigation included interviews of numerous CIA personnel as well as line-by-line reviews of the transcripts of classified Congressional hearings and the follow-up material provided to the Congress in response to Members' questions. On the basis of my personal review of the report and other classified material available to me as DCI, the

⁷ The National Intelligence Council is composed of a number of National Intelligence Officers who are charged with providing policy makers with the Intelligence Community's coordinated assessments on issues of interest. Although the NIC is a Community organization, it is administratively housed within the CIA and is subject to the investigative purview of CIA's Office of Inspector General.

Plaintiff's allegations are unfounded. In order to assist the Court, I will summarize below the OIG's findings as well as portions of the classified transcript of the Agency's July 1989 testimony to HFAC, to the extent I can do so without compromising classified intelligence sources and methods.

17. The OIG report concluded that no one at CIA or the NIC ever deliberately provided false or misleading information to Congress regarding Pakistan's nuclear program. Although there were source protection concerns and coordination issues that limited the level of detail that could be provided to HFAC, the Intelligence Community's overall assessment of the Pakistani program was provided accurately and candidly. As the transcript makes clear, CIA and NIC officers apprised HFAC of those instances when source protection or other sensitivities prevented detailed testimony on certain points. In accordance with long standing practice, when circumstances warranted, the briefing officers offered to coordinate the release of additional information with the appropriate originating entities or, in some cases, to provide additional information to HFAC via the oversight committees in Congress.⁸ The OIG report concluded that, on those few occasions when an Agency or NIC officer may have made an

honest misstatement during Congressional testimony, the Agency quickly corrected the record without prompting from any other quarter.

18. In his Motion to Compel, Plaintiff specifically asserts certain Intelligence Community employees "provided incomplete and misleading testimony to Congress ... because this testimony ignored evidence that the F-16's [proposed for sale to Pakistan] could be used to deliver nuclear weapons, that Pakistan possessed nuclear weapons, and that Pakistan was engaged in a systematic effort to obtain US technology illegally in support of its nuclear weapons program." Plaintiff's Motion to Compel at 1. As a former staff director of the Senate Select Committee on Intelligence, I was particularly disturbed by Plaintiff's allegations. However, my review of the 1991 OIG report, the July 1989 transcript, and other classified information available to me as DCI has convinced me without doubt that Plaintiff's allegations are groundless. By July 1989 the Congress had received the Intelligence Community's candid assessment of the status of Pakistan's nuclear program. It is clear to me that the OIG report, the July 1989 transcript, and the other classified intelligence information Plaintiff seeks in discovery refutes rather than supports his assertions that the Intelligence Community

¹ The oversight committees are the House Permanent Select Committee on

provided incomplete or misleading information to Congress
with respect to Pakistan's nuclear program.

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19. CIA's Office of Inspector General concluded in 1991 that Plaintiff appeared to be equating legitimate source protection and coordination issues with the provision of "incomplete and misleading" testimony. On the basis of my own review of this matter, I see no reason to differ with the OIG's conclusion. In short, the source protection and coordination concerns expressed by Intelligence Community briefing officers during their classified testimony to HFAC were legitimate. Rather than resulting in misleading testimony, these protection and coordination concerns resulted in truthful and complete, yet sometimes delayed responses. The source protection concerns have not been attenuated by the period of time that has elapsed since the briefings occurred. As a result, in order to carry out my duty under the law to protect intelligence sources and methods from unauthorized disclosure, I have determined that, in connection with this litigation, Plaintiff and his counsel may not receive access to any of the classified intelligence information under my statutory control that may be responsive to Plaintiff's discovery requests in this litigation.


20. In light of the foregoing, after personal consideration of this matter in my capacity as head of both the CIA and the United States Intelligence Community, I hereby formally assert the privilege of secrets of state and the statutory privilege of the DCI to protect intelligence sources and methods from unauthorized disclosure. I assert these privileges to preclude from disclosure any Intelligence Community documents or information sought in this case that would reveal or tend to reveal the specific, classified intelligence sources and methods the United States Intelligence Community employed to monitor Pakistan's nuclear program between 1 January 1986 and 31 December 1990, or that would reveal the success or failures of such monitoring, as such disclosure reasonably could be expected to harm the national security. I have prepared a more detailed, but classified, declaration for the Court's review *ex parte* and *in camera*, should the Court require additional justification in this matter regarding my reasons for asserting the privilege of secrets of state and the statutory privilege to protect intelligence sources and methods.

21. These claims of privilege are intended to preclude the disclosure of any classified intelligence information under my statutory control during all further proceedings in this matter, regardless of the security clearances or

special access approvals Plaintiff or his counsel may possess or obtain.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Executed on this 10 day of FEB 2000.


George J. Telet