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THE WHITE HOUSE

WASHINGTON

July 14, 1972

Mr. Eugene J. Suto
President
The National Classification Management Society Inc.

Dear Mr. Suto:

I should like to take this occasion to thank you for extending to Ambassador John Eisenhower and myself the invitation to attend the Eighth National Seminar of the National Classification Management Society. Unfortunately, neither of us will be able to attend the Seminar but I would like you to convey to the participants our interest in the work of the Society and extend to them the following greetings.

No doubt you are aware that the government has embarked this year on a new and progressive classification system. On March 8, 1972 President Nixon signed Executive Order 11652 which set in motion the first major overhaul of the classification system in nearly 20 years. This reform was the result of a study which began in January 1971 under the chairmanship of the Assistant Attorney General William Rehnquist. It involved personnel at all levels in each of the departments dealing with national security information. When Mr. Rehnquist was nominated to the Supreme Court I took over the chairmanship of the working group and after the promulgation of the new Executive Order and an National Security Council directive thereunder the new rules went into effect on June 1, 1972.

The new Order is a concrete and straight forward attempt to create a more rationale and credible basis for classifying material relating to the national security. Three basic objectives underlie the new system.

- The first is to reduce the amount of material that is classified.
- The second is to provide for speedier declassification.
- The third is to provide a monitoring mechanism to insure the above objectives are carried out.

The problem which is faced is most clearly dramatized by the fact that it is estimated that there are in government archives over 760,000,000 pages of classified documents from the period 1942 to 1962. The sheer magnitude of the problem is overwhelming. In the words of the President in his statement on the signing of the new Executive Order on March 8th

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

In an endeavor to support this fundamental belief in concrete terms the new Order specifically provides as follows:

- Tighter rules have been instituted to determine what is qualified for classification.
- The number of departments originating classified information outside the Executive Office of the President have been reduced from 24 to 12.
- The number of individuals in these departments has been reduced by over 50%.
- The individual classifier must be identified on the material which he classifies.
- A General Declassification Schedule ranging from 6 to 10 years has been established for automatic declassification of all documents except those which fall into four specifically defined categories.
- Sanctions have been authorized to prevent over classification and abuse of the system.
- An Interagency Classification Review Committee has been established consisting of the General Counsels of the major departments involved with national security information and under the Chairmanship of Ambassador John S. D. Eisenhower. The Committee will oversee, monitor, hear complaints and generally act as a watchdog to insure the implementation of the new Executive Order - not only in letter, but in spirit.

Needless to say the implementation over-sight and education required to make the new system work is a major undertaking. This to my mind, is the area in which your Society can be most helpful and we would be most appreciative of any steps you can take in this direction.

Finally, I would like to close by saying that we are under no illusions about the difficulty of getting control of the whole problem of excessive classification. However, we do believe that we have set the framework and policy course for a flexible and progressive system that is evidence of and in keeping with the President's pledge to have an open administration.

Sincerely,

David R. Young

David R. Young
Executive Director,
Interagency Classification
Review Committee

STATUS OF LEGISLATION AFFECTING
CLASSIFICATION MANAGEMENT
BY
WILLIAM G. FLORENCE (NCMS)

Thank you, Mr. Chairman. GREETINGS EVERYONE.

It is truly an honor to be invited to talk with the National Classification Management Society about security classification matters.

I expect to spend only a short time with these comments. My hope is that there will be ample time for questions afterward.

Discussion of legislation affecting classification management is the best possible way to open the Eighth Annual Seminar. Publication by the New York Times, the Washington Post and other papers in June 1971 of the Vietnam Study, known as the Pentagon Papers, showed clearly how damaging the President's security classification practices had become in the life of this nation.

Those practices were revealed as constituting a denial of truth to the American people about Executive branch operations which the people had a right and a requirement to know, according to the Constitution. They also showed that the more secretive the Executive branch became, the more repressive it became in relation to Congress and the people.

Members of Congress, as a group demonstrated a feeling of urgent need for corrective legislation. Many of them participated in and supported litigation initiated to compel the Executive branch to cease attempting to substitute Executive preference and administrative choices for established law.

Members of Congress suddenly realized that they had been victimized, on a continuing basis, by allowing the fantastic hoax of security classification to keep essential knowledge from them. Congress had been denied access to information central to exercising its constitutional legislative and surveillance functions.

The reaction in Congress was expressed variously by different members. Many Senators and Representatives introduced resolutions and bills designed to assure that Congress would have information from the Executive branch as necessary to exercise its judgment regarding the course of action this nation should follow in world affairs and domestic endeavor.

There are five House Resolutions and four House bills regarding the subject of security classification. They were sponsored by about 50 Representatives. There are at least two Senate resolutions and two Senate bills on the same subject. A third bill is being considered for introduction.

Most of the legislation was a quick-reaction proposal to (1) Investigate Executive branch security classification practices, OR (2) Make studies of laws and regulations, OR (3) Establish a commission to monitor the Executive branch classification system.

For example, on the Senate side is Senator Muskie's draft "Truth in Government Act", S-2965. His bill would establish a seven-member Disclosure Board to promulgate a new classification system and monitor its operation.

Senator Javits' resolution of May 5, 1972 possibly could be acted upon during this session of Congress. It would establish a Senate Committee to study existing law and Executive secrecy, and recommend whether classification markings should be viewed as having any validity.

A third Senate action of particular interest to this Society is the proposal to update the Federal Criminal Code, including the Espionage sections. Senator McClellan's Subcommittee of the Judiciary on Criminal Laws and Procedures has been holding hearings on the Brown Commission's recommendations for Reform of the Federal Criminal Laws.

A bill incorporating the Subcommittee Version of the Commission's recommendations was prepared more than two months ago, but was held for further review.

It had been recommended that to mishandle "National Security Information" be made a crime. The information would include about everything that could be classified under Executive Order 11652.

As one witness who testified before the McClellan subcomittee, I urged that no penalty be established for mishandling information unless there is intent to injure the United States.

Two House bills merit discussion. The first, H.R. 9853, known as the Hebert Bill, would provide for a 12-member "Commission on the Classification and Protection of Information". The commission would review classification rules, observe classification practices, and make reports and submit recommendations to the President and Congress.

The Hebert bill was discussed during hearings held in March 1972 by the Nedzi subcommittee of the House Armed Services Committee. Representatives of NCMS commented on the bill, somewhat unfavorably, when they testified before the Nedzi Committee.

The other House bill, H.R. 15172, was introduced May 24, 1972 by Representative Moorhead, chairman of the House Subcommittee on Foreign Operations and Government Information. The bill is known as the "Freedom of Information Act Amendments of 1972". It would:

(1) Establish in law the authority of Executive branch to classify "National Defense Information" as Top Secret, Secret, or Confidential.

(2) With certain exceptions, limit to only one year the assignment of an item of information to a given classification.

(3) Establish a nine-member Commission to prescribe standards and procedures for handling classified information, and to declassify information that an agency is holding needlessly.

(4) Provide for people to appeal to the United States Court of Appeals for the District of Columbia if the commission itself refuses to declassify an item of information held in secrecy by the Executive branch.

It is my opinion that the majority of Congress is not in favor of establishing any separate commission to operate in the area of classification and government secrecy.

I also developed a Bill for introduction in the Senate. It would be known as the "National Defense Data Classification Act".

My objective would be to legalize a classification system that would be operated by the President, not a commission. The Act would:

(1) Limit the legal classification of information to a single category. Restrictions on the routing of especially sensitive information could be prescribed administratively.

(2) Establish "Would damage the National Defense" as the basis for classification, not "could damage". (That is the only criterion, if any, that could be consonant with the First Amendment.)

(3) Set two years as the normal limitation on classification for an item of information. (The head of an agency could extend the period of classification to eight years, or in the case of cryptologic information and certain intelligence items, he could permit a classification to remain for 12 years.

Senator Gravel is actively interested in filing a bill along the lines of the one I suggested. However, he intends to obtain support from other senators at the outset to an agreed version of the bill. There is no point in introducing a bill and then starting a search for someone to disagree with it as submitted.

As for the future, let me explore with you what would be more certain to affect classification management than any other action pending at this time.

I am referring to the Executive branch prosecution of Dr. Ellsberg and Mr. Russo in Los Angeles. If you do not know what the trial is about, here are some facts:

(1) Ellsberg and Russo were indicted 30 December 1971 for violating 184. S. C. 370 in conspiring to defraud the United States by interfering with and defeating its lawful governmental function of controlling the dissemination of classified Government Studies, not documents, during a period ending in September 1970. That was over eight months before the Vietnam Study was published. Dr. Ellsberg was an employee of the RAND Corporation at the time.

(2) No one ever heard before that section 371 of the Criminal Code could apply to something called classified.

(3) Also, Ellsberg was charged with violating 18 U.S.C. 793(e), an espionage statute, by having unauthorized possession during 1969 and part of 1970 of certain volumes of the Vietnam Study, and by disclosing the documents to a person not entitled to receive them.

The third basic charge was that during the 1969-1970 period, the theft statute, 18 U.S.C. 641, was violated by converting certain volumes of the Vietnam Study to private use.

Let us pass over the distorted theft charge and consider the case the Executive branch has made under the two statutes. Of special interest are the following facts:

(1) Ellsberg is not charged with doing or intending to do anything injurious or prejudicial to the national defense, or with having reason to believe that the Vietnam Study could injure the United Sates or be of advantage to a foreign nation.

(2) Ellsberg is not charged with giving the Vietnam Study to the New York Times or any other paper. He is not charged with any public disclosure of the Study, either directly or indirectly.

(3) Ellsberg is charged with disclosure of portions of the Vietnam Study to three individuals in violation of specified contractual Security procedures applicable to RAND. Also, he is charged with having retained a copy of the Vietnam Study in violation of the same contractual procedures, even though the record is clear that he had signed for the copy as an "authorized person".

(4) The Executive branch has alleged that Security procedures applicable to RAND also applied to Ellsberg, and that the alleged violation of certain of these procedures by Ellsberg and Russo constituted a violation of law.

If the Executive branch can get Dr. Ellsberg and Mr. Russo punished for criminal violation of administrative procedures included in a contract with a commercial firm, with no charge of bad intent, bad conduct, or negligence, we shall have become a Police state of the worst sort. The First Amendment guarantee of free speech will no longer exist.

I cannot believe that the jury in the Ellsberg-Russo case will agree that any law was violated. But if they are convicted, I predict that Congress will definitely act to demolish the Executive branch classification system as we know it today.

Thank you, very much.

EFFECTIVE DECLASSIFICATION AT THE NATIONAL ARCHIVES

EDWIN A. THOMPSON
NATIONAL ARCHIVES AND RECORDS SERVICE

I want to thank Mr. Eugene Suto, your president, and Mr. George W. McRoberts, seminar chairman, for inviting me to appear here today. I believe this is the first time a representative of the National Archives has addressed you. I am sure that my appearance here at this particular seminar reflects the newly recognized role of the Archivist of the United States--my boss--in the business of classified records management.

Executive Order 11652 mentions the Archivist of the United States in three sections while its antecedents, Executive Order 10290 of 1951 and Executive Order 10501 of 1953 with their half-dozen amending Executive orders did not once mention the Archivist. As many of you know, this did not mean that the Archivist and his staff and the National Archives and Records Service as an institution has not been deeply involved in the management of classified records for many years.

Thirty-eight years ago when the National Archives was created, the classification of documents was still in its infancy. We were busy taking in from the agencies the records of the American Revolution, surviving records of the early business of the Federal Government, large blocks of Civil War records and some more recent ones. Classified documents were no problem largely because few made their way into our custody. Sensitive records most frequently remained closely locked up in the offices of origin until World War II.

Archivists were also developing in those days the techniques (and fostering the proper attitudes in the agencies) for making the nation's records available to the public in general and to historical researchers in particular. The National Archives, we argued, was created not only to receive, preserve, and provide reference service to the Federal Government on its own records of permanent value, but also to make those records accessible to all citizens.

World War II changed the character of some of the records transferred to the National Archives, the size of our holdings, and the uses made of our collections. As the emergency developed the old line offices of government disgorged more and more of their recent records to make room for the enormous increase in new records. Because these recent records were sometimes marked "Confidential" or "Secret," we were given our first lessons in handling classified records.

Official researchers appeared in our search rooms in growing numbers to analyze historical antecedents to the "new" problems facing Mr. Roosevelt's government. After all, some of these same problems had been faced by Mr. Wilson's government just a generation earlier. But access for official researchers to records marked "Confidential" or "Secret" was not a problem because they came with authorization for unrestricted access. After the war the National Archives was approached for the first time by considerable numbers of unofficial researchers seeking permission to examine classified material. They were encouraged to believe that vast quantities of recently classified material would be made quickly available. An example of the liberal attitudes can be found in the statement by Chief of Staff of the Army Dwight D. Eisenhower on November 27, 1947:

> the historical record of the army's operations as well as the manner in which these were accomplished are public property, and except where the security of the Nation may be jeopardized, the request of the citizens to the full story is unquestioned.... The American public therefore should find no unnecessary obstacle to its access to the written record.

But the hard facts were that the volume of classified records was immense and the manpower which could be diverted to declassification review was severly limited. Further, in some parts of the government itself, some subjects--particularly those affecting foreign policy--were recognized as increasingly sensitive. As we plunged deeper into the cold War and then into a hotter Korean War, awaren ss of these sensitivities grew. Subversion, the loyalty questions of the late 1940's and early 1950's, questions of trustworthiness, and finally questions of the requestor's real "need to know," also conspired to change the initial post-war liberal attitude. A more security conscious position prevailed and became embodied in regulations and finally in President Truman's Executive Order 10290 of 1951 and President Eisenhower's Executive Order 10501 of 1953. Even Executive Order 10816 of 1959, which permitted outside access under certain conditions represented only a slight relaxation from the strictness of the original order. President Kennedy's Executive Order 10964 of 1961 amended 10501 to require that each agency develop a schedule for automatic downgrading and ultimate declassification of some material created after enactment. While such schedules

could have been applied retroactively, no serious plan was considered to apply the schedules to all the classified records in the National Archives nor those in records centers.

To the National Archives the requirements of these orders meant that large quantities of classified records acquired from war-time emergency agencies and similar records originated by the military and other Departments were effectively closed except to the more persistent non-official scholars who convinced the responsible agencies that their access was in the best interest of the government and that they were trustworthy. The strict clearance requirements and procedures imposed meant that any free-wheeling and wide-ranging research by outside scholars was severly curtailed if not cut off altogether. These same Executive orders firmly establish the principle that the originator of classified records was also the primary arbitor for purposes of declassification. These two principles governed the National Archives' management of the classified records which were transferred to its custody.

In effect, we were made the middle-man between the scholar seeking access and the agency safeguarding defense information. In this role we commonly directed the researcher to the appropriate office where he could obtain information and forms to submit for clearance. The practice further evolved whereby Archives specialists, working with the agency's representatives, determined first if the researcher's topic was so comprehensive or complex that he needed to see many different classified files. In such cases he was required to obtain security clearances from all relevant agencies. Once such clearances were granted, archivists were authorized to make certain information available to him. National Archives personnel located the information, screened the files to be sure that the researcher saw only that which he was authorized to examine; monitored his use of the files in special security research rooms; and finally secured his research notes and forwarded them to the appropriate agency officials for review and eventual release to the researcher.

Another type of researcher wanting very specific or limited information, could be treated differently. Archivists would attempt to locate the single document or few documents containing the information he desired, declassify them if the agency's regulations permitted; or forward them to the appropriate officials for declassification review and release.

In either approach the National Archives role in the declassification process has largely been that of agent for the original classifying office. Implementing directives and regulations of the Departments set the requirements and we were obliged to make them work. Notable examples of Executive order implementing instructions were Department of Defense Directives 5200.9 (E010501) and 5200.10 (E010964). Under these Directives we were authorized to declassify information unless it fit into any one of the several broadly-stated exemption categories. But our experience has been that many researchers seek information precisely in those areas replete with exempted categories of information and that automatic declassification of Group 4 material seldom met the requirement of the scholar. Consequently we are obliged to advise many researchers to seek security clearances.

We recognize that Executive Order 11652 does not entirely eliminate the need for continuing some programs for researchers to obtain security clearances in those cases where access to large quantities of classified material or information buried deeply in many files is involved. We think it is likely, however, that researchers will avail themselves of the mandatory review provisions in Section 3 (C) and (D) in those cases where the archivist can readily identify the information requested and it can be reviewed with a reasonable amount of effort. We believe that by utilizing this provision fewer researchers will need to obtain security clearances. But whether there will be a real change in this regard will depend upon the cooperation and honest effort of classification managers such as ourselves. For older classified material in our custody--certainly on that which predates 1950--we believe that the special declassification staff will be sufficient to meet any mandatory review requirement as it arises.

In summary, NARS had no authority of its own either to classify documents or declassify them. Its role has been confined to the application of the varied regulations on classified documents provided by the Government agencies which originated them. As these regulations have progressively altered, archivists have been able to make available to the historian an additional number of previously classified documents. But most classified documents in the National Archives from the period through the Second World War retain their original classification.

The great majority of classified and unclassified documents dating from World War II are now officially transferred to the National Archives.

They are located either in the National Archives Building; in the Archives Division at the Washington National Records Center, Suitland, Maryland; in the Franklin D. Roosevelt Library, Hyde Park, New York; in the Harry S. Truman Library, Independence, Missouri; and in the Dwight D. Eisenhower Library, Abilene, Kansas. Their total volume is approximately 260,000 cubic feet.

Of these, a considerable number are still classified. We estimate that they total about 49,000 cubic feet of paper records and some 18,500 rolls of microfilmed records. These represent approximately 160,000,000 pages of classified material. Table I also shows the estimated quantity of permanently valuable records remaining under the control of the originating Department whether in record centers or in other agency holding areas. Notice, too, that as we move towards the present, the number of permanently valuable classified records slowly increases, while the number retained by the agencies increases dramatically. You who are classified records managers in such agencies have your work cut out for you in this area.

About eighteen months ago, we began to compile statistics on the size of the declassification problem facing the National Archives and began analyzing the scope of the problem. We concluded again (as had our predecessors) that the prevailing procedures would require slow and consequently very expensive declassification review. This was because the procedures were designed to effect the declassification of individual documents only after the most careful individual scrutiny.

Among other things, those procedures required that classification stamp marks on nearly every page be methodically cancelled. They also required that a declassification authority stamp be placed on documents indicating the authority for the action, the date of the cancellation, and the name or initials of the person taking the action.

Furthermore, if we were obliged to use existing agency regulations and criteria, declassification review would require detailed page-by-page examination of nearly every document. It would also involve almost constant referral of documents to the agencies since the criteria were often broadly stated or ambiguous.

Sixteen months ago we prepared some preliminary estimates of the cost of declassifying the 160 million pages of records predating 1946. Under existing regulations we concluded that it would require 1,136 man-years at a cost of just under $11 million. We saw too, that unless the impeding procedural requirements were changed; unless we could remove some of the inhibiting and restrictive criteria and/or obtain more specific guidelines from <u>all</u> agencies whose classified records were among our holdings; and unless we could secure a significant change in the overall approach to classification and declassification; expenditures on a similar scale would continue indefinitely. Even as we prepared these preliminary statistics, we learned that changes were under serious consideration by the Rehnquist Committee studying revisions of E010501. We were encouraged to think that simplified marking and labeling procedures would be permitted; that better guidelines would be developed which would permit us to survey certain records and "bulk declassify" numerous files of low sensitivity; and finally, that meaningful agency assistance would be made available to eliminate the need for constant referral of problem documents and questions to many agencies. Such changes in procedures and requirements we estimated, would reduce the cost to about $6,350,000 for a five year program to declassify the records predating 1946. The National Archives and Records Service of the General Services Administration submitted an appropriation request in line with these estimates last fall and again this spring.

Executive Order 11652 was signed by President Nixon on March 8. Section 5 (E) (2) provides:

> All information and material classified before the effective date of this order and more than thirty years old shall be systematically reviewed for declassification by the Archivist of the United States by the end of the thirteenth full calendar year following the year in which it was originated. In his review, the Archivist will separate and keep protected only such information on material as is specifically identified by the head of the Department in accordance with (E) (1) above. In such case, the head of the Department shall also specify the period of continued classification.

Instead of a five-year program we faced a requirement to accomplish the same amount of work in about three-and-a-half! (See Table II) Our Fiscal Year 1973 proposal was before Congress and could not be readily changed. As we struggled with the budgetary problem we also studied the order itself, reexamined our statistics in the light of more recent experience and became convinced that we could indeed

accomplish the task assigned us under the new order. But it would require the fullest cooperation of all the agencies concerned - cooperation such as we have received from The Adjutant General of the Army and the Assistant Chief of Staff (of the Army) for Intelligence, the Director of Naval History, ONI, and the Office of the Joint Chiefs of Staff, the Department of Defense Historian, the Historical Office of the Department of State and others.

Detailed declassification reviews conducted by Army reservists on Army Intelligence Files, broad surveys conducted by special consultants to the Adjutant General, and file sampling work performed on JCS records provided us with new statistical estimates of the man-hours required to perform various tasks.

Table II indicates the estimated number of records we are required to review systematically each year. By December 31, 1975 we should have reviewed all 160 million pages indicated here.

To ensure that all affected agencies understood what the National Archives declassification program would entail, we invited representatives of nineteen agencies to a meeting at the National Archives on April 28. The Archivist of the United States, Dr. James B. Rhoads, opened the meeting with these words:

> Cooperation...is the name of the game...The new Executive Order...places upon us both a heavy responsibility. In addition, the timetable for the performance of these tasks on documents which are already 30-years old, and the widespread public concern for opening such documents, lend a particular urgency to our task. The National Archives needs the cooperation of <u>all</u> of the agencies whose classified records are in our stacks to carry out the President's mandate. I believe that your agency will find our review program invaluable--perhaps even essential--in carrying out the difficult task which the Order places upon <u>you</u>.

The Deputy Archivist, Dr. James E. O'Neill, followed with a briefing on the scope and nature of the problems facing us using the three tables shown here.

I concluded the presentation with a discussion on the procedures we will employ, provided each agency representative with information on classified records of their agency's origin which are in the National Archives, and pointed out again the types of assistance we must have from each agency to attain our goal and meet the obligation imposed on us all by the Executive order.

[Brief informal presentation using Table Three]

We have been discussing exclusively the most significant section of the new Executive order so far as the National Archives declassification project is concerned. It may be helpful to make a few remarks about the other two sections in which the Archivist of the United States is mentioned.

Section 3 (E) provides that the Archivist, as the custodian of a large quantity of officially transferred and accessioned classified records, has the authority to downgrade and declassify such material in accordance with the order, N.S.C. directives, and pertinent regulations of the Departments. In the past much time and much paper was expended in obtaining authorization from individual agencies to declassify particular records of those agencies. Now, equipped with the declassification guidelines which will be provided to us by the agencies and the National Security Council, along with those already spelled out in the Executive order itself, we can take the action of declassification on our own.

Section 11 directs the Archivist of the United States to review and declassify information and material in the Archives or Presidential Libraries which has been classified by the President, his White House staff, or any special committee or commission appointed by him. Restraints on that authority include any provisions in a donor's deed of gift which governs his personal papers, a requirement to consult with the Departments having a primary subject-matter interest, and the provisions of Section 5 of the order. Section 11 is of major importance to us as it finally clarifies the declassification authority for millions of pages of highly important classified records in our custody.

Our double mission--serving both the rest of the Government and the public--makes us particularly sensitive to the problem of restrictions on access to records. We are well aware of and share the conviction throughout the Government that a degree of confidentiality is essential for the national security and for the proper operation of government. We are also well aware of the insistence on the part of historians and other researchers that they receive access to records, for we are most often the first to receive their requests and their complaints.

From our point of view, Executive Order 11652 is a decided improvement over the earlier Executive orders. It shifts the burden of proof from the researcher, who wants to see documents, to the agencies, who must justify their continued classification. We see it as an attempt to strike a new and better balance between the Government's need for confidentiality and the people's right to know--a balance in favor of greater access.

ON COMMUNICATING

S. J. LUKASIK
DIRECTOR, ADVANCED RESEARCH PROJECTS AGENCY

Before I get to the subject of communications, I will take the long way round and look at some of the fundamental aspects of classification. First of all, in the classification literature, one always hears of information. I would like to use a somewhat shorter word that focuses one's attention where it should be; the word is "fact." I think that one should concentrate on facts rather than on the more inclusive category of "information" because in what follows I will talk about classification and control at a more detailed level than we conventionally consider, and facts are the basic units of information.

I think that it is useful to measure the value of a fact by its utility to society. For example, the laws of electromagnetism are facts and they are useful in generating power and for communicating over long distance. But the laws themselves have no value except insofar as they are applied for some purpose. Following that thought, one can ask, what is the relationship between the value of a fact and the degree of its dissemination? For general scientific facts, it is fairly clear that their value increases monotonically with dissemination. There is, of course, a point of diminishing returns. You eventually run out of people who can understand and/or utilize the fact; it is not necessary that all two billion people on the earth today know all about Maxwell's equations, but certainly "enough" people should know about them.

Facts about specific technologies like the characteristics of an engine, the details of a radar, etc., also have a monotonic relationship between value and dissemination. It is clear, for example, that everybody in the United States ought to know about performance and safety characteristics of automobiles.

On the other hand, there is a class of facts for which dissemination beyond a certain point decreases value. Take the case of a military operation. If only the commander knows about it, the troops can't even move out; a certain number of other people have to know about it. But, obviously, if everyone knows about it, then the element of surprise is lost and the utility of the whole operation is in question. For some kinds of fact then, beyond a certain point, the greater the dissemination, the less the value.

We can infer that one should determine dissemination strategy in accordance with the expected utility. In general, an unknown fact has no utility and a fact that only one person knows has limited utility. As dissemination increases so does the utilization. It is generally recognized that dissemination is a good thing.

Our problem today is really in the area of the dissemination of facts rather than in the particular impediments to dissemination that are imposed by the classification system. Thus I would like to talk first about how facts are disseminated and then see how the classification interacts with the problem.

Facts are usually disseminated either in written or spoken form, and these ways tend to be mutually exclusive; each has unique advantages and unique liabilities. For example, documents are particularly good for wide dissemination. Many people can receive them. The accuracy of dissemination is very high, too. You can say precisely what you mean and to whatever depth is needed. The recipient, in turn, can take as much time as needed to study the document. Also, a high degree of physical control is possible.

In terms of these four characteristics, verbal communication is very poor. You really can't converse with too many people, they may misunderstand, you don't remember what you say, the conversation goes by and you can't study it in depth, and you can't control who talks to whom, really.

On the other hand, documents also have some major disadvantages. For example, there is no immediate interaction between the source and the recipient of the information, no way of clarifying ambiguities or exploring areas in more depth. The effort, the time, and the cost involved in preparing documents are very high. Further, documents leave a potentially embarrassing record and thus may, in fact, inhibit communication. But talk is cheap, verbal communication leaves no record, allows interaction, is easy, and so on.

Now what I would like to do is discuss a third possibility, a third approach to communication. This approach uses the technique of recording information, data, facts, in computer memories. The method has many attractive features and I would like to discuss some of them. The use of computers can radically change the way we communicate. It will also raise a number of problems in the management of classified information, but I think that, in the long run, computer techniques will make it possible to achieve the two almost inconsistent goals of increasing the security of information while at the same time enhancing its dissemination.

On May 17, as part of the announcement of Ambassador Eisenhower's appointment as Chairman of the Interagency Classification Review Committee, President Nixon's statement contains the very interesting passage: "Under a directive issued by the National Security Council, each department originating classified information, has been asked to set up a computerized data index system for classified material and to compile a name list of all persons with authority to classify documents. This application of computer technology across the board should lead to a much more manageable classification system and greatly enhance the flow of information to the public." The particular applications of computer technology that are cited here are really purely accounting in nature, but I think if one looks toward the broad application of computer technology, taking as a start the increase of dissemination of information to the public, then some really revolutionary possibilities appear. Some of these are things that ARPA is working on now so that I have some definite information. Others represent unsolved problems that I will discuss.

The present classification system is oriented either to controlling paper or to controlling physical access. When we put classified information into a computer now, we control access to the computer. Input to the computer and output from the computer are in written form and are marked and controlled as conventional documents. Of course I include punch cards, reels of magnetic tape, discs, and that sort of thing.

Suppose we look at the way we run our present offices, yours and mine. There is a very wide gap between our current practices and the theoretical capabilities of computers. How do we work today? We write or dictate, but our words are nearly always typed, typed on a keyboard virtually identical with the keyboard conventionally used to enter material into computers. Often we edit our words, retype them through several drafts, reproduce and distribute them to various locations. The recipient sometimes reads them and sometimes files them, but usually someone eventually retrieves our words for study. Finally, we engage in a very elaborate exercise called "records management" in order to purge outdated material from our files. Now I assert that this whole process is characterized by enormous cost and enormous inefficiency.

Imagine, instead, that we have a computer system. It is not the kind of computer system that you may be thinking of, the one that does the payroll or that engineers use for design calculations. Let me describe what I have in mind and some of its capabilities. So that you don't think I am too "blue-sky," let me point out that many of the capabilities that I am going to discuss are available today; the rest will be available within the next five years. So this is a very real thing that I am talking about.

First of all, I will note that in this system the cost per executed instruction is trivial; that is always possible by economies of scale. The system has remote entry terminals, perhaps located hundreds of miles from the computer. Since I am not restricting the system to collocation of computer and entry terminals, I am eliminating the possibility of simple fences and walls to provide physical security.

Most importantly, the input and output to this system are flexible and convenient. Perhaps you have seen that before, but I am not referring to keyboards, but to the ability of the computer to recognize cursive script; I am talking about free form English language, perhaps of a restricted vocabulary and syntax, but generally the simple declarative sentences that we use in everyday speech; I am talking about graphic displays and, if desired, a hard copy capability. All this requires cheap rapid-access mass memories, but that's not all that complicated. ARPA has just bought a trillion bit memory, and there is no reason why one cannot build 10^{15} bit memories. (10^{15} is an interesting number. 1,000,000,000,000,000! This is equivalent to the total amount of information assimilated in an entire lifetime by the total population of the United States - assuming that no person knows anything that anyone else knows!) Finally, we can envision that many computers will be interconnected so that information that is in one can be accessed by anyone connected to any of the other computers. Thus we do not have to ship files around the world; neither do we have to master the details of other people's computer systems.

Now what does this do? How does this change the operation of an office? If all the typing that is presently done by secretaries is put into computers at the beginning, the editing and formatting can be done by means of a few further instructions to the computer given by the author or his "secretary." The intended recipients of the "documents," are simply notified of their existence since the document is already in the computer and, hence, is already "filed." It is filed in one copy and everyone can get to it. The recipients can access this material at their

leisure; they will presumably have some sort of a computerized scheduling algorithm on the basis of their interest and current needs. Thus, on the basis of some estimate of importance the material will be presented to recipients and it will thus eventually be read and appropriate action will be taken. Quite possibly the action will consist of entering a response into the system to be handled similarly.

If the document is not read, it will remain in the system to be discovered by someone in response to a computerized information retrieval request. The material can be scanned, if its syntax is not too complicated, and used automatically to update users' files. Thus, one can benefit from the information in the document without actually having to read it!

Now let us return to the subject of classification. What does this computerized mode of operation do to a classification system? First of all, note that much of the information I have been discussing, the kind of things we handle in our offices all the time, is classified information. One of the things that one would have to do to attach to each fact in the computer all the instructions that are necessary for its proper handling. The item can have its classification, classifier, any special dissemination instructions, all the need-to-know criteria, declassification schedule, etc., attached to it and carried along with it in all subsequent processing. All those details can be handled, essentially from cradle to grave, by the computer, from the origination of the information until the information is either eliminated, or dumped on a magnetic tape and stored in a warehouse. The point is that however dull and tedious is the bookkeeping, however involved the questions asked, however mixed the bag of requests or access authorizations and information classifications, requests can be filled without the need of human intervention. Classification management will be reduced to what it should be: to policy determination, and all of the external mechanics of the process will be virtually eliminated.

Note that only in those rare cases where hard copy is requested will our present classification management procedures come into play. But on the other hand, why should one ask for hard copy? Then you have to file it, you have to keep track of it, you have to destroy it when no longer needed, and so on. Instead, you can simply leave it and all the files you create in the machine. The important point, then, is that most classified information will never see the light of day as a hard copy document. You may object that beyond some level in the organization you must have a hard copy report, but nothing necessarily requires this when you come right down to it. You have to read the stuff but you do not have to have a hard copy report.

What capabilities does such a system offer for classification management? I think there are two really important capabilities. First, you keep track of the right unit in this business. The unit is the fact, the basic item of information, and not the document. Currently, we wrap up everything in a thick document and control the document, but the information in the document may have a complicated set of classification characteristics. If you focus attention on the classified fact you eliminate the problems related to the accumulation of a mixed set of facts into a single document. For example, only classified facts will be denied to uncleared requestors or to cleared requestors who lack a valid need-to-know. They can get everything else within large classes of access and only specific things will be denied.

Computerized systems can easily control the time character of classified information. While the present idea of attaching a date to all documents and saying that it becomes unclassified on this date is all very well, there is still a fair amount of bookkeeping involved in the process. In our present filing system the document is often put in with a lot of other documents of different classifications, different declassification dates, different levels of security, etc., and problems arise. For example, while one may be willing to declassify a set of reports that are in a big file or in a warehouse somewhere, mixed in with a lot of other things, one may not be able to get to them easily.

The second important capability is that now you can trace the access to information by individuals with a degree of detail, up-to-dateness, and low cost, that is impossible now. One can actually record who has received or requested information, what unusual characteristics are involved in that search, etc. This capability is a powerful counterintelligence tool.

What are the problems? While this all sounds very attractive, there are some problems too, or we would have it now. First of all, the idea of interconnecting computers is fairly recent and one that is just gaining acceptance as the result of some work that ARPA is doing. It is, however, realized today.

There is a very major problem, however. In fact, it is the problem which, if not solved, completely

invalidates the concept I have just outlined. I expect it to be solved, of course. Because of the interconnection of widely separated computers, the various classification levels of the information that will be stored in them, and the wide range of access authorizations that will be exercised via remote terminals, it is not now possible to control access to the information. There is no equivalent of the security officer keeping track of who goes through the door and what his clearances are. That will have to be designed into the computer system; it is partly a matter of hardware and partly a matter of software. One will have to prevent unauthorized users from gaining access to information that they, according to their clearances, need-to-know, and so forth, should not have.

Of course, we have this problem now in a crude way in time-shared systems. Everyone has a password which is supposed to ensure privacy. But the same considerations that drive us as national security people also drive the whole industrial and commercial world. It is just as important that Corporation A's marketing plans be not known to Corporation B, as it is that the Soviet's do not know the full capabilities of our weapon systems. There have been a number of experiments concerning "breaking into" time-shared systems. In fact, you don't even have to think about experiments; just consider the way high school and college students working in their school computer centers delight in determining what the passwords are; it has been done over and over again. It is possible largely because the people who design computer systems really do not know as yet how to insure privacy. That problem is the subject of another ARPA research program.

Nevertheless, I believe that it will be comparatively easy to make a system fairly secure; what is really hard from the standpoint of the security officer, is not merely to guarantee that the system is secure when it is operating properly but to account for its eccentricities. We know enough about computers to know that there are disappointingly frequent instances when they do not operate correctly. The security officer quite properly insists that, for all failure modes of the system, classified information shall not end up in the wrong place. That is a much harder job. It is hard enough to design an operating system for a computer that works; it is very much harder to design one all of whose failure modes can be predicted and understood. This is a problem that needs to be solved. The solution is probably a combination of some specific hardware design that will prevent certain things from happening and a more organized approach to the design of software. At any rate, that is a current problem. It is being worked on and I am very confident that it will be solved. And once it is solved, it will provide the key to applying the concepts that I outlined for the generation, control, and dissemination of classified material.

There is one other area that I will mention, although not in great detail. It is useful when thinking about the implications of all this to take it one step further. I have discussed this third option of putting all the information into a computer at the earliest stage possible and how the computer can assume the role currently played by documents. One might ask, what is the impact on verbal communication? I will only point out that there is a much further-out technical possibility, one that is also part of the ARPA research program. I am very sure that one will be able to program a computer to recognize speech sounds, digitize them, encode them, have the computer record them, put them back together again as words and understand them, do a syntactical analysis, and thus understand free speech. I think that in the long run we will be able to apply the same type of computerized approach to verbal communications as we will to written communication.

It obviously would have a lot of advantages. The system would produce a record of a conversation that could be useful for study and analysis, and, incidently, for determining the classification of the conversation, for notifying the person after the conversation is over what classified information has been transferred, and so on. There are, however, some very serious problems dealing with surveillance because of the possibility of misuse; that is something that will have to be straightened out before speech-operated systems of this sort are used.

But, at any rate, the same general principles can be applied to the computerized management of written and spoken information transfer. In that way one could possibly combine the advantages of verbal and written communication. When you have done that you have gotten all the information transfer advantages of documents as well as of speech. Thus we will eventually get to the point where we can communicate significantly better than we do now. Along the way, of course, there is no reason, in principle, why one couldn't simultaneously take care of all of the problems of translation so that speakers need not even use the same languages. I passed over that because it is conceptually unimportant. I also passed over the whole question of encryption but obviously at some point classified digital data has to be encrypted if it is to be transmitted over

open lines. But, again, that is something we understand and which poses no conceptual problem.

This is perhaps a good point to stop. I think that these are things that we must really consider because they are going to change the way we manage classified information. These will be the technological ground rules. These will be conditions of communication in the future. It is incumbent upon the security management establishment to rise to the occasion.

PANEL ON IMPLEMENTATION OF EXECUTIVE ORDER 11652.

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PRESENTATION BY MR. GARRETT

The Executive Order under which we are now operating is Executive Order 11652 issued on March 8, 1972, entitled "Classification and Declassification of National Security Information and Material." Supplementing that is a National Security Council Directive issued on May 17 entitled "Directive Governing the Classification, Downgrading, Declassification and Safeguarding of National Security Information." From these two there was developed and issued on June 1, 1972 a provisional DoD Directive 5200.1 which establishes the basic responsibilities and authorities for the administration of the Information Security Program in the Department of Defense. The Assistant Secretary of Defense (Comptroller), Mr. Robert C. Moot, has been designated as the senior official responsible for effective compliance with the Executive Order and the NSC Directive. To implement the E.O. and NSC Directive, Secretary Moot approved on July 15, 1972 the DoD Information Security Program Regulation, DoD 5200.1-R, which provides full details on the operation of the Program.

The philosophy behind the new program is exemplified in the beginning of the Executive Order--to make available to the citizens of the United States as much information as possible consistent with the interests of national security so that they can be readily informed concerning the operations of the Department of Defense and of the Government. The President has pointed out, however, that there is a quantity of information which requires protection in the interests of national security. The DoD Information Security Program is established to assist in meeting these requirements.

Classification Policies

With the signing of Executive Order 11652, the President issued a statement in which he set the tone for the new Program. The theme of the new program is to classify less, declassify sooner and protect better that which truly needs protection.

The basic policy of E.O. 11652, is to classify only to protect the interests of national defense and the foreign relations of the United States, which are combined and termed "National Security." An important new policy is stated: Whenever there is a doubt as to the proper level of classification or whether classification is necessary at all, the less restrictive action is to be taken. There is a companion policy that is always good: "When in doubt--find out." Get from all sources the best possible advice and assistance and then make a sound, reasoned judgment, using the less restrictive action when you still have a question.

There are a number of "don'ts" found in E.O. 11652: Do not overclassify or underclassify. Do not classify to conceal error or administrative inefficiency. Do not classify to prevent personal or official embarrassment. And, do not classify to restrain competition, because of personal prestige or interservice rivalry, or to stifle independent initiative. These "do's" and "don'ts" are very important with the emphasis on classifying less, declassifying sooner and protecting better that which is kept classified.

When determining whether information is to be classified, it is absolutely essential that we consider not only the reasons for classification but whether there are some good solid reasons for not classifying. For example, if you know that dissemination of particular information is going to be very widespread, there would be a question as to whether a document should be classified Top Secret. You would consider what would happen to it--is it possible to protect it. There are many circumstances, particularly in the development of weapon systems, where information can be used to good advantage in the private sector. It is important to consider whether or not the values to be obtained

from open use exceed the values which might be obtained by the DoD by continued classification. We also have to consider the effect on mission, or on operations resulting from classification, and to consider all of the factors together.

Classification Authorities

The authority to classify has been considerably reduced. Under E.O. 11652 there are only 4 officials in the Department of Defense who can designate others to exercise Top Secret classification authority. They are the four Secretaries, the Secretary of Defense and the Service Secretaries. They can designate certain of their senior principal deputies and assistants and the heads of major elements of the Department of Defense and certain of the senior principal deputies and assistants to the heads of those major elements. On May 31 after canvassing all of the DoD components Secretary Rush issued a list of 592 officials in the Department of Defense who have Top Secret classification authority. A few have been added to meet specific operational requirements.

For Secret classification authority all those who have Top Secret classification authority can classify at the Secret level and at the Confidential level. Certain of them, the designated senior principal deputies and assistants to the Secretaries, can also designate certain of their subordinates to exercise Secret classification authority.

Confidential classification authority can be exercised by any of the designated Top Secret or Secret classification authorities, or by certain subordinates designated by them.

Many classification determinations will not be based upon an original determination but instead, will be based upon source material or classification guidance. In that case, it is necessary for everybody who works with classified information to pay attention to the classification determinations made by the authority who originally determined it in the form of a source document of some kind or in the form of a classification guide. These classifications are to be followed unless it is felt that they are not correct in which case it is necessary to go back to the original classifier to obtain a review and a change if it is appropriate.

Later on when we talk about the particular stamps that are going to be used, there is a line which shows the authority for classification. Whenever possible the original classifier will be indicated on the "classified by" line by title or position, so that we can go back to him and find out the reason why he classified if it is appropriate or to request that he reconsider his classification determination. If the original classifier cannot be determined, the classifier of the source material or a complete identification of the source material itself should be stated. If there are a number of controlling sources or guides it would then be appropriate to show the signer or final approver, remembering that whoever signs or finally approves a document or record or other material is responsible for its content, for the classifications assigned within that document and for the downgrading and declassification determinations.

The main idea is to maintain records from which anyone can determine the classification responsibilities going back if necessary to an original classifier. The party who prepares a document must keep whatever records he needs to show who classified what and on a rapid response basis. This is extremely important and requires particular consideration when there are many items of information classified at varying levels and based upon several different sources of classification determination.

Classification Standard and Categories

The classification standard established by Executive Order 11652 prescribes that official information shall be classified when unauthorized disclosure could be reasonably expected to cause a degree of harm to the national defense or foreign relations of the United States, collectively termed national security. This is the only standard for classification. It applies to the three classifications which are the same as we have had, Top Secret, Secret and Confidential. Top Secret would be assigned to information the unauthorized disclosure of which could reasonably be expected to cause exceptionally grave damage to national security. This slide shows some examples of the types of information which would qualify for Top Secret classification. You will note that the President has said that the classification of Top Secret shall be used with utmost restraint.

Secret would be applied to official information the unauthorized disclosure of which could reasonably be expected to cause serious damage to national security. This slide shows examples of information which would qualify for Secret classification. The President has said the Secret classification will be used sparingly. As an example of the distinction that is to be

made between Top Secret and Secret, Top Secret could apply to intelligence information leading to an enemy attack, while Secret could apply to intelligence information on vital military actions in progress. Top Secret is to be reserved for use in matters of extreme importance to national security. Secret would be used for matters vital to national security. The Confidential classification would be applied to any information the unauthorized disclosure of which could reasonably be expected to cause some degree of damage to national security but less than Secret.

Downgrading and Declassification

With each classification determination, the classifier is required to make a downgrading and declassification determination. Any higher authority in the chain of command can also make a downgrading and declassification determination. Additionally, there will be certain designated officials within the military departments and DoD components who will be given authority to consider downgrading and declassification of specific bodies of information.

The first consideration is to establish dates or events on which downgrading or declassification will be automatically effected. These dates and events must occur sooner than the time periods of the General Declassification Schedule. If you cannot establish a date or event for downgrading and declassification, the next step then is the General Declassification Schedule which establishes a particular schedule for downgrading and declassification. Under the General Declassification Schedule, Top Secret goes to Secret in two years, to Confidential in two more years, and to unclassified in six more years for a total of ten years. Eight years for Secret and six years for Confidential. This is considerably shorter than the former Group-4 material which was three-three-six years, or the Group-3 material which was twelve-twelve-zero. Most of the material that we classify now should fall within either the date or event class or under the General Declassification Schedule.

If we cannot establish a date or the GDS, it is then possible to exempt the material from the General Declassification Schedule. There are four categories of information which can be exempt. Foreign origin information over which we do not have classification control would be exempt. Certain information which is exempt or covered by statute, for example, Restricted Data and Formerly Restricted Data, are exempt from the General Declassification Schedule. There are certain bodies of information like cryptography, communications security, intelligence sources and methods, which require indefinite classification and a specific determination on downgrading and declassification. That type of information can be exempted. The third category is a little bit broader but it is to be used much more sparingly than we have used Group-3 in the past. It would apply to any system, plan, installation, project or specific foreign relations matter when it is determined that continued classification is essential in the interests of national security. The fourth category is a rather rare one and would pertain mainly to intelligence records which would identify a person who, if his identity were disclosed, may be placed in personal jeopardy.

The determination to put information in the exempt category can be made only by a Top Secret classification authority. This applies to all levels of classification, Top Secret, Secret and Confidential. Then you are preparing material and your classification determinations are based on a source document or on a classification guide, you take from that source material or from that guide the exemption category which is stated. If there are differences in the exemption category which you obtain from source material or from a classification guide, in the material that you are currently preparing you would show each of the appropriate exemption or exemptions, or show the most restrictive one. There is one exception--if you are dealing with material that warrants the designation of Restricted Data or Formerly Restricted Data--that is the only designation that you have to put on it, you do not have to show the exemption, although a "Classified by" line should be added.

Classification Markings

There are some new marking requirements. The first stamp some of you may recognize as being the optional Group-4 stamp. It is used when you decide that there is a particular date or series of dates or events on which downgrading and declassification can occur. The second stamp is used when the General Declassification Schedule is appropriate and in that case you would show in the last line the year on which declassification is appropriate, that would be ten, eight or six years in the future, depending upon the classification level. And the last one is the exemption stamp that you would use.

Now you will note, in each one of these instances, that there is a line which says "Classified by" on each one. On that line you will enter the identi-

fication of the original classifier if he is known, or you will identify the source material by designation of the document or by designation of the classification guide. The important thing is that anybody who picks up this material must have a base upon which to go back and to identify the official who can give them a fast answer on downgrading and declassification of a particular document. Now if any of these are not applicable, then the signer or final approver of the document should be shown on the "Classified by" line. This would apply in cases where there are many sources of classification used in a document being prepared.

There are also some additional markings which are considerably different. You will note that the Restricted Data/Formerly Restricted Data notations are shorter than those we have been using but they say essentially the same thing. The national security information notation is considerably shorter than the espionage stamp that we were using. It will be used on all documentation for which Restricted Data or Formerly Restricted Data is not applicable whenever the document leaves the Executive Branch. Finally, there is another notation prescribed by the National Security Council Directive for sensitive intelligence information. If applicable, the sensitive intelligence notice will be shown in conjunction with one of the other notations.

Remarking Material Marked under E.O. 10501

What do we do about information that we now have which is marked Group-1, 2, 3 or 4 under the E.O. 10501 system? If the material on hand is marked Group-4, it becomes automatically subject to the General Declassification Schedule. This means that any Confidential document that you have in hand today that is marked Group-4 and is over six years old will be declassified at the end of this year. Any Secret document more than two years old will be downgraded to Confidential at the end of this year and will be declassified at the end of this year if it is eight years old, and so on. The only way that this can be stopped is for an original Top Secret classifier, having proper jurisdiction over classification of the information, to make a determination that the information in that document warrants exemption and to notify all holders before the scheduled date for downgrading or declassification under the GDS.

Former Group-1, 2 and 3 material is excluded from the General Declassification Schedule, for the time being. Sooner or later, all of this documentation will have to be reviewed and a determination made as to whether it falls under the General Declassification Schedule or whether an exemption is appropriate. It will then have to be redesignated and remarked accordingly. That does not have to be done on a current basis but whenever the material is brought to light for any kind of use.

There are many cases in which new material is being prepared and classification, downgrading and declassification are based upon a source document or documents or a classification guide which are stated in E.O. 10501 terms. In such cases, if the source material or guide called for Group-4, the newly prepared material would be marked with the GDS stamp, using the date of preparation of the new material as the date of origination unless an earlier date is stated. If the source material or guide calls for Group-1, 2 or 3, if possible, the original classifier should be requested to provide a determination based on E.O. 11652. If that cannot be done, then the new material will be marked "Excluded from GDS" and, in addition, the former Group marking will be stated and a reference made to the controlling source material. Later on, more detailed instructions on treatment of Group-1, 2 and 3 material will be provided.

Classification Reviews

Now, we come to the reviews specified in Executive Order 11652. If any person makes a request for a document or a record and that document or record is more than ten years old, and it can be identified and located with a reasonable amount of effort, it is mandatory that the controlling agency make a current review of that document or record to determine what its current classification status should be. If it is declassified, then it would be considered for release unless it is subject to exemption under the Freedom of Information Act. If it is not to be declassified or if it cannot be declassified for a particular period of time, then it would be remarked accordingly and action taken in that respect. It would not be made available to the general public if it remains classified, of course. This would apply to anything which is more than ten years old as of today.

There is another review prescribed by the Executive Order on material which is thirty years old. If the material is created after June 1, 1972, the material is automatically declassified after 30 years unless the head of the agency personally determines that continued classification is essential to national security or a person would be placed in jeopardy. Material which was created

before June 1, 1972 and is now 30 years old is to be reviewed by the National Archivist with the assistance of the responsible agencies to determine whether or not it can be declassified or whether or not classification should continue for a particular period. If classification is to continue beyond the thirty year period, it requires personal action by the head of the agency, in this case, the Secretary of Defense. We are currently assisting the National Archivist in reviewing World War II records. The Archivist estimates that there are approximately 160 million pages to review. Much of this material has already been downgraded and declassified by the Department of Defense under our mass declassification action which began in 1958, but it is necessary to review some of the information which was, at that time, exempted from downgrading and declassification.

DoD Committee and Board

To assist the designated senior official of each department in carrying out his responsibilities for the administration of an effective program, a Classification Review Committee is prescribed by the President. Mr. Robert C. Moot, the Assistant Secretary, Comptroller, chairs the DoD committee. The members are the Assistant Secretary for Public Affairs, Mr. Daniel Z. Henkin; and the General Counsel, Mr. J. Fred Buzhardt. This Committee will consider suggestions and complaints from any source concerning the administration of the program throughout the Department of Defense. It will also consider appeals of denials of requests under the Freedom of Information Act in cases wherein the Department of Defense has considered that there should be no release because of the need for continued classification. This Committee will not consider appeals on requests where the denial was based on one of the other exemptions of the Freedom of Information Act. It will also consider appeals of actions by the Classification Review Committees of the military departments, when they denied a request for a particular record on classification grounds. They will also consider and make recommendations to the Secretary of Defense on any abuses and violations of the administration of the Order which are brought to light, or which are reported to the Committee.

In addition to this Committee, there has been established a Department of Defense Information Security Advisory Board to assist the Assistant Secretary in the administration of the program. Mr. Joseph J. Liebling, Deputy Assistant Secretary for Security Policy, chairs this Board. It is composed of senior officials of the Army, Navy, Air Force, Joint Chiefs of Staff, DDR&E, Assistant Secretaries for Intelligence and Public Affairs, the General Counsel and the Defense Supply Agency because of the latter's interest in industrial security matters. This Board will advise and assist the Assistant Secretary in the development of policies, procedures, standards and criteria for the betterment of the program, and will generally evaluate the effectiveness of the program through whatever means are appropriate.

Monitorship

We will make greater use of existing inspection processes and resources of the military departments and other DoD components including the Office of Industrial Security in the Defense Supply Agency. We will expect these inspection resources to supply us with information on the administration of the program. Inspection teams will be going out to gather information on certain operational phases of the program; certain reports will be obtained. DoD, in turn, is required to prepare and submit on a quarterly basis, reports to the Interagency Classification Review Committee in the National Security Council on the operations of the program.

The Interagency Classification Review Committee was established by the President and is chaired by Ambassador John S. D. Eisenhower. It is formed of representatives of the Departments of State, Defense, Justice, the Atomic Energy Commission, the Central Intelligence Agency and the National Security Council. The DoD representative is our General Counsel, Mr. J. Fred Buzhardt. This Committee will consider suggestions and complaints concerning the administration of the program throughout the Executive Branch. It will also consider appeals of denials of releases of information. It will consider and develop means for improving the program, preventing overclassification, assuring proper classification, prompt declassification, facilitating the release of information to the general public, and so forth.

Special Access Programs

Another important provision of the DoD Regulation concerns Special Access Programs. The National Security Council Directive indicated that there should be a minimum of cases in which special access requirements are imposed, with the exception of certain information such as sensitive intelligence, communications security, and the like. Current programs will be reviewed to determine whether or not they should be continued as special

access programs. Any program in the future will have to be reported, properly substantiated and approved before any special access requirements are imposed. By special access requirements we mean additional security clearances, special access lists, or special procedures for the dissemination of information. Finally, renewed emphasis is being placed on the control of classified information, on the need-to-know principle. No classified information is to be released to anyone unless they need it in the course of their official business.

On the whole, E.O. 11652 begins a new era. The emphasis is on accurate classifications, limited in duration and proper protection where and when it is needed. Closer watch will be undertaken to ensure that the provisions of the Order and the NSC Directive are efficiently and effectively applied.

PRESENTATION BY COL. CASSELS

As indicated by previous speakers, Executive Order 11652 did not just happen. Its conception can be traced back to January 1971 when the President initially directed the National Security Council (NSC) to review and revise certain aspects of the then current E.O. 10501. Subsequent developments affecting national security led to additional Presidential direction in July 1971 to completely revise E.O. 10501. It was clearly evident at this point that the intent of a new E.O. on safeguarding official information would be to classify less information, downgrade and declassify more, and protect better that classified information which remains. This then became the major objective of E.O. 11652 signed by the President on 8 March 1972.

With this as a basis and in anticipation of things to come certain actions were initiated by the Army to improve its security posture. First, the Chief of Staff of the Army directed Army field commanders to examine their security practices and to correct deficiencies uncovered prior to issuance of the new E.O. Emphasis was placed on reducing classified holdings as appropriate by retirement, destruction or transfer of records. Documents should not be allowed to gather dust in files at a cost to the taxpayer after they have served their purpose.

Secondly, the Assistant Chief of Staff for Intelligence (ACSI) who is charged with overall General Staff responsibility for security in the Army, formed a Study Group of about ten people to review Army's security regulations and instructions to determine where reasonable answers to existing problems in security could be developed to meet the objectives of the impending E.O.

Examination of the information developed by the study as well as information received from Army field activities in response to the Chief of Staff's direction led to what was considered then a kind of trial balloon or feeler for how the new E.O. could be implemented on an Army-wide basis. This took the form of Chief of Staff Regulation 380-8 which is submitted to you for your information and evaluation. I realize that some of you will agree with this publication, some will disagree, and others may just think about it. In any event, and, as we mentioned earlier, a symposium can be likened to a "seed bed." If the approach we took with this regulation plants a few seeds, it will then have accomplished its purpose. It is stressed that one of the charges from the Chief of Staff was to be practicable. Sometimes security people lose their heads and forget about reality such as mission accomplishment, short suspense requirements on action officers, etc. Some balanced judgment must be reached between all of the desirable characteristics to be included in an effective security regulation.

It should also be stressed that this Chief of Staff Regulation (CSR) 380-8 is not applicable Army wide. Its provisions apply only to the Headquarters, Department of the Army Staff. Accordingly, it prescribes specific policies and procedures for the Army Staff concerning access to, classification management of, and security controls for official information requiring protection in the interest of national defense.

As noted therein, CSR 380-8 established a Classification Management Program for the Army Staff with OACSI serving as the point of contact responsible for providing advice and assistance to the Army Staff agencies on such matters. Responsibilities of all concerned are clearly delineated in the regulation.

With regard to reproduction of classified information, we had a little problem with the control of reproduction machines. Although a reproduction machine can increase efficiency if it is used properly, it was considered that machines used for such purpose should be so designated and, at least, be under the supervision of staff agency personnel.

Effective until 20 December 1974 unless sooner rescinded or superseded

*CSR 380-8

CHIEF OF STAFF REGULATION)
NO. 380-8)

DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF STAFF
Washington, D. C., 20 December 1971

SECURITY

Security of Classified Information

1. PURPOSE. This regulation sets forth specific policies and procedures applicable to the Army Staff concerning access to, classification management of, and security controls for official information requiring protection in the interest of national defense.

2. REFERENCES.

a. AR 380-5, Safeguarding Defense Information, 26 March 1969.

b. AR 604-5, Clearance of Personnel for Access to Classified Defense Information and Material, 29 December 1969.

c. JA Message 311215Z Aug 71, subject: The Army's Security Posture.

3. GENERAL. Referenced Army Regulations and DA Message are expanded to address specific aspects of information security.

4. RESPONSIBILITIES.

a. The Assistant Chief of Staff for Intelligence will--

(1) Establish and maintain a Classification Management Program for the Army Staff for the purpose of providing clear guidance, improving understanding, assuring correct application, and stressing supervisory responsibility for the classification, downgrading, declassification, and timely destruction of classified information.

(2) Appoint a DA Classification Management Officer to--

(a) Act as the DA single point of contact on matters pertaining to classification management.

(b) Represent DA on the Department of Defense Classification Review and Advisory Board.

*This regulation supersedes CSM 71-380-72, subject: Classified Reproduction, dated 25 August 1971 and CSM 71-380-102, subject: The Army's Security Posture, dated 21 September 1971.

(c) Provide advice and assistance to Army Staff agency and activity classification managers.

b. The Adjutant General is responsible for the downgrading and declassification of records transferred to the custody of the Administrator, General Services Administration.

c. Heads of Army Staff agencies will--

(1) Implement and maintain an effective Classification Management Program within their agencies.

(2) Review on a continuing basis the requirement for TOP SECRET clearances.

(3) Limit access to all categories of classified material to those cleared individuals determined to have a need-to-know.

(4) Appoint from existing resources a properly cleared and qualified officer or civilian employee as the agency or activity Classification Manager to--

(a) Act as his principal assistant on matters concerning classification management.

(b) Advise supervisors on individual classification problems and in development of appropriate classification guidance.

(c) Insure preparation and maintenance of classification guides for assigned classified plans, programs, or projects.

(d) Conduct periodic review of classifications assigned within the agency to insure that classification decisions are based on the proper criteria and that downgrading and declassification is accomplished as soon as practical.

(e) Initiate a program of document review to destroy, declassify, downgrade, or retire classified holdings.

(5) Provide the name of the agency Classification Manager to the Assistant Chief of Staff for Intelligence, ATTN: DAMI-DOS, OX5-5892.

(6) Establish procedures to control the reproduction of classified material on equipment under the control of the Staff agency. As a minimum, procedures will include--

(a) Designating, by position, the individuals authorized to approve the reproduction of TOP SECRET and SECRET material, providing reproduction of the material is not prohibited by the originator or higher authority.

(b) Designating specific reproduction equipment authorized for reproduction of classified material. Equipment designated will be in an area under visual observation of agency personnel. Rules to minimize human error inherent in the reproduction of classified material will be posted on or near the designated equipment.

(c) Restricting the reproduction of classified material to designated equipment and prohibiting the use of other equipment for that purpose.

(d) Posting appropriate warning notices prohibiting reproduction of classified material on equipment used only for unclassified reproductions.

(7) Establish a security indoctrination program to insure that assigned personnel are aware of established security policies and procedures and their individual responsibilities concerning security of classified information.

5. SPECIAL INSTRUCTIONS.

a. Working Papers are documents accumulated or created to assist in the formulation and preparation of a finished document. When the papers directly contribute to the course of action taken, they become essential background material for the finished document and should be filed with the appropriate related functional records described in the AR 340-18-series. When they do not directly contribute to the course of action taken, they will be handled as reference papers in accordance with the AR 340-18-series and will be destroyed as soon as they have served their purpose. Working Papers containing classified information will be--

(1) Dated when created.

(2) Marked with the highest classification of any information contained in the document.

(3) Marked "WORKING PAPERS" beneath the classification at the bottom of the page. (Finished controlled documents or reproductions of controlled documents will not be marked "WORKING PAPERS.")

(4) Protected in accordance with classification assigned.

(5) Accounted for in the same manner prescribed for a finished classified document of comparable classification when--

(a) Released by the originator to an agency or activity outside HQDA with no intent to retrieve, or when transmitted through message center channels.

(b) Placed in functional files.

(c) Retained more than 180 days from date of origin.

(6) Marked with appropriate group markings when placed in functional files.

b. Non-record copies of classified documents should be destroyed as soon as their intended purpose has been served. To expedite timely destruction of controlled SECRET documents, agencies using DA Form 1203 (Classified Document Mail Control Record and Receipt), or appropriate substitute, as the accountability record are authorized to use it as the RECORD OF DESTRUCTION in the following manner:

(1) Annotate one copy of the DA Form 1203 as indicated below:

DESTRUCTION CERTIFICATE (Check Appropriate Block)--Material described hereon has been: ☐ Destroyed; ☐ Torn in half and placed in a classified waste container (CSR 380-8). Date _____.

Destruction/Certifying Official _____.

Witnessing Official _____.

(2) Execution of either option indicated above constitutes a record of destruction and active accountability of documents described on the DA Form 1203 is terminated. The annotated form will be filed in accordance with the AR 340-18-series.

(3) Documents placed in classified waste containers will be protected and committed to the destruction facility in accordance with established agency procedures.

(ACSI)

BY DIRECTION OF THE CHIEF OF STAFF:

Warren K. Bennett

WARREN K. BENNETT
Major General, GS
Secretary of the General Staff

DISTRIBUTION:
A

Also, the CSR recognizes for the first time that there is something called a "working paper." Parameters for the use, control, and accountability of working papers were set forth in very definitive language.

In order to reduce volume and to make it easier to destroy controlled SECRET documents, the CSR permits Staff agencies to use DA Form 1203 (Classified Document Mail Control Record and Receipt) as a Record of Destruction under prescribed conditions. Under this procedure, an individual could commit a SECRET document, after it had served its purpose, to the destruction process, normally a paper bag which would be protected and destroyed in the Pentagon pulping plant. The individual certified only to the action taken. At this point, accountability of the document ceases. It is protected in the same manner as classified waste until it is destroyed beyond recognition.

CSR 380-8 reflects current Army staff policy for security of classified information. We've had considerable success with it. It has increased communication, thereby enabling us to set the stage for rapid expansion in fully implementing E.O. 11652 on an Army-wide basis.

PRESENTATION BY MR. RANKIN

Thank you George, ladies and gentlemen, the other day I was talking to a friend of mine who was a toastmaster and he told me that the formula for a good speech was an attention getting opening and a conclusive ending - spaced not very far apart! Unfortunately, I do not have the attention getting opening, nor do I have the conclusive ending. Hopefully, I will be brief.

Don, in his customary grand style, has provided you with a good rundown of the significant aspects of the new Executive Order. Unfortunately, Don has done such an outstanding job - he has just about completely covered the subject matter that I was about to speak on. Namely, The Downgrading and Declassification Stamps.

With the threat of being somewhat redundant, it would be beneficial to cover the material again.

As you can see there are three basic stamps that will be used on the classified documents:

DATES OR EVENTS

Downgrade to SECRET
on_____
CONFIDENTIAL
on_____
Declassify on_____
Classified by_____

GENERAL DECLASSIFICATION SCHEDULE

Classified by_____
Subject to GDS of EO 11652
Automatically Downgraded at Two
Year Intervals
Declassified on December 31, ____

EXEMPTION CASES

Classified by_____
Exempt from GDS of EO 11652
Exemption Category_____
Declassify on_____

In addition to these three basic stamps, we will have some stamps for markings that will be applied to messages, and I will get into this a little later.

The top stamp is that stamp that will be used when a Date or an Event is appropriate for downgrading and declassification. Heretofore there was a provision for the use of the Date and Event, and as Don pointed out, sparingly used. The Executive Order required that after you classify a document, the first consideration should be: Can I use a Date or an Event for downgrading and declassification?

When using the specific Date or Event, it is essential that the date used will be less than that found in the general declassification schedule of 2, 2 and 6 years.

In the absence of being able to use the Date or Event, the second marking will be the one you see in the center, the General Declassification Schedule marking. You will notice on the very

last line that in the General Declassification Schedule, you will declassify on December 31 of the appropriate year. If you want to protect information beyond the 10 year period, you have to go to the Exemption Stamp which you see at the bottom.

The Exemption Stamp, requires two aspects of consideration.

It requires original top secret classifying authority, and

In order to put it in the exempted category it has to fall within one of the four categories Don outlined before. The first category covers foreign government information.

The second category includes cryptography; intelligence sources and methods; information covered by statues, namely: RD.

The third category and I think this is the category that is going to create the greatest problem, covers material dealing with systems, plans, installations, projects, foreign relations matter.

Category four is that area where that information might place someone in immediate jeopardy.

Let's look at the markings again.

In the "Classified by" block the title of the original classifying authority should be inserted. Many times you will not have that information available so that your next thought should be, what security classifying guide applies? First however you should look to the original classifying authority. In the absence of having that information, you use the Security Classification Guide. If it developes that you have neither, you should look to a source document. By a source document, we are talking about a letter, a message, or any other document which really assigns the classification.

Another aspect to consider with the Date and Event Stamp is that it normally will be downgraded to Secret, and then downgraded to Confidential before it is declassified. There is no reason why you can't declassify the document from Secret. That is, you can have a document stamped Secret and go right from Secret to declassified. Again, it is important that you don't try to extend the Secret category beyond the two year period which is provided in the General Declassification Schedule.

Let's look to the General Declassification Stamp. Again, the original title of classifying authority should be used in the "Classified by" line. In the absence of having that information, then the Security Classification Guide would be appropriate. In the absence of that, the Source Document. The reason for all this, is to be able to establish some sort of audit trail in order to trace the document.

Another problem area, is what do you do in the case of multiple sources. In other words, what do you put in the "Classified by" line if an individual compiles 10 or 15 documents? In this case you would not have the original classifying authority. The individual who compiles this information would place his title in that line: Classified by the individual who compiles this information. Again, in this case he is not the original classifying authority. In the case of the contractor, if the contracting activity has provided the information, the original classifier, has provided the security classifying guide, he should insert that in "Classified by" block. If the user agency has not provided it, he should put: Apply the 254 in the "Classified by" block.

I did overlook one thing. For a Date or Event, I mentioned that I would cover markings on messages. Heretofore, all messages would have one of the following Group 1, 2, 3, 4. In the case of the advanced declassification schedule, which is the upper block, at the end of the text in the message, you would put ADS and the Date or an Event. ADS representing the Advanced Declassification Schedule.

Returning to the center stamp, General Declassification Schedule, in the declassified block you will notice again where everything is declassified on December 31 of a particular year and you insert 6, 8 or 10, whichever is the appropriate year. For example, if we classified something TS today, the declassified block would read, "Declassified on December 31, 1982." If it were Secret today, the declassified block would read December 31, 1980, and if it were Confidential, it would be December 31, 1978.

Now, if you have a message and are using the General Declassification Schedule you will, at the end of the text, use GDS, and the last two digits of the year. The reason that you can use the last two digits is because it's always on December 31 that declassification is effective.

Let's move on to the Exempted Stamp. In the "Classified by" block of the Exempted Stamp, you should insert the original top secret classifying authority. Again, in the absence of that would be Security Classification Guide or some source document. Next to the last line on the bottom stamp you should insert the proper category of exemption, 1, 2, 3, 4. In the event you have more than one, you put all of the exempted categories.

Finally, the last block--"Declassify on." In some instances you will not know when or what to put in for "Declassify on." If this information is unavailable you leave it blank.

If a document includes information from several types of documents that have different downgrading declassification instructions, you would use the most restrictive. For example, if you had Date and Event, General Declassification Schedule and Exempted Stamp, the Exempted Stamp would take precedence.

Another thing to consider is if your command or activity holds a large volume of material and you receive some downgrading declassification instructions. If it would unduly interfere with your operations, you are permitted to take the instructions and attach them to the storage unit and downgrade and declassify the information as you withdraw it from the file.

To this point we have been talking about information which was originated subsequent to 1 June 1972. What I would like to do is to go back over, as Don has done, and talk about information that was created prior to 1 June 1962. All the information in the old Groups 1, 2 and 3, and the information that was marked, will be placed into the Excluded Category. The Excluded Category is a special category for that information that was originated prior to 1 June 1972. Many people have raised the question, what is going to happen to all this material that's excluded? How long is it excluded? Theoretically, it could be excluded for a period of 30 years, but this does not relieve the original classifying authority of the responsibility to review it, to declassify it, put it into the general declassifying schedule or exempt it. If you are preparing a message and it involves excluded material, this particular aspect was not covered by the OSD Regulation. The Navy decided to mark excluded material on a message by using the abbreviation XCL. Whether or not OSD will adopt this, I don't know, but in the interim the Navy will use XCL.

With respect to all the Group 4 information that falls into the General Declassification Schedule, there doesn't seem to be any difficulty with the overall concept. However, two problem areas are:

...If a document was originated in July 1965 and was marked Confidential, Group 4, theoretically it would be declassified now. However, there is a provision that no action will be taken to declassify the material until 31 December in order to provide the originator an opportunity to review the material and to decide whether or not an exemption is justified.

Another example is:

...A document is created in July 1969 and assigned to Confidential Group 4. This document would be declassified on December 31, 1975. You will notice that this is approximately 6 1/2 years. I don't believe it was brought out too clearly that we are talking about calendar years.

I think in situations like this where there has been a new Executive Order and drastic changes in policy, that all of us have to accept the fact that we will be going through an interim period where many questions are going to be raised and some of the answers are not readily available. I think this particular group, hopefully, will surface some additional questions and perhaps some solutions.

I think the theme of the President's Executive Order, which has been said many many times here already, that we would like to see less information classified and more declassified and protect only that which requires protection. I think the Executive Order provides the necessary tools for us to do the job, and it behooves us to follow the Executive Order as well as carrying out the spirit of it.

PRESENTATION BY MR. MYERS

The subject the panel assigned to me is Classification Considerations and Criteria. I'll be short because the considerations don't differ much from those in the past. The main points are that you have to identify specific information, that you have to take into account specific criteria: the U.S. advantage in terms of operational, strategic, intelligence, and tactical matters, foreign relations--the possibility that the information that gets out may lead to a military threat, international tensions that could be contrary to security, disruptions of

foreign relations, hostile political and military action; things that would weaken the U.S. ability to wage war; things that would compromise some of our intelligence capabilities not heretofore known to other countries; war plans and the information that would let another country plan its counter measures against our war plans. These are the categories of information that warrant classification.

All of you are fairly well familiar with the criteria for classification and I think the difference that has come about is primarily one of a different attitude on the part of the classifier. The term "balanced judgment" has been mentioned several times. What it boils down to is that first you must find a positive reason for classification, and having found it, you still are not permitted to classify until you've taken a look at the other side, what are the pros and cons, what are the possible reasons why we should not classify. And some of the things that may be considered there are dissemination, the fact that you have to disseminate widely doesn't bar you from classifying, but it may make it so impractical that you should start over and reconsider your desire to classify.

Another consideration is: how much is already known elsewhere. If country X is ahead of us in this field, it's foolish for us to classify as we catch up. If our intelligence people can tell us that foreign nations already know certain things about us, then it's time we stop trying to hide the information.

Another point that seems basic is this: What has already been released? The new directive is very clear on this point. Information that has been put out in an official, authorized government release will not be classified. It seems obvious, and its been true right along, but its been made clearer now than at anytime in the past.

Basic research: the general position is that you don't classify it. Sometimes people come up with the question as to what is and what isn't basic research data, but if its research and its in the basic sciences, it would be a rare situation where you can classify. If that happens at all, it would have to be something related very closely to national security and have direct defense implications. Then we get back to the question of balanced judgment. What gain can there be to the country from not classifying it? There can be many instances where such gain will be found. If someone finds a way to break up bad weather at an airport, this might be fine as a means of carrying on military operations, but I think it would be apparent that you would be more interested in having airlines around the world able to clear the weather when you land. So, to come back to where I started--first, you have to have a positive reason to classify; then you have to take into account all the other considerations to decide whether or not to classify.

I visited a corporation yesterday and one of the officials there asked me: what is the major impact of the new Executive Order? I told him that I thought probably the main impact was not any specific words but a general atmosphere or attitude that's created by it. You've heard the points I've mentioned here. You've heard before about resolving doubts in favor of not classifying. You know that the definitions require that you determine that disclosure could reasonably be expected to do damage. In many other ways, it's clear that people want less classified and will have it that way, but the biggest thing is that throughout the Department of Defense people are talking that way. I go to sit in on a meeting and someone who would ordinarily have no comment will say: "Well, Executive Order 11652 says you can't do it." Or I hear: "The new DoD Reg says you can't classify." There is a tide moving and for those of you who don't want to see too much classification, this is your chance--jump on the tide and ride it, because people who up to now would have held out for undue classification, have been impressed enough by publicity in the press, in the government, and elsewhere so that they're taking a more reasonable attitude.

PRESENTATION BY MR. MAC CLAIN

About two years ago this audience brought to our attention certain imperfections in the Industrial Security Manual that ought to be changed, and I promised to do something about it. I can now say we have.

You may recall that there has been considerable interest in permitting a prime contractor to sign off a DD Form 254 for a subcontractor of a so-called "service" contract. The policy to permit that has been adopted. There was considerable pressure also to permit a prime contractor, upon receiving notice that his classification guide had been reviewed and left unchanged, to send out a notice to his subcontractors over his own signature. That's been approved. Any sub who serves as a prime to a lower sub can do the same thing.

Another policy which has been approved is to authorize and require a commercial carrier who is authorized to carry classified material and who at some point in his trip has to place it in the custody of an authorized temporary storage facility, to execute a 254 for that storage facility over his own signature.

There was considerable stress two years ago on the question of whether the "tentative" classification marking, which is part of DoD policy, could or could not be used in industry. Well, it was pretty clear at that time that the language of the Industrial Security Manual did not authorize industry to use a protective marking which would include the words, Confidential, Secret or Top Secret. We have now approved for use by industry a new protective marking which reads "Classification Determination Pending: Protect as Though Classified Confidential, Secret or Top Secret." Anyone who now contends that this new marking is evidence of actual classification is fighting the plain meaning of the English language, in my opinion.

So, you people in industry who from time to time generate information on your own that you believe might justify safeguarding by classification are requested to mark it in that new way and send it in for official evaluation. You may think there are too many words, but sometimes we have to use a lot of words first to say NO. I can say to you that if you do this, we'll do our best to get the evaluation promptly made and notify you of it.

Two years ago there was considerable discussion about classification in connection with independent research and development. The new regulation now makes it very clear that the product of independent research and development cannot be classified unless it incorporates classified information to which that party was previously given access, or unless the DoD first acquires a proprietary interest in it. If there's any doubt now in anyone's mind, let him read the regulation. It speaks very plainly.

A recently approved Industrial Security Letter which is now, I think, in the course of distribution, will give you some interim guidance on marking under the new Executive Order and new DoD Reg. It says a little and it leaves out a lot. As one of our speakers said, while you're waiting to receive more, please do what the User Agency asks you to do, and you will be doing the right thing. The period before the Industrial Security Manual and Industrial Security Regulation can be totally revised to reflect the new regulation is a period of uncertain duration, but we hope it will be short. This Industrial Security Letter is the first step along the way.

In his talk today, Don used the word, "derivative." As far as our official position is concerned, that word is taboo. We're not going to use it. You know the meaning we have always given the word officially when we said it, and I expect that you may continue to use it among yourselves. But the process of following guidance is the same process you've always followed. If your guide says to classify the information in your paper, then you mark your paper accordingly. So please don't be upset if we don't say "derivative."

Something else that is mentioned from time to time that may disturb you is that the new Executive Order and National Security Council Directive come awfully close to saying that upon declassification, information is publicly releasable. That is simply not true. The words used are that upon declassification, information is releasable to the extent required or permitted by law. Let me illustrate.

...If you have information which is classified, but also is within one of the other exemptions of the Freedom of Information Act, then, upon declassification, the other Freedom of Information Act exemption is still there. It still has to be considered. So don't assume that declassification automatically means release. It simply does not.

You have heard the word "excluded" versus the word "exempted" today. The President did not provide a stamp for the "excluded" category. So, we have been working to provide a proper marking. An "excluded" item is subject, upon anyone's request, to review for declassification 10 years after date of origin, and 30 years after date of origin it is subject, without request, to mandatory review by the Archivist for possible declassification.

With respect to exemption, I want to mention the fact that not all exempt material has to be Top Secret. It can be either Top Secret, Secret or Confidential. But the only person who can grant an exemption is one who has Top Secret Classification Authority. Even if I have Confidential or Secret classification authority, I still have to have someone with TS classification authority to consider and act on my recommendation for an exemption.

In connection with exemptions, we have it in the regulations that those persons who have Top

Secret classifying authority are authorized not only to grant exemptions but also to issue specific guidance on exemptions. But any such guidance must be very specific as to the information covered, the exemption category, and whether a declassification date earlier than 30 years is to be used.

Yesterday in a discussion, it was brought out that in the 254's which you will be receiving you may be told specifically how to complete the "Classified by" space. We do not yet know whether that will come to pass.

Another point I want to mention is that the new regulation 5200.1R did become effective on June 1 throughout the Department of Defense. No additional words from anybody within the Department of Defense are needed to make it immediately effective. However, the Military Departments and other components may wish to issue supplementary guidance, consistent with the regulation, to meet their own particular requirements.

It is a fact that effective June 1, 1972, former DoD Directives 5200.1, 5200.9, 5200.10 and former Instruction 5210.47 were cancelled.

SALT AGREEMENTS

MR. RALPH STUART SMITH
ACTING PUBLIC AFFAIRS ADVISOR
U.S. ARMS CONTROL AND DISARMAMENT AGENCY
WASHINGTON, D.C.

Thank you Mr. Chairman, ladies and gentlemen. I was privileged to attend one of these seminars a few years ago, and ever since then I've had a deep respect for the practitioners of the very complex and occult science of classification, so I'm particularly happy to be here with you again.

In treating the SALT agreements, I'm planning just to use a very light brush stroke and be brief about it. Also, I go at this with a certain measure of humility because I think there are a number of you gentlemen who probably know a great deal more about the technical aspects of these things than I do; but recently I seem to have found myself in the role of a traveling SALT witness, talking to newspapermen and radio and television people and members of the public. So I thought maybe the best thing would be if I just tried to share with you briefly some of the things which interest people, some of the things which trouble them, and some of the problems and the explanations we try to give in putting the SALT picture into perspective.

I think, first of all, I might just mention the fact that the public, by and large, seems to have a rather strong instinctive feeling that things like this are a good idea. You may have noticed recently there was a Harris pole on this. It was rather loosely worded, unfortunately, but in effect it asked, "Do you approve of the SALT agreements?" Interestingly enough, the result was almost precisely the same as in 1968 at the time that the Non-Proliferation Treaty was launched: 80% in favor, 12% against, and 8% no opinion. Well, the polling people will tell you that 80% is an exceptionally high figure on almost any subject.

Notwithstanding this instinctive feeling of approval that people seem to have, I think there are some basic concepts which people find difficult to grasp at first.

To begin with, the idea that in going into international arms control negotiations our major objective is to enhance the national security of the United States: this is something that people have difficulty understanding. They are much more familiar with the traditional concept that if you want to enhance national security you build up armed forces and add to your stock of weapons and so forth. So we have to point out that although this was indeed the traditional approach, we have now learned that this can lead you into a blind alley--because in the arms competition between the United States and the Soviet Union, what one side can do, so can the other, sooner or later.

Another thing which seems to have a long life, in spite of all that's gone on, is the concept of "nuclear superiority". This was something which we thought had been laid to rest some time ago, when the new Nixon Administration came in and adopted the policy of nuclear sufficiency; but still there are a number of people who cling to the idea of nuclear superiority. Of course, you have to point out to them that although this was something that existed at one time--we actually had it--in the present condition, when either side can devastate the other no matter which one strikes first, it's a little bit difficult to establish who is superior to whom.

There is also still prevalent the idea that somehow the United States Government, more or less purposely, gave away the position of nuclear superiority that we had and deliberately headed toward a condition of parity. Well, here I think you have to point out that this movement toward parity was not something we chose; it was something that happened. There was really no way to prevent the Soviet Union from building up a strategic force commensurate with its own advanced technology. If we had tried to maintain a condition of nuclear superiority such as existed before, we would still have ended up with parity, but with considerably higher levels of armaments. Anyhow, we now have what has been called the nuclear stand-off, which, while not an ideal condition, would probably be livable if it were stable enough.

So here we get into the question of the stability of the mutual deterrent situation. And this leads us straight to the SALT agreements. There have been two increasing potentialities, over the past few years, for destabilizing the strategic equation, and, the SALT agreements deal with these in a direct manner.

The first of these potentialities relates to Anti-Ballistic Missile Systems, ABM's. Until fairly recently, you recall, many people considered that ABM's, being a purely defensive weapon, should be

"harmless," and after all, if ABM's might possibly save lives and cities, maybe we should have them all over the place, regardless of the cost. Well, of course it has become increasingly apparent that if either side had a large-scale nationwide ABM system, it could in a crisis situation be tempted to launch an attack against the other in the belief that its ABM's would blunt the retaliatory blow--at least enough so that on balance it seemed to make sense to go first. This, in other words, puts a premium on striking first. In a way this is a theoretical consideration, because there is no ABM system, no conceivable one, which could actually offer adequate protection against an all-out nuclear attack. Nevertheless, it is perfectly demonstrable that the existance of ABM systems or the prospect of ABM systems is a considerable impetus to the other side to build up his offensive forces, so that he can be absolutely sure of being able to overwhelm the ABM system.

In this connection, you may recall that in the late 1960's some of our American worst-case planners predicted that before very long if we wanted to launch a retaliatory strike against the Soviet Union it would be necessary to penetrate thousands of Soviet's ABM's. Well, the SALT ABM Treaty, which was recently signed in Moscow, limits the Soviets, as it does us, to 200 ABM launchers. So you can see this is a considerable difference.

Now, I think that this is really the most significant thing which has come out of the SALT talks. This limitation on ABM systems to a very low level means, first of all, that our retaliatory deterrent capability is assured; it means that a first strike is no longer a rational concept; and finally, the existence of the ABM Treaty means that the stimulus to build up offensive forces is very considerably diminished. As a result, it should be possible in the follow-on negotiations not only to broaden the offensive limitations which we have already placed in the first round, but perhaps, even to start thinking of certain reductions.

The other potentially destabilizing factor in the equation which I mentioned is the possibility that one side might try to nulify the retaliatory capability of the other, specifically by building up a missile force which would destroy the land-based missiles of the other side before they have a chance to leave the ground. Of course, even if such a strike as this were a 100% successful, the side that was hit could still retaliate with its bombers and with its submarine-based missiles. Nevertheless, even the apparent threat of building up a missile-killing force is an unsettling thing, and you will recall that our government expressed concern a number of times, prior to the SALT agreements, about the build-up of large Soviet missiles like the SS-9, which seemed to be destined for this role.

Well, the Interim Agreement on offensive strategic systems does limit the SS-9, as well as other intercontinental ballistic missiles. Although, as mentioned, I think the ABM Treaty really is the most significant thing to come out of the SALT agreements, ironically, much of the public interest seems to have centered on the Interim Agreement on offensive systems; and I think the reason for this is quite plainly that this was the target of most of the criticism which has taken place. The criticism is leveled at the fact that the Interim Agreement allows the Soviet's to maintain a lead in the number of ICBM launchers and SLBM launchers. Now, I think, that if you are faced with this question and you want to explain it to someone, you can point out that both sides gain certain advantages in the offensive limitations, and actually we come out extremely well.

To begin with, the Interim Agreement on offensive systems limits two major Soviet offensive systems which have been rapidly building up: their ICBM's and their SLBM's, and it does not affect any on-going or planned American program.

By the same token, if we did not have the SALT agreements, the Soviet's would have been able to build up to a very much larger number than they are allowed to retain under the 5-year freeze. Other advantages, from the American point of view, of the offensive agreement are the fact that the SS-9 is limited; the fact that we have a considerable lead in missile technology and accuracy, and perhaps most important: in MIRV technology, multiple warhead technology. We now have a lead of about 2 1/2-to-1 in warheads, and by the time the 5-year freeze is over, it's expected, I think, that we will have more like a 3-to-1 lead. Another advantage for the American side: the Interim Agreement does not cover bombers, and we have an advantage in strategic bombers about 460 to 140. And finally, although they are not central to the main strategic equation, I think it is relevant to take into account that over and above these central systems we have about 2,000 aircraft overseas at bases and on carriers, which also have a nuclear capability.

We see certain advantages in SALT, and the Soviet's do too; and what it all boils down to is that these agreements are in our mutual interest. Without wishing to seem simplistic or rhetorical about it, I think the first advantage, as seen by both sides, they reduce the likelihood of nuclear war. Over the long run, also, we can expect rather considerable savings.

Now in the matter of savings, I've found in talking with people that there is a good deal of confusion. It is a little bit like the Viet-Nam story. People were expecting some rather radical drop in expenditures on strategic systems, and of course this has not happened. Secretary Laird testified recently that, as a result of the ABM Treaty, the Pentagon projected a saving in this fiscal year of about $650,000,000, and over the next several years of somewhere between 5- and 9-billion; which of course is considerable. But at the same time the people have difficulty understanding that the Administration has asked for the amount it has for modernization of strategic systems. It is a bit difficult to make people understand that this is a reasonable stance, that we cannot guarantee in advance what the result of the follow-on negotiations is going to be.

Another positive aspect of the SALT agreements is the way they handle the verification question. This is one of the most significant steps forward that we have made. As you know, the agreements provide for national technical means of verification. Of course the idea of on-site inspection has become a kind of symbolic thing, and some people can't understand how can you really expect to monitor these agreements without on-site inspection. However, all the intelligence agencies involved are satisfied that we can monitor the agreements adequately with technical means. In fact, we can monitor them a great deal better with technical means than we could ever have hoped to do with on-site inspections.

The corollary to this verification provision is that neither side will interfere with the other's technical means of verification. I think this is quite a significant opening--really a very important political and psychological step in international affairs.

I did want to say something about the classification aspect of the SALT talks. As you know, we tried to keep them very private. We had agreed with the Soviets that we would do so. The reasons are simple. If you are going to have a successful negotiation, you can't have each government going public on what its positions are, for then it is obliged to defend them. Also, if you're dealing with another delegation and you want to get people to talk rather frankly, it is hard to do that if they suspect that everything they say is going to wind up in the press the next morning. So I think that, given a number of fairly important leaks to the press which did take place, our director, Gerard Smith, head of the U.S. SALT delegation, must have found himself in an awkward position visa-vis his Soviet opposite number. As for the degree of permanent damage which resulted, I don't know really if anyone could assess this; but I do recall one article which caused us particular grief because it even gave a fallback position; and that's not very helpful in negotiations!

I will ask my colleague Dick Durham to correct me if I'm wrong on this: it has been decided that since the negotiations were private and the general record of the negotiations has been kept classified, it will so remain; because, of course, these negotiations are a continuing thing.

Well, if I may end on a philosophic note, I think one of the most interesting things about arms control is that, with these very sophisticated means of surveillance, we are finally beginning to control technology with technology.

WORKSHOP ON TRAINING OF CLASSIFICATION MANAGERS

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INTRODUCTION BY MR. BAGLEY

Looking at this assemblage of interested people, I am struck with an important fact - this is not a young group - certainly over 30 years of age, although I will not attempt to define young. It is apparent, however, that there is a need for (untired blood) young people in Classification Management. There is also an urgent need to develop a career ladder with appropriate curricula for education and training.

I have long contended that Classification Management is a good career field for [illegible] and it is gratifying to see the number of women attending this Seminar - a greater number than in any of the past Seminars.

How can we induce more people to enter Classification Management? What types of people do we want? What kind of backgrounds should they have? What personality characteristics should they have? These are some of the questions the Panel will start to address. Each of the speakers will address the subject from his own point of view - Bob Green from the viewpoint of a major command where management skills are a primary requirement; Jim Marsh will speak from experience with AEC classification requirements from the vantage point of an AEC contractor with DoD responsibilities; and finally, Jack Robinson will take the viewpoint of a contractor which has Navy-wide responsibilities.

It will be apparent that Classification Management is a field so broad that no single set of answers is possible or even reasonable. But there is a single thread that runs through the entire spectrum of CM activities - that each classification decision is a judgment, based on information available at the time a decision is needed. Therefore, what qualification or qualities should people need in order to make judgments?

PRESENTATION BY MR. GREEN

No one associated with the business of security classification will deny that there are insufficient numbers of qualified, experienced Classification Managers to properly handle the job of determining what information requires protection and for how long. A brief look at the evolution of the Classification Management Program will provide some insight into this condition and why it exists. While the principles of protecting information are probably as old as man, Classification Management as an identifiable program dates back only to 1963. The program was and still is considered to be a logical function of security, although there are sound arguments and some precedents for divorcing the classification decision from the protection of information once it is classified. Like so many fledgling programs, Classification Management had to be achieved within existing resources. Therefore, in an overwhelming majority of cases, persons trained and experienced in various other facets of security became Classification Managers; suddenly and miraculously endowed with instant expertise. Again, a majority of these individuals entered or remained in the security program on the basis of military or civilian duties during World War II. It might be interesting to speculate, at some more opportune time, as to why they have remained in a program which perpetually has been subject to "the slings and arrows of outrageous fortune", immortalized by Shakespeare and now cast by an increasingly vocal and generally uninformed segment of society. Effectiveness of the program thus far, can be related directly to the ability and desire of these captive bodies to acquire new skills and to accept new philosophies which were, in many ways, contrary to their previous training and experience. Fortunately, many have become the type of program managers needed to fulfill Classification Management objectives. Others have not, for a variety of reasons. From this brief backward look, one very clear and unmistakable fact emerges which this Society, Government and

Industry cannot afford to ignore. The current body of Classification Managers represents a generation which, however depressing the prospect, is rapidly approaching retirement age. The exodus is already noticeable. It will increase significantly over the next five years or so and with it will pass a great deal of the knowledge and expertise that has been developed out of need over the past years. As most of you know, a number of the most knowledgeable and effective members of this Society are no longer active in classification management, to the great loss of the profession they served so well. The point which should concern us all is . . where are their replacements? What qualifications should we look for in the search for future Classification Managers? How can young men and women be motivated to enter this field and pursue careers in classification management? These are questions which must be answered and answered soon.

It appears to me that, with few exceptions, little has been done to establish career development programs which will attract and retain the promising young people needed to continue an effective program. This is a long term investment and perhaps one of the reasons it has not been undertaken earlier stems from a manpower environment which makes trainee positions a prohibitive luxury. Needless to say, the penny wise, pound foolish adage applies. Another contributing factor which affects Government primarily, but has some impact on Industry, is the lack of recognition of classification management as a career field and the absence of specific job standards for classification managers. Until this is corrected, a sound and continuing basis for career development will not exist and an uninterrupted flow of qualified personnel into more responsible Classified Management positions will be more by chance than by design.

Unlike Topsy, who "just growed" and some classified information, which was born that way, Classification Managers must be created from a combination of native abilities, acquired skills and experience. Certain identifiable traits must be present. Certain acquired skills are highly desirable, sometimes prerequisite, in positions involving classification of information in a variety of highly specialized technological disciplines. As a last ingredient, experience has yet to be surpassed as the ultimate teacher for those willing to learn Few applicants for Classification Manager positions will come equipped with all of the desired qualifications. Those with the greatest potential must be trained in the areas of their deficiency and all recruits must be trained in specific classification management techniques.

The proper combination of qualifications and training may be influenced by the nature of the organization in which the position is located: large versus small, technical versus administrative, highly specialized versus multi-faceted activity and, to some extent, Government versus Industry. The operational concept applied to Classification Management is also a factor. In the central staff concept, in which all classification decisions are made at a single point within an activity, personnel must be highly skilled and knowledgeable in all areas which influence the classification decision; i.e. technical, security, production, accounting, contract administration, public affairs, operations, etc. On the other hand, the decentralized concept minimizes the skills required of the Classification Manager by placing the primary responsibility for classification on the originator of documents, subject to guidance issued and post-audit by the Classification Manager. In a third concept, the team effort, which is probably the most widely used, all factors bearing on classification are addressed by individual subject experts and a joint decision is reached. The Classification Manager functions as the team leader and coordinates the actions of the team, which may or may not be structured formally. In this concept the Classification Manager normally provides the security input, although there are instances in which his role is purely that of coordinator, tie-breaker and final authority.

There are proponents for each of these concepts. However, since my experience has been primarily with the team concept, I will limit my final comments to that concept. My fellow panelists will no doubt address the other areas. Let us assume that we have the opportunity to recruit new blood for the Classification Management Program. What basic qualifications are needed? What training should be provided

for the recruit? Remembering that in the team concept the Classification Manager, as a team leader, has available all of the technical expertise in all disciplines with which the agency is concerned, I would place heavy emphasis on the Management in Classification Management. I would look for ability or potential in the following areas, though not necessarily in this order:

Initiative: This is a natural trait which can be found in every successful manager. In the Classification Management business very little will be done unless the manager initiates actions voluntarily and pursues them aggressively. This characteristic leads to the establishment of solid and constructive working relationships with other technical experts, which are an essential element of the team concept.

Native Intelligence: While the merits of formal education cannot be denied, its application is sometimes handicapped by lack of "horse-sense" and the ability to analyze a situation in terms of logic and reality. No derogatory inference is intended; but we have all heard of the absent minded professor who is a genius in his field but cannot cope with reality. Classification Management must, above all else, be free of dogmatic theories and practices which cannot be defended in the light of current reality. This type of "horse-sense" may be sharpened by formal education but cannot be replaced by it.

Diplomacy: The Classification Manager must also be a people manager. He must know when to listen and respect the opinions he seeks even though he may not agree. When a decision must be made he must be firm but not arbitrary. When his powers of persuasion have been exhausted without success, there comes a time when he must be insistent without destroying his working relationships. The time spent in cultivating these relationships can be rewarding in a personal as well as a business sense.

Communication: This may be the most important qualification of all. The ability to read or hear and understand, and to speak or write in a manner which conveys a precise meaning and intent would probably result in more solutions than any other single factor brought to bear on a problem. Lacking this ability, whether natural or acquired, the Classification Manager is isolated and cannot function effectively.

In my opinion, the importance of formal education or training in one or more of the technical disciplines is not as great in the team concept as it is in the central staff concept. Obviously, an interest in, and affinity for, things technical is a valuable asset even in the team concept. It does wonders when communicating with the technical members of the team, but it is not essential, as is management skill.

In the line of formal education I would look for a Business Administration major with a minor in one of the natural sciences. A second choice would be Liberal Arts in the traditional sense of science and humanities - not a curriculum laced with music appreciation, literature and the like. Based on my experience, I would be more inclined to scrutinize more carefully the other qualifications of a straight engineering or science major to insure that management potential is indicated.

Having found the individual with all of these desirable qualifications, he must still be induced to enter the Classification Management field. If he is good, many respected and recognized fields will be open to him with the promise of financial and professional rewards. Classification Management will be hard pressed to compete for this kind of talent until the program has more to offer in the way of formal career development. Ringing phrases and personal dedication will not fill the void which can be predicted in the not too distant future.

Assuming an unexpected stroke of luck, the perfect recruit accepts an offer of employment as a trainee member of the classification team. There must follow an extensive period of on-the-job training during which the trainee will learn the philosophy and specific techniques of classifying information, and how to use his management skills in this environment. During this period he should be exposed to an indoctrination by each of the experts with whom he must subsequently work. Training sessions should be arranged with experts in each major technical discipline involved, contract administrators, personnel who will be the ultimate users

of equipment and systems under development; in short, any group whose function could influence the classification decision. When this initial phase is completed the trainee should begin to participate in actual working sessions under the supervision of a senior classification manager. It would be useful and informative if the trainee could visit the site of major R&D or Production projects or contracts to witness, first hand, the impact of the classification decision on those who must use, handle and protect classified information. At the end of a year, if the initial evaluation of the recruit was sound and if the training has been effective, the trainee should be able to operate independently in selected areas.

It is important that provisions be made for periodic refreshers, particularly in technical areas so that the Classification Manager is at least aware of changes in state of the art which might influence the classification decision.

When I started to record some thoughts for this paper I had no intention of taking a "Devil's Advocate" position. As it turns out, I seem to be leaning that way. There is much we might have done, but have not done. No matter how sound our reasons, the results are the same; Classification Management has been painfully slow in achieving recognition as a profession, if in fact, it has outside of our own community. It is time for this Society to develop a formal position on Classification Management job standards and career development patterns which can be applied in Government on a mandatory basis and in Industry on a voluntary basis. This is an over-due first step in building the foundation for the viable career field necessary to support the program.

With increased emphasis on classification management evidenced by E. O. 11652, other legislative proposals and current public exposure, the challenge and the opportunity is here. It is our responsibility to answer it.

PRESENTATION BY MR. MARSH

When Jim Bagley asked me to join this panel, I had serious reservations about the subject, ostensibly the selection, training, care, and feeding of a classification analyst. Certainly I am acquainted with the subject. I have been directly involved in classification at Sandia Laboratories for fifteen years. Over that period I have developed a number of unconventional views on this subject, as well as others. Only after Jim assured me that he didn't mind my displaying my prejudices, did I feel comfortable in accepting. What you are going to be exposed to now are Marsh's personal views; no one else should be saddled with the blame.

Perhaps a few words about my own background will put these remarks in better perspective. I attended a number of universities from Ann Arbor, Michigan, to Tuscon, Arizona, and accumulated degrees in Business Management and Economics along the way. I even attended law school at the University of Texas for a short time. I successively taught, worked in accounting, and wrote engineering procedures before, quite by accident, I became a classification analyst (AEC terminology). I explain this background because what I am about to tell you about selecting, educating, or being a classification analyst is in direct contradiction to my educational background and natural interests.

With this as a base, let us take a look at what security classification really is, and how it relates to security - physical security, document security, personnel clearances, or whatever. I have worked in the Atomic Energy Commission environment for the past twenty years. The Atomic Energy Commission was established by the Atomic Energy Act of 1946, as amended in 1954, so you see that classification under the AEC is a requirement by statute. This results in a situation that is quite different from that which prevails in the DOD where Executive Orders cover classification and security procedures. Perhaps this is one of the basic reasons why the AEC and the DOD find themselves at odds on some classification matters. Perhaps another reason for the difference in attitude or philosophy is that much of the information classified by the military establishment is operational data which tends to be fluid or transient. Most of the information classified under the Atomic Energy Act, on the other hand, is technical design information of a more permanent nature. At any rate, under the act, information concerning design, manufacture, and use of nuclear weapons is "born" classified as many of you are well aware. Of more than passing interest is the fact that Restricted Data and

Formerly Restricted Data are exempt from the declassification provisions of the new Executive Order.

I believe that a classification determination is a quasi-legal judgement based on the best relevant technical information available, together with the pertinent classification guidance derived from the Atomic Energy Act or other authority. Classification decisions or judgements, of course, impinge on security and security regulations. When the classification analyst makes a decision that a body of information (usually technical) requires security protection in view of approved local or program classification guidance, security becomes responsible for determining the means required to protect the information. Note the two distinctly different functions and responsibilities. For this reason, I feel that it is fundamentally unsound to have the classification function reporting to the security director or to have both functions reporting to the same administrative head.

So, what place in the organizational structure should the classification official occupy? At Sandia, the Classification Division, which I supervise, reports to the Technical Publication and Art Department, and I feel that this is certainly a reasonable base from which to operate. My division, however, is also staff to the Vice President who serves as Chairman of our Classification Board and who is our top corporate authority on classification matters. In accordance with the new Executive Order, I also will serve as staff to the President of the Laboratories on matters relating to Top Secret authentication and control. In the AEC family, including contractors, I don't believe that there is any organizational slot specified for the classification function. The only requirement is that security and classification not report to the same administrative head. This is a fundamental point; obviously it would be most undesirable to have the auditors of an organization report to the accounting people, or vice versa. No organizational structure should allow potential conflict of interest. On the other hand being too rigid is not rewarding either. I believe that the successful classification officer must work with both technical and administrative people constantly, and as harmoniously as possible, to minimize security time and dollar costs, particularly in placing classified contracts.

To put my remarks in perspective, let me tell you something about Sandia Laboratories. Sandia Laboratories was established in 1945 as a part of the Los Alamos Scientific Laboratory (LASL) to handle future weapons development engineering and bomb assembly for the Manhattan Engineering District, the code name given the original atomic bomb project. The facility was a branch of LASL, operated by the University of California, until 1949, when the University asked to be relieved of the nuclear ordnance engineering job. President Truman asked the Bell System to assume the responsibility for operation of Sandia, and Sandia Corporation was formed as a subsidiary of Western Electric to operate the Laboratories under a non-profit, no-fee contract as a service of the Bell System to the Atomic Energy Commission.

Sandia Laboratories consists of two major ordnance engineering and R & D facilities: the headquarters laboratories at Albuquerque, New Mexico, and the laboratories at Livermore, California.

Sandia's principal responsibility is research and development on nuclear ordnance -- all the non-nuclear aspects of U. S. nuclear bombs and warheads. Together with the necessary development engineering, we are also responsible for monitoring production, assuring quality, and providing training courses and manuals for the using services. There has been a marked trend in our laboratory to concentrate our efforts in research and development, as contrasted to engineering. As a result, Sandia has acquired a highly qualified technical staff.

The Classification Division personnel are members of the laboratory staff. The job structure consists of three levels of classification analysts and a supervisor designated the classification administrator. Jobs are evaluated under the position evaluation plan (PEP) which establishes the relative worth of various administrative positions. The rating is based on job knowledge, problem solving ability, and dollar accountability. A person with proper qualifications can enter at any job level commensurate with his qualifications and job experience. Fortunately, our wage and administrative people rank our positions high in both job knowledge and problem solving ability. Hence, we have a point rating which allows us to have a good salary range. I feel also that our people contribute substantially to dollar accountability because of their

proven ability to point out means of cost savings to the operating people. Incidentally, I feel that many agencies do themselves a great disservice by submerging the classification job in the security structure thereby reducing its importance and thus pay scale or GS level. This happened very recently at Kirtland Air Force Base and the job level of the classification manager was reduced two grade levels. The AEC, by using considerable care in establishing job requirements and job descriptions, has been able to establish a flexible job structure which attracts and retains professional level people.

Before I discuss the qualifications and training of classification analysts, let me briefly list the activities performed by my division:

1. Provide advice, counsel, resolution on classification problems and questions.

2. Prepare, coordinate, and justify new and revised classification guidance.

3. Review documents, work projects, material, and hardware as they are generated.

4. Conduct classification education programs, both general and on specific subjects.

5. Prepare subcontractor/consultant guidance, education, and liaison.

6. Review older documents and projects for downgrading or declassification.

7. Carry on intercontractor/agency communication.

One of the classification administrator's most important jobs, as I am sure you recognize, is to recruit and maintain a capable staff. This is quite a trick in view of the tight dollar situation, particularly in a laboratory such as Sandia which is continually reducing the ratio of the administrative staff to the technical personnel. Over a period of twelve or fourteen years I have hired about a dozen classification analysts and interviewed many more. Basically, what I look for in an applicant is a broad educational background with strength in the pure sciences or engineering areas. It is most important that a potential analyst have the ability to communicate well both on a person-to-person basis and in writing. Age is not necessarily a consideration, although I have avoided hiring young candidates just out of school. By the same token, older folks with no particular skills or applicable background usually do not fit our requirements. It is helpful if the individual has what I would call a quasi-legal inclination, as I feel that the process of making classification determinations is somewhat akin to the judicial process.

It is absolutely essential that the job candidate have the patience and forbearance required to deal with the frustrations of classification. It is difficult to really assess personal characteristics during a short interview, but while discussing the positive and negative aspects of the position, you can usually determine how the candidate would react to the job situation.

Another characteristic that is difficult to evaluate is judgement. Obviously, classification managers or analysts do not last long if their judgement is poor. The prime requisite for making good decisions is a thorough evaluation of all relevant information before making a judgement. Another factor is individual motivation. In this current era when good positions are hard to find, many engineers with Bachelors and even Masters degrees are finding it hard to compete in an environment which caters to PhD's. This, together with the growing professionalism in classification management, prompts the scientist or engineer to consider it more seriously as a career than used to be the case. Of the persons I have interviewed or hired, the best candidates have been those with rather broad educational backgrounds, skill in technical writing, and the ability to elicit technical information from the engineer or scientist. Many outstanding candidates for classification management were young ex-military men who had been connected with the then Field Command, DASA Weapons School. These young officers generally had a good technical background plus a basic knowledge of weapons, which of course was of great benefit in our work. In emphasizing the importance of a technical degree (which, in fact, AEC requires for its classification officers) it would be an oversimplification to indicate that the mere fact that an individual has a technical degree assures either interest in or skill at classification.

The classification manager to be most effective must have some knowledge and understanding of every project at his installation. Obviously, no man has enough technical information in depth to be able to answer any and all inquiries. Early in my career in classification management I learned that the best way to survive with a limited technical background was to obtain information from qualified individuals in the various technical fields at Sandia -- to ask questions and more questions. Experience has shown that most technical people are glad to expound on their area of expertise if you ask the right questions in the right way. It doesn't pay to be bashful in asking questions. Especially, the trainee should learn that there are no "dumb" questions if he is honestly seeking information. The other side of the coin is that no one should try to bluff his way by trying to give the impression that he understands complicated technical problems. Laser technology, for example, is a new and extremely complex area which should be "off limits" to all but a very few well informed individuals. I recall very vividly working for a man that was proud of his "nickel knowledge" which he frequently tried to stretch to 2-bits or 4-bits worth. The number of times I was embarrassed for him when he tried to climb in off the limbs he had put himself on are more than I care to remember.

Once you have hired a candidate whom you feel will make a top flight classification analyst, how do you train him to optimize his capabilities, and therefore his worth to your organization? The first few months in the classification business are frustrating to many people because there are really no courses taught in classification management, and skill in decision making and problem solving is learned only by exposure and experience over a lengthy period. But, there are a good many things that the supervisor can do to make the break-in period both more palatable and more useful. I will list a few of the tools and the means of training a new classification analyst.

1. He should be given a broad knowledge of the basic classification policies and procedures of the AEC (DOD) including a working knowledge of the Atomic Energy Act or Executive Order(s).

2. He should have or acquire a general knowledge of all active programs at his installation with particular emphasis on the classified activities.

3. He should participate and meet with other organizations including in the case of the AEC, the Operations Office, and the headquarters people and the integrated contractors. He should attend working sessions on joint programs with various using services and visit contractors with classified subcontracts.

4. He should try to acquire a general familiarity with the many related security regulations such as security clearances, mail channels, and report/document marking. This is not to say that the classification analyst should presume to make himself an expert in security matters, but almost inevitably during my classification orientation session questions are raised which have security overtones. I have found that my classification organization is being drawn more and more into discussions relating to security markings as well as classification per se. Some recent examples of this have been the implementation of CNWDI, the revision of AEC Manual Chapter 2108 on weapon data reports, retention periods as they relate to the AEC's crash declassification program, and most recently, implementation of the Executive Order 11652 which will be reflected in revised AEC Manual Chapters 2105 and 3401.

5. He should be involved in face-to-face office discussions whenever possible, attend orientation and technical briefings, and as soon as possible be given small projects under the direction of a senior staff person.

6. He should learn to use available tools in the office -- guides, files, manuals, and outside agency information. He should be acquainted with the drawing files, the central technical files and their contents and the computer facilities. It is clear that an analyst with some programming skill will find that this ability is very useful. Data processing will undoubtedly receive greater emphasis in the future, e.g., the growing use of indices by the AEC.

7. He should meet members of the company classification committee if one exists. At Sandia, the Classification Board is made up of senior members of the technical staff (AEC designates them as Responsible Reviewers with individual areas of expertise) who are available for advice on classification matters.

8. He should attend and participate in all classification education sessions conducted by the Division including new staff briefings, new supervisor orientation, secretarial refreshers, and special topic presentations.

9. The weapon contractors of the AEC have a rather unique group known as the Weapon Contractors Classification Conference which includes all the AEC weapon contractors and meets three or four times a year. At these conferences we air mutual classification problems, listen to technical briefings, and tour the various AEC facilities. It is useful for people new in the profession to attend these meetings and listen to the sometimes heated discussions which result. It is also useful for new personnel to visit other contractors as individuals for a general orientation and philosophical discussion. We welcome visits of new classification people from other contractors or government offices.

I have already emphasized some of the personal attributes, skills, and education that I feel are necessary for success in classification management. Let me once again emphasize the importance of oral and written communication. All of you appreciate the fact that particularly in classification, any rules or guidance that can be misunderstood will be misunderstood. Therefore, it must be a primary aim of classification management that all written guidance must communicate the same ideas to all users. In essence, a guide is a means of formalizing and communicating judgements made for use by others.

During the years I have been associated with classification, I have had the pleasure of knowing people like Don Woodbridge, Union Carbide - Y-12, Les Redman and Bob Krohn of LASL, Dean Warner and Art Thomas of LLL, and many other fine gentlemen from the manufacturing and production agencies, the AEC, DASA, NASA, and the using services and their contractors. It is fair to say, at least as far as the AEC is concerned, that the most successful individuals have been those with a broad technical background and an outstanding ability to communicate. Surprisingly enough, the most frequent technical background is chemistry, and a number of the classification people possess advanced degrees in the subject.

In summary, I emphasize that classification and security can and must be treated as two separate functions, and the difference must be understood by management. Classification and security must be separated in the organizational structure. Further, the judgement that information (including material) requires protection should be made by a knowledgable classifier based on a competent technical evaluation, as well as the appropriate classification guidance. It is not clear that there can be specific rigid qualifications listed for a classification analyst, but certainly a broad educational background with emphasis in some technical area such as physics or chemistry is desirable, along with the capabilities to communicate effectively and exercise good judgement. Although no field of formal course study is available for classification managers, there are means that any organization can improvise to supply the necessary "on-the-job" training.

In closing, let me digress briefly to say that it is my hope that the new Executive Order, although imperfect, will be implemented as uniformly as possible by all agencies, with the result that there will be great improvement in classification and declassification policies and procedure. Frankly, I feel that in recent months the classification management function has been badly maligned by a few over-zealous critics. I believe that through our classification function and our society, we can demonstrate that we are real professionals.

PRESENTATION BY MR. ROBINSON

As the third speaker, one always has some trepidation - especially being the third man on such a prestigious totem pole as this; one can either face the situation that you're completely free to comment since what the two previous speakers have said or didn't say doesn't overlap what you plan; or, you may find that you've been preempted completely on

what you had intended to present. In this instance, fortunately, neither of these extremes is in fact the case.

For those of you who may not know about the Center for Naval Analyses, I should identify that it is one of those unusual organizations called a Federal Contract Research Center. If you have read about them, you are probably aware that recent Congressional activities are not necessarily designed to ensure their perpetuation! However, the kind of organization we are does bear on our approach to Classification Management matters.

Considering the comments of the two previous speakers, we might say that Bob's presentation was in the more general approach, as befits their supervisory responsibilities, and certainly Jim's critique, as would be expected, was tailored in a very specific fied. With our organization, I suppose one might characterize my approach as the generally-specific!

We are examining the field from the point of view: "whom does one get into it," and then "what does one do with them." An aspect affecting the first part is found in the new Executive Order 11652 and its implementing program. I should like to quote from the NSC implementing directive of 17 May since it presents for the first time in writing, to the best of my knowledge, a piece of information very useful to all of us. In Section 10, entitled "Departmental Implementation and Enforcement," "Action Program," I read:

> "Those departments listed in 2A and B of the Order shall assure that adequate personnel and funding are provided for the purpose of carrying out the order and directives thereunder."

This seems to be the very first time that an official statement has recognized that funding and people are quite important in having an effective classification program. I call it to your attention since you may not have had the opportunity to see it yet. It will be found also in the forthcoming DOD Instruction 5200.1.

Having noted a potential source of support for the program, let me proceed to outline some of the elements of whome we try to get and what do we do with them. First, what is our approach? We have taken the central office approach, as described by Bob, and I think it is important to establish a few of the facts as to why this was chosen. Bob characterized the CNM effort as a team effort principally, and in some ways the central office is not actually different from that. The application differs somewhat as I will cover.

As one examines a group such as ours, we find a very broad spectrum of things with which we must deal. They range from the quite technical, as Jim Marsh would describe, to essentially the abstract; covering most of the points in between. Such as examining new weapon technology for application or exchange with existing weapons - What could you do with weapon IB if you had it? Would it be more effective to have a few more of such and such or a few less? What will we do in Europe in 1985, and with what? What plan is the most effective for achieving a given end; and, again, with what?

To operate in such an environment one needs not only a foundation of plans, one needs also the capability to understand and examine the implications of technology. Recognizably, technology infringes on all of us, and it does have a bearing on some comments which I will make later concerning people.

We also must contend with a variety of guidance - let us recognize that a group operating on matters such as these gets classification guidance sometimes in rather weird ways - and attempt to use that "guidance" correctly.

There are two basic conditions in connection with guidance that exist either in government or industry. I think one can recognize that in industry, to address it primarily, either it is principally paper producing (with possibly an ancillary production in hardware or software) or it is essentially only producing hardware.

In the case of the DD 254 issued for hardware production, I think it generally can be said to contain fairly good and complete guidance. In the case of the DD 254 issued for the paper-producer, on the other hand, is rarely complete and that is perhaps an understatement.

In this connection, ours could be characterized as a fishing license or a hunting license - either one. We're authorized to seek any guidance we can get but guidance, as I commented, does come in some weird ways and some of it is very bad indeed.

An illustrative example of current bad guidance issuing under the new Executive Order shortly after it became effective: we were regaled with a message from a fleet commander who classified

as Secret, Exemption Category 3, the mere face that he wanted aid in planning an exercise. Exemption category 3, as you may remember, covers plans. His use of that category for this purpose wouldn't have seemed intended by the Executive Order. However, if someone writing in response to this meassage had to directly incorporate some of the text, the Secret classification would have to be used, when, in fact, it should have been Unclassified. If one were in a superior chain of command, one could change the classification, of course, and one could reclama an inappropriate classification. On the other hand, it's not always convenient to reclama to higher authority.

This kind of case is helped considerably by a "central office" approach where there can be a bit better capability to steer, guide, and select an appropriate course of action without having to perpetuate a bad classification--an individual author in a technical field may not be able to perceive how best to solve such a problem.

In this connection, what other kinds of things could we expect a central office to field? We must recognize, as Bob quite rightly observed and so did Jim, one cannot expect to have expertise in all fields. One, therefore, could really quite properly question whether a "central office" covering the spectrum I have described could be feasible. Such a question I shall attempt to cover as I then get to, "Whom does one select." For the moment I will discuss a bit further how one approaches the problem of coverage of many fields.

If you are examining a cloth, a large cloth, and you are concerned with classification matters within it, you in a central office can examine and focus your attention on differences in the pattern. Which parts of the pattern are changing and which continue. What are the pattern elements that cause something to be classified or not as the case may be? If you are the author, your point of view is necessarily much different. Irrespective of whether you are thinking in terms of budgets or technical matters, I suspect your primary concern is the logic of your arguments and points which you raise.

In this connection, EO 11652 does not eliminate judgment. Even yesterday, for example, when the new statements were being explained, George MacClain commented that one case - RD or FRD - was clearcut and therefore needed no further amplification. In some papers the question looms as to whether RD or FRD is in the paper. That judgment is not always so easy to make as falling off a log. Authors are prone to unthinkingly stick in phrases in the weirdest places, completely forgetting that a single phrase may indeed make the paper restricted data. In many instances this kind of thing has happened. In fact, papers we receive from places which ought to know better are sometimes similar and in our particular case, we have to protect our clients as well as our authors.

Then in a central office you are able to use more effectively, because you have concentrated on the pattern, official, formally released information. Note the emphasis on official because official release and publication are quite different matters as I'm sure all of us know. But, official releases can be used very effectively for quick changes in classifications. When the Secretary of Defense, who is the principal authority for classification if you are in the defense business, makes a determination that certain pieces of information are now to be released, they are then unclassified. A written guide in hand, covering such information, would not be able to be changed until much later, recognizing the time necessary for rewriting, printing, and distribution. I believe the impact here has often not been fully appreciated—authors in their respective fields could hardly be expected to keep up with this body of information. As an aside, it seems hard to imagine what Congress would do with any more information than it now has; despite this fact, one does hear still about denying information to Congress. Returning to our point, under these circumstances a central office, being able to focus attention, can help the authors in very practical ways. An additional element, not only are they not able to pay attention to many of these matters, but also they are prone to forget where they have learned some fact and whether it's classified. In our group we have been able to protect both the client and the author.

Granted that this may be true, still the question exists, how can it work? As we know, it must work or obviously it would not exist for very long. The question of what would you do if you wanted to create a central office would hinge importantly on people. That brings me to one of the two main points we are trying to address: Whom would you choose?

Our group, and those which are oriented towards military activities per se, seek a foundation in or an inclination toward military matters. It's important that an individual selected have this for a number of reasons; some evident and some not so evident. Questions arise where an understanding

of the background aids significantly in assessing whether certain information need be classified. Understanding the employment of tanks, for example, or, indeed, that they are employed in certain offensive operations; what one does with a destroyer; how one considers the use of nuclear weapons to achieve an effect; how one structures a force and some of the ramifications of its support; all may be standard and unclassified, or they may contain elements requiring classification. These are the kinds of things to which I refer in military operations. Therefore, understanding them is a great aid when establishing classifications in a spectrum of military operational matters.

Then what else? As I've already inferred, and as Bob and Jim so aptly emphasized, a technical foundation is certainly critical. You can hardly avoid having at least a working knowledge about what lasers are if you want to talk about them. You must understand enough about nuclear physics to recognize when you are encountering restricted data--which is current and which is not. You must be able to talk with electronics people about a function and have an understanding of what they are saying; I would say at least to the point of recognizing the differences being described either in technology, or fine timing, or the basis on which one expects to obtain some advantage in operations. Operational advantages, after all, are at the heart of the classification system.

Since this is so important, a technical foundation is necessary. It doesn't really matter much, however, in what. Whether the background is in physics, or chemistry, or any one of the others is not critical. This is so because whomever you find will not have complete knowledge of any given field much less all of them. Just as in military operations, it doesn't matter whether the foundation is Air Force, Navy, or Army; any one of these will do nicely since you will have to learn something about the others in any case.

Is there anything further to seek in the individual you are trying to select? Certainly common sense - the horse sense type - is equally necessary, as well brought out by Bob Green. A candidate who is too far out in theory will not necessarily be your best bet for getting a practical solution to, "what is this fact classified as?" So, the application of common sense and understanding, and the ability to communicate both orally and in writing certainly must be judged highly when considering the qualifications we seek in a person to be in classification - as such - or its management.

After one examines requirements, these can be considered primary elements; any one of which is substitutable for any other to some degree, but a blend of them is needed. That leads logically into the question of "What does one do with them?" How does one integrate them into an operating office?

It's reasonable to say that there cannot be a single program to train a classification analyst. There is a spectrum of programs because there is a spectrum of qualifications; some of which will exist in any given individual but no two individuals are likely to possess the same. After one has selected an individual it is very important and necessary to sit down and figure out, between the two of you as a matter of fact, what are the principal strengths, and then which are the principal weaknesses or fields in which he needs to do further study. Here we address a very important key to the program. Study is critical and an inescapable part of the program for anyone selected as a classification analyst. Such has been both inferred and stated by both Bob and Jim; I hope to have augmented the reasons and emphasized further just how important it is.

This is also a kind of limitation, in a real way, on the selection process. The person who is not oriented to study would not fit into this kind of classification management scheme - would not! Some simply do not like to study. They would not fit into an application of this kind irrespective of how bright they were. They could have technical expertise in a given field, for example, and be able to give expert advice in that field. Beyond that field, if they are disinclined to study, they would be likely to be "bad news" in your operating program.

After mutual examination of the case, you decide on an appropriate program. There must be a foundation in the technical areas. How does one get this? Basic texts in such fields as electromagnetics, for example, even to include the excellent Radiation Laboratory series of MIT from World War II vintage. Also from that period, the Physics of Sound in the Sea is excellent and very understandable for a background in acoustic phenomena in water. In the area of nuclear physics - particularly in the weapons applications area - Glasstone is a prime piece of guidance and very understandable if one does not dwell unduly on the technical parts. Other items should be selected appropriately to augment the foundation the individual has, including military-operations-type material.

How long does this go on? A newly arrived individual will have to study for at least two months before he begins then to think in terms of, "What does this mean in reference to classification?" Until such a point, his time is spent essentially in organized study; not that he or she is completely isolated, but the time is needed for study - it's critical for your program. Then he should begin to do some application of his study in an actual classification sense. He should begin examining some classified things - some well done and some poorly done. About concurrently in time, he should begin also in classifying things which you would consider relatively straightforward or easy. From that point forward the individual gradually does more complicated things under guidance, while continuing to study applicable fields.

The studying part, as Jim Marsh rightly comments, can be deadly dull; however, it is critical to success. Here encouragement and opportunities to see the applicability and the relationships which evolve should help make the program somewhat livlier. As I have mentioned inferentially, study is a continuing responsibility. In order to be reasonably up-to-date, approximately 30 per cent of the total time is required for study. This need not be programmed in a formal way but the need is very real. You who are responsible for the program have to ensure that you obtain things that bear on the operations of your respective groups - irrespective of whether your field is very narrow or quite broad. Technical things, guides, and the like must be sought out since there rarely is the case of being ensured that they will arrive in hand without effort on your part. Your selection of materials should be forward-looking to the best of your ability to learn about impending operations of your organization.

One further point regarding the capability of a "central office." It is, of course, true that no given individual at any given moment will have absolute answers for any question that arises in the Department of Defense. However, the central office is in a better position to keep track of where to go to find the answer to the question.

The points which I have tried to cover may be restated. Seek someone with a background appropriate to the field as best one can find. In our application, a technically oriented, militarily trained or inclined person is the best choice.

Then, mutually develop a training-study program tailored to cover the areas of information on which the individual needs further work.

Then break the individual in gradually into the classification of information continuing to study as points seem to require.

Lastly, provide for continuing study in order that your program remains up-to-date.

CONCLUDING REMARKS BY MR. BAGLEY

It is obvious from this discussion that the most urgent priorities should be (1) the establishment of job standards for Classification Management personnel; (2) the development of education and training programs at all levels; and (3) recruitment of new people, hopefully younger, into Classification Management.

As we well know, the only body of literature which exists in this field are the Classification Management Journals and Bulletins. The Journals are available through the Defense Documents Center. This is not enough, however. Steps should be taken to establish courses at the college and university level. Finally, the title of the new DoD Directive is "Information Security Regulation." This states that we are dealing with information and the security of information. Should we now consider readjusting our focus to bring into this field Information and Technical Information specialists? They too are concerned with information which may be released and information which must, for a time, be protected.

USER AGENCY SECURITY CLASSIFICATION MANAGEMENT AND PROGRAM SECURITY

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Classification management's greatest contribution to the U. S. security program must be more accurate, realistic, timely security classification guidance to all concerned.

I am concerned with the operation and responsibilities of a classification management office at the level of a user agency; how one is organized, its association with contractors and/or higher headquarters, how it operates and some of the problems that evolve. The greatest problem, I believe, is the indiscriminate classification direction that is issued by individuals to individuals. To be truly effective, classification guidance must be coordinated and controlled by a central office. The most important function of and necessity for a classification management office at a user agency is the development of classification guidance. The second most important function is that there must be one central place where all guidance funnels through. Classification decisions that are made between individuals leaves the rest of the world in the dark and, in many instances, causes the use of different classifications for the same information.

Initial classification determination---what needs protection and at what level---in my opinion is the most important factor in the security of all projects and programs. Classification of information generated during the life of the program is based on this original determination. The part security plays as to time, costs, etc., is based on the original classification decisions. These original classification determinations for a specific project or program should be developed by the System Program Office and the Classification Management Office at the user agency.

Following the principle that the final authority for classifying, regrading and declassifying of information must be subject to control from a central source, I believe this control must be in the classification management office. The System Program Office (SPO) is responsible to the Commander for the program including all aspects of security, but classification management is the Commander's representative to assure that the best possible classification decisions and actions are taken for all programs under his command. Higher headquarters provide guidelines; contractors performing on classified contracts recommend classifications but the contracting command (user agency), to be effective, must make the decisions as to what must be classified and what level of classification is necessary.

Classification management personnel must be involved from the start of a program to its end. A security classification guide for each program or project is prepared at the earliest time possible. This guide should be staffed, published and controlled by the classification management office. The security classification guide for a program is the most important security document pertaining to the program. All classification guidance and actions for a program has as its base the classification guide. Classification determinations can differ because of different interpretations of the guide and may require resolution, but at least all concerned are working from the same basic document. The DD Form 254 (Contract Security Classification Specification) is the contractual document furnishing classification guidance for a contract but to be really effective it must be based on a classification guide. No matter how we look at it, the security classification guide is the most important document pertaining to the security of the program. Therefore, it is mandatory that it be as accurate and timely as possible.

The organization of a classification management/program security office must vary with the mission of the Command. As an example, a research and development organization, by the nature of its mission, will be involved in more original classification actions than a command that monitors contracts. Regardless of the organization, if it is necessary to develop classification guidance, a classification management office is warranted. To efficiently perform their mission, the classification management office must have qualified personnel. Only with complete knowledge of the program can the classification specialist properly assist the program office and assure that the best possible classification decisions and guidance for the program are being made. The number of people varies with the mission, volume of work and expertise of the individual classification management specialist. Based on my experience, I would estimate one specialist for every five programs--programs such as the DSP; while a program such as the Minuteman requires almost all of one specialist's time. A program file is next to qualified personnel in importance. The file should contain basic documents that originated the program, a program development plan or technical development plan. The name is unimportant---the what, why, when, and how of the program is what is important.

The files must contain a record of all actions pertaining to classification and security of the program or project. Also, current operating instructions are necessary. Instructions that provide guidance to all concerned as to who does what and when. A current list of contracts in programs and at contractors is necessary. A sufficient number of qualified clerical personnel of course is essential. The organization must be such that programs and/or projects are assigned to specific specialists. The specialist must be closely associated with program personnel for his assigned programs and/or projects. The Chief of the office must have the confidence of and access to the Commander and other individuals with decision-making responsibilities. To be effective, he must be the individual the Commander depends upon for all classification decisions and development of adequate security procedures for all programs and/or projects. Specialists of the Classification Management Office must have a close working relationship with their counterparts at higher headquarters and at contractors. The goal is to have qualified people, complete and current program files, and operating procedures that result in the Classification Management Office being the focal point for all classification and program security actions.

In the concept that classification requirements and guidance must be funneled through and controlled by a central classification management office, the following actions are considered necessary during the life of a program:

a. Prepare and publish a classification guide for the program. Contractor classification personnel expand as applicable this guidance for their personnel. Much controversy exists over what a guide should contain, how much detail it should contain, etc. I submit to you that if a guide covered every item that everyone involved was interested in, it would not be published before the program was completed. All areas needing protection must be covered in a guide but too much detail negates its effectiveness. Room for interpretation as it applies to all concerned must be available.

b. Continuous review and evaluation of security requirements for a program; processing requirements for additional security guidance and bringing to a conclusion necessary changes. I consider it to be classification management's responsibility at the procuring agency to see that proper guidance is furnished and industry's to complain if it is not.

c. Determine necessity for special security requirements; assist in implementation of special requirements. A good example of special requirements is known as the Special Access Required program.

d. Continuous study of security requirements and changes necessary to maintain necessary security at a minimal cost. This, of course, is a continuing requirement of classification management at all levels. All sorts of conflicts, regrading requirements, changes, additions or deletions in security requirements arise during the life of a program and must be resolved. Classification management is not only the best way to control the security requirements of a program, but I believe the only workable way. Coordination between government and industry classification specialists is mandatory. Mutual respect and consideration of the problems faced in both areas result in better security for our programs.

Other agencies are responsible for monitoring, inspecting, and, in some instances, advising but the user agency and the contractor involved are the organizations spending the tax payers money and are responsible for the necessary classification and security.

It is emphasized that the initial security classification decision for a program is the most important security consideration pertaining to a program. Classification management must be responsible for developing the initial classification requirements of programs and projects; must provide a central control of all classification matters, all decisions, all guidance, all changes in classification, and the resolution of classification problems as they arise; must have qualified personnel; must be properly organized with the backing of the commander and/or management; probably most important---must be completely familiar with all aspects of programs supported. Classification is a command responsibility; classification management's job is to see that it is carried out in the most efficient way possible.

ESTABLISHING AND MANAGING A CLASSIFICATION MANAGEMENT PROGRAM - PANEL DISCUSSION

BY
S.K. DOTSON, CLASSIFICATION MANAGER, NAVAL WEAPONS CENTER, CHINA LAKE, CALIFORNIA

As we all know, the success of a Classification Management Office is dependent not only on knowledge of the established rules and regulations, but the ability of selling classification to the technical community.

I feel that I am constantly selling in order to make our technical community aware of the importance of proper classification and that my office is a place where help is available in problem solving, no matter how slight or great they may feel that problem might be.

I shall tell you of some of the duties assigned to my office and how we at the Naval Weapons Center attempt to achieve our goal! For instance, we are involved in:

(1) Preparation of proposed classification guidance which is forwarded to our sponsoring activity in Washington for review and approval,

(2) Preparation of all phases of the DD Form 254,

(3) Providing direction for proper classification, reclassification, and declassification, for our military and civilian team,

(4) Review of

(a) unclassified information proposed for public release as a member of the security review panel,

(b) papers, classified/unclassified to be presented at symposiums/seminars, and

(c) documentation requested by foreign firms/governments and make recommendations for release or denial. This is done after coordination with the cognizant technical/scientific personnel, and

(5) Maintaining constant review of special programs assigned to the Naval Weapons Center and insure that each recipient has been properly cleared and briefed prior to having access. Special briefings and debriefings are dependent upon the particular type of program.

In all cases, we must constantly sell the classification management of the projects we are working on. The Naval Weapons Center is engaged in a wide variety of activities ranging from climatic research programs to weapon system development and, as you know, people of Scientific, Technical and R & D Climate are particularly prone to losing sight of all but the end result of what they are involved in. It takes an office such as ours to more or less hold the reins and guide them where classification is concerned.

In order to accomplish these things, we must have direct liaison with our technical and scientific personnel. This is accomplished by the technique of direct interaction with them. During this interaction, the technical personnel may become so enthusiastic over their program and what we are trying to accomplish that they will actually draw me pictures of how a system mates together, as well as explain in terms so that the average person can comprehend the mission of that program. As an example - To prepare a proposed classification guide to be forwarded to our sponsoring activity for approval - the Naval Weapons Center Program Manager of a particular weapon system, myself, and primary individuals responsible for sub-components of that weapon system meet and discuss what they feel should be classified or declassified. My role is not to tell them what level of classification should be assigned to a particular item or piece of information but to give them the when, how and whys for classifying, as well as, ask what their justification is for proposing these recommendations. This usually leads us into various opinions and begins the analysis of what their goal is - what they are trying to protect - and why they feel it should be protected. This analysis provides the ultimate proposal and needed justifications - other than, "When in doubt - I classify" - or "It is easier to handle if it is unclassified."

This same approach is taken when dealing with future technical programs and when developing a 254 - however, in preparing the 254 - it is usually just the person cognizant of a particular proposed contract requirement and myself who meet and work out the classification requirements for that contract.

There are approximately 236 active/semi-active programs (437 active contracts stem from these) currently on going at the Naval Weapons Center which involve access to classified information. My office is currently staffed with three people: one typist, one assistant and myself. How is everything accomplished? It is difficult, but by assigning priorities everything gets done somehow, someway.

Success? How is it accomplished? By communication, coordination and the gaining of confidence between a classification manager and the technical and scientific community. Not the "pounding in" of security rules and regulations, but the establishment of rapport. This is how we operate with what, so far has proven to be successful at the Naval Weapons Center.

LUNCHEON TALK
CARL HAUSSMANN
ASSOCIATE DIRECTOR FOR PLANS & LASERS
LAWRENCE LIVERMORE LABORATORY

INTRODUCTION OF MR. HAUSSMANN

Carl has a varied and sundry educational background. He graduated from the Military Academy at West Point in 1946 with his B.S. degree in military engineering. He is also a graduate of the U.S. Naval Academy Postgraduate School at Annapolis, Maryland. He got his Master's degree at Pennsylvania State University. He has held various positions in the AEC community including nuclear supervisor at the Armed Forces Special Weapons Project, Sandia Base in New Mexico. He was a physicist team member in the Matterhorn Project at Princeton; as an army officer, he was invited to work at the Livermore Laboratory in weapons design in 1953-1955. After he resigned from the Army, he stayed at LLL and has served as physics group leader, division leader, and the Associate Director for Military Applications. Currently he is the Associate Director for Plans & Lasers at LLL: Mr. Carl Haussmann.

PRESENTATION BY MR. HAUSSMANN

Of course all of that was when I was working for a living! I am very pleased that I've been invited here. I was looking through your program brochure and noted your theme, "Classification, A National Responsibility," and particularly a subtheme by George McRoberts--that of "Participation." With regard to classification, or any other important issue, I think that's the real characteristic that identifies the "doers" in the country; participation.

In leafing through the program for the first day, I realized that you fully understood the needs of your position because you had an invocation by a Navy chaplain! And then I read further. I'm sorry to have missed Steve Lukasik's talk. After hearing a thumbnail sketch of what Steve covered it sounds to me like there is a need to breed classification officers with the usual large brains but with very small bodies, so that they can fit into the mainframes of computers as we enter the era Steve describes.

I also noted that Mr. Smith gave a discussion on the SALT Agreements. I can't think of a topic that (1) is more important, and (2) provides a better reason for disseminating more information. Any agreement between the United States and foreign countries certainly should be based on a broad understanding of the relative positions of the countries involved, the potential gains, and the potential problems. I know we are all following the Arms Agreements that have been arrived at, and those that may be, with great interest and hope. I think my one disappointment to date in regard to the agreements is that more information hasn't been made available to the public.

I noted also two very interesting topics scheduled for today: (1) The Training of Classification Personnel, and (2) Establishing and Managing the Program. Those are two very important topics but I'm going to address today two other pertinent issues that I have been involved in over the last several years. The first topic is on setting up policy. The second is on implementing the policy. I was our Laboratory's senior reviewer for quite a number of years, and in that role was one of the advisors to the AEC on classification policy. Classification policy formation is just another part of the whole jig-saw puzzle. It fits in nicely with the topics of training personnel, and managing the program which you are discussing. Recently, for the last year or so, through having been in charge of Livermore's Laser and Laser-Fusion programs, I've been on the receiving end of a certain amount of classification directives. Although I won't allude to those interactions in detail, some of the thoughts which I will express a little later on have obviously flowed from those relationships.

There is a great deal of interest in classification, or perhaps I should say declassification, right now. The DOD requested a blue ribbon panel, a year or two back, to give it declassification advice. To the extent that the DOD feels it is feasible, it is trying to order and reduce the classification associated with its programs. Congress is continuously interested in reducing the amount of material that is classified. Dr. Edward Teller, who is at the Livermore Laboratory and is also University of California Professor at Large, has been stumping the country for several years arguing for declassification. I don't know whether his talk to you stimulated him to do this, or whether it was just a continuing mission of his to be doing this stumping. Edward sometimes tends to overstatement to make his points. In this instance, he states that things shouldn't be classified unless they are sensitive operationally-related issues. I think if you talk to him in detail, Edward might back off slightly from that position.

I don't know whether times have really changed or just my point of view, but when I was a senior reviewer and advising on policy, things

were going very smoothly. Now that I am receiving those policy directives, things are a little more tedious.

I'm going to deal a little bit with my recent experiences. While these are specifics, they're generalized specifics. If you recognize some of the actors involved, so be it, but they won't be named. (This approach reminds me of our laser program's attempt to improve our image relative to bringing in minorities. My program has been looking for a one-eyed Jewish Negro female Ph.D. laser expert. Although she might remain nameless, it's a small group so sometimes you can surmise the identity.)

One of the things that I have run into recently is there seems to be a connection made between classification and what I might call, sensitivity. I don't think it's a good arrangement. I asked my bosees in Washington if they could define these sensitivity issues and they gave me a good, but useless, definition. It is a retrospective and retroactive definition, that is, when the Washington management gets clobbered because of something we've said, then that's a sensitive issue! There have been some programs recently which, in fact or seemingly, have had paths and goals which crossed or clashed. On such occasions it is easy for some people to believe that their favorite ox is being gored. Such issues aren't classification issues, but they are real issues. Unfortunately, in the weapons side of the AEC, these issues are a little bit foreign to us. Yet with some of the programs we're undertaking now, we're being introduced to them. We haven't yet learned to cope with these sensitivities very well. I think in the long term that sensitivity issues should be handled by the programmatic side of the house, and the classification issues should continue to be handled by the classification side. Up to the present there hasn't been this separation, and that is causing some problems.

One of the problems with AEC classification review is, and I don't know how typical the AEC is, that in order to have a good enunciation of policy it is necessary to get the attention of senior people within that organization. These leaders must spend some time thinking about the classification policy, or review the thoughts of the lower echelons who have ordered the options for them. That's a very difficult, albeit necessary, request. Senior personnel are very very busy, and they would rather put any spare time on things of programmatic interest. The senior people tend to view classification as an administrative issue, and it's difficult to get their time. Because of this situation, one of the things that typically happens is that the next echelon down must do rather more than they should in the way of determining classification policy. There are some additional things that flow from this arrangement.

At this next lower echelon, when they attempt to set policy they get pushed and pulled by various interests, either above, at the side or below them in the scheme of things. In the AEC you might have a Commissioner who is very conservative, and who would say a great many things are classified. We may have a Commissioner sitting next to him who feels that very little should be classified, because if that were the situation we'd get even greater participation from industry. Since by default people now are trying to set policy at too low an echelon, they are vulnerable to these pressures. They soon turn a little bit schizophrenic. There are real implementation problems created for the working echelons, where one day it's one way and the next day it's another. This sort of life gets a little tedious.

There are some other important issues, I don't know whether they are policy or procedural. This second echelon has to, by default or intent, settle on such things as, do you have a centralized policy? Relatively speaking, the AEC not only has a centralized policy but a stronger centralization of its classification implementation procedures than is the DOD situation.

This second echelon has still another decision to make. Once you and your bosses have made sure the policy is correct the classification manuals must be written. You can request lower echelon help in writing up the classification manuals, or you can concentrate on doing the classification manual within Headquarters.

My experience within the AEC is that it's a very good idea to ask the field officers to give you detailed advice on how to write the manual that will implement the established policy. The reason is that those field officers over the years have learned what is necessary in a manual in order to make it usable on a day-to-day basis. I've seen classification guides written both ways and when all is said and done, it is extremely important to get the field officers feelings on the subject. They have the vast wealth of experience.

Since I've touched on the field classification personnel, let me say that I have nothing but admiration for the people I've run into, at least within the AEC mode of operations. The

number of regulations and the number of pieces of background information, both programmatic and guidance, that must be remembered are very large. Consider someone who runs a program like I do. I know generally what the guidance is, but I cannot remember all of the details. It is just grand to have people who can keep us straight on these details. Quite often, not only do classification people keep us squared away on the details, but they are able to point out other things. First, they note any trouble they're having, and we act when we can as intermediaries to address those problems, if possible. Secondly, in chatting with our classification representatives (and others), sometimes it becomes apparent that some things have gotten a little out of date and the guidance or the policy needs changing.

Incidentally, when it comes to a change of policy, I guess over the years I have grown to favor block changes rather than piece by piece changes.

Let me review again some of the difficulties that I, a representative program leader see. There's the desire to have more senior level thought on setting policy. If the most senior level would set the policy, that would help avoid the next lower echelon from being pushed and pulled by conflicting pressures. With time, I'm sure the AEC will square away its hard to handle "sensitivity" issues, hopefully sooner rather than later. Another thing that makes policy setting a task to be revisited with some frequency is the observation that sometimes our policy, or France's policy, or the Soviet Union's policy are quite different. After they differ enough, you had better acknowledge that some things are no longer classified. Maybe there ought to be an international association like this one (suggested in jest!).

With regard to the sensitivity issues I mentioned, they are real issues. One of the things we run across is that we have something like 5,000 people at Livermore. There's one director and about ten associate directors. Many of the 5,000 employees seem to have a gift for gab and just look for (unclassified) opportunities to exercise it. Seemingly also, whenever they say something that doesn't set too well, it is requoted as "Laboratory Policy." What is worse, it's not only quoted but frequently misquoted, the worst inferences of what was said are focused on. As the head of a, for the most part, unclassified program I've been in the midst of that kind of situation. It takes very mature people in Washington to calm their more reactive people down and to remember that it is only an individual who is speaking. LLL's "popular lecturers" usually say that they are individuals speaking and not the Laboratory speaking. But if you're from LLL you quote policy whenever you talk, according to some people.

Another thing in the sensitivity area that we've run into recently in the weapons side of our house--I'm sure its old hat to you people--has to do with legal issue. For example, much of my current program is unclassified. We therefore have to go out of our way to submit patent applications, and submit them early. Also, the AEC in Washington is dealing with some companies which provide them with company confidential information. Under such circumstances you run into a very interesting dilemma that I don't know the solution to. If the AEC passes the information on, perhaps it is compromised. If they don't pass it on, maybe they are trying to make a judgment in Washington while being cut off from the technical experts in the field. To me, that's an unsolved dilemma. Perhaps some of you that have had more experience in this sort of thing could give us some advice.

The problems I have mentioned have shown up from time to time in various programs. I want to talk about a program, which shall remain nameless, that seems to have them all. Some unfortunate special administrative procedures have been instigated because of this. I think this is a transient situation; I certainly hope it is. Normally, in the AEC policy and detailed guides are sent out for us to follow in the field, and within the framework of those guides, most of the actions can be handled in the field. Well, in this one program the classification situation is in transition and the sensitivity issues are more intense than the AEC Washington is used to, at least on the weapons side of the house. So the interim procedure in effect right now is that not only do we go through the normal procedures which we've always had, but also much more. Additional echelons of intensive document review at the Laboratory have been ordered by the AEC. For instance, the program head involved must read, and comment on, every document generated--for both classification and sensitivity. Advisory memoranda commenting on the classification and sensitivity aspects of each document are required. Then all of this is sent to Washington. A full set of reviews and decisions are then made in Washington. In addition, all talks that might hit the various media must be written in advance and it's been suggested strongly that they be read verbatum.

Incidentally, you know the propensity of people to wait until the last minute. Physicists are among the worst offenders. So all in all this procedure is sort of a tough one to have to implement. One of the unfortunate aspects of all of this is that at least two-thirds of the documents that have gone through this rather complex procedure are detailed technical physics papers with no sensitivity and with no real classification issues. This example is, again, very close to being a worse case because of its nature.

Now, other than all of the extra work involved, one of the reasons you want to square those types of situations away as rapidly as possible is that it creates a credibility gap. Perhaps this typified by one of my people who just came back from visiting a conference in the Soviet Union. He had been through an awful lot of this sort of thing in preparation for his trip. His introductory phrase to me, "Now that I'm back in this erstwhile free country . . . "

I have reviewed some of the things that would be desirable. Perhaps some of these just pertain to AEC business, some are common between the AEC and DOD, and some the DOD probably is doing already. In summation: it is very important to attain better policy definition, and from the highest levels. Senior people, whether in the AEC or the DOD, should spend just a little more of their time on classification policy. It would be very helpful.

With regard to the implementation of classification policy, my conclusion over the years is that this should be as decentralized as possible. My observations are that the DOD is more decentralized than AEC. Certainly the AEC has not gone far enough.

One of the things that I have learned over the last year is that I have a much greater appreciation for the merit of being consistent. When I was advising on policy, sometimes I fretted a little bit about not making changes sooner. Now that I'm on the receiving end, what I notice is that inconsistency, whether in allowing exceptions under the guidance or in interpretation of the guidance, is the major cause for friction between the field and the people in Washington.

While this talk portrays, perhaps, that "a foolish consistency is the hobgoblin of little minds," I think you could reverse that saying and note that a reasoned inconsistency is also the hobgoblin of little minds, and is the creator of a great deal of trouble!!

THE AEC DECLASSIFICATION PROGRAM

BY
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Introduction

It is a pleasure to be here. I have attended three previous seminars, but this is my first time up here on the firing line. My topic is "The AEC Declassification Program". I hope that this report on the things the Atomic Energy Commission and its contractors are doing to reduce the huge inventory of classified documents in our files and vaults will be of interest to you and perhaps generate some ideas which may speed up the general declassification program. I think we are all aware of the pressure from both the public and the administration to get on with the job. I will mention Executive Order 11652, Classification and Declassification of National Security Information and Material, only to state that information classified by law such as AEC Restricted Data is exempt from the provisions of the order. Classification in the AEC complex is based on law. The same law that defines "Restricted Data" and makes it classified also provides means for its declassification by the AEC. When the Commission, the five Commissioners, decides that certain classified information no longer requires protection in the interest of national security, it has the authority to declassify that information. The Atomic Energy Act of 1954 not only provides the means for declassifying information classified as Restricted Data, but requires that the Commission frequently review its files and its classification rules and that it declassify information no longer requiring protection. Under the law, the Commission has the sole authority and responsibility to declassify Restricted Data. Where the DoD has interest, such as weapons use, military or naval reactor development, air craft nuclear propulsion, etc., the declassification decisions are made only with concurrence of the Department of Defense.

There are three basic requirements for conducting a declassification program. They are:

1. Specific and detailed classification guidance.
2. Qualified and authorized reviewers to apply the guidance.
3. A notification system, including manpower to assure that all copies of a declassified document are marked.

Classification Guidance

Most of you are familiar with the DD 254 form as a vehicle for providing classification guidance. The guidance on form DD 254 is normally provided by a program or project manager of a user agency and is based on his determination of what information involved in his program or project should be safeguarded in the interest of national security. The basic policies and criteria on which he makes his determinations are stated in DoD Instruction 5210.47, "Security Classification of Official Information," and in implementations of that instruction. Downgrading and declassification of Defense Information based on an event or on a time schedule may be determined at the time the initial classification is made. The person making the initial classification determination on the DD-254 is normally also responsible for determining how long the information shall remain classified. Some revisions in practice will result from E.O. 11652.

In the AEC, the system is quite different. The Atomic Act of 1954 defined "Restricted Data" as "all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear materials or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act of 1954." The Atomic Energy Act also provided for special protection of Restricted Data. Thus, all information falling under the definition of Restricted Data is born classified and will remain so until a specific act of the Commission declassifies it and removes it from the Restricted Data category. It is exempted from automatic downgrading and declassification.

This brings us to the AEC system of classification guides. First and most important are the Policy Guides. These are prepared by the AEC Division of Classification following consultations with many specialists and authorities and after much deliberation and considered judgment. These guides must be approved by the Atomic Energy Commission and constitute the basic classification policy. They describe in a general way the information which the Commission has declassified and that which must remain classified. In approving the Policy Guides, the Commission makes the statutory determination that is required to declassify Restricted Data.

Using the approved Policy Guides as bases, the Division of Classification issues

several of a second type of guide called Program Classification Guides. These guides provide specific detailed guidance for each of the major technical or production programs or projects, e.g. SNAP devices, nuclear propulsion, military reactors, source and feed material, etc. These guides implement the Policy Guides. They do not require the approval of the Commission.

The third type is called a Local Classification Guide. These are usually issued and controlled by the Classification Officer at a Field Location or AEC Operations Office, although they may be issued by AEC Contractors. The guidance in Local Guides is very detailed and specific for the activities at a given site and is based on the guidance provided by one or more Program Guides. Local Classification Guides must be approved by the Director of the AEC Division of Classification.

So, in the AEC classification guidance system, we have three levels of guidance: general Policy Guides, detailed Program Guides, and more detailed Local Guides. The guidance in them is all derived from law or direct action by the Commission and the guides are all issued or approved by one authority, the Director of the AEC Division of Classification. The five man commission sets the policy--the Director of the DoC implements it.

Applying the Guidance for Declassification

Now that we have our guidance system installed, how do we apply it for declassifying documents? The AEC Manual 3401 Appendix describes the authority to declassify documents and materials as follows: 1. the Director, Division of Classification, Headquarters and those to whom he may delegate authority are authorized to declassify documents in accordance with Commission approved policies and guides. 2. Directors of Headquarters Divisions and Offices, Field Office Managers and those whom they may designate are authorized to declassify documents and materials generated under the supervision of the particular Division or Office Director or Field Office Manager if the documents disclose only:

a. information falling wholly within the unclassified topics of the Guide to Unclassified Fields of Research.
b. information identified as unclassified in an approved Program Guide or Local Guide.
c. information specifically identified as declassified by the Director of Division of Classification, Headquarters.
d. information identical with that contained in previously declassified documents.
e. purely administrative information revealing no technical or programmatic data.

3. When a document is not declassifiable by local authority as listed above, it may be referred to the Division of Classification, Headquarters. What this boils down to then is that only the Director, DoC and those to whom he delegates authority may declassify documents, and then only according to approved classification guide topics. Only the Commission, itself, can declassify information. Those delegated declassification authority can declassify documents only if they contain information determined to be unclassified according to approved guides.

Role of C. O. D.

Declassification efforts of principal AEC contractors are normally directed by a Coordinating Organization Director (C.O.D.). This is a key official appointed by the AEC Assistant General Manager for Administration upon the recommendation of the Director DoC. The C.O.D. is responsible for initiating classification reviews of documents originating within his organization and for preparation of Local Guides, if needed. He maintains direct liaison with the Director, DoC in developing new classification guidance topics relating to his contractor's activities. He is not authorized by virtue of his position as C.O.D. to declassify documents. He does make the initial review and recommends declassification of specific documents.

In addition to the declassification effort at the local level, the AEC has a continuing declassification review program. As additional areas of information are removed from the Restricted Data category by the Commission, new guide topics are developed to define the action. Reviews of document files are then conducted by declassification review teams who apply the new topics in declassifying documents. The teams are made up primarily of AEC Classification Officers, Responsible Reviewers, and Analysts but may also include AEC contractor classification personnel who are familiar with AEC programs. Yours truly participated in a team review of AEC files at Oak Ridge, Tennessee, where the AEC Technical Information Center and several other AEC and AEC contractor offices are located. During this review which began in September 1971, a million documents were reviewed in an eight-month period. Over 600,000 of these were declassified. This

review was on a Go, No-Go basis, i.e. there was no downgrading, no declassification with deletions, and no evaluation for retention. The documents were either declassified as they were or no action was taken. The review team of about 20 men was supervised by two to five members of the DoC staff. Several complete sets of Program Classification Guides and several Local Guides were provided for the reviewers use. The AEC DoC staff members were available for assistance and counseling and made final decisions on declassification where questions arose on the application of the classification guides. The review at Oak Ridge was the first phase of a comprehensive review of the 7.5 million classified documents in AEC controlled files. Reviews are currently being held at the Albuquerque, N. M. offices. It will probably take another two years to complete the AEC-wide review. This will take care of the backlog, then we will proceed from there. Review of classified information will continue after that time. Much document declassification is performed at the local level by AEC Field or Operations Office Classification Officers and Analysts using approved classification guide topics.

AEC Manual Chapter 3402 provides that authority may be granted by Field or Operations Office Managers to AEC contractors to designate qualified personnel approved by that office to declassify documents generated under the supervision of that contractor or for which the contractor has retained custodial or record responsibility. Under recent AEC application of the provision, this authority is being granted to additional AEC contractors. It should help speed up the declassification program.

Notification and Marking

If all classified documents were single copy items, our task would end with the marking of each document as it is declassified. However, there are normally multiple copies and distribution may be rather extensive. Because classified documents generated by AEC and its contractors are given alpha-numeric identification numbers (document numbers) when issued, the copies wherever they may be, can be identified and declassification markings applied by the custodian. It is the responsibility of the person who declassifies a document to assure that custodians of all copies and the AEC Declassification Branch are promptly notified. In addition to direct notification to document recipients, the Declassification Branch reports all declassification action to the Technical Information Center (TIC), formerly DTIE, at Oak Ridge. The TIC distributes a bi-monthly report of classified report accessions to all AEC and AEC contractor document transfer- accountability stations. Included in this report is a listing of all declassification actions reported to TIC. The transfer-accountability stations use this listing as their authority to declassify, i.e. mark copies of the declassified documents in their accountability system. Following a comprehensive team review, such as the one at Oak Ridge, a special report listing all declassification action is distributed to all AEC and AEC contractor transfer-accountability stations. Distributing such a listing for over 1,000,000 documents constitutes a sizable reporting job in itself. This is part of the cost of declassifying documents. Perhaps this is a good time to mention another important aspect of document review--evaluation of the document, itself. Evaluation is primarily a records management responsibility, but it also has a bearing on the declassification program. We should not have to go to the trouble and expense of declassifying a document if it is of marginal value and might just as well be destroyed as classified scrap. It would seem that the best approach would be a review for retention value or current worth of documents prior to any consideration for declassification review.

Summary

In summary, review of all classified documents for declassification is an enormous undertaking in the AEC and DoD complexes. The systems are different, but the needs and the problems are similar. The most important need is timely, precise, authoritative classification guidance to be applied by reviewers. In the AEC complex guidance is controlled by a single authority, the Atomic Energy Commission, through its Division of Classification. The second need is qualified reviewers who have authority to declassify documents. If adequate, detailed classification guidance is provided, a reviewer need not be an expert on the subject with which a document deals to declassify it. He must be technically oriented and knowledgeable in the security classification field, but needs only a general knowledge of the subject matter of a document to review it for declassification. The third requirement for a declassification program is a system for notification and marking and the manpower to implement it. This last need may be a major problem with the current budget squeeze and the order of priorities, but it is essential to completion of the job.

Classification is a national responsibility. Declassification appears to be the order

of the day. The AEC and its contractors have begun a concentrated program to carry out the order. Our job is to complete the task. And that Gentlemen (and Ladies) is the AEC Declassification Program.

PRESS PANEL

Mr. Ralph SMITH, Moderator, Public Affairs Advisor, U.S. Arms Control and Disarmament Agency, Washington, D.C.

Mr. Abraham MELLINKOFF, Spreaker, City Editor, San Francisco Chronicle, San Francisco, Calif.

Mr. Kip COOPER, Speaker, San Diego Union, San Diego, Calif.

Mr. Louis FLEMING, Speaker, Chief Editorial Writer, Los Angeles Times, Los Angeles, Calif.

Mr. Donald TOLLEFFSON, Speaker, Editor, Stanford Daily, Stanford University, Palo Alto, Calif.

Mr. Richard DURHAM, Speaker, Classification Advisor, U.S. Arms Control and Disarmament Agency, Washington, D.C.

Mr. Smith: In the course of the argument which took place on the television film we saw yesterday, it seemed to be assumed by both sides that there could be a thoroughly satisfactory classification system. One of the sides kept referring, in this connection, to "an independent federal commision." The concept of a more or less ideal system really wasn't disputed by either side, and so I think this raises a double question: First of all, could there be such a generally accepted and satisfactory classification system--so that the press would be willing to accept the principal of a newspaper's being prosecuted for violating classification? That's the first part of the question. Secondly, does the new system of classification that we have under the new Executive Order constitute such a system?

Now in this connection, I want to ask our distinguished colleague Dick Durham if he would give a very brief resume of what is different now, under the new system of classification emanating from the Executive Order--what is different now from what existed before. Perhaps he will do that now for the benefit of the panelists in particular.

Mr. Durham. Mr. Donald Garrett's excellent briefing on the first day has made us experts on the new Executive Order 11652. For the benefit of the panel, utopia isn't here yet; however, this audience is all looking forward to tomorrow when utopia will arrive and the scales between over classification and underclassification will come into balance. With the establishment of an inner departmental committee under the National Security Council as a watch dog committee to check on the Executive Branch agencies, we have top level focus on the problem. Also, a redefining and a slight narrowing of what is top secret, secret and confidential has been accomplished in the new Order. I would hope that, with this new system, you gentlemen of the fourth estate will see much more information made readily available. Again, I would be kidding myself to say that utopia is here. I think only time is going to tell how well those of us in the audience, and myself, exercise our judgments under this new system.

Mr Smith. Perhaps a member of the panel could give us an opinion about this new system that we have as a result of the Executive Order. Does it give you the kind of confidence that you would want in contemplating the principal that the press should be held responsible and prosecuted for a violation of classification? Do I have any volunteers on this subject?

Mr. Fleming. I'd be glad to seize the opportunity to say that it doesn't take Vice President Agnew to project the diversity within the press in perceiving what is truth and what is the national interest. It is inconceivable to me that a precise formula could ever be worked out so exactly that all the press would agree that anyone who violated it would not be acting in the public interest. I would like to go a step beyond the evident disagreement within the press itself on an acceptable standard as what should and should not be printed, and to argue that I don't think the United States government would ever want to see the day come when the press would be punished in the court for the publication of secret documents since most of the secret material given to the press is given deliberately and on orders of the highest authorities of government for a particular purpose.

Mr. Smith. Mr. Mellinkoff, do you have any thoughts on that subject?

Mr. Mellinkoff. I think anyone who violates any law should be prosecuted. I don't believe in prior censorship of the press, but if we violate a law, a security law or any other law--speed limit, the income tax, failure to have an elevator in order, anything else--the violation should be weighed by the judicial and administrative process.

Mr. Smith. Mr. Cooper, do you have any thoughts on this subject?

Mr. Cooper. I have some thoughts on it. In the first place, as Military Editor of the San Diego Union, I become privy to a lot of information that is classified. I don't print this in all instances. In some instances I do. I think that so far as prosecuting the press is concerned, it is not the press that has violated a law. The duty of the press is to publish news.

If you have a home and you want to guard it against burglars, then that is your responsibility. That's the responsibility of the government. If you have somebody who leaves the window open and if somebody in the house hands something out to you, you haven't stolen anything, it was given to you, so I don't see that the press has committed a crime by publishing something that is given to you anymore than any other information you get from any other source.

Major Richa[illegible]vens (Space and Missile Systems Organization). For those of you who feel the press should be prosecuted for publishing classified information, the First Amendment applies to not only the press of course, but to freedom of speech. Now, if I were not a government employer, or otherwise under contract to the government, and I obtained classified information, I might take that information and mimeograph it and pass it out to people, stand on the street corner and shout it to people, or walk down to any individual or any nationality and pass it on. Informing the nation is not the sole obligation of the press.

How would you support my position as a private citizen if you say that I would not be prosecuted in that case?

Mr. Ralph Smith. Mr. Tolleffson, do you have an opinion? Would you like to handle that one?

Mr. Tolleffson. The way I understand the Espionage Act in this case, if a private citizen were made privy to classified information that truly did effect the national security--you see this is the crucial issue when we talk about classification--he could be prosecuted for committing an act of espionage. I think that's the crucial point. If he goes out and someone leaks to him information that really is going to effect our national security, I think there are ways to prosecute it and not under the First Amendment as you're looking at it as Freedom of the Press.

Major Givens. My intent is to inform the public rather than to pass it to a foreign intelligence organization.

Mr. Tolleffson. It truly does effect the national security and again I focus on that issue. When you come out, whether it's a newspaper or a person who does this, they should be prosecuted for violating espionage, because if it really is going to jeopardize this country, I don't think it should be done. I think anyone who does something in that area should be prosecuted--should answer for it--because I think it's a criminal act.

I think the important part is the one section that talks about: In no case shall any information be classified in order to conceal inefficiency or administrative error, to prevent embarrassment to a person or department, to restrain competition or independent initiative or for any reason which does not require protection in the interest of national security.

I think that the major issue that the press deals with here is, "What truly does effect national security?" In that program--and I hope that most of you here did see "The Advocates"--it was clear that there was a big disagreement over whether or not the press can have knowledge of what really does affect national security, and the whole Pentagon Paper issue. I'm sure someone is going to raise sooner or later, so I'll do so right now: it was the judgment of the Jurists of both the New York Times and Washington Post and all the other papers that followed it, that this information was being classified and continued to be classified mainly because of this embarrassment thing that is mentioned in this classification order. The former administrations were afraid that if this information was brought out into the open it would make them look stupid and this is namely why the information continued to be classified, and not that it had an imminent worth to national security.

When the Pentagon Papers were first released in the New York Times that Sunday last June, there was a lot of action, to say the least, in Washington, in both the Justice and Defense Departments and John Mitchell and Melvin Laird were running around trying to figure out what should be done. According to a number of reports--the credibility of which I think has been established--Bob Doyle, who is one of Nixon's top advisors and has a lot to do with Republican strategy, proposed, as did a number of other

Republican advisors, that the publication of these papers be allowed because it would embarrass Democratic Administrations primarily. But it was thought won't, in the future, some Democratic Administration do the same to us and make us look stupid? So I think this is the whole issue which the press has a big interest in--seeing that classification is done truly, almost solely, on the basis of national security and not just to protect politicians, military people, or whoever, from getting egg on their faces from a mistake they've made.

Question from Audience. Would the gentlemen agree to that on the panel--that the press should stand the risk of being prosecuted? And I wonder what the situation would be to the private citizen playing the same role.

Mr. Durham. I think the press has accepted this view ever since Peter Zanger. This is nothing new.

Mr. Fleming. The only point I would make is that if it's regarded as the ultimate standard that any violation of the classification procedure is automatically a case for the courts, this would be unacceptable on both sides, both for the press and the government.

But clearly, there's no exception of the press from any legislative remedy to protecting the national security.

Mr. Mellinkoff. I didn't say we should be tried. I said we should be subjected to the administrative, judicial process. They may decide that it's not very good for the country to try and put into jail 1,787 editors in the country who approved a publication of parts of the Pentagon Papers, but I do think that every newspaper, if they've violated a law, should be subject to the process. Whether they should actually go to court or not is another question entirely.

Mr. Smith. If these gentlemen on the panel should decide to write anything about the morning's procedings, they do not plan to quote anybody by name, so I hope that nobody will feel inhibited about what he says.

Mr. Robert D. Donovan (United Technology Center). I would like to address this to the gentlemen members of the panel up there. In the last few days there has been a story published by Ramparts magazine by a Mr. Beck which makes certain allegations which may not be true. The point is, had this gentleman come to you, what would your approach have been to that particular story? Would you have printed it as Ramparts did?

Mr. Mellinkoff. I wouldn't have published it in the way Ramparts did. I would have first checked--which the papers did when they finally got around to it--to see what the situation actually was. I had that written down to speak about. When the story broke, we called the Air Force in Washington to find out if the man actually ever served with the Air Force and we were told that was classified. However, cooler heads prevailed and we got a call back which said, "Yes, indeed he had served with the Air Force. He served with the Air Force in Turkey," where he said he had. You listen to people and you try to see if there's any credibility at all to the story and then only do you publish it--not the way Ramparts did it.

Mr. Cooper. The San Diego Union would not publish anything that could not be substantiated. When I was speaking of classification a minute ago, I was thinking of a particular instance in which, as a member of the Navy League, I was invited out to a Research Community in San Diego to visit the base, and I was shown a movie on something that was very interesting to me from a military point of view, and when I went back the next day to ask the Public Affairs Officer for an interview with the scientist involved, I was told it was classified, so then I went to Washington and I was told it was classified. Then I went to the White House and I was told that if I had seen it, then it obviously couldn't be classified! If I had seen it then it couldn't be classified because I didn't have the security clearance. Well, to make a long story short, it all boiled down to this: I got the story that the project had been unofficially "classified" when the scientist was working on it, because he wanted to retain publication rights for a professional journal. This is the type of classification I think the journalist has the right to violate.

Major Givens. Perhaps I misunderstood you. I think I heard you say that if you were passed information by someone out the window, you thought you had the right to publish this information without any prosecution for doing so?

Mr. Cooper. If I could substantiate it.

Major Givens. Right, even though it was classified?

Mr. Cooper. I don't take everything at face value.

Major Givens. Well, the reason I say this, you say you shouldn't be prosecuted; however, I want to say,

every day you read in the paper where someone who has received stolen goods is being prosecuted. Evidently the material--though it may not be considered stolen--if taken out of a document control center, or out of a set of files, mimeographed, or in its original form is released to someone else, this is stolen copy.

Mr. Cooper. I think that you misunderstood me. What I said was, if you have property that you want to protect, it's your responsibility to protect that. It's not my responsibility to protect it. Now in my case, and on my newspaper, we do protect classified matter; but I think that the burden of the protection for the property you have belongs to you and not to me, not to the receiver.

(Unknown). It's a very interesting point that the last question was made by Chief Justice Berger in the Pentagon Papers. He felt that it could only be construed as "hot goods" in effect and should have been returned to the source. It's interesting that in that particular case that in the 6 to 3 decision, the court really split 9 ways. I think Mr. Berger alone cited that particular point only. Two of the Justices saw this whole affair as the First Amendment, pure and simple, and there were really 9 different opinions that strayed all over the map, which is a reflection of how unclear the highest Judicial thinking is on this problem, let alone ours.

(Unknown). I'm a little curious listening to all this. You're all talking about the government. I wonder what my company would do if the same thing happened to some proprietary information--if such material had been released or stolen by one of my employees and been given to a publisher.

(Unknown). When I talk about security, I'm not talking about the security of your company or of my company. I feel that security, as we're discussing here, only refers to the security of the Country. Now if we study this document that somebody slipped us and thought it hurt the Country, I'd return it to you. If I didn't think so, I would feel free to use it and take the legal consequences of doing it.

(Unknown). I would ask the question. You would accept the legal consequences?

Mr. Smith. What criteria do you use in determining whether something is newsworthy?

Mr. Mellinkoff. It's obvious from the different media and independent journalists within any particular branch that every editor sees it in a highly subjective and very different way. Generally, I think most media--and specking now for newspapers--try to sell their products. On the one hand part of that judgment is popularity or general interest or what we assume to be that general interest. I think the difference between the mediocrity and the superiority in the press then is the degree to which, not only that judgment, but a more sophisticated judgment is applied to the news. The aim is to try to grasp what may be of educational or historical or imaginative value beyond just simply what is popular or sensational or titilating for the day. But we have to ask: does it get into a highly subjective area? In that area, I think, each of us would require a half hour to outline our own judgment.

Mr. Tolleffson. I think one thing I would like to raise here is about what defines "news worthiness." I think it's important to look at, as there are very few journalists who can make by themselves a single determination as to what is news. I know that my paper, a lowly, humble student newspaper, tries to follow what I think most good newspapers do--the whole concept of collective news judgment. Most good newspapers--the Los Angeles Times of course, the Saint Louis Post Dispatch, whatever, drew many collective judgments. So it isn't like one person with an incredible bias and incredibly irresponsible who is going to make a judgment in his own warped mind about what may affect the national security. I hope that you people would put a little more trust in the collective judgments of the experienced journalists who work on most newspapers.

Jackie Anderson is the exception, and it's going to be a sore spot but here is an individual who pretty much has free reign over what he can do, and obviously he's not answerable to anyone but good ole Jack Anderson. A lot of people in here would disagree with some of his judgments about what the national security is, but let's remember that there are very few people with the freedom and the power of Jack Anderson. The major amount--almost all the decisions in journalism are collective judgments of people who have a lot of expertise and are not a bunch of crazy people trying to hurt the national interest.

Mr. Smith. Aren't there more objective criteria, so to speak, as to what is newsworthy? Abe, do you have some thoughts on that?

Mr. Mellinkoff. I have to agree it's a very long question. I spoke about this at a conference at Stanford for two hours. To summarize it in a very flip way, it boils down to this: news is what people want to read. In other words, the readership determines the news value. If you people don't read something--if enough of you don't read it--we won't publish it.

(Unknown). There was a television program, I think it was called, "The Selling of the Pentagon." Do you feel that television or a portion of it can hurt the credibility in the newspapers?

Mr. Fleming. Well, I'd be glad to say no. I haven't seen that program but in part of it, the quotes were used out of context. There's no question that a different meaning was attributed to one of the people on the program and I think this is a very serious error, and most unfortunate that the network never saw fit to acknowledge and apologize for this particular defect. But the general feeling of our people who did see the program and who reviewed it, was that it deserved the rewards it received despite that defect. I think, in general, the public affairs functioning of television, sparse as it is--it compromises something like 4% of their network time--has often been outstanding in a way of communicating very complicated subjects. A recent one on the politics of Chile, for example, to a broad and popular audience which we cannot reach.

(Unknown). I think it's been pretty well publicized that there is such an institution as "backgrounder" reaching newspaper people by government, and that there is another rather well publicized activity that goes on, the eager search by reporters for information wherever they can find it, and sometimes, I suppose they pursue this information that the government considers to be classified. Is there a position that the members of the press here would like to find, whether a backgrounder type of briefing if it does occur, establishes in the newspaper audience a responsibility for the protection of that information from that time on until they have knowingly been informed of release without restraint, because the same information might be leaked unofficially. You might hear about and you might feel that now that is out of the bag, my obligation, if I had one, is gone. Is that question clear?

Mr. Fleming. Yes, I think I understand what you are saying. In other words, we learn something off the record--what you call "backgrounder." Then you learn about it from another source. What is your obligation? If you want to keep your sources--forgetting morality now--you go back to the person who gave you the information off the record, tell him the situation and you're forced to abide by his judgment. That's the danger of accepting information off the record.

This is a very complicated question. The question of protecting the source of background meetings, which I think you were also asking about, and there was the recent spectacular in which the text of a backgrounder was published in the Congressional Record attributing it to Henry Kissinger while the reporters, up until that moment, had respected the source as confidential and contributed only to high American sources. So there's always that dilemma posed with reporters of the background when someone else learns who gave the backgrounder and publishes the name in the press. It has become so muddy that one of the large Eastern establishment papers (that we're not going to mention), I guess, has now declined to send reporters to backgrounders in Washington.

(Unknown). Yes, but they don't mind printing AP and UP stories of those backgrounder meetings. So I think that is what you might call a cheap shot!

(Unknown). I would like to turn the conversation around a little bit and ask the panel for their opinion on proposed government merger of confidential sources that you are using. Has the government elected to publish it? What would you feel is the government's responsibility in that kind of a contract?

Mr. Fleming. You are aware that this is the subject of a recent Supreme Court decision. My own newspaper felt that the decision was widely construed as written to risk some element of the First Amendment. We do feel, for example, that our reporters would have to risk imprisonment rather than have to reveal sources under a wide variety of circumstances, but we do not argue that absolute immunity must be granted to reporters on the revelation of sources. There are all kinds of new answers to this. The reporter who observes a crime, for example, as opposed to a reporter who becomes involved in a confidential arrangement to obtain information.

Mr. Durham. I wonder if this may not be a good time to bring to your attention a current situation at the Stanford Daily which is germane to this issue.

Mr. Smith. Right. If Don Tolleffson will tell us about that.

Mr. Tolleffson. I hope you can bear with me for a few minutes while I try to give you a little background on the whole issue. I don't come here for an opportunity to attack the Nixon Administration. I come for a two-way dialog and I first want to thank all of you people because I think what you are doing is very good. I think there is obviously a need for more professional management in the work in which you deal, and I think you're to be commended for coming together each year and working together to try and improve the situation, and I think we would both agree, it can use improvements.

However, I hope you'll bear with me for just a moment. I sat in on some of your panels and heard some of your problems and I would like to take a moment and just run into it with the mention of the Caldwell Decision in court.

Let's look for a moment at some of the problems we have and maybe, hopefully, you can get a little bit of understanding of what I think is a bad thing that has been happening to the press in this country recently.

My impressions of President Nixon, and I have studied the man quite a bit, and obviously I've been around that long, but from what I've studied of him I think everyone believes that President Nixon takes a strong anti-communist position and he has traditionally done this as far back as the McCarthy days. One of his major complaints about communist nations and this was raised recently when Congress had to fight over whether to maintain funding for Radio Free Europe, or free press ideas in eastern European countries, and President Nixon was saying, "Well, we need to keep a second voice, you know, and have some kind of alternative to the propaganda machine to these countries, at least for their press. And I think it is kind of weird here that in essence, if you look at the Caldwell Decision--and now I'm going to lead into a case where we are currently involved in Federal District Court--we have sort of a strange moving possibility of the press and that model of the press propaganda of the governments. The Caldwell Decision concerned Earl Caldwell, reporter of the New York Times, who had done some articles on the Black Panthers and was subpoenaed by a Grand Jury to disclose information about his sources and about the information they had given him. He refused to do that. His newspaper obviously wanted him to refuse. Also, he personally, didn't think that they could violate the confidentiality of those sources, so he didn't. What happened is a case which was argued by a Stanford Law Professor.

The Supreme Court ruled in essence that the press is not immuned from Grand Jury Subpoenas and they have to answer them, and there are many key men of the press that may become unwillingly aid to the government because they will be forced to compromise confidentiality and lose a lot of sources, and I think this can only hinder the role of the press, and what we are talking about here is the press classicly can be considered sort of an adversary of government.

Now Mr. Agnew claims that the press has a liberal slant, when it's just attacking the Nixon Administration. You need to go back in the early '60's, in the Democratic Administrations; and just look at the Pentagon Papers, for that embarrassed Democrats. In 1968, 80% of the papers incompassing 80% of the circulation in this country, endorsed President Nixon for election to Presidency. The statement that we had this overwhelming left liberal bias in the press is kind of wrong you know. It surprised me because the press has to fill an adversary role no matter what administration is in there.

The press has a responsibility to the American people to act as a watch-dog, not only on the government but everything else going on in society, and hopefully, I think for a pursuit of truth. It's my nature to amend that most journalists who have any integrity are committed to this truth factor. It's a long introduction and I apologize for that.

What our case involved was back about a little over a year ago. There was a demonstration at the Stanford Hospital and this involved the firing of a janitor. A number of local radical groups rallied to the cause and it ended up in a sit-in in the hospital here.

As a result of this sit-in, the police were called in to evict demonstrators one night and it was a major tactical plow the way the police went in. Obviously, they would never do what they did again. They sent too few officers and one got overwhelmed by the number of demonstrators and it was very tragic because a couple of officers were hurt very seriously, and one policeman had to end his career rather early. The people responsible for that should be prosecuted, definitely.

What happened was that a few days subsequent to that we had had photographers and reporters on the scene. The powers of the Police Department came to the offices of the Daily and for the first time in the United States the files of a legitimate newspaper were searched by a law enforcement agency. The Search Warrant encompassed negatives. They wanted negatives we had taken there, but they not only looked for negatives, they went through everything in our newspaper office, through files, through garbage cans, through everything and made a completely thorough search.

Now, what we have done is gone into court for violation of a number of different Amendments: our First Amendment right, and our Fourth Amendment right against an unlawful search. In essence we feel they went in and searched without going through the normal channels such as getting a subpoena. They had no assurance other than hearsay from one person that we would not honor a subpoena. In fact, our policy has been, and continues to be, if we are lawfully subpoenaed we are going to honor the subpoena. There's not much choice about that.

Now the whole question here, this kind of government action against the press is very dangerous because if you can allow the government to come on into an office and go through everything in your office, and have the right to conduct such a blanket search of newspaper offices, it is just really going to inhibit what the press can do and curtail the role of free press in our country which is really vital to making this the best country in the world.

It just has terrible connotations and I hope you can understand that we are fighting vigorously against this, because confidential sources are important to newsmen. No journalist would deny that, and I think that people ought to realize that we have to have confidential sources. I argue to lawyers and doctors in the client confidentiality relationship. A lot of people in the press business argue that we should have similar privileges. I think this is crucial to understand. If your sources start drying up because police and law enforcement agencies have a right to come in and search, you are really going to see an end to what I think is a vital part of a Democracy, this free press.

Just one more point I want to make. All of you have to read a lot of newspapers. I read about six a day in my job and I'm just inundated with information. All of us are aware that there is an over-kill of information. You have a lot of facts and they come in one ear and out the other. In the development in journalism, and I think all of my colleagues would agree, over the past ten years this has been a realization that you not only have to report facts but you have to put them into perspective, and also, try and make things more readible, more understanding, so that you just don't present straight facts, that as I say, a lot of times go in one ear and out the other. You talk about the mmportance of the feature story. Now I just want to give you one example of how searches and subpoenas which would end a lot of our use of confidential sources and our ability to have them would really curtail free press in this country and curtail democracy.

Drug problems are things I'm very aware of, being in the under-30 generation. I think there is a serious drug abuse problem in this country. I think there is a lot that has to be done to correct it, but let's talk about trying to bring this across to people that heroin addiction is a major problem. I think you know this has to be done. Now the one way that has been done is to sit there and say we have all these figures about heroin addiction and we can say 12% of this number of people in this geographic block has used heroin one to three times etc., and those kind of facts are going to go like I say, to readers and a lot of them are just going to disregard them. You get so many damn facts every day from your newspapers and your media. Now the way to handle a story like that, I think, should be like a lot of newspapers have done very successfully--to reduce it to a feature, say on one heroin addict, so that you see the tragedy that is involved to heroin addiction by only one human being. You can really understand the problem a lot more vividly than seeing a lot of statistics. Now it's very arguable to say a heroin addict is committing illegal acts, the mere possession of heroin is making him into a criminal, and if this decision to search against a Daily is allowed to stand up in court, and if we say that the press should have no immunity to maintain the confidentiality of their sources--like this heroin addict--what would be in it for him to come and talk to you on any sort of level, anonymously or not, in which the police could come in and subpoena your records, all your records, search your offices and find out who he is and put the guy in jail. I would like to present to you people that these kinds of searches are kind of like the recent Supreme Court decision. They place the press in major jeopardy, in its continual effort to fulfill its role as a free press. I want to thank you for bearing with me on that.

Mr. Smith. Would anybody be so bold as to express a contrary point of view?

(Unknown). I just have a question. Would you be willing to submit to me a list of all your confidential sources and allow me to decide whether they should continue to be protected?

Mr. Tolleffson. Now, are you speaking of you as a government official, or, what role are you saying, "Give them to you," just as a private citizen? Do you want me to give my sources to a private citizen or what? Just what I'm asking, "Who am I giving these to, first of all, before I answer the question? I don't think the private citizen has a right to know what my confidential sources are. As I said before, I don't think the government really has the right to know who these sources are.

(Unknown). You're trying to say that the press should determine what is sensitive and what is not. What makes the press so eminently qualified to pass judgment on confidentiality?

Mr. Tolleffson. Now all I'm saying, and let me bring it down to a sense as to why the Pentagon Papers were published, is this In essence I think it is a disagreement as to whether or not the press has any brains and could figure out what is really valuable as far as national security is concerned what the press is doing in the Pentagon Papers, in essence, in publishing them, was trying to get [illegible]ts which in the judgment of the press clearly had newsworthy value, and in the judgment of the press were [illegible]t, by proof of the national security, because the press has a lot of expertise available. We have former military men I have two of them right here with me. We have all sorts of sources who have a pretty clear picture of the national security available to us. You just have to put some sort of trust in a free press to make judgments about these questions.

The reporter is the one, or the photographer is the one, who is going to be held in contempt of court, in essence, if that subpoena isn't answered. [illegible]s going to be his body who goes to jail for five days or fifteen days, or how many days they decide to put him away for. We allow the reporter or the photographer to make that decision based on whether he is committed to maintain that individual notes on that issue, or those particulars, whether or not he thinks it's worth going to jail or answering the subpoena. It's up to the individual person in that case.

Now we feel it's only fair to the reporter that if he's the one who is going to have to spend time behind bars that he have some say in whether or not he's going to do that.

Mr. Fleming. I sense a certain hostility to the press here. I have the impression that all of you must have had extraordinary experiences with the press on the question of breaches of security. I would like to hear some of the specifics that have troubled you. I prefer presenting a loaded case, for example, the restraint exercised by the press at the time of the Bay of Pigs. Had the press been less restrained on information, it might have saved the United States from an extraordinary error. On the other hand, I think of the difficulty the press would have encountered had it respected security in the General Lavelle case, or in the My Lai case, and not published any of the data when it was leaked on those particular events. We do not see ourselves in the role of obstructing justice. A person's photographs, which we have taken, would normally become available to anyone who comes into our library or purchases them from the commercial section. We do not keep from the District Attorney material that we would sell to the general public. We are very keen on supporting the law. The delicate area dealt with in the recent Supreme Court case had to do only where confidentiality was essential to obtain material used in criminal cases, not in government security matters. I really wonder what has leaked out of your operations to the press?

(Unknown). I come back to the point I made earlier, I bet 99% of the stuff is deliberately given by senior government officials, whether it's the Secretary of Defense, Secretary of State or within the White House complex, for purposes of policy control, particularly at appropriations time.

Mr. Mellinkoff. It seems to me we are confusing two subjects: One is the security of the United States vis-a-vis enemies abroad. I think we're all agreed here that nothing should be printed or published or anyway broadcast that would hurt the security of the country. Now there is the other problem about the security of individuals. If I were to talk with this gentleman and he told me something off the record, and then I were to print it and attribute it to him by name--and let's say it has nothing to do with national security, but only with the profits of his company--he would have objections. I'm sure he would want me to respect his confidence, as if he was talking to another businessman on a confidential basis. This is just human decency and people should do that. It just so happens that we in the press are given more secrets than most people and have to hold more in, that's all.

Mr. Smith. Kip, you have something on that?

Mr. Cooper. Yes, I wanted to clarify because I think there may be some misconception about what I mean about publishing classified information.

I spent 23 years in the military and I used to classify some information and I know reasons why some was and was not classified. I think that so far as the type of companies that you represent are concerned, that there are many many sources of information from within your companies and I think that you underestimate the intelligence of a newspaper man to get this type of information when it is presented to him, and I think also that sometimes you insult his profession by some of the things that are said about it.

I want to cite two examples. Most all of your companies have house organs. You publish newspapers or little things and you send these out to the press, and I'm quite sure that most people read them. Now when you have something, say for example, in recent case there was a very beautiful article in a house organ about a new missile that is being developed for the U.S. Navy and it was in very great detail. So far as I'm concerned, when something like that is published, in that type of a publication, where everybody who works for that company including the janitors, can get it and take it home, drop it on the streetcar or on the street corner, that when I call up the public affairs officer of that company, and eventually to the vice-president, and he tells me that he can't discuss this because it's classified, I feel that I can take the information from the house organ and use the company as the basis for it.

Now another instance of classification which happened a couple of years ago. A manufacturer saw fit to put a very large device on the back of a flatbed truck and take it down a public street, and I saw it, and a lot of other people saw it. Having been in the Navy I had some idea as to what it was for and when I called up the company about that, they said it was classified.

Now these are the types of instances of classified information I feel a reporter is free to use, stuff that you carelessly let get out into the public domain and then try to deny that it exists.

Now if somebody brought me something on a piece of green paper or a piece of pink paper, I wouldn't use it. I wouldn't even read it. I have been in briefings where people would say, "I'm going to tell you something that is classified," and I told them, "I don't want to know it. Don't tell me. I might forget where I got it from and publish it."

Mr. Tolleffson. In the instance of the policy investigating a major crime and you have information which you did not get from confidential source, which could aid them, it's newsworthy, and ought to be published because of that, and the police can use it when it's published.

But I think that if you went and called up the police and that became known to confidential sources you have, you'd lose them pretty quickly because they would fear that you are cooperating with the police in that way rather than just on the basis of news judgment.

(Unknown). I have not yet arrived at any definition of people's rights.

Mr. Smith. The definition of people's rights to know. Does anybody want to take that one?

(Unknown). I think that is what we are talking about today and everybody that has spoken here has been talking about that subject. Somebody has to decide what the people are going to know. No paper has the facilities to print everything that comes to its attention and we try and make our best judgment on what the people should know in any given case. I don't think it can be summarized briefly in one sentence.

Mr. Durham. In the Executive Order that was just referred to, there is an exhaustive reference to this, and the further reference in the Preamble to sections of the U.S. Code which shows the President and Congress have sought to define the people's right to know.

Mr. Smith. I wonder if I could throw out a question now at the members on the floor, and I hope somebody can answer this one. There has been a fair amount of discussion of covering up things in government, using classification to "avoid embarrassment," and I wonder if someone could offer an opinion about: "How often does this happen? To what extent do you think that people have classified things for that type of purpose?"

Mr. Durham. It's happened. We all know its happened. We've all seen it happen. At least most of us have. We all hope that tomorrow will be a new dawn and it won't happen again.

I can think of an instance of a professional seminar where the subject matter of the seminar was embarrassing to one government agency and the papers being presented by the University complex

at that particular seminar were classified by that government agency to preclude the public knowledge of that particular subject matter. That's a classic case.

I think my colleagues in the audience are now older and wiser and hopefully these type of things will not happen again, but obviously we're not utopia. I would like to hear if some of my colleagues agree with me or not.

Mr. Tolleffson. Ralph, may I get in here for just a minute? I have a study here which says that in 1970 a special task force on secrecy set by the Pentagon's Defense Science Board reported, "The amount of scientific and technical information which is classified could probably decrease perhaps by as much as 90% by limiting the amount of information classified and the duration of its classification."

In essence the Pentagon is saying here--is admitting--that a lot of stuff gets classified, for reasons other than national security. I think the most vivid example of this is in the Pentagon Papers case. When it was being argued in Appellate Court, the Solicitor General, Griswold, was speaking and he was drawing up a complaint to try to show how much of this stuff was really important in national security and they were trying to cite specific examples within them. It says here that "Griswold took reams of notes on a yellow legal pad as three of his advisors reeled off a total of 41 items they were most concerned about in the Pentagon Papers, and after reading each item in the a papers, Griswold found that in his judgment many could lead to a situation of political embarrassment, but would surely not endanger national security. It was perfectly plain to him that the papers were over-classified in places according to one high ranking Justice Department official. I think that's the kind of problem I'm talking about when we talk about classification be based on national security interests and not on political embarrassment.

Now I want to find out from you what is wrong with the secrecy reports. I think most of us agree that there is a problem with overclassification and political embarrassment and that is the thing I think your Society is really to be commended for, because it seems, what I can see, you are trying to lessen that and that should be done and that's what we're talking about.

Mr. Fleming. My paper has argued, and I certainly agree with them, this has to be left as a rather ambiguous proposition, and that through the history of this country the kind of tension and confrontation that has always existed between those in power and out of power, and the citizen and the government is unavoidable. The press is seen by this audience, I think, as hostile to government, but there are large groups in this country that see the press as part of the establishment or oligarchy who is hostile to the public interest. It is a curious dilemma trying to find a balance.

These are broad generalities to say that I don't believe you can write a precise rule book and the courts will one by one in different ways deal with these as the whole history of the Supreme Court on this has shown in the past.

One of the reasons, frankly, that we were apprehensive about the decision of the New York Times and the Washington Post to publish the textual material of the Pentagon Papers, is that we thought this action would invite court action. We would have preferred to avoid that kind of a legal confrontation and to leave the ambiguity that I referred to previously which would have been the case had mere excerpts or references to content been used by the papers that had the material, and which has in the past been the usual way in handling highly classified material that became available in this way.

(Unknown). If government or major companies were to release everything that could be released without violating the nation's security, I don't think then there would be nearly the pressure from the media to get information.

In all the years I've had contact with the military, both as a member of it and as an observer of it, I've never heard of anyone who was reprimanded for overclassifying something.

Although this new order says that overclassification can be penalized, I would wait to see the first man who was publicly chastized for cancelling something or overclassifying it. When that happens, I think the media will have a greater belief in this Executive Order and how it is going to affect us.

Mr. Cooper. There have been several statements made about the adversary role of the press, the government and various people. I would like to say that when I was in the Navy, many, many moons ago, many of the officers who were Ensigns and Second Lieutenants then are Admirals and Generals now, and I can say that we have remained friends even though I am now in the press. They don't tell me any secrets. Many of the people in Defense Industry, people who have formerly been in the military that I know and particularly in public affairs, and I don't think

that there is any adversary relationship and there should not be one in my job as a military reporter dealing with people like you, because I think that when you become an adversary of the person with whom you are dealing, when you are confronting each other, then you are not communicating, and if I can't communicate with the people in your business and in government, then I don't have anything to write about.

Mr. Tolleffson. May I speak on that for just a minute. I use the term, "adversary," and a lot of journalists use that, and I just want to explain what I mean. I have a few friends in government, locally here in student government, city government, whatever, and it does not imply hostility but in the way in which the free press would envision in this country, part of its major function should be and is a watch-dog function toward the government. This does not mean that necessarily everything the government says, I, as a journalist have to say something different or try to contradict what they are doing. That's not true. I think the word, "watch-dog," is sort of a loose term but its meaning is a little bit better than "adversary" which has its connotation in clobbing each other over the head.

Mr. Smith. I think I can confirm that there is a change. I know, in my own case, when the new system came into effect I had to do a memo, and finally I decided I did not know how to classify it; so I went and delivered the message verbally!

Mr. Durham. I think Ralph's point is well taken. The Executive Order, if you read it closely, says, "The preferable method of transmission of top secret is orally." I trust though, under the new definition, what you said earlier wasn't top secret!

(Unknown). The problem of what to do about declassified information is still with us, and I do not think that we have a completely ready answer for you. What I am trying to say just briefly, more specific is, classified information sometimes contains proprietory information, patent information and when you take the wraps off declassification, there is a problem about publications. Now on the other hand, if you have technology, let us say, valuable, and it doesn't deserve classification and nevertheless there is a law in this country that says that some of that technology will not be exploited without a license, the problem then is always one of evaluating whether valuable technology should be protected because of a statutory desire that it be protected, and the silver platter concept is brought up in connection with that more than it is with classification and is a constant problem. I'm glad that Dick mentioned it.

I would like to suggest as an observation that it always bothers me a little bit when I read in the newspaper that the following information, classified by the government, has been obtained and here it is. Would it not be in the spirit of cooperation if the press could say that we have obtained the following information and here it is, rather than saying the government says it's classified. I would like to solicit the cooperation of the press once it publishes, while at the same time explicitly accusing the government of stupidity.

(Unknown). Doesn't it enhance the interest of the readership though if the newspaper can say this was classified?

(Unknown). Yes indeed. Everyone else does it too.

Lorry McConnell, System Development Corporation. I have a question on a little different tack here. I have the impression that there is a rather large volume of press copy released by the government. My question is: To what extent does the press take these releases on face value and print them, and to what extent does the press do a little investigating on its own before it publishes them?

Mr. Tolleffson. For our policy I think we are a little unique for being a college newspaper, we're not very big and we don't have to worry about just putting out 50 pages a day so that we don't publish any press release verbatim. We take all press releases and they are read by people who have specific areas to cover. If it's newsworthy then they'll check it out and do a story using that as source material, but we do not do what I think is a grievous sin in journalism--running anybody's press release verbatim. You see some classic examples of this; some newspapers, to get something out quickly, will run it verbatim and look really stupid.

Mr. Ralph Smith. This is very discouraging to writers of press releases!

Mr. Cooper. I think you do get a great volume of press releases from the government and from the military everyday. I think that both the military and industry save the best stories for their house organs because they don't want their own publications scooped, so I read those more carefully than I do the press releases; but I think

that any newspaper, at least a daily, a credible newspaper, will not take a handout at face value. You not only call the person who originated it to be sure that he did, but you also try to check out the facts to be sure they are as he has presented them.

(Unknown). Recently with the new Executive Order we are looking for new and great things in classification management. We've received so much publicity that members of Congress are rushing to get on the bandwagon by introducing the main bill which would take security classification out from under the Executive Order. I wonder if the press has considered this or reviewed this with any alarm or determination, or have you had an opportunity to consider this? How do you feel about it? Do you have any feelings about an Executive Order or law? Would it be more of a problem to you in the long run?

(Unknown). I would throw out one comment that I think it would be in the interest of the Fourth Estate to see it stay as an Executive Order because laws usually become more unflexible and difficult to change. Hopefully, Executive Orders are a little more flexible.

(Unknown). It's easier to talk to a Congressman than to the President!

Mr. Tolleffson. This is a question I would like answered by anyone of you people for my own benefit. I'll get back to a source which is not confidential. This is a book by Stanford J. Unger from the Washington Post called, "The Papers and the Papers," which I think would make good reading but I work neither for the Washington Post or E. P. Dutton, so I'm just saying on the basis that I think it's a good book. There are a lot of things in it that people won't agree with but it's good because it details the whole legal issue we are talking about in light as they apply to the Pentagon Papers. It says in here something I would like to throw out because I think the majority of you, if I'm not mistaken, work for corporations that handle Defense contracts rather than working directly for the Federal Government. Unger says in here, "In some instances the worlds of derivative classification requires that any compilation of documents, such as the Pentagon Papers, receive the highest classification contained in any of its parts, resulting in putting secret stamps on newspaper clippings, public speeches and other material that is circulating freely in other parts of the government. Occasionally defense contractors employ this technique and extreme extension of it in order to direct more serious attention to their work from the upper echelon in the Defense Department."

Is this a valid charge that Defense contracts will up the classification if they can possibly do that to make it seem more important for their benefit? Can somebody answer it?

Now I just want to get back off the track for just a minute. We are all human beings and I think we should have mutual respect for each other. I think there's a lot of similarity between government and the press. Most of the people in both businesses are really truly interested in the society, improving that society and helping the people in that society. We do it in different ways. I think you can see that for so many people seem to go from the government to the press, one way or the other. I have the upmost respect for many many career government people many politicians, but there is also the problem you have to realize on our part, that there are a lot of politicians who are just out to raise themselves quickly in the public light. When this gets into classification, that's where our problem comes in and that's what we're talking about.

I think in "The Advocate" show yesterday they pointed out that in the case of the career government official, you can easily trust his judgment. He doesn't have a vested interest in keeping his name as the "white knight in shining armor," and that sort of thing. Some of the politicians we have to watch out for, and I've worked with enough of them to realize that. But I want to say again, I really respect you people for inviting us here. I've learned a lot from this session and I hope you have. You know, we're all human beings and committed toward improving society and if we just give a little bit to each other, look through the other guys eyes (which is what I've been doing this morning) I think it's really going to help everyone in the long run.

Mr. Smith. Ladies and gentlemen, on this note of understanding I think I must point out that we are about to run out of time. I think I speak for all of us in saying that, notwithstanding so-called "adversary" relationships, class feelings, and things of that sort, I think everybody has had an opportunity to look at the other side of the problem. I hope I can speak for all of us, also, in saying, that notwithstanding problems that come up from time to time, we all are grateful to the press for many things; and in particular, we're grateful this morning to these representatives of the press who have been kind enough to come and share their thoughts with us.

CLASSIFICATION: SYSTEM OR SECURITY BLANKET? AMROM H. KATZ

INTRODUCTION OF MR. AMROM H. KATZ

Mr. Katz is quite a distinguished gentleman, a native of Chicago, raised and educated in Milwaukee. He has done graduate work in mathematics and physics at the University of Wisconsin. He started his work in the area of Aerial Reconnaissance and Intelligence in 1940 with the United States Air Force Aerial Reconnaissance Laboratory in Dayton. He was Technical and Scientific Advisor to the Air Force Photo Commander at the 1946 Bikini Bomb Tests, leaving the Aerial Reconnaissance Labs as Chief Physicist, he joined the Rand Corporation in 1954 where he became a member of the senior staff.

He is a senior member of the American Institute of Aeronautics and Astronautics, a Fellow for the American Geographic Society, a Fellow of the Society of Photographic Instrumentation Engineers and a member of several other professional groups, and is a member of the Institute for Strategic Studies in London.

Long active in public and international affairs, he was a long-time regular panelist on a weekly TV program sponsored by the Dayton Council on World Affairs in the early 50's. He is a member of the National Planning Association Committee on Security Through Arms Control. He helped draft the widely circulated pamphlet "1970, Without Arms Control," as well as the committee's other publications.

He is on the board of sponsors of the magazine, War/Feace Report. He is consulting editor of Arms Control and Disarmament. He is on the Advisory Board of Technological Forecasting and on the Editorial Board of Remote Sensing of Environment.

Mr. Katz is listed in American Men of Science, World's Who's Who in Science, World's Who's Who in Commerce and Industry, Who's Who in Space and Who's Who in the West and we are going to listen in a minute to "Who's Who at NCMS!"

He has published numerous articles on disarmament and arms control. He is a consultant to the Arms Control and Disarmament Agency, to the United States Air Force and to the Department of State.

He enjoys a national reputation as a wit and humorist about science, government and bureaucracy and he is a much sought after speaker.

Mr. Katz is now a consultant to several agencies of the United States Government, to industry and to some other institutions and we want to express our appreciation for him. Yesterday afternoon he was in Boston. He cut his visit to be sure and be here for our luncheon today.

PRESENTATION BY MR. KATZ

It is a good thing that I attended only the last hour of the morning seminar because I am sure that had I attended the other meetings I would have realized that my entire speech had been preempted.

At the end of what I laughingly call my formal presentation I will be happy to entertain questions. I offer no guarantee of answering them, but I will entertain them anyway.

However, it is quite apparent as I look around that however you classify this society, you cannot call it a society of male chauvinist pigs, for which I am glad!

Now we begin. A funny thing happened to me on my 30 year journey through classified bureaucracy en route to this meeting. I got to know both Dan Ellsberg and Tony Russo very well. More on this later. First, I need to ensure that you are wide awake and paying attention.

Whenever I hear the word "classification" it reminds me of an experience I had in 1946 which is getting increasingly remote in time and space.

I was at the Bikini atomic bomb tests. We were out a few months early arranging markings on the target ships we were going to bomb, and installing photogrammetric markers on the islands. Things were quiet (it was well before the tests) and we took a cruise among the hundred or so odd ships of the doomed fleet. While we were there we saw one ship lying a few miles off with much activity around it. The Navy chap who was driving us around in a little Navy craft, none of whose names are familiar to me, told us, when we asked, "That's the USS Nathaniel Bowditch."

Now Nathaniel Bowditch, I remembered from my student days, was a famous navigator and astronomer of the previous century. I said, "What the hell is going on there?" He said, "That's where all those long hairs are." I said, "What long hairs?" "Well,

you know, you've heard about the strange fish they've been catching." And indeed we had heard, because this was the first American marine expedition in that part of the world in the previous half century.

I said, "Drive us over there." About an hour later I climbed aboard the ship wanting to see the strange fish they had caught. Right next to me on deck as I got aboard was a clam of some kind, about three feet thick, the biggest damn clam ever caught.

The Captain asked, "What can I do for you?" We said, "We want to see some of those strange fish you've caught." He said, "Stop!" "You can't see them!" "Why not," I said. "Well," he said "we got an order to classify all fish we caught and we classified them secret."

Absolutely true!

Now you know when you hear a story like this that you are confronted with one of two options: whether it is a made-up story or it happened, and a story like this is too preposterous to have been made-up! It has to be much easier to have happened. I am sure you find the same thing that I notice - the preposterous things are what's happening.

Clearly there are other meanings to the word "classification," than the automatic response I got on board the USS Bowditch, but we are not concerned with them here today.

A phrase frequently heard in the audience and in the panel (during the last hour this morning) is the "the state of the art," I argue that it is not the state of the art that should concern us here so much as it is the art of the state. That is really the subject matter we are talking about.

Allow me to state what I believe (without support from a scientific sampling of opinion) what many "people" believe about the "classification system" or problem.

It is interesting that these two words are often used interchangably - system and problem. By "people" I include lay people such as the press, members of the House and Senate, ex-government classification experts, the Defense Science Board, you know, just plain folks. They believe --

1) The classification system keeps information from Americans and their friends but not from America's enemies.

2) There is too much classified material and much, if not most, of it is overclassified.

3) The classification system is a self-supporting and growing bureaucracy that costs too much for what it does and in fact, far from doing anything positive it incurs costs and produces negative effects.

Now do not get hostile. I am not asserting that these propositions are true. (Nor am I saying that these propositions are false.) What is important is the widely held belief that they are true. The objective fact does not count as much as the perception. I will not "answer" these statements, but I will comment on them and on other matters, trying to illuminate the subject. While I am making light of the subject, I hope that at the same time I will shed light on it. I believe that this audience of conscientious professionals will pick and choose from among such insights as I produce and reject others as they will.

Is it true that the classification system costs too much for what it does? I suspect it is true. But on the other hand I am old-fashioned and I believe everything costs too much.

First let us examine the charge, made under various guises, that the system costs too much or that it is not cost-effective, to use modern up-to-date jargon. Similar arguments were made that the Manson trial cost too much. That the Sirhan trial cost too much. No struggle is required in order to believe those statements.

I believe them too. There is, fortunately, however, no way to measure just how much a trial and an attempt at justice should cost and such discussion is properly out of order.

Take a moment to consider Viet Nam as an exercise in cost effectiveness, or cost ineffectiveness, as it turned out. Our maximum rate of expenditure in Viet Nam was of the order of 30 billion dollars per year, that's with 9 zero's after it, 30×10^9. The maximum estimate of the enemy order of battle, the enemy facing us, was 300,000 which is 30 with 4 zero's after it, 30×10^4. Now dividing the first number by the second number, yields that we have been spending $100,000 per year per enemy dead or alive except we have not gotten delivery! Now it turned out that the $100,000 which we were spending per year per enemy was say, about 15 or 20 times the maximum life expected income of the average enemy. We were spending 20 times per year what he would have been expected to earn in his lifetime if we had left him alone, so clearly something is wrong.

Obviously our negotiation process was not working and still is not. It would have been cheaper to buy them and put them on an annuity!

This is an example of what often happens when you invert the whole problem. In this case, inverting the problem would have made everything different. Now we go to a hell of a lot of hard work to capture a guy and persuade him that he is a VC and make him talk. Instead, by offering him an annuity, we have inverted the problem and made him prove he is a VC!

Furthermore, this idea has the additional advantage that instead of having open season on the enemy we would have a closing date. More advantages will occur to you if you think about this proposal for a few minutes. Of course there are certain administrative problems you run into such as ensuring they remain bought, you can do this by using partial payments, for example. But I happily turn this over to the administrators with the observation that I am only a technical type.

Back to the Sirhan Sirhan and the Manson trials, about which I argued that the remark that they cost too much is inappropriate.

We wish they had cost less but we cannot scale justice by cost.

However, another aspect of those two examples, and the criticism that they called forth, does have an analogy in the continued brouhaha going on over the classification system. The two trials were certainly lengthy, (and therefore expensive) and they tied up the system, delaying trials of other people and other cases. The analogy with the classification system, is that everyone affected by the system, not involved in monitoring it but in complying with it and working within this system finds it to be an impedance, a nuisance and that it never facilitates one's work. It is something you have to take time out to do: to get something classified, registered, receipted, or declassified, unregistered, unreceipted. But you have heard all of this before and you have been insulted, downgraded and attacked by genuine experts, so I bow to them.

Were I not already convinced that too many projects, reports and other artifacts of our defense establishment and foreign policy establishment are overclassified, and were I approaching the discussion today armed with only plain logic and fancy psychologic, I would argue that overclassification is inevitable.

In the first place there is a fierce asymmetry between the penalties and consequencies for underclassifying and those for overclassifying. Suppose someone classifies a document TOP SECRET when it should have been classified no more than CONFIDENTIAL. I lay aside without comment the implicit argument that correct classification can be determined objectively, like weighing a pound of hamburger (or should I have said bologna). The "correct" classification is a subjective thing at best, and there is no way of measuring, weighing and so on. To detached observers, of whom there is none in my audience today, I state that, like a fish hook going in, it is easier to stamp a document than un - or restamp it.

Now back to the asymmetry. If one overclassifies a document he may be regarded as foolish or stupid. But if so, he joins a multitude and the epithet is neither lasting nor heinous. However, if one underclassifies some information, or distributes, say unclassified, some SECRET or TOP SECRET data, there are penalties.

There is, therefore, a built-in bias to play safe, a bias that argues in favor of overclassifying.

I can illustrate this from another field, intelligence estimates. Many feel that a similar bias exists in the intelligence estimating process. If we overestimate the enemy, it may cost us money, to buy defenses against the estimated threat. If we underestimate the enemy, it may cost us blood. We can print money but we cannot print blood. (Although you can type it!) Clearly this example is a caricature but I think the bias works in this general direction. This does not mean that a conspiracy is at work, rather, I conclude forces are at work.

Of course there are other reasons to overclassify, sometimes operating at the subconscious level. One may want to shield and insulate his project from criticism, be it literary or technical. Literary criticism is usually needed and deserved the higher the classification of the document. This occurs because such documents do not have to meet the test of open publication, and have highly restricted readership. Although one may desire to insulate his project from criticism by hiding it as best as he can, such protection by insulation does not work very well. But as long as people think it works, that is what counts.

Some, fortunately few in number, worship classification, and regard any attacks on it as an assault on religious principles and theology. I

am reminded here of an old New Yorker cartoon. Deservedly a classic, this cartoon showed a monastery high in the Pyrenees. In one room a monk was working at a safe marked "Sacred," and in another room one was working at a safe marked "Top Sacred."

Now, about the charge that the classification system is a bureaucratic apparatus? Of course it is. What is not? As soon as you get more than two people, one has to be the boss and issue orders. You have the beginning of bureaucracy. In the system we are here to cuss and discuss there are many more than two people! A paradox inherent in bureaucracies (this one as well as all others) is that as they grow, they get more joints, nodes and branches. But they become more rigid; this is a paradox, because one would think that they would get looser and more flexible. Alas, they become more rigid.

Another gratuitous truism about bureaucracies or other large collections of people is that as they get bigger, intellectual level decreases. That is a cumbersome way of beating around the bush and I would rather say it plain: they do not get smarter, they get dumber!

Another, perhaps minor shift occurred when we shed the old category RESTRICTED. My impression is that when we had the categories RESTRICTED, CONFIDENTIAL, SECRET and TOP SECRET, there were very few TOP SECRET documents around. When the lowest classification was abolished, what we used to call RESTRICTED became marked CONFIDENTIAL, and there was a general upgrading, hence the proliferation and liberal use of the TOP SECRET stamp. This is only a partial explanation, but I think it is on the track.

Let us turn back to the Pentagon Papers case. Tons and reams have been written about this historic episode and much more will be written. The matter is now before the third branch of our government, the judiciary, and I will therefore say (what is for me) comparatively little. The disclosures did satisfy, for many, the opportunity of voyeurism, permitting a peek inside the government, but I wondered at the time, and I ask again, who really read the Pentagon Papers? Of the thousands who pointed at, commented on and bought the Papers, at best, a microscopic minority has really read them. I have satisfied myself about this truth by going around and asking detailed questions. But all of these people have streng ideas of what they think was proved, what was revealed, what was flushed out and what was given to the American public. People pointed at them and some writers made headlines by saying things that you cannot find in the Papers.

Others made, and still make, the grievous error of equating contingency plans with marching orders. This error is not new. Some of you in this audience may be old enough to remember that The Chicago Tribune, on or about, December 4, 1941, three days before Pearl Harbor, obtained and published the United States War Plans. Everybody knows we did not have war plans. A little earlier, Lt. Col. Eisenhower was drilling in Louisiana with wooden rifles. But they published our war plans with the claim, based on a semantic inversion, that because we had war plans, we were planning war.

To anyone who has been an even moderately careful newspaper reader, the Pentagon Papers offered absolutely no surprises. Details - yes; surprises - no. The trouble is that many who will not, or do not drink from the highly potable flood of unclassified information are dying of thirst for secrets.

This suggests that a titillation factor coupled with an a priori commitment to various conspiracy theories is hard at work.

With that as an introduction, I turn to a memo I wrote on the Pentagon Papers case on, July 1, 1971, about two weeks after the New York Times started publishing the Papers.

To keep the memo short, I confined myself to some predictions which, like fall out, will descend upon all of us.

First, and most important, we must recognize that Dan Ellsberg invented something. What I mean is that, as the guy who kidnapped the first diplomat set the stage for other kidnappings, as the first contemporary airline hijacking set the stage for other hijackings, so this event will serve as a stimulant and a model for future similar events. (Remember, I am quoting from the memo of, July 1, 1971.) Ellsberg has received many accolades, has achieved martyrdom and will likely get off free and clear, (the prediction I made then still holds). Any book he writes will automatically be a best seller. He is portrayed by many as a patriot, a super hero and so on. He is on TV frequently and will be known and commemorated as Saint Daniel!

I argue that this general reaction will inspire further disclosures by others who aspire to some collection of similar statuses. We had better be alert to this. My own favorite and incomplete list of subjects which can make for embarrassing and exciting disclosures, include information rela related to our atomic weapons and strategic delivery systems, information about intelligence operations, some of our transactions in the Middle East between the United States and Russia and between the United States and Israel, details

about strategic contingency plans, a subject that was earlier remarked upon. (Everyone knows that a contingency plan is never used, because you are always confronted by a new contingency and when you look around at a lot of your plans, there are none that fit. Besides, contingency plans are guarded by their preparers and owners, like the library books are guarded by an old maid librarian. They are to be kept and not be removed.)

So I predict, therefore, (July 1, 1971) we should expect further disclosures in other areas. I predict and expect further polarization between the press and the government, which cannot be good. The press equates secrecy with secretiveness. Adding to this is the well-known phenomenon of overclassification in some areas. I might add, parenthetically, that as pointed out in the earlier discussion that the press defends its right to secrecy, and its right to confidentiality of sources. I understand this, but I cannot reconcile it with the implicit denial of the government's right to secrecy. Back to the memo.

These events will only launch the press on the warpath for more scalps and kudos. Any writer who wants a Pulitzer Prize will exert diligence to come up with further disclosures. I noticed that Neal Sheehan did not get a Pulitzer Prize, and this created quite a storm. Perhaps he should have gotten the Olympic medal for fencing!

A third prediction concerned further and possible loss of confidentiality internal to the government which I estimate will contaminate much communication on policy matters. A guy will be writing classified messages with an eye on the possibility that they are going to be published, not 30 years later, but maybe next week.

A fourth point is that we are still in a growing anti-defense mood in this country. Most people will not read the Pentagon Papers (I confirmed later that they did not), but will only point at them, and will use them as a further weapon to belabor and attack the defense establishment.

I concluded my memo by remembering that in older, and hopefully former times, the messenger who brought bad news was sometimes shot, because of misidentification of the bad news with its bearer. In this case, clearly I am only the messenger. I want everybody to understand that! That is what I predicted. I leave it to you to evaluate these ideas.

Let us look at the practice of secrecy in the United States. What is open and what is secret? To do this we will start with a short review course in the theory and practice of deterrence in a nuclear era. Being well armed in the face of a threat from an opponent is necessary, but not a sufficient condition for protection in a nuclear era. The fundamental requirements of deterrence, if we want to deter the Soviets, and they want to deter us, is that each side has to know what the other side has, and be suitably impressed by it. In other words, a truly secret weapon is completely valueless for the purpose of deterrence. This is so obvious that it is usually forgotten and has to be remembered. A secret weapon, that is a weapon whose existence is not known to the other opponent, may be good for something, but not for deterrence. So how do we tell each other?

We have an elaborate disclosure apparatus in this country, in spite of all of us working with the classification system. To a member of a Soviet intelligence apparatus studying the United States, the job of drawing the wiring diagram of the United States disclosure system would be a snap. He would have the following ingredients: the brothers Stewart and Joseph Alscop, Bill Beecher of the New York Times, Mike Getler of the Washington Post, Aviation "Leak" as we call it sometimes, the annual Secretary of Defense Posture Statement and the enormous collection of green books and brown books published by the Senate and House respectively, the institutional advertising, the free commercial reports, the available data ..... He would be drowning in information. In truth, you would cause great mirth among the Russians if you told them how we really work. We do not have a system. He would have this all wired together. Every once in a while I suspect he might not be all wrong.

I want to make a plausible retrospective case that there is a system and it is wired together. I say this because certain secret information has to be given out without declassification or else is declassified by the process of leaking it.

We need not detail any further what we all know is an elaborate disclosure system. If anybody wants to find out how many weapons we have, how big they are, how well they work, where they are located, roughly what our strategic doctrine is; etc., can find out all that information. Most people who want that information do not even tap the flood of free information to get it.

Now let us look at the Soviets' disclosure system. Remember the symmetry here is that they have to tell us what they have in order for us to be scared and impressed by what they have. How do they do it? Well, they are not set up very well to do it, because over there when they say a telephone directory is classified, they do not mean it has yellow pages. They mean it is secret. We do not understand that. We cannot cope with such a thing. So they are not set up at all to reveal anything, but they do reveal. How do they do it?

By and large they do have two systems; one is qualitative and the other is quantitative. About 15 or 18 years ago I wrote a paper suggesting that the Soviets were going to have to exhibit their missiles and that they were going to have to constitute what I named, "The Moscow Dragstrip," to give us a look at them. A moment's thought will confirm the administrative inconvenience of flying missiles by in parade. This is not a very handy business, so I thought they were going to have to drag them by, and indeed they did and do! And we are impressed, as we are supposed to be. That is the purpose of it.

But nobody is deterred by quality alone. You are deterred by numbers. Here comes a fairly fancy word that I find describes what is happening: symbiosis. To achieve credibility in the number of missiles and aircraft and defensive systems: in the state of the art; to impress China, West Germany, Italy, France and the United States, to back up and exert their political leverage and muscle around the world, the Soviets depend on the United States National Intelligence System and the disclosures set forth in posture statements, reprinted, elaborated somehow by the Institute of Strategic Studies in London, printed apparently independently in Aviation Week. These estimates all come from the same place. We are doing the Soviets' work for them. We are part of their disclosure apparatus. I leave the implications, most of which should be obvious to most of you, for you to draw, or to the question period.

The practice of secrecy in the Soviet Union is not a dirty communist trick but is rather, an old Russian habit. It pre-dates the advent of communism, which is barely a half century old, and goes way back. It is truly an old Russian habit. You cannot expect to have that changed with regime or modification of the regime.

It is often alleged by some of these lay or plain folk I referred to earlier, that we should communicate more internationally, communicate all our information, declassify everything. There is a built-in assumption (hardly even subjected to careful analysis) that more communication between one nation and another makes for more friendship and understanding. Clearly, the existence of a pipeline is not alone what counts. What is coming through it? Is it dessert or sewage? What has been communicated counts for more than the fact of communication. As I recall, it was not until we seriously listened to Hitler's communications that we took him seriously, with unpleasant results from Hitler, so it depends entirely on what is being communicated.

My wife, as usual, hit at the heart of the matter. She makes remarks, out of which I make speeches. She once pointed that the trouble with modern communications - referring to TV, radio and the press, is that it brings you, at high speed, in great volume, from all directions, 24 hours a day - bad news! And the more you think about it, the more you realize this has nothing to do with what I am talking about today, but since I am talking I will finish this interesting diversion by noting that most news is bound to be bad, because most news is a discontinuity, and a discontinuity is something breaking, something busting, something blowing up, and something catching on fire -- it is bound to be bad news.

Earlier I suggested that inverting a problem will often provide a clue to a solution. Why classify documents, projects, or activities? Only to protect them. What is the precise meaning of the phrase? Crudely put, we mean to see to it that the wrong guy does not read the report. Of course this result can be obtained if nobody reads it. This is known as the Captain Kidd effect, after the unlamented pirate who was supposed to have shot his fellow pirates after they helped him bury his treasure. The net result was that the secret of the treasure died with the Captain. The non-pirates among you might prefer to call this "throwing the baby out with the bath water."

However, I have previously observed and communicated to high officials of the DoD, that in 10 years we may expect to have great difficulty in hiring people to work on classified projects. If so, this is going to cut down on the reading problem and the protection problem. If you cannot hire any workers for your projects it is going to be tough to produce any classified reports. No, I am not basing this on an expansion or expected continuation of the wide-spread anti-defense mood or reluctance to work for the DoD, rather I argue that very few will be able to get cleared. Think about it.

Project what is happening. By 1984, a felicitious choice of dates, practically everyone in the pool of potential new employees will have smoked pot, have been arrested, have been plunged deep into one or more kinds of so-called therapy, have been a member of one or more kinds of subversive organization or have deviated from the sexual norms of the then current establishment, thus making clearance difficult, perhaps in most cases impossible. This solution (when no one reads anything) may be coming, but never fear: I have the cancellation orders in the next sentence.

The supreme and over-riding commandment of a bureaucracy is, "Thou shalt not go out of business," and therefore, that is sufficient to ensure that you will not allow yourselves to go out of business. Criteria will have to be changed. Clearance criteria will be changed as needed to ensure a steady flow of employees, and grist for your various mills.

I fear, and you probably rejoice, that I have not really solved your problems. Not all problems are soluble. Coping with them is frequently the best we can hope for. We have examined some of the differences of opinion and interpretation that occur. This does remind me of a closing story I must tell. A friend of mine who travels from the east coast to the west coast fairly frequently, once or twice a year, got fed up with driving the turnpikes. He always drove. He said, "Damn it Katz, I want to drive across the country and see the country while there is still country to see." He drove across the country on old U.S. 30, through Iowa. It was summer and it was hot. He stopped at a small town of no more than 120 people, and the temperature was about equal to the population. He got out to get a coke and refuel himself and so forth. Looking down the two blocks of the main street of town, he noticed two huge churches facing each other across the Y axis in the main street. He asked, "What is that?" "Them are our two famous churches," the filling station man said, pointing to the first one, "That's the Fundamental Church of Christ." My friend said, "What's that one?" "That's the Fundamental Church of Christ, Reformed." "What's the difference?" So the guy says, "Well, a vast theological gulf separates these two churches." "The hell you say," my friend said, "What is it?" "They," the attendant said, pointing to the first one, "believe that Adam's fall was caused by his eating of the apple at the hand of Eve." "Really? What do they believe?" My friend asked, pointing to the second church. "They believe he was a son-of-a-bitch from the word go."

Moderator. Never again will you ask me, who is Amrom Katz! Any questions?

(Unknown). You sound like Art Buchwald. Do you know him?

Mr. Katz. Art happens to be a good friend of mine. I had him at my house for lunch one day. We were discussing something seriously. He said, this reminded him of the story of a woman who had two pet chickens. One of them got sick so she killed the second one to make chicken soup for the first one!

There is a universal moral there somewhere.

Moderator. Thank-you very much. It is pretty obvious we thoroughly enjoyed your presentation. Someone wanted to ask Amrom: What is a consultant? You will recall we had a little query about this in Washington last year.

Mr. Katz. Long before I became a consultant I used to tell this story and although I still tell it occasionally, I usually wince when I do.

It seems that Farmer Jones had an unusually fine bull. A mighty stud animal. Jones earned about 75% of his monthly income from the services of this one bull, with negligible work by Jones himself.

He kept the bull in a corral, about 20 feet square, surrounded by a high fence.

One day the farmer moved in a black and white Holstein cow into the pen next to the bull, to be serviced, as they say, the next day. Something snapped in this bull's mind. He thought, "Those are the most beautiful horns I've ever seen, the most beautiful sway back, the nicest hide, prettiest eye lashes and beautiful purple eyes. I'm not about to wait until tomorrow, I'm going right now!" So he backed off about 15 feet and made a mighty leap -- but he did not make it! He got wiped out on the way over. He lost, as we say, his credentials.

So Farmer Jones bemoaned this tragic accident. With one fell swoop, or better one foul swipe, he lost 75% of his income. His neighbors, who were, of course, completely uninvolved in this episode, came around, laughed, and said, "Jones, what are you going to do? Shoot the old bull?" He said, "Hell, no, I'm going to keep him on as a consultant!!"

A LOOK AT CASUAL CLASSIFICATION - BY INDUSTRY

BY
JOSEPH C. WINGERD, LMSC, INC.

Foreword

I would like to state at this time that this paper which I am going to present is to be considered in strictly an academic light and in no way reflects the position of the Lockheed Aircraft Corporation. As you all must well know, there are many Divisions and parts of Lockheed and I am speaking as an individual with rather extensive Contract Administration experience and the analyses and the opinions stated here today by me are my own and are for the purpose of raising questions and pointing out what I consider are areas requiring closer contractual administrative attention.

From the viewpoint of the Contractor doing business with the United States Government, Casual Classification has many facets, both from a legal approach under the many Executive Orders, Federal Statutes and Department of Defense Directives and from a basic contractual accomplishment. For the purpose of this discussion today, I shall make no attempt to go into the legal ramifications of all of the above-mentioned regulations. I shall treat casual classification primarily from a contractual interpretation and impact on the Defense Contractor. To accomplish this, I have broken casual classification into three (3) basic areas of consideration. The first area is that dealing with Casual Classification by the Government to Protect Private Data as well as Data which would be Determined as Injurious to our National Defense if Disclosed to Unauthorized Personnel. The second area is Casual Classification by the Government and Industry when a question of Doubt Exists as to the Level of Classification or that an Item should be Classified at all, but is then Classified as the Easiest Way to Solve that existing Dilemma. The third area is Casual Classification Direction to the Contractor by Word of Mouth or in Lieu of the Normal Contract Change to the DD 254 Specification and Not by the Contracting Officer.

Industry's responsibility for the classification of information or the safeguarding of such classified information only comes into being at such time as the Contractor involved enters into a Contract or some such proper agreement with the United States Government and then requires access to already classified information or generates such classified information in accomplishing his contractual obligations for the U. S. Government, primarily the Department of Defense. Since this responsibility is established solely by the existence of this Contract or Agreement, we must look then to the contract for the extent of his obligations in complying with the classification of information which is spelled out in the DD 254 Classification Specification for this particular contract or agreement.

The Industrial Security Manual for Safeguarding Classified Information assigns to the Contracting Officer the responsibilities of furnishing necessary classification, authorizing retention of classified material and certifying contractor's need to attend classified meetings.

The Manual states that "For the purpose of this Manual, the term Contracting Officer refers to the contracting officer at the purchasing office who is identified as the Procuring Contracting Officer (PCO) and the contracting officer at a contract administrative office who is identified as the Administrative Contracting Officer (ACO). Normally, the responsibilities which this Manual assigns to the contracting officer during the pre-contract, contract award and post-contract stages of a classified procurement will be performed by the PCO, with the ACO performing those responsibilities which arise during the performance stages of a classified contract.

It clearly appears that the DD 254 Classification Specification is basically intended to be treated in the same manner as any other contractually-imposed specification whether it be work statement, vehicle specification or performance specification; in other words as a classified contract-directed effort to be complied with and which effort was part of the contract negotiated with bids.

In this light it very clearly falls under the "Changes Clause" of the contract and all its ramifications.

The "Changes Clause" reads as follows:

> "The Contracting Officer may at any time, by a written order, and without notice to the sureties, make changes, within the general scope of this contract, in any or more of the following: (i) Drawings, designs, or specifications, where the supplies to be furnished are to be specially manufactured for the Government in accordance therewith; (ii) method of shipment or packing; and, (iii) place of delivery. If any such change causes an increase or decrease in the cost of, or the time required for the performance of any part of the work under this contract, whether changed or not changed by any such order, an equitable adjustment shall be made in the contract price or delivery schedule, or both, and the contract shall be modified in writing accordingly. Any claim by the Contractor for adjustment under this clause must be asserted within 60 days from the date of receipt by the Contractor of the notification of change, provided, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Where the cost of property made obsolete or excess as result of a change is included in the Contractor's claim for adjustment, the Contracting Officer shall have the right to prescribe the manner of disposition of question of fact within the meaning of the clause of this contract entitled "Disputes". However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed."

Now, let's consider Casual Classification Area No. 1 in light of this contractual requirement.

1. <u>Casual Classification by the Government to Protect Private Data as well as Data which would be Determined as Injurious to our National Defense if Disclosed to Unauthorized Personnel</u>.

Since the DD 254 Specification that is included as part of the Contractor's contractual obligation contains a reference to the Industrial Security Manual for Safeguarding Classified Information as part of his obligation, and since we must take it in its entirety, the type of classified information considered here would have been generated by the Government, its handling and protection would be in accord with the requirements established for the handling of this level of classified information without exception. Nowhere in this contractual relationship is the Contractor given the prerogative of analyzing such classified information and questioning the reasons that the Government-authorized personnel classified such information to the level which he received it. It must be recognized and accepted as an assumption that when classified information is submitted to a Contractor for use under a Government contract, that it has been properly classified by an authorized individual who has access to background information that probably is not available to the Contractor and therefore his judgment should not be subject to question. In this instance, if the Contractor takes it upon himself to disagree with the level of classification or the fact of classification at all and discloses this information to unauthorized individuals, he is, at the least, in default of his contractual obligations and the Government should have every right to terminate such contract for default and withdraw the security clearance and all classified material from that Contractor's possession. The determination of his guilt or his innocence under the National Security Act is a problem for the Courts to decide based primarily on whether there was a compromise of information injurious to the

National Defense.

The effect on the Contractor's obligations by the classification of the Government of data for reasons other than the protection of our National Defense information, is to impose upon him a heavier burden of classification than he originally would have anticipated because the underlying connotation throughout the Industrial Security Manual is that in addition to that information stated in the DD 254 Classification Specification, that the Contractor is also responsible to ensure that classification is applied to all information which is the same as or similar to information that he has knowledge of that has been classified previously. This poses a question: If such volume of classified information becomes burdensome or costly, who should bear such costs? While it is true that there is always the channel of requesting a review by the original classifiers to determine the applicability of this seemingly misclassified information and the cost of the handling and classification of similar information creates, there may still be in the final analysis much unnecessary cost imposed upon a contractor by this method. In this particular area it would seem that the only real answer is a close working relationship with the User Agency to apply downgrading in every instance that is possible.

Now, from a contractual standpoint, let's consider Casual Classification Area No. 2.

2. Casual Classification by the Government and Industry When a Question of Doubt Exists as to the Level of Classification or that an Item Should Be Classified at all, but is then Classified as the Easiest Way to Solve that Existing Dilemma.

People being what they are and classification by interpretation of a DD 254 or what type of information would be injurious to the National Defense is going to vary from individual to individual because much of the interpretation applied to those areas of possible ambiguity are strictly within the judgment factors peculiar to that individual responsible to exercise the particular authority applied to this area of interpretation. What then happens if the Contractor, in his judgment, does not classify certain information which he considers is no in the DD 254 specification and which, in his judgment is in no way injurious to the National Defense if disclosed to an unauthorized individual, when on the other hand the Government User Agency determines that there is a possibility for such information to be injurious to the National Defense and feels that such information should be classified to avoid this possibility and that these two actions happened independently of each other, is the Contractor in danger of a security violation if he has knowledge of such Government interpretation after issuance of the information and does nothing to resolve the opposing interpretation? If such classification by the Government, if complied in by the Contractor, should increase the Contractor's cost since he depended on the type of interpretation that he had made and expected to operate under at the time such specification was originally reviewed, would this increased cost be paid the Contractor through a Contract Change for compliance or would he have to absorb it through his misinterpretation of the security specification? It would seem in this type of instance that it was an obvious ambiguity or lack of specific direction in the security specification, to such an extent that a change to such specification should be issued through the Contracting Officer to the Contractor carrying with it the Contractor's right under the Changes Clause to submit a claim for additional cost and fee which would then be negotiated through the proper contractual channels.

Now, let's consider Casual Classification Area No. 3.

3. Casual Classification Direction to the Contractor by Word of Mouth or in Writing but Not by a Contract Change to the DD 254 Specification and Not by the Contracting Officer.

Now this area can become quite controversial because of the broad scope of security responsibilities imposed upon a Contractor when he accepts a Government Contract. It is recognized that classification deci-

sions are made by the User Command and trained security people and not by the Contracting Officer; however, inasmuch as the Contractor's channel of responsibility for contractual compliance lies solely within the contract document, it is important that any changes to his responsibility are implemented through such contract document. As we all know, this is not necessarily always done. When such course is followed so that each direction in classification of upgrading or downgrading the Contractor's responsibility are implemented by contractual change or written direction signed by the Contracting Officer as a Contracting Officer, there is no doubt of the Contractor's responsibility to comply fully with such direction and to be held fully responsible for his action or lack of action under his contractual obligations. However, when casual classification direction is given to a Contractor either by word of mouth or in writing by someone other than the Contracting Officer, what impact does such direction have in fact on the Contractor's responsibility? In the event he did not follow such direction because of disagreement with the interpretation or because it did not come in through the proper channels for dissemination, and, because of this, issues information in that category in an unclassified manner, is he subjected to a security violation; or on the other hand, if he should follow such direction and it substantially increases his cost for compliance with the security requirements, does he get paid with fee for this additional cost? This situation arises quite frequently and in many instances is of insufficient impact cost-wise that such directions are accepted as part of our general responsibility for Industrial Security and which condoning action tends to create a loose method of operating which should be guarded against in all instances. The first question of a possible security violation from a contractual standpoint would appear to be in the negative as long as it stayed in the area as a borderline case of a judgment factor. Since the Contractor has an obligation to protect classified information imposed upon him by his basic DD 254 Classification Specification and the general responsibilities imposed upon him by the Industrial Security Manual, the argument of a security violation would require complete analysis of the facts involved in each situation. The argument of cost would depend upon the type of contract involved. In the instance of a Fixed Price Contract, such casual classification direction would be strictly on the Contractor unless he could convince the Contracting Officer to give him a Contract Change to implement such direction. In the instance of a Cost Reimbursement Contract, such direction could be considered as being within the general scope of the DD 254 Specification and the general intent of the Industrial Security Manual and such additional cost would then be allowed as overrun to its Cost Reimbursement Contract. But on the other hand, if such casual direction was not interpreted by the Administrative Contracting Officer and the various Defense Audit Agencies, to be within the scope of the DD 254 Specification, then such additional costs would be disallowed and of necessity then come out of the Contractor's profits, a situation which is certainly in no manner fair to the Contractor and I am sure was not the intent of the Government under such circumstances to impose on him. In the event of such a happening, there is of course a channel open to the Contractor which is under the doctrine of Constructive Change to a Contract. This doctrine is based on those instances when a Contract Change is requested or imposed upon the Contractor by a person of apparent authority but who has not gone through the Contracting Officer or the proper contract change document route. This method is not an accepted way of doing business and is frowned on quite heavily by the Government and the Contractor as a method of resolving these type of differences. It is highly recommended therefore, both to Industry and the Government, that in those instances where casual classification direction is involved, that upon receiving same, the Industry representative should call this immediately to the attention of the individual giving such direction and request verification by the cognizant Contracting Officer on behalf of the Government and in the event such is not accomplished, the Industry Representative should contact his Contract Representative and have him immediately file a Construction Change Notice to bring such issue to the proper light without any delay.

Problems in this area can be avoided by clearly stating in the regulation that any direction from the Government that changes in any manner the Contractor's obligations under a Contract must be submitted to the Contractor by the Contracting Officer through the proper contractual channels.

THE BRITISH OFFICIAL SECRETS ACT

An Examination

by

JACK ROBINSON

INTRODUCTION

All of us have heard comments about the British Official Secrets Act and have heard murmurs – not to mention outright recommendations – about adoption of such a law here.

We are now beginning to operate under a new Executive Order, with an extensively changed but evolving set of regulations. It seems timely, therefore, to look more closely at the British Act, to consider whether some of its provisions would strengthen proper application of Executive Order 11652 and its implementing regulations.

The purpose of this paper, therefore, is to present the available information on the British law, discuss some facts about its relationship to our own, and offer some observations about its effect on operations. The paper is a "highlight," not intended as a discursive exposition.

Another purpose of this paper is to make the Act available for easier access. Recommendations concerning the advisability of adopting specific provisions of the Act are beyond the scope of this paper.

THE ACT

The first point to establish is that the "Act" is not a single law at all. Properly, it is 'The British Official Secrets Acts, 1911 to 1939."[1] This point is not purely semantic, as anyone who reflects on the range of years covered will agree. We shall examine the major provisions as they have changed.

The law is found in the *Laws of England*[2] which is the closest approximation to our Code (statutes are not codified in the United Kingdom). The following topics are covered:

- **Penalties for spying**
- **Meaning of prohibited place**
- **Effect of communication with foreign agents**
- **Communication, etc., of information**
- **Communication of information relating to munitions**
- **Wrongful receipt of sketch, etc.**
- **Harbouring of spies**
- **Gaining admission to prohibited place, etc.**
- **Wrongful retention, etc., of official documents**
- **Obstruction of police, etc., in prohibited places**
- **Power of police to obtain information**
- **Offenses by corporations**
- **Attempts, incitements, etc.**
- **Punishment**
- **Consent of law officer**
- **Powers of arrest**
- **Exclusion of public during hearing**
- **Production of telegrams**
- **Accomodation addresses**
- **Extent of Acts and place of trial**
- **Laws of British possessions**
- **Communication of information concerning atomic energy**

The last provision is, of course, of more recent origin than 1939. In this connection, it is interesting to note that the first formal act of this type,[3] contained only the following provisions:

- **Disclosure of information**
- **Breach of official trust**
- **Punishment for incitement or counseling to commit offence**
- **Expenses of prosecution**
- **Saving for laws of British possessions**
- **Extent of Act and place of trial of offence**
- **Restriction of prosecution**
- **Interpretations**

Examining then the Act of 1911[4] which repealed the Act of 1889, one finds:

- **Penalties for spying**
- **Wrongful communication etc., of information**
- **Definition of prohibited place**
- **Power to arrest**
- **Penalty for harbouring spies**
- **Restriction on prosecution**
- **Search Warrants**
- **Extent of Act and place of trial of offence**
- **Saving for laws of British possessions**
- **Interpretation**

It is not surprising that the Act of 1911 added to the detail and definition (e.g., the meaning of prohibited place) and added provisions. Among the latter were: Power of arrest, Penalty for harbouring spies, Search warrants, and, the most notable from our view, the one establishing "Wrongful receipt" as an offense. It thus became an offense under the Act for a person to receive prohibited information, just as it was for a person to pass such information, unless the receiver could prove that the receipt was contrary to his desire.[5]

The Act of 1920[6] provided further extensions and amplification. Its sections included:

- **Unauthorised use of uniforms; falsification of reports, etc.**
- **Communication with foreign agents to be evidence, etc.**
- **Interfering with officers of the police, etc.**
- **Power to require the production of telegrams**
- **Registration and regulation of persons. . . receiving postal packets**
- **Powers of police in arrest**
- **Attempts, incitements, etc.**
- **Provisions as to trial and punishment of offenses**

The main elements in these sections relate to detailed

[1] *Footnotes follow the text*

definition of improper use of uniforms and identification in connection with obtaining information or access to a "prohibited place"; a statement of details for establishing evidence of communication with a foreign agent; establishment of a series of records to be kept by persons in the business of receiving "postal packets" for transshipment; and reinstitution of a section pertaining to incitement to commit an offense under the Act. Such a provision, it might be observed, had been in the Act of 1889[7] but not in the Act of 1911.

Undoubtedly, the changes reflected experience gathered in one way or another during World War I, as was noted by Viscount Peel, the Under-Secretary of State for War, when introducing the bill for a second reading in the House of Lords:

> "My Lords, this Bill is intended to amend the Official Secrets Act of 1911. Of course, great changes have taken place in espionage during the war, and great advances, if advances they may be called, have occurred in that somewhat doubtful art, and the experience of countering espionage which we have had during the war is embodied in the amendments contained in this Bill. . . ."[8]

Further, it appears that many of the amendments had appeared as regulations under the Defence of the Realm Act, as reflected by Viscount Burnham during debates:

> ". . . I quite see it may be necessary, with the experience of the war behind us, to embody by way of Statute those provisions which have been extremely useful during the war under the Regulations made by virtue of the Defence of the Realm Act. . . ."[9]

The Act did not, however, basically change the provision pertaining the "wrongful receipt" although it did add a provision, subject to considerable debate, pertaining to "wrongful retention."

Finally, the Act of 1939[10] extended the provisions of the collective Acts to Northern Ireland and rewrote section 6 of the Act of 1920. That section describes the procedures to be followed in obtaining information from those believed to have it about offenses or suspected offenses.

Though no Secrets Act has been written since 1939, provisions covering production and use of atomic energy were added to the Law by The Atomic Energy Act of 1946.[11]

Another aspect, worth noting, is that some provisions of the Secrets Act are incorporated in current laws. Two recent ones are The Radiological Protection Act of 1970 and the Civil Aviation Act of 1971.[12]

An excerpt from the latter will illustrate the continuing application:

> "Section 61 *Official Secrets*
>
> (1) For the purposes of Section 2 of the Official Secrets Act of 1911 (which among other things relates to the wrongful communication of information) a member and an employee of the Authority shall be deemed to hold an office under Her Majesty and a contract with the Authority shall be deemed to be a contract with Her Majesty.
>
> (2) For the purposes of paragraph (c) of section 3 of said Act of 1911 (under which the Secretary of State may by order declare any place belonging to Her Majesty to be a prohibited place for the purposes of that Act) a place belonging to or used for the purposes of the Authority shall be deemed to be a place belonging to Her Majesty. (3) Subject to the following subsection no person shall, except with the consent of and in accordance with any conditions imposed by the Authority, be entitled to exercise any right of entry (whether arising by virtue of a statutory provision or otherwise) upon a place which by virtue of the preceding subsection is a prohibited place for the purpose of the said Act of 1911."

These then, are the provisions of the British Official Secrets Acts, 1911 to 1939 as carried forward into current law.

UNITED STATES LAW

In this country the first of the Acts of this type was passed in 1911.[13] It is perhaps not common knowledge that it was drawn from the British Act of 1889, as the discussion in the House attendant on passage of the law reveals:

> "Mr. BENNET of New York. I would like to ask the gentleman if the language in this bill is substantially in the form of foreign statutes. Mr. PARKER. It is almost exactly in the form of the English statute. We have stricken out the presumption of intent; we thought that was not fair." [14]

An examination of the texts of the two clearly establishes the relationship even though the formats differ and neither "Her Majesty" nor the British possessions enter the discussion. In the comment by Mr. Parker, that the U.S. law had "stricken out the presumption of intent," he apparently refers to the Section of the 1889 Act relating to providing such information to a foreign source:

> (3.) Where a person commits any act declared by this section to be a misdemeanour, he shall, if he *intended* (emphasis supplied) to communicate to a foreign state any. . .or if he communicates the same to any agent of a foreign state. . ."[15]

Our law of 1911, on the other hand, says only:

> "SEC. 2. That whoever, having committed any offense defined in the preceding section, communicates or attempts to communicate to any foreign government, or to any agent or employee thereof, any. . . ."[16]

As evident from the fact that Public Law 470 passed on 3 March 1911 and the British Act of 1911 on 25 August, they were at the time in the process of preparing the Act of 1911 which repealed the Act of 1889. The relation between the Act of 1911 and our "Espionage Act" of 1917 is also evident, but so are some differences. For example, it is in the Act of 1911 that the definition of "prohibited place" appears. By inference, certain

named places in the 1889 Act and in our own 1911 law certainly would be considered as intended of limited access. But, in the 1917 law we find essentially the addition of the "prohibited place:"

> "Section 6. The President in time of war or in case of national emergency may by proclamation designate any place other than those set forth in subsection (a) of section one hereof in which anything for the use of the Army or Navy is being prepared or constructed or stored as a prohibited place for the purposes of this title: *Provided*, That he shall determine that information with respect thereto would be prejudicial to the national defense."[17]

Other portions of this Title are quite similar to those of the Law of 1911, which was repealed by Title I of the 1917 law.[18] Aspects of procedure under law and other matters included in the British Act, in the U.S. are found in appropriate sections of the United States Code. In major respects, then, the provisions of the British Official Secrets Acts are found in United States law; one, of course, is no. – namely, the part that makes it unlawful to *receive* official secrets.

SOME OBSERVATIONS

Clearly, the Acts are part of the fabric of current British law, and aspects of orders issued under them can be found. *Halsbury's Statutory Instruments* is similar to our Code of Federal Regulations. One portion is concerned with Official Secrets.[19]

Of probably greater interest, however, are views expressed over a period of time relating to the one notable aspect that does not appear in U.S. law – the designation of receipt of prohibited information as an offense. A few examples may be illuminating.

In the House of Commons during the discussions and debates incident to the passage of the Act of 1889, one Member commented:

> "Sir G. CAMPBELL (Kirkcaldy): I do not wish to oppose this Motion (reading the bill a third time preliminary to the final passage), but I must say it seems to me that the discussion of some measures in this House is scamped. This Bill has not been sufficiently discussed, and I venture to say it will be of no practical use until the Government have the courage to go further and punish not only those who steal information, but the receivers of the stolen goods – the newspapers. Until the Government deals with the press, nothing in connection with this matter will be satisfactory. . . ."[20]

During the same discussion, and reminiscent of many comments heard in this country today, was the following:

> "Mr. HANBURY (Preston): . . .I should also like to know what is meant by a "Department?" For instance, in the Admiralty, what is the Department? Is it the First Lord. . .When we are passing a measure of this kind which inflicts punishment not only on the person who gives official information, but on those who take it, we ought to have the clearest information as to what can possibly be contrary to the interests of a Deparment. . .when the Department is acting for the true benefit of the State. . .but looking at the way the Departments have been managed lately, I do not think we should render it illegal to obtain information as to that management. . .If the words to which I object are retained. . .A good many of the Departments will not be kept in that good order they ought to be in if we do not obtain more information about them in the future than we have been able to obtain in the past. . ."[21]

Then, with respect to effects on the press and in a not totally dissimilar vein, in the debates attendant upon passage of the Act of 1920, Viscount Burnham, the prestigious publisher of the *Daily Telegraph*, expressed the following apprehensions concerning a clause relating to "wrongful retention:"

> ". . .What I wish to bring before your Lordships is this. In the second subsection of Clause 1 a series of new offences is created, and the principal one is that any person who is in possession of any official document, the return of which is demanded by a competent authority, is guilty of a misdemeanour. . .He is, therefore, in a very grave position. I do not know a single editor of a national paper who from time to time has not been in possession of official documents. . .and which it may be inconvenient to the Minister of the responsible Department should have gone out. . .I do not believe any editor would be safe if the Bill were passed in its present form. . and I have not such unlimited faith in Government Departments that I wish to give them the sort of autocratic powers that have no doubt been exercised. . .in other countries, which have treated official documents as if they were inspired and sacrosanct. . . ."[22]

It must be observed, of course, that while modifications were made in some of these points, the main thrust was enacted and remains law. Clearly these aspects are matters of prime importance in the United States. More recent comments, much in point, were made by Lord Shawcross, a former Attorney-General of the United Kingdom, former member of the Permanent Court of Arbitration at the Hague, and, at the time of writing, Chairman of JUSTICE, the British branch of the International Commission of Jurists, in *Encounter* in 1966:

> State Secrets – I turn now to the publication in newspapers of so-called official or government secrets: information in the possession of Departments of State which they do not care to disclose or information about matters taking place within Departments. In Britain there is legislation known as the Official Secrets Acts, and there are other statutes which have somewhat similar effect in forbidding disclosure in particular cases. This is not a matter which we can expect to be left entirely to the discretion of the newspapers. . .the fact remains that not every newspaper editor can at every moment be fully informed in every case whether or not

disclosure of some particular matter might be detrimental to the State. There must, therefore, be some degree of control by law. The important thing is to ensure that it does not go further than the necessity requires – and that indeed is a danger, for the moment that it is admitted to be right that *some* things should not be published, the matter becomes one of degree and those who seek to preserve secrecy in order perhaps to conceal mistakes or inefficiency in their Departments may push the restraint on publicity too far. There are perhaps four categories of cases in which it may be arguable that the public interest justifies a restraint on disclosures:

> 1. Information prejudicial to the security of the State – for instance, matters relating to defence or police.
>
> 2. Information prejudicial to the national interest – matters concerning foreign relations, diplomatic negotiations and, perhaps, matters affecting banking, currency and commodity reserves so far as they are matters for the state.
>
> 3. Information concerning matters of State, for instance in regard to an impending budget, the premature disclosure of which could provide unfair opportunities for private financial gain.
>
> 4. Information provided to Government Departments in regard to matters of State on the promise of non-disclosure.

In regard to these four matters, the realities of political life and of State interests justify a restraint on publication or, indeed, even on receipt of information without authority. In regard to these it is legitimate for the State to forbid disclosure or publication. . . ."[23]

Lord Shawcross went on to discuss a means by which the system is made workable. A system of advisories called "D Notices" is made available through the official press and broadcasting company. These provide warning on matters of which the press may learn or hear as to their sensitivity in the sense of The Official Secrets Acts. He observes that these have no statutory or legal effect, but adds:

> "...In practice this system has, at least in recent years, in general, prevented the Official Secrets Acts forming a serious restriction on the liberty of the Press in matters relating to National Security. . . ."[24]

He observed further that some Departments are still prone to cause problems:

> "...But Departments not concerned with military security sometimes still continue to threaten the Press with dire consequences under the Act. . . ."[25]

These problems appear similar to problems of some U.S. agencies which had original classifying authority, but whose operations could be only remotely related to security matters.

SUMMARY

At the beginning of the paper, the stated intention was to present a *précis* of the British Official Secrets Act. We have seen that it apparently differs from our law in only one respect – namely, receipt of prohibited (classified) information is an offense just as is obtaining, losing, or passing such information.

NOTES

[1] For the complete text of the Statutes, see appendix B; for the complete text of the Law, see appendix C.

[2] *Halsbury's Laws of England*, Third Edition, Butterworth & Co. Ltd., London, 1955.

[3] The Official Secrets Act of 1889, *Public General Acts*, 52 & 53 Victoria, HMSO, London, 1889. For complete text, see appendix A.

[4] The Official Secrets Act, 1911, *Halsbury's Statutes of England*, Third Edition, Vol 8, "Criminal Law," "Crown Proceedings," Butterworths, London, 1969.

[5] The Official Secrets Act, 1911 (1&2 Geo. 5 c. 28) s. 2(2).

[6] The Official Secrets Act, 1920 (10&11 Geo. 5 c. 75).

[7] The Official Secrets Act, 1889 (52&53 Vict. c. 52), s. 3.

[8] *The Parliamentary Debates*, Fifth Series, 10 & 11 George V, House of Lords, HMSO, London, 1920, Vol. 50, p. 735.

[9] *ibid, p. 897.*

[10] The Official Secrets Act, 1939, (2&3 Geo. 6 c. 121).

[11] The Atomic Energy Act, 1946, (9&10 Geo. 6 c. 80).

[12] *Halsbury's Statutes of England* Third Edition, Current Statutes Service, Butterworths, London.

[13] 36 Statutes 470, chapter 226. For complete text of the law see appendix D.

[14] Congressional Record - House, 6 February 1911, 61st Congress, 3d Session, p. 2030.

[15] The Official Secrets Act, 1889 (52&53 Vict. c. 52), s. 1(3).

[16] 36 Statutes 470, Section 2.

[17] 40 Statutes 24, Title I.

[18] *ibid.* It may be observed that this was an omnibus law of 12 titles; others dealing with such matters as Injuring Vessels Engaged in Foreign Commerce, Enforcement of Neutrality, Disturbance of Foreign Relations, Passports, etc., were included as well

[19] *Halsbury's Statutory Instruments*, Vol. 6, Part 4, Official Secrets, Butterworth & Co. Ltd., London, 1952.

[20] *Hansard's Parliamentary Debates*, Third Series, 52 & 53 Victoria, 1889, The Hansard Publishing Union, Ltd., London, 1889, Vol.337 p. 322.

[21] *ibid.* pp. 320-321.

[22] *The Parliamentary Debates*, Fifth Series, 10 & 11 George V, House of Lords, HMSO, London, 1920, Vol. 50, pp. 896-897.

[23] Lord Shawcross, "The Shadow of the Law," *Encounter*, Vol. XXVI, No. 3, March 1966, Rolls Publishing Co., Ltd., London, pp. 87-88.

[24] *ibid.*, p. 88.

[25] *ibid.*

APPENDIX A

Official Secrets Act, 1889

An Act to prevent the Disclosure of Official Documents and Information. [26th August 1889.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1.–(1.) *(a.)* Where a person for the purpose of wrongfully obtaining information–

(i.) enters or is in any part of a place belonging to Her Majesty the Queen, being a fortress, arsenal, factory, dockyard, camp, ship, office, or other like place, in which part he is not entitled to be; or

(ii.) when lawfully or unlawfully in any such place as aforesaid, either obtains any document, sketch, plan, model, or knowledge of any thing which he is not entitled to obtain, or takes without lawful authority any sketch or plan; or

(iii.) when outside any fortress, arsenal, factory, dockyard, or camp belonging to Her Majesty the Queen, takes or attempts to take without authority given by or on behalf of Her Majesty, any sketch or plan of that fortress, arsenal, factory, dockyard, or camp; or

(b.) where a person knowingly having possession of, or control over, any such document, sketch, plan, model, or knowledge as has been obtained or taken by means of any act which constitutes an offence against this Act at any time wilfully and without lawful authority communicates or attempts to communicate the same to any person to whom the same ought not, in the interest of the State, to be communicated at that time, or

(c.) where a person after having been entrusted in confidence by some officer under Her Majesty the Queen with any document, sketch, plan, model, or information relating to any such place as aforesaid, or to the naval or military affairs of Her Majesty, wilfully and in breach of such confidence communicates the same when, in the interest of the State, it ought not to be communicated;

he shall be guilty of a misdemeanor, and on conviction be liable to imprisonment, with or without hard labour, for a term not exceeding one year, or to a fine, or to both imprisonment and a fine.

(2.) Where a person having possession of any document, sketch, plan, model, or information relating to any fortress, arsenal, factory, dockyard, camp, ship, office, or other like place belonging to Her Majesty, or to the naval or military affairs of Her Majesty, in whatever manner the same has been obtained or taken, at any time wilfully communicates the same to any person to whom he knows the same ought not, in the interest of the State, to be communicated at that time, he shall be guilty of a misdemeanour and be liable to the same punishment as if he committed an offence under the foregoing provisions of this section.

(3.) Where a person commits any act declared by this section to be a misdemeanour, he shall, if he intended to communicate to a foreign State any information, document, sketch, plan, model, or knowledge obtained or taken by him, or entrusted to him as aforesaid, or if he communicates the same to any agent of a foreign State, be guilty of felony, and on conviction be liable at the discretion of the court to penal servitude for life, or for any term not less than five years, or to imprisonment for any term not exceeding two years with or without hard labour.

2.–(1.) Where a person, by means of his holding or having held an office under Her Majesty the Queen, has lawfully or unlawfully either obtained possession of or control over any document, sketch, plan, or model, or acquired any information, and at any time corruptly or contrary to his official duty communicates or attempts to communicate that document, sketch, plan, model, or information to any person to whom the same ought not, in the interest of the State, or otherwise in the public interest, to be communicated at that time, he shall be guilty of a breach of official trust.

(2.) A person guilty of a breach of official trust shall–

(a.) if the communication was made or attempted to be made to a foreign State, be guilty of felony, and on conviction be liable at the discretion of the court to penal servitude for life, or for any term not less than five years, or to imprisonment for any term not exceeding two years, with or without hard labour; and

(b.) in any other case be guilty of a misdemeanor, and on conviction be liable to imprisonment, with or without hard labour, for a term not exceeding one year, or to a fine, or to both imprisonment and a fine.

(3.) This section shall apply to a person holding a contract with any department of the Government of the United Kingdom, or with the holder of any office under Her Majesty the Queen as such holder, where such contract involves an obligation of secrecy, and to any person employed by an person or body of persons holding such a contract, who is under a like obligation of secrecy, as if the person holding the contract and the person so employed were respectively holders of an office under Her Majesty the Queen.

3. Any person who incites or counsels, or attempts to procure, another person to commit an offence under this Act, shall be guilty of a misdemeanor, and on conviction be liable to the same punishment as if he had committed the offence.

4. The expenses of the prosecution of a misdemeanor under this Act shall be defrayed in like manner as in the case of a felony.

5. If by any law made before or after the passing of this Act by the legislature of any British possession provisions are made which appear to Her Majesty the Queen to be of the like effect as those contained in this Act, Her Majesty may, by Order in Council, suspend the operation within such British possession of this Act or of any part thereof, so long as such law continues in force there, and no longer, and such order shall have effect as if it were enacted in this Act:

Provided that the suspension of this Act, or of any part thereof, in any British possession shall not extend to the holder of an office under Her Majesty the Queen who is not appointed to that office by the Government of that possession.

The expression "British possession" means any part of Her Majesty's dominions not within the United Kingdom.

6. (1.) This Act shall apply to all acts made offences by this Act when committed in any part of Her Majesty's dominions, or when committed by British officers or subjects elsewhere.

The Public General Acts
52 & 53 Victoria, HMSO, London, 1889

(2.) An offence under this Act, if alleged to have been commited out of the United Kingdom, may be inquired of, heard, and determined, in any competent British court in the place where the offence was committed, or in Her Majesty's High Court of Justice in England or the Central Criminal Court, and the Act of the forty-second year of the reign of King George the Third, chapter eighty-five, shall apply in like manner as if the offence were mentioned in that Act, and the Central Criminal Court as well as the High Court possessed the jurisdiction given by that Act to the Court of King's Bench.

(3.) An offence under this Act shall not be tried by any court of general or quarter sessions, nor by the sheriff court in Scotland, nor by any court out of the United Kingdom which has not jurisdiction to try crimes which involve the greatest punishment allowed by law.

(4.) The provisions of the Criminal Law and Procedure (Ireland) Act, 1887, shall not apply to any trial under the provisions of this Act.

7.—(1.) A prosecution for an offence against this Act shall not be instituted except by or with the consent of the Attorney-General.

(2.) In this section the expression "Attorney-General" means the Attorney or Solicitor General for England; and as respects Scotland, means the Lord Advocate; and as respects Ireland, means the Attorney or Solicitor General for Ireland; and if the prosecution is instituted in any court out of the United Kingdom, means the person who in that court is Attorney General, or exercises the like functions as the Attorney-General in England.

8. In this Act, unless the context otherwise requires—

Any reference to a place belonging to Her Majesty the Queen includes a place belonging to any department of the Government of the United Kingdom or of any of Her Majesty's possessions, whether the place is or is not actually vested in Her Majesty;

Expressions referring to communications include any communication, whether in whole or in part and whether the document, sketch, plan, model, or information itself or the substance or effect thereof only be communicated;

The expression "document" includes part of a document;

The expression "model" includes design, pattern, and specimen;

The expression "sketch" includes any photograph or other mode of representation of any place or thing;

The expression "office under Her Majesty the Queen," includes any office or employment in or under any department of the Government of the United Kingdom, and so far as regards any document, sketch, plan, model, or information relating to the naval or military affairs of Her Majesty, includes any office or employment in or under any department of the Government of any of Her Majesty's possessions.

9. This Act shall not exempt any person from any proceeding for an offence which is punishable at common law, or by military or naval law, or under any Act of Parliament other than this Act, so however, that no person be punished twice for the same offence.

10. This Act may be cited as the Official Secrets Act, 1889

APPENDIX B

THE STATUTES

THE OFFICIAL SECRETS ACT 1911

(1 & 2 Geo. 5 c. 28)

Arrangement of Sections

An Act to re-enact the Official Secrets Act, 1889, with Amendments

[22nd August 1911]

(See Appendix A for text.)

General Note. This Act, the Official Secrets Act 1920, p. 294,* *post*, and the Official Secrets Act 1939, p. 337, *post*, deal with espionage and the unauthorised obtaining or disclosure of official information.

Bank of England. The Bank of England Act 1946, s. 4 (4), (5), Vol. 2, p. 767, applies the provisions of the Official Secrets Acts 1911 to 1939, to certain directions and recommendations given by the Bank under that section.

Parliamentary Commissioner. Information obtained by the Parliamentary Commissioner or his officers in the course of or for the purposes of an investigation under the Parliamentary Commissioner Act 1967, Vol. 6, p. 822, may be disclosed for the purposes of any proceedings for an offence under the Official Secrets Acts 1911 to 1939 alleged to have been committed in respect of information obtained by the Commissioner or any of his officers by virtue of the Act of 1967 or for the purposes of an inquiry with a view to the taking of such proceedings; see s. 11 (2) *(b)* of the Act of 1967, Vol. 6, p. 829.

Diplomatic missions. The Official Secrets Acts 1911 to 1939 extend to a diplomatic agent dealing with documents of the diplomatic mission which employs him, see *R.* v. *A.B.*, [1941] 1 K.B. 454

Duties of chief officers of police. Chief officers of police must report offences alleged to have been committed against the Official Secrets Acts 1911 to 1939 in their districts to the Director of Public Prosecutions; see the Prosecution of Offences Regulations 1946, S.R. & O. 1946 No. 1467, reg. 6 (2) (6 Halsbury's Statutory Instruments, title Criminal Law (Part 1A (i)).

Official Secrets Acts 1911 to 1939. By the Official Secrets Act 1939, s. 2 (1), p. 337, *post*, the following Acts may be cited together by this collective title and are to be construed as one: the Official Secrets Act 1911 (this Act); the Official Secrets Act 1920,

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Halsbury's Statutes of England,
Third Edition, Volume 8,
Butterworths, London, 1969.
(*Interal page references in text refer to this volume.)

p. 294, *post;* the Official Secrets Act 1939, p. 337, *post.* As to construction see the note "Construed as one" to the Official Secrets Act 1920, s. 11, p. 302, *post.*

Northern Ireland. This Act applies. As respects Northern Ireland s. 5 was repealed and ss. 6 and 10 were partly repealed by the Criminal Law Act (Northern Ireland) 1967, Sch. 2.

1. Penalties for spying

(1) If any person for any purpose prejudicial to the safety or interests of the State–

(a) approaches [inspects, passes over] or is in the neighbourhood of, or enters any prohibited place within the meaning of this Act; or

(b) makes any sketch, plan, model, or note which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy; or

(c) obtains, [collects, records or publishes,] or communicates to any other person [any secret official code word, or pass word, or] any sketch, plan, model, article, or note, or other document or information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy;

he shall be guilty of felony . . .

(2) On a prosecution under this section, it shall not be necessary to show that the accused person was guilty of any particular act tending to show a purpose prejudicial to the safety or interests of the State, and, notwithstanding that no such act is proved against him, he may be convicted if, from the circumstances of the case, or his conduct, or his known character as proved, it appears that his purpose was a purpose prejudicial to the safety or interests of the State; and if any sketch, plan, model, article, note, document, or information relating to or used in any prohibited place within the meaning of this Act, or anything in such a place [or any secret official code word or pass word], is made, obtained, [collected, recorded, published], or communicated by any person other than a person acting under lawful authority, it shall be deemed to have been made, obtained, [collected, recorded, published] or communicated for a purpose prejudicial to the safety or interests of the State unless the contrary is proved.

2. Wrongful communication, etc., of information

(1) If any person having in his possession or control [any secret official code word, or pass word, or] any sketch, plan, model, article, note, document, or information which relates to or is used in a prohibited place or anything in such a place, or which has been made or obtained in contravention of this Act, or which has been entrusted in confidence to him by any person holding office under His Majesty or which he has obtained [or to which he has had access] owing to his position as a person who holds or has held office under His Majesty, or as a person who holds or has held a contract made on behalf of His Majesty, or as a person who is or has been employed under a person who holds or has held such an office or contract,–

(a) Communicates the [code word, pass word,] sketch, plan, model, article, note, document, or information to any person, other than a person to whom he is authorised to communicate it, or a person to whom it is in the interest of the State his duty to communicate it, or,

[*(aa)* Uses the information in his possession for the benefit of any foreign power or in any other manner prejudicial to the safety or interest of the State;]

(b) retains the sketch, plan, model, article, note, or document in his possession or control when he has not right to retain it or when it is contrary to his duty to retain it [or fails to comply with all directions issued by lawful authority with regard to the return or disposal thereof] [or

(c) fails to take reasonable care of, or so conducts himself as to endanger the safety of the sketch, plan, model, article, note, document, secret official code or pass word or information]:

that person shall be guilty of a misdemeanour.

[(1A) If any person having in his possession or control any sketch, plan, model, article, note, document, or information which relates to munitions of war, communicates it directly or indirectly to any foreign power, or in any other manner prejudicial to the safety or interests of the State, that person shall be guilty of a misdemeanour;]

(2) If any person receives any [secret official code word, or pass word, or] sketch, plan, model, article, note, document, or information, knowing, or having reasonable ground to believe, at the time when he receives it, that the [code word, pass word,] sketch, plan, model, article, note, document, or information is communicated to him in contravention of this Act, he shall be guilty of a misdemeanour, unless he proves that the communication to him of the [code word, pass word,] sketch, plan, model, article, note, document, or information was contrary to his desire.

(3) *(Rep. by the Official Secrets Act 1920, s. 11 (2) and Sch. 2.)*

3. Definition of prohibited place

For the purposes of this Act, the expression "prohibited place" means -

[*(a)* Any work of defence, arsenal, naval or air force establishment or station, factory, dockyard, mine, minefield, camp, ship, or aircraft belonging to or occupied by or on behalf of His Majesty, or any telegraph, telephone, wireless or signal station, or office so belonging or occupied, and any place belonging to or occupied by or on behalf of His Majesty and used for the purpose of building, repairing, making, or storing any munitions of war, or any sketches, plans, models, or documents relating thereto, or for the purpose of getting any metals, oil, or minerals of use in time of war]; and

(b) any place not belonging to His Majesty where any [munitions of war], or any [sketches, models, plans] or documents relating thereto, are being made, repaired, [gotten] or stored under contract with, or with any person on behalf of, His Majesty, or otherwise on behalf of His Majesty, and

(c) any place belonging to [or used for the purposes of] His Majesty which is for the time being declared [by order of a Secretary of State] to be a prohibited place for the purposes of this section on the ground that information with respect thereto, or damage thereto, would be useful to an enemy; and

(d) any railway, road, way, or channel, or other means of communication by land or water (including any works

or structures being part thereof or connected therewith), or any place used for gas, water, or electricity works or other works for purposes of a public character, or any place where any [munitions of war], or any [sketches, models, plans] or documents relating thereto, are bein made, repaired, or stored otherwise than on behalf of His Majesty, which is for the time being declared [by order of a Secretary of State] to be a prohibited place for the purposes of this section, on the ground that information with respect thereto, or the destruction or obstruction thereof, or interference therewith, would be useful to an enemy.

4, 5. *(S. 4 rep. by the Official Secrets Act 1920, s. 11 (2) and Sch. 2; s. 5 rep. by the Criminal Law Act 1967, s. 10 (2) and Sch. 3, Part III.)*

6. Power to arrest

Any person who is found committing an offence under this Act . . . or who is reasonably suspected of having committed, or having attempted to commit, or being about to commit, such an offence, may be apprehended and detained . . .

7. Penalty for harbouring spies

If any person knowingly harbours any person whom he knows, or has reasonable grounds for supposing, to be a person who is about to commit or who has committed an offence under this Act, or knowingly permits to meet or assemble in any premises in his occupation or under his control any such persons, or if any person having harboured any such person, or permitted to meet or assemble in any premises in his occupation or under his control any such persons, [wilfully omits or refuses] to disclose to a superintendent of police any information which it is in his power to give in relation to any such person he shall be guilty of a misdemeanour . . .

8. Restriction on prosecution

A prosecution for an offence under this Act shall not be instituted except by or with the consent of the Attorney-General:

Provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the institution of a prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.

9. Search warrants

(1) If a justice of the peace is satisfied by information on oath that there is reasonable ground for suspecting that an offence under this Act has been or is about to be committed, he may grant a search warrant authorising any constable named therein to enter at any time any premises or place named in the warrant, if necessary, by force, and to search the premises or place and every person found therein, and to seize any sketch, plan, model, article, note, or document, or anything of a like nature or anything which is evidence to an offence under this Act having been or being about to be committed, which he may find on the premises or place or on any such person, and with regard to or in connexion with which he has reasonable ground for suspecting that an offence under this Act has been or is about to be committed.

(2) Where it appears to a superintendent of police that the case is one of great emergency and that in the interests of the State immediate action is necessary, he may by a written order under his hand give to any constable the like authority as may be given by the warrant of a justice under this section.

10. Extent of Act and place of trial of offence

(1) This Act shall apply to all acts which are offences under this Act when committed in any part of His Majesty's dominions, or when committed by British officers or subjects elsewhere.

(2) An offence under this Act, if alleged to have been committed out of the United Kingdom, may be inquired of, heard, and determined, in any competent British court in the place where the offence was commited, or . . . in England . . .

(3) An offence under this Act shall not be tried . . by the sheriff court in Scotland, nor by any court out of the United Kingdom which has not jurisdiction to try crimes which involve the greatest punishment allowed by law.

(4) The provisions of the Criminal Law and Procedure (Ireland) Act, 1887, shall not apply to any trial under the provisions of this Act.

11. Saving for laws of British possessions

If by any law made before or after the passing of this Act by the legislature of any British possession provisions are made which appear to His Majesty to be of the like effect as those contained in this Act, His Majesty may, by Order in Council, suspend the operation within that British possession of this Act, or of any part thereof, so long as the law continues in force there, and no longer, and the Order shall have effect as if it were enacted in this Act:

Provided that the suspension of this Act, or of any part thereof, in any British Possession shall not extend to the Holder of an office under His Majesty who is not appointed to that office by the Government of that possession.

12. Interpretation

In this Act, unless the context otherwise requires,

Any reference to a place belonging to His Majesty includes a place belonging to any department of the Government of the United Kingdom or of any British possessions, whether the place is or is not actually vested in His Majesty,

The expression "Attorney-General" means the Attorney or Solicitor General for England; and as respects Scotland, means the Lord Advocate, and as respects Ireland, means the Attorney or Solicitor General for Ireland; and, if the prosecution is instituted in any court out of the United Kingdom, means the person who in that court is Attorney-General, or exercises the like functions as the Attorney-General in England,

Expressions referring to communicating or receiving include any communicating or receiving, whether in whole or in part, and whether the sketch, plan, model, article, note, document, or information itself or the substance, effect, or description thereof only be communicated or

received; expressions referring to obtaining or retaining any sketch, plan, model, article, note, or document, include the copying or causing to be copied the whole or any part of any sketch, plan, model, article, note, or document; and expressions referring to the communication of any sketch, plan, model, article, note or document include the transfer or transmission of the sketch, plan, model, article, note or document;

The expression "document" includes part of a document;

The expression "model" includes design, pattern, and specimen;

The expression "sketch" includes any photograph or other mode of representing any place or thing;

[The expression "munitions of war" includes the whole or any part of any ship, submarine, aircraft, tank or similar engine, arms and ammunition, torpedo, or mine, intended or adapted for use in war, and any other article, material, or device, whether actual or proposed, intended for such use;]

The expression "superintendent of police" includes any police officer of a like or superior rank [and any person upon whom the powers of a superintendent of police are for the purpose of this Act conferred by a Secretary of State];

The expression "office under His Majesty" includes any office or employment in or under any department of the Government of the United Kingdom, or of any British possession;

The expression "offence under this Act" includes any act, omission, or other thing which is punishable under this Act.

13. Short title

(1) This Act may be cited as the Official Secrets Act, 1911.

(2) *(Rep. by the S.L.R. Act 1927.)*

NOTES – ACT OF 1911

Section 1

The words omitted were repealed, and the words in square brackets were added, by the Official Secrets Act 1920, ss. 10, 11 (2) and Schs. 1, 2.

General Note. In *Chandler* v. *Director of Public Prosecutions*, [1964] A.C. at p. 777; [1962] 3 All E.R. 142, the House of Lords held that on the true construction of this section: *(a)* the section was not limited to offences of spying notwithstanding that its marginal heading referred only to spying but extended to the saboteur as much as to the spy, *(b)* "purpose" within the meaning of this section was to be distinguished from the motive for doing an act, and the words "any purpose" meant or included the achieving of the consequence which a person intended and desired to follow directly on his act, *viz.*, his direct or immediate purpose as opposed to his ultimate aim, and even if a person had several purposes, his immediate purpose remained one of them and was within the words "any purpose"; *(c)* in the phase "interests of the State" the word "State" meant (*per* Lords Reid and Hodson) the organised community or (*per* Lords Devlin and Pearce) the organs of government of a national community, and (*per* Lords Devlin and Pearce) the "interests of the State" meant such interest according to the policies of the State as they in fact were, not as it might be argued that they ought to be.

As to the obtaining of information concerning offences or suspected offences under this section, see the Official Secrets Act 1920, s. 6, p. 299, *post*.

Purpose prejudicial to the safety or interest of the State. See the General Note above; and note the provisions of sub-s. (2) above.

Enemy. This includes a potential enemy with whom there might be war (*R.* v. *Parrott* (1913), 8 Cr. App. Rep. 186).

Obtains . . . or communicates . . . information . . . useful to an enemy. Communication or attempted communication with a foreign agent is to be evidence that a person has obtained or attempted to obtain information of the kind mentioned in sub-s. (1) *(c)*; see the Official Secrets Act 1920, s. 2 (1), p. 296, *post*, and see also s. 2 (2) of that Act, p. 296, *post*.

The falsity of the information given is not material except as to a possible defence of intent to mislead (*R.* v. *M.* (1915), 23 T.L.R. 1, C.C.A.).

Shall be guilty of felony. The distinctions between felony and misdemeanour were abolished, and the law and practice applying to misdemeanour were in general made applicable to all offences, by the Criminal Law Act 1967, s. 1, p. 552, *post*. See also, in particular, s. 12 (5) of that Act, p. 561, *post*, as to the construction of existing enactments.

The punishment is laid down by the Official Secrets Act 1920, s. 8 (1), p. 300, *post*. See also s. 8 (3)-(5) of that Act, p. 301, *post*; s. 7 of that Act, p. 300, *post* (attempts, incitements, etc.); s. 6, *post* (power of arrest), s. 7, *post* (penalty for harbouring); s. 8, *post* (restriction on prosecution); s. 9, *post* (search warrants); and s. 10, *post* (extent of Act and place of trial of offence).

The offence is excluded from the jurisdiction of all courts of quarter sessions; see the Criminal Law Act 1967, s. 8 (2) and Sch. 1, List B, para. 15, Vol. 21, title Magistrates.

Definitions. For "prohibited place", see s. 3, *post*; for "communicates", "obtains", "document", "model" and "sketch", see s. 12, *post*.

Section 2

The words in square brackets in sub-ss. (1) and (2) and the whole of sub-ss. (1) *(aa)*, *(c)*, (1A), were added by the Official Secrets Act 1920, ss. 9 (1), 10 and Sch. 1.

Extension. This section is applied to recommendations and directions made under the Bank of England Act 1946; see s. 4 (4), (5) of that Act, Vol. 2, p. 767.

Relates to . . . a prohibited place, etc. An offence under this section may be committed though the code word, etc., does not relate to a prohibited place (*R.* v. *Smington*, [1921] 1 K.B. 451, C.C.A.).

Made or obtained in contravention of this Act. See s. 1 (1) *(b)*, *(c)*, *ante*.

Entrusted in confidence to him, etc. It is not necessary to prove that the information was entrusted especially in confidence to him (*R.* v. *Crisp and Homewood* (1919), 83 J.P. 121).

Office under His Majesty. See the definition in s. 12 *post*, and the note thereto.

Contract made on behalf of His Majesty. Any contract with the United Kingdom Atomic Energy Authority is to be deemed for

the purposes of this section to be a contract with Her Majesty; see the Atomic Energy Authority Act 1954, s. 6 (4) and Sch. 3, Vol. 37, title Trade and Industry.

Manner prejudicial to the safety or interests of the State. Cf. the General Note to s. 1, *ante*.

Shall be guilty of a misdemeanour. The note "Shall be guilty of a felony" to s. 1, *ante*, applies subject to the modification that in the case of misdemeanours the punishment is laid down by the Official Secrets Act 1920, s. 8 (2), p. 300, *post*.

Knowing. See the note "knows" to the Perjury Act 1911, s. 1, p. 242, *ante*.

Reasonable ground to believe. See the Note "Reasonable cause to believe" to the Foreign Enlistment Act 1870, s. 8, p. 186, *ante*.

Unless he proves. The burden of proof laid on the defendant is less onerous than that resting on the prosecution as regards proving the offence, and may be discharged by satisfying the court of the probability, or rather the preponderance of probability, of what the defendant is called to prove; see *R.* v. *Carr-Briant*, [1943] K.B. 607; [1943] 2 All E.R. 156, and *R.* v. *Dunbar*, [1958] 1 Q.B. 1; [1957] 2 All E.R. 737.

Definitions. For "prohibited place," see s. 3, *post*; for "communicates", "receives", "obtained", "retains", "document", "model", "sketch", "munitions of war" and "office under His Majesty", see s. 12, *post*. See also, as to "office under His Majesty", the note to s. 12, *post*.

Section 3

The words in square brackets were substituted and added by the Official Secrets Act 1920, s. 10 and Sch. 1.

Para. (c). Any place belonging to or used for the purposes of the United Kingdom Atomic Energy Authority is regarded as a place belong to or used for the purposes of Her Majesty under this paragraph; see the Atomic Energy Authority Act 1954, s. 6 (3), Vol. 37, title Trade and Industry.

Definitions. For "document", "model", "munitions of war", "place belonging to His Majesty" and "sketch", see s. 12, *post*.

Orders under para. (c). The Office Secrets (Ministry of Supply) Order 1947, S.R. & O. 1947 No. 1357; the Official Secret (Ministry of Supply) (No. 2) Order 1947, S.R. & O. 1947 No. 2355; the Official Secrets (Ministry of Supply) Order 1949, S.I. 1949 No. 2315; the Official Secrets (Ministry of Supply) Order 1950, S.I. 1950 No. 826; the Official Secrets (Prohibited Place) Order 1954, S.I. 1954 No. 243; the Official Secrets (Prohibited Place) (No. 2) Order 1954, S.I. 1954, No. 1482; the Offical Secrets (Cyprus) Order 1955, S.I. 1955 No. 564; the Official Secrets (Cyprus) (No. 2) Order 1955, S.I. 1955 No. 1410; the Official Secrets (Prohibited Place) Order 1955, S.I. 1955 No. 1497; the Official Secrets (Prohibited Place) Order 1956, S.I. 1956 No. 1438; the Official Secrets (Prohibited Place) Order 1958, S.I. 1958 No. 1935; the Official Secrets (Prohibited Places) Order 1959, S.I. 1959 No. 705 as amended by S.I. 1964 No. 92; the Official Secrets (Prohibited Places) Order 1960, S.I. 1960 No. 1348. For the places specified by these orders, see 6 Halsbury's Statutory Instruments, title Criminal Law (Part 4).

Section 6

The Words omitted were repealed by the Criminal Law Act 1967, s. 10 (2) and Sch. 3, Part III.

Section 7

The words in square brackets were substituted, and the words omitted were repealed, by the Official Secrets Act 1920, ss. 10 and 11 (2) and Schs. 1 and 2.

Knowingly. See the note "Knows" to the Perjury Act 1911, s. 1, p. 242, *ante*.

Wilfully. Cf. the note to the Perjury Act 1911, s. 1, p. 241, *ante*.

Superintendent of police. See the definition in s. 12, *post*.

Shall be guilty of a misdemeanour. The note "Shall be guilty of a felony" to s. 1, *ante*, applies subject to the modification that in the case of misdemeanours the punishment is laid down by the Official Secrets Act 1920, s. 8 (2), p. 300, *post*.

Section 8

Attorney-General. For meaning see s. 12, *post*.

Section 9

Definitions. For "document", "model", "sketch" and "superintendent of police" see s. 12, *post*.

Section 10

The words omitted from sub-s. (2) were repealed by the Criminal Justice Act 1948, s. 83 (3) and Sch. 10, Part I, and the Criminal Law Act 1967, s. 10 (2) and Sch. 3, Part I. The words omitted from sub-s. (3) were repealed by s. 10 (2) of, and Part II of Sch. 3 to, the Act of 1967.

United Kingdom, *i.e.*, Great Britain and Northern Ireland; see the Royal and Parliamentary Titles Act 1927, s. 2 (2), Vol. 6, p. 520.

Offence under this Act should not be tried, etc. Offences under this Act are also excluded from the jurisdiction of all courts of quarter sessions; see the Criminal Law Act 1967, s. 8 (2) and Sch. 1, List B, para. 15, Vol. 21, title Magistrates.

Criminal Law and Procedure (Ireland) Act 1887. 50 & 51 Vict. c. 20; not printed in this work.

Section 11

See all the Official Secrets Act 1920, s. 11 (1) proviso *(a)*, p. 302, *post*, as to the exclusion of that Act from application to the Dominions.

British possession. For meaning, see the Interpretation Act 1889, s. 18 (2), Vol. 32, title Statutes.

Office under His Majesty. See the definition in s. 12, *post*, and the note thereto.

Orders under this section. The Official Secrets (Commonwealth of Australia) Order in Council 1915, S.R. & O. 1915 No. 1199; the Official Secrets (Mauritius) Order in Council 1916, dated 12th April 1916, the Official Secrets (Malta) Order in Council 1923, S.R. & O. 1923 No. 650; the Official Secrets (India) Order in Council 1923, S.R. & O. 1923 No. 1517; the Official Secrets (Straits Settlements) Order in Council 1936, S.R. & O. 1936 No. 409; the Official Secrets (Penang and Malacca) Order in Council 1950, S.I. 1950 No. 1779; the Official Secrets (Jersey) Order 1952, S.I. 1952 No. 1034.

Section 12

The words in square brackets defining "munitions of War" were added, and the words in square brackets relating to the definition of "superintendent of police" were substituted, by the Official Secrets Act 1920, ss. 9 (2), 10 and Sch. I.

United Kingdom. See the note to s. 10, *ante*.

Office under His Majesty. This also includes membership of an office or employment under the United Kingdom Atomic Energy Authority (Atomic Energy Authority Act 1954, s. 6 (4) and Sch. 3, Vol. 37, title Trade and Industry, which applies, however, only for the purposes of s. 2, *ante*), the Parliamentary Commissioner for Administration and his officers (Parliamentary Commissioner Act 1967, s. 11 (1), Vol. 6, p. 829) and police officers (*Lewis* v. *Cattle*, [1938] 2 K.B. 454, [1938] 2 All E.R. 368).

THE OFFICIAL SECRETS ACT 1920

(10 & 11 Geo. 5 c. 75)

Arrangement of Sections

An Act to amend the Official Secrets Act, 1911

[23rd December 1920]

See the Introductory Note to the Official Secrets Act 1911, p. 250, *ante*.

Official Secrets Act 1911 to 1939. This Act is one of the Acts which may be cited by this collective title; see the Introductory Note to the Official Secrets Act 1911, p. 250, *ante*.

Northern Ireland. This Act applies.

1. Unauthorised use of uniforms; falsification of reports, forgery, personation, and false documents

(1) If any person for the purpose of gaining admission, or of assisting any other person to gain admission, to a prohibited place, within the meaning of the Official Secrets Act, 1911 (hereinafter referred to as "the principal Act"), or for any other purpose prejudicial to the safety or interests of the State within the meaning of the said Act—

(a) uses or wears, without lawful authority, any naval, military, air force, police, or other official uniform, or any uniform so nearly resembling the same as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform, or

(b) orally, or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes or connives at the making of any false statement or any omission; or

(c) forges, alters, or tampers with any passport or any naval, military, air-force, police, or official pass, permit, certificate, licence, or other document of a similar character (hereinafter in this section referred to as an official document), or uses or has in his possession any such forged, altered, or irregular official document; or

(d) personates, or falsely represents himself to be a person holding, or in the employment of a person holding office under His Majesty, or to be or not to be a person to whom an official document or secret official code word or pass word has been duly issued or communicated, or with intent to obtain an official document, secret official code word or pass word, whether for himself or any other person, knowingly makes any false statement; or

(e) uses, or has in his possession or under his control, without the authority of the Government Department or the authority concerned, any die, seal, or stamp of or belonging to, or used, made or provided by any Government Department, or by any diplomatic, naval, military, or air force authority appointed by or acting under the authority of His Majesty, or any die, seal or stamp so nearly resembling any such die, seal or stamp as to be calculated to deceive or counterfeits any such die, seal or stamp, or uses, or has in his possession, or under his control, any such counterfeited die, seal or stamp;

he shall be guilty of a misdemeanour.

(2) If any person

(a) retains for any purpose prejudicial to the safety or interests of the State any official document, whether or not completed or issued for use, when he has no right to retain it, or when it is contrary to his duty to retain it, or fails to comply with any directions issued by any Government Department or any person authorised by such department with regard to the return or disposal thereof; or

(b) allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code word or pass word so issued, or, without lawful authority or excuse, has in his possession any official document or secret official code word or pass word issued for the use of some person other than himself, or on obtaining possession of any official document by finding or otherwise, neglects or fails to restore it to the person or authority by whom or for whose use it was issued, or to a police constable, or

(c) without lawful authority or excuse, manufactures or sells, or has in his possession for sale any such die, seal or stamp as aforesaid,

he shall be guilty of a misdemeanour.

(3) In the case of any prosecution under this section involving the proof of a purpose prejudicial to the safety or interests of the State, subsection (2) of section one of the principal Act shall apply in like manner as it applies to prosecutions under that section.

2. Communications with foreign agents to be evidence of commission of certain offences

(1) In any proceedings against a person for an offence under section one of the principal Act, the fact that he has been in communication with, or attempted to communicate with, a foreign agent, whether within or without the United Kingdom, shall be evidence that he has, for a purpose prejudicial of the safety or interest of the State, obtained or attempted to obtain information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy.

(2) For the purpose of this section, but without prejudice to the generality of the foregoing provision–

(a) A person shall, unless he proves the contrary, be deemed to have been in communication with a foreign agent if–

(i) He has, either within or without the United Kingdom, visited the address of a foreign agent or consorted or associated with a foreign agent; or

(ii) Either, within or without the United Kingdom, the name or address of, or any other information regarding a foreign agent has been found in his possession, or has been supplied by him to any other person, or has been obtained by him from any other person:

(b) The expression "foreign agent" includes any person who is or has been or is reasonably suspected of being or having been employed by a foreign power either directly or indirectly for the purpose of committing an act, either within or without the United Kingdom, prejudicial to the safety or interests of the State, or who has or is reasonably suspected of having, either within or without the United Kingdom, committed, or attempted to commit, such an act in the interests of a foreign power:

(c) Any address, whether within or without the United Kingdom, reasonably suspected of being an address used for the receipt of communications intended for a foreign agent, or any address at which a foreign agent resides, or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, shall be deemed to be the address of a foreign agent, and communications addressed to such an address to be communications with a foreign agent.

3. Interfering with officers of the police or members of His Majesty's forces

No person in the vicinity of any prohibited place shall obstruct, knowingly mislead or otherwise interfere with or impede, the chief officer or a superintendent or other officer of police, or any member of His Majesty's forces engaged on guard, sentry, patrol, or other similar duty in relation to the prohibited place, and, if any person acts in contravention of, or fails to comply with, this provision, he shall be guilty of a misdemeanour.

4. Power to require the production of telegrams

(1) Where it appears to a Secretary of State that such a course is expedient in the public interest, he may, by warrant under his hand, require any person who owns or controls any telegraphic cable or wire, or any apparatus for wireless telegraphy, used for the sending or receipt of telegrams to or from any place out of the United Kingdom, to produce to him, or to any person named in the warrant, the originals and transcripts, either of all telegrams, or of telegrams of any specified class or description, or of telegrams sent from or addressed to any specified person or place, sent or received to or from any place out of the United Kingdom by means of any such cable, wire, or apparatus, and all other papers relating to any such telegram as aforesaid.

(2) Any person who, on being required to produce any such original or transcript or paper as aforesaid, refuses or neglects to do so shall be guilty of an offence under this Act, and shall, for each offence, be liable on conviction under the Summary Jurisdiction Acts to imprisonment with or without hard labour for a term not exceeding three months, or to a fine not exceeding fifty pounds, or to both such imprisonment and fine.

(3) In this section the expression "telegram" shall have the same meaning as in the Telegraph Act, 1968, and the expression "wireless telegraphy" shall have the same meaning as in the Wireless Telegraphy Act, 1904.

5. Registration and regulation of persons carrying on the business of receiving postal packets

(1) Every person who carries on, whether alone or in conjunction with any other business, the business of receiving for reward letters, telegrams, or other postal packets for delivery or forwarding to the persons for whom they are intended, shall as soon as may be send to the chief officer of police for the district, for registration by him, notice of the fact together with the address or addresses where the business is carried on, and the chief officer of police shall keep a register of the names and address of such persons, and shall, if required by any person who sends such a notice, furnish him on payment of a fee of [seven shillings and sixpence] with a certificate of registration, and every person so registered shall from time to time furnish to the chief officer of police notice of any change of address or new address at which the business is carried on, and such other information as may be necessary for maintaining the correctness of the particulars entered in the register.

(2) Every person who carries on such a business as aforesaid shall cause to be entered in a book kept for the purpose the following particulars–

(a) the name and address of every person for whom any postal packet is received, or who has requested that postal packets received may be delivered or forwarded to him,

(b) any instructions that may have been received as to the delivery or forwarding of postal packets,

(c) in the case of every postal packet received, the place from which the postal packet comes, and the date of posting (as shown by the postmark) and the date of receipt, and the name and address of the sender if shown on the outside of the packet, and, in the case of a registered packet, the date and office of registration and the number of the registered packet,

(d) in the case of every postal packet delivered, the date of delivery and the name and address of the person to whom it is delivered,

(e) in the case of every postal packet forwarded, the name and address to which and the date on which it is forwarded,

and shall not deliver a letter to any person until that person has signed a receipt for the same in such book as aforesaid, nor, if that

person is not the person to whom the postal packet is addressed, unless there is left with him instructions signed by the last-mentioned person as to the delivery thereof, and shall not forward any postal packet to another address unless there is left with him written instructions to that effect signed by the addressee.

(3) The books so kept and all postal packets received by a person carrying on any such business, and any instruction as to the delivery or forwarding of postal packets received by any such person, shall be kept at all reasonable times open to inspection by any police constable.

(4) If any person contravenes or fails to comply with any of the provisions of this section, or furnishes any false information or makes any false entry, he shall be guilty of an offence under this Act, and shall, for each offence, be liable on conviction under the Summary Jurisdiction Acts to imprisonment with or without hard labour for a term not exceeding one month, or to a fine not exceeding ten pounds, or to both such imprisonment and fine.

(5) Nothing in this section shall apply to postal packets address to any office where any newspaper or periodical is published, being postal packets in reply to advertisements appearing in such newspaper or periodical.

(6) Nothing in this section shall be construed as rendering legal anything which would be in contravention of the exclusive privilege of the Postmaster General under the Post Office Acts, 1908 to 1920, or the Telegraph Acts, 1963 to 1920.

6. [(1) Where a chief officer of police is satisfied that there is reasonable ground for suspecting that an offence under section one of the principal Act has been committed and for believing that any person is able to furnish information as to the offence or suspected offence, he may apply to a Secretary of State for permission to exercise the powers conferred by this subsection and, if such permission is granted, he may authorise a superintendent of police, or any police officer not below the rank of inspector, to require that person believed to be able to furnish information to give any information in his power relating to the offence or suspected offence, and, if so required and on tender of his reasonable expenses, to attend at such reasonable time and place as may be specified by the superintendent or other officer; and if a person required in pursuance of such an authorisation to give information, or to attend as aforesaid, fails to comply with any such requirement or knowingly gives false information, he shall be guilty of a misdemeanour.

(2) Where a chief officer of police has reasonable grounds to believe that the case is one of great emergency and that in the interest of the State immediate action is necessary, he may exercise the powers conferred by the last foregoing subsection without applying for or being granted the permission of a Secretary of State, but if he does so shall forthwith report the circumstances to the Secretary of State.

(3) References in this section to a chief officer of police shall be construed as including references to any other officer of police expressly authorised by a chief officer of police to act on his behalf for the purposes of this section when by reason of illness, absence or other cause he is unable to do so.]

7. Attempts, incitements, etc.

Any person who attempts to commit any offence under the principal Act or this Act, or solicits or incites or endeavours to persuade another person to commit an offence, or aids or abets and does any act preparatory to the commission of an offence under the principal Act or this Act, shall be guilty of a felony or a misdemeanour or a summary offence according as the offence in question is a felony, a misdemeanour or a summary offence, and on conviction shall be liable to the same punishment, and to be proceeded against in the same manner, as if he had committed the offence.

8. Provisions as to trial and punishment of offences

(1) Any person who is guilty of a felony under the principal Act or this Act shall be liable to penal servitude for a term of not less than three years and not exceeding fourteen years.

(2) Any person who is guilty of a misdemeanour under the principal Act or this Act shall be liable on conviction on indictment to imprisonment, with or without hard labour, for a term not exceeding two years, or, on conviction under the Summary Jurisdiction Acts, to imprisonment, with or without hard labour, for a term not exceeding three months or to a fine not exceeding fifty pounds, or both such imprisonment and fine:

Provided that no misdemeanour under the principal Act or this Act shall be dealt with summarily except with the consent of the Attorney General.

(3) For the purposes of the trial of a person for an offence under the principal Act or this Act, the offence shall be deemed to have been committed either at the place in which the same actually was committed, or at any place in the United Kingdom in which the offender may be found.

(4) In addition and without prejudice to any powers which a court may possess to order the exclusion of the public from any proceedings if, in the course of proceedings before a court against any person for an offence under the principal Act or this Act or the proceedings on appeal, or in the course of the trial of a person for felony or misdemeanour under the principal Act or this Act, application is made by the prosecution, on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the national safety, that all or any portion of the public shall be excluded during any part of the hearing, the court may make an order to that effect, but the passing of sentence shall in any case take place in public.

(5) Where the person guilty of an offence under the principal Act or this Act is a company or corporation, every director and officer of the company or corporation shall be guilty of the like offence unless he proves that the act or omission constituting the offence took place without his knowledge or consent.

9. (*Amends the Official Secrets Act 1911, ss. 2, 12, pp. 252, 256, ante.*)

10. Minor amendments of principal Act

The amendments specified in the second column of the First Schedule to this Act (which relates to minor details) shall be made in the

provisions of the principal Act specified in the first column of that schedule.

11. Short title, construction, and repeal

(1) This Act may be cited as the Official Secrets Act, 1920, and shall be construed as one with the principal Act, and the principal Act and this Act may be cited together as the Official Secrets Acts, 1911 and 1920.

Provided that—

(a) this Act shall not apply to any of the following Dominions, that is to say, the Dominion of Canada, the Commonwealth of Australia (which for this purpose shall be deemed to include Papua and Norfolk Island), the Dominion of New Zealand, . . . [India . . .]; and

(b) *(applies to Scotland).*

(2) *(Rep. by the S.L.R. Act 1927.)*

(3) For the purposes of this Act, the expression "chief officer of police,"—

(a) with respect to any place in England other than the city of London, has the meaning assigned to it by the Police Act, 1890;

(b) with respect to the city of London, means the Commissioner of the City Police;

(c) *(applies to Scotland);*

(d) with respect to Ireland, means, in the police district of Dublin metropolis, either of the Commissioners of Police for that district, and elsewhere the district inspector of the Royal Irish Constabulary.

NOTES — ACT OF 1920

Section 1

Prohibited place. For the meaning of this term, see the Official Secrets Act 1911, s. 3, p. 253, *ante*, and the notes thereto.

Purpose prejudicial to the safety or interest of the State. *Cf.* the General Note to the Official Secrets Act 1911, s. 1 p. 251, *ante;* and note sub-s. (3) above.

Uses or wears, without lawful authority, etc. See also the Uniforms Act 1894, Vol. 29, title Royal Forces, as to the restriction of the wearing by unauthorised persons of naval, military and air force uniforms.

As to wrongful use of the uniform or an association incorporated by Royal charter and penalties therefor, see the Chartered Associations (Protection of Names and Uniforms) Act 1926, s. 1 (3), (4), Vol. 37, title Trade Marks and Trade Names.

Knowingly. See the note "Knows" to the Perjury Act 1911, s. 1, p. 242, *ante*.

Forges . . . any passport. See also the Criminal Justice Act 1925, s. 36, Vol. 21, title Magistrates.

False. See the note to the Perjury Act 1911, s. 1, p. 242, *ante*.

Shall be guilty of a misdemeanour. The distinctions between felony and misdemeanour were abolished, and the law and practice applying to misdemeanour were in general made applicable to all offences, by the Criminal Law Act 1967, s. 1, p. 552, *post*. See also, in particular, s. 12 (5) of that Act, p. 561, *post*, as to the construction of existing enactments.

The punishment is laid down by s. 8 (2), *post*. See also s. 8 (3)-(5), *post;* s. 7, *post* (attempts, incitements, etc.); and (by virtue of s. 11 (1), *post*) the Official Secrets Act 1911, ss. 6-10, pp. 254, 255, *ante*.

Offences under this Act are excluded from the jurisdiction of all courts of quarter sessions; see the Criminal Law Act 1967, s. 8 (2) and Sch. 1, List A, Division II, para. 5 *(a)*, and List B, para. 15, Vol. 21, title Magistrates.

Definitions. For "communicates", "retains", "document" and "office under his Majesty", see (by virtue of s. 11 (1), *post*) the Official Secrets Act 1911, s. 12, p. 256, *ante*. See also as to "office under his Majesty" the note to s. 12 of the Act of 1911, p. 257, *ante;* and note as to "official document", sub-s. (1) *(c)* above.

Section 2

Enemy. See the note to the Official Secrets Act 1911, s. 1, p. 251, *ante*.

Unless he proves the contrary. See the first note to the Prevention of Corruption Act 1916, s. 2, p. 291, *ante*.

Principal Act. *i.e.*, the Official Secrets Act 1911; see s. 1 (1), *ante*. For s. 1 of that Act, see p. 250, *ante*.

Section 3

In the vicinity of. This expression means "in or in the vicinity of", see *Adler* v. *George*, [1964] 1 All E.R. 628.

Obstructs. Obstruction need not involve physical violence; see, in particular, *Borrow* v. *Howland* (1896), 74 L.T. 787, and *Hinchliffe* v. *Sheldon*, [1955] 3 All E.R. 406. In fact there is authority for saying that anything which makes it more difficult for a person to carry out his duty amounts to obstruction; see *Hinchliffe* v. *Sheldon* above. Yet standing by and doing nothing is not obstruction unless there is a legal duty to act; see *Swallow* v. *London County Council*, [1916] 1 K.B. 224; [1914-15] All E.R. Rep. 403; and contrast *Baker* v. *Ellison*, [1914] 2 K.B. 762; but see *Rice* v. *Connolly*, [1966] 2 Q.B. 414; [1966] 2 All E.R. 649.

Knowingly. See the note "Knows" to the Perjury Act 1911, s. 1, p. 242, *ante*.

Shall be guilty of a misdemeanour. See the note to s. 1, *ante*.

Definitions. For "chief officer of police", see s. 11 (3), *post;* by virtue of s. 11 (1), *post*, for "prohibited place" and "superintendent of police", see ss. 3 and 12, respectively, of the Official Secrets Act 1911, pp. 253, 256, *ante*.

Section 4

United Kingdom. *i.e.*, Great Britain and Northern Ireland; see the Royal and Parliamentary Titles Act 1927, s. 2 (2), Vol. 6, p. 520.

Hard labour. Imprisonment with hard labour was abolished by the Criminal Justice Act 1948, s. 1 (2), p. 339, *post*.

Not exceeding three months. As the maximum term of imprisonment is not more than three months, trial by jury may not be claimed under the Magistrates' Courts Act 1952, s. 25, Vol. 21, title Magistrates.

Summary Jurisdiction Acts. This expression is defined by the Interpretation Act 1889, s. 13 (10), Vol. 32, title Statutes. The Acts have been largely consolidated by the Magistrates' Courts Act 1952, Vol. 21, title Magistrates, as respects England and Wales.

Telegraph Act 1869. See Vol. 35, title Telegraphs and Telephones. "Telegram" is defined in s. 3 of that Act.

Wireless Telegraphy Act 1904. That Act expired on 1st June 1954; for the meaning of "wireless telegraphy", see now the Wireless Telegraphy Act 1949, s. 19 (1), Vol. 35, title Telegraphs and Telephones, by virtue of s. 18 (2) of that Act.

Section 5

The words in square brackets in sub-s. (1) were substituted by the Miscellaneous Fees (Variation) Order 1968, S.I. 1968 No. 170 (made under the Local Government Act 1966, s. 35 (2) and Sch. 3, Part II, Vol. 19, title Local Government), and the fee in question may be further varied or may be abolished by order made under that power.

Chief officer of police. For the meaning of this term, see s. 11 (3), *post*.

If any person contravenes. "Any person" includes a person using, as well as keeping, the accommodation address; see *Stevenson* v. *Fulton*, [1936] 1 K.B. 320.

False. See the note to the Perjury Act 1911, s. 1, p. 242, *ante*.

Hard labour. Imprisonment with hard labour was abolished by the Criminal Justice Act 1948, s. 1 (2), p. 339, *post*.

Not exceeding one month. Cf. the note "Not exceeding three months" to s. 4, *ante*.

Summary Jurisdiction Acts. See the note to s. 4, *ante*.

Post Office Acts 1908 to 1920. All those Acts have been repealed, as to the exclusive privilege of the Postmaster General, and its infringement, see now the Post Office Act 1953, ss. 3, 4, Vol. 25, title Post Office.

Telegraph Acts 1863 to 1920. For the Acts which may be cited by this collective title, see the Introductory Note to the Telegraph Act 1863, Vol. 35, title Telegraphs and Telephones.

Section 6

The whole of this section was substituted by the Official Secrets Act 1939, s. 1.

Reasonable cause for suspecting; for believing; to believe. Cf. the note "Reasonable cause to believe" to the Foreign Enlistment Act 1870, s. 8, p. 186, *ante*.

Knowingly. See the note "Knows" to the Perjury Act 1911, s. 1, p. 242, *ante*.

False. See the note to the Perjury Act 1911, s. 1, p. 242, *ante*.

Shall be guilty of a misdemeanour. See the note to s. 1, *ante*.

Definitions. For "chief officer of police", see s. 11 (3), *post* (and note sub-s. (3) above); for "superintendent of police", see (by virtue of s. 11 (1), *post*) the Official Secrets Act 1911, s. 12, p. 256, *ante*.

Principal Act. Defined in s. 1 (1), *ante*, as the Official Secrets Act 1911. For s. 1 of that Act, see p. 250, *ante*.

Northern Ireland. For modifications of this section in its application to Northern Ireland, see the Official Secrets Act 1939, s. 2 (2), p. 337, *post*.

Section 7

Attempts. As to attempts, see *R.* v. *Olsson* (1915), 31 T.L.R. 559, C.C.A.

And does any act preparatory, etc. In this phrase the word "or" should be read for "and" (*R.* v. *Oakes*, [1959] 2 All E.R. 92, C.C.A.).

Felony; misdemeanour. See the first paragraph of the note "Shall be guilty of a misdemeanour" to s. 1, *ante*.

Principal Act. Defined in s. 1 (1), *ante*, as the Official Secrets Act 1911, p. 250, *ante*.

Section 8

Felony; misdemeanour. See the first paragraph of the note "Shall be guilty of a misdemeanour" to s. 1, *ante*.

Penal servitude for a term, etc. In the cases mentioned in sub-s. (1) above, imprisonment for up to fourteen years has taken the place of the punishment provided by that subsection; see the Criminal Justice Act 1948, s. 1 (1), p. 339, *post*.

Where each of several offences charged in an indictment is separate and distinct the judge has a discretion whether the sentences imposed should be consecutive or concurrent, and his discretion is not limited so as to prevent him awarding consecutive sentences which would be longer in the aggregate that the maximum permitted for any one of the offences by itself (*R.* v. *Blake*, [1961] 3 All E.R. 125, C.C.A.).

Hard labour. Imprisonment with hard labour was abolished by the Criminal Justice Act 1948, s. 1 (2), p. 339, *post*.

Not exceeding three months; United Kingdom. See the notes to s. 4, *ante*.

Attorney General. For meaning, see (by virtue of s. 11 (1), *post*) the Official Secrets Act 1911, s. 12, p. 256, *ante*.

Unless he proves. See the first note to the Prevention of Corruption Act 1916, s. 2, p. 291, *ante*.

Knowledge. See the note "Knows" to the Perjury Act 1911, s. 1, p. 242, *ante*.

Consent. There is authority for saying that this presupposes knowledge; see *Re Caughey, Ex parte Ford* (1876), 1 Ch. D. 521, C.A., at p. 528, *per* Jessel, M.R., and *Lamb* v. *Wright & Co.*, [1924] 1 K.B. 857; [1924] All E.R. Rep. 220, at p. 864 and p. 223, respectively. It is thought, however, that actual knowledge is not necessary; cf. *Knox* v. *Boyd*, 1941, S.C. (J.) 82, at p. 86, and *Taylor's Central Garages (Exeter), Ltd.* v. *Roper* (1951), 115 J.P. 445, at pp. 449, 450, *per* Devlin, J.; and see also, in particular, *Mallon* v. *Allon*, [1964] 1 Q.B. 385; [1963] 3 All E.R. 843, at p. 394 and p. 847, respectively.

Principal Act. Defined in s. 1 (1), *ante*, as the Official Secrets Act 1911, p. 250, *ante*.

Summary Jurisdiction Acts. See the note to s. 4, *ante*.

Section 10

Principal Act. Defined in s. 1 (1), *ante*, as the Official Secrets Act 1911, p. 250, *ante*.

Section 11

The words in square brackets were substituted by the Government of India (adaptation of Acts of Parliament) Order 1937, S.R. & O. 1937 No. 230, arts. 2 and Schedule, Part II, as to the construction of the term "India", see the Indian Independence Act 1947, s. 18 (1), Vol. 4, p. 327. The words omitted from sub-s. (1) *(a)* in the first place were repealed by the Newfoundland (Consequential Provisions) Act 1950, s. 1 and Schedule, Part II, and the South Africa Act 1952, s. 2 (3) and Sch. 5; and in the second place were repealed by the Burma Independence Act 1947, s. 5 and Sch. 2, Part I.

Construed as one. *I.e.*, every part of each Act is to be

construed as if contained in one Act, unless there is some manifest discrepancy; see for example *Phillips* v. *Parnaby*, [1934] 2 K.B. 299; [1934] All E.R. Rep. 267, at p. 302 and p. 269, respectively; see also Preliminary Note to title Statutes in Vol. 32.

Principal Act. Defined in s. 1 (1), *ante*, as the Official Secrets Act 1911, p. 250, *ante*.

Police Act 1890. Repealed by the Police Act 1964, s. 64 (3) and Sch. 10, Part I; see now s. 62 *(b)* of, and Sch. 8 to, that Act, Vol. 25, title Police.

Northern Ireland. As to "district inspector of the Royal Irish Constabulary", see the Constabulary Act (Northern Ireland) 1922 (c. 8) (N.I.), s. 1 (4) (not printed in this work).

(Sch. 1 amends the Official Secrets Act 1911, p. 250, ante; *Sch. 2 rep. by the S.L.R. Act 1927.)*

THE OFFICIAL SECRETS ACT 1939

(2 & 3 Geo. 6 c. 121)

An Act to amend section six of the Official Secrets Act, 1920

[23rd November 1939]

See the Introductory Note to the Official Secrets Act 1911, p. 250, *ante*.

Northern Ireland. This Act applies; see s. 2 (2), *post*.

1. *(Substitutes a new s. 6 in the Official Secrets Act 1920, p. 299,* ante.*)*

2. Short title, construction, citation, and application to Northern Ireland

(1) This Act may be cited as the Official Secrets Act, 1939, and this Act and the Official Secrets Acts, 1911 and 1920, shall be construed as one, and may be cited together as the Official Secrets Acts, 1911 to 1939.

(2) It is hereby declared that this Act extends to Northern Ireland; and, in the application thereof to Northern Ireland, this Act shall have effect subject to the following modifications, that is to say, for references to a chief officer of police there shall be substituted references to a district inspector, for references to a Secretary of State there shall be substituted references to the Minister of Home Affairs, and for the reference to the rank of inspector there shall be substituted a reference to the rank of head constable.

NOTES – ACT OF 1939

Construed as one. See the note to the Official Secrets Act 1920, s. 11, p. 302, *ante*.

Official Secrets Acts 1911 and 1920. *i.e.*, the Official Secrets Act 1911, p. 250, *ante*, and the Official Secrets Act 1920, p. 294, *ante*; see s. 11 (1) of the Act of 1920, p. 302, *ante*.

APPENDIX C

HALSBURY'S LAWS OF ENGLAND

Third Edition, Volume 10

SECT. 4. OFFENCES IN RESPECT OF OFFICIAL SECRETS

Penalties for spying. A person is by statute[1] guilty of felony[2] who, for any purpose prejudicial to the safety or interests of the state,[3] (1) approaches, inspects, passes over or is in the neighbourhood of or enters any prohibited place;[4] or (2) makes any sketch,[5] plan, model,[6] or note which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy;[7] or (3) obtains, collects, records, or publishes or communicates[8] to any other person any secret official code word or pass word, or any sketch, plan, model, article, or note or other document[9] or information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy.

Meaning of prohibited place. For this purpose a prohibited place is defined as being: (2) any work of defence, arsenal, naval or air force establishment or station, factory, dockyard, mine, minefield, camp, ship, or aircraft belonging to or occupied by or on behalf of Her Majesty or any telegraph, telephone, wireless or signal station, or office so belonging or occupied, and any place belonging to or occupied by or on behalf of Her Majesty and used for the purpose of building, repairing, making, or storing any munitions of war, or any sketches, plans, models, or documents relating thereto, or for the purpose of getting any metals, oil, or minerals of use in time of war; (2) any place not belonging to Her Majesty where any munitions of war,[10] or any sketches, models, plans, or documents[11] relating thereto, are being made, repaired, gotten, or stored under contract with, or with any person on behalf of, Her Majesty, or otherwise on behalf of Her Majesty; (3) any place belonging to or used for the purposes of Her Majesty[12] which is for the time being declared by order of a Secretary of State to be a prohibited place[13] on the ground that information with respect thereto, or damage thereto, would be useful to an enemy; and (4) any railway, road, way, or channel, or other means of communication by land or water, including any works or structures being part thereof or connected therewith, or any place used for gas, water, or electricity works or other works for purposes of a public character, or any place where any munitions of war, or any sketches, models, plans, or documents relating thereto, are being made, repaired, or stored otherwise than on behalf of Her Majesty, which is for the time being declared by order of a Secretary of State to be a prohibited place for the purposes of this section, on the ground that information with respect thereto, or the destruction or obstruction thereof, or interference therewith, would be useful to an enemy.[14]

Effect of communication with foreign agents. In any proceedings against a person in respect of the offences described,[15] the fact that he has been in communication with, or attempted to communicate with, a foreign agent, whether within or without the United Kingdom, is evidence that he has for a purpose prejudicial to the safety or interests of the state obtained or attempted to obtain information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy.[15]

Communication, etc., of information. A person is by statute[17] guilty of a misdemeanour[18] if he commits certain acts when he has in his possession or control any secret official code word or pass word, or any sketch,[19] plan, model,[20] article, note, document,[21] or information, (1) which is connected with a prohibited place;[22] or (2) which has been made or obtained in contravention of the Official Secrets Acts;[23] or (3) which has been entrusted to him in confidence[24] by a person holding office[25] under the Sovereign; or (4) which he has obtained or has had access to because he holds or has held office under the Sovereign or holds or has held a contract[26] made on behalf of the Sovereign, or because he is or has been employed by a person who holds or has held such an office or contract. In these circumstances an offence is committed if the person concerned (1) communicates[27] the code word, etc., to any person other than a person to whom he is authorised to communicate it or a person to whom it is in the interest of the state his duty to communicate it; or (2) uses the information in his possession for the benefit of any foreign power or in a way prejudicial to the safety or interests of the state; or (3) retains the sketch, plan, model, article, note, or document in his possession or control when he has no right so to do or when it is contrary to his duty so to do, or fails to comply with lawful directions with regard to its return or disposal; or (4) fails to take reasonable care of or so conducts himself as to endanger the safety of the sketch, plan, model, article, note, document, secret official code or pass word or information.[28]

Communication of information relating to munitions. A person is by statute guilty of a misdemeanour[29] who having in his possession or control any sketch,[30] plan, model,[31] article, note, document,[32] or information relating to munitions of war, communications[33] it directly or indirectly to a foreign power or in any other way prejudicial to the safety and interests of the state.[34]

Wrongful receipt of sketch, etc. A person is by statute guilty of a misdemeanour[35] who receives any sketch,[36] secret official code word or pass word, or plan, model,[37] article, note, document,[38] or information, knowing or having reasonable ground to believe, at the time of receipt, that the sketch, etc., is communicated[39] to him in contravention of the Official Secrets Acts, unless he proves that the communication was contrary to his desire.[40]

Harbouring spies. A person is by statute guilty of a misdemeanour[41] who (1) harbours any person whom he knows or has reasonable grounds for supposing to be a person about to commit or who has committed an offence against the Official Secrets Acts; or who (2) knowingly permits any such persons to meet or assemble in premises in his occupation or under his control; or who (3) having harboured such person or permitted such persons to meet or assemble in premises in his occupation or under his control, wilfully omits or refuses to disclose to a superintendent of police[42] any information which it is in his power to given in relation to any such person.[43]

Gaining admission to prohibited place, etc. A person is be statute[44] guilty of a misdemeanour[45] who for the purpose of gaining admission or helping another to gain admission to a prohibited place[46] or for any other purpose prejudicial to the safety and interests of the state[47] does any of the following acts:

(1) Uses or wears without lawful authority any naval, military, air force, police or other official uniform or any uniform so similar as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear such uniform; or

(2) Orally or in writing knowingly makes or connives at the making of any false statement or omission in a declaration or application or any document signed by him or on his behalf; or

(3) Forges, alters, or tampers with a passport, or any naval, military, air force, police, or official pass, permit certificate, licence, or other official document, or uses or has in his possession any such forged, altered, or irregular official document;[48] or

(4) Personates or falsely represents himself to be a person holding office under the Queen or employed by such a person, or to be or not to be a person to whom an official document or secret official code word or pass word has been duly issued or communicated, or knowingly makes a false statement to obtain, whether for himself or any other person, an official document, secret official code word or pass word; or

(5) Uses or has in his possession or under his control without authority a die, seal, or stamp of, or belonging to, or used, made, or provided by, a government department or any diplomatic, naval, military or air force authority, appointed by or acting under the authority of the Queen, or any die, etc., so similar to those mentioned as to be calculated to deceive, or who counterfeits any such die, etc., or uses or has in his possession, or under his control, any such counterfeited die, etc.; or

(6) Unlawfully makes, sells, or has in his possession for sale any such die, seal, or stamp.[49]

Wrongful retention, etc., of official documents. A person is by statute guilty of a misdemeanour[50] who (1) for any purpose prejudicial to the safety or interests of the state[51] wrongfully retains[52] an official document,[53] whether or not completed or issued for use, or fails to comply with any authorised directions with regard to its return or disposal; or (2) who allows another to possess an official document issued for his use alone, or communicates[54] any secret official code word or pass word so issued, or unlawfully possesses an official document or secret official code word or pass word issued for the use of another, or who obtaining possession, by finding or otherwise, of an official document fails to give it to the person or authority by whom or for whose use it was issued or to a police constable.[55]

Obstruction of police, etc., in prohibited places. A person is by statute guilty of a misdemeanour[56] who in the vicinity of a prohibited place[57] obstructs, knowingly misleads, or otherwise interferes with, or impedes the chief officer or a superintendent or other officer of police, or a member of Her Majesty's forces on duty in relation to the prohibited place.[58]

Power of police to obtain information. Where a chief officer of police[59] is satisfied that there is reasonable ground for suspecting that an offence[60] has been committed and for believing that any person is able to furnish information as to the offence or suspected offence, he may, having applied for and obtained the permission of a Secretary of State, authorise any superintendent of police[61] or any police officer not below the rank of inspector to require that person to give any information in his power relating to the offence or suspected offence, and, if so required and on tender of his reasonable expenses, to attend at such reasonable place as may be specified.[62]

Where a chief officer of police has reasonable grounds to believe that the case is one of great emergency and that in the interest of the state immediate action is necessary, he may exercise this power without applying for permission but must forthwith report the circumstances to the Secretary of State.[63]

Any person who fails to comply with any such requirement or knowingly gives false information is guilty of a misdemeanour.[64]

Offences by corporations. Where a person guilty of an offence under the Official Secrets Acts is a company or corporation, every director and officer of the company or corporation is guilty of the like offence, unless he proves that the act or omission constituting the offence took place without his knowledge or consent.[65]

Attempts, incitements, etc. A person who attempts to commit an offence under the Official Secrets Acts, or solicits or incites or endeavours to persuade another person to commit an offence, or aids or abets and does any act preparatory to the commission of that offence is guilty of a felony or a misdemeanour or a summary offence according to what the substantive offence is, and on conviction is liable to the same punishment and to be proceeded against in the same manner as if he had committed the offence.[66]

Punishment. The punishment for the foregoing offences on conviction on indictment is, in the case of an offence declared to be a felony, imprisonment for not more than fourteen years, and, in the case of a misdemeanour, imprisonment for not more than two years.[67]

Consent of law officer. Prosecutions for offences under the Official Secrets Acts can only be instituted with the consent of the Attorney-General or Solicitor-General;[68] but a person charged with such an offence may be arrested or a warrant for his arrest issued and executed, and he may be remanded in custody or on bail, notwithstanding that the consent has not been obtained.[69] Consent is necessary, however, before any further or other proceedings are taken.[69]

Powers of arrest. A person found committing an offence under the Official Secrets Acts, or who is reasonably suspected of having committed or attempted to commit or to be about to commit any such offence, may be apprehended and detained in the same way as a person found committing a felony, whether the offence is a felony or not.[70]

A justice of the peace who is satisfied by information on oath that there is reasonable ground for suspecting that an offence under the Official Secrets Acts has been or is about to be committed, may grant a search warrant authorising any constable named therein to enter at any time any premises or place named in the warrant, if necessary by force, and to search the premises or place and every person found therein and to seize any sketch, plan, model, article, note, or document or anything of a like nature or anything which is evidence of an offence having been or being about to be committed, which he may find on the premises or place or on any such person, and with regard to or in connection with which he has reasonable ground for suspecting that an offence has been or is about to be committed.[71]

A superintendent of police, to whom it appears that the case is one of great emergency and that in the interests of the state immediate action is necessary, may by a written order under his hand give to any constable the like authority as may be given by the warrant of a justice.[72]

Exclusion of public during hearing. In addition and without prejudice to any powers which a court may possess to order the exclusion of the public from any proceedings, if, in the course of proceedings before a court against any person for an offence under the Official Secrets Acts or the proceedings on appeal, or in the course of the trial of a person for felony or misdemeanour under those Acts, application is made by the prosecution on the ground that the publication of any evidence to be given or of any statement to be made in the course of the proceedings would be prejudicial to the national safety, that all or any portion of the public shall be excluded during any part of the hearing, the court may make an order to that effect.[73] The passing of the sentence, however, must in any case take place in public.[74]

Production of telegrams. If it appears to him to be expedient in the public interest, a Secretary of State may, by warrant under his hand, require any person who owns or controls any telegraphic cable or wire or any apparatus for wireless telegraphy, used for the sending or receipt of telegrams to or from any place out of the United Kingdom,[75] to produce to him or to any person named in the warrant the originals and transcripts either of all telegrams or of telegrams of any specified class or description, or of telegrams sent from or addressed to any specified person or place, sent or received to or from any place out of the United Kingdom by means of any such cable, wire, or apparatus, and all other papers relating to any such telegram.[76]

Accommodation addresses. Every person who carries on, whether alone or in conjunction with any other business, the business of receiving for reward letters, telegrams, or other postal packets for delivery or forwarding to the persons for whom they are intended must, as soon as possible, send to the chief officer of police for the district, for registration by him, notice of the fact, together with the address or addresses where the business is carried on.[77] The chief officer of police must keep a register of the names and addresses of such persons, and must, if required by any person who sends such a notice, furnish him, on payment of a fee of 1s., with a certificate of registration.[77] Every person so registered must, from time to time, furnish to the chief officer of police notice of any change of address or new address at which the business is carried on, and such other information as may be necessary for maintaining the correctness of the particulars entered in the register.[77]

A person who carries on such a business must enter in a book kept for the purpose the following particulars: (1) the name and address of every person for whom any postal packet is received or who has requested the delivery or forwarding of such packets, (2) any instructions that may have been received as to the delivery or forwarding of postal packets, (3) in the case of a postal packet received, the place from which it comes and the date of posting (as shown by the postmark) and the date of receipt and the name and address of the sender if shown on the outside of the packet, and, in the case of a registered packet, the date and office of registration and the number of the registered packet, (4) in the case of every postal packet delivered, the date of delivery and the name and address of the person to whom it is delivered, (5) in the case of

every postal packet forwarded, the name and address to which and the date on which it is forward.[78] Such a person must not deliver a letter to any person until that person has signed a receipt for the same in the book, or, if that person is not the person to whom the postal packet is address, unless the last-mentioned person has left signed instructions as to the delivery thereof, and unless written instructions to that effect, signed by the addressee, are left with such person, he must not forward any postal packet to another address.[78]

The books so kept and all postal packets received by a person carrying on any such business, and any instruction as to the delivery or forwarding of postal packets received by any such person, must be kept at all reasonable times open to inspection by any police constable.[79]

A person who contravenes or fails to comply with any of the foregoing provisions or who furnishes any false information or makes any false entry, is guilty of an offence and is liable, for each such offence, on summary conviction, to imprisonment for a term not exceeding one month, or to a fine not exceeding £10, or to both.[80]

Extent of Acts and place of trial. Subject as stated afterwards[81] the Official Secrets Acts apply to all acts which are offences under their provisions, when committed in any part of Her Majesty's dominions or when committed by British officers or subjects elsewhere.[82] An offence, if alleged to have been committed out of the United Kingdom, may be inquired of, heard, and determined in any competent British court in the place where the offence was committed, or in any county or place in England in which the accused is apprehended or may be in custody.[83]

For the purposes of the trial of a person for an offence under the Official Secrets Acts, the offence will be deemed to have been committed either at the place in which the same actually was committed or at any place in the United Kingdom in which the offender may be found.[84]

Laws of British possessions. If by any law made by the legislature of any British possession provisions are made which appear to be of the like effect as those contained in the Official Secrets Act, 1911,[85] the operation of the latter Act, or any part thereof, may be suspended within that possession, by Order in Council, so long as that law continues in force there and no longer, and the Order will have effect as if it were enacted in the Official Secrets Act, 1911,[85] the suspension, however, will not extend to the holder of an office under Her Majesty[86] who is not appointed to that office by the government of that possession.[87] It has been expressly enacted that the Official Secrets Act, 1920,[88] is not to apply to Canada, Australia (including Papua and Norfolk Island), New Zealand, South Africa, India and Pakistan.[89]

Communication of information concerning atomic energy. A person is by statute guilty of an offence who, without the consent of the Lord President of the Council,[90] communicates to any other person, except one authorised by the Lord President to receive such information, any document, drawing, photograph, plan, model or other information whatever which to his knowledge describes, represents or illustrates (1) any existing or proposed "plant"[91] used or proposed to be used for the purpose of producing or using atomic energy,[92] (2) the purpose or method of operation of any such existing or proposed plant, or (3) any process operated or proposed to be operated in any such existing or proposed plant.[93] Such a person is liable (1), on conviction on indictment, to imprisonment for a term not exceeding five years, or to a fine not exceeding £500, or to both, or (2), on summary conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding £100, or to both.[94]

Communication of information in respect of any plant of a type in use for purposes other than the production or use of atomic energy is excepted unless the information discloses that plant of that type is used or is proposed to be used for such production.[95]

Where any information has been made available to the general public otherwise than in the course of the commission of this offence, any subsequent communication of that information does not constitute an offence.[96] The above provisions do not apply to anything done by or to the United Kingdom Atomic Energy Authority.[97]

NOTES TO LAWS OF ENGLAND

[1]Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 1 (1); Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75) ss. 10, 11, Schs. 1, 2. These two Acts and the Official Secrets Act, 1939 (2 & 3 Geo. 6 c. 121), are to be construed as one; see *ibid.*, s. 2 (1). Archives of a foreign embassy can be the subject of a charge under the Acts; an employee of such an embassy enjoys immunity, which can be waived by the ambassador, where the employee has been dismissed and the immunity waived, there can be no extension of immunity for a reasonable time to allow the ex employee to leave the country (*R.* v. *A.B.*, [1941] 1 K. B. 454, C. C. A.).

[2]There is power to convict of misdemeanour if the circumstances warrant such a finding (Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 5). For the punishment for felony under the Acts see Section on punishment, *post*.

[3]It is not necessary to prove a particular act tending to show a purpose prejudicial to the safety or interests of the state. It is sufficient if, from the circumstances of the case, or from the conduct or known character of the accused as proved, it appears that such was his purpose. Where any sketch (see note 5), plan, model (see note 6), article, note, document (see note 9), or information relating to or used in any prohibited place (see text, *infra*), or anything in such a place or any secret official code word or pass word is made, obtained, collected, recorded, published, or communicated (see note 8) by anyone other than a person acting under lawful authority, it will be deemed to have been made, etc., for such a purpose, unless the contrary is proved (Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 1 (2), as amended by the Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 10, Sch. 1). See *R.* v. *O'Grady* (1941), 28 Cr. App. R. 33.

[4]The meaning of "prohibited place," see *infra*. As to the premises of the United Kingdom Atomic Energy Authority, see note 12.

[5]"Sketch" includes any photograph or other mode of representing a place or thing (Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 12).

[6]"Model" includes design, pattern and specimen (*ibid.*, s. 12).

[7]"Enemy" includes a potential enemy with whom there might be war (*R.* v. *Parratt* 1913), 8 Cr. App. Rep. 186). The falsity of the information given is not material except as to possible

defence of intent to mislead (*R.* v. *M.* (1915), 12 T. L. R. 1, C. C. A.).

[8]Expressions relating to communicating or receiving include any communicating or receiving, whether in whole or in part, and whether the sketch, plan, model, article, note, document, or information itself or the substance, effect or description thereof only be communicated or received; expressions referring to obtaining or retaining any sketch, etc., include the copying or causing to be copied the whole or any part of the sketch, etc., and expressions referring to the communication of any sketch, etc., include the transfer or transmission of the sketch, etc. (Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 12).

[9]"Document" includes part of a document (*ibid.*, s. 12)

[10]"Munitions of war" includes the whole or any part of any ship, submarine, aircraft, tank or similar engine, arms and ammunition, torpedo or mine, intended or adapted for use in war, and any other article, material or device, whether actual or proposed, intended for such use (*ibid.*, s. 12; Official Secrets Act, 1920 (11 & 12 Geo. 5 c. 75), s. 9 (2)).

[11]For the meanings of "sketch," "model," "document," see notes 5, 6, and 9.

[12]Any reference to a place belonging to Her Majesty includes a place belonging to any department of the government of the United Kingdom or of any British possessions, whether the place is or is not actually vested in Her Majesty (Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 12). Any place belonging to or used for the purpose of the United Kingdom Atomic Energy Authority is for this purpose deemed to be a place belonging to or used for the purposes of Her Majesty; and no person other than a constable or officer of customs and excise or inland revenue acting in the execution of his duty as such, or an officer of any government department especially authorised by or on behalf of a minister may exercise any right of entry (whether arising by virtue of any statutory provision or otherwise) upon any place belonging to or used for the purposes of the authority which is declared a prohibited place (see *infra*), except with the consent of the authority and subject to any conditions imposed by them (Atomic Energy Authority Act, 1954 (2 & 3 Eliz. 2 c. 32), s. 6 (3)). Any person aggrieved by a refusal of consent or by conditions imposed may apply to the Lord President of the Council who may authorise the exercise of the right subject to such conditions, if any, as he may think fit to impose (*ibid.*, s. 6 (3) proviso). As to communication of information concerning atomic energy, see section on communication etc., *post*.

[13]The following orders made under this power are in force:— the Official Secrets (Ministry of Supply) Order, 1947, S. R. & O. 1947 No. 1357, the Official Secrets (Ministry of Supply) (No. 2) Order 1947, S. R. & O. 1947 No. 2355; the Official Secrets (Ministry of Supply) Order, 1949, S.I. 1949 No. 2315; the Official Secrets (Ministry of Supply) Order, 1950, No. 826; the Official Secrets (Prohibited Place) Order 1954, S.I. 1954 No. 243; the Official Secrets (Prohibited Place) (No. 2) Order, 1954, S.I. 1954 No. 1952.

[14]Official Secrets Act 1911 (1 & 2 Geo. 5 c. 28), s. 3, Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 10, Sch. 1.

[15]See section of penalties for spying, *ante*.

[16]Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 2 (1) by *ibid.*, s. 2 (2), for the purposes of the section but without prejudice to the generality of the statement in the text, the following provisions apply (see *ibid.*, s. 2) (1) a person is, unless he proves the contrary, deemed to have been in communication with a foreign agent or consorted or associated with him, or if the name or address of, or any other information regarding a foreign agent has been found in his possession or has been supplied by him to any other person or has been obtained by him from any other person; (2) "foreign agent" includes any person who is or has been or is reasonably suspected of being or having been employed by a foreign power either directly or indirectly for the purpose of committing an act, either within or without the United Kingdom, prejudicial to the safety or interests of the state, or who has or is reasonably suspected of having, either within or without the United Kingdom, committed or attempted to commit, such an act in the interests of a foreign power; (3) any address whether within or without the United Kingdom reasonably suspected of being an address used for the receipt of communications intended for a foreign agent, or any address at which a foreign agent resides, or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, is deemed to be the address of a foreign agent, and communications addressed to such an address are communications with a foreign agent.

[17]Official Secrets Act, 1911, (1 & 2 Geo. 5 c. 28), s. 2 (1); Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), ss. 9, 10, Sch. 1.

[18]As to punishment for the offense, see section on punishment *post*.

[19]For the meaning of "sketch" see note 5.

[20]For the meaning of "model" see note 6.

[21]For the meaning of "document," see note 9.

[22]See section on prohibited place, *ante*.

[23]Offences under heads (2), (3), and (4) may be committed though the code word, etc., does not relate to a prohibited place (*R.* v. *Simington*, [1921] 1 K. B. 451, C. C. A.).

[24]It is not necessary to prove that the information was entrusted especially in confidence to him (*R.* v. *Crisp and Homewood* (1919), 83 J. P. 121, C. C. A.).

[25]This includes any office or employment in or under any department of the government of the United Kingdom or any British possession (Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 12), and membership of or any office or employment under the United Kingdom Atomic Energy Authority (Atomic Energy Act, 1954 (2 & 3 Eliz. 2 c. 32), s. 6 (4), Sch. 3). A police officer holds office under the Sovereign (*Lewis* v. *Cattle*, [1938] 2 K. B. 454, D. C.; [1938] 2 All E. R. 368).

[26]This includes any contract with the United Kingdom Atomic Energy Authority (Atomic Energy Authority Act, 1954 (2 & 3 Eliz. 2 c. 32), s. 6 (4), Sch. 3).

[27]See note 8.

[28]Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28) s. 2 (1); Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), ss. 9, 10, Sch. 1.

[29]For punishment, see section on punishment *post*.

[30]For the meaning of "sketch" see note 5.

[31]For the meaning of "model" see note 6.

[32]For the meaning of "document" see note 9.

[33]See note 8.

[34]Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 2 (1A), Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 9.

[35]For punishment, see section on punishment *post*.

[36]For the meaning of "sketch" see note 5.

[37]For the meaning of "model" see note 6.

[38]For the meaning of "document" see note 9.

[39]See note 8.

[40]Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 2 (2).

Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 10, Sch 1.

[41]For punishment, see section on punishment *post*.

[42]"Superintendent of police" includes any police officer of like or superior rank and any person upon whom the powers of a superintendent of police are for this purpose conferred by a Secretary of State (Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 12; Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 10, Sch. 1).

[43]Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 7; Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), ss. 10, 11, Schs. 1, 2.

[44]Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 1 (1), (2) (c).

[45]For punishment, see section on punishment *post*.

[46]See section defining prohibited place *ante*.

[47]In the case of any prosecution involving the proof of such a purpose prejudicial to the safety and interests of the state, s. 1 (2) of the Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28) (see note 3), applies (Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 1 (3)).

[48]"Document" includes part of a document (Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 12).

[49]Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 1 (1), (2) (c).

[50]For punishment, see section on punishment *post*.

[51]In the case of any prosecution under these provisions involving the proof of a purpose prejudicial to the safety or interests of the state, s. 1 (2) of the Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28) (see note 3), applies (Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 1 (3)).

[52]See note 8.

[53]See note 9.

[54]See note 8.

[55]Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 1 (2) (a), (b).

[56]For punishment, see section on punishment *post*.

[57]See section on prohibited place, *ante*.

[58]Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 3.

[59]Chief officer of police means in England the Commissioner of the City of London Police, the Commissioner of Police of the Metropolis or the Chief Constable as the case may be (Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 11 (3), applying the Police Act, 1890 (53 & 54 Vict. c. 45), s. 33, Sch. 3). The term includes for the present purpose any other officer of police expressly authorised by a chief officer of police to act on his behalf for this purpose when by reason of illness, absence or other cause he is unable to do so (Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 6 (3), Official Secrets Act, 1939 (2 & 3 Geo. 6 c. 121), s. 1).

[60]Under s. 1 of the Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28).

[61]See note 43.

[62]Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 6 (1), Official Secrets Act, 1939 (2 & 3 Geo. 6 c. 121), s. 1.

[63]Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 1 (2), Official Secrets Act, 1939 (2 & 3 Geo. 6 c. 121), s. 1.

[64]Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 6 (1), Official Secrets Act, 1939 (2 & 3 Geo. 6 c. 121), s. 1.

[65]Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 8 (5).

[66]*Ibid.*, s. 7. As to attempts, see *R. v. Olsson* (1915), 31 T. L. R. 559, C. C. A.

[67]Official Secrets Act, 1920, (10 & 11 Geo. 5 c. 75), s. 8 (1), (2), Criminal Justice Act, 1948 (11 & 12 Geo. 6 c. 58), s. 1. For power to fine, see p. 494 *ante*. A misdemeanour is punishable summarily by imprisonment for a term not exceeding three months, or by a fine not exceeding £50, or by both imprisonment and fine; but no misdemeanour can be so dealt with summarily except with the consent of the Attorney-General (*ibid.*, s. 8 (2)). As to "Attorney-General," see note 68.

[68]Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 8; see also the Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 8 (2)). "Attorney-General" means Attorney or Solicitor General for England (Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 12). The chief officer of police must report to the Director of Public Prosecutions all offences alleged to have been committed within his police district (Prosecution of Offences Regulations, 1946, S. R. & O. 1946 No. 1467, reg. 6 (2) (a) (ii)).

[69]Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 8.

[70]*Ibid.*, s. 6. As to powers of arrest generally, see pp. 342 *et seq.*, *ante*. A person may be arrested before the consent of the Attorney-General or Solicitor-General to proceedings has been obtained; see p. 610, *ante*.

[71]Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 9 (1).

[72]*Ibid.*, s. 9 (2). For the meaning of "superintendent of police," see note 42.

[73]Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 8 (4).

[74]*Ibid.*, s. 8 (4).

[75]This term does not include the Republic of Ireland; see note *(k)*, p. 565, *ante*.

[76]Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 4 (1). A person who, on being required to do so, refuses or neglects to produce any such original, or transcript or paper is guilty of an offence, and for each offence is liable on conviction summarily to imprisonment for a term not exceeding three months, or to a fine not exceeding £50, or to both such imprisonment and fine (Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 4 (2)). "Telegram" has the same meaning as in the Telegraph Act, 1869 (32 & 33 Vict. c. 73), s. 3, and "wireless telegraphy" has the same meaning as in the Wireless Telegraphy Act, 1904 (4 Edw. 7 c. 24), s. 1 (7) (Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 4 (3)). S. 1 (7) of the Wireless Telegraphy Act, 1904 (4 Edw. 7 c. 24), has expired (see the Wireless Telegraphy Act, 1949 (12, 13 & 14 Geo. 6 c. 54), s. 18 (1)), and an extended meaning of wireless telegraphy appears in *ibid.*, s. 19 (1). See title *Telegraphs*.

[77]Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 5 (1). Nothing in this section applies to postal packets addressed to any office where any newspaper or periodical is published, being postal packets in reply to advertisements appearing in that newspaper or periodical (*ibid.*, s. 5 (5)). The section does not legalise anything which would be in contravention of the exclusive privilege of the Postmaster-General under the Post Office Act, 1953 (1 & 2 Eliz. 2 c. 36) (see title *Post Office*) and the Telegraph Acts, 1863 to 1954 (see title *Telegraphs*) (Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 5 (6)).

[78]*Ibid.*, s. 5 (2).

[79]*Ibid.*, s. 5 (3).

[80]Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 5 (4). The user as well as the owner of an accommodation address may be guilty of the offence of giving false information (*Stevenson v. Fulton*, [1926] K. B. 320, D. C.).

[81]See *infra*.

[82]Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 10 (1).

[83]Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 10 (2) (applying the Criminal Jurisdiction Act, 1802 (42 Geo. 3 c. 85)); Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 8 (3); Administration of Justice (Miscellaneous Provisions) Act, 1933 (23 & 24 Geo. 5 c. 36), s. 1 (4), Sch. 1; Criminal Justice Act, 1948 (11 & 12 Geo. 6 c. 58), ss. 31 (2), (3), 83, Sch. 10, Pt. 1. Offences cannot be tried by any court of general or quarter sessions, or by the sheriff court in Scotland, or by any court out of the United Kingdom which has not jurisdiction to try crimes involving the greatest punishment allowed by law (Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 10 (3); Official Secrets Act, 1920 (10 & 11 Geo. 5 c. 75), s. 11 (1) (b)).

[84]*Ibid.*, s. 8 (3).

[85]1 & 2 Geo. 5 c. 28; for the Acts to be construed as one therewith, see note 1.

[86]For the meaning of this expression, see note 25.

[87]Official Secrets Act, 1911 (1 & 2 Geo. 5 c. 28), s. 11. See the Official Secrets (Commonwealth of Australia) Order in Council, 1915, S. R. & O. 1915 No. 1199; the Official Secrets (Mauritius) order in Council, 1916 (S. R. & O. Rev. 1948, Vol. XVI, p. 1130); the Official Secrets (Malta) Order in Council, 1923, S. R. & O. 1923 No. 650; the Official Secrets (India) Order in Council, 1923, S. R. & O. 1923 No. 1517 (as to the effect of the creation of the Dominions of India and Pakistan, see title *Commonwealth and Dependencies*, Vol. 5, p. 530); the Official Secrets (Straits Settlements) Order in Council, 1936, S. R. & O. 1936 No. 409 (as to the former Straits Settlements, see title *Commonwealth and Dependencies*, Vol. 5, p. 634; and, as to Penang and Malacca, see the Official Secrets (Penang and Malacca) Order in Council, 1950, S.I. 1950 No. 1779); the Official Secrets (Jersey) Order in Council, 1952, S.I. 1952 No. 1034.

An Order in Council dated 30th June 1890, as to the Isle of Man, made under the Official Secrets Act, 1889 (52 & 53 Vict. c. 52) (repealed), is probably no longer effective.

[88]10 & 11 Geo. 5 c. 75.

[89]*Ibid.*, s. 11 (1) (a); Indian Independence Act, 1947 (10 & 11 Geo. 6 c. 30), s. 18 (1), Newfoundland (Consequential Provisions) Act, 1950 (14 Geo. 6 c. 5), s. 1 (2), Schedule, Pt. II.

[90]The functions of the Minister of Supply under the Atomic Energy Act, 1946 (9 & 10 Geo. 6 c. 80), were transferred to the Lord President of the Council by the Transfer of Functions (Atomic Energy and Radioactive Substances) Order, 1953, S.I. 1953 No. 1673. The Lord President may not withhold consent if satisfied that the information proposed to be communicated is not of importance for purposes of defence (Atomic Energy Act, 1946 (9 & 10 Geo. 6 c. 80), s. 11 (2)).

[91]"Plant" includes any machinery, equipment or appliance whether affixed to land or not (Atomic Energy Act, 1946 (9 & 10 Geo. 6 c. 80), s. 18 (1)).

[92]"Atomic energy" means the energy released from atomic nuclei as a result of any process, including the fission process, but does not include energy released in any process of natural transmutation or radioactive decay which is not accelerated or influenced by external means (*ibid.*, s. 18 (1)). Any reference to the production or use of atomic energy is to be construed as including a reference to the carrying out of any process preparatory or ancillary to such production or use (*ibid.*, s. 18 (4)).

[93]Atomic Energy Act, 1946 (9 & 10 Geo. 6 c. 80), s. 11 (1). The Lord President of the Council may by order grant exemption from this section in such classes of cases, and to such extent and subject to such conditions, as may be specified in the order (*ibid.* s. 11 (3)). For an order made under this power, see the Atomic Energy (Disclosure of Information) (No. 1) Order 1947, S. R. & O. 1947 No. 100.

[94]Atomic Energy Act, 1946 (9 & 10 Geo. 6 c. 80), s. 14 (1). Where a person convicted on indictment is a body corporate, the provision limiting the amount of the fine does not apply, and a fine may be imposed on the body corporate of such amount as the court thinks just (*ibid.*, s. 14 (2)). Where an offence has been committed by a body corporate, every person who was at the time a director, general manager, secretary or other similar officer is deemed to be guilty of the offence, unless he proves that the offence was committed without his consent or connivance and that he exercised all such diligence to prevent the commission as he ought to have exercised having regard to the nature of his functions in that capacity and to all the circumstances (*ibid.*, s. 14 (3)). Proceedings in respect of an offence under *ibid.*, s. 11, cannot be instituted in England except by, or with the consent of, the Director of Public Prosecutions (*ibid.*, s. 14 (4)).

[95]*Ibid.*, s. 11 (1) proviso.

[96]*Ibid.*, 11 (4).

[97]Atomic Energy Authority Act, 1954 (2 & 3 Eliz. 2 c. 32), s. 6 (4), Sch. 3.

APPENDIX D

STATUTES OF THE UNITED STATES

Volume 36

CHAP. 226.—*An Act To prevent the disclosure of national defense secrets.*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whoever, for the purpose of obtaining information respecting the national defense, to which he is not lawfully entitled, goes upon any vessel, or enters any navy yard, naval station, fort, battery, torpedo station, arsenal, camp, factory, building, office, or other place connected with the national defense, owned or constructed or in process of construction by the United States, or in the possession or under the control of the United States or any of its authorities or agents, and whether situated within the United States or in any place non contiguous to but subject to the jurisdiction thereof, or whoever, when lawfully or unlawfully upon any vessel, or in or near any such place, without proper authority, obtains, takes, or makes, or attempts to obtain, take or make, any document, sketch, photograph, photographic negative, plan, model, or knowledge of anything connected with the national defense to which he is not entitled, or whoever without proper authority receives or obtains, or undertakes or agrees to receive or obtain, from any person, any such document, sketch, photograph, photographic negative, plan, model, or knowledge of anything connected with the national defense to which he is not entitled, or whoever, without proper authority, receives or obtains, or undertakes or agrees to receive or obtain, from any person, any such document, sketch, photograph, photographic negative, plan, model, or knowledge, knowing the same to have been so obtained, taken, or made, or whoever, having possession of or control over any such document, sketch, photograph, photographic negative, plan, model, or knowledge, willfully and without proper authority, communicates or attempts to

communicate the same to any person not entitled to receive it, or to whom the same ought not, in the interest of the national defense, be communicated at that time; or whoever, being lawfully intrusted with any such document, sketch, photograph, photographic negative, plan, model or knowledge, willfully and in breach of his trust, so communicates or attempts to communicate the same, shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both.

SEC. 2. That whoever, having committed any offense defined in the preceding section, communicates or attempts to communicate to any foreign government, or to any agent or employee thereof, any document, sketch, photograph, photographic negative, plan, model, or knowledge so obtained, taken, or made, or so intrusted to him, shall be imprisoned not more than ten years.

SEC. 3. That offenses against the provisions of this Act committed upon the high seas or elsewhere outside of a judicial district shall be cognizable in the district where the offender is found or into which he is first brought; but offenses hereunder committed within the Philippine Islands shall be cognizable in any court of said islands having original jurisdiction of criminal cases, with the same right of appeal as is given in other criminal cases where imprisonment exceeding one year forms a part of the penalty; and jurisdiction is hereby conferred upon such courts for such purpose.

Approved, March 3, 1911.

GENERATION OF A CLASSIFIED DOCUMENT COST STUDY

BY
EDWARD J. CASTRO

I wish to express my appreciation to Mr. Daigle for allowing me the opportunity to speak to you today on a subject which I feel is of interest to all personnel who handle classified documents. Specifically, the manner in which to compute costs involved to generate and maintain one 'Secret' document.

Many of us, I am sure, are not fully aware of the various elements and their respective costs that contribute, in one way or another, with the costs involved to generate and maintain one Secret document. I wish, in the next few minutes, to describe for you the various job functions and equipment which concern themselves to Secret document generation and maintenance and the method in which to compute these costs in an effort to arrive at a single per copy cost.

In August 1964, Lockheed, Sunnyvale published its first Classified Document Cost Study - a study designed to reveal the specific costs involved to generate and maintain one Secret document. Since publication, however, five subsequent revisions have been published, each refined in such a manner to include current timings and cost expenditures for each category utilized. The Cost Study is concerned with Secret documents only; Top Secret and lesser classification categories have been omitted since their volume and attributable work efforts are not sufficient.

A Document Cost Study is a compilation of cost expenditures for various items which, in one way or another, are involved in the generation and maintenance of Secret documents. Examples of categories which concern themselves to Secret documents are (1) Reproduction Costs - the percent of time expended by Reproduction Personnel in the reproduction, collating and binding of Secret documents; (2) Classification Management Review - the tim time required to review a document for classification purposes; (3) Document User Responsibilities - the percent of time attributed to the safeguard of classified information; (4) Transmission Costs - the percent of time attributed by company furnished couriers to move classified documents in-plant from one building to another. These are only four of the 25 total categories utilized in our study ranging from Document Origination Responsibilities to the costs involved for purchase of security desks, locks and safes which safeguard classified information. The object therefore is to correlate the total costs incurred for each category and arrive at a single cost for generating and maintaining one Secret document.

To arrive at a single per copy cost, the study is divided into two broad cost areas entitled DIRECT and INDIRECT. Direct cost factors consist of all processing expenditures, such as Origination Processing, Secretary Processing and Document Control Processing, which have an intrinsic attachment to a document as it travels from the originator to Document Control for entry into the accountable Document Control System and, finally, on to the ultimate recipient. The premise for direct costing is to isolate those items whose costs are an integral part of the Document Control process and to exclude supporting security costs which, once incurred, do not necessarily vary directly with document fluctuations.

Indirect costs encompasses all other contributing expenditures, such as Security and Destruction personnel, Security Education and Clearance Costs, and Material Costs that are related in one way or another with Secret documents. External costs, however, such as fencing and perimeter patrols, are not included in the indirect cost categories since they are considered normal plant protection safeguards.

The first step in generating a Document Cost Study is to determine the items which directly, or indirectly, are involved in the generation and maintenance of Secret documents. Once the categories have been determined, the next step is to contact the respective personnel involved to determine, through estimates or actual timings, the percent of time they attribute in their job function to Secret document generation and maintenance.

Direct costs, which consist of Originator, Processing, Secretary Processing, Document Holder Responsibilities, Document Control Processing and Courier functions, all play an active role in the generation and maintenance of Secret documents. The document originator is responsible for reviewing classification

guidelines; determining the correct classification to apply to the paragraph and page; and requests clarification or assistance on classification matters from Classification Management.

The Secretary responsible for preparing Secret documents in final type is concerned with safeguarding the material during typing of the document; stamping the appropriate classification on each page; obtaining a control number from Document Control; and miscellaneous time expended directly pertaining to the generation of the document.

Document Holders are responsible for the receipt, verification and signature of the document; security considerations and safeguard of the material while under his custody; and dealings with Document Control concerning procedural problems, audits, etc.

Document Control Processing is concerned with all phases of document generation and maintenance - from reviewing the document upon receipt from the originator for completeness of required markings and entry into the accountable Document Control System to destruction.

The Courier function of moving Secret documents in-plant from one building to another is somewhat more involved. Not only is it necessary to consider the time expended in moving the material but computation of vehicle utilization - its monthly rental and maintenance costs - must be considered.

Rates of pay utilized to determine labor charges should include the employees basic pay, cost-of-living adjustments and fringe benefits.

Computation of Direct Costs per copy is computed by multiplying the combined total costs incurred for each category by the per cent of original and reproduced copies on hand in the total document inventory.

Indirect Costs, consisting in part of personnel in Plant Protection, Destruction, Classification Management, Reproduction, Security, Document Control Supervision and Miscellaneous Supervision actively contribute to the costs incurred for Secret document generation and maintenance. Their concern includes, but is not limited to, the safeguard of Secret documents within the Company; pickup and destruction of outdated material; publication of classification guidance for using personnel; reproduction of documents; adherence to security and Document Control procedures and security monitor and security coordinator responsibilities.

Security Education and Clearance Costs are concerned with the total time expended in basic orientation relating to Secret Document generation and maintenance; preparation and review of PSQ's; fingerprinting and miscellaneous recordkeeping.

Material Costs consist of those items which indirectly assist in the generation, transmission and safeguard of Secret documentation. Document Control Manuals, destruction equipment and EDP equipment are utilized by Document Control in the gensration process. Stamps, postage and forms are concerned with transmitting correspondence either in-plant or to an out-of-company facility. Security desks, file cabinets, vaults, safes and locks are all utilized to safeguard classified information.

Each item in the Indirect Cost category is based on a percent in which it is utilized for Secret documents. Again, rates of pay utilized to determine labor charges should include the employees basic pay, cost of living adjustments, and fringe benefits. In the case of Material Costs, the total cost incurred for each item can normally be obtained through the department or organization responsible for their purchase price and quantity

Computation of Indirect costs per copy is computed by dividing the total number of active documents in the Document Control System into the combined annual expenditure for each category.

To arrive at a single per copy cost, the totals of the Direct and Indirect Cost categories are added together.

Throughout the past eight years, since publication of our first classified Document Cost Study, we have found this publication to be an excellent means of requesting document originators to curtail excessive distribution

of documents by citing the additive costs involved for additional copies. Along the same line, the classified Document Cost Study is very useful in determining monetary savings realized through document processing procedural eliminations.

If you elect to generate a Cost Study of your own, I hope you will find it as useful as we have.

To assist you in the publication of a Document Cost Study for your facility, I have prepared an outline depicting the various categories utilized in our latest study and the method in which each category is computed. If you decide to generate a Cost Study for your facility, feel free to call or write me for clarification or assistance. My name and address are indicated on the outline. I will be more than happy to assist you.

Thank you for your attention.

CLASSIFIED DOCUMENT COST STUDY

A) DIRECT COSTS:

- Originator Processing
- Secretary Processing
- Document Holder Responsibilities
- Document Control Processing
- Courier

B) INDIRECT COSTS:

- Personnel
  - Plant Protection
  - Destruction
  - Classification Management
  - Reproduction
  - Security
  - Document Control Supv.
  - Miscellaneous Supv.
- Security Education
- Clearance Costs
- Material Costs
  - Document Control Manual
  - Security Desks
  - File Cabinets
  - Vaults
  - Safes
  - Locks
  - Destruction Eqpt.
  - Stamps
  - Postage
  - Forms
  - EDP Equipment.

METHOD OF COMPUTATION

Cost for each category based on the percent/time attributed to one Secret document.

Percent of original/reproduced copies times total cost incurred for each category equals total direct cost per document.

All categories based on the annual expenditure for each category divided by the total active documents in the system.

A + B = Total per copy cost

EVOLUTION AND DEVELOPMENT OF CLASSIFICATION MANAGERS

JAMES C. MARSH, SANDIA LABORATORIES

The Atomic Energy Act of 1946, as amended in 1954, established Atomic Energy Commission classification. This act resulted in a classification program quite different from that of the Department of Defense where Executive Orders cover classification and security procedures. Perhaps this is one of the reasons why the AEC and DOD find themselves at odds on some classification matters. Perhaps another reason for the difference in attitude or philosophy is that much of the information classified by the Military is operational data which tend to be fluid or transient. Most of the information classified under the Atomic Energy Act is technical design information of a more permanent nature.

Of importance to AEC classification management people is the fact that Restricted Data and Formerly Restricted Data are exempt from the downgrading and declassification provisions of Executive Order 11652.

A classification determination is a quasi-legal judgement based on the best available relevant technical information and supported by pertinent classification guidance derived from the Atomic Energy Act or other authority. Classification decisions or judgements frequently impinge on security and security regulations. When the classification analyst decides that a body of information (usually technical) requires security protection in view of approved local or program classification guidance, security is responsible for determining the means required to protect this information. Note the two distinct functions and responsibilities. This difference in functions and responsibilities suggests that probably it is unsound to have the classification organization reporting to the security director.

This being the case, then just what place in the organizational structure should the classification official occupy? At Sandia Laboratories, the Classification Division, which I supervise, reports to the Technical Publication and Art Department. This has proven to be a reasonable base from which to operate. The Classification Division is also staff to the vice president who serves as Chairman of Sandia's Classification Board. This vice president is also the top Laboratory authority on classification matters. In accordance with the new Executive Order, I also serve as staff to the Laboratories President on matters relating to top secret authentication and control.

Within the AEC family, including contractors, there is no specific organization slot specified for the classification function. The only requirement is that security and classification will not report to the same administrative head. This is a fundamental point. Obviously, it would be most undesirable to have the production acceptance people report to the production manager, or vice versa. No organizational structure should allow such a potential conflict of interest. However, being too rigid is not rewarding either. The successful classification officer must work with both technical and administrative people constantly, and as harmoniously as possible, to minimize security time and dollar costs. This is particularly true in placing classified contracts.

A few words about Sandia Laboratories will help make clear why its Classification Division functions as it does. Sandia was established in Albuquerque in 1945 as a part of the Los Alamos Scientific Laboratory. It was intended that Sandia would handle weapons development engineering and bomb assembly for the Manhattan Engineering District--a code name for the original atomic bomb project. The University of California operated Sandia as a branch of Los Alamos Scientific Laboratory located in Los Alamos, New Mexico, until 1949 when the University requested the AEC to be relieved of nuclear ordnance engineering responsibilities. President Truman asked the Bell System to assume responsibility for operating Sandia. Sandia Laboratories was designated as a subsidiary of Western Electric Company, the manufacturing branch of the Bell System. Western Electric manages the Laboratories under a no-profit, no-fee contract as a service to the U.S. Atomic Energy Commission.

Sandia's principal responsibility lies in research and development in nuclear ordnance and non-nuclear aspects of nuclear bombs and warheads. There has been a marked trend in Sandia Laboratories to concentrate efforts in research and development. As a result of this emphasis, Sandia has acquired a highly qualified scientific and engineering staff.

Classification Division personnel are members of the Laboratory staff. The job structure consists of three levels of analysts and a supervisor designated classification administrator. Jobs are evaluated under a position evaluation plan which establishes the relative level of various administrative positions. Ratings are based on job knowledge, problem solving ability, and dollar accountability. Persons with proper job qualifications can enter at a job

level commensurate with qualifications and job experience. Our wage administration people rank our positions high in both job knowledge and problem solving requirements. Hence we have a point rating which allows us to have a good salary range. Many agencies do themselves a great disservice by submerging the classification job in the security structure reducing its importance and pay scale or GS level. The AEC, using considerable care in establishing job requirements and job descriptions, has established a flexible job structure which attracts and retains professional level people.

Let me briefly list the activities performed by Sandia's classification Division.

1. Provide advice, counsel, resolution on classification problems and questions.
2. Prepare, coordinate, and justify new and revised classification guidance.
3. Review documents, work projects, material, and hardware as they are generated.
4. Conduct classification education programs, on both general and specific subjects.
5. Prepare subcontractor/consultant guidance, education, and liaison.
6. Review older documents and projects for downgrading or declassification.
7. Carry on intercontractor/agency communication.

One of the classification administrator's most important jobs is to recruit and maintain a capable staff. This is a challenge in view of the tight dollar situation, particularly in a laboratory such as Sandia which is steadily reducing the ratio of administrative staff to technical staff. Through 14 years of classification management work I have hired about a dozen classification analysts and interviewed many more. What I have looked for in an applicant is a broad educational background and strength in pure sciences or engineering areas. It is most important that a potential analyst communicate well both orally and with the written word. Age is not necessarily a consideration. Hopefully, the individual should have quasi-legal inclination for the process of making classifications determinations is somewhat akin to making decisions in legal processes.

An absolute essential in a job applicant is patience and forbearance in dealing with the frustrations of classification. It is difficult to really assess personal characteristics during a short interview, but one can usually determine how the candidate would react to the job situation.

Another characteristic difficult to evaluate is judgement. Obviously, classification managers or analysts do not last long if their judgement is poor. The prime requisite for making good decisions is a thorough evaluation of all relevant information before making the judgement. Another factor is individual motivation. Today, when good positions are hard to find, many engineers with bachelor's degrees and even master's degrees are finding it hard to compete in an environment which favors persons with PhD degrees. This, with the growing professionalism in classification management, now prompts the scientist or engineer to consider classification more seriously as a career than did his counterpart in years past. Of persons I have interviewed, the best candidates have had broad educational backgrounds, skill in technical writing, and the ability to elicit technical information from the engineer or scientist. Many outstanding candidates for classification management positions at Sandia Laboratories have been young ex-military men who have been connected with the former Field Command, Defense Atomic Support Agency Weapons School. These young officers generally had a good technical background plus a basic knowledge of weapons, which of course was of great benefit to our work. The AEC requires its classification officers to have technical degrees, but it is unsafe to feel confident that a technical degree assures either interest or skill at classification.

The classification manager, to be most effective, must have some knowledge and understanding of every project at his installation. Obviously, no man has enough in depth technical information to be able to answer all inquiries. Early in my career in classification management I learned that the best way to survive with a limited technical background was to obtain information from qualified individuals by asking questions and more questions. Experience has shown that most technical people are glad to expound on their areas of expertise if you ask the right questions. However, no one should try to bluff his way by attempting to give the impression that he understands complicated technical problems.

Once you have hired a candidate whom you feel will make a top flight classification analyst, how do you train him to optimize his capabilities and his worth to the organization? The first few months in the classification business are frustrating to many people because there is no prescribed course of study. Skill in decision making and problem solving is learned only by

exposure and experience over a lengthy period. But, there are a good many things that the supervisor can do to make the break-in period both more palatable and more useful. Here are a few tools and a few means of training a new classification analyst.

The newcomer should:

1. Acquire a knowledge of the basic classification policies and procedures of the AEC or DOD, including a working knowledge of the Atomic Energy Act or Executive Orders which set his policies.
2. Have or acquire a general knowledge of all programs at his installation with particular emphasis on classified activities.
3. Cooperate and meet with other organizations, including in the case of the AEC, the Operations Office and the headquarters people and the integrated contractors. He should attend working sessions on joint programs with various using services and visit contractors with classified subcontracts.
4. Try to attain a general familiarity with the many related security regulations such as clearances, mail channels, and report marking. This is not to say that the classification analyst should presume to make himself an expert in security matters, but almost inevitably during classification orientation sessions, questions are raised which have security overtones. Sandia's classification organization is being drawn more and more into discussions relating to security markings as well as security matters. Some recent examples of this have been the implementation of CNWDI, the revision of AEC Manual Chapter 2108 on weapon data reports, retention periods as they relate to the AEC's declassification program, and most recently, implementation of Executive Order 11652.
5. Be involved in face-to-face office discussions whenever possible, attend orientation and technical briefings, and as soon as possible be given small projects under the direction of a senior staff person.
6. Learn to use available tools in the office--guides, files, manuals, and outside agency information. He should be acquainted with the drawing files, the central technical files and their contents, and the computer facilities. An analyst with some programming skill will find this ability useful.
7. Meet members of the Laboratory's classification committee, if one exists. At Sandia, the Classification Board is made up of senior members of the technical staff (the AEC designates them as Responsible Reviewers with individual areas of expertise) who are available to advise on classification matters.
8. Attend and participate in all classification education sessions conducted by the division including new staff briefings, new supervisor orientations, secretarial refreshers, and special topic presentations.
9. Attend meetings of AEC weapons contractors. There is a rather unique group known as Weapons Contractors Classification Conference which includes all the AEC weapons contractors and meets three or four times a year. At these conferences we air mutual classification problems, listen to technical briefings, and tour various AEC contractor facilities. It is useful for people new in the profession to attend these meetings and listen to the sometimes heated discussions. It is also useful for new personnel to visit other contractors for a general orientation and philosophical discussions. We welcome visits of new classification people from other contractor and government offices.

Already emphasized are some of the personal attributes, skills, and education necessary for success in classification management. Once again emphasis is placed on the importance of competence in oral and written communications. Particularly in classification, any rules or guidance that can be misunderstood probably will be misunderstood. Therefore, it must be a primary aim of the classification manager to assure that all written guidance relay what the manager intends and be received by all users with the same meaning.

During the years I have been associated with classification, I have had the pleasure of knowing many fine capable people. It is fair to say, at least as far as the AEC is concerned, that the most successful classification management individuals in the practical sense have been those with the broad technical background and an outstanding ability to communicate. Surprisingly enough, the most frequent technical background of AEC complex analysts has been and is chemistry.

In summary, I emphasize that classification and security can and must be treated as two separate functions, and the difference should be understood by management. Classification and security should be separated in the organizational structure. Further, the judgement that information (including material) requires protection should be made by a knowledgeable classifier with his opinion based on competent technical evaluation, as well as the appropriate classification guidance. It is not clear that there can be specific rigid qualifications listed for a classification analyst, but certainly a broad educational background with emphasis in some technical area such as physics or chemistry is desirable, along with good judgement and the capability to communicate effectively. Although no formal academic course of study is available for classification managers, any organization can improvise ways to supply the necessary on-the-job training.