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# CLASSIFICATION MANAGEMENT

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## ANNIVERSARY ISSUE

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# In Tribute

This, an anniversary edition of the Journal of the National Classification Management Society, is dedicated with respect and appreciation to the memory of those members who gave so much of their energies to the formation, building and preservation of our Society through effective leadership at the chapter and national levels, and to those who provided the required impetus by being devoted Society members.

Some of you in the present membership worked and associated with them, and shared their enthusiasm; all have benefitted from their efforts. Some departed while active members, and others after their destinies took them to other fields.

LET US REVERE THEIR MEMORIES IN THIS DEDICATION

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## FOREWORD

A purpose of the Fifth Anniversary Journal of 1969 was to provide a guide to what NCMS had done; that is a prime purpose also for this issue. For many of you who have become members in recent years, there has not been an opportunity to learn of the history of the Society and you will find the presentation on that of interest-as will some of the old-time members who may have forgotten details.

The program in which we all are engaged has seen substantial change since our Fifth Anniversary. Aspects of the change are covered in a number of articles. The index of topics covered in our various seminars will reveal the depth and scope of our interests and endeavors. Then too, the bibliography (not necessarily exhaustive) of related books, articles, Congressional Hearings and the like will be valuable to all--for those who have none as well as those who need to verify their holdings. A further point is that many newer members have never seen our ByLaws as a Society; these too are included.

*Lorimer F. McConnell*  
*Editor*

ANNIVERSARY ISSUE

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**TEN YEARS OF THE NATIONAL  
CLASSIFICATION MANAGEMENT  
SOCIETY**

**Frederick J. Daigle  
Lockheed Missiles & Space Company**

In his inaugural speech in 1973, then President Nixon made an observation that in some form or other must have been in the minds and hearts of the founders of NCMS. He said, "Abroad and at home, the time has come to turn away from the condescending policies of paternalism - of Washington knows best. That is why I offer no promise of a purely governmental solution for every problem. We have lived too long with that false promise. In trusting too much to government, we have asked of it more than it can deliver. This leads only to inflated expectations, to reduced individual effort and to a disappointment and frustration that erode confidence both in what government can do and what people can do."

The credit for the initial efforts toward the founding of the National Classification Management Society rests with a small group of individuals who were then part of the only recognized group involved in this new world of Classification, namely the Classification personnel of the Atomic Energy Commission family.

Early in the spring of 1963, a need for improving communications between the classification people of the nuclear design laboratories and those of the nuclear production agencies was recognized. It was at this time that the idea was conceived of establishing a professional society in the field of Security Classification Management for AEC government and contractor personnel. Discussions were held that Spring by Richard Durham, Classification Officer, Sandia Corp., Livermore Laboratory, Calif., with James Ruff, then classification officer at Lawrence Radiation Laboratory, Livermore, California, and with Doctor Leslie M. Redman of the Los Alamos Scientific Laboratory in New Mexico. The three of them agreed that this would be an appropriate item for discussion at the first meeting of the Weapon Contractors Classification Conference (WCCC) working group which was to be held 4 and 5 June 1963, at the Bendix Corporation's Kansas City Division.

In attendance at that first meeting of the WCCC were: James Marsh, Classification Officer and Charles Prohaska, Classification Analyst, Sandia Corporation, Albuquerque; Les Redman, Donald Woodbridge and Robert Dreyer, Classification Officers, Union Carbide

Nuclear Company, Oak Ridge, Tennessee; Edward Calvert, Classification Officer, South Albuquerque Works, AFC Industries Incorporated; Dick Durham, Classification Officer Sandia Corporation, Livermore Laboratories, Calif.; James Bunch, Classification Officer, Pantex Company, Amarillo, Texas; and the host, Jack Long, Classification Officer, Bendix Corporation, Kansas City Division.

On June 5, the second day of the meeting, the idea of forming this professional classification management society was discussed in depth and all attendees agreed that it was worthy of further investigation and effort.

Considerable discussion then ensued as to the advisability of associating our organization with American Society for Industrial Security (ASIS). The group agreed that an approach would be made to the western representatives of ASIS to solicit their views, and, hopefully, through them, the views of the national officers of ASIS on the feasibility and advisability of associating our organization with theirs.

It was further agreed that we should talk to DoD contractor classification personnel. It was suggested that a meeting could be arranged for this purpose at the close of the second meeting of WCCC, which was scheduled for November 19 and 20, 1963, at Sandia Corporation, Livermore Laboratory.

In the time between June 5 and November 19, contact was made with DoD contractor people and with an ASIS chapter officer, who agreed to raise the question with the appropriate people in ASIS. No response was received from ASIS by November 19.

The contact with DoD contractor personnel was most fruitful, however, and on the afternoon of November 20, 1963, in the conference room of Sandia Corporation, Livermore, twenty-three classification representatives from DoD contractors, AEC contractors and field classification personnel of the AEC met, considered the idea favorably, and organized a steering committee. The ad hoc steering committee consisted of John Shunny, Sandia Corporation, Albuquerque; Robert Rushing, Lockheed Missiles & Space Company, Sunnyvale, California; William Herling, Space Technology Laboratory, Redondo Beach, California, and Richard Durham, Sandia Corporation, Livermore, California, John Shunny was named chairman and Dick Durham Secretary/Treasurer of the committee.

The first duties of the committee were to solicit assistance from other interested persons in the then

sparse classification community, draft bylaws, and select a name for the blossoming organization. During this meeting it was suggested and acted upon that those present so inclined, contribute \$10 to help build a treasury to cover initial costs; this contribution would eventually become the member's initiation fee which was also set at \$10 as was the annual dues. It is interesting to note here that this modest sum for initiation and dues remained constant until 1970.

#### First Members

As of December 18, 1963, the following were considered the very first charter members of the Society from the AEC community: Ed Calvert, Dick Durham, James Patterson, then of Sandia, Livermore Laboratory, and John Shunny, from the Defense Industry group, Fred Daigle, Lyle Dunwoody, Bob Rushing and John Wise all of Lockheed Missiles & Space Company in Sunnyvale, California.

By December 18, the steering committee had agreed, after considerable research and study, on the official title of "National Classification Management Society," and the draft bylaws were published and disseminated to the charter members and prospective charter members.

The main driving forces during the initial founding phase prior to the incorporation of the Society were, without any question of doubt, Bob Rushing and John Shunny.

By January 16, 1964, the formal charter members had grown by the addition of Jim Marsh, and Lorry McConnell of Systems Development Corporation, Santa Monica, California. Major A. A. Correia, then of Norton AFB, California, became the first military member, in February, and Francis W. May, then of Air Force Headquarters, joined in March and was the first government civilian employee to become a member.

On March 31, 1964, the Society was incorporated as a nonprofit professional society under the laws of the state of New Mexico and, as such, the Society formally and legally came into being.

During the period from January through June, extensive recruitment was undertaken by the ad hoc committee, and tentative plans were made for the first Society Journal and the first seminar of the Society. Much of the heavy letter writing in this period to prospective new members was accomplished by John Shunny and Bob Rushing. As of May 13, 1964, the

Society had grown to 35 charter members, and the treasury held \$495. On August 11, 1964, a letter was sent to all charter members of NCMS furnishing a slate of officers for the initial NCMS directorships.

On September 17, 1964, the ballots had been counted and the Board of Directors was selected as follows: Dick Durham, Bob Rushing, Don Woodbridge, Tony Correia, Les Redman, Bill Herling, and Bob Niles of Defense Atomic Support Agency. Rushing and Durham were named to terms of three years, Woodbridge and Correia two years, and the others one year.

From among the board, officers were elected on October 6, 1964, naming Don Woodbridge as Chairman of the Board, Bob Rushing, President, Dick Durham, Vice President, Bill Herling, Secretary-Treasurer. The membership was so informed on October 30, 1964. By November 1964 plans were underway to hold the first seminar in 1965. Washington, D. C. was selected as the site and Dick Durham was given the job of seminar chairman.

During this same period other activities were taking place all over the country in the form of organizing area chapters.

Under the leadership of Dick Durham the first organization meeting for the Washington, D. C. chapter, and perennially our largest chapter, was held in November 1964 with forty interested persons attending. Mr. Don Garrett, then of the Office of the Secretary of Defense, was elected first chapter chairman. Almost concurrently in Northern California, under the guidance of Fred Daigle, the first organization meeting of the then called Bay Area Chapter was held in October 1964 and the chapter formally organized in December 1964. Fred was elected the first chapter chairman in January 1965, a position he held for the first two years of the chapter's life. This chapter was renamed the Northern California Chapter, and although small in number, proved over the years to be very innovative and hosted two national seminars in 1968 and 1972.

The Southern California cadre of members was not idle. Although even fewer in numbers at that time, under the leadership of Lorimer (Lorry) McConnell and two members of the society, they undertook the task of organizing a chapter, also in 1964, with the final organization and first meeting in 1965. Southern California, although it only started with three members, continually grew and provided a challenge to Washington as the largest chapter. They hosted the first seminar of the society held outside Washington, D. C. and have consis-

tently run successful seminars. The chapter pioneered in hosting a seminar in a remote location from the chapter headquarters, this being the San Diego Seminar in 1974. To date they have hosted a total of four seminars, while Washington has hosted five, and Northern California two.

#### Rocky Mountain

Although Rocky Mountain area personnel such as John Shunny and James Marsh of the Sandia Corporation, Leslie Redman of the Los Alamos Scientific Laboratory, and Cecil Carnes, then of Dow Chemical, were early organizers of the national Society, the sparse population of the region did not provide enough potential members for a local chapter until 1967-1968. After organizational spadework by Messrs. Marsh and Shunny and Ann Merritt of DASA, an initial meeting was held in January 1968 in Albuquerque. Mr. Marsh was elected chairman, Mrs. Merritt, vice chairman, Ruth Ann Alves, secretary, and Robert Pogna of EG&G, treasurer.

#### New England

In 1967 the national board of directors asked Kenneth E. Wilson, Sylvania Electronic Products, to try to form a new chapter in the Boston area. Mr. Wilson organized an initial meeting late in 1967, and further meetings resulted in the official granting of the chapter charter in January 1968. The first officers were Mr. Wilson, Chairman, and Charles Mangos, Sylvania Electronic Systems Division, Secretary-treasurer. Activities have featured the "workshop" format with practical subjects such as "How An Employer Can Benefit From Good CM."

#### Mid-Eastern

James D. Moran, of General Precision, Inc., Aerospace Group, assisted by Henry Jespersen III, Western Electric, organized the Mid-Eastern Chapter to cover New York, New Jersey, and Pennsylvania. An organizational meeting was held at the Western Electric Company office in New York City on January 26, 1968. Others present then were John Foster, Avco Lycoming; Charles Uhland, General Electric; and Carl Danielson, Thiokol Chemical Corporation. Endorsing the action by proxy were Ronald Beatty of Avco Lycoming, Walter Lucas of Curtiss-Wright, and Edmund Weiss of Bell Telephone. The organization was successful and the charter was formally presented May 17, 1968, by R. L. Durham, national chairman of the board.

#### Journal

In the Spring of 1965, only 16 months after the first exploratory meeting at Livermore, the first issue of the Journal appeared under the editorship of charter member Les Redman. This journal announced the program for the first National Seminar to be held in the International Conference Room, Department of State and contained articles by Robert Rushing, the Society's first president, George Mac Clain, Director Classification Management, Office of the Assistant Secretary of Defense, Dick Durham, by now Director of Classification for the Arms Control and Disarmament Agency, Mr. C. C. Carnes, Jr., then of Dow Chemical and Fred Daigle. Our first bylaws and our membership list (71 members) were also included.

Since that time our Journals have undergone many changes not only in content but in appearance. From the first 5" x 8" staple bound editions, the Journal increased in size to a book type binding, then was completely redesigned in 1971 to a two color cover with our logo. This was very well received and the Journal now had a personality. In 1971 the final design change was made with Volume VII and we went to our current Journal size 8" x 11". Our Journal is the only source document in the United States dedicated to Classification Management, and is widely used by students as reference material and source documentation. The Journal is available through the Defense Documentation Center and has been registered as an Information Source by the National Referral Center, Science and Technology Division, Library of Congress.

In addition to the format, the Editors of the Journal have undergone some changes also, starting with the second edition in 1966, Edward H. Calvert, then of ACF Industries, Albuquerque was our editor and he continued in this capacity until 1970 when Lorimer (Lorry) McConnell assumed the responsibility, and he has been our editor since then. We all owe a debt of gratitude to these gentlemen who have expended so many hours in our behalf to publish a most representative Journal.

#### Bulletin

The C/M INTELLIGENCER, although many of you have never heard of this document, was the granddaddy of our current *CM Bulletin*. First issued as the Northern California Chapter Newsletter by Robert Donovan, then of United Technology, Sunnyvale, the Intelligencer gained national recognition and evolved into the early version of our *CM Bulletin* with the first edition pub-

lished in November 1967. This early Bulletin was authored by Bob Donovan, and printed, assembled and mailed by Gene Suto, Research Analysis Corporation, McLean, Virginia, and his "girls" with headquarters in the Suto living room. In 1970, with the assistance of Jim Marsh, the Bulletin format was changed, and we went to two color printing much the same as we do now. Bob Donovan continued on as the Editor and Jim Marsh coordinated the printing and distribution. In 1972 our current editor, Jack Robinson, Center for Naval Analyses, assumed the responsibility for the Bulletin and shortly after the untimely passing of Jim Marsh, printing was shifted to the Washington area under the watchful eye of Samuel J. Hollen of Balmar, Inc.

Our Bulletin has traveled a long road to its present format, content and editorial policy. Many of our members have contributed articles and information items and during the period between Bob Donovan and Jack Robinson's editorship, several interim editors tried their hand at it including Donald Garrett, Jim Marsh, Fred Daigle and Donald Woodbridge. The editorial review board has varied in composition and has included Donald Garrett, Frank May, Gene Suto, James Marsh, Fred Daigle, and Jim Bagley. However, we owe the existence of our Bulletin to you, the dues payers, who financially support its publication, but most of all to Messrs. Donovan, Suto, Marsh and Robinson. Without their tenacity and desire to succeed, our Bulletin would not now exist in its professional format.

### Seminars

So much for the mechanics of the organization and continuation of the Society, but what, one may ask, have we accomplished over the years? In the opinion of your author, the greatest and most important accomplishment has been the bringing together of people who are interested in the Profession of Classification Management. Our members represent a cross section of the Profession ranging from those with very senior positions in the government such as Director of Information Security, Office of the Assistant Secretary of Defense, to Classification Management trainees. These members are drawn from Government, Industry, Military and Academic areas. The beauty of all this is we have a common bond through which we can communicate, we have an opportunity to meet each other in both the business and social aspects of our annual seminars, thereby establishing the all important personal contact. When you call "up the line" in Classification you know to whom you are talking, and both you and your company can take a positive approach with your prob-

lems, reaping the benefits of these seminar oriented personal contacts.

The Seminars are the life blood of the Society. They provide, on an annual basis, a forum for the Classification policy makers, the interpreters, the enforcers and the users. Our seminar speakers have been drawn from the United States Senate, the State Department, various agencies such as the old Atomic Energy Commission, NASA, Central Intelligence Agency, National Security Agency, just about every military department, and the Interagency Classification Review Committee. From industry we have heard from company presidents, computer experts, patent attorneys, contract management and international sales experts. The press, both the news media and the magazine media have addressed us on many occasions, giving us their views on the continuing controversy of freedom of the press vs. classification of information.

Our NCMS Journal recaps every seminar, and prints the professional papers that were presented whenever the author has permitted publication. Due to the newness of our profession, our Journal provides an excellent educational background in the field for the new members and other people just getting into the business.

Seminar locations have been alternated from Coast to Coast each year, Los Angeles, then Washington, then San Francisco, etc., providing the heaviest population, NCMS membership-wise, to attend at a minimum of cost and travel time away from the job. Future plans include not only return to these locations, but going to other areas such as Dallas, when population of membership dictates.

As another service to the membership and the Classification community, the Board of Directors also schedules its meetings in locations to support local seminars, thereby providing a cadre of experienced professionals to draw from as speakers. Orlando, Florida, Dallas, Texas and Rock Island, Illinois have taken advantage of such an opportunity and provided training and education to the local classification oriented personnel to which they otherwise might have been exposed.

The subject matter of the seminars remains constant - Classification and its associate environments such as Security, Document Management, Library holdings, Patent problems, International trade, and government regulations.

In actuality, the emphasis appears to vary with geography. The Washington seminars provide the op-

portunity to draw heavily from the government speakers who are more readily available and much more willing to speak "downtown" rather than 3000 miles away. The West Coast seminars, on the other hand, draw more from the industrial complex, due to the proximity of the major military contractors on the west coast and the Aerospace population which makes up a heavy percentage of our NCMS industrial membership.

As most of us have experienced in our formative years, history is at best a dull subject, and very difficult to enliven. Rather than try to form a narrative of accomplishments for the first 10 years, here is presented a chronology of significant events in the life of the Society, by the year of occurrence:

- 1964 – This year has been covered in the previous text consisting primarily of the early organization efforts.
- 1965 – First edition of Society Journal, under the Chairmanship of Dick Durham, Les Redman, Editor.
  - First NCMS Seminar, Washington, D. C.
  - Continued efforts in publicizing the society.
- 1966 – NCMS Journal observes that it is the entire body of published information on the professional aspects of *Classification Management*.
  - Second Annual Seminar hosted by Los Angeles Chapter, under chairmanship of Mr. Richard Boberg, Aerospace, in which various thoughts on automated classification control and downgrading are introduced by C. Donald Garrett and by Robert Donovan.
  - First edition of Northern California Chapter newsletter *The Intelligencer* which was the forerunner of our present day *Bulletin*.
- 1967 – Northern California Chapter issues first NCMS questionnaire.
  - Third Annual Seminar held in Washington, D. C. under the chairmanship of Howard Maines, NASA. The Honorable John E. Moss, Member of Congress, California, in his keynote address discussed his Freedom of Information Act, which was passed into law on 4 July. (PL 49-487).
- Major revision of DD254 released by Department of Defense. Extensive input to this revision was generated by NCMS.
- First *CM Bulletin* published, Bob Donovan, Editor.
- 1968 – Employment referral service inaugurated by NCMS, Later became the additional duty of the Vice President.
  - Rocky Mountain Chapter formed as a result of efforts by Jim Marsh, J. Shunny and Ann Merritt of DASA.
  - Certificate of Appreciation designed and adopted.
  - Mr. Robert Rushing, a Society founder, was presented with the Society's first Honorary Membership. (This category subsequently was changed to Life Member.)
  - New England Chapter formed under the leadership of Ken Wilson, Sylvania Electronic Products.
  - Mid-Eastern Chapter formed under the leadership of James D. Moran of General Precision, Inc. assisted by Henry Jespersen, III, of General Electric.
  - Fourth NCMS Seminar held in San Francisco under the chairmanship of Frederick J. Daigle, Lockheed Missiles & Space Company, Sunnyvale. This seminar boasted many firsts for the Society - first 3-day seminar; first Ladies Program; first presentations to the Society by the working press; Dick Durham announces membership over 200, eats his hat (as provided by the St. Francis bakery).
  - Directors limited to two terms.
  - Position of Chairman of the Board eliminated.
- 1969 – Don Woodbridge appointed as Counselor to the Society.
  - First dues increase voted by the Society, effective 1970.
  - Fifth Annual Seminar held in Washington, D. C. under the chairmanship of Jim Bagley,

- Naval Research Laboratory.
- Number of Directors increased from 7 to 9.
  - Secretary-Treasurer position changed, creating the new Society Officer titles of Secretary and Treasurer.
  - *CM Bulletin* commences publication by a commercial printer on a bi-monthly basis.
  - Society shifts from a fiscal to a calendar year for accounting purposes.
  - "Guide for Conducting National Seminars" published by G. Chelius, McDonnell-Douglas Astronautics Corp
  - Sixth Annual Seminar held in Los Angeles under the chairmanship of George Chelius.
  - So. California Chapter position paper on "Special Access Programs" submitted as a Society position paper.
- 1971 - NCMS Journal released to Defense Documentation Center.
- Society emblem approved and adopted. Society lapel pin designed and ordered.
  - First NCMS survey of all members was conducted.
  - Letter requesting Society input received from Chairman William S. Moorhead, House of Representatives, Foreign Operations and Government Information Subcommittee.
  - Seventh Annual Seminar held in Washington, D. C. under the chairmanship of Lynwood G. Satterfield, Westinghouse, Baltimore.
- 1972 - NCMS President, Eugene Suto, Executive Committee and NCMS Counselor appear before the House Armed Services Committee, Subcommittee on intelligence hearings on the proper classification and handling of government information involving the national security, at the request of Chairman L. N. Nedzi, Michigan.
- By request of the Executive Director of the Interagency Classification Review Committee, President Jim Bagley, Naval Research Laboratory and Eugene Suto, met with him at the White House to brief him on the Society.
  - Eighth Annual Seminar held in Palo Alto, California under the chairmanship of George Mac Roberts, Philco Ford Corporation.
  - Position paper submitted on Retention of Classified Material, originated jointly by the New England and the Northern California Chapters.
  - Position paper submitted on working of DoD implementation of Executive Order 11652 in the area of Accountability and Control. This paper was originated by McDonnell-Douglas Astronautics Company and forwarded by the Southern California Chapter.
  - Society responds to Hon. W. S. Moorhead regarding its views on HR 15172.
- 1973 - Board holds meeting in Orlando, Florida, in conjunction with a 2-day seminar hosted by Martin Marietta, Orlando, under the chairmanship of James Buckland.
- Permanent mailing address for the Society established in Alexandria, Virginia.
  - *Position of Executive Secretary* for the Society established, Francis May was appointed to the position.
  - NCMS survey on Executive Order 11652 was conducted.
  - First female elected to the Board of Directors by the membership.
  - Ninth annual seminar was held in Washington, D. C. under the chairmanship of Jack Robinson, Center for Naval Analyses.
  - Bylaws rewritten to reflect operating policies and procedures.
  - NCMS recommends that information previously Group 3 under E. O. 10501 be allowed to be downgraded as originally indicated as opposed to automatic transfer to the GDS exempt category.
- 1974 - Board holds meeting in Dallas, Texas in con-

junction with a one-day seminar hosted by Texas Instruments under the chairmanship of Dean Richardson.

- NCMS registered as an "Information Source" with the National Referral Center, Science and Technology Division, Library of Congress.
- Standardization of member category, eliminating the Associate Member, was passed by the membership as a result of a national balloting.
- Position papers submitted on the consolidation of the Industrial Security Regulations and the Industrial Security Manual; Change in Retention of classified information; recommendation for establishment of a central repository for Security Classification Guides.
- Mr. Stanly E. Jenkyns, Industrial Security Division, Canadian Department of Defense, elected to Honorary Membership in NCMS.
- Tenth annual seminar was held in San Diego, California, under the chairmanship of George Chelius.
- NCMS submitted a position paper to Congressman Moorhead recommending the enactment of legislation that:

recognizes the need to protect certain information variously identified as National Defense Information, National Security Information and Information requiring protection in the interests of national defense and foreign policy, and provides a statutory basis for such protection.

Further, the Society recommended that the legislation be consistent with Congressional oversight responsibilities but not deal in details of managing the classification system.

- Position paper submitted to DoD on the revision of the DD Form 254.

So here we are, ten years young. Some have been good years, some great years and some were spent in existing. All in all, a good track record for a new profession and its new professional society. WITH YOUR HELP, and only with your help, will the society prosper and grow - contribute your time and knowledge NOW.

## HISTORY OF CLASSIFICATION

Eugene J. Suto  
General Research Corporation

This article is intended to give you a history of the classification program. It touches on the early days of classification, the Wright Commission, the Coolidge Committee, the Freedom of Information Act, Executive Order 10501, Executive Order 11652, Government Regulations and hearings by various Congressional Committees. Any one of the subjects mentioned could be the subject of a separate lengthy discussion. But a chronology at least touching on these subjects should give a layman's feel for the classification program.

One definition of Security classification means "the formal process in the Executive Branch of limiting access to or restricting distribution of information on the grounds of national security." Although there was no legislation establishing a classification system, during the first ten post-war years following World War II, Congress in effect cooperated or at least acquiesced in the Executive Branch's establishment of a classification system through such legislation as the Atomic Energy Act of 1946, the National Security Act of 1947, and the Internal Security Act of 1950. Since 1955, Congress has moved in the direction of preventing excessive withholding of information through amendment of some of the statutes which were being used to justify the classification system. Nevertheless, the dimension of the problem of classified information does not still appear to have been significantly reduced. There is general agreement that even today the quantity of classified information and documents remains huge and still includes many documents which should be classified no longer.

Many of the proposals relating to the classification problem aim at cutting down the amount of classified information or making certain that information which would not jeopardize national security is not classified.

Let us retrace our steps before the birth of our country 200 years ago.

According to research done by the Defense Department, security classification, in one form or another, existed in the time of the 13 original colonies. Allusions to a policy of military secrecy were found in Articles of War dating from 1775, prohibiting any unauthorized correspondence by soldiers with an enemy. In 1776, legislation forbade spying by civilians in time of war. On the legislative side, when the Constitutional Convention opened in Philadelphia in 1787, rules were

quickly adopted to ensure that its proceedings would be conducted in secrecy. It was not until 1820 that statutes were enacted removing those restrictions and simultaneously providing for the publication and distribution of the Convention records.

According to notes kept by Thomas Jefferson, it was in 1796 that the Chief Executive first asserted the authority for denying information to the Congress. At that time in a response to a request from Congress for particular information, Washington said "It is essential to the due administration of the Government that boundaries fixed by the Constitution between the different Departments should be preserved, a just regard to the Constitution and to the duty of my office, under all the circumstances of this case, forbids a compliance with your request." Thus, as far back as 1796, we come on to the use of "executive privilege," as it has come to be known.

Secrecy was practiced to some degree in diplomatic and military affairs throughout the nation's history, and was an outgrowth of our basically European origin. For example, in 1790 President Washington presented to the Senate for its approval a secret article to be inserted in a treaty with the Creek Indians. A formal and extensive classification system to keep certain information secret for purposes of national security did not develop until much later, however.

Although members of the United States Armed Forces were, from the time of the Revolution, prohibited from communicating with the enemy and spying during wartime, no directives regarding the protection of information or safeguarding against foreign military intelligence during peacetime were issued until after the Civil War. President Lincoln placed strict governmental control over communications - the telegraph, the mails, and, to a considerable extent, the press. Secretary Seward maintained a network of secret agents to assist in apprehending Confederate spies and collaborators and sympathizers. During this time, the military controlled communications and civilians within the shifting war zones.

The use of markings such as Confidential, Secret, or Private on communications from military and naval or other public officials can be traced back almost continuously into the War of 1812. However, the roots of the present classification system appear to be found around the time after the Civil War.

A few years after the cessation of hostilities, the War Department turned its attention to security proceedings

for peacetime. In what would appear to be the forerunner of today's security regulations pertaining to the protection of military installations, the Headquarters of the Army issued General Order No. 35 in April, 1869 which read in part, "Commanding Officers of troops occupying the regular forts built by the Engineer Department will permit no photographic or other views of the same to be taken without the permission of the War Department." This language placed limited information control at the disposal of the War Department

Later, in 1898, a statute was enacted to protect harbor-defenses, and fortifications constructed or used by the United States from malicious injury and for other purposes. This law provided that "Any person who shall knowingly, willfully or wantonly violate any regulation of the War Department that has been made for the protection of such mine, torpedo, fortification or harbor-defense system shall be punished by a fine of not less than \$100 nor more than \$5,000 or with imprisonment for a term not exceeding five years, or with both, in the discretion of the court." One effect of this statute was to sanction War Department directives regarding the protection of information.

A General Order of the War Department dated February 16, 1912, established a system for the protection of the information relating to submarine mine projects, land defense plans, maps and charts showing locations of defense elements and the character of the armament, and data on numbers of guns and the supply of ammunition, although it prescribed no particular markings. A General Order from the General Headquarters of the American Expeditionary Force dated November 21, 1917 established the classification of Confidential, Secret, and For Official Circulation Only.

The classification system established during the First World War was continued after the war was over. Army Regulation 330-5 of 1921 stated:

A document will be marked Secret only when the information it contains is of great importance and when the safeguarding of that information from actual or potential enemies is of prime necessity. A document will be marked Confidential when it is of less importance and of less secret a nature than one requiring the mark of secret but which must, nevertheless, be guarded from hostile or indiscreet persons. A document will be marked "For Official Use Only" when it contains information which is not to be communicated to the public or to the press but which may be communicated to any persons known to be in the service of the

United States whose duty it concerns, or to persons of undoubted loyalty and discretion who are cooperating with Government work.

In a 1935 revision the term Restricted was introduced as a fourth category, to be used when a document contained information regarding research work on the design, test, production, or use of a unit of military equipment or a component thereof which was to be kept secret. It also emerged in 1935 that documents on projects with restricted status were to be marked:

Restricted: Notice - This document contains information affecting the national defense of the United States within the meaning of the Espionage Act (U.S.C. 50:31,32). The transmission of this document or the revelation of its contents in any manner to any unauthorized person is prohibited.

Executive Order No. 8381 issued March 22, 1940, by President Roosevelt, entitled "Defining Certain Vital Military and Naval Installations and Equipment" gave recognition to the military classification system. In this order he cited as authority the act of January 12, 1938 (Sec. 795(a) of Title 18, part of the Espionage laws) which stated:

Whenever, in the interests of national defense, the President defines certain vital military and naval installations or equipment as requiring protection against the general dissemination of information thereto, it shall be unlawful to make any photograph, sketch, picture, drawing, map, or graphical representation of such vital military and naval installation or equipment without first obtaining permission of the commanding officer . . ."

The term "Top Secret" which had been used in military regulations during the latter part of World War I to coincide with classification designations of our allies, was not formalized as a level of classification until 1938.

Executive Order 9835, issued by President Truman in 1947, is widely held as the first such order dealing with security as we know it today.

Executive Orders 8381 and 9835 were superseded by Executive Order 10104 issued by President Truman February 1, 1950. In place of the Secretary of War and the Secretary of the Navy, Executive Order 10104 described the President, Secretary of Defense, Secretary of the Army, the Secretary of the Navy, and the Secretary of the Air Force as being authorized to classify

or direct to be classified the designated information.

On September 24, 1951, President Truman issued an executive order which officially extended the classification system to non-military agencies and to "security information --" Executive Order 10290, "Prescribing Regulations Establishing Minimum Standards for the Classification, Transmission, and Handling, by Departments and Agencies of the Executive Branch, of Official Information Which Requires Safeguarding in the Interest of the Security of the United States." It permitted any department or agency of the Executive Branch to classify and defined "classified security information" to mean official information the safeguarding of which is necessary in the interest of national security, and which is classified for such purposes by appropriate classifying authority.

President Eisenhower replaced Executive Order 10290 with Executive Order 10501, "Safeguarding Official Information," on November 9, 1953. It narrowed the number of agencies authorized to classify and redefined the usage of the various security labels.

Executive Order 10501 did not claim to be authorized by a specific statute. Executive Order 10501 contains in its preface as to authority only the general statement, "Now, therefore, by virtue of the authority vested in me by the Constitution and statutes, and as President of the United States, and deeming such action necessary in the best interests of the national security, it is hereby ordered as follows . . ."

Executive Order 10501 differed from 10290 in the following major respects. It

- withdrew authority to classify information from 28 agencies of the Government.
- limited authority to classify to the agency head, without power to delegate in 17 other agencies.
- limited sharply the authority to classify only if required in the interest of the national defense of the United States.
- eliminated completely the restricted classification, one of the most controversial categories of classified information.
- defined explicitly for the first time the three remaining categories of classified information - top secret, secret and confidential in order to prevent indiscriminate use of the power to classify

when specific interests of the national defense did not so require.

- provided for continuous review of classified material for the purpose of declassifying or downgrading the classification whenever national defense considerations permit.
- made more definite and certain the procedures for handling classified information so that employees would be more alert to the dangers of unauthorized disclosure.

Executive Order 10501, after defining the types of national defense information which may be classified in one of the three categories, set forth minimum rules for the labeling of such information, for its dissemination, transmission, handling, storage, and disposition, and for review with a view to downgrading or declassification.

Despite the declared purpose of Executive Order 10501, the Order was subjected to continuous and sharp attack. These attacks were led for the most part by leaders in the press and other information media as well as by numerous individuals in the legal field, and the world of science and scientific research.

In recognition of these attacks during the 84th Congress, the Special Subcommittee on Government Information of the House Committee on Government Operations held lengthy hearings under Congressman Moss to examine these complaints. These hearings and studies were the first major congressional effort to examine the document classification program.

Many of the problems involved in the classification system were recognized and there were many proposals for changing the system. Some of these proposals resulted in changes but others have not. A brief survey of some of the major studies of the classification system in the past and their recommendations demonstrates that such problems as overclassification are not new.

Let us look first at the Coolidge Committee. On 13 August 1956, this Committee on Classified Information was appointed by Secretary of Defense Charles E. Wilson, because of the latter's concern about unauthorized disclosures of information. Headed by Charles A. Coolidge, the committee reported that while the classification system under Executive Order 10501 seemed "beyond reasonable criticism as a matter of theory," the system in practice could justifiably be criticized both for withholding too much information and for harmful leaks of information. The recommendations of this com-

mittee included:

- making a determined attack on overclassification;
- cutting down the number of persons authorized to classify documents as top secret;
- making clear that classification was not to be used for information not affecting the national security and specifically not for administrative matters;
- establishing within the Office of the Secretary of Defense an official responsible for establishing, directing, and monitoring an active declassification program; the official to be separated from the direct influence of both security and public information officials in order to bring an unbiased judgement to the field of classification; and
- supplying more specific guidelines on classification criteria.

Another group which concerned itself with the defense classification system was the Commission on Government Security established pursuant to P. L. 84-304, approved August 9, 1955. The Commission consisted of several Members of Congress as well as private citizens with Lloyd Wright as Chairman and Senator Stennis as Vice Chairman. The Commission, which also examined other aspects of the effort to protect national security including the Federal Civilian Loyalty Program, the Atomic Energy Program, and the immigration and nationality program, expressed its conviction that "an adequate and realistic program for control over information or material of concern to national defense or security is vitally important to the objectives of our national security program." The reason behind document classification, the Commission stated, was the necessity for balancing the need to insure that hostile eyes did not gain access to information the country wished to safeguard against the need to make certain that the American people and friends had access to all information which would help in the achievement of peace and security. The problem was how best to achieve this balance.

The Commission recommended the establishment of a "Central Security Office having review and advisory functions with respect to the Federal document classification program and to make recommendations for its improvement as needed." It recommended a few mod-

ifications, particularly the abolition of the confidential classification on defense information in the future. It expressed the belief that the document classification program should be embodied in an executive order, with the exception of the review and advisory functions of the proposed Central Security Office which it stated required legislation.

In the area of industrial security uniformity of regulations, of procedures and their applications, and or administration appeared as the needed goal of any reform of the industrial security program. Therefore, the Commission recommended the establishment of a Central Security Office in the executive branch of the Government.

To insure uniformity within the armed services with respect to the Department of Defense Industrial Security Programs, the Commission recommended establishment of an Office of Security within the Office of the Secretary of Defense.

It stated classification guides should be issued by such office, and close scrutiny maintained on the classification of materials contracted for by the services. Downgrading and declassification programs would also be monitored from this office, as well as disposition of classified material upon completion of contracts.

It is interesting to note that some of these changes were later effected and a central office was established to insure proper classification of defense information originated by or under the jurisdiction of the Department of Defense. The objective of classification management was to provide a more effective DoD information security program and:

- Increase the flow of information to the public so that the American people will be better informed concerning major issues in national defense policy and significant activities of the DoD.
- Increase and accelerate the flow of technical information to American industry and the scientific community in order to advance the state of the art of weapons technology; avoid and reduce duplication of effort in research and development, and facilitate production of weapon systems and military equipment.
- Eliminate unnecessary expense to the Department of Defense and Industry incurred in protecting information which no longer requires security classification.

To accomplish the above objectives, procedures were to be established to insure that:

- Classification and declassification policies, standards, and criteria are responsive to the current needs of the DoD.
- Individual classification determinations are accurate and consistent.
- Overclassification is eliminated.
- Declassification is facilitated.
- All aspects of classification and declassification are effectively administered.

With the ever increasing awareness of classification problems; the National Classification Management Society (NCMS) was founded in July 1964 as the result by a steering committee formed in the Fall of 1963. NCMS is dedicated to advancement of classification management through education, research, training and dissemination of information.

Background studies on classification at the time of founding NCMS and the DoD Classification Management Program and even today indicate that classification:

- Is the *kingpin* of the whole information security system.
- *None* of the expensive clearance and control provisions of the system come into effect until the *act of classification* takes place.
- Security goes to work only *after* a classification is assigned.
- Thus, classification becomes the *pivot* on which the whole subsequent security operation turns (excluding physical security required for other reasons).

Questions began to be asked such as:

- *Who* are the *Classifiers* who spark the action which sets the security machine in motion?
- How many thousands are there? Where are they?
- Do they have the "know how" to classify accurately?

- Do they understand their responsibilities?
- Are they aware of the extent of the security operation and costs which result from their actions?

Although there was consistent improvement in the classification program from 1963 to 1971, many problems still existed. Then in 1971 the Congressional hearings especially were sparked by the Pentagon Papers episode.

Hearings were held by the Foreign Operations and Government Information Subcommittee of the Committee on Government Operations, House of Representatives, 92nd Congress, starting in June 1971. The function of that Subcommittee and the purpose of the hearings as stated in Vol 1 of their proceedings was to determine whether or not the right of the people and the people's representatives in Congress to adequate information is being violated and if so, to recommend legislation for procedural mechanisms to reestablish a proper balance between these shifting constitutional rights. The Committee heard testimony in 1971 from legal experts, Congressmen, retired classification personnel, members of the public media, Government employees and officials and others connected with classification and security matters.

*Congressman Moorhead stated the following at the start of the hearings in 1972. Let me quote in part:*

"Today's discussion with a group of experts in government information continues a series of hearings on one of the most important problems facing our democratic society.

"Call it "government secrecy," "news management," the "credibility gap," or "truth in government," it is a problem which has been with us since our form of government was established. It is a political problem, but it is not a partisan problem.

"All administrations, whether Whig or Federalist, Republican or Democrat, have faced the problem; no administration, no President, no Congress has solved it. In fact, the problem of informing all of the people who are an integral part of the democratic process has become more and more important in recent years — has grown to alarming proportions particularly since World War II."

In March 1972 hearings were held by the special sub-

committee on Intelligence, Armed Services Committee. The opening statement of Congressman Lucien N. Nedzi, stated in part:

"The subcommittee has been charged to conduct a major inquiry into the problem of proper classification and handling of Government information involving the national security.

"We have also been asked to review the adequacy of the National Security Act with regard to classified material and to ascertain the merits of H. R. 9853, jointly introduced by the Chairman and Congressman Arends of Illinois, which would establish a permanent National Commission of the Classification and Protection of Information."

"The Armed Services Committee, conscious that the most sensitive classification disputes are defense-related, has been concerned for some time over the classification procedures practiced by the Department of Defense as well as occasions of apparent mishandling of classified materials closely associated with the national security. We are concerned with the public's right to know and with the necessity of providing Congress and the public the fullest possible information upon which it may exercise an informed opinion."

"We are aware of various efforts over the years within the Department of Defense to reduce the great mass of classified data that has been accumulating with apparently insufficient control. It is time to make a more strenuous effort."

"We recognize the subject is not an easy one. It involves:

1. the protection of sensitive information.
2. the accepted principle of the right of the people in a free society to be informed about their government, and
3. the exercise of human judgements on where to strike the proper balance between the two."

President Nixon's Executive Order 11652 was issued on 8 March 1972. The major points of the Executive Order were that it:

1. widened the scope to include foreign relations with national defense in a single category called national security.

2. tightened the criteria for TOP SECRET, SECRET, and CONFIDENTIAL.

3. limited the authority to classify.

4. defined the authority to declassify more clearly.

5. held authorized classifiers accountable for their decisions.

6. shortened the time for automatic downgrading and declassification of General Declassification Schedule data (GDS) or former Group 4.

7. provided for mandatory review-on-request-of information classified ten or more years ago.

8. established that material over 30 years was to be declassified with very few exceptions.

Further, for the first time the archivist of the United States was to undertake systematic reviews of classified material when it was 30 years old continuing to protect only such material as specifically designated by the appropriate department head for continued protection.

The archives problem was clearly dramatized by the fact that there were over 760 million pages of classified documents in the archives for the period 1942 to 1962 alone.

In this connection a program was submitted to Congress by the President in the form of a request for supplemental appropriations to begin the declassification task in July 1972. Initial funds for a five (5) year program starting in fiscal 1973 were approved.

One interesting aspect here is that the Department of the Army started a special task force to declassify Military Intelligence records in July 1971. This task force utilized Army reservists and a significant reduction was made by such review before the start of a formal program.

Over a dozen bills or resolutions relating to classification and information controls were read in Congress during the period 1971-1974. One group of these bills was designed to insure that people — Congressmen in particular — not be deprived, arbitrarily and without recourse, of access to information generated in the executive branch. Another group aimed to establish review commissions to monitor classification and to recommend remedies. All in all they presented a picture of an aroused Congress. Two of the bills that were by

Mr. Moorhead, H. R. 8903, and Mr. Nedzi's Bill, H. R. 9853, were the subject of detailed hearings as mentioned before.

A portion of the NCMS President's testimony before the Nedzi Committee in 1972 and comments on H. R. 9853 which would amend the National Security Act of 1947 to provide a commission to effect continuing review and study of the security of information programs of the Government and to make recommendations on operations of the program were as follows:

"The members of our society have great sympathy with the motives that led to the framing of this bill and the several other bills and resolutions with similar goals now before Congress. As I pointed out earlier, two-thirds of us are employed in areas outside the Government. We recognize the justice in much of today's widespread complaints about overclassification and the abuses of classification, though I think many of us would be more moderate in our appraisals than are some of the more publicized experts. As citizens as well as classification managers, we are disturbed by the prospect of vital information improperly withheld — particularly if it is withheld from you, gentlemen of the Congress, who need all the help you can get to legislate wisely on our behalf — just as we are disturbed at the prospect of leaks of vital information that must be protected for the safety of the Nation. And yet we question seriously whether H. R. 9853 offers a truly satisfactory way of achieving what we conceive to be an admirable goal. Indeed, after detailed discussion, the NCMS Board voted to recommend against enactment of this bill

"In the first place, a commission of the sort envisaged by the bill, if it is to have maximum effect and greatest efficacy, if it is to avoid duplication of effort and fragmentation, should not be narrowed in its purpose as in H. R. 9853, but should hold within its scope the total interest of Congress. In particular, its scope should include:

1. Military disclosure.
2. Foreign policy.
3. Freedom of information.
4. International traffic in arms regulations (ITAR).

5. Title 18, United States Code.

6. Proprietary and official information.

"If a commission of the sort here envisaged is created, its study and review should cover all agencies in the Government where there is authority to classify.

"In the second place, at the risk of appearing a bit cynical, one might ask, not unreasonably, what still another commission still another investigative body, can be expected to accomplish. There is a notable history of study and recommendation in matters of classification and secrecy. There was the Coolidge Committee, the Wright Commission. There is the House Committee on Government Operations, which has recommended various changes. The faults of the system have been exposed and analyzed. A new commission can reinforce the findings; it is doubtful whether it can add much to them.

"What we see running through the many proposals like a common thread is the search (perhaps yearning is a better word) for a group of high-minded, disinterested citizens, gifted with extraordinary intelligence, knowledge, wisdom, and expertise, to whom we can give the power and the means to insure that information flows where it is needed and does not escape where it *shouldn't*. But since no one pretends to believe that such an Olympian band can be found ready and willing to serve our needs, where we can look and for what? I suggest that we look at the Interagency Classification Review Committee (ICRC) established under Executive Order 11652. It should also be noted that the DoD has reactivated its classification review and advisory board. It will not be surprising if the gentlemen of Congress look on this committee with a certain skepticism. Can the executive branch be expected to police itself? But, as I say, let's take a look. Intelligence, knowledge, and expertise will be there, and be there probably in greater measure than you can hope to find elsewhere as long as we are dealing with the problems engendered by classification. The committee will be able to make no peculiar claim to being wise, but that does not mean it will be deficient. This committee, by virtue of being interagency, will be at least one rung higher on the ladder of disinterest. Second, the spotlight will be shining on it full force; by definition it will be the focus of all the complaints that used to get

lost in the wilderness of offices, deputy offices, deputy assistant offices, and so on. Finally it is worth pointing out that whatever ways and means Congress may devise to cope with the ebb and flow of information, there must be an interface with the people who will be the administrators of these ways and means in the executive branch. If now it turns out that this interface is a committee that looks remarkably like a commission that Congress might legislate into being, it becomes quite reasonable to recommend that Congress consider whether most of the benefits it might hope to achieve through legislation are not already within its grasp."

Under Executive Order 11652 the tone of the program had been set by the President and was characterized by a frequently heard phrase as, "Classify less, declassify more, and protect better that which remains."

The rate of accumulation of classified information was an important aspect of the problem. While from World War II to 1962 the rate was approximately 146,000 pages a workday, the current rate is 200,000 or more pages a day. Such volume can cause the credibility of classification to be in doubt.

In the initial implementing efforts of Executive Order 11652, the number of people authorized to classify was reduced some 60 percent, and the number authorized to classify originally at the TOP SECRET level reduced 77 percent. The Executive Order and its implementing directives were not considered a panacea but that with cooperation much improvement could be expected. An educational campaign to stress the importance and purpose of the program was stated to be critical to its success.

Even though there have been successes to date under Executive Order 11652, it has not eliminated the problems that have been with the security classification system since its inception. Improper classification, overclassification, the lack of current classification guides, classification leaks, and continued large accumulations of data that should be downgraded, are still present. The Security training and education program must be reoriented towards the importance of correctly classifying information.

Congress has not yet passed a law which makes legal the classification program. Although there have been numerous executive orders, these directives do not have the force of law. The various newspapers which printed the Pentagon papers for example were not indicted because there was a weak legal basis for prosecuting. Under the Espionage Act, the present law on the books, it is

necessary to prove intent to actually harm the security of the country to obtain a conviction. There is reason to be dubious of the merit of the warning required by the Executive Order implementation — *NATIONAL SECURITY INFORMATION Unauthorized Disclosure Subject to Criminal Sanction*. Its potential punch seems to require some change to the law.

It is understood that Executive Order 11652 is currently undergoing study within the National Security with a view towards:

- Accelerating downgrading and declassifications of XGDS items from 30 to 25 years.
- Eliminating the "classified by" line.
- Recognizing formally the advance Declassification Schedule (ADS) category and encouraging its use.
- Making the paragraph marking mandatory throughout the Government.
- Narrowing the categorical definition of Exemption 3.

Learning of the proposed changes to Executive Order 11652, NCMS in early 1976 submitted detailed recommendations for changes. NCMS felt that changes to Section 4 of the order dealing with classification was crucial to effective implementation. The thrust of the change would be to establish security classification guides for all classified programs and projects, paragraph marking of all classified documents by the Government officials, and the formation of an Industry Advisory Group.

As you can see from the chronology presented, there have been over the years since the birth of our country, a gradual attempt to refine the classification system and progress is being made. The many bills and proposals introduced in Congress recently indicate that a new attitude toward classified information is developing. There appears to be a greater awareness of the hazards in Executive Branch Secrecy which is leading to an even greater vigilance on the part of Congress against misuse of the classification system. There is also evidence that the National Security Council means business in implementing the executive order and the various governmental agencies are inspecting and monitoring the classification systems at all levels.

Important aspects of all these studies and actions have shown that:

- Classification is here to stay.
- There will be continued emphasis to classify less and declassify more.
- Authority to classify will continue to be limited.
- Those who classify will continue to face challenges for their actions.

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## SHOULD THERE BE A LAW?

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Before commenting on the legislation proposed to cure "the classification mess," to insure that the Congress would get the information it wants, and the public gets the information it needs in order to make useful decisions at the ballot box (at least the 55 percent of them who vote with any regularity), it is necessary to set the scene and try to put the problems of secrecy in perspective.

### The Current Scene

There is a deep and continuing conflict between the need for greater public dissemination of information and the need for official secrecy - the "right-to-know" versus the "need-to-know". In this day of instant communications wherein violence and terror is served with breakfast, lunch and dinner, and the news is served encapsulated and abbreviated in sight and sound, the question of the availability of information and its attendant impact on the human psyche takes on new and different meanings. Although the events of the 1960s and 1970s - war, violence, kidnappings, assassinations, etc., are too recent for objective analyses, there are some findings emerging that indicate a causal relationship between an act of terror shown on television and a subsequent act of terror or violence in another part of the world. Some observers suggest that these acts are repeated in detail as the news is communicated.

Similarly, as living becomes more complicated and intimate personal details are stored in computer systems which may be accessed, either overtly or covertly, for good or for bad reasons, there is an awareness of the need to protect the privacy of individuals. Again, how to strike a balance between fairness to individuals and the legitimate need for information is difficult.

Regardless of the motivations of the individuals involved, the "I know something that you don't know" and the "down with the Establishment" syndromes have led to a great number of leaks of sensitive information throughout the world. The enormous amount of information leaked to date, which, in turn, has led to investigations, which has led to more leaks inevitably has led to the conclusion that the government cannot be trusted - certainly an understatement. The results are coming in - there is a credibility gap; the government is not trusted; Congress is not trusted; the courts are not trusted. Friends and allies have become afraid to share infor-

mation on their sensitive information about their systems or operations; they are fearful that information they consider sensitive might find its way into the press, make the 6:00 PM TV broadcast, or be revealed by a member of Congress who feels he is qualified to judge whether information should or should not be kept secret - incidentally, he or she is immune from prosecution. Friends and allies see the operations of the U. S. intelligence system revealed in published testimony, or from leaks from closed sessions, and wonder whether they will be the next victim(s). Their rules for the declassification and public release of information are different from the U. S. rules, and they feel they are being unduly pressured to conform to the U. S. rules, against their better judgement. At the same time they see that legislation proposed to cure the system has stated consistently that foreign information shall be made available to the Congress, and none of the proposals have provisions protecting the privacy of their information.

The Freedom of Information Act of 1966 established 9 categories of information which might be exempt from automatic public dissemination. The definition of Exemption 1 was revised in the 1974 amendments to the Act. Both the original and revised definitions are cited below:

*Original definition:* The provisions of this section shall not be applicable to matters that are (1) specifically required by Executive Order to be kept secret in the interest of national defense or foreign policy.

*Revised definition:* (A) specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive Order.

These definitions inevitably lead to fundamental questions:

● *Does the Freedom of Information Act, as amended, provide a statutory basis for the government classification system, which is now covered by Executive Order 11652?*

If the answer is YES, then it would appear that recommendations for a statutory system are futile unless it is intended to establish, by legislation, the exact detail of a classification system, which would place it in concrete, that is, it could not be changed except by amending legislation, a long and laborious process. Congress could however, pass a law which would increase

its role in the development of agency regulations and procedures. However, agency regulations are required to be published prior to enactment and historically, Congress has not been reluctant to criticize these regulations.

If the answer is NO, then Congress might well examine the entire Act and survey the statutes now in effect which limit the dissemination of information. The last such survey was published in 1960.<sup>1\*</sup>

● *What is the meaning of the term "national defense or foreign policy?"*

In the last few years, the term has meant almost anything the executive has chosen it to mean. It is felt that the lack of definition is partly the cause of the controversy. Some of the trouble stems from the imprecise language used by the proponents. For example, President Johnson on signing the original bill stated:

"At the same time, the welfare of the Nation and the rights of individuals may require that some documents not be made available. As long as threats to peace exist, for example, there must be military secrets."<sup>2</sup>

It should be noted there is nothing in these words that connects foreign policy with economic policy or even agricultural policy with the right to classify, or to permit the non-disclosure of information.

The preamble of Executive Order 11652 is clearer in that it states:

"Within the Federal Government there is some information and material which, because it bears directly on the effectiveness of our national defense and the conduct of our foreign relations, must be subject to some constraint for the security of our Nation and the safety of our people and our allies. To protect against actions hostile to the United States, of both an overt and covert nature, it is essential that such information and material be given only limited distribution.

"This official information or material, referred to as classified information in this order, is expressly exempted from public disclosure by Section 552-(b)(1) of Title 5, United States Code. Wrongful disclosure of such information or material is recognized in the Federal Criminal Code as providing a basis for prosecution.

"To ensure that such information and material is

protected, but only to the extent and for such a period as is necessary, this Order identifies the information to be protected, prescribes classification, downgrading, declassification and safeguarding procedures to be followed, and established a monitoring system to ensure its effectiveness."

Even though examples of the meaning are given in the test for Top Secret, Secret and Confidential, none of these words describe with reasonable precision the kinds of information which affect the national defense or foreign policy. Is it the intent to classify military information in the sense of weapons systems, atomic warheads, plans and operations and the like? Is it the gathering of information on foreign systems in order to design countermeasures? Is it intelligence information, or the classic non-sequitor-intelligence sources and methods? Is it the economic health of the nation which is an indicator of the ability to wage war? Is it the status of information on crop projections which affects both economic and foreign matters; information on fiscal policies, in particular foreign exchange and balance of payments? Does it pertain to negotiations between the United States and foreign countries which may be of such a nature that public disclosure could wreck the negotiations? Is it all of these? All of these are examples of the kinds of information which could affect the national defense or foreign policy. However, the test of whether information does or does not qualify for exemption rests with an individual who must make an instant judgement, knowing full well that he might have to defend that judgement years later when hindsight could reveal that a wrong decision was made under a stress situation.

It is possible that a workable definition cannot be developed; thus, the confusion which now exists will be compounded unless other measures are developed to assist the individuals who must make judgements for which they are accountable. One possibility, of course, is to classify nothing, to restrict nothing, to be a completely "open society".

● *What criteria should be used in determining eligibility for access to information requiring protection? To whom shall the criteria apply? Should there be penalties assessed against those who violate the rules?*

Executive Orders and the agency implementations and the federal personnel regulations prescribe the conditions for access and the administrative penalties for failure to comply. These rules and regulations however apply only to the Executive Branch and the personnel under its control, including contractors of the executive (EO 10865). There is no effect on either the legislative or the

\*Footnotes follow the text

judiciary. Senator Muskie addressed the problems of congressional access to classified information when he states: "Few of our committees now have precise rules for handling classified records, and none have their own standards for security clearance of congressional employees."<sup>3</sup> It should be noted that his remarks apply only to employees and not the elected officials. The judiciary under the Freedom of Information Act has an extensive role in making determinations of the propriety of classification being applied to information and for making information available to the public. But there are no standards for the eligibility for access for employees of the courts or for the judiciary itself. Parenthetically it should be noted that there is little legal precedent for judges to make determinations as to whether the release of specific information will or will not damage the United States. Such are the problems faced by the judiciary when making determinations as a result of *in camera* inspection.<sup>11</sup>

There is another fundamental question of whether there should be a single standard for determining whether information qualifies for exemption from automatic exemption to the public. For that matter, what is the definition of "the public"? An interesting question when considered that public release is tantamount to foreign release. It is obvious that to even consider the establishment of a single standard is fraught with controversy, not the least of which is the Speech and Debate clause of the Constitution which confers on Members of Congress and their aides immunity from civil or criminal liability for conduct related to their legislative functions. The Gravel case and the Harrington disclosure of secret intelligence information also raise the question of whether "any law restricting the dissemination of classified defense information can provide any assurance of confidentiality."<sup>4</sup> A single standard for access certainly would lead to a single standard for enforcement which is what the debate on S-1 is all about.<sup>5</sup> Whether an Official Secrets Act (access) and a criminal code (S-1) would ever survive the inevitable tests of constitutionality certainly is moot.

It is questionable whether Congress would ever subject itself to the same rules as they would like to impose on the executive, and it is equally unlikely that the judiciary would ever submit to such rules. Being in the position of a non-accountable critic certainly has its advantages. However, there are seeds of change in the wind. Recently, and over the objections of the "Old Guard" the Senate did establish a permanent select committee to monitor the CIA and the military intelligence agencies. The committee will share legislative jurisdiction with the Armed Services Committee over the

CIA and will share jurisdiction over the FBI with the Judiciary Committee. Senators Tower and Stennis objected to the new committee and said that giving the new committee legislative power would inevitably lead to revelations of military secrecy useful to other countries, would fragment authority over the military and lead to conflict with the House of Representatives.<sup>6</sup> They did not explain the other side of the coin: how the old committee did surveil the intelligence community, or, for that matter, how information is disclosed to an individual who doesn't want to receive it, particularly when receipt would involve the recipient becoming responsible for the information. The statement does, however, shed light on the important questions of legislative prerogative and jurisdiction, friction between the committees and the authority of the chairman, and, finally, whether Congress can surveil intelligence activities. There is always however, the example of the Joint Committee on Atomic Energy which has been in existence for nearly three decades with singular success in protecting sensitive information in its possession, and at the same time, having an excellent record in making information available to the public.

#### Proposed Legislation on Government Secrecy

In the 92nd and 93rd Congresses several bills and resolutions were introduced to establish a statutory classification system. Thousands of pages of testimony, of varying degrees of merit and relevance were published. The texts of the more important bills and resolutions, together with an analysis was published by the Senate Government Operations Committee.<sup>3</sup> What follows is a brief summary of some of the bills with comment.

S. 1520 A Bill "To establish a commission to study all laws, and executive branch rules, regulations, orders, and procedures, relating to the classification and protection of information for the purpose of determining their consistency with the efficient operation of the government, including the proper performance of its duties by the Congress, and for other purposes." The Bill would establish a National Commission on Executive Secrecy.

*Comment* Over the years, numerous committees have looked at the abuses of secrecy and executive privilege. The Coolidge Commission Report to the Secretary of Defense;<sup>7</sup> the Wright Commission on Government Secrecy;<sup>8</sup> Hearings conducted by the Moorhead Committee of the House of Representatives and the Muskie Committee of the Senate which resulted in the recent

amendments to the Freedom of Information Act, and the Privacy Act of 1974. More recently there has been the Murphy Report of the Commission on the Organization of the Government for the conduct of Foreign Policy;<sup>9</sup> the Rockefeller Report to the President by the Commission on CIA Activities Within the United States,<sup>10</sup> the reports of the Church Committee, the Senate Select Committee to study Governmental Operations with Respect to Intelligence Activities,<sup>11</sup> and finally, the reports of the Pike Committee of the House of Representatives. Although all these reports deal with abuses of secrecy by the executive branch and call for a statutory classification system, the last comprehensive look at the statutes which restrict the dissemination of information was made by the House Government Operations Committee in 1960.<sup>1</sup> At that time, it was estimated that there were approximately 100 laws which, to some degree, limit the availability of information. Since that time there has been a variety of estimates, ranging from the earlier estimate of 160 to as high as 300. Regardless of which number is correct, the purpose of the Commission has merit, particularly that part of its charter which called for "a study of all laws, rules, and regulations which relate to the classification and protection of information, and to determine which of those laws and regulations are necessary, appropriate and consistent with the freedom of speech, press, and assembly guaranteed by the First Amendment." Although not part of its charter, such a commission, if established in the future could prepare a compendium of court decisions relating to the Freedom of Information Act and, in particular, to make an analysis of the results of *in camera*<sup>12</sup> inspection. There have been only a few cases to date, so that it is too early to comment on how the courts are carrying out their responsibilities under the Act. It makes one wonder however, the basis on which the court will make a decision whether the open publication of a bit of information will or will not affect the security of the nation, particularly when complicated scientific and technical information is involved. It would appear that to make such a decision, the courts might well need background information which could involve access to intelligence information. This could also open another "can of worms." (See also NCMS Bulletins, Vol VII, No. 1 and Vol IX, No. 2).

The Commission would be authorized to establish its own rules of procedure, administer oaths, issue subpoenas, etc. Curiously, it could require classified information originated in the executive agencies to be delivered unless the information was classified top secret and was prepared within one year preceding the request for information. Apparently it was interested in information only less than top secret and then only

over a year old. Is it possible that the sponsors of the bill thought top secret classifications were not a problem? The Commission could establish its own rules for the protection of the information in its possession. It would have been interesting to know the conditions for access which would have been adopted; whether the investigative requirements for employment in the Commission would have been established; whether or not the subpoena power would have produced executive branch information on demand. In this connection, there is a similarity between the proposal and the problems later encountered by the Church Committee. Despite the fact that this Committee was congressionally ordered, and such committees under the Constitution have the right of full inquiry, the executive agencies limited access to records and then filtered that information transmitted to the Committee. The problems of committee access, protection and disclosure lead to recommendation 86 of the Church Committee report.<sup>13</sup> The life of the Commission was intended to be 9 months with it going out of business within 60 days of the submission of its final report. It is the opinion of this writer that a useful service would have resulted if this bill had been enacted. Obviously there were flaws in the proposal, but if the only result has been a listing of the statutes which limit the dissemination of information, together with the inconsistencies existing in their application, the Commission would have performed a useful service.

*S. 1726* A Bill to provide guidelines and limitations for the classification of information, to insure the integrity of the Congress as a separate branch of the Government by preventing the unwarranted interference in congressional functions by the executive and judicial branches, to establish an Office of the General Counsel to the Congress, to require the disclosure of information to the Congress by the Executive Branch, to protect the confidentiality of information and sources of information by the news media, and for other purposes.

*S. 2451* A Bill to amend section 552 of Title 5, USC, to clarify certain exemptions from its disclosure requirements, to provide guidelines and limitations for the classification of information, and for other purposes.

*Summary* In the first section, both bills are similar in detail; S 1726 has additional titles which are of interest. Each would establish a single classification - Secret Defense Data. Classification would be authorized only if its unauthorized disclosure would adversely affect the

ability of the United States to defend itself against overt or covert hostile action. Derivative classification would not be permitted; that is, information might be kept secret only on the basis of its actual content and not on the relationship to other secret matters. Further, only those portions of a document or other object which require protection might be classified.

The authority to classify would be limited; both the level of classification authority and the identification of agencies which would have original authority. Only the Heads of the Agencies designated and those principal deputies, assistants, and subordinate officials explicitly designated in writing would be authorized to classify. No officials would have the authority unless their routine daily operations required it. The authority to classify would be reviewed semiannually to eliminate those officials whose duties no longer required the authority. Classification markings could be applied by clerical personnel.

Both Bills limited the time material might remain classified. Automatic declassification would take place 2 years after the date of origination. Declassification could be deferred for 2 years by the President or the Head of an Agency on a determination that the information was of such a sensitivity and importance that continued classification was warranted. Additional deferrals could be authorized; however, all deferrals were to be reported in writing to both Houses of Congress and the Comptroller General and would include detailed justification for the deferral. Any person could challenge the classification in a federal court and the burden of proof would be on the President or the agency head responsible.

Security review mechanisms would largely be in the hands of the Comptroller General who would also be responsible for monitoring compliance. Agencies would establish classification-declassification procedures in conjunction with the Comptroller General who would also be responsible for working out uniform regulations; sampling data to ensure its designation was proper; visiting facilities to check on proper safeguarding and the practical application of policy; and investigating allegations of improper secrecy made by the public or by others and for transmitting semi-annual reports of its monitoring work to both Houses of Congress.

The Bills would authorize Secret Information from Foreign Governments to be marked as Secret Defense Data, but would not authorize the withholding of such information from any Member or Committee of Congress.

In the Statement of Findings, the bills declare the necessity of setting legislative guidelines and limitations, stating that it was not the intention of Congress to encourage the classification of information and material or "to establish as a criminal offense, in itself, the unauthorized disclosure of such classified information." The Bills would exempt Restricted Data as defined by the Atomic Energy Act of 1954 from the new classification-declassification statute.

*Comment* The fairest comment that could be made on both proposals is that they did not become law. It would have been interesting however, to compare the proposed 2 year rule for declassification with the information considered as sensitive in a new weapons system under development. If one considers that a system is in development and testing on an average of 5 years, and then issued for field use, it would be fair to conclude that a new system would be declassified (unless deferral was requested, justified and approved) about 2 years before issue. Assuming that the information might be made public soon after declassification, it would also be fair to conclude that a potential adversary would have about 2 years to develop a counter-system and also be able to exploit any new technology introduced with the system. Inasmuch as interoperability is common, that is, using systems in both U. S. and foreign military forces, the compromise would also affect our allies.

Under these Bills foreign classified information furnished to the U. S. in compliance with foreign exchange agreements could not be withheld from Congress, which would be free to reveal the information as it saw fit. Therefore the ability of the U. S. to protect foreign information, which is an integral part of existing exchange agreements, would not be possible. Certainly this would jeopardize the agreements now in effect and could further aggravate the distrust now exhibited by foreign governments toward the United States. Some of these governments are reluctant to make available to the U. S. information they consider sensitive; when there is no assurance that their information can be protected, how can they be blamed?

Not related directly to the classification of information, Title II of S. 1726 was labeled: Congressional Protection. This Title would amend the present Part II of Title 18, USC, by the addition of a new chapter. The principal thrust of this Title was to extend the Speech and Debate Clause of the Constitution to speeches and publications made outside of Congress. The Bill would also have been applicable to former Members of Congress. How nice to be free from lawsuit and to be able to say almost anything with impunity!

The "frosting on the cake" of this bill was Title III which would have established an Office of the General Counsel to Congress. The role of the General Counsel was to provide counsel to Members (at taxpayers expense) who might find themselves on trial. As Louis Howe, political advisor to Franklin Roosevelt once said: "You cannot adopt politics as a profession and remain honest."

S. 3393 The Government Secrecy Control Act of 1974. On introducing the Bill, Senator Muskie stated that the Bill was intended to strike a balance between the powers of the executive and legislative branches over national security policy and the information essential to its determination. The Bill approached the problems of secrecy from the perspective of sharing constitutional power, the power to withhold or disclose sensitive information. The principal thrust was the establishment of a new office to replace the Interagency Classification Review Committee, set up under Executive Order 11652, with the Registrar of National Defense and Foreign Policy Information. The Registrar would be a Presidential Appointee, confirmed by the Senate, with power to oversee and regulate secrecy practices throughout the Federal Government. A key feature would have been the compiling of a Register of classified information from every agency which would describe the records it was keeping secret, their origin and location, and the assurance that the classification policy of the agency was consistent with the policy standards established by the Act.

The Bill would have established a Joint Committee on Government Secrecy which would have been the office to which the Registrar would report and be held accountable. The Joint Committee would have explicit authority to obtain documents or records listed in the Register, and, if it found them to be improperly classified, to direct the documents or records be released for publication, or that the date of their declassification be changed. The Committee would have been authorized to take necessary and appropriate action to enforce compliance with its subpoenas or directives, and have the power to go to the U. S. District Court to seek judicial enforcement of its will.

An important second task for the Committee was to have been that developing procedures for congressional handling of secret information and for the development of standards for the security clearance of congressional employees. Further, it was to have established the basic ground rules for the entire Congress with respect to the access or availability of information.

More broadly, the Committee, with information available from the Register, could have been the overall monitor of national security policy and would have been in a position to steer other committees, such as the Armed Services and Foreign Relations into areas of inquiry and oversight they otherwise could have overlooked.

Unlike other legislation introduced to correct the classification mess, this Bill dictated few practices with respect to the length of time information could stay classified, nor did it limit the agencies or officials who would be authorized to classify. The Bill established a presumption that any information over 10 years old would be considered declassified unless the Registrar entered the information into the Index and so notified the Joint Committee. The federal agencies would have 4 years to review their files of classified material originated within 10 years of the enactment of the Bill, and to decide which records in those files should be indexed, and which should be declassified.

*Comment* None of the bills introduced were passed. However, the Freedom of Information Act was amended substantially and passed over the veto of the President. A Privacy Act of 1974 was also passed. It is too soon to assess objectively the effects of these Acts. It will be interesting however to study agency reports on the cost of administering the acts and the actual cost to the individual agencies on the cost of providing information requested under the acts. When it is considered that the Acts make no provisions for the cost of administration, it must be assumed that the costs is an overhead burden for which they receive no reimbursement.

Several other bills and resolutions of varying worth and impact were introduced, but are not discussed here. None passed. However, the subject of a statutory classification system is not dead; momentarily dormant. Because of its devastating impact, there is a fair possibility that some of the recommendations of the Church Committee will be introduced individually or separately in the next session of Congress. Of direct concern is recommendation 86 which strikes to the heart of the matter. This recommendation warrants most careful attention because there is a hidden trap - the possibility of embracing all "National Secrets" under an intelligence umbrella. It is possible to argue that scientific and technical information developed by a defense agency is threat related, and because a threat is based on an intelligence information, that all scientific and technical information is intelligence related, therefore, should be classified in accordance with intelligence standards. This would be a tragedy. It would cause further division in the national psyche. Similarly, if S-1<sup>4</sup> is ever passed by Congress and

in its drafting that specific penalties are assigned to the improper disclosure of intelligence information, as is contemplated in E. O. 11905,<sup>15</sup> the possibilities of abuses are endless.

### The Government and the Press What Relationship?

Having discussed whether there should be a law and some of the more interesting legislative proposals, it is useful to turn to a directly related subject - Government and Press relationship. This subject is getting considerable attention these days - the press itself is taking a hard look at itself and doing considerable soul searching.

One of the more interesting free programs in the nation's capital is the National Town Meeting presented weekly at the Kennedy Center for the Performing Arts, sponsored by the Mobil Oil Company. The program is broadcast over Public Radio. The topic for the session of April 21, 1976 was, *Government and the Press - What Relationship?* The panelists were:

Moderator Jack Rosenthal, Associate Editor, New York Times and editor of the New York Times Magazine.

Panelists Herbert L. Block, HERBLOCK, nationally known political cartoonist of the Washington Post.

Les Whitten, shares his by-line with Jack Anderson.

John Lofton, syndicated columnist and radio commentator for NBC news. Editor of Battle Line, monthly publication of the American Conservative Union.

Nicholas von Hoffman, syndicated columnist of the Washington Post.

In format, the Town Meeting devotes roughly half of the time to prepared comments from the moderator and the panelists, the remainder from the audience. It was noteworthy that the concert hall of the Center was nearly full for this panel. The questions were provocative.

In his opening remarks, the Moderator gave a thumbnail sketch of the relationship he felt exists between the government and the press; the changes in the press itself, it does not trust government, particularly the handouts and briefings. In his view, the publication of the Penta-

gon Papers caused a fundamental shift in the press's judgment when it said its responsibility was to print rather than do what the government desired - withhold publication, voluntarily. The underlying questions facing the press still are:

- Who shall decide what the press shall print? Editors or others?
- In criminal cases, shall judges tell editors what to print?
- In the issue of secrecy, shall government officials tell the press what to print even when leaks come from other government officials?

These questions were discussed by the moderator and the panelists prefaced by the following prepared remarks as taken from the transcript.

*Herblock* The job of the free press is to keep an eye on government and to inform the people. He spoke of James Madison and others who shaped the Bill of Rights, noting that a free press was established as part of the system of checks and balances to serve as a check on all government. Even Jefferson, who suffered real abuse from the publications of his day considered a free press as important in its role as a critic of the government. In concluding his remarks, Block cited Justice Black in his comments on the Pentagon Papers case before the Supreme Court,<sup>18</sup> when he said: "In the First Amendment the founding fathers gave the free press the protection it must have to fulfill its essential role in our democracy. The press was to serve the governed. The government's power to censor the press was abolished so that the press would remain forever free to censor the government. The press was protected so that it could bare the secrets of the government and inform the people."

*Whitten* While agreeing with Herb Block that Justice Black was also his hero, he commented that it was his feeling that the press is under attack more than ever, stating: "At no time more than in the last seven years, with the possible exception of the John Adams Alien and Sedition days,<sup>19</sup> has the government oppressed the press in the United States."

*Lofton* He expressed a view different from the others. He commented that in his view the press in many instances was helping to dig its own grave. And he thought that a reason for this is because journalists see their roles as separate from their roles as citizens, as he said:

"Just sort of a resident of the United States." A concept

he completely rejects. To support this comment, he cited as an example a survey made of editors concerning whether they would publish the names of individuals if it meant that publication might cause their assassination. One of the respondees said the duty of the press is to report fully and accurately without subjecting the story to some arbitrary test of what constituted the national interests. The implication of this is that there is no such thing as national interest, a position with which Lofton felt the American public does not agree. He said, "I think we have obligations as citizens to ask ourselves whether or not information we publish is in the national interest, and the reason is that if we behave like people who are not citizens, then no one is going to care when our constitutional rights are taken from us."

*von Hoffman* His views were interesting, provocative and different from the others. He evoked memories of the past, the days of many newspapers, when he said, "Unlike earlier times when newspapers were advocates of a point of view - liberal or conservative, republican or democratic, the limited number of papers today cause them to homogenize the writing of news so that there is no point of view, with the result that a reader can't find a paper with an opinion he can relate to. In attempting to satisfy everybody, nobody is satisfied, with the result that there is general anger with the press. It is one of the tragedies of the times that there are very few newspapers even in the largest cities. And it is not unusual to have the newspapers of a city under a single ownership thus presenting only a single editorial voice (regardless of the kind of voice) in a large city."

On conclusion of the prepared remarks of the panelists, the Moderator opened the floor to questions. The opening question, from J. J. Bagley directed the following to Les Whitten and the other panelists: "Should there be a law prohibiting the unauthorized disclosure of information, which is properly classified, that is, classified in accordance with statute or executive order, by an individual authorized to classify the information?" Whitten did not comment directly, that is he said NO, with reservations. The Moderator commented that there were really 2 questions: 1) Should it be unlawful for a government employee to disclose? 2) Should it be unlawful for a publication having gotten such information, to print it? The colloquy that followed was interesting, enlightening and, in the case of one of the panelists, surprising. What follows is taken from the transcript, not directly quoted but rather the sense of the remarks:

*Whitten* I think both of them would be so inhibiting on the press that the answer would be NO to both of them. That may be an extreme view.

*Block* I think you (Whitten) are saying that you are opposed to any prior restraint law.

*von Hoffman* What bothers me when Les (Whitten) talks and when Mr. Block talks is that there seems to be an implication that the First Amendment is, in fact, absolute, and that the press has the right to publish literally anything. The question states: Information that is properly classified. And while both these gentlemen may very devoutly believe in the views of Justice Black, it was never a majority view of the Supreme Court - he was always in a minority.<sup>20</sup> I don't think you have the right to libel people, which is what it means, if you believe it is absolute. I don't believe that at all. I think that most of the government information is over-classified, or certainly, does not belong in the classification it is in. I would favor, generally, a law that imprisons or fines members of the press that were to publish properly classified information. And I would also favor a portion of the law also fining or imprisoning government officials who over-classify or mis-classify information.

*Lofton* I don't think if you restrict a member of the press - I won't say right - I will say ability to report a properly classified government secret that that means the end of the press's freedom in America, and I think you make a big mistake by implying, at least, if not stating explicitly, that the whole case for press freedom has to ride on your right to publish anything you want.

*Whitten* Well, that is what the founding fathers seemed to suggest, John (Lofton), in the Constitution when they said, "The Congress will make no law abridging the freedom of speech, or of the press." And they don't say that freedom is to be limited in any way.

*Block* Although Justice Black was not in the majority regarding the First Amendment, he certainly was with the majority on the Pentagon Papers case, and I would also mention that Justice Potter Stewart, who I hope you would not think is a far-out radical, said also that the press is a fourth institution to balance the three branches of government.

*Lofton* The Pentagon Papers case was not considered by the Court to be a decision on the absolute right of the First Amendment.

There was another question addressed to Whitten and

von Hoffman relating to the question of prior restraint and the freedom to publish.

*Question* Do you feel that diplomacy in international relations should be conducted in the dark? Second - executive agreements are not covered by treaty requiring Senate approval; therefore, can be secret. What are your comments?

*Whitten* Well, I think that much more diplomacy is conducted in the dark than need be. I think a lot more diplomacy should be conducted in the open. On the second question on executive orders and executive agreements, we could talk forever on it. In a nutshell, the President does have too much power; executive orders are too all-embracing and Congress has been too little restrictive on questioning the executive branch's decrees.

*von Hoffman* I must say that I don't think you can conduct diplomacy in the open; there are all kinds of negotiations that just cannot be done in the open. They have to be secret or you'll never get an agreement. I think foreign policy should be in the open. I think that the fruits of an agreement should be in the open. But I think the process of arriving at the agreement has to be kept secret. But this brings up two things: One - diplomats should keep their big fat mouths shut if they don't want to read their words in the New York Times. Two - I don't believe in prior restraint on the press. And while I don't believe in prior restraint, I believe that Society has the right, after we have printed something, to throw us in jail.

*Rosenthal* Can I get back to something that Nick (von Hoffman) mentioned. As I understand your comments, you felt that there should be no prior restraint, which I agree with you, but after we have printed something, they could throw us in jail.

*von Hoffman* I say again - we are members of Society. We have to be held responsible as much as any one. When we libel someone, for example - and I don't believe in prior restraint - we should be sued, and, if found guilty, fined, or whatever.

The panel was interesting, timely and enjoyable. It did, however, point out the divergence among the press itself, on the responsibilities of the press as professionals, on the one hand, and members of Society on the other. Many writers, for example, cite the Supreme Court decision on the Pentagon Papers case as an example of the rights of the press and the absoluteness of the First

Amendment. However, a close reading of the decision reveals that only Justices Black and Douglas decided the case on the basis of the "absolute" First Amendment. The remaining Justices, even those with the majority, had a variety of opinions ranging from - hasty decisions make bad law; no prior restraint, but you may be sued if you break the law; the First Amendment is not absolute. In fact, there is such a diversity of opinion on this one case as to warrant a separate article.

From the range of opinions of the panel on the responsibility of the press and the variety of opinions on investigative reporting, it would appear there is considerable soul-searching going on by the press on its role in a free society. In this connection, there is a comparison between the role and responsibilities of classifiers of information and reporters. Each is suffering from a bad image and for much the same reasons - lack of responsibility and accountability.

Obviously there is no unanimity; on such a controversial issue as the right to classify versus the right to print, agreement on ground rules and procedures would be virtually impossible. Nevertheless, it is apparent that there is a distrust of the government and a distrust of the press; lack of candor had produced distrust of government; so-called investigative reporting has resulted in a distrust of the press. Some journalists see their roles as reporters as separate from their roles as citizens. Others, some of the more widely syndicated, see themselves as bigger than the government and seem to lack any sense of public responsibility. This role separation appears to have extended into other professions - lawyers, corporate executives, even to parents. But there is an extensive dialogue going on - people are communicating, there appears to be a sense of responsibility emerging, and this is the hope for the future.

#### A Concluding Observation

Should there be a law? If the world changed and there was instant morality, instant judgement, or instant honesty, surely there would not be a need. Responsible people would act responsibly and be accountable for their actions. Unfortunately, Utopia is not around the corner, individuals as well as nations are governed by ambitions and self-interest. Although the press is considered a fourth branch to be the watchdog of government, until it is willing to assume full responsibility for its actions, which certainly would include admitting its mistakes on the front page rather than in the obituaries or hidden in the want ads, it also will not be trusted. de Tocqueville summed up the feelings of many these days when speaking of the American press - he said: "I love it more from

considering the evil it prevents, than on account of the good it does."<sup>22</sup> Similarly, those who create the news and provide the news must equally be responsible for their actions and not try to hide by obfuscations. It appears, then, that some control may be appropriate and necessary to provide sanctions to people who will not act responsibly. However, if there is to be a law, it should apply to all; no one should be above the law or exempt from the law.

Will there be a law? It appears there will. There is considerable agitation both by the Congress and Executive to have both a statutory classification system and penalties for unauthorized disclosure of classified information. Deep in the recesses of the Executive Branch, there are even attempts to define that ambiguous and maddening term - Intelligence Sources and Methods. A word of caution is in order - E. O. 11905<sup>15</sup> and recommendation 86 of the Church Committee could result in an unworkable law unless there are careful and reasoned arguments raised and discussed. There is a concerted attempt by some to place intelligence information in a special category and give it special treatment because of its sensitivity. Certainly there is a need to protect such information, but there is an important point to be considered and discussed - whether intelligence information *per se* is of sufficient importance to be placed on a pedestal and given primacy over all other information important to the national defense and foreign policy. This subject deserves special attention in another article.

Finally, five years have passed since the Supreme Court ruled on the publication of the Pentagon Papers. The sky has not fallen. There is not a law - there has been considerable debate. With the passage of time and the inevitable cooling of passions, it is possible that a reasonable approach may be taken which will result in a workable statutory classification system and reasonable laws and penalties for violation applicable to all, with no exception for Congress, the Judiciary or holders of high office.

#### Footnotes and References

1. Federal Statutes on the Availability of Information, House of Representatives, Committee on Government Operations, 86th Congress, 2nd Session, GPO, Washington, D. C. 1960.

2. Attorney General's Memorandum on the Public Information Section of the Administrative Procedures Act, U. S. Department of Justice, June 1967.

3. Legislation on Government Secrecy, prepared by the Subcommittee on Intergovernmental Relations of the Committee on Government Operations, U. S. Senate, 93rd Congress, 2nd Session, May 8, 1974.

4. NCMS Bulletin, Vol IX, No. 3, May-June 1975.

5. NCMS Bulletin Vol X, No. 3, May-June 1976.

6. Washington Post, May 20, 1976.

7. Coolidge Report to the Secretary of Defense, 1957.

8. Report of the Commission on the Organization of Government Security pursuant to PL 304, 84th Congress, June 21, 1957 (Wright Commission Report).

9. Commission on the Organization of the Government for the Conduct of Foreign Policy, June 1975 (Murphy Commission Report.)

10. Report to the President by the Commission on CIA Activities Within the United States, June 1975 (Rockefeller Report).

11. Final Report, Books I and II of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities, U. S. Senate, 94th Congress, 2nd Session, April 26, 1976 (Church Committee).

12. Section 552(a)(4)(B), PL 93-502.

"On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter *de novo*, and may examine the contents of such records *in camera* to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain this action."

13. Recommendation 86 of the Church Committee Report (see also 11)

"86. Secrecy and Authorized Disclosure - The Committee has received various administration proposals that would require persons having access

to classified and sensitive information to maintain the secrecy of that information. The Committee recommends that the issues raised by these proposals be considered by the new legislative intelligence oversight committee(s) of Congress and that, in recasting the 1947 National Security Act, and in consultation with the executive branch, the oversight committee(s) consider the wisdom of new secrecy and disclosure legislation. In the view of the Committee any such consideration should include carefully defining the following terms:

- national secret
- sources and methods
- lawful and unlawful classification
- lawful and unlawful disclosure

The new legislation should provide civil and/or criminal penalties for unlawful classification and unlawful disclosure. The statute should also provide for internal departmental and agency procedures for employees who believe that classification and/or disclosure procedures are being improperly or illegally used to report such belief. There should also be a statutory procedure whereby an employee who has used the agency channel to no avail can report such belief without impunity to an "authorized" institutional group outside the agency. The new Intelligence Oversight Board is one such agency. The intelligence oversight committee(s) of the Congress should be another. The statute should specify that revealing classified information in the course of reporting information to an authorized group would not constitute unlawful disclosure."

14. NCMS Bulletin, Vol X, No. 2, March-April 1976 .

15. Executive Order 11905, United States Foreign Intelligence Activities, February 18, 1976.

16. Transcript of the April 21, 1976 National Town Meeting, furnished by the Mobil Oil Corporation.

17. It should also be remembered that the New York Times was asked by President Kennedy not to print information about the Bay of Pigs, it having an almost complete story in its possession. It complied. Later, President Kennedy expressed the view that if the information had been published, a fiasco might have been

averted.

18. *New York Times vs. U. S.* and *U. S. vs. the Washington Post et al*, June 30, 1971.

19. The Alien and Sedition Acts were 4 bills passed by Congress in 1798 and signed into law by President Adams. The Acts were intended to suppress conspiracies against and criticisms of the Federal Government. The clamor against the Acts led to the collapse of the Federalist Party and the election of Jefferson to the presidency in 1800. Only one of the Alien and Sedition Acts remain law - the Logan Act of 1798 which prohibits a private citizen from entering into negotiations with an enemy of the United States in time of war.

20. In the Pentagon Papers case, he was with the majority insofar as prior restraint was concerned - the point at issue. The rest of the majority had reservations about the First Amendment being absolute.

21. A careful reading of the decision reveals, that with the exception of Justice Black, there was a considerable divergence of opinion on the subject.

22. *Democracy in America*, Alexis de Tocqueville, edited by J. P. Mayer, Anchor Book edition, 1969.

**WHY NOT MAKE THE SECURITY CLASSIFICATION SYSTEM LEGAL?**

**The Honorable William S. Moorhead, Chairman  
Foreign Operations & Government Information  
Subcommittee, Committee on Government  
Operations, U. S. House of Representatives**

For almost twenty years, the House subcommittee which I now chair has concerned itself with the operation of the Nation's security classification system as authorized by two Presidential Executive Orders during that period.

Subcommittee investigations and extensive hearings were held in 1956 and 1957 concentrating on the operation of President Eisenhower's 1953 Executive Order 10501 within the Defense Department. During the same period, the Department of Defense established the Coolidge Committee on Classified Information to review security classification procedures and Congress created the Wright Commission on Government Security. Each of the three independent studies covered overlapping segments of the broad problems involved in the classification and declassification fields and made a variety of recommendations to curb the growing tendency of the Federal bureaucracy to overclassify.

Part of the implementation of recommendations made in the Coolidge Committee report resulted in the issuance of consolidated classification instructions for the Department of Defense - Directive 5200.1, entitled "Safeguarding Official Information in the Interests of the Defense of the United States." A Director of Declassification Policy was also established and Vice Admiral John N. Hoskins was named to the position. Much of the problem was succinctly described by Admiral Hoskins in testimony in November, 1957, before our subcommittee. He said:

" . . . when you overclassify, you weaken the whole security system . . . Throughout the 180 years of our Government, however, I have never known a man to be court-martialed for overclassifying a paper, and that is the reason, I am afraid, we are in the mess we are in today . . ."

Unanimous bipartisan recommendations by the House Government Operations Committee following these mid-1950 investigative hearings called for a comprehensive series of administrative changes in the functioning of Executive Order 10501 with more emphasis on automatic downgrading, eventual declassification, and strict penalties for overclassification. They also called for other

procedural reforms to make the security classification more workable and manageable. Some of these recommendations, particularly those affecting automatic downgrading, were incorporated into Executive Order 10964, issued by President Kennedy several years later. Various recommendations for major policy reforms of the classification system, however, were largely ignored by both Republican and Democratic Administrations despite strenuous efforts by our Committee.

The next several years of our Committee's major activity in areas related to the security classification system were marked by periodic oversight investigations to update previous in-depth studies. We were also becoming increasingly involved in the drafting of legislation which, in 1966, became the Nation's first public access law. Entitled "The Freedom of Information Act," the measure was signed by President Johnson and became effective on July 4, 1967, as section 552 of title 5, United States Code.

The Freedom of Information Act mandated that any person could have access to information contained in documents of Federal agencies upon request, unless the information asked for fell into one or more of nine exempt areas. In such case the agency could decide to withhold it from public access. The first exemption provided in the new law dealt with matters that are "specifically required by Executive Order to be kept secret in the interest of national defense or foreign policy." Other exemptions included such matters as internal personnel rules, specifically exempted from disclosure by other statutes, trade secrets, personnel and medical files, certain types of investigatory files, and certain inter-agency or intra-agency memorandums or letters. Each of these permissive exemptions have been subject to extensive interpretations by the Federal courts in freedom of information cases during the past seven years that it has functioned.

In 1971 when I assumed the chairmanship of the Foreign Operations and Government Information Subcommittee, previously headed for sixteen years by Representative John E. Moss of California, I ordered the staff to undertake a detailed updating investigation of the operation of the freedom of information law. Particular emphasis was placed on the need for major reforms in the security classification system. The publication of the so-called "Pentagon Papers" by the *New York Times* and the *Washington Post* in June 1971 and the Nixon Administration's efforts to use prior restraint against the papers in the Federal courts prompted the Subcommittee to hold seven days of public hearings on the issues involved in the controversy. Much of the

testimony centered on deficiencies of Executive Order 10501 and the way in which Federal agencies were operating their security classification programs.

Unknown until later events, was the coincidental establishment of the so-called White House "plumbers" unit to investigate leaks in the Executive branch during our investigation. It also became known in subsequent hearings that President Nixon had in January 1971 directed an overall hush-hush study of the operation of Executive Order 10501 by a blue-ribbon interagency unit headed by then Assistant Attorney General William H. Rehnquist. The Rehnquist committee study eventually led to the issuance of a new security classification Executive Order 11652 by President Nixon in March 1972 to replace the old 1953 Eisenhower Order.

In January 1972, I had announced plans for additional hearings that spring on the operation of the classification system. Press reports a few weeks later indicated that a draft Executive Order was being circulated for comment within key Federal agencies. I formally requested of the Justice Department and then White House Counsel John W. Dean that the Subcommittee be permitted to review the draft in confidence so as to have the opportunity to make informal suggestions based on our long experience in the field. Our requests were rejected both by the Justice Department and the White House and Executive Order 11652 was issued a few weeks later.

The Nixon statement accompanying the new Order confirmed many of the judgements we had tentatively reached concerning Executive Order 10501 during our earlier investigations and hearings. He said:

"The many abuses of the security system can no longer be tolerated . . . Unfortunately, the system of classification which has evolved in the United States has failed to meet the standards of an open and democratic society, allowing too many papers to be classified for too long a time. The controls which have been imposed on classification authority have proved unworkable, and classification has frequently served to conceal bureaucratic mistakes or to prevent embarrassment to officials and administrations."

In May of 1972, the Subcommittee began its previously scheduled hearings on the security classification system - expanding the scope to include discussions with Executive branch witnesses of the meaning and purpose of certain provisions of the new Executive Order - which had not yet become effective. These hearings revealed

serious administration deficiencies and substantive loopholes in the new Order which confirmed our earlier suspicions that the draft had been prematurely issued in order to head off our Subcommittee's hearings and our growing conviction that the Executive Order type of classification system - to be truly workable and effective - must eventually be replaced by a comprehensive statutory program.

This was the major conclusion and recommendation contained in the report of the Government Operations Committee based on our subcommittee's two year investigation and 1971-1972 hearings on the classification system. The unanimous report was adopted by the Committee in May, 1973 (H. Rept. 93-221) and was entitled "Executive Classification of Information - Security Classification Problems Involving Exemption (b)(1) of the Freedom of Information Act (5 U.S.C. 552)." The report traces the history of the present day classification system, reviews previous efforts of the Committee to improve the operation of the old Executive Order, and summarizes the testimony received during the hearings. It also devotes considerable attention to the operation of the classification system established by the 1954 statute governing the activities of the Atomic Energy Commission - the only present statutory classification system in existence in our government.

Soon after our May hearings, I introduced H. R. 15172 that would create a statutory mechanism to govern the entire security classification system in the Executive branch. The bill had been in the drafting process since the conclusion of our 1971 hearings; its introduction provided a useful discussion vehicle by which public and official attention could be focused on the need for such action by Congress. The legislation, which would amend the Freedom of Information law, would provide for the establishment of an independent Classification Review Commission in the Executive branch to oversee the broad administration of the system, enforce its provisions, and adjudicate disputes over classification and declassification matters.

Helpful suggestions for improving the legislation were received from many sources during the following months and it was modified and reintroduced in the 93rd Congress as H. R. 12004. Subsequently, this bill was the subject of hearings by our subcommittee during the summer of 1974. Witnesses from the Defense, State and Justice Departments, the Central Intelligence Agency, the Atomic Energy Commission, and the Interagency Classification Review Committee presented testimony, along with a number of distinguished experts representing the public interest.

For the first time during these hearings on H. R. 12004, Executive branch witnesses agreed to the concept of a statutory classification system, *although* they generally opposed the specific approach advocated in this particular legislation. During the coming months, the Subcommittee staff will be conferring with key officials of the major Executive agencies most involved in classification and declassification activities. We trust that these conferences will result in substantive input from these Executive branch officials. It is our earnest hope that this will lead to the drafting of more precise definitions of the various classification levels, agreement on time frames for declassification procedures, guidelines for classification actions, and other details to improve and perfect the language of H. R. 12004. On the basis of these meetings, and the results obtained, I plan to introduce a new bill early in the next Congress which will serve as the vehicle for additional hearings, Committee action, and House passage of a workable, effective security classification statute.

Within our representative system of government, there must be a proper balance between a classification system that will provide adequate protection of our truly vital security needs and that will also assure a maximum degree of information to the Congress and the public to maintain the essential degree of credibility of our elected and appointed officials and the decisions which they must make in the national security field.

One of the greatest tragedies of the Watergate debacle is that vast numbers of Americans have lost faith and confidence in our government and in our leaders. Unfortunately, many of the crimes of Watergate were hidden under the broad umbrella of "national security," thereby casting additional suspicions on information classified and withheld by bureaucratic orders under a system that has been unilaterally established by Presidential edict.

What we need is to make the security classification system *really* legal by the enactment by Congress in the coming session of a truly legitimate, meaningful and enforceable security classification system.

I pledge that I will continue these efforts and that our Subcommittee will continue to move forward to reach that vitally important objective.

**THE INTERAGENCY CLASSIFICATION  
REVIEW COMMITTEE**

**Jack Robinson**  
**Center for Naval Analyses**

Executive Order 11652 brought at least one wholly new concept to the field of security classification - the Interagency Classification Review Committee (ICRC), a White House-level group of the National Security Council to monitor the program established by the Order. It can be argued that the system introduced by the Order is not all that much better in terms of definitions nor in terms of provisions for automatic downgrading of information requiring protection for longer periods of time (indeed, rather worse) than that of the amended Executive Order 10501 which it replaced. However, there is no argument that the emphasis brought about by the establishment of the ICRC provided a new dimension to the scene. It is not surprising that four years after the Order became effective, the activities of the ICRC are still evolving. Ultimately what it can accomplish surely will be related to its support - as is so true of any venture.

It is regrettable that there has been only one Chairman, Ambassador John Eisenhower, who served for just short of a year. Since then, the Committee has operated under the Acting Chairmanship of Dr. James B. Rhoads, Archivist of the United States. Dr. Rhoads has done most commendably indeed, as will be shown later, so the regret is not with his helmsmanship; rather it is with the failure of the Executive to actively and aggressively support its program. This failure has been noticed by the Congress in its deliberations on secrecy matters. Senator Muskie remarked in Hearings that "the intent of the reforms is good but their implementation has been haphazard at best." However, one may note that he voiced concern also over pending proposals that would have required continuing attention of the Congress about their ability to *maintain* sufficient interest to carry a program forward.

Be that as it may, accomplishments are demonstrable; the emphasis has wrought changes in approach and thinking that likely would not have taken place were the Order not to have issued; some modicum of additional support has provided the wherewithal, even if not optimum, to progress. Each of the reports to the ICRC has shown progress and the composite may be found in its most recent - the *1975 Progress Report*, Interagency Classification Review Committee, Washington D. C.. A summary, then, of the most recent may highlight the accomplishments in furtherance of the goals established

when the Executive Order was announced.

The ICRC, as prescribed in the Order, is comprised of a Chairman - appointed by the President - the Archivist of the United States, senior representatives of the Departments of State, Defense, and Justice, the Energy Research and Development Administration, the Central Intelligence Agency, and the National Security Council Staff. In this connection, the initial senior representatives to the Committee were legal-counsel oriented; excepting the Archivist and ERDA'S Director of the Division of Classification. One may well question the merit of lawyers/counsels operating substantively in the field of classification which is concerned primarily with controls over official information in determining, as it does, what information needs protection.

Then, to program content. An emphasis relating to reducing the number of people who are authorized to classify information initially was explicit in both the Order and the implementing National Security Council Directive. This emphasis has had a remarkable effect. The reduction in those authorized to establish original Top Secret classifications is an example. Prior to the effective date of EO 11652 (1 June 1972) there were 7,134 so authorized in the government, while at the end of 1975 there were 1,563 - a reduction of 78 percent. As respects the total of those authorized to classify at all levels the report notes the prior total of 59,316 reduced to 14,729 - a reduction of 75 percent. It's true that in 1975 a few agencies had to increase their numbers by a few here and there but that only points to the earlier drastic cuttings because of the emphasis brought to bear. On the other hand, apparently the agencies didn't suffer from the reduction.

One may question (and some have) whether this reduction in the number of classifiers reflects also a concurrent reduction in the amount of information classified. It would seem, as sober reflection might support, that if information truly should be protected, the number authorized to establish classification initially is not actually germane; perhaps this is an oversimplification. Certainly, the elimination of agencies not reasonably in the field of defense or foreign relations from authority to establish classification originally as well as eliminating from Top Secret authority still others (e. g., Health, Education & Welfare and the Civil Service Commission among others) is meritorious. They are not in the stream-of-consciousness that would give them insight into the problem, and possession of the authority would tend to encourage the prohibited activity best-termed "cover-up". In any event, those who are sanguine about this approach to reducing the amount of classified documentation can

point to the recorded totals presented in the report and say there are fewer classification actions (3,794,455 as opposed to 4,086,319 in 1973) and those who are dubious can comment that the figure includes only message traffic from the DoD.

Then, the review activity is notable. As you will remember, the Order and the implementing directive established, the procedures for review of information that was ten or more years old, and for which there was a request. Despite the amendments to the Freedom of Information Act that would have seemed to make the ten-year period obsolete, the facts are opposed. Calendar year 1975 saw a 94 percent increase in the number of requests for mandatory review to a total of 1,993. In this connection one may note that the percentage of requests granted in full is not an unreasonable 53 percent overall and a commendable 86 percent of either "all or in part." The report observes that the deletion of even a line from a multi-hundred-page document requires that it be reported as "granted in part," so the actual amount of information released under the procedures has been rather good. Another interesting sidelight of this program is that there have been only 39 appeals from the departmental actions since the program began (there have been 3,860 requests). In the year reported, of eighteen appeals to the ICRC three were granted in full, six in part, five denied; the others were withdrawn or returned for various reasons. In presenting these figures the report stated:

"That so few appeals have reached the Committee is a tribute to the willingness of Departments to make the mandatory review system work by taking responsible action on declassification requests. In a large sense the success enjoyed to date is directly attributable to the interest shown by senior departmental officials, the effectiveness of security education programs and the vigor with which the ICRC has pressed the system."

The one note of caution one could read from the figures presented, however, is that the number of cases pending at the close of the year was much larger than the number of cases pending at the close of the previous year (more than three times as many).

It is also true that more than 50 percent of all requests received since the program began were received in 1975; naturally, these are in addition to those received under FOIA. Whether resources will be adequate to cope is by no means clear at this time.

Some comment need be made about the Data Indexing

System. It, you will recall, was required by the implementing NSC directive for information "... having sufficient historical or other value appropriate for preservation," and approved by the ICRC. The aims were

- To find information promptly - in response to anybody's request.
- To review program status, and respond to inquiries regarding the program from external sources (e. g., the ICRC or Congress).

The systems were to have been established by the improbable-to-achieve deadline of 1 July 1973. To no one's astonishment, it didn't come out quite that way; and also to no one's astonishment the smaller agencies (in terms of classified information output) could face the requirement more easily. AID, Commerce, ERDA, GSA, Justice, NASA, Treasury, ACDA, and USIA are "fully operational." On the other hand, State is struggling to achieve compliance (strange that Dr. Kissinger didn't think of the impact before he signed the directive ... no one else had a shot at it) and during 1975 moved its coverage up to 90 percent of classified information created. Pieces of information required for reporting are missing. The DoD has stated that the cost of compliance is not worth the product - which, in the Report, is found as "... Experience has revealed that some Departments with elements dispersed world-wide or those maintaining a significant volume of classified information find the system cost-ineffective ...". The philosophical merit is unassailable, no doubt, but the pragmatics are another matter.

No comment about the program or the ICRC would be complete without information about the declassification programs. As a highlight the report noted "Since 1972, under the National Archives and Records Service (NARS) declassification program nearly 171 million pages of official records have been *declassified*. In CY 1975 alone, over 46 million pages were declassified. In addition ... (F)or example, in 1975, just the *major* Departments of the DoD reported that over 57 million pages were reviewed for declassification." Some points of interest about programs that may not be as well known as NARS and DoD's include:

- Federal Power Commission has issued no classified information since 1972.
- HEW issues none and has destroyed or returned almost 38 thousand documents in its possession from other agencies.

- NASA now has fewer than 600 classified reports in its holdings.
- State is using retired senior Foreign Service Officers to assist in declassification reviews; working on some 120,000 pages of Top Secret information from 1955-63.
- ACDA reduced its classified holdings from 2600 cubic feet to 1100.
- ERDA continues on its active program that basically stems from the law. In their review of some 11 thousand Top Secret documents only 250 remained TS, 964 were declassified, and the remainder downgraded.

Finally, the program review activities are under way not only with the Department of Defense but the ICRC itself inaugurated its activities during 1975. The thrust of its effort as reported has emphasized

- Reduction in original classifiers.
- Greater control over the application of derivative classification markings.
- Elimination of classification in the first instance.
- Reduction in classified inventories.
- Greater use of the Advanced Declassification Schedule.
- Greater control over the use of exemption authority.
- Development of accelerated programs for declassification.
- Improved security education and training programs.
- Stimulation of the interest and support of senior officials responsible for the program.
- Reduction in the classification rate.
- Improvement in physical security procedures.
- Development of improved departmental inspection programs capable of identifying abuses of the system.

- Ensuring that adequate personnel and funding are made available for the purpose of carrying out the Order and Directives thereunder.

The report observes that the Committee has been encouraged with the results of the program reviews. It noted that the next quarterly report following such a review of one agency showed a 60 percent reduction in Confidential classifiers and an overall 28 percent reduction in a different agency.

It would seem clear that despite commonly acknowledged difficulties substantial substantive progress has been made. If the emphasis continues and the support for the program is adequate, there is every reason to expect further improvement. It would be encouraging if there were at least as much attention with necessary support on the part of the administration as there has been in the Congress. Possibly such an equality would lead to a truce between the Executive and Legislative Branches thus ending the state of war that has existed for too long.

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OFFICE OF THE ASSISTANT SECRETARY  
OF DEFENSE  
WASHINGTON, D. C. 20301

SECURITY POLICY 19 November 1974

Mr. Eugene J. Suto  
President, National Classification  
Management Society, Inc.  
P. O. Box 7453  
Alexandria, Virginia 23307

Dear Gene:

On the occasion of the Tenth Anniversary of the founding of the National Classification Management Society, please convey my sincere appreciation to the members for the significant contributions they have made to the enhancement of our nation's security through their active interest and participation in programs designed to improve the effectiveness of both the administration and functioning of the Department of Defense Information Security Program.

I can assure you that officials involved in security policy at the highest levels store great faith in the wealth of security experience and expertise demonstrated by members of the Society. Consequently, both suggestions for program improvement and constructive criticisms which have been advanced by Society members have been given the fullest and most careful consideration. As you are aware, on many occasions, action has been taken to revise security policy based on comprehensive recommendations of individual members of the Society or the Society as a whole. I encourage your continuing cooperation and that of the membership in the development of new and innovative suggestions to make the program a more viable one.

Through the efforts of the National Classification Management Society and of other dedicated members of the Department of Defense and Defense Industry, we can be justifiably proud of the success we have achieved thus far in meeting the goals of Executive Order 11652 - classifying less, declassifying more, protecting better that which truly deserves security protection, and above all, enhancing public availability to those official records related to the affairs of government.

The progress made over the past ten years in the development of a comprehensive program is noteworthy. However, the longest stride toward achieving national goals in this regard was taken with the issuance of Executive Order 11652. I think it is appropriate here to review

the progress made by the Department of Defense since promulgation of that Executive Order.

With the full support of Secretary Schlesinger, the Department has taken positive steps to improve monitorship and administration of its Information Security Program. These have included the establishment of Departmental Classification Review Committees, a Defense Information Security Advisory Board, the designation of a senior official in each Department or Agency to be responsible for effective implementation of the program in his organization and, finally, the establishment of a division within my office to evaluate program effectiveness. In connection with the latter, that division has conducted program reviews within the headquarters of major elements of the Department and at selected industrial facilities throughout the country. As a result of these reviews, the strengths and weaknesses in program implementation have been identified and, more importantly, an informal chain of communication has been established between those who implement policy in field activities and those who prepare it at the highest Defense level.

We have concentrated a good deal of attention on limiting the use of exemption authority. Primary success in this endeavor has been achieved through a program we directed for the mandatory review of classification guides and Contract Security Classification Specifications (DD Forms 254). Thus far, over 10,000 classification guides and 254s have been reviewed. Of these, 23 percent have been revised to cause earlier downgrading and declassification and 10.5 percent have been revised to cause fewer exemptions from the General Declassification Schedule. These actions will cause earlier downgrading and declassification of tens of thousands of documents which are already classified on the basis of the original guidance and will eliminate the unnecessary classification of a like amount of documents to be created in the future which deal with information covered by the revised guidance.

We have taken action to identify entire programs/projects/systems wherein total downgrading and declassification action may be taken on a meaningful basis. For example, a project was initiated by us to review Military Standardization Handbook 140C, Security Classification and Cognizant Activity of Electronic Equipment, for downgrading and declassification purposes. Thus far, reviewers have reported a 32 percent reduction in the classification of the individual pieces of electronic equipment listed in that handbook. Efforts are continuing to determine statistics on the number of pieces of hardware and documentation such as technical and modifi-

cation work orders which have been declassified as a result of this action. We have also requested all Department of Defense components to identify and take action to downgrade and declassify related equipments and information which may have been compromised through use or loss in combat.

To further public access, we have issued guidelines for the use of the military departments and the Archivist of the United States to authorize blanket declassification of the great majority of the department's official records which are dated prior to July 1, 1950. Much success has been achieved through use of these guidelines, both in the Department of Defense and the Archives. Millions of pages of official records have been declassified and made available for public access.

In both the Department of Defense and Defense industry we have taken positive steps to reduce our classified inventories. In the early part of calendar year 1973, a program was conducted in the Department to reduce the volume of Top Secret documents carried in inventory. A 25 percent reduction goal was set for that project. It was met. The Deputy Secretary of Defense, on October 29, 1974, again directed that a similar project be undertaken in the Department of Defense and encouraged that the reduction achieved in 1973 be surpassed.

During fiscal year 1972, industry reported the reduction of 1.5 million classified documents from the total classified inventory. Through our program reviews, we have every indication that industry is working on a continuing basis to keep their classified inventories to the minimum consistent with national security interests and operational requirements. Recognizing the importance of security education and training as the "Keystone" of the Information Security Program, significant measures have been taken to educate military and civilian personnel at all levels of command and supervision to assure full understanding and compliance with the provisions of E. O. 11652. In this connection, regular issuances, presentations, video tapes, articles and publications have been used to advantage. Of particular significance, is the establishment of an Information Security Management Course at the Defense Industrial Security Institute. This comprehensive course is available to both government and defense contractor security management personnel. A pilot class was conducted in June 1974 in which both Defense and contractor personnel participated. From the critiques which these personnel submitted to the Institute, substantive changes have been made in the course material from which the regular classes now underway have greatly benefited.

During this calendar year, we have been heavily engaged in commenting and testifying on proposed legislation introduced into both Houses of the Congress which is designed to establish:

- (1) A statutory base for classification and greater Congressional oversight of the program, and
- (2) the protection of individual privacy.

It is anticipated that, in the months ahead, Congressional interest in these matters will increase and that their efforts in these areas will continue to be commensurately active.

The brief synopsis of progress which I have reported here is certainly not to be construed as all inclusive. The military departments and defense industry have introduced new and innovative concepts to bring about results which are aimed toward full achievement of the goals set by the President in June of 1972. I hasten to add that we are not fully satisfied that we have done all we can to meet these goals. Much remains to be done. Continued emphasis must be placed on the reduction of classification in the first instance, the overuse of exemption authority and the development of more detailed and proper preparation and use of security classification guidance and DD Forms 254. In connection with the foregoing, I can assure the Society that my office will concentrate its resources toward full achievement. I look forward to the Society's continued cooperation in this effort and I solicit your frank expression of views in this regard.

In the days ahead, as in the past, management will continue on the course set by laws, executive orders, other Presidential directives, court decisions and Congressional resolutions. In so doing, we will use every reasonable management technique to bring about the best results at the least cost.

Again, my congratulations to the Society and its members on this, your Tenth Anniversary, and my best wishes for continued success in your endeavors.

Sincerely,

Joseph J. Liebling  
Deputy Assistant Secretary of  
Defense (Security Policy)

*TO THE MEMBERS AND SUPPORTERS OF  
THE NATIONAL CLASSIFICATION  
MANAGEMENT SOCIETY*

**Stanley M. Jenkyns**  
Department of Supply and Services, Canada

As one of your new Honorary Members, I consider it a great privilege to respond to the kind invitation of your Past President, Mr. Fred Daigle, to include a few words in your Journal on the Tenth Anniversary of your Society.

There is no doubt that, since the founding of the Society in 1964, its members have contributed a great deal to the National Security of your country, culminating with its recent recommendations for amendments to National Classification Policy and Procedures.

I have had the opportunity of watching the Society grow, not only in numbers, but in stature and acceptance, in one of the most important segments of society, "The Security Community." The Society's inclusion of government and industry representatives has provided an excellent forum for discussion and free exchange of ideas which, no matter how relatively unimportant they may seem to some, are given the same searching examination and analysis which has become a hallmark of the Society's work.

The importance of the Society's activities with its meetings, seminars, workshops, bulletins and journals has been recognized by some of the most senior and important managers in U. S. government and industry, and this has not gone unrecognized in Canada. I believe the participation in your meetings of Department of Defense officers, such as the Honourable Joseph J. Liebling, Assistant Secretary of Defense, Security Policy, and his senior officers, and of Col. D. Clark, Chief, Office of Industrial Security, Defense Supply Agency/DCAS, Cameron Station, Va. and his officers, proves beyond doubt, the acceptance of your Society as the most outstanding in its field.

With micro-second access to information through Computer use today, industry and government will be hard pressed to protect its vital technological lead time, especially in the conceptual research and development stages. A dynamic Classification Management program will contribute considerably to the selection and protection of vital national and international information.

Certainly today's environment of freedom of information, and the need to keep the public informed of all

government activities, places a great deal of emphasis and responsibility on the Classification Management program and its effect on all aspects of life in a democratic society. Your Society's presentations to U. S. Congress and other Agencies has, and will continue to contribute to this objective.

Your Society is indeed to be congratulated on ten years of rewarding activity, and can look forward to continuing its work under the direction of another fine Executive.

About the Author: Mr. (Stan) Jenkyns was born in Winnipeg, Manitoba, on August 8, 1914 and educated in Canada and the United Kingdom. He is married and has three children. From 1937 - 1939 he was employed by Rolls Royce in the United Kingdom and then joined the Royal Air Force at the outbreak of World War II subsequently transferring to the Royal Canadian Air Force. served as a fighter pilot and latterly in the Directorate of Air Intelligence. After leaving the service he joined industry as Chief Security Officer at A. V. Roe (Canada) Limited and is a founding member of the Canadian Society for Industrial Security. In 1961 he joined the Department of Defense Production now known as Department of Supply and Services where he is Chief of the Industrial Security Division.

Editor's note: Mr. Jenkyns became an Honorary Member of the Society in July 1974, by unanimous vote of the Board of Directors, to recognize his continuing participation in and valuable contribution to this Society.

BYLAWS  
of  
THE NATIONAL CLASSIFICATION MANAGEMENT SOCIETY

*a nonprofit corporation*

**ARTICLE I – OFFICES**

The principal office of the corporation in the state of New Mexico shall be located in the City of Albuquerque, County of Bernalillo. The corporation may have such other office, either within or without the State of New Mexico as the Board of Directors may determine or as the affairs of the Corporation may require from time to time.

The registered office may be, but need not be, identical with the principal office in the State of New Mexico, and the address of the registered office may be changed from time to time by the Board of Directors.

**ARTICLE II – PURPOSE AND SCOPE**

*Section 1 - Purposes*

It is the purpose of the National Classification Management Society to advance the practice of classification management as a profession and to foster the highest qualities of professionalism and professional competence among its members. In furthering this purpose, the Society provides a forum for the free exchange of views and information on the methods, practices, and procedures for managing classification programs and it engages in activities for disseminating such information and for developing and refining the principles and techniques of classification management.

*Section 2 - Scope*

The Society shall engage in activities for developing and promoting the following, and shall make known its position on these matters by formal comment, proposal, publication and petition to such extent and degree as circumstances may warrant:

- (a) Understanding of the philosophies, doctrines, standards, and criteria of the Government's programs for identifying and designating information that requires protection in the interest of national defense and security.
- (b) Methods for training and indoctrination of personnel in the application of classification principles, practices, techniques, procedures and requirements.
- (c) Systems and techniques for identifying and marking documents and materials requiring classification,

regrading or declassification under guidance issued by the Government.

(d) Understanding among the Governmental, industrial, scientific, academic, and technical communities of the character and significance of security classification.

(e) Procedures, methods and practices for the management of classified inventories.

(f) Methods, techniques and standards for identifying and designating company private or proprietary information.

**ARTICLE III – MEMBERSHIP**

*Section 1 - Qualifications*

The Society shall consist of (1) Regular Members and (2) such Honorary Members as the Board of Directors may from time to time designate and elect.

(a) Regular Members are those individuals who (1) are Charter Members, or (2) have been accepted for membership in accordance with the Bylaws of the Society (in particular, by action of the Membership Committee), and (3) continue in good standing. Charter Members are those (and only those) who became Members of the Society before July 1, 1964.

In these Bylaws, unless otherwise indicated, Member shall mean Regular Member.

In determining eligibility for Regular Membership, the following qualifications shall be considered.

- (1) Employment, past or present, in industry, government (including military service), or education, with a responsibility for carrying out a function or functions of Classification Management.
- (2) Employment and/or responsibility in fields related to Classification Management.
- (3) Ability, opportunity, and desire to advance Classification Management and further the aims of the Society, whether or not the prospective member is employed in a field related to Classification Management.

Members whose good standing has lapsed shall cease to be Regular Members until their good standing has been restored.

(b) Honorary Members may be elected to the Society. The Board of Directors may, at its discretion, by a majority vote of all its members, designate and elect as Honorary Members of the Society individuals who are deemed to be outstanding in the field of Classification Management or in any field related to the purpose of the Society. No more than one Honorary Member may be elected in a calendar year. Honorary Members shall be entitled to all privileges of Regular Membership except the right to hold office or to take part in the management of the affairs of the Society except as provided in Article III, Section 6, of these Bylaws.

#### *Section 2 - Resignation*

Any member may resign by advising the Society Secretary in writing. Resignation does not relieve the member of any liability to the Society that may exist as of the postmark date of the letter of resignation.

#### *Section 3 - Questions of Eligibility*

The Board of Directors shall resolve all questions pertaining to eligibility of persons for Membership, or continued membership in the Society.

#### *Section 4 - Rules for Admission*

The Board of Directors shall prescribe the application form and rules governing admission to the Society.

#### *Section 5 - Certificates*

All Members shall be entitled to a Certificate of Membership in such form as the Board may from time to time approve. Charter Members are entitled to certificates of membership designating them as Charter Members of the Society.

#### *Section 6 - Voting*

Only Regular Members of the Society in good standing shall be entitled to vote for the Directors of the Society, to vote at Annual or special meetings and in polls of the Society, to hold national offices and to participate in the management of the Society's national business.

Members shall be entitled to vote and to hold office in their respective Chapters.

Regular and Honorary Members may hold committee assignments, both National and Chapter, and shall be permitted to chair such committees and to vote in business meetings of such committees, except as otherwise provided by these Bylaws.

Each Member shall be entitled to one (1) vote on each matter submitted to a vote of the Members.

### **ARTICLE IV – ENTRANCE FEE, DUES AND ASSESSMENTS**

#### *Section 1 - Amount of Fees and Dues*

The entrance fee for Membership in the Society and annual dues for Members shall be determined annually by the Board. Annual dues are payable on the first day of January each year. A new Member admitted on or after July 1st of any year shall pay only one-half of the annual dues for the balance of the year of his admission. Members paying dues within ninety (90) days of the due date shall be considered to be in good standing.

#### *Section 2 - Arrears*

If dues or other amount owed by any Member remain unpaid for a period of ninety (90) days after the beginning of the calendar year, the Society shall by mail request immediate payment. Such request having been made, then from and after the end of said period and until full payment is made, said Member shall cease to be in good standing. If within thirty (30) days additional time the amount owing continues unpaid, in whole or in part, Membership of such Member shall automatically terminate. However, Membership shall be automatically restored provided payment of the full amount in arrears is made within a year after dues became payable, except in the case of a new Member. Any person desiring to have his Membership restored after the expiration of one year from the loss of Membership, as above described, shall be subject to the rules and procedures prescribed for an original application for Membership. In the event dues in arrears are fully paid, no entrance fee need be paid again.

#### *Section 3 - Assessments*

The Board may not levy assessments against Members of the Society without approval by a majority of the Membership as determined by vote at an Annual or special meeting or by polling the Membership by mail.

### **ARTICLE V – DIRECTORS**

#### *Section 1 - Duties and Functions*

(a) The property, business, and affairs of the Society shall be managed and controlled by a Board of not fewer than 4 and not more than 13 Directors, the exact number at any time to be fixed by the Board as it shall see fit, except that (1) any change in number shall take effect only at the close of an Annual Meeting and (2) the number of Directors shall not exceed 9 until the Society's membership exceeds 300.

(b) The Board shall elect from among its members the National Officers of the Society, as provided in Article VI, Section 1.

(c) The Board shall fix and provide for the salary and other compensation and remuneration, if any, of all officers and Directors of the Society. The Board may employ or authorize employment of individuals to assist in carrying out the business of the Society and shall fix and provide for the salaries, compensation, and remuneration of such employees and the conditions of employment, including termination.

#### *Section 2 - Election*

(a) Directors shall be elected each year in an Annual Election by vote of the Regular Members; and, to provide continuity from one year to the next, election shall be by classes, each to contain one-third (or approximately one-third) of the Directors, such that immediately following the Annual Meeting, when the newly elected Directors take office, one class has three years, a second class has two years, and a third class has one year to serve. As nearly as possible, all three classes shall have an equal number of Directors. Each year the Society shall elect one class of Directors to serve three years and such additional Directors as are needed to fill vacancies in the other two classes. A Director elected to fill a vacancy shall belong to the class in which the vacancy occurred, and his term of office shall thereby be determined. The terms of office of newly elected and reelected Directors shall commence immediately following adjournment of the Annual Meeting. The number of Directors elected to a three-year term in any Annual Election will be the same as the number of three-year terms expiring at the close of the next Annual Meeting, unless the size of the Board has changed.

(b) Voting for Directors shall be by mail. The voting period shall be not less than 40 days and shall close at least 15 days in advance of the Annual Meeting. The close of the voting period shall be considered the date of the Annual Election. The Nominating Committee shall send to all Regular Members prior to the beginning of the voting period, a ballot containing the names of all nominees. The names shall be arranged alphabetically. Separate from the ballot the Nominating Committee shall provide information as to the background and qualifications of each nominee.

Members may vote for only as many nominees as there are Directorships to be filled and shall be instructed to return their marked ballots to the Chairman of the Nominating Committee within the voting period specified by these Bylaws.

At the end of the voting period, the ballots shall be opened and counted by the Nominating Committee. To the required number, the leading candidates shall be

declared elected in the order of votes received, first, in the class having 3 years to serve, second, in the class having two years, and third, in the class having one year to serve, insofar as there were vacancies to be filled in the two-year and one-year classes. In event of a tie vote, the Nominating Committee shall resolve the tie by lot. The Nominating Committee shall promptly certify the results of the election, over the signature of the Chairman, to the President of the Society. The President shall notify the successful nominees of their election and, in turn, the Membership at the Annual Meeting.

#### *Section 3 - Eligibility*

No person may be elected, be appointed, or serve as a Director who is not a Regular Member of the Society in good standing. No Director completing the second of two consecutive terms, whether they be three-, two-, or one-year terms shall be eligible for reelection until after the lapse of one year. Fractions of terms served by appointment, as provided in Section 5 (a), shall not be counted in determining eligibility under Section 3.

#### *Section 4 - Nominations*

(a) Each year the Nominating Committee shall solicit from each Chapter proposals for two candidates for Directorships to be voted on at the next Annual Election, stipulating that at least one of the two proposed candidates be a resident of the region in which the Chapter is situated. Proposals must be submitted to the Nominating Committee at least 100 days in advance of the election. Such proposals shall not be binding on the committee, nor shall they relieve the committee of full responsibility in selecting and submitting to the Members of the Society a list of nominees for election as Directors, together with a statement of their qualifications, as required in Section 2(b).

(b) The Nominating Committee shall, at least sixty (60) days in advance of the Annual Election, prepare a list of nominees, consisting of at least two (2) more nominees than there are Directorships to be filled. The Nominating Committee shall list as nominees only Regular Members who have certified a willingness to serve on the Board if nominated and elected.

#### *Section 5 - Vacancies*

(a) Each Director shall hold office until the expiration of his term and until his successor has been elected and has taken office, or until death, resignation, or removal. Any vacancy on the Board occurring in midterm may be filled by majority vote of the remaining Directors, and any Director so appointed shall hold office until the close of the next Annual Meeting. If vacancies occur during the voting period for an Annual Election, the number of Directorships to be filled in that election shall automatically be increased by the number of such

vacancies to the extent that the number of nominees permits, and the ballots shall be counted and candidates declared elected according to the provisions of Article V, Section 2 (b). Such election shall be valid notwithstanding the lack of notice to the Membership of the increase in the number of vacancies and the number of candidates voted for on individual ballots. If the nominees are too few to fill all vacancies occurring during the voting period, the incoming Board may by majority vote of its incumbents immediately following the close of the Annual Meeting fill the remaining vacancies by appointing Directors to serve one-year terms or may defer such appointments.

In the event that a vacancy occurs between the close of the voting period of an Annual Election and the close of the Annual Meeting following that election, or, in the event that a successful candidate in an Annual Election fails or is unable to take office at the close of the Annual Meeting following his election or announces his intention to resign prior thereto, the next runner-up shall automatically be declared elected, and the class of each successful candidate shall be redetermined on the basis of votes received. If there is no runner-up, the incoming Board may by majority vote of its incumbents immediately following the close of the Annual Meeting appoint a Director to serve a one-year term or may defer such appointment.

#### *Section 6 - Meetings of the Board*

(a) Meetings of the Board may be called (1) by the President or Secretary of the Society and shall be called by either of them upon a written request of a majority of the Board, or (2) by a majority of the Board upon notice to the President and the Secretary. Each meeting shall be held as provided in the call, and the notice shall state the time, place and general purpose.

(b) Notice of Board meetings shall be given personally or in writing, by mail, at least ten (10) days before the meeting, but such notice may be waived by any Director before or after the meeting. Any business may be transacted at any meeting at which every Director is present, even though there be no notice or waiver of notice.

(c) At all meetings of the Board, the President shall preside, or in his absence, in the order named, the Vice-President, or a member of the Board chosen by a majority of the Directors present.

(d) The Board of Directors shall have complete authority to declare vacant the directorship of any Director who, without excuse from the Board, fails to attend three consecutive meetings of the Board. Such excuse shall be made a matter of record and entered in the official minutes of the Board.

(e) Prior to the business session of the Annual Meeting,

the Board of Directors for the ensuing year shall meet for the purpose of organization, including the election of officers.

(f) At all meetings of the Board, one-half of the Directors shall constitute a quorum and the act of a majority of the Directors present at any meeting at which there is a quorum shall be the act of the Board, unless, when the Bylaws require consent by a majority of the Board or unanimous consent of all the Directors, a majority of the quorum is insufficient. If at any meeting there is less than a quorum present, a majority of those present may adjourn the meeting without further notice to any absent Director.

(g) Where in these Bylaws it is specified that any duty, action, or performance shall be accomplished by the Board or any Committee in a meeting of the Board or such Committee, such duty, action or performance may be accomplished in full force and effect by the consent, in writing, of the members of the Board or such Committee (by mail). Such consent shall be unanimous or by majority, whichever the Bylaws or the Committee rules require for the action in question.

#### *Section 7 - Change in the Size of the Board*

If the Board votes to change the number of Directors, the change shall be accomplished by means of an Annual Election to take effect at the close of the next Annual Meeting, and the Board shall direct the Nominating Committee to adjust the number of nominees in the next Annual Election accordingly and to provide appropriate instructions to the Membership. Election, including determination of the classes in which Directors are declared elected to serve on an enlarged or diminished Board, shall be in accordance with the principles and procedures of section 2.

### **ARTICLE VI – OFFICERS**

#### *Section 1 - National Officers*

The principal National Officers shall be a President, a Vice-President, a Secretary and a Treasurer. These officers shall be elected annually by the Board of Directors from among their number at the organization meeting provided for by Article V, Section 6 (e). Election shall be by ballot, and a majority of the votes cast shall elect. Each elected officer shall take office immediately following adjournment of the Annual Meeting.

In addition to the principal National Officers specified above in this section, the Board may elect or appoint other minor officers or agents to assist in the affairs of the Society, assigning to them powers and duties consistent with these Bylaws.

### *Section 2 - Tenure*

Each officer of the Society shall hold office for one (1) year and until his elected successor takes office or until death, resignation, or removal. The member elected to the office of President shall be ineligible to succeed himself as President. The offices of President and Vice-President may not be held by the same person.

### *Section 3 - Vacancies*

In case any office in the Society becomes vacant as a result of death, resignation, retirement, disqualification, or other cause, such vacancy may be filled by the Board. An officer elected to fill such a vacancy shall hold office until the end of the term and until his successor takes office.

### *Section 4 - Duties of President*

The PRESIDENT of the Society shall be the Chief Executive Officer and spokesman of the Society and shall be Chairman of the Executive Committee and a member ex-officio of all other regular and special committees. He shall preside at all Annual and special meetings of the Society and at all meetings of the Executive Committee and of the Board of Directors, except (1) when, for good and sufficient reasons, he delegates this responsibility to the Vice-President or to a member of the Board, as appropriate in each case, or (2) when at a meeting of the Members no Board member is present and the chairman is chosen according to the provisions of Article VIII, Section 6. He shall have general charge and supervision of all the business and affairs of the Society, and shall do and perform such other duties as may be assigned to him from time to time by the Board.

### *Section 5 - Duties of Vice-President*

The VICE-PRESIDENT shall assist the President in performance of his duties as the President may request, including performance of functions delegated to him by the President.

In his capacity as Chairman of the Membership Committee, the Vice-President shall advise and report to the Board on the status of the Society's Membership and shall present at the Annual Meeting a report of the persons who have been admitted to Membership in the Society during the preceding year, which report shall be filed with the records of the Society and an abstract thereof entered in the minutes of the Annual Meeting.

### *Section 6 - Duties of Secretary*

The SECRETARY shall be responsible for recording all votes and minutes of all proceedings at all meetings of the Board and of the Society. He shall attend to the giving and serving of notices of all meetings of the Board

and Members. He shall have custody of such books, documents, and papers as the Board may determine. He shall attend to the publication of all reports and conduct the official correspondence of the Society.

### *Section 7 - Duties of Treasurer*

(a) The TREASURER shall have custody of all funds and securities of the Society, subject to such regulations as may be imposed by the Board. When necessary and proper, he may endorse on behalf of the Society for collection, checks, notes and other obligations, and shall deposit the same to the credit of the Society at each bank, banks, or depository as the Board may designate. He shall sign all receipts and vouchers. He, together with such other officer, officers, or agents, if any, as the Board or Executive Committee may designate, shall sign all checks of the Society; provided, however, that the Board or Executive Committee may authorize an officer or officers to sign any such receipts, vouchers or checks either with or without the signature of the Treasurer. Promisory notes, if any, issued by the Society shall be signed by him or another or others only pursuant to specific authority conferred by the Board or the Executive Committee. He shall make such payments as may be necessary or proper on behalf of the Society, subject to the control of the Board, and shall enter regularly on the books of the Society to be kept for the purpose of recording a full and accurate account of all moneys and obligations received and paid or incurred on account of the Society. He shall exhibit such books at all reasonable times to any Director upon application by the Director to the Executive Committee. Whenever required by the Board, he shall make a full written report covering the financial transactions of the Society. He may be required to give bond for the faithful performance of his duties in such sum and with such securities as the Board may require. He shall, in general, perform all the duties incident to the office of Treasurer, subject to the control of the Board.

(b) The Treasurer shall present at the Annual Meeting a report, approved by a majority of the Directors, showing (1) the whole amount of real and personal property currently owned by the Society, where located, where and how invested, (2) the amount and nature of the property acquired since the last Annual Meeting, and the manner of acquisition, and (3) the amount applied, appropriated, or expended since the last Annual Meeting and the purposes, objects, or persons to or for which such application, appropriations, or expenditures have been made.

### *Section 8 - Assistants*

An ASSISTANT SECRETARY and an ASSISTANT TREASURER, each approved by the Board, may, at the request of or in the absence or disability of the Secretary

or the Treasurer, respectively, perform any and all of the duties and possess other powers of the Secretary or the Treasurer, respectively, and shall have other powers and perform such other duties as the Board, or the President, Secretary or the Treasurer may determine, to the extent authorized by law. An Assistant Treasurer may be required to give bond for the faithful performance of his duties in such sum and with such sureties as the Board may require.

#### *Section 9 - Chapter Chairmen*

A CHAPTER CHAIRMAN shall have the following responsibilities: to promote the welfare, growth, and professional stature of the Society; manage chapter activities to include providing the Board with an annual report of chapter operations, plans and financial condition; to represent the President and/or Board of Directors upon such occasions as specifically requested or delegated to do so; to present the views of the members of his chapter to the Board; and to bring to the Board's attention problems, reports, surveys and recommendations as he may be petitioned to present by his chapter or by individual members or as his judgment may dictate.

Chapter Chairmen may be invited to sit individually or jointly with the Board, in order to render such advice and assistance as the Board may require.

#### *Section 10 - Resignation*

Any National Officer may resign at any time by giving written notice to the President or Secretary of the Society; such a resignation shall take effect at the time specified therein or, if no time is specified, then upon receipt thereof, and unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective. Any principal or other officer or employee of the Society may be removed at any time for cause, either at any meeting of the Regular Members of the Society called or notified for the purpose, or by vote of a majority of the whole Board at any Directors' meeting.

### **ARTICLE VII – COMMITTEES**

#### *Section 1 - Standing Committees*

There shall be the following standing Committees:

(a) An EXECUTIVE COMMITTEE, which shall consist of the President as Chairman of the committee and such other Board members as the Board may determine and approve. The Committee shall advise and aid the officers of the Society in all matters concerning its interests and, during intervals between meetings of the Board, shall have and exercise all powers of the Board, except in matters requiring a majority vote of the Board or a quorum of the Board. No specific reference to the

committee in any other provision of these Bylaws shall be deemed to limit the general power hereby authorized the committee. A majority of the committee shall constitute a quorum. The minutes of each Executive Committee Meeting shall be the first order of business of the succeeding Board Meeting, and the actions of the committee shall be subject to the revision or alteration of the Board, provided that no rights of third parties shall be affected by such revision or alteration. The Committee may, subject to the approval of the Board, prescribe rules and regulations for the calling and conducting of its meetings and for other matters relating to its procedure and exercise of its powers.

Vacancies that occur in the Executive Committee shall be filled by the Board.

(b) A NOMINATING COMMITTEE, which shall consist of not less than three (3) members, selected each year by the President with the advise and consent of the Board, from among the Regular Members of the Society to serve until the close of the next Annual Meeting. The Nominating Committee shall perform its duties as prescribed in Article V, Sections 2 and 4. No Director whose term does not expire at the close of the next Annual Meeting and no Director eligible for reelection may serve on the Nominating Committee unless, in the latter case, he has affirmed his intention not to seek reelection.

(c) A MEMBERSHIP COMMITTEE, which shall consist of the Vice-President as Chairman and such other Members as the President may appoint. The duties of the Membership Committee shall be (1) to receive and process applications for Membership, (2) to decide on the eligibility of prospective members subject to review and final judgement of the Board of Directors, and (3) to promote increase of membership.

(d) Except as provided in this Section 1, no member of any committee need be a Director of the Society.

#### *Section 2 - Other Committees*

In addition to the Executive, Nominating, and Membership committees, there may be such other committees as may be authorized or designated by the Board or by Members with the approval of the Board. The members of such committees shall be chosen as directed in the resolution authorizing such committees, or, in the absence of directions concerning membership in the resolution, then by the President.

#### *Section 3 - Rules and Tenure*

Except as herein otherwise provided, each committee referred to in this Article may, subject to the control of the Board, determine its own rules and regulations for the calling and holding of meetings or for other action

by it, including the designation of a secretary to act for such committee. All committees of the Society, except the Executive Committee, shall hold office at the pleasure of the President. The tenures of all committees and their chairmen shall be concurrent with that of the President who appointed them and shall expire upon the expiration of the President's tenure, unless otherwise provided by resolution of the Board.

## ARTICLE VIII – MEETINGS OF MEMBERS

### *Section 1 - Annual Meeting*

Unless otherwise specified by the Board of Directors, the Annual Meeting of the Society shall be held annually at a time and place that the Board may designate. Failing such designation by the Board, the Annual Meetings shall be held on the fourth Tuesday in July at the principal office of the Society. If the fourth Tuesday in July should be a legal holiday, then said meeting shall be held on the next succeeding business day that is not a legal holiday. The Annual Meeting shall consist of a business session and such other sessions as the Board may authorize and approve. At this meeting, the Regular Members shall receive annual reports of the officers, directors, and committees, and transact any other business that shall come before the meeting.

### *Section 2 - Special Meetings*

Special Meetings of the Members may be called at any time by a majority of the Board, the President or the Secretary upon written request of twenty-five (25) Regular Members of the Society then in good standing. All such meetings shall be held at the principal office of the Society unless the Board designates some other place.

### *Section 3 - Notification*

Notice of the time and place of each Annual or Special Meeting shall be served either personally or by mail, not less than five (5) days before the meeting, upon each Member of the Society in good standing. Notice shall, if mailed, be directed to the Member at his mailing address as it appears on the books or records of the Society. Notice of the Annual Meeting need not specify the object thereof, but notice of any Special Meeting shall indicate the object or objects thereof.

### *Section 4 - Quorum and Proxies*

At any meeting of the Regular Members, thirty (30) of the Members, or fifteen percent (15%) of the Regular Membership, whichever is the smaller number, present either in person or by proxy, shall constitute a quorum. A quorum being present or represented, it shall decide all questions submitted for action by the Regular Members. Any meeting may be adjourned by majority vote of

the Members present without notice other than by announcement at the meeting. At any meeting at which a quorum is present, any business may be transacted at the meeting as originally notified. A Member's proxy submitted at any meeting shall be in the form of a ballot signed by the Member of such format and content as the Board may prescribe or declare acceptable. The Member signing the ballot shall be deemed present at the meeting only with respect to the matter covered by said ballot.

### *Section 5 - Voting*

At every meeting of the Members, each Member shall be entitled to one vote on any question put before the Membership, in person or by proxy filed with the Secretary. The vote on any question shall be by ballot, if the Board so determines or if so ordered by a majority of the Members present at the meeting.

### *Section 6 - Designation of Chairman*

At any meeting of Members, the President, or, in his absence, the Vice-President, the Secretary or the Treasurer shall preside in the order listed. In the event that no principal officer is present and if the President has not designated a member of the Board, any other Member selected by a majority of the Members present shall preside as Chairman. Any other person appointed by the Chairman of the meeting shall act as Secretary thereof.

### *Section 7 - Members in Good Standing*

Whenever reference is made herein to any specified number or percentage of the Members of the Society voting to approve or disapprove any matter, or taking any action at or with respect to any meeting of the Members, the number or percentage of Members referred to shall mean Regular Members in good standing.

## ARTICLE IX – CHAPTERS

If the Board so determines, Chapters may be established in any city, or cities, area or areas, to perform such functions and exercise such powers as the Board may determine. Rules or regulations for the control, guidance, or continuance of any such unit may be fixed or changed by the Board.

## ARTICLE X – INTERPRETATION AND CONSTRUCTION OF BYLAWS

All questions of interpretation or construction of these Bylaws shall be decided by the Board, whose decision thereon shall be final.

## ARTICLE XI – FISCAL YEAR

The fiscal year of the Society shall be from January through December 31.

**ARTICLE XII – CORPORATE SEAL**

The seal of the Society shall be in such form and design as the Board of Directors may select and shall bear the name of the Society and the year of its incorporation.

**ARTICLE XIII – AMENDMENTS**

*Section 1 - Amendment by the Board*

The Board shall have the power at any meeting of the Board at which enough Directors are present, or by polling the Directors by mail, to make, alter, amend, and repeal the Bylaws of the Society by affirmative vote of a majority of the Board, provided there has been proper notice or waiver of notice of such meeting, as provided in Article V, Section 6, hereof, except that the Board shall have no power to amend, alter or repeal sections of these Bylaws relating to qualification for Regular Membership and qualifications for Directors.

*Section 2 - Amendment by the Members*

Except as provided, these Bylaws may be altered, amended or repealed at any meeting of the Regular Members of the Society at which there is a quorum by a majority vote of the Regular Members present, either in person or by proxy, provided notice of the proposed action is stated in the notice of such meeting. Notwithstanding the foregoing, the provisions of the sections relating to qualification for Membership and qualifications for Directors can be amended only by affirmative vote of a majority of the Regular Members. Such a vote may be called for at an Annual Meeting or at a special meeting called for the purpose, or by means of a poll of the Members by mail. All bylaws made by the Board may be altered, amended, or repealed as aforesaid by the Members of the Society.

**ARTICLE XIV – DISTRIBUTION OF ASSETS**

Upon dissolution of the Society, the Board of Directors shall distribute any net assets of the Society to a charitable organization exempted under provision 501 (c) (3) of the 1954 Internal Revenue Code.

The undersigned Secretary of the corporation known as the National Classification Management Society does hereby certify that the above and foregoing Bylaws were duly adopted by the Board of Directors of said corporation on the \_\_\_\_\_, as the Bylaws of said corporation, and that they do now constitute the Bylaws of the National Classification Management Society. Changes in the Bylaws on \_\_\_\_\_ are effective beginning with the first meeting of the Board of Directors after the Annual Meeting next following the date of adoption reflected in the preceding sentence.

\_\_\_\_\_  
*Secretary*

\_\_\_\_\_  
*Date*

\_\_\_\_\_  
*President*

\_\_\_\_\_  
*Date*

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Robert B. Donovan

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#### NOTES

- \* *Deceased*
- \*\* *Retired*

*The office of Chairman of the Board was discontinued in 1969*