

ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Executive Registry

FROM:

EXTENSION

NO.

84 - *5052/12*

DATE

15 AUG 1984

TO: (Officer designation, room number, and building)

DATE

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. Executive Registry
7E-12 Headquarters

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM <div style="font-size: 2em; font-weight: bold; margin-left: 10px;">K</div>	EXTENSION	NO.
		DATE 14 August 1984

TO: (Officer designation, room number, and building)	DATE		OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
	RECEIVED	FORWARDED		

1.	DCI 7D-5607 Headquarters			
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Sir:

Under Tab A you will find my attempt at an editing of the text you sent me on 31 July on the subject of "unauthorized disclosures." I have discussed this effort informally with [redacted] and we have coordinated on the basic themes and statistics used in the piece.

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UNAUTHORIZED DISCLOSURES TO THE MEDIA

BY

William J. Casey

Over the last several years the United States Government has spent many billions of dollars to enhance the nation's intelligence collection and assessment capabilities. Meanwhile, unauthorized disclosures of classified information have either damaged or threatened every existing method of collecting intelligence information. This debilitating influence has the menacing potential to undo in short order the improvement that has been achieved in recent years in intelligence capabilities.

The scope of this problem is serious in the extreme. Over the past two years, the security protection of classified information has been breached by public disclosures on 103 occasions.

A recent study by the Security Committee showed that in the five-year period from FY 1979 to FY 1983, there were 285 verified unauthorized disclosures of classified information. The study showed that the number of such incidents was increasing, and that the time between production of intelligence

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reports and the media's publication of their contents is decreasing. This means that more leaks are occurring and they are occurring with greater rapidity. The study showed that the number of journalists and the number of publishers and broadcasters who present classified intelligence material are increasing. The publication of classified intelligence is now virtually an accepted practice.

The consequences of this problem are serious in the extreme:

- ° Leaks have threatened the lives of Americans serving abroad.
- ° Leaks have threatened the safety of American diplomatic and military installations.
- ° Leaks have destroyed or threatened the viability of intelligence sources and methods.
- ° Leaks have given aid and comfort to the real enemies of the United States, including hostile nations and various terrorist groups.

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The current administration has tried seriously, but without much success, to deal with the leak problem:

° It published National Security Decision Directive (NSDD) #19. It requires that all contacts with the media in which classified National Security Council matters or classified intelligence information are to be discussed will have the advance approval of a senior official. It also requires that a memorandum be prepared as soon as possible after the media contact to record the subjects discussed and the information provided to the media representatives. Implementation of NSDD #19 has been soft-pedaled under pressure from the media and elements within the government.

° The Administration published NSDD #84 in March 1983 featuring various reform measures designed to enhance the protection of classified information. Unfortunately, NSDD #84 has become pretty much a dead letter, again because of the political storm cloud it generated.

° The Administration released, in November 1982, a memorandum signed by Judge William Clark ordering a policy

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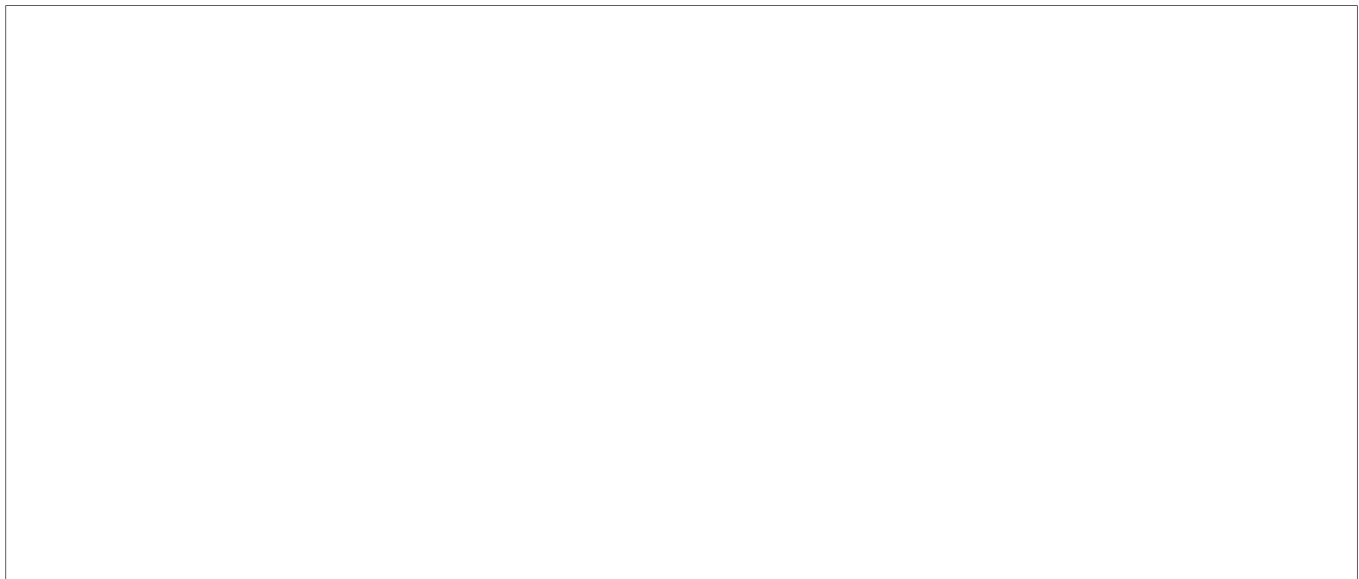
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of not commenting on media reports of intelligence matters. Exceptions to this policy were to be granted only the Assistant to the President for National Security Affairs. No requests for such exceptions have been received by the Administration thus far. Meanwhile, "unnamed" government officials continue to comment on media reports containing classified intelligence information.

It is obvious that most of the people in government and in the media who disclose classified information do not realize the gravity of the damage that results.

Again, to further underscore the seriousness of all this, these examples are presented:

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[Redacted]

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Furthermore, the disclosures endangered a human source. [Redacted]

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ITEM:

[Redacted]

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[Redacted] The article disclosed classified information which could have caused an adversary to change its procedures and block intelligence information from reaching the U.S. Government. One

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[Redacted]

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ITEM:

[Redacted] an industrial trade paper published an article which dealt with an overhead imaging capability. The article disclosed classified information revealing extremely costly technology still under development by this country. This disclosure could result in the Soviet Union developing techniques to counter its effectiveness

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[Redacted]

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ITEM:

[Redacted]

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The article disclosed classified information which placed a human source in great personal jeopardy. Contact with the source has had to be cut off indefinitely. This will result in the loss of unique reporting regarding [Redacted]

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[Redacted]

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ITEM:

[Redacted]

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program. The article disclosed classified information that has placed a human source in danger of being discovered [Redacted]

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[Redacted]

Furthermore, the disclosure could possibly have an adverse effect on U.S. relations with the [Redacted]

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[Redacted]

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And remember, these are only five out of 103 damaging disclosures analyzed by CIA alone over the past 24 months.

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The motives of the people involved in leaks are worth considering. There are those who have knowingly disclosed information they have pledged to keep secret in order to:

- ° Push a policy or program interest of theirs.
- ° Denigrate a policy or program with which they disagree.
- ° Pursue a selfish or personal goal.

There are others whose disclosure of classified information reflects mainly a lack of personal and professional discipline.

The motives of the people in the media who receive and use classified information are perhaps more difficult to analyze and characterize. Many people in the media have a real conflict in this area. On one hand, they do not want to damage the national security or intelligence capabilities. On the other hand, they see as their job to inform the public. Therefore, when they come into possession of classified information, they face a dilemma. In some instances it is possible, with sufficient lead time, to work with a columnist, reporter, or

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editor to determine how the public can be properly informed without putting intelligence capabilities at risk. The Intelligence Community should do more of this and be willing to pursue education of the media as well as the public on this problem. Understanding and patience on both sides are required for this process.

In educating the media, its members must be taught the kinds of information that invariably have a damage potential, such as:

- Communications intercepts
- Signals and other electronic intelligence
- Imagery and intelligence from satellite collection
- Agent operations (HUMINT)
- Covert action operations
- Plans for technical collection systems
- Capabilities of collection systems--past, present and future.

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It must be stressed that unauthorized disclosures of classified intelligence information, whether intentional, unintentional, or even unwitting, all have the same potential for damage. Public officials' statements explaining or confirming media speculation lead credibility and authority. Even unwitting confirmation can ensure publication of information that damages U.S. intelligence programs and points the opposition toward countermeasures. Even knowledgeable individuals may not understand that discussing the product of a collection system can result in the neutralization of that system.

Some would say that skillful reporters have an advantage in this battle of wits over classified information. By playing to the biases and ego needs of the intelligence officer, the reporter can work wonders. In a sad commentary on intelligence professionalism, [redacted] told an audience of new CIA Senior Intelligence Service officers that he calls CIA analysts at home in the evening, and some of them discuss classified information with him. To make matters worse, [redacted] said analysts in other agencies, such as the Department of State, provide him the names of CIA analysts working specific topics.

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In some of his calls to CIA people, Taubman related they advised him that regulations require them to report the call. Neither CIA's Office of Security nor its Office of Public Affairs was able to find a record of any such reports.

The advantages that reporters enjoy could be neutralized quickly if leaking became dangerous and unprofitable for both parties in the transaction. There is no legal basis for excepting a reporter who has participated in an illegal act from the investigative process to which all citizens are subjected. Passing classified information to an unauthorized person is illegal and, in some instances, it is criminal. Reporters involved in taking and disseminating classified information must be subject to the same investigative processes and penalties as other citizens. The Justice Department should be able to bring such a person before a grand jury and offer him immunity if he takes the fifth amendment and have him held in contempt if he still refuses to respond to questions about the source of the classified information which he received and had published. If the penalty for contempt would require the publisher/employer to pay a stiff fine for every day the reporter refuses to respond, public sympathy might well swing toward the Government--at least that has been the experience in labor union cases.

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Edward Bennett Williams has stated that while doctors, lawyers and clergymen enjoy legally privileged communication with their patients, clients and parishioners, there is no legal basis for privileged communications between a journalist and his sources. He suggests that a journalist who publishes classified information can be brought before a grand jury, given immunity from prosecution and can be compelled to identify the source of classified information. To avoid making a journalist a martyr, Dr. Wheelon suggests a substantial daily fine on the publisher until the question is answered. This approach seems legally feasible. It would generate a storm of protest in the media, but perhaps a special prosecutor could help defuse charges of administration persecution of the press. It is extremely important to note that this approach is not directed at the media, but at requiring the cleared government employee or contractor to live up to his acknowledged obligation to protect security. It is vital that any enforcement efforts by the government be directed at those who have agreed to keep secrets and then violated the agreement, rather than at the media.

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The law must also be tightened up. In recent years, legislation has been proposed by CIA to make crime of the simple act of disclosing classified information to an unauthorized person. This seems eminently reasonable and avoids the "driving tacks with a sledge hammer" aspect of using the Espionage Act to prosecute leakers. Since ex post facto laws are unconstitutional, we need this legal remedy as soon as possible. The CIA proposed version of such a law has never made it to the floor of Congress.

Additional legislation might also be sought to criminalize the unauthorized possession of classified material. This would be harder to legislate, but would be useful in making the acceptance of classified documents a riskier proposition.

To summarize----what needs to be done to stem the hemorrhage of leaks is to deal with the problem on multiple fronts. The following eight-step program seems appropriate to give structure to the government's efforts to combat unauthorized disclosures.

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°STEP #1 - There must be better controls over communications with the media. Contacts with the press should be specifically authorized in advance. Press interviews should require a second government presence. Media people should not have the freedom to wander the halls of agencies involved in national security matters. A written record of discussions with media representatives should be required after every contact.

°STEP #2 - Leak data must be cross-referenced and computerized for future analysis. The trends of leaks, the media people and institutions involved and the possible methods used in the infraction should all be reduced to a community-wide data base for easy retrieval by Intelligence Community members. To make the investigation and analysis of leaks more effective, Judge Webster has suggested the creation of a special analytical unit to track where damaging stories appear, who reported them and what kinds of patterns can be developed.

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° STEP #3 - Greater use of the polygraph in leak investigations should be encouraged. Four leakers have been identified in this administration. In all four cases, polygraph interviews played a pivotal role. One leaker at the State Department was caught after he denied having seen a reporter when the records at the Department showed that the reporter had called on the leaker. This was confirmed when another State employee, on detail to CIA, admitted in a polygraph interview that passing information to reporters was a common practice in that particular office at the State Department. Three leakers have been caught by the CIA: one a staff employee, another an outside consultant, and a third an employee of a contractor. In each of these three cases, the leaker admitted his transgressions during the course of polygraph interviews.

° STEP #5 - More investigative activity must be performed, both by the Intelligence Community agencies and by the FBI, to solve those leak cases involving relatively limited disseminations and

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presenting reasonable possibilities of success. Even if the more difficult cases were virtually written off, this approach would prove enormously valuable in fighting leaks.

° STEP #6 - A uniform policy must be implemented in the Intelligence Community agencies to provide for uniform penalties for individuals who divulge classified intelligence to the news media without authorization, regardless of where or in what capacity the perpetrator is employed.

° STEP #7 - Efforts must be mounted to promote a new statute which would criminalize the passage of classified information to unauthorized persons. A good law here would require authorized recipients of classified information to live up to their fiduciary responsibilities, or suffer penalties if they fail to do so. Such a law could not be construed in anyway as infringing upon the freedom of the press. Ideally, it would not require proof

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that the United States was damaged by the unauthorized disclosure. It would only be necessary to show that the defendant gave classified information to someone not authorized to receive it.

° STEP #8 - A major effort must be made to educate the public about the problem of unauthorized disclosures. Unless the public can be brought to an awareness of the scope, depth, and complexity of the problem, long-range and lasting solutions are unlikely. Unless the leaker can be painted in hues distinctively different from the whistleblower, the battle, indeed the war, on leaks will most certainly be lost.

Let me make it plain that I believe in the importance to our nation of a free press. Journalists should be able to criticize wrongdoing in government. The government, on the other hand, must have the ability to maintain the secrecy of its legitimate secrets. Intelligence activities, by their nature, cannot fulfill their purpose under the spotlight of worldwide media attention. I do not believe that U.S. journalists are any less patriotic than other Americans, although a few are less responsible than they should be. I do believe that unless those of us who are entrusted with intelligence secrets become more scrupulous in fulfilling that trust, our freedom and that of future generations will be gravely imperiled.

**SUBJECT: Unauthorized Disclosures to the Media
by William J. Casey**



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