

## A BILL

To amend the National Security Act of 1947, as amended, and for other purposes.

1 Be it enacted by the Senate and House of Representatives of  
2 the United States of America in Congress assembled, that  
3 Section 102 of the National Security Act of 1947, as amended,  
4 (50 U.S.C.A. 403) is further amended by adding the following  
5 new subsection (g):

6 (g) In the interests of the security of the foreign  
7 intelligence activities of the United States, and in order further  
8 to implement the proviso of section 102(d)(3) of the Act that the  
9 Director of Central Intelligence shall be responsible for  
10 protecting intelligence sources and methods from unauthorized  
11 disclosure--

12 (1) Whoever, being or having been in duly  
13 authorized possession or control of information relating  
14 to intelligence sources and methods, or whoever, being  
15 or having been an officer or employee of the United States,  
16 or member of the Armed Services of the United States,  
17 or a contractor of the United States Government, or an  
18 employee of a contractor of the United States Government,  
19 and in the course of such relationship becomes possessed

1 of such information imparts or communicates it by any  
2 means to a person not authorized to receive it or to the  
3 general public shall be fined not more than \$5,000 or  
4 imprisoned not more than five years, or both;

5 (2) For the purposes of this subsection, the  
6 term "information relating to intelligence sources and  
7 methods" means any information, regardless of its origin, that  
8 is classified pursuant to the provisions of a statute or Executive  
9 order, or a regulation or a rule issued pursuant thereto as  
10 information requiring a specific degree of protection against  
11 unauthorized disclosure for reasons of national security and  
12 which, in the interest of the foreign intelligence activities  
13 of the United States, has been specifically designated by  
14 a department or agency of the United States Government  
15 which is authorized by law or by the President to engage  
16 in foreign intelligence activities for the United States as  
17 information concerning--

18 (A) methods of collecting foreign intelligence;

19 (B) sources of foreign intelligence, whether  
20 human, technical, or other; or

21 (C) methods and techniques of analysis

1                   and evaluation of foreign intelligence.

2                   (3) A person who is not authorized to receive  
3 information relating to intelligence sources and methods is  
4 not subject to prosecution for conspiracy to commit an  
5 offense under this subsection, or as an accomplice, within  
6 the meaning of sections 2 and 3 of Title 18, United States  
7 Code, in the commission of an offense under this  
8 subsection, unless he became possessed of such information  
9 in the course of a relationship with the United States Govern-  
10 ment as described in paragraph (1): Provided, however, That  
11 the bar created by this paragraph does not preclude the  
12 indictment or conviction for conspiracy of any person who is  
13 subject to prosecution under paragraph (1) of this subsection.

14                   (4) It is a bar to prosecution under this subsection that:

15                               (A) at the time of the offense there did not  
16 exist a review procedure within the Government  
17 agency described in paragraph (2) of this subsection  
18 through which the defendant could obtain review  
19 of the continuing necessity for the classification  
20 and designation;

21                               (B) prior to the return of the indictment or the

1 filing of the information, the Attorney General and the  
2 Director of Central Intelligence did not jointly certify  
3 to the court that the information was lawfully classified  
4 and lawfully designated pursuant to paragraph (2)  
5 at the time of the offense;

6 (C) the information has been placed in the public  
7 domain by the United States Government; or

8 (D) the information was not lawfully classified  
9 and lawfully designated pursuant to paragraph (2)  
10 at the time of the offense.

11 (5) It is a defense to a prosecution under this  
12 subsection that the information was communicated only to a  
13 regularly constituted subcommittee, committee or joint  
14 committee of Congress, pursuant to lawful demand.

15 (6) Any hearing by the court for the purpose of  
16 making a determination whether the information was lawfully  
17 classified and lawfully designated, shall be in camera;

18 (A) at the close of any in camera review, the  
19 court shall enter into the record an order pursuant  
20 to its findings and determinations;

21 (B) any determination by the court under this

1 paragraph shall be a question of law.

2 (7) Whenever in the judgment of the Director of  
3 Central Intelligence any person is about to engage in any  
4 acts or practices which will constitute a violation of this  
5 subsection, the Attorney General, on behalf of the United  
6 States, may make application to the appropriate court for an  
7 order enjoining such acts or practices, and upon a showing  
8 that such person is about to engage in any such acts or  
9 practices, a permanent or temporary injunction, restraining  
10 order, or other order may be granted. In the case of an  
11 application for an order under this paragraph;

12 (A) the court shall not hold an in camera hearing  
13 for the purpose of making a determination as to the  
14 lawfulness of the classification and designation of the  
15 information unless it has determined after giving due  
16 consideration to all attending evidence that such  
17 evidence does not indicate that the matter has been  
18 lawfully classified and designated;

19 (B) the court shall not invalidate the classification  
20 or designation unless it finds that the judgment of the  
21 department or agency, pursuant to paragraph (2),

1 as to the lawfulness of the classification and  
2 designation was arbitrary, capricious and without  
3 a reasonable basis in fact.

## SECTIONAL ANALYSIS AND EXPLANATION

The draft bill by adding a new subsection (g) to the National Security Act of 1947 further implements a proviso of that Act imposing a duty upon the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure. The new subsection draws upon existing concepts of law found within 18 U.S.C. 798 (relating to communication intelligence) and 42 U.S.C. 2204 et seq. (relating to atomic energy Restricted Data).

Paragraph (1) of the new subsection identifies the special and limited class of individuals having privity of access to the sensitive information defined in paragraph (2) below and proscribes their culpable communication of such information to an unauthorized recipient.

Paragraph (2) of the new subsection defines the special category of information relating to intelligence sources and methods which is subject to the new provisions. It also recognizes the authority of the Director and heads of other agencies expressly authorized by law or by the President to engage in intelligence activities for the United States, to provide for the appropriate designation of such information.

Paragraph (3) of the new subsection assures that only the special and limited class of individuals identified under paragraph (1) above will be subject to prosecution as a result of the violation of the new subsection. This is in keeping with the intent that the new provision penalizes as

unlawfully the conduct of those whose access to the designated information is dependent upon understandings arising out of a relationship involving trust and confidence. Collateral prosecution related to the violation of any other provision of law, however, is not vitiated by this paragraph.

Paragraph (4) of the new subsection provides that no prosecution may be instituted unless the Attorney General and the Director of Central Intelligence first jointly certify to the court that the information was lawfully classified and lawfully designated for limited dissemination; the information was not placed in the public domain by the Government; an agency review procedure existed whereby the defendant could have secured a review of the information in question for a determination on public releasability; and the information was lawfully classified and lawfully designated pursuant to paragraph (2) at the time of the offense.

Paragraph (5) of the new subsection provides a defense to prosecution if the information was only provided to a regularly constituted committee, joint committee or joint committee of Congress, pursuant to lawful demand.

Paragraph (6) of the new subsection provides that any hearing by the court to determine whether the information was lawfully classified and lawfully designated shall be in camera and such determination shall be a question of law.



Paragraph (7) of the new subsection permits the Attorney General to petition a court to enjoin injunction any act which the Director believes will violate any provision of the new subsection. This authority is intended to provide prompt judicial action to avoid damage to the U. S. foreign intelligence effort in circumstances where punitive criminal action alone, being necessarily ex post facto, may be inadequate in achieving the underlying objective of the legislation which is to protect intelligence sources, methods and techniques from unauthorized disclosure. This paragraph also provides that in any hearing for such an order the court shall not hold an in camera hearing to determine the lawfulness of the classification and designation of the information unless it has first considered all attending evidence and determined that the evidence does not indicate that the matter has been lawfully classified and lawfully designated. The paragraph further provides that the court may invalidate a classification or designation if it finds the judgment of the department or agency head was arbitrary, capricious and without a reasonable basis in fact.