PROTECTION OF CLASSIFIED INFORMATION - A SUMMARY OF THE LAW

1. Several statutes provide some degree of protection for the sort of information generally classified, but there is some variance in the description of the information protected under each. For example, various statutes protect:

e. Information classified as affecting the national security.

c. Anything connected with the national defense.

g. Information which the possessor has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation.

d. Information relating to the national defense.

f. Classified COMINT information (defined in some detail and possibly including cables, dispatches, pouching procedures, cryptonyms and pseudonyms).

b. Public records.

2. Records, documents or other things deposited in any public office. Although in general the Government employee or a person who has lawful custody of protected information is held to a higher standard of conduct, the statutes are sufficiently broad to provide a putative case against anyone, employee or not, who performs a prohibited act in connection with protected information.

3. The penalties are higher in wartime and they are higher if protected information is delivered to a foreign government.

4. The essential elements of the offense under some statutory provisions include an intent to bring about particular consequences detrimental to the United States or of advantage to a foreign nation, but negligence by a lawful custodian of protected information is sometimes punishable, and certain offenses require only proof that a prohibited act was committed intentionally and wilfully, regardless of end-purpose.

5. It is specifically provided in the statute protecting COMINT information that nothing therein shall prohibit the furnishing of information upon lawful demand to a regularly constituted committee

of the Congress. The Lloyd LaFollette Act of 1912 also provided that the right of persons employed in the Civil Service of the United States to furnish information to the Congress or to any committee or member thereof "shall not be denied or interfered with."

6. Although the primary prohibitions of the statutes seem to be against the communication of protected information, there are grounds for proceeding against one who individually collects such information, or against an employee or lawful custodian who mishandles protected information in his custody. In the Petersen case the defendant pleaded guilty to a charge that his storage of classified COMINT documents in his home was a "use in a manner prejudicial to the safety or interest of the United States," a prohibited act under the statute protecting COMINT information.

7. In a case now awaiting trial, that of Van Fossen, the charge is based upon his conversion to his own use of a public record and upon his removal of a record from a public office in which it was filed. The two statutes under which this case was brought are not really intended for the protection of "classified information." One is a general statute to authorize punishment of embezzlers, and the other is directed primarily against the employee who falsifies records. The reason for bringing the Van Fossen case under these statutes the Department of Justice has indicated in conversation with us is that his communication was to a committee of Congress and Justice felt that bringing this case under the espionage laws might have created an unfavorable emotional climate for conviction. One must appreciate this viewpoint, especially in light of the provisions cited above in paragraph 5, but it remains to be seen if conviction on these grounds is possible.

8. In conclusion, if an employee of this Agency removes from the Agency any classified information reduced to tangible form (documents, maps, models, etc.) he has probably violated one or another of the applicable statutes. Conviction of Van Fossen would strengthen the hand of this and other Government agencies. If the information which the employee mishandles is only verbal, then its communication is an essential element of the offense and, if the communication is to a member of the Congress, the possibility of his conviction under any Federal statute is remote.

9. Whether or not indictment or conviction are possible, the Director has, of course, the authority to discharge any employee, but the situation might require very delicate handling if the grounds for discharge were disclosure of classified information to a member of Congress.

10. The question of indictment and prosecution is for resolution by the Department of Justice upon referral by the Agency concerned. It would be most unwise for the Director or any other official of the Agency to attempt an arrest of an individual believed to have disclosed classified information. A safer procedure would be notification to the Department of Justice and the seeking by them of a warrant. This Agency has no police powers, as a result of which any arrest by an Agency official would have to be a citizen's arrest. The "rules" surrounding such an arrest are complex and on occasion obscure, so that any individual who makes one, submits himself to a possible action in damages and may prejudice the prosecution's case if indictment is eventually obtained and conviction sought.