LAW AND THE NATIONAL SECURITY DECISION-MAKING PROCESS IN THE REAGAN ADMINISTRATION

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Let me start by warning you that my remarks today will be devoid of substance. I will not tell you what I think the Boland amendment means. I will not venture an opinion on the constitutionality of the War Powers Resolution. And I most certainly will not plumb the depths of the Arms Export Control Act.

Instead, my remarks will focus on the national security decision-making process in the Reagan administration. From my observations, I would agree with the conclusions of the Tower Board that the process was seriously flawed, particularly in its failure to include adequate legal advice. I also agree that these shortcomings were attributable in part to the Administration's failure to develop an adequate policy to deal with the problem of leaks of classified information. The ultimate result was the Iran-Contra Affair.

My perspective on this subject comes from service in three capacities during the Reagan administration. First, from March 1981 until January 1982, I served as Counsel for Intelligence Policy to Attorney General William French Smith. In this capacity, I participated in revising Executive orders and other policies on both the organization and conduct of U.S. intelligence activities and the protection of national security information. Second, from January 1982 until February 1988, I served in the Civil Division of the Justice Department, first as Deputy Assistant Attorney General, and then as Assistant Attorney General. In this capacity, I supervised the defense of civil litigation challenging national security activities of the Reagan administration. Third, while in the Civil Division, I also served as chairman of an interdepartmental group on unauthorized disclosures of classified information, which submitted a report on this problem in March 1982. That report formed the basis for National Security Decision Directive 84 (NSDD-84), which was issued in March 1983, and partly revoked in February 1984.[1] My role in the development

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1. Werner, *Reagan to Relent on Secrecy Pledge*, N.Y. Times, Feb. 15, 1984, at A1, col. 1.

and implementation of NSDD-84 created a substantial amount of controversy. For example, at one point, William Safire called me "the John Dean of the Reagan administration."[2]

1981-1982: THE NEW ADMINISTRATION'S APPROACH TO LAW AND THE NATIONAL SECURITY PROCESS

The Reagan administration came to office in 1981 with a mandate to improve the effectiveness of our national security structure, including the conduct of intelligence activities. The 1980 Republican platform was clear on this point, stating in part:

> Republicans will undertake an urgent effort to rebuild the intelligence agencies, and to give full support to their knowledgeable and dedicated staffs. We will propose legislation to enable intelligence officers and their agents to operate safely and efficiently abroad.
>
> We will support legislation to invoke criminal sanctions against anyone who discloses the identities of U.S. intelligence officers abroad or who makes unauthorized disclosures of U.S. intelligence sources and methods.
>
> We will support amendments to the Freedom of Information Act and the Privacy Act to permit meaningful background checks on individuals being considered for sensitive positions and to reduce costly and capricious requests to the intelligence agencies.
>
> We will provide our government with the capability to help influence international events vital to our national security interests, a capability which only the United States among the major powers has denied itself.
>
> A Republican Administration will seek adequate safeguards to ensure that past abuses will not recur, but we will seek the repeal of ill-considered restrictions sponsored by Democrats, which have debilitated U.S. intelligence capabilities while easing the intelligence collection and subversion efforts of our adversaries.[3]

When I became Attorney General Smith's Counsel for Intelligence Policy in March 1981, it was immediately apparent that there was enormous pent-up hostility in the intelligence community toward lawyers and legalistic restrictions. This attitude was not an invention of the Republican political appointees—who at that time were not yet that numerous—but permeated the career service.

At the beginning of 1981, these holdover officials in the intelligence

2. Safire, *Us Against Them*, N.Y. Times, Oct. 30, 1983, at E19, col. 1.
3. *Republican Platform*, 126 CONG. REC. 20,633 (1980).

community were busily drafting a new Executive order on intelligence activities that would virtually eliminate the legal oversight role of the Attorney General. I was one of the first political appointees named to a position at the Department of Justice because Attorney General Smith thought it was necessary to devote immediate attention to insuring a balanced approach to these issues of law and national security policy.

During 1981, my office worked with others in the executive branch and the congressional Intelligence Committees to implement the national consensus to "repeal . . . ill-considered restrictions" but maintain "adequate safeguards to ensure that past abuses will not recur."[4] I continue to believe that Executive Orders 12,333[5] and 12,356,[6] together with a variety of implementing guidelines and related policies, faithfully discharged that mandate. In particular, the role of the Attorney General was preserved in these documents, together with the vital principle that all intelligence activities were to be conducted in adherence to the rule of law. We were also successful in obtaining legislation making it a crime to reveal the classified identity of covert intelligence agents of the United States.[7]

When I left office as Counsel for Intelligence Policy in January 1982, there were two problems that particularly concerned me. One was that the Administration's procedures for considering sensitive foreign policy and intelligence matters, such as proposals for covert operations, did not include adequate legal review. The second was the continued debilitating effect of unauthorized disclosures of classified intelligence information, primarily through leaks.

The two problems were not unrelated. The fear of leaks contributed to efforts to restrict participation in the national security decision-making process. Moreover, many in the intelligence community blamed the Department of Justice for failing to vigorously investigate and prosecute leak cases. This perceived failure was a continuing irritant that hampered my efforts to improve the working relationship between the Department and the intelligence community.

Some of the problems with the process for reviewing and approving sensitive foreign policy and intelligence matters in 1981 and 1982 were as follows:

(1) The Attorney General was not a full member of the cabinet-

4. *Id.*

5. Exec. Order No. 12,333, 3 C.F.R. 200 (1982).

6. Exec. Order No. 12,356, 3 C.F.R. 187 (1983).

7. Intelligence Identities Protection Act of 1982, Pub. L. No. 97-200, 96 Stat. 122 (1982) (codified at 50 U.S.C. § 421 (1988)).

level group that considered these matters but was only "invited" to attend. It is my understanding that Attorney General Meese was later made a member of the group, but that even then some effort was made to insist that he was a member in his personal capacity and not as Attorney General.

(2) As a consequence of the Attorney General's uncertain status in the process, his subordinates were generally excluded from working groups and subcabinet-level deliberations.

(3) The Attorney General was not allowed to bring a staff person to the meetings he was invited to attend on the theory that they were for "principals only"; there did, however, appear to be exceptions to this rule for the White House and Central Intelligence Agency (CIA) staff.

(4) Background papers were generally sent to the Attorney General just before meetings, if then, and were often too short and poorly written.

The cumulative effect of these restrictions was to minimize the ability of the Attorney General to participate in the deliberations or to render meaningful legal advice. He was even asked at times to render off-the-cuff oral advice on complex legal situations. The obvious desire was to be able to claim that the Attorney General had given a legal seal of approval to various proposals without permitting them to undergo real legal scrutiny. Apart from the shortcomings of the process as to legal issues, it also appeared that the most sensitive kinds of foreign policy and intelligence matters received fairly casual staff review and coordination.

Attorney General Smith regularly complained about these systemic shortcomings in a series of letters to the White House staff and principal members of the National Security Council (NSC) in 1981-1982.[8] I believe he was fairly forceful on these points in meetings as well. Despite these efforts, however, we did not have much success during this period in improving the process by which the Attorney General participated in reviewing sensitive intelligence operations.

1982-1984: THE ANTI-LEAK EFFORT

I did have the opportunity to address the other problem I mentioned earlier—unauthorized disclosures of classified information. The precipitating event for this effort was a hastily prepared National Security Decision Directive on the subject that was issued in January 1982 without any consultation of the Justice Department.[9] It immediately became apparent that this directive was unworkable, and Attorney General Smith was asked to convene an interdepartmental group to address the issue in a

8. Based on the author's personal recollection—no published source.
9. *Id.*

more careful way. As mentioned at the outset, I chaired the group, and we produced a report in March 1982, which came to be known in some circles as the Willard Report.[10]

Among the reasons I undertook this task were my belief that this problem undermined the integrity of the government's decision-making process, and that it exacerbated tensions between the Department of Justice and the intelligence community.

The very first paragraph of the report indicates that we harbored no illusions about the problem:

> Unauthorized disclosure of classified information is a long-standing problem that has increased in severity over the past decade. This problem has resisted efforts at solution under a number of Administrations . . . . We must seek more effective means to prevent, deter, and punish unauthorized disclosures. At the same time, we must recognize that this complex problem is unlikely to be solved easily or quickly.[11]

The report went on to recommend a Presidential directive to tighten information security standards in several areas. We summarized our recommendations as follows:

> 1. The Administration should support new legislation to strengthen existing criminal statutes that prohibit the unauthorized disclosure of classified information.
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> 2. All persons with authorized access to classified information should be required to sign secrecy agreements in a form enforceable in civil actions brought by the United States. For persons with access to the most sensitive kinds of classified information [i.e., the Select Committee on Intelligence (SCI)], these agreements should also include provisions for prepublication review.
>
> 3. Agencies should adopt appropriate policies to govern contacts between media representatives and government officials, so as to reduce the opportunity for negligent or deliberate disclosures of classified information.
>
> 4. Each agency that originates or stores classified information should adopt internal procedures to ensure that unauthorized disclosures of classified information are effectively investigated and appropriate sanctions imposed for violations.
>
> 5. The Department of Justice, in consultation with affected agencies, should continue to determine whether FBI investigation of an unauthorized disclosure is warranted. The

10. *See* Pear, *Strong Curb Asked on Secret Papers*, N.Y. Times, Apr. 21, 1983, at A1.

11. The report is reproduced in *Presidential Directive on the Use of Polygraphs and Prepublication Review: Hearings Before the Subcomm. on Civil and Constitutional Rights, House Comm. on the Judiciary*, 98th Cong., 2d Sess. 166 (1984).

> FBI should be permitted to investigate unauthorized disclosure of classified information under circumstances where the likely result of a successful investigation will be imposition of administrative sanctions rather than criminal prosecution.
>
> 6. Existing agency regulations should be modified to permit the use of polygraph examinations for government employees under carefully defined circumstances.
>
> 7. All agencies should be encouraged to place greater emphasis on protective security programs. Authorities for the federal personnel security program should be revised and updated.[12]

The report's recommendations were circulated for comment within the Administration, and the proposed directive was prepared for Presidential consideration in the summer of 1982. At this point, the project became enmeshed in White House staff deliberation. In March of 1983, after about nine months of silence from the White House, I was surprised to learn the directive was suddenly being approved by the President as NSDD-84.

For most of the next year, I was involved in efforts to implement NSDD-84 and explain it to Congress and the media. It is clear in retrospect that the media devoted inordinate attention to this issue because of their self-interest in assuring the continuing disclosure of information from the government. This is understandable. But the content of the reporting was often highly distorted and hysterical in tone. A *New York Times* editorial is typical.[13] It started out with the following description of government policy:

> The Reagan Administration is mad, to the point of madness, about secrecy. It thinks the Federal Government is one big sieve, that important secrets are dribbling out and that a firm disciplinary hand is needed. So the administration is preparing to lower the boom on thousands of government employees.[14]

Even the *Reader's Digest* ran an article by Carl Rowan entitled, "Mr. President, This Isn't Russia."[15] In case the message was too subtle for the readership, the article concluded with the following message surrounded by a black box:

> You can have a say on this critical issue by exercising your right of free expression. Write to President Reagan. Urge him to withdraw Directive 84 *completely* and to forget about ever

12. *Id.* at 169.
13. N.Y. Times, Sept. 22, 1983, at A30, col. 1.
14. *Id.*
15. April 1984, at 65.

> implementing anything remotely resembling its most threatening sections. Your voice, joined by countless other voices, can make a difference.[16]

In Congress, Senator Mathias persuaded the Senate to adopt (by a vote of 56 to 34) an appropriations rider that blocked implementation of the new SCI nondisclosure agreements (the revised Form 4193) for a six-month period. A couple of months later, the press breathlessly reported, as evidence of hypocrisy, the fact that virtually no top administration officials had signed the new Form 4193, even though Congress had made it illegal to sign the agreement.[17] Also unnoticed was the fact that these same officials *had* signed the prior version of Form 4193, which also contained a prepublication review requirement.

In any event, it soon became apparent that NSDD-84 had little or no support from most of the political officials of the Administration. I was just about the only administration official willing to appear publicly in defense of the directive. One commentator observed:

> [I]n fact the White House staff has little personal commitment to it [NSDD-84]. The order was drafted by a conservative ideologue at the Justice Department, Richard K. Willard, apparently at the direction of William Clark, then President Reagan's national security adviser. It never went through the regular White House clearance process.[18]

Another newspaper account stated:

> Opposition to the rule has been so widespread that it even includes some of the President's own aides . . . . [A]dministration officials who declined to be identified said that the rule, which was the brainchild of former national security adviser William P. Clark, has lost support inside the White House since Clark left to become Secretary of the Interior.[19]

In February 1984, the Administration decided to revoke the controversial provisions of NSDD-84. A newspaper reported: "One official said the White House was 'hoping to remove it as a sore spot, a source of controversy' in an election year."[20] Another newspaper account said that administration officials "feared the security directive would become an issue in the Meese [confirmation] hearings."[21]

The press applauded the decision to revoke the controversial parts

16. *Id.* at 70.
17. Safire, *Who Is on 'Our' Side?*, N.Y. Times, Dec. 18, 1983, at E19.
18. Lewis, *Meese and Secrecy*, N.Y. Times, Jan. 30, 1984, at A17, col. 6.
19. L.A. Times, Jan. 14, 1984, pt. 1, at 6, col. 1.
20. N.Y. Times, Feb. 15, 1984, at A20, col. 2.
21. Wash. Post, Feb. 16, 1984, at A12, col. 1.

of NSDD-84, but was fearful that the effort would be renewed if President Reagan was reelected in 1984. An article in *Editor and Publisher*[22] reported on a panel discussion at a journalists' convention:

> Unhindered by the need for reelection, the panelists concurred, this administration is likely to become even more tight-lipped in the next four years.
>
> While past administrations have also attempted to manage news and limit leaks, *Los Angeles Times* Justice Department correspondent Ron Ostrow said, under Reagan, "it has reached a degree of skill that is unparalleled."
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> . . . .
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> And unlike past administrations, when sympathetic middle-level aides would leak information the leadership sought to suppress, the Reagan White House has been notably successful in curbing news leaks, [*Washington Post* White House correspondent Juan] Williams said: "You don't find in this White House very many leakers."[23]

In retrospect, I did not know whether to laugh or cry about these dire predictions, but they obviously did not come true. After the 1984 election, there was no effort to develop a new administration policy on unauthorized disclosures of classified information, and the problem of leaks persisted and apparently became even more severe. Efforts in the intelligence community to deal with this problem were fitful, uncoordinated and ineffective.

In 1986, CIA Director William Casey advocated criminal prosecution of the news media for publishing classified information; in 1987, the National Security Agency Director Lt. General William Odom made the same proposal. Casey had earlier advocated calling journalists before the grand jury as a way of finding out their sources of classified leaks. None of these proposals were taken very seriously for a variety of legal and practical reasons, all of which had been set forth in the 1982 working group report.

Interestingly, some members of the press thought these proposals to prosecute their colleagues made the NSDD-84 report look good by comparison. A Jack Anderson and Dale Van Atta column on July 20, 1986[24] stated: "In short, the government's best legal and security brains [elsewhere described as a 'blue ribbon panel'] had decided that prosecution of the press was virtually impossible. The reasons are as valid today as they were four years ago."[25]

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22. Fitzgerald, *Gloomy Message for the Press*, Editor and Publisher, Nov. 24, 1984, at 11.
23. *Id.* at 47.
24. *Casey Will Huff and Casey Will Puff*, Wash. Post, July 20, 1986, at D7, col. 1.
25. *Id.* at col. 4.

The column went on to quote liberally from our report, citing with approval our recommendation that "the government go after its own employees who leak information. They can be fired when identified, even if they might not be prosecuted."[26]

Similarly, a *Newsday* editorial criticizing General Odom concluded with the following observation: "The place to stop leaks is at their source—within the government—and not by trying to intimidate the press."[27]

1985-1986: THE IRAN-CONTRA DECISION-MAKING PROCESS

I am not an expert on the Iran-Contra Affair, and fortunately had no involvement in it. However, in reading the report of the Tower Board, I found it quite striking that their analysis of the decision-making process revealed the same flaws that concerned me in 1982. I would like to beg your indulgence to quote some excerpts from that report.

Among the flaws in the decision-making process regarding the sale of arms to Iran, according to the report, was a lack of careful review below the cabinet level.

> Because of the obsession with secrecy, interagency consideration of the initiative was limited to the cabinet level. With the exception of the NSC staff and, after January 17, 1986, a handful of CIA officials, the rest of the executive departments and agencies were largely excluded.
>
> As a consequence, the initiative was never vetted at the staff level. This deprived those responsible for the initiative of considerable expertise . . . . It also kept the plan from receiving a tough, critical review.[28]

One of the specific problems caused by lack of subcabinet-level review was insufficient attention to legal problems. The report points out:

> A thorough vetting would have included consideration of the legal implications of the initiative. There appeared little effort to face squarely the legal restrictions and notification requirements applicable to the operation. At several points, other agencies raised questions about violations of law or regulations. These concerns were dismissed without, it appears, investigating them with the benefit of legal counsel.[29]

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26. *Id.*

27. *Stop Intelligence Leaks, Not Printing Presses*, Newsday, Sept. 5, 1987, at 16 (unsigned editorial).

28. REPORT OF THE PRESIDENT'S SPECIAL REVIEW BOARD IV-4 (Feb. 26, 1987).

29. *Id.* at IV-4—IV-5.

Another problem with the process was that it was too casual. The report observed as follows:

> The whole decision process was too informal. Even when meetings among NSC principals did occur, often there was no prior notice of the agenda. No formal written minutes seem to have been kept. Decisions subsequently taken by the President were not formally recorded. An exception was the January 17 Finding, but even this was apparently not circulated or shown to key U.S. officials.[30]

The report concluded that the sale of arms to Iran would likely not have survived a more formal deliberative process.

The report included similar criticism of the decision-making process with regard to support for the Contras:

> The lack of adequate vetting is particularly evident on the question of the legality of LtCol North's activities. The Board did not make a judgment on the legal issues raised by his activities in support of the Contras. Nevertheless, some things can be said.
>
> If these activities were illegal, obviously they should not have been conducted. If there was any doubt on the matter, systematic legal advice should have been obtained. The political cost to the President of illegal action by the NSC staff was particularly high, both because the NSC staff is the personal staff of the President and because of the history of serious conflict with the Congress over the issue of Contra support. For these reasons, the President should have been kept apprised of any review of the legality of LtCol North's activities.
>
> Legal advice was apparently obtained from the President's Intelligence Oversight Board. Without passing on the quality of that advice, it is an odd source. It would be one thing for the Intelligence Oversight Board to review the legal advice provided by some other agency. It is another for the Intelligence Oversight Board to be originating legal advice of its own. That is a function more appropriate for the NSC staff's own legal counsel.[31]

At this point, I would add my own view that on a matter of such importance, the Justice Department should have been involved as well as the NSC staff legal counsel.

Included with the recommendations of the Tower Board is the following discussion of the role of leaks in producing a defective procedure for considering covert action:

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30. *Id.* at IV-5.
31. *Id.* at IV-6 (footnote omitted).

> Policy formulation and implementation are usually managed by a team of experts led by policy-making generalists. Covert action requirements are no different, but there is a need to limit, sometimes severely, the number of individuals involved .... In such cases, there is a tendency to limit those involved to a small number of top officials. This practice tends to limit severely the expertise brought to bear on the problem and should be used very sparingly indeed.
>
> The obsession with secrecy and preoccupation with leaks threaten to paralyze the government in its handling of covert operations. Unfortunately, the concern is not misplaced. The selective leak has become a principal means of waging bureaucratic warfare. Opponents of an operation kill it with a leak; supporters seek to build support through the same means.
>
> We have witnessed over the past years a significant deterioration in the integrity of process. Rather than a means to obtain results more satisfactory than the position of any of the individual departments, it has frequently become something to be manipulated to reach a specific outcome. The leak becomes a primary instrument in that process.
>
> This practice is destructive of orderly governance. It can only be reversed if the most senior officials take the lead. If senior decision-makers set a clear example and demand compliance, subordinates are more likely to conform.[32]

The conclusions of the Tower Board that I have just cited are echoed as well in the Majority and Minority Reports of the congressional committees investigating the Iran-Contra Affair.

The Majority Report recommended institutionalizing the role of the Attorney General in conducting a legal review of proposed covert action findings:

> The Committees recommend that the Attorney General be provided with a copy of all proposed Findings for purposes of legal review.
>
> The first Iranian arms Finding of December 5, 1985, was not reviewed by the Attorney General. The Attorney General did give oral advice on the January 17 Finding but did not do the analysis or research that a written opinion would have entailed. The President, the intelligence community, and Congress are entitled to a review by the country's chief legal officer to ensure that planned covert operations are lawful.[33]

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32. *Id.*

33. REPORT OF THE CONGRESSIONAL COMM. INVESTIGATING THE IRAN-CONTRA AFFAIR, H.R. REP. No. 433, S. REP. No. 216, 100th Cong., 1st Sess. 424 (1987) [hereinafter REPORT].

The Majority Report also recognized, somewhat grudgingly, the need to deal with the problem of leaks of classified information:

> The Committees recommend that consistent methods of dealing with leaks of classified information by government officials be developed.
>
> The record of these hearings is replete with expressions of concern by executive branch officials over the problem of unauthorized handling and disclosure of classified information. The record is also replete with evidence that high NSC officials breached security regulations and disclosed classified documents to unauthorized persons when it suited their purposes. Yet no steps have been taken to withdraw or even review clearances of such people.[34]

The Minority Report treated the leaks phenomenon in greater detail, devoting an entire chapter to this problem, entitled "The Need to Patch Leaks." A key passage in this chapter states:

> Throughout the majority report, much is made of the Administration's concern for secrecy. That concern is portrayed almost exclusively, if not exclusively, as the desire of some lawbreakers to cover the tracks of their misdeeds. We agree that the National Security Council staff, under Admiral Poindexter, let its concern over secrecy go too far. We should not be so deceived by self-righteousness, however, that we dismiss the Admiral's concern as if it had no serious basis. Our national security, like it or not, does depend on many occasions on our ability to protect secrets. . . . [U]nless we can understand the real problems that led the NSC staff to its decision, future administrations will once again be faced with an unpalatable choice between excessive secrecy-risking disclosure of foregoing what might be a worthwhile operation.
>
> Time after time over the past several years, extremely sensitive classified information has been revealed in the media. Predictably, both Congress and the Administration have blamed each other. In fact, both are culpable.[35]

The report goes on to discuss in some detail the problem of congressional leaks and their inhibiting effect on cooperation between the two branches on national security matters.

WHERE DO WE GO FROM HERE?

I am pleased that President Reagan gave the Tower Board its broad

34. *Id.* at 426.
35. *Id.* at 575.

mandate and agreed to implement its recommendations. I cannot comment from personal experience, but these measures should help to remedy the flaws in the decision-making process that we have analyzed so far.

The problem of unauthorized disclosures of classified information remains as perplexing as ever, and I am not sure there is a solution. The measures in NSDD-84 were, in my view, fairly modest. But at least they represented a comprehensive effort to address the problem. Perhaps better proposals could be developed, although I have not seen any realistic suggestions.

Our working group in 1982 did recommend new legislation to strengthen criminal statutes that apply to unauthorized disclosures.[36] The Minority Report of the Iran-Contra committees made the same recommendation.[37] Enactment of such legislation alone would not solve the problem, but would at least demonstrate congressional support for the effort to address it.

In fact, I am not optimistic that Congress will do anything to address the problem of leaks, in either the executive or legislative branches. The only thing Congress has done recently is to make matters worse. In December 1987, Senator Grassley added, in conference on the 1000-page Continuing Resolution, a rider that blocks the use of the standard Form 189 secrecy agreement.[38]

Form 189 was adopted pursuant to NSDD-84 in 1983 as the standard nondisclosure agreement for employees with access to classified information. Unlike the SCI nondisclosure agreement (Form 4193), it did not contain a prepublication review provision. Thus, it was not the subject of much criticism and was not revoked with the controversial portions of NSDD-84 in 1984. Over the following four years, over a million government employees signed Form 189 as it was gradually implemented throughout the government.

In 1987, Pentagon whistleblower Ernest Fitzgerald was told to sign Form 189 and it suddenly became controversial.[39] Lawsuits were filed,[40] and the Grassley amendment was adopted. The Administration now faces the prospect of seeing over a million secrecy agreements and four years of effort go down the drain.

In broader terms, Congress seems much more concerned with

36. *See* Pear, *supra* note 10.
37. REPORT, *supra* note 33, at 584-85.
38. Pub. L. No. 100-202, § 630, 101 Stat. 1329 (1987).
39. *See* Isikoff, *Grassley to Civil Servants: Ignore Secrecy Pledge*, Wash. Post, Oct. 16, 1987, at A21, col. 1.
40. National Fed'n of Fed. Employees v. United States, 688 F. Supp. 671 (D.D.C. 1988), *appeal pending.*

preventing what it perceives to be the harassment of government employees than preventing unauthorized disclosures of classified information. Thus, I am not optimistic that help will come from that quarter.

This brings us back to the executive branch. Here also, there is little enthusiasm for addressing information security issues generally or the leaks phenomenon specifically. For example, a comprehensive study of the federal personnel security program was undertaken as a follow-up to NSDD-84.[41] The recommendations of this working group, in the form of a proposed Executive order, have been pending for at least a year.[42] Although this is essentially a "good government" measure that has support among the congressional Intelligence Committees, it appears unlikely to be acted upon because of fears that it would become controversial.

In closing, it appears that we end where we began. Some improvements do seem to have been made in the national security decision-making process. But the system cannot be expected to work properly unless classified information that is involved in the process can be adequately protected. The Carter administration learned this lesson when the fear of leaks hampered the planning process for the Iranian hostage rescue mission. The Reagan administration learned this lesson with the Iran-Contra Affair. Solving this problem will be a challenge for the next Administration, whoever is President.

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41. Based on the author's personal knowledge—no published source.
42. *Id.*