

Interagency Task Force  
on  
Unauthorized Disclosures of Classified Information

INTERIM REPORT

Submitted by:  
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Chairman

Section 310 of the "Intelligence Authorization Act for Fiscal Year 2002" (P.L. 107-108) directs the Attorney General, in consultation with the Secretary of Defense, Secretary of State, Secretary of Energy, Director of Central Intelligence, and other agency heads as appropriate, to "carry out a comprehensive review of current protections against the unauthorized disclosure of classified information." This review is to include a review of current criminal and civil statutes and administrative regulations to detect such unauthorized disclosures and to sanction those responsible for engaging in such practice. Pursuant to section 310, the Attorney General is to provide to Congress a report on the findings of this interagency review not later than May 1, 2002.

On October 24, 2001, before passage and enactment of the Intelligence Authorization Act, the Attorney General advised the Chairman and Vice Chairman of the Senate Select Committee on Intelligence that the Department would provide an interim report of the progress of the interagency task force. The Attorney General's letter indicated that this interim report could be provided on or before February 1, 2002, and that he anticipated it would "reflect the status of the Justice Department's coordination with CIA, Defense, State, Energy, and other executive branch entities and, I hope, include some preliminary recommendations."<sup>1</sup>

A. Status and Organization of the Interagency Task Force

1) Status

On December 11, 2001, the Attorney General sent letters to the Secretaries of Defense, State, and Energy, the Director of Central Intelligence, and the Assistant to the President for

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<sup>1</sup> At the invitation of the staff of the Senate Select Committee on Intelligence, on February 14, 2002, ADAG Murray provided a briefing on the status of the task force's activities to date.

National Security Affairs, advising each that he was establishing an interagency task force to review the issues surrounding unauthorized disclosures of classified information to the media. The Attorney General outlined the scope of the task force's review and noted that he had designated Associate Deputy Attorney General Patrick B. Murray to chair the task force. The Attorney General solicited their personal support for, and commitment to, the work of the task force.

On January 8, 2002, ADAG Murray convened the first meeting of the interagency task force. The members of the task force, as designated by their respective department or agency heads, are:

Department of Defense:	Richard Shiffrin, Deputy General Counsel
Department of State:	James Thessin, Deputy Legal Adviser
Department of Energy:	Joseph Mahaley, Director, Office of Security and former Assistant General Counsel for Defense and National Security
Central Intelligence Agency:	John Rizzo, Acting General Counsel
National Security Council:	John Bellinger, Deputy Counsel to the President and Legal Adviser to the National Security Council

The interagency task force has met twice since the beginning of January and is expected to meet with more frequency as the deadline for the production of the final report approaches.

## 2) Organization

The interagency task force determined that creating issue area working groups would be the most efficient manner in which to consider the myriad and complex issues inherent in this subject. Five working groups were established to study, investigate, analyze, and report back to the interagency task force on a wide range of matters related to the subject of unauthorized disclosures of classified information to the media. Task force members quickly identified individuals from their respective organizations to serve on the working groups. Since the beginning of the year, the working groups have met and continue to meet at least weekly. In the case of the Legal Review Group, however, while not convening as a group per se, issues are considered by all members of the group on a regular basis in written form, which are circulated for comment and concurrence.

The working groups are:

- 1) Litigation, which studies all issues relating to criminal, civil, and administrative processes;
- 2) Legislative, which reviews and develops potential legislative proposals, as well as considers of any new or amended executive orders;

- 3) Security, which assesses current mechanisms to protect against unauthorized disclosures, as well as the development of new methodologies;
- 4) Science and Technology, which studies innovations in technology that can assist in the protection of classified information; and
- 5) Legal Review, which analyzes all issue resolutions and any potential recommendations to determine their legal implication.

It should be noted that the Security Group is chaired by representatives from DOD and the CIA. Likewise, the Science and Technology Group is chaired by a representative from the CIA. Justice Department components participating in the task force's work include the Criminal and Civil Divisions; the Offices of Legal Counsel, Legal Policy, Professional Responsibility, Intelligence Policy and Review, Legislative Affairs, and Public Affairs. Additionally, the Department's Science and Technology Advisor and the Federal Bureau of Investigation are participating in the work of the task force. The CIA has personnel from its Offices of General Counsel and Security and from its Science and Technology ranks who are participating in relevant working groups. DOD has personnel from its Office of General Counsel, the National Security Agency, and the National Reconnaissance Office, as well as from the office of the Assistant Secretary of Defense for Command, Control, Communications, and Intelligence participating in relevant working groups. The State Department has personnel participating from its Office of the Legal Adviser, as well as other relevant bureaus and offices. The Department of Energy personnel participating in the working groups are the Director, Security Policy Staff; the General Counsel of the National Nuclear Security Administration; and the Director, Office of Public Affairs.

#### **B. Issues Under Consideration**

The task force is, of course, considering those issues set forth by the statutory mandate. Additionally, it is considering a number of complex issues, which are listed below. As such, at present we are not including any recommendations, either legislative or administrative. Moreover, the assessments of the effectiveness and adequacy of past efforts in this area, and of current laws and regulations that are intended to protect against and punish unauthorized disclosures, are still ongoing. We can, however, provide a general sense of the issues currently being considered. They include:

- a review of the current statutory regime relating to unauthorized disclosures to determine whether gaps exist in the statutory coverage;
- a review of all civil, criminal, and administrative options legally available to be pursued against those who would disclose classified information in an unauthorized manner;
- a survey of current legal procedures that enable the government to bring a case involving an unauthorized disclosure of classified information to court without further damaging

national security, including any potential shortcomings in the current system;

- a study of past legislative proposals and executive orders relating to the issue of unauthorized disclosures to identify benefits or drawbacks of such proposals;
- a review of technological advances available to control and track classified information;
- a study of whether improved agency procedures for responding to press inquiries can assist the government in better protecting its classified information;
- an overview of current processes and procedures required to revoke or suspend security clearances of government employees determined to have engaged in an unauthorized disclosure of classified information;
- a review of current whistle-blower protections to determine whether they are adequate or could be used more effectively to reduce or stop unauthorized disclosures of classified information;
- a study of methods by which certain private sector industries protect against unauthorized disclosures of proprietary information; and
- a review of current nondisclosure agreements for their efficacy at deterring unauthorized disclosures.

This list is by no means exhaustive, but rather is submitted to provide a perspective on the range of issues before the task force.

The deliberations on these and other still developing issues will inform any recommendations that the task force might make in its May 1, 2002, report.

As was the case for the 1982 Willard Report, which was the last comprehensive interagency review of these issues, the current task force is limiting its study to the issue of unauthorized disclosures of classified information to the media. The focus is not, therefore, on other types of unauthorized disclosures such as espionage, unauthorized disclosures of sensitive law enforcement information, or on the negligent handling of classified information.

### C. Conclusion

The task force looks forward to sharing its findings and any potential recommendations in its final report, which is to be submitted no later than May 1, 2002.