# Chapter 42 - Restraining Unauthorized Disclosures of National Security Information

## Why do administrations authorize “leaks” of classified information?

### What were examples from *Alfred A. Knopf, Inc. v. Colby*, 509 F.2d 1362, 1369 (4th Cir. 1975)?

### What is the legal effect of leaking classified information?

## What is a security clearance?

### What is involved in getting one?

### What happened last week to General Petraus?

#### Why does the FBI care if he was having an affair?

#### Why was the used for banning homosexuals from security work?

#### Why might have gotten Turing killed? (Google it)

## United States v. Marchetti, 466 F.2d 1309 (CTA4 1972)

### Who was Marchetti?

### What was his contractual agreement with the CIA?

### What did he do to trigger this case?

### What did the District Court order?

### What does the 1st Amendment prevent?

#### Does that mean you cannot be punished post-publication?

### Why use a contract when you can just threat to prosecute them for leaking classified information?

### Can the contract abrogate the 1st Amendment?

#### What about a contract with a private employer?

### What must the CIA do to avoid the prior restraint problem?

### If the CIA will not approve publication, is there judicial review?

#### What will be reviewed?

#### What could be grounds for reviewing whether a classification decision is proper?

#### Who has the burden of requesting judicial review?

### Was the injunction upheld?

### Would the concurrence allow review of classification decision?

#### By what standard?

## Snepp v. United States, 444 U.S. 507 (1980)

### Who did Snepp work for?

### What did he do to trigger this case?

### What did Snepp promise the CIA in this employment contract?

### Did he comply with this?

### Did the district court find he violated his agreement?

### Did the court find that the publication had caused harm?

### What remedy did the court impose?

### Did the District Court find that the book contained classified information?

### Based on this, how did the Appeals Court modify the remedy?

### Why no punishment?

### What are the ways that publishing unclassified information might threaten the security of the United States?

#### Could it hurt morale?

#### What about trust by informants?

#### What is the mosaic theory?

### Why can’t the CIA just sue him for damages, rather than having the court impose a constructive trust?

### What are other advantages of the constructive trust?

### Did the United States Supreme Court restore the trust?

### Does the dissent accept the theory that publishing unclassified information can hurt the US, and thus could be banned by contract?

### Why do you think the dissent is comfortable with forcing the government to prosecute if it thinks the publication causes injury to the US?

### Notes

#### Could the constructive trust reach the publisher’s profits?

##### Would this be more effective?

##### Is there a 1st amendment right to be paid for publication?

#### What about movies and television?

#### What is the argument against allowing publication of public information that the agent had access to?

## Lifetime Prepublication review

### What does National Security Decision Directive 84 (NSDD 84) require?

### How many people have signed it?

### What are its provisions?

### What is the statutory support for this?

#### Can you identify the source of the President’s authority to promulgate NSDD 84 to cover federal officials and employees other than CIA and NSA personnel?

#### What about civilian contract employees?

### Does any First Amendment right exist with respect to sensitive information that would not have been gained but for the employment?

### Do the agencies always comply with the 30 day review window?

#### What if the information has time value?

### What about telling stories at the bar?

### What happened when Congress attempted to prevent the these agreements from applying to providing information to Congress?