

Security act raises press' hackles

By Sally Hodgkinson
Of the Emerald

Is the new National Security Act a safeguard against overzealous judges or a crack in the dike that protects the First Amendment?

It depends on who's talking.

"Protection of the security of the United States and all its citizens is the first and most solemn duty of every president," Pres. Ronald Reagan said in an April 2 introduction to his executive order. "This order will improve my ability to meet this constitutional obligation."

"This seems to be the most constant attack on press freedoms by a president," counters Steven Dornfeld, president of the Society for Professional Journalists. "It has always been an administration goal to restrict information. This is more restrictive than Nixon's order; Reagan wants to turn back the clock on press freedoms."

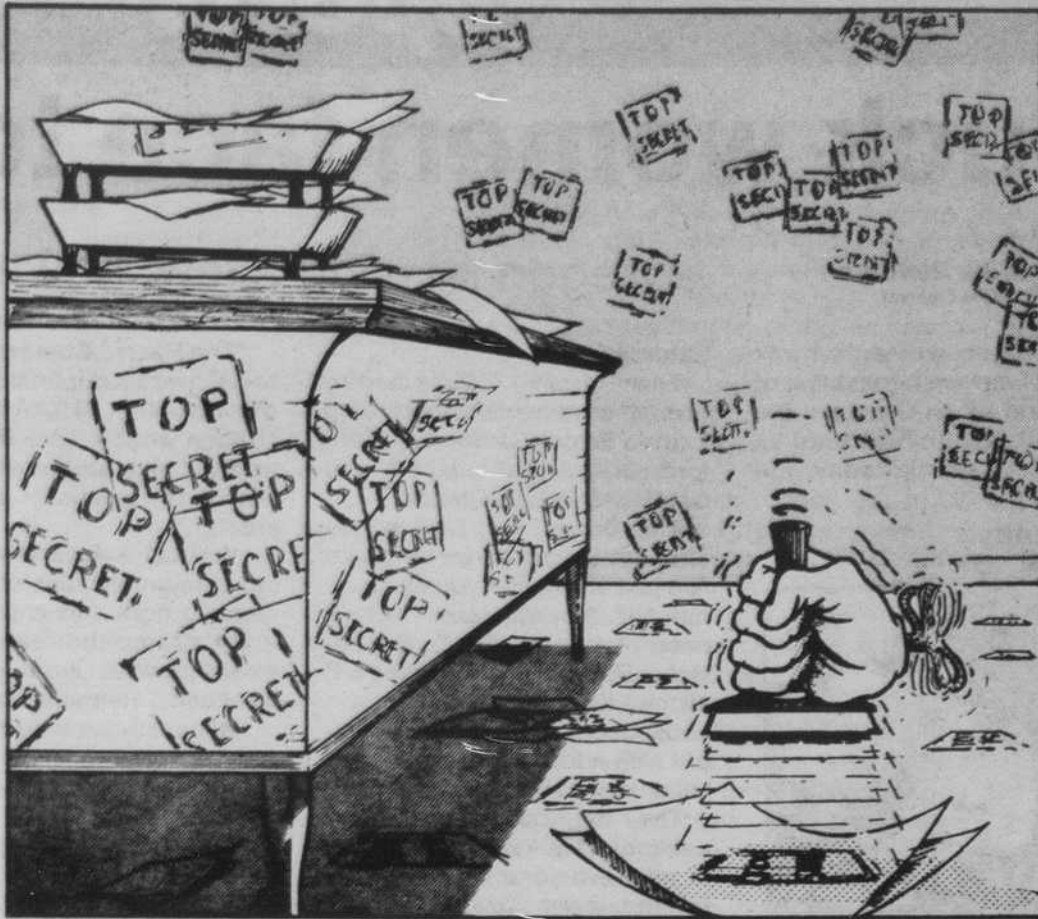
Reagan's order, which replaced a 1978 order by Pres. Jimmy Carter, deletes a clause that requires government officials to identify the security danger before classifying a document. The document can be held in security limbo for a month before a classification decision is made.

The order specifies — as the previous one did — that classification can't be used to conceal violations of the law, hide embarrassing documents or delay release of information that doesn't qualify for classification.

Top Secret is used for documents that are "reasonably expected" to pose "grave danger" to national security if released. Secret is for documents that might pose "serious danger" to national security, and Confidential is used for documents that could pose "damage" to national security.

Reagan's order also deletes a requirement that classified documents be automatically reviewed after six years. It still requires an agency to conduct a "declassification review" when asked. Ninety percent of declassification inquiries result in part or all of the document being released, according to press information accompanying the order.

Although several Congressmen have criticized the executive order, the loudest outcry has come from the press,



Graphic by Michael Schafbuch

which has classified the order as a "secrecy act" that will allow bureaucrats to hide information not directly related to national security.

The executive order is "a real blow against all kinds of press freedoms" that have been granted since the Eisenhower Administration, says Dornfeld.

Before the Freedom of Information Act was passed in 1966, government officials could refuse to release almost any information. "The motto was 'When in doubt, don't give out,'" Dornfeld said. Classification is one of nine exemptions within the FOIA.

But even after the FOIA was passed, government officials could hide almost anything they wanted by classifying, says Mark Abrams, a University journalism professor.

The FOIA's exemption for classified material was so ambiguous that it "allowed people to buy a stamp that said 'security' and go wild," says Abrams, who teaches press law. "If it was a bit embarrassing — bang! — it was stamped

secret."

Carter's 1978 National Security Act clarified classification and tightened up the guidelines, Abrams says. "It was desperately needed."

Now, most reporters can get information released under the FOIA without having to file an official request, Dornfeld says. A FOIA inquiry is used only if the agency is failing to administer the law or if the issue is in a gray area, he adds. "A reporter shouldn't have to file a FOIA request."

FOIA requests that challenged classification are one of the main reasons the order was revised, says a senior White House official.

"Such litigation places some of our most sensitive information in jeopardy," he says. "The problem we had was that some plaintiffs were trying to get judges to decide for themselves whether something should or should not be classified, rather than leaving this decision to be made by the executive branch where it properly belongs."

"What we're really talking about is improved protection for properly classified information."

Judges should decide if documents are properly classified under executive order guidelines, not determine the validity of the order, the official says.

"The executive branch has much more information about whether widget production in Patagonia would or would not damage the national security," he says.

"The burden still remains on the government to prove that the documents are properly classified under the executive order. The burden of proof doesn't change, it just becomes lighter," he says.

Although there have been some court challenges over classification under the Carter order, the government has never lost a case. "That's right, and we want to keep it that way."

The official says the order doesn't allow more documents to be classified; it better protects those that are classified. "It's easier to justify the classification."

Were there any instances under the previous order in which information was released that damaged national security? "Sure, but we're not going to talk about it."

Sensitive military, technological and financial information should be classified, but too often simply embarrassing information is protected, says Abrams. "Giving the government a black eye is not harming the country."

And under the new order, that balance is out of whack, says Dornfeld, adding that legislation to challenge the act is being developed by Sen. David Durenberger, R-Minn.

Is the media over-reacting? No, says Dornfeld. Maybe, says Abrams.

"This is no little thing," Dornfeld said. "If we don't cry wolf, no one else would. We're not just concerned for ourselves. A free press is essential in a free society. When we lose access to information, the public loses too."

"We scream wolf too often," Abrams says. "The order's going to hurt us, but it's not a crippling blow. It's a big, black-and-blue mark."

Abrams pauses, considering what he just said. Then he shrugs. "But on the other hand, how upset do you get over a crack in a dike?"

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