

*Chapter 2.*

***CLASSIFICATION IN THE UNITED STATES  
PRIOR TO WORLD WAR II***

World War II (WWII) had a major effect on the classification and control of information in the United States. Throughout most of our country's early history until WWII, the government's concern with protecting information had been mostly limited to a relatively small amount of information closely related to military and diplomatic matters. The breadth and depth of security classification of information in the United States significantly expanded during and after WWII. For example, not until WWII was secrecy widely imposed by the government on scientific and technical information. Since WWII, it has not been unusual for scientific and technical information to be classified by the government.

The first executive order (EO) dealing with classification was issued in 1940, shortly after WWII began in Europe. The first statute dealing with information classification, the Atomic Energy Act, was enacted in 1946 shortly after WWII ended. That statute defines "Restricted Data," which is the most stringently protected category of classified information that currently exists in the United States.

This chapter reviews classification in the United States preceding WWII (before EOs dealing with classification of information and before the Atomic Energy Act). Control of "defense information" by the U.S. Army and Navy in peacetime began to be implemented, although not significantly, shortly after the Civil War. Such control proceeded slowly, and it was not until after the U.S. entered World War I (WWI) that all the basic elements of a security classification of information system and an information-protection system were incorporated into Army and Navy regulations. The system that was adopted by the U.S. borrowed heavily from the British and French systems as they existed in 1917, especially the British system. Therefore, one subsection in this chapter discusses the British classification system as it developed from about 1853 until 1914. The French system is also briefly discussed in another subsection. The changes in the Army and Navy's classification systems from the end of WWI until the start of WWII are discussed in some detail in this chapter. (The fact that Army and Navy regulations issued in certain years are mentioned in this chapter is not meant to indicate that similar regulations were not issued in other years.) The Army and Navy classification systems as they existed at the start of WWII were the foundation for the classification and information-protection systems used during the Manhattan Project. They also provided the foundation for the first EO on classification of information. Subsequent chapters discuss classification under EOs and under the Atomic Energy Acts of 1946 and 1954.

## COLONIAL TIMES THROUGH THE CIVIL WAR

Restrictions on the dissemination of information related to the military and its operations have existed since the beginnings of our country. During the Revolutionary War, the 1775 Articles of War prohibited unauthorized correspondence by soldiers of the Continental Army with an enemy.<sup>1</sup> Those wartime regulations were directed primarily to military personnel and were limited to the control of military information. They were probably taken from similar British Army and Navy regulations.<sup>2</sup> Further, “laws of war” that have been accepted for millennia have always allowed harsh penalties for civilian spies in times of war.<sup>3</sup> This is, in essence, governmental control of civilians with respect to military information possessed by those civilians (i.e., government protection of national defense information possessed by civilians). Penalties imposed on spies presuppose that there is certain information (i.e., “national defense” or “national security” information) that, when provided to an enemy, would cause damage to the nation. Government censorship has also been established during times of war.

Some of the first instances of civilian governmental control of information in the America were by the Continental Congresses (1774–1789). Members of the First Continental Congress (1774) were requested to keep the proceedings secret, in accordance with the following resolution, which was passed by that Congress on September 6, 1774, its second day of business:

Resolved, That the doors be kept shut during the time of business, and that the members consider themselves under the strongest obligations of honour, to keep the proceedings secret, untill [sic] the majority shall direct them to be made public.<sup>4</sup>

However, at the end of the First Continental Congress, its proceedings were ordered to be published.<sup>5</sup>

The Second Continental Congress also requested its members to keep the proceedings secret. A resolution nearly identical to that adopted by the First Continental Congress was passed on May 11, 1775,<sup>6</sup> the second day of business of the Second Continental Congress. A more detailed resolution to that effect was passed on November 9, 1775, as follows:

On motion made, Resolved, That every member of this Congress considers himself under the ties of virtue, honor and love of his country not to divulge directly or indirectly any matter or thing agitated or debated in Congress before the same shall have been determined, without leave of the Congress; nor any matter or thing determined in Congress which a majority of the Congress shall order to be kept secret and that if any member shall violate this agreement he shall be expelled this Congress and deemed an enemy to the liberties of America and liable to be treated as such and that every member signify his consent to this agreement by signing the same.<sup>7</sup>

This Congress also, at an early date (July 25, 1775), authorized a committee to “revise” the “Journals of the Congress, and prepare it for the press.”<sup>8</sup> Apparently, not all of those proceedings were initially made public, since in November 1775 the Congress authorized further publication of its proceedings and asked the committee responsible for this matter “to examine whether it will be proper yet to publish any of those parts omitted in the journal of the last session.”<sup>9</sup> Later, the proceedings of each day’s meeting began to be reviewed and revised by the Congress on the following day and sent to

the press.<sup>\*10</sup> Congress began to publish its proceedings on a periodic basis in 1777,<sup>11</sup> with weekly publication in 1779.<sup>12</sup>

The Second Continental Congress established two “secret” committees, the “Secret Committee” and the “Committee of Secret Correspondence.” The Secret Committee was established on September 18, 1775,<sup>13</sup> and dealt mainly with the purchase of weapons, ships, and other war materials—“national defense” matters. The Committee of Secret Correspondence was established on November 29, 1775,<sup>14</sup> for the purpose of corresponding with “friends” in other parts of the world—“foreign relation” matters. This committee later became known as the “Committee for Foreign Affairs.”<sup>15</sup> Thus, at an early date, the Second Continental Congress had established committees dealing with national defense and foreign relations and had acknowledged the importance of secrecy in certain military and diplomatic activities. Those activities, usually the responsibility of a government’s executive branch, were the responsibility of the Continental Congress because at that time there was no executive branch of our government.

The Articles of Confederation, proposed by the Continental Congress in 1777 and ratified by all the colonies by 1781, explicitly recognized the need to keep secret certain information concerning military and diplomatic activities. Those articles specifically excluded from publication in the journal of the Continental Congress those parts of their proceedings “relating to treaties, alliances, or military operations, as in their judgment require secrecy”<sup>16</sup> (that is, those matters normally handled by a government’s executive branch). The Articles of Confederation did not provide for an executive branch of government. Although the Continental Congress gradually established a policy of openness in its proceedings, this openness did not extend to all its activities. A separate, secret journal was kept for congressional votes and official actions on certain matters.<sup>11</sup>

The secrecy of communications to the Continental Congress from its envoys to Europe was initially determined by the Congress on a case-by-case basis.<sup>17</sup> Then, in 1784, the Congress decided that this correspondence should be secret until authorized for release by the Congress:

Ordered, That all letters from the ministers of these United States in Europe, be considered, at all times, as under an injunction of secrecy, except as to such parts of them as Congress shall, by special permission, allow to be published or communicated.<sup>18</sup>

Perhaps this was the first application of the “born classified” principle in the United States.

The 1787 Constitutional Convention determined that its proceedings were to be protected by secrecy.<sup>19</sup> The delegates believed that “secrecy was needed to protect the convention from outside pressures until a complete plan could be developed.”<sup>20</sup> It has been reported that General Washington, the presiding officer of the convention, reprimanded the convention’s delegates when one delegate was careless with a copy of the convention’s proceedings (i.e., it was found on the floor of the

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\* It is not clear whether the resolution of Congress directed that the revised minutes be printed (e.g., for the use of Congress) or sent to the press (e.g., newspapers). The pertinent resolution and order are as follows: “Resolved, That on the meeting of Congress, half an hour every morning be employed in reading the corrected copy of the journal, till the whole is gone through.” “Ordered, that the journal, as corrected, after being read, be transcribed, in order to be sent to the press” (*Journals of the Continental Congress, 1774-1789*, 3, 1775, U.S. Government Printing Office, Washington, D.C., 1905, p. 427).

convention hall) and endangered the secrecy rule.<sup>21</sup> The Constitutional Convention's records were finally published in 1819, as directed by an 1818 joint resolution of Congress.<sup>22</sup>

The U.S. Constitution mentions secrecy only once. Article I, Sect. 5, authorizes the House and Senate to publish the journal of their proceedings, "excepting such Parts as may in their Judgment require Secrecy." This section was derived from a similar provision in the Articles of Confederation, as mentioned earlier.

The delegates to the Constitutional Convention assumed that secrecy was necessary for certain military and diplomatic information. They provided for secrecy in national security affairs by giving the leading role in those matters to the president, "whose activities would not in the ordinary course be made public."<sup>23</sup> Since Congress was generally expected to publicize its proceedings, the Constitution's framers thought that an explicit congressional power of secrecy should be mentioned in connection with its special activities concerning foreign relations and military matters, hence the provisions of Article I, Sect. 5.<sup>23</sup> In the debates during the framing of the Constitution and preceding its adoption, proponents of the wording that was finally approved maintained that the "exceptions" to normal publication of the proceedings encompassed only military and diplomatic information, as was explicitly stated in the Articles of Confederation.<sup>24</sup>

Since our nation was founded, presidents have used their implied Constitutional authority to control the dissemination of information related to national defense and foreign relations. The Supreme Court and Congress have acknowledged this implied authority as necessary for presidents to execute their responsibilities under Article II, Sect. 2, of the Constitution as commander-in-chief of the nation's armed forces and as the chief executive responsible for the conduct of foreign relations.<sup>25</sup> An early instance of a president's use of this authority to restrict the dissemination of information occurred in January 1790, when President Washington transmitted information about negotiations with some southern tribes of Indians to Congress as a "confidential communication."<sup>26</sup> Later that year the president sent to the Senate a proposed secret article to a treaty with the Creek Indian nation.<sup>27</sup> Subsequently, it was not unusual for certain military or diplomatic communications to be designated as "confidential."<sup>28</sup>

Executive departments of the government have controlled the access to their documents by authority of "housekeeping" statutes. Statutes establishing those departments generally provided a legal basis for them to control (e.g., withhold from the public) and preserve their records, papers, and other documents.<sup>29</sup> The first executive department, the Department of Foreign Affairs (later renamed the Department of State), was established by statute on July 27, 1789.<sup>30</sup> Section 4 of that statute stated that the Secretary for the Department of Foreign Affairs shall "be entitled to have the custody and charge of all records, books and papers in the office of Secretary for the Department of Foreign Affairs." Other similar statutes were enacted, as necessary, when additional executive departments were created. Those were combined into one statute in 1875, which was last amended in 1966 and is now codified at 5 U.S.C. Sect. 301.\* This statute serves only as a basis to control access to some

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\* The head of an executive department or military department may prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. This section does not authorize withholding information from the public or limiting the availability of records to the public" (5 U.S.C. Sect. 301)

information, not to classify that information. Further, this statute does not serve as the basis for an exemption to a Freedom of Information Act (FOIA) request for information.

Between the Revolutionary War and the Civil War, certain governmental documents were given special markings to aid in restricting their distribution. Governmental use of the terms “Secret,” “Confidential,” and “Private” has been traced back to the War of 1812.<sup>31</sup> As mentioned earlier, President Washington designated some documents as “Confidential” or “Secret” as early as 1790, and other terms were also probably used prior to 1812. However, those words were used in their ordinary language meaning to advise the recipient of a document that the information contained therein was sensitive. Such usage had been common for a long time in private, commercial, and governmental correspondence. Those words were not used as part of a governmental security classification of information system.

Even during the Civil War, there was no official system of secrecy.<sup>32</sup> Most of the control of information during the Civil War appears to have been limited to the “war zones,” which were within the jurisdiction of military commands. Sometimes, reporters were allowed easy access to military secrets, and at other times severe measures were taken to preserve or emphasize secrecy. In some instances, newspapers were seized or suppressed by the Union Army.<sup>33</sup> One general was advised by President Lincoln on how to deal with control of information as follows:

You will only arrest individuals and suppress assemblies or newspapers when they may be working palpable injury to the military in your charge, and in no other case will you interfere with the expression of opinion in any form or allow it to be interfered with violently by others. In this you have a direction to exercise great caution, calmness, and forbearance.<sup>34</sup>

This quotation indicates that restricting the dissemination of information was not a matter to be implemented casually by the government. Although President Lincoln suspended habeas corpus and authorized censorship of mail and suppression of some newspapers, most information concerning the war was readily available to the public, as Lincoln indicated in his second inaugural address when he said, “The progress of our arms, upon which all else chiefly depends, is as well known to the public as to myself.”<sup>32</sup>

The mid-19th century, around the time of the Civil War, was a turning point in the application of the technologies of the industrial revolution to warfare,<sup>\*35,36</sup> which led to concerns about protecting this information from dissemination to adversaries. According to one author, protecting information on military technologies was not important before the 1860s because prior to that time it had not been demonstrated that new scientific and technical advances would significantly change the means and ways of waging war.<sup>37</sup> However, by the mid-19th century, earlier technological developments of the industrial revolution, for example, the steam engine, advances in iron and steel metallurgy, and the establishment of a machine industry, began to find significant military applications. Those developments led to much-improved weapons systems (e.g., armored warships, steam propulsion, propellers, breech-loading naval guns and artillery, slow-burning

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\* The period from 1840 to 1884 has been characterized as the “initial industrialization of war” (W. H. McNeil, *The Pursuit of Power: Technology, Armed Force, and Society Since A.D. 1000*, University of Chicago Press, Chicago, 1982, pp. 223–262). The American Civil War was characterized as the “first full-fledged example of an industrialized war” (McNeil, p. 242). During the latter part of the 19th century, the first military-industrial complexes were formed in Europe (McNeil, pp. 262-306).

powder, nitrocellulose explosives, and mass-production methods), which were products of scientific research and increased industrial strengths. Some of those new developments, such as railroads, telegraphy, observation balloons, and electrical firing of explosives were used to great effect during the Civil War. The development and effective use of mines by the South in the Civil War was a particularly effective new technology that was adopted by European nations during and after that war. Thereafter the recognition that military advantages from those developments would be diminished if essential information concerning them was acquired by an enemy became increasingly widespread.\* It was certainly obvious that such information should be protected from an actual enemy, but it is of interest that after the Civil War some nations became concerned about protecting such technological information in peacetime.<sup>38</sup>

Another factor in applying technology to warfare was the increased participation of scientists in the development of weapons systems.<sup>†</sup> In earlier days of modern science, most scientists had generally been averse to using their expertise to develop weapons of war.<sup>39</sup> However, this began to change in the late 18th century.<sup>‡</sup> The French mobilized their scientists and engineers during the French Revolution, and during the wars that occurred shortly thereafter, to assist in developing and producing weapons.<sup>40</sup> This was, perhaps, the first significant use of scientists, as scientists, to help in a war. In March 1863, during the Civil War, the National Academy of Sciences was granted a federal charter with a responsibility to provide expert scientific advice to the government, some of which presumably would be of use in warfare.

## POST-CIVIL WAR UNTIL WORLD WAR I

### Classification in Britain, 1853-1914

As mentioned in the first part of this chapter, all of the essential elements of a security classification of information system, including an information-protection system, were not adopted by the U.S. Army and Navy until some months after the U.S. entered WWI in April 1917. Although some elements of such a system had gradually been implemented by the Army and Navy after the Civil War, a complete system was not in place until after WWI had started. That system, when established, borrowed heavily from British and French systems, especially the British system.

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\* "After 1866 and 1870, everyone (the rival European nations) recognized that some newly won technical superiority might bring decisive advantage in war" (W. H. McNeil, *The Pursuit of Power: Technology, Armed Force, and Society Since A.D. 1000*, University of Chicago Press, Chicago, 1982, p. 292).

† H. D. Smyth has mentioned the gap, throughout much of history, between science (discovery, based on "scientific methods") and technology (use of empirical methods to "apply" the discoveries) [H. D. Smyth, "The Place of Science in a Free Society," *Bull. At. Sci.* **6**, 180, 181 (1950)]. This situation changed in the latter part of the 19th century, when technological advances began to depend more upon those who also understood the science. By the time of World War I, chemists and physicists went directly from their peacetime laboratories into war work, such as gas warfare, sound ranging, wireless communication, etc. In World War II, fewer than 7 years elapsed between the time of a fundamental scientific discovery (nuclear fission) and its military application (the atomic bomb dropped on Hiroshima).

‡ Additionally, during the 18th and 19th centuries, the "civilized" traditions of warfare began to be severely eroded (B. and F. M. Brodie, *From Crossbow to H-Bomb*, Indiana University Press, Bloomington, Ind., 1973, pp. 100-101, 105, 106, 110, 118), and universal conscription, through which wars closely affected most of the populace of warring nations, including scientists and their families, began to be implemented (B. and F. M. Brodie, p. 101).

The first “formal or organized” use of a security classification of information marking by a governmental entity was said to be by the British War Office during the Crimean War (1853-1856).<sup>41</sup> Starting in 1853, that War Office compiled a series of documents for use by the Cabinet and marked most of those documents as “Confidential,” “Private Confidential,” or “Secret and Confidential.”<sup>42</sup> This use of a specified marking represents one element of a security classification of information system. However, no other element of such a system (e.g., with respect to allowed recipients, document handling, etc.) accompanied those marked documents.

British Army regulations were published from time to time as *Queen’s Regulations and Orders for the Army* (QROA) or *King’s Regulations and Orders for the Army* (KROA). The first use of “confidential” in such a publication was in 1868 with respect to the duties of an officer to turn over to his successor “all official books and documents, confidential and otherwise.”<sup>43</sup> That same issue of the QROA directed Commanding Officers to:<sup>44</sup>

... prevent [his subordinates] publishing information relative to the numbers, movements, or operations of troops . . . any officer or soldier will be held personally responsible . . . for placing information beyond his control so that it finds its way into unauthorized hands.

This regulation designated certain information as sensitive and specified punishment (discipline) for not following the regulations concerning protection of that information. These are two more of the elements of a security classification of information system, but were not otherwise part of such a system. Another section of the 1868 British Army regulation specified who should have access to official information: “Access to official records is only permitted to those who are entrusted with the duties of the office or department to which they belong, . . . .”<sup>45</sup> This “need-to-know” limitation is another element of a security classification of information and information protection system.

The new developments in weapons technology in the mid-19th century were initially not especially protected.<sup>46</sup> Mines and torpedoes were the first new weapon technologies to be recognized as representing a significant advance in warfare such that information about them was worthy of special protection.<sup>47</sup> The first use in Britain, in peacetime, of a security classification of information marking on a document concerned with military equipment development was said to be an 1866 report on mines and torpedos.<sup>48</sup>

The torpedo, or “fish-torpedo” or “automobile torpedo” as it was sometimes called, was said to be the “greatest secret of the immediate post-Civil War period.”<sup>49</sup> It was invented by an English engineer, R. Whitehead, who sold the secrets of its manufacture and use to France, Austria, Britain, and other countries. British manufacture of this torpedo was said to be carried out under such secrecy that “the entire principle of the invention is known only to the three or four officials who superintend its construction.”<sup>50,\*</sup>

British experiments in the 1870s on how to sink double-bottom ships, which were then possessed only by Britain, provide another example of protecting information on weapons technology. The presence of observers from other nations at those experiments caused a public outcry in England because those observers, some of whom represented potential enemy nations,

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\* The first example of “compartmentalization” of information?

could thereby learn the vulnerabilities of British ships.<sup>51</sup> One response was an 1878 proclamation by Queen Victoria that forbade the export of torpedoes or related materials.<sup>52</sup> However, the information on how to construct such hardware was not controlled.\*

In the 1880s, Britain further recognized the need to protect weapons technology. In awarding contracts to produce a new design of torpedo, the British Admiralty awarded separate contracts, to different companies, for the different torpedo components.<sup>53</sup> The rationale was that this separation (i.e., compartmentalization) would prevent any single nongovernmental employee from knowing all the information required to build the torpedo. The chance that a foreign government could obtain this information was thereby diminished.<sup>54</sup>

In February 1889, the British Army issued “Orders to Regulate Admission to the National Defences, Position-Finding Stations, and Submarine Mining and Torpedo Establishments.”<sup>55</sup> The guiding principles were “Those who have no business in the works should be denied access to them” and “Generals and other Commanding Officers are responsible that no unauthorized persons gain admission.”<sup>56</sup> These were said to be the first British actions to protect facilities related to the national defense in peacetime.<sup>57</sup> Note that the first British Official Secrets Act (“Official Secrets Bill”) was passed a few months later in August 1889. That Act included prohibitions concerning making sketches of English fortresses, ships of war, camps, etc.<sup>58</sup>

British Army regulations of 1892 used the word “secret” for the first time, in a section of the regulations concerning correspondence:<sup>59</sup>

Correspondence . . . will be dealt with by the Director of Military Intelligence . . . .  
Confidential or semi-official communications should be enclosed in an inner envelope, marked secret or confidential, according to the nature of the contents, and addressed to the Director of Military Intelligence.

Meanings for the words secret or confidential were not provided. However, it is of interest that the regulation provided direction in wrapping these communications - ‘enclosed in an inner envelope.’ In 1893, regulations provided that “all letters of a confidential nature are to be marked “confidential” both on the letter itself and on the envelope; and all confidential plans or other documents forwarded separately as enclosures or otherwise, are to be similarly treated.”<sup>60</sup>

British Army regulations of 1894 are said to mark a turning point in classification markings. Those 1894 regulations also contained the first formal reference to “Secret” as a classification marking:<sup>61</sup>

All letters of a secret or confidential nature (See Section XXII, paragraph 1) are to be marked “Secret” or “Confidential” as the case may be. Such letters should be enclosed in two envelopes, of which the inner one only should be marked “Secret” or “Confidential” and the outer one should be inscribed with the address only. Confidential plans and other documents are to be similarly treated.

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\* Actually, Britain couldn’t control it, since the inventor of the modern torpedo, R. Whitehead, had factories in a location that was then controlled by Austria. Whitehead was selling those torpedoes to any and all purchasers, one of the first of which was Britain (E. Gray, *The Devil’s Device*, Seeley, Service, London, 1975).

Clarification of the meanings of the words was found in Section XXII, paragraph 1, of those regulations:

1. The term “document” includes books, maps, letters, papers, and drawings. All official documents are in a sense private, and can only be dealt with on the responsibility of the individual charged with them, but their privacy varies with their contents, and when special privacy is necessary they will be inscribed “Secret” or “Confidential.”\*

A document marked “Secret” is intended only for the personal instruction of the individual by whom in due course it may be received, and its contents are only to be disclosed to those whose duties require that they should be aware of them. It must be kept in the personal custody of the recipient and under lock and key.

A document marked “Confidential” is of a privileged nature. The contents are only to be disclosed to authorised persons, or in the interests of the public service.

No secret or confidential documents are to be used by any individual for private purposes, literary or otherwise, nor are they to be referred to in any catalogue or publication which is not of itself a secret or confidential document. Every secret document issued from head-quarters will bear two numbers, of which one, on the left hand lower corner of the cover or first page, is the particular mark of the document, and the other, at the top of the cover or first page, is the serial number of the copies issued of that document. By these two numbers every copy can be identified. Every officer to whom a secret document is issued will be required to give a receipt for it on Army Form A 2,000.

\*All such expressions as “Very Confidential,” “Strictly Confidential,” &c., are to be discontinued.

All persons were required to be familiar with the British Official Secrets Act of 1889.<sup>62</sup> Other parts of the 1894 Army regulations specified how documents were to be handled and mailed and, with the mention of the punishment of the Official Secrets Act, constituted a complete security classification of information system for the British Army.<sup>63</sup> [Assuming that the regulations specified who had authority to affix the markings to documents.]

A system of receipts for classified documents was added to the 1898 British Army regulations.<sup>64</sup> A reference to the Navy appeared in 1904:<sup>65</sup>

A confidential document issued by the Admiralty, marked “Not to be communicated to officers below the position of C.O. of His Majesty’s Ships” is to be treated as “Secret” if issued to officers of the Army, and must be so endorsed upon receipt.

“For Official Use Only” was introduced as a classification marking in the British Army in 1909:<sup>66</sup>

The information contained in a document or map marked “for official use only” is not to be communicated to the press nor to any person not holding an official position in His Majesty’s Service.

A British Army Order of 1914 removed documents marked “for official use only” from those

documents which might be referred to only in a similarly classified document.<sup>67</sup> That restriction still applied to secret and confidential documents.

Brief mention will be made of classification of information in the British Navy. It has been said that the British Navy [in the 19th century] “seemed always to be behind the Army in accepting new ideas.”<sup>68</sup> 1879 Admiralty instructions mentioned “Secret” as a marking for Private Signals (code) books,<sup>69</sup> and “confidential Gunnery and Torpedo Books” were mentioned in 1887,<sup>70</sup> which is perhaps the first statement of protection of “technical defense information” in the British Navy.<sup>71</sup> Earlier, in 1883, an Office Memorandum from the Secretary of the Admiralty had provided detailed instructions with respect to preparation, labeling, and record-keeping for confidential papers.<sup>72</sup> Space on a document was provided for numbering that document, directions for numbering were given, document distribution records were to be maintained, recipients were personally responsible for protecting those documents, and provisions were made for canceling a document’s marking (with the cancellation being initialed by the person taking the action).<sup>73</sup> General Order G 4356 of 1894 included a section that stated that “all confidential books are to be carefully locked up when not in use.”<sup>74</sup> Regulations listed in 1906 provided guidance regarding personnel who were to be allowed access to documents with certain markings (“confidential” -- Commanding Officers of His Majesty’s Ships only, and those officers above in rank; “for the use of Officers in His Majesty’s Service only” -- Naval Officers; and “for use in His Majesty’s Navy only” -- seamen performing signal duties).<sup>75</sup> The Navy definition of “confidential” had first appeared in 1901 (Admiralty Order M 17825) and had been used by the Army by 1902.<sup>76</sup>

The classification systems of the British Army and Navy were incorporated into a uniform system in 1913.<sup>77</sup> The Navy classification markings “confidential,” “for the information of Officers in His Majesty’s Service only,” “for use in His Majesty’s Navy only,” and “non-confidential” were eliminated and replaced by the Army’s: “secret,” “confidential,” and “for official use only.”<sup>78</sup> Not only were the markings changed, but their definitions were changed from the prior Navy use, where access to marked documents depended upon rank, to a system where the definitions mentioned importance of the information contained in the document (“Instructions on Defence Matters” vs. information of a less confidential nature) as well as upon rank.<sup>79</sup> The Navy committee recommending use of the Army’s marking system and new definitions for the markings also recommended using different-colored paper for the different classes of documents; however, that suggestion was vetoed by the Army.<sup>80</sup> The Navy committee also recommended printing on the title page of a classified book the admonition:<sup>81</sup>

Attention is called to the penalties attaching to any infraction of the Official Secrets Act.

This recommendation was subsequently adopted.<sup>82</sup>

### **Classification in France, 1900 - 1917**

The French Army and Navy document classification systems date from 1900 and were little changed between that time and 1917.<sup>83</sup> Two markings were used, “Secret” and “Confidentiel.” The instructions of the French Navy were said to be more detailed and more stringent (a secret document could not be copied) than those of the Army; also, in 1909 the Navy changed its regulations from a system where receipt of classified documents was based on rank to a system that classified a document based on its contents.<sup>84</sup> In 1913, it was discovered that French Courts did not apply the French espionage laws to Confidential documents; therefore, the Navy’s classification regulations were

changed so that “Secret” was to be applied to documents that directly affected the security of the state and only to such documents.<sup>85</sup>

### **Classification in the U.S. Army, Civil War Until 1917**

After the Civil War, the U.S. Army and Navy initiated some activities that recognized the importance of military information (“intelligence”). Military attachés were assigned to many U.S. embassies. Formal Navy and Army intelligence branches were established in 1882<sup>86</sup> and 1885,<sup>87</sup> respectively.

The first peacetime governmental directives that were concerned with the protection of information were issued in 1869. In that year, the Army issued an order restricting the availability of certain information on Army forts. The regulation prohibited photographs or other views of those forts except with the permission of the War Department:<sup>88</sup>

Commanding officers of troops occupying the regular forts built by the Engineer Department will permit no photographic or other views of the same to be taken without the permission of the War Department.

The substance of the 1869 Army order concerning information on Army forts was continued in other regulations until 1897, when worsening relations with Spain, prior to the Spanish-American War, led to an expansion in the scope of those regulations.<sup>89</sup> In March 1897, an Army order was issued that included restrictions on who could visit lake and coastal defense facilities, as well as restrictions on information (including photographs and other views) about those facilities that was included in earlier orders:<sup>90</sup>

No person, except officers of the Army and Navy of the United States, and persons in the service of the United States employed in direct connection with the use, construction or care of these works, will be allowed to visit any portion of the lake and coast defenses of the United States, without the written authority of the Commanding Officer in charge.

Neither written nor pictorial descriptions of these works will be made for publication without the authority of the Secretary of War, nor will any information be given concerning them which is not contained in the printed reports and documents of the War Department.

Note that in 1889 the British Army had issued an order regulating admission to similar facilities.

This U.S. Army Order of March 1897 was revised slightly in August 1897. Revisions included a statement that special authority granted by the Secretary of War to visit these defense works was “limited to United States Senators and members of Congress, their public duties requiring them to take official action on matters connected therewith, and to the Governor (or his Adjutant General) of the State in which the works are located, as commander-in-chief of the local militia instructed there.”<sup>91</sup> Revisions also required that other permission to visit these facilities be “only given for proper military reasons” or “only as may be warranted for good and sufficient military reasons.” The 1869 regulation and its successors were applicable only to the armed services and their internal documents and communications.

In October 1907, the Army's Chief of Artillery sent a letter to The Adjutant General, War Department, concerning the use of the word "confidential."<sup>92</sup> The letter called attention to the "considerable confusion and misunderstanding" that existed concerning confidential publications and communications. "The result of this is that officers receiving 'Confidential' communications must, of necessity, use their own judgment as to what extent the information therein shall be guarded; and there is great difference of opinion in this matter." The letter suggested some plan be devised by which:

- (a) Confidential communications should be classified according to the nature of their contents and the degree of confidentiality that is to be observed.
- (b) Whenever practicable to do so, a time limit should be affixed after which communications or publications will no longer be considered confidential.
- (c) An annual return should be made by officers of all confidential publications in their possession on which no time limit has been placed, or upon which the time limit has not expired.

The letter also suggested the following classes of confidential communication:

Class I. For the sole information of the person to whom it is addressed, unless some military necessity should exist for its being communicated to others, in which case the person to whom it is addressed assumes responsibility for such communication.

Class II. For the sole information of commissioned officers of the Army, Navy, and Marine Corps, unless some military necessity should exist for its being communicated to others, in which case the person to whom it is addressed assumes responsibility for such communication.

Class III. For the sole information of officers, enlisted men of the Army, Navy, and Marine Corps, and civilian employees of the United States, unless some military necessity should exist for its being communicated to others, in which case the person to whom it is addressed assumes responsibility for such communication.

Class IV. Semi confidential, the only restriction being that it will not be given to the public or to the press.

Thoughtful discussion appears to have ensued following the Chief of Artillery's communication. A November 12, 1907, memorandum for the Acting Secretary of War reviewed the situation.<sup>93</sup> The suggestion of fixing in advance a time limit for considering a document as confidential was thought to be impracticable. The suggestion of annual returns (annual inventory) was thought to be not necessary and would complicate matters. Some of the other suggestions were adopted in a War Department circular issued on November 21, 1907. That circular provided the following regulations with respect to use of the word "confidential" and related matters.<sup>94</sup>

1. Hereafter the word "confidential" will not be placed on any communication from the War Department, except where the subject-matter is intended for the sole information of the person to whom addressed. If some military necessity should exist therefor [sic] the contents of such a communication may be made known to others, but the person to whom the communication is addressed must assume all responsibility for taking such action.

2. When the contents of any publication, document, communication, map, drawing, or blueprint are intended for the information of a certain class or classes of individuals and not for the public at large it will not be marked confidential, but a statement printed or written, indicating to whom the contents may be disclosed will be furnished. Persons receiving such a publication, document, communication, map, drawing, or blueprint will exercise due care that its contents are not imparted to any unauthorized person.

3. The following publications will not be considered confidential in the future: [Five documents were identified. Were those the first “official” declassifications?]

4. Mimeographs, bulletins, printed circulars, or blueprints, marked “confidential,” which have been issued in the past by the different bureaus of the War Department for distribution to certain officers, are for the use of officers and enlisted men and civilian employees of the United States when necessary in connection with their work. [Was this the first “bulk” declassification?]

This War Department circular was mostly concerned with using the “confidential” marking to limit a document’s distribution (i.e., to specify who could read it) and not to “classify” its contents.

In 1912, the War Department provided regulations for marking and safeguarding certain documents, mostly concerning coastal defenses and other fortifications, as “Confidential.” Documents so marked were to be kept under lock, to be uniquely numbered,<sup>\*</sup> to be periodically inventoried,<sup>\*</sup> and not to be copied except by the issuing office<sup>†,95,96</sup> These regulations possibly reflect the earliest use of a numbering system and periodic inventory requirements for classified United States documents. (British Army regulations of 1894 required that Secret documents be numbered. See a previous subsection.)

A May 19, 1913, memorandum from the Office of the Judge Advocate General, War Department, prescribed packaging requirements for confidential communications.<sup>97</sup> Those requirements applied to all confidential communications including those transmitted by mail, telegraph, or messenger. The communication was to be double wrapped or enclosed, with the inner “sealed envelope or wrapper addressed in the usual way, but plainly marked CONFIDENTIAL in such manner that the notation may most readily be seen when the outer cover is removed.” The outer envelope or wrapper was to be addressed in the ordinary manner, with no indication of the nature of its contents. (British Army regulations of 1894 specified similar wrapping requirements.)

In 1916, further regulations of the War Department described “double wrapping” of confidential communications.<sup>‡</sup> The inner envelope was to be marked “CONFIDENTIAL.” The outer wrapper was to be addressed in the normal manner, with no special notation indicating its contents.<sup>98</sup>

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<sup>\*</sup> The Department of Energy requires each Top Secret document and some Secret documents and other matter to be uniquely numbered and periodically inventoried [DOE M 471.2-1B, *Classified Matter Protection and Control Manual*, U.S. Department of Energy, Office of Security Affairs, Office of Safeguards and Security, Ch. II, Sects. 4.a, 4.c.(3), and 4.d, Washington, D.C., Jan. 6, 1999].

<sup>†</sup> The Department of Energy used to have similar requirements for Secret and Top Secret documents. Approval of the originator is no longer generally required [DOE M 471.2-1B, Ch. II, Sect. 5.a(1)].

<sup>‡</sup> Double wrapping of classified documents is currently a Department of Energy requirement for documents transmitted outside a facility (DOE M 471.2-1B, Ch. II, Sect. 6.c).

## **Classification in the U. S. Navy, Civil War Until 1917**

Confidential publications were mentioned in a 1909 Navy General Order regarding “the care, distribution, and disposition of the confidential publications relative to target practice and engineering instructions.”<sup>99</sup>

These publications are issued confidentially and are not to pass out of the hands of officers. Under no circumstances will the contents of these publications be explained or divulged to persons not regularly connected with the naval service. It is desired that all features of the present system of training be held as confidential, and therefore it is directed that foreigners or persons not directly connected with the naval service be given as little information as is consistent with professional etiquette.

Officers receiving copies of such publications were to sign receipts and return them to the appropriate Navy office (Bureau of Navigation). Copies of such publications, when mailed, were to be sent by registered mail. An officer’s copies of confidential publications were to be returned to the Bureau of Navigation when the officer left the Navy.

Almost identical wording was in regulation changes issued in September 1916, except that a provision was added to explicitly warn resigning officers of the provisions of the national defense secrets act.<sup>100</sup> This was the first mention in Naval regulations of possible prosecution under the Defense Secrets Act of 1911.<sup>101</sup> However, the Navy regulations issued prior to 1918 used “confidential” in the ordinary meaning of the term and not as part of a system of classification markings.

## **Pertinent U.S. Statutes, Civil War Until 1917**

In 1898, Congress enacted a statute that established a penalty for damaging fortifications or harbor-defense systems, or interfering with their operation, or violating any War Department regulations made for the protection of such systems.<sup>102</sup> The penalty was a fine (\$100-\$5000) or imprisonment (not more than 5 years) or both. Thus, penalties for violating the previously mentioned Army regulations protecting information on forts and harbor-defense facilities were now applicable to civilians as well as to military personnel.

Congress enacted the Defense Secrets Act,<sup>103</sup> *An Act to Prevent the Disclosure of National Defense Secrets*, in 1911. This statute was quite similar in content to the British Official Secrets Act of 1889,<sup>104</sup> which, in August 1911, was replaced by the British Official Secrets Act of 1911.<sup>105</sup> This Defense Secrets Act imposed penalties on anyone who attempted to obtain “information respecting the national defense, to which he is not lawfully entitled,” including taking photographs or making sketches of ships or facilities “connected with the national defense . . . without proper authority.”\*

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\*Note that this statute encompassed ships as well as fixed facilities. Previous War Department regulations encompassed only fixed facilities—fortifications and coastal defenses. However, maybe there were similar Naval Department regulations concerning ships. Another possibility is that the Navy did not bother with similar regulations because it is not effective to prohibit sketching or photographing ships in port, since they will subsequently sail on the open seas where they can be observed by an adversary.

Penalties were also imposed for communicating such information to unauthorized individuals, with significantly higher penalties for such communications to a foreign government. The Defense Secrets Act presumed the existence of “national defense secrets” but did not further identify them except to indicate that they could be obtained by entering or being near a “vessel” or Army or Navy facility “connected with the national defense” and that they included documents, sketches, or photographs “connected with the national defense.” This Act was mainly directed towards prevention of or punishment for espionage.

## **WORLD WAR I**

### **Classification in the U. S. Army**

After the April 1917 entry of the United States into World War I, the American Expeditionary Force (AEF) was established on May 26, 1917, under the command of General John J. Pershing. The first AEF troops arrived in France in late June 1917. On November 21, 1917, the AEF promulgated General Order No. 64 to protect official information. The reason for concern in protecting such information was stated as follows:<sup>106</sup>

Extreme care will be taken by all members of this command in the treatment of “Confidential” and “Secret” matters. There appears to be some carelessness in the indiscriminate use of the terms “Confidential” and “Secret.” These words sometimes appear on official publications which are common property to our officers, but documents properly bearing these words sometimes are seen on desks in the several offices convenient of access to visiting officers, to clerks, orderlies and in some cases to the employees who clean and care for the building.

Official information was defined as follows:<sup>107</sup>

In general terms, all matters passing through official channels, verbal, written or printed, in the transaction of business in this command are to be considered “Official” in the sense that they are not to be discussed with any person except those to whom they come for consideration or transmission. Any official matters to be released are so designated by the Commander-in-Chief. This is authority which has not yet been delegated to anyone.

Note the similarity of this definition to the British Army 1894 definition of “official” documents (see a previous subsection of this chapter).

The AEF General Order established three markings, as follows:<sup>108</sup>

The word “Secret” on a communication is intended to limit the use or sight of it to the officer into whose hands it is delivered by proper authority and when necessary a confidential clerk.

“Confidential” matter is restricted for use and knowledge to a necessary minimum of persons, either members of this Expedition or its employees;

Those [documents] which are for ordinary official circulation and not intended for the public but the accidental possession of which by the enemy would result in no harm to the allied cause [will be marked] “For Official Circulation Only.”

Those AEF regulations were patterned after French and British classification procedures. (The French used “Secret” and “Confidential” terminology; the British used those terms and also “For Official Use Only.”) Note that, by implication of the definition of “For Official Circulation Only,” documents marked Secret or Confidential contain information that concerns the national defense (i.e., would harm the allied cause).

The markings on the AEF documents were to be placed in the upper left hand corner of the document, using all uppercase letters for secret and confidential (i.e., SECRET or CONFIDENTIAL) and the first letter of a word in uppercase for the other marking (i.e., For Official Circulation Only). These markings were to be in “heavy face type sufficiently conspicuous to attract attention.” For Secret documents, the word “SECRET” was to be printed in red. Secret and Confidential materials were to be kept under lock and key, except that, if Confidential matter was a necessary part of a collection of office records, then it could be kept in the office files, which were to be locked except during office hours.

The three markings defined who could have access to the documents but did not describe or define their contents (i.e., did not provide guidance on how to determine when to apply those markings). However, the Order provided some general guidance as to the kind of information that should be marked in some manner. All AEF headquarters-originated “orders, pamphlets of instructions, maps, diagrams, intelligence publications, etc.”<sup>109</sup> and any “document or correspondence regarding our organization, movement of troops, munitions, ammunition, supplies, transport, orders, or any pamphlets of instruction”<sup>110</sup> had to be marked with one of the three markings. Where circulation was to be limited further than allowed by the three markings, as for Intelligence documents, one of the following four distribution limitation markings was to be applied in heavy face type:

Not to be taken into Front Line Trenches;  
Not to be Reproduced;  
Not to go below Division Headquarters; and  
Not to go below Regimental Headquarters.

The classification system promulgated by AEF General Order No. 64 was said to be the first formal classification system in the U.S. government.<sup>111</sup>

Shortly after the AEF’s classification regulations were issued, the War Department adopted, on December 14, 1917, similar regulations to be applicable throughout the Army. It has been suggested that the time between the issuance of AEF General Order No. 64 (November 21, 1917) and the proposed issuance of the comparable War Department regulations (December 3, 1917) represents the time required for a copy of the Order to reach the United States from France via ship.<sup>112,113</sup> The War Department guidance for the use of the markings “Secret,” “Confidential,” and “For official use only,” (the AEF marking was “For Official Circulation Only”) was as follows:<sup>114</sup>

A document or map marked “Secret” is for the personal information of the individual to whom it is officially entrusted and of those officers under him whose duties it affects.

A document or map marked “Confidential” is of less secret a nature than one marked “Secret,” but its contents will be disclosed only to persons known to be authorized to receive them or when it is obviously in the interest of the public service that they receive them.\*

The information contained in a document or map marked “For official use only” will not be communicated to the public or to the press, but may be communicated to any person known to be in the service of the United States, simply by virtue of his official position.

The December 14, 1917, regulations stated that the existence of Secret “documents or map will not be disclosed by the officer to whom it is entrusted, nor by his officers without the sanction of superior military authority.” A document or map marked Secret was not to be taken into the front-line trenches in the theater of war. Documents and maps marked Secret or Confidential “will not be referred to in any catalogue or publication which is not itself a document marked ‘Secret’ or ‘Confidential’ as the case may be.”† A document marked both “Secret” and “Confidential” or “For official use only” was to be considered as “Secret” (i.e., the most restrictive marking was to be considered applicable).

The War Department regulations also specified a penalty for not following these regulations:<sup>115</sup>

Publishing official documents or information, or using them for personal controversy, or for any private purpose without due authority, will be treated as a breach of official trust, and may be punished under the Articles of War, or under section 1, Title I, of the espionage act approved June 15, 1917.‡

This has been said to be the first time that the War Department invoked a statute as authority for regulations to protect “defense information.”<sup>116</sup> That author also suggested that “invocation of the Espionage Act of 1917 was considered advisable because so many officers of the war-time army were drawn from civilian life and therefore would not have the instincts of professionals.”<sup>117</sup> Note that the Navy regulations of 1916 contained a similar warning with respect to the Defense Secrets Act of 1911.

## Classification in the U. S. Navy

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\* British Army regulations of 1894 had the following definition of Confidential: “A document marked ‘Confidential’ is of a privileged nature. The contents are only to be disclosed to authorised [sic] persons, or in the interests of the public service.” *Queen’s Regulations and Orders for the Army*, 1894, Sect. XXII, par. 1, as cited in “*CONFIDENTIAL*” -- *The Beginning of Defense-Information Marking*, Andrew Patterson, Jr., Sterling Chemistry Laboratory, Yale University, New Haven, Conn., 1980, unpublished manuscript, p. 115. Hereafter cited as “Patterson.”

† It is of interest to note that a very similar admonition had appeared in British Army regulations in 1894. “No secret or confidential documents are . . . to be referred to in any catalogue or publication which is not of itself a secret or confidential document.” *Queen’s Regulations and Orders for the Army*, 1894, Sect. XXII, par. 1, as cited in Patterson, p. 115.

‡ It is interesting to note that British Army regulations of 1868 concerning access to official information state that use of official documents in “personal controversies” would be treated as a “breach of official trust.” As stated in Patterson, p. 109, citing *Queen’s Regulations and Orders for the Army*, 1868, Sect. 29, par. 1470. Reference 172 in Patterson’s manuscript also refers to “personal controversies” in which official documents were not to be used.

The Navy first instituted a system of protective (classification) marking for official information in February 1918, a few months after the AEF and the War Department had instituted such a system. The Navy's 1918 regulations defined three classes of correspondence and information, Secret, Confidential, and Nonconfidential, as follows:<sup>118</sup>

“Secret” matter is correspondence or information which should be known only to the person addressed, or to other persons to whom he is specifically authorized to communicate it. In war time, specifically, that which relates to present or future defensive or offensive operations against an enemy. This includes all current instructions to and reports from operating forces, codes and ciphers, movement orders to vessels, all correspondence which has to do with active operations against the enemy; and any current information which, if known, would assist the enemy to determine in advance the nature of offensive measures or weapons which the United States or its allies were planning to use against him.

“Confidential” matter is correspondence or information which would prove of value to an enemy (or in time of peace to a foreign government), but which does not relate to measures or weapons which the United States is preparing to use against him, and is not vital to the enemy.

“Nonconfidential” matter is correspondence or information which relates to methods of procedure regularly followed, and to other subjects, a full knowledge of which could, by no possibility, be of use to the enemy.

The Navy regulations were significantly more detailed than the Army's with respect to describing information that should be classified, and its classification level. Note that the British Navy used “Non-confidential” sometime prior to 1913 (see a preceding subsection of this chapter).

The regulations stated that secret matter “must be opened, transmitted, and handled by an officer, and shall be at all times actually or potentially in the possession of commissioned officers only.” Officers could delegate their responsibilities regarding Confidential matter. All Secret or Confidential correspondence had to be stamped as such on the first or cover sheet. Typing the words was not sufficiently conspicuous. The regulation also mentioned that the distinction between Secret and Confidential matter was a fine one and that “extreme care and constant thought should be applied to maintain secrecy as extensively and thoroughly as humanly possible. The importance and vital necessity of keeping the enemy in ignorance of plans and operations is too generally blindly and thoughtlessly disregarded.”<sup>119</sup>

## **Pertinent Statutes**

After the U.S. entry into World War I in April 1917, the Espionage Act of 1917<sup>120</sup> was passed, replacing the Defense Secrets Act of 1911. The prohibited methods of gathering information included overflights, and the categories of national defense information included information on aircraft and on code books and signal books, methods and categories which were not included in the 1911 Act.\* The 1917 Act made it unlawful to disseminate information relating to the “national

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\* Whereas the 1911 Act was the first to mention ships (previous regulations mentioned only fixed facilities), even though ships had

defense” or “public defense.” Like the earlier Defense Secrets Act, the Espionage Act presumed the existence of national defense information but only loosely identified that information. The main objective of those two acts was to punish spies. The 1917 Act was much more severe than the 1911 Act, allowing the death penalty to be imposed in time of war.

The Trading with the Enemy Act,<sup>121</sup> passed by Congress in 1917, contained a provision allowing the president to designate as secret certain patents whose publication might “be detrimental to the public safety or defense, or may assist the enemy or endanger the successful prosecution of the war.”<sup>122</sup> A prior statute had given the commissioner of patents similar authority.<sup>123</sup> These statutes have been described as noteworthy with respect to classification of information because they represent the first direct statutory grant of authority to the executive branch to declare a type of information as secret,<sup>124,125</sup> but they did not define that information. Further, those statutes were the first to permit the government to impose secrecy restrictions on privately developed information.<sup>123</sup> No information-classification marking arrangements were promulgated to accompany this authority.<sup>123</sup>

## POST WORLD WAR I UNTIL WORLD WAR II

### Navy Classification Regulations of 1920

Navy Regulations of 1920 contained the same definitions of Secret, Confidential, and Nonconfidential as did the 1918 order.<sup>126</sup> Authority to open and handle secret matter, which had been limited to officers only, was broadened to include persons specifically so authorized by proper naval authority. Identity of such other persons was to be provided to the Director of Naval Intelligence. Officers being detached from a ship or station were to return all Secret or Confidential publications to the commanding officer. The prior regulation required return of such documents to the Bureau of Navigation because they were receipted from that bureau to the officer. The new regulations also required, for all Secret or Confidential matter issued by a bureau or office of the Navy Department, to have the following on the cover, title page, or other prominent place:<sup>127</sup>

- (a) The classification of the publication (whether secret or confidential)
- (b) If possible, the length of time the publication is to be considered “secret” or “confidential”
- (c) The final disposition at the end of this stated period
- (d) What reports or returns are required
- (e) The office or bureau having cognizance of the publication and to whom the reports or returns required by (d) are to be forwarded

This is the first mention in a system of classification markings of the specification, if possible, of the duration of classification.\* The 1920 regulations also stated that confidential and secret publications, except code and signal books, could be sent by registered mail.<sup>128</sup>

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been important instruments of war for millenia, the 1917 Act recognized the significance of airplanes shortly after they were used in warfare.

\* Note that such a time limit was suggested in 1907 by the Army’s Chief of Artillery, but this suggestion was not implemented by the War Department (see earlier, this chapter).

## Army Classification Regulations of 1921

Army regulations issued in 1921, *Army Regulations*, No. 330-5 (AR 330-5), expanded somewhat on what was to be marked Secret:<sup>129</sup>

A document will be marked “Secret” only when the information it contains is of great importance and when the safeguarding of that information from actual or potential enemies is of prime necessity.

This definition described the information to be designated as Secret, rather than, as did the 1917 Army regulation, describe who was to have access to the information. This was a significant change from the 1917 regulation. The “access” requirement was continued in the 1921 regulations with a statement that documents marked Secret were “for the personal information and use of the officer to whom it is officially entrusted.”<sup>130</sup>

The 1921 regulations specified who had the authority to place the “Secret” marking on a document and required that such authority be identified on the document. The marking also had to be dated and initialed by the officer affixing the marking.\* Information as to the existence of the document, its location, and its contents was to be disclosed only to those whose duties “absolutely require that they have such information.” Documents marked Secret “will not be referred to in any catalogue or publication which is not itself marked ‘Secret.’ “ Secret documents transmitted to another person were to be enclosed in an inner and outer cover. The outer cover was to be addressed in the usual way. The inner cover would be sealed and addressed in the usual way, would be plainly marked “Secret,” and would contain a receipt form identifying the addressor, the addressee, and the document. The Secret marking could be cancelled by the authority who authorized it, or by higher authority, with the cancellation dated and initialed by the officer making the cancellation. All Secret marks on the document were then to be stricken out.

The 1921 Army regulations similarly defined “Confidential:”

A document will be marked “Confidential” when it is of less importance and of less secret a nature than one requiring the mark of “Secret,” but which must, nevertheless, be guarded from hostile or indiscreet persons.

The regulations stated that a commissioned officer could mark a document Confidential, and the marking should designate the office held by that officer. Regulations as to information about the existence of a Confidential document, canceling its markings, etc. were similar to those applicable to Secret documents.

“For official use only” was defined in the 1921 Army regulations as follows:<sup>131</sup>

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\* Identity of the classifier (name or personal identifier and position title), name and address of the organization preparing the document and the date of preparation, and designation of the guide or source document and the date of such document are currently required by the Department of Energy to be placed on documents containing Restricted Data or Formerly Restricted Data [DOE M 4721.2-1B, Ch. II, Sects. 3.a(2), 3.b, and 3.j(3)]

A document will be marked “For official use only” when it contains information which is not to be communicated to the public or to the press, but which may be communicated to any person known to be in the service of the United States whose duties it concerns, or to persons of undoubted loyalty and discretion who are cooperating in Government work.

The term “document” was defined in the 1921 Army regulations as applying “to printed, mimeographed, typed, photostated, and written matter, and to maps, drawings, and photographs.”<sup>132</sup> A person who originated (initiated) a document “which, in his judgment, should be marked ‘Secret’ or ‘Confidential’ will take immediate steps to forward it to the authority competent to so mark it” following procedures for transmitting Secret documents.<sup>133</sup> Note that this regulation did not mention “For official use only” documents. Documents were not to be marked with more than one of the three classification markings, but if through error more than one of those markings was on a document, then the most restrictive marking was to be considered applicable.<sup>134</sup>

### **Navy Classification Regulations of 1932**

The Naval Regulations of 1920 were reprinted, with changes, in 1932.<sup>135</sup> The regulations stated that “All naval publications, instructions, orders, reports, dispatches, and *information*, [emphasis added] communicated in any manner, may be classed as:<sup>136</sup>

- (a) *Secret*.--Matter that relates to national policy or plans, or offensive or defensive measures against an actual or potential enemy, the disclosures of which would be highly inimical to the national interest;
- (b) *Confidential*.--Matter of a less vital degree of secrecy than “secret,” the disclosure of which would be prejudicial to the interests of the Government;
- (c) *Service*.--Matter of concern to the Naval Establishment and which is not desired to be available to the general public;
- (d) *Nonconfidential*.--All matter not included in the above three classes.

Secret, Confidential, and Service matter had to be marked as such. Marking was not required for Nonconfidential matter. Secret and Confidential publications generally had to have registration numbers distributed by the Chief of Naval Operations. Secret publications were normally to be sent by commissioned-officer messenger; but in some instances, they could be sent by registered mail within the continental United States.

“Service” publications were to be marked “Service--For official use only”<sup>137</sup> or “Service--For restricted use only.”<sup>138</sup> (This appears to be the first use of the word “restricted” with respect to classification markings.) Service correspondence could be transmitted by first-class mail.

### **Army Classification Regulations of 1935**

Army regulations issued in 1935 were similar to the 1921 regulations with respect to Secret, Confidential, and For official use only. However, in 1935, the Army introduced a fourth marking, “Restricted,” which was defined as follows:<sup>139</sup>

A document is marked “Restricted” when it contains information regarding research work or

the design, development, test, production, or use of a unit of military equipment or a component thereof which it is desired to keep secret. Such information is considered as affecting the national defense of the United States within the meaning of the Espionage Act (U.S.C. 50:31,32).

A further description of the “Restricted” classification is found in Changes No. 3, dated February 12, 1935, to Army Regulation 850-25, *Types of Equipment Used by the United States Army*, dated July 15, 1931. The 1935 changes concerned technical committees and safeguarding and disclosing information regarding research and development work and military equipment. Those changes included the following:

(1) Whenever the chief of an arm or service which is charged with a research project or the design, development, test, and production of a unit of military equipment or component thereof, shall determine that the maintenance of secrecy regarding any such project is sufficiently important to the national defense of the United States to warrant it, he may declare it a “Restricted” project. Information regarding a “Restricted” project will be considered information affecting the national defense within the meaning of the provisions of the Espionage Act (secs. 1 and 2, Title I, act June 15, 1917 (40 Stat. 218; U. S. C. 50: 31, 32; secs. 2181 and 2182, M. L., 1929)), the pertinent provisions of which are . . . .

...  
(2) When a project has been declared a “Restricted” project, the chief of the arm or service responsible for the project will take the necessary steps to inform all such persons concerned, including non-Government employees of such action.

(3) Information regarding a “Restricted” project may be communicated only to persons in the military or naval service of the United States (including civilian employees) whose duties it concerns and to American citizens of undoubted loyalty and discretion who are cooperating in the work on this project.

...  
(6) During the period that a project has a restricted status, all documents, such as drawings, specifications, contracts, correspondence, etc., containing technical information regarding it will be identified by being marked substantially as follows:

**RESTRICTED**

*Notice.*-This document contains information affecting the national defense of the United States within the meaning of the Espionage Act (U. S. C. 50:31, 32). The transmission of this document or the revelation of its contents in any manner to any unauthorized person is prohibited.

Documents referring to a “Restricted” project, but which do not contain technical information regarding it need not be so identified.

This admonitory marking for “Restricted” information might be the first U.S. use of such a marking. It was perhaps used to emphasize the fact that “Restricted” information affected the national defense. It was perhaps thought not necessary to use this admonitory marking for the other classification markings (e.g., “Secret”) because it was assumed to be obvious that documents containing such markings concerned the national defense.

The Army may have created the “Restricted” classification to use specifically for technical

information that needed to be classified. If such documents were classified “Secret,” the then-existing regulations would stringently limit their distribution. Such regulations may have prohibited distribution of such documents to contractors. Therefore, perhaps the “Restricted” classification and accompanying distribution regulations were created so that “Restricted” documents could be provided to contractor personnel needing access to them to assist the Army programs. This hypothesis is based on an explanatory note to the War Department Chief of Staff with respect to proposed changes in the 1935 version of AR 330-5 (see below). That note mentioned that a complete revision of the section on safeguarding Secret documents was necessary to permit divulging Secret information to persons not in the Government service “if the term ‘secret’ is to be applied to technical information.”<sup>140</sup>

The section of the 1935 Army regulations that concerned military maps and photographs also indicated the appropriate classification level for those maps and photographs.<sup>141</sup> The classification levels “Secret,” “Confidential,” and “For official use only” were described with respect to their application to war plans, layout of permanent defense works and naval bases and adjacent terrain, layout of radio stations, aviation centers, supply bases, arsenals, proving grounds, topographic maps, etc., both in the continental United States and at overseas locations. Notification to the War Department was required when military maps and photographs were classified or reclassified.<sup>142</sup> (Note that this may be the first use of the term “reclassification” in an Army classification regulation.)

The 1935 regulations required that documents marked Secret or Confidential be stamped with those markings at the top and bottom of each page.<sup>143</sup> There was no comparable requirement for marking “Restricted” or “For official use only” documents.

### **Army Classification Regulations of 1936**

In 1936, the Army classification regulations were significantly revised. The Navy had formally requested, in December 1932 and in January 1935, that the War Department “establish a single standard of security requirements for the two services in handling and safeguarding secret and confidential documents.”<sup>144</sup> One reason for the change was that in 1935 the Army started to use the term “Restricted” for marking documents. The Navy had been using that for some years, but with a meaning different from the Army’s definition of that term. The Navy used “Restricted” as equivalent to the Army’s “For official use only.” In its 1936 revision of AR 330-5, the Army discontinued the use of “For official use only” as a classification marking and established a definition of “Restricted” consistent with the Navy’s definition (i.e., the Army’s new definition of “Restricted” was essentially the same as its prior definition of “For official use only”). A discussion of the Army’s major 1936 changes to AR 330-5 is given in the following paragraphs.

The 1936 Army regulations<sup>145</sup> defined “registered publication,” and “short title” as well as “document.” The definition for document was expanded slightly from prior definitions.

In this pamphlet the word “document” will be understood to apply to printed, mimeographed, typed, photostated, and written matter, and to maps, drawings, sketches, notes, blueprints, photographs, photographic negatives, and similar matter.

A “registered document” was a classified document that was assigned a register number for

document accountability and inventory purposes. A “short title” was an unclassified title given to a classified document for reasons of security and brevity. Such title had to include an abbreviated designation of the office of origin.

Secret, Confidential, and Restricted documents were defined as follows:

A document will be classified and marked “Secret” only when the information it contains is of such nature that its disclosure might endanger the national security, or cause serious injury to the interests or prestige of the Nation, an individual, or any governmental activity, or be of great advantage to a foreign nation.

A document will be classified and marked “Confidential” when the information it contains is of such nature that its disclosure, although not endangering our national security, might be prejudicial to the interests or prestige of the Nation, an individual, or any governmental activity, or be of advantage to a foreign nation.

A document will be classified and marked “Restricted” when the information it contains is for official use only or of such a nature that its disclosure should be limited for reasons of administrative privacy, or should be denied the general public.

The 1936 Army regulations broadened the definitions of Secret and Confidential to include non-defense information as one of the types of classifiable information. For the first time, “national security” was specifically mentioned as a reason for classifying information. By implication, foreign policy information seemed to be included within the new definitions of classifiable information. Note especially that disclosure of Confidential information would not endanger national security. Note also that the definitions of Secret and Confidential included consideration of harm to an individual.

A commissioned officer could mark a document Confidential or Restricted, but authority to mark a document Secret was more stringently limited. Document originators were to make “every effort” to “word each document so that the *least restrictive* classification may be assigned consistent with the proper safeguarding of the contents (emphasis added).” The originator was also to consider the ultimate distribution of the document when originating that document.<sup>146</sup>

The probable distribution to be given the document must be considered by the originator in order that widespread dissemination may neither disclose information which must be safeguarded, nor place such a burden upon recipients that proper safeguards are neglected because of too great a volume of overclassified matter.

The term “reclassification” was specifically used to describe declassifying a document or changing its classification to a less-restrictive classification.<sup>147</sup> In a prior Army regulation, that term had been used with respect to changing the classification of maps and photographs.

Documents containing Secret, Confidential, or Restricted information were to be stamped appropriately at the top and bottom of each page.<sup>148</sup> Previously, that requirement was applicable only to Secret and Confidential documents.

“Registered” documents were safeguarded more stringently than unregistered documents, as indicated by the following storage requirement:<sup>149</sup>

“Secret” and “Confidential” documents will be habitually kept in locked safes or other suitable locked containers when not required for immediate use. The most secure storage space available, which should be at least a three-combination safe, will be assigned to the storage of secret and confidential codes, ciphers, war plans, defense projects, and other registered publications.

All registered documents were subject to semiannual accountings, on June 30 and December 31 of each year.<sup>150</sup> When the classification of a registered document was changed, the office of record was to notify all recipients of that document of that change.

Information about the contents of classified documents was not to be revealed in any other document unless that document was marked with the same or higher classification. “However, documents referring to a ‘Restricted’ project, but which do not contain technical information regarding it, need not be marked ‘Restricted.’ ”<sup>151</sup> This latter advice may have been an overlooked holdover from the 1935 Army regulation, where “Restricted” had a different meaning, applying to technical matters.

The distribution and dissemination of secret matter was to be “confined to the absolute minimum,” and an officer was not entitled to knowledge of secret matter “by virtue of his commission alone.”<sup>152</sup> Secret and Confidential documents were not to be transported by airplane (as distinguished from carried for use) except in emergency. When transported, they were to be securely wrapped, weighted if necessary, and be in the actual custody of an officer not engaged in flying the airplane.<sup>153</sup>

### **Navy Classification Regulations of 1938**

Naval regulations of 1920 were reprinted again, with changes, in 1938.<sup>154</sup> The term “classified matter” was to be “used in the naval service as a generic term comprising *secret*, *confidential*, and *restricted* categories to distinguish between matter which requires special provisions for safeguarding and matter which either needs no safeguarding or whose safeguarding can well be entrusted entirely to the discretion of the various custodians and which is normally referred to as *nonclassified* matter.”<sup>155</sup> The three categories of classified matter were defined as follows:<sup>156</sup>

*Secret* matter is matter of such a nature that its disclosure might endanger the national security, or cause serious injury to the interests or prestige of the Nation or any Government activity thereof.

*Confidential* matter is matter of such a nature that its disclosure, while not endangering the national security, would be prejudicial to the interests or prestige of the Nation or any Government activity thereof.

*Restricted* matter is of such a nature that its disclosure should be limited for reasons of

administrative privacy; or, is matter not classified as *confidential* because the benefits to be gained by a lower classification outweigh the value of the additional security obtainable from the higher classification.

Note that these three designations are now referred to as “categories” of classified information. Previously, they were referred to as “classes” of information. Note also, especially, that the definition of Restricted includes a “balancing” evaluation, where security is balanced against other applicable factors. Also, note that the Army 1936 definition of Secret included serious injury to the interests or prestige of “an individual” and “or be of great advantage to a foreign nation,” items that were omitted from the Navy definition of Secret. Those same items were in the Army definition of Confidential, but not in the Navy’s definition of that term. Also, the Navy definition of Confidential used the phrase “would be prejudicial,” whereas the Army’s definition of Confidential used the phrase “might be prejudicial.”

The originator of matter was responsible for its proper initial classification. When matter was reclassified to a less restrictive category, the reclassifier was required to notify custodians of the matter. Secret information was to be disclosed only to those persons in the naval establishment or in government service whose official duties required such knowledge, unless under conditions of absolute necessity others must be informed. Confidential information could be disclosed to Naval officers whose duties rendered it advisable that they have such information, to other persons in the naval establishment whose duties required knowledge of such information, to persons in the government service who must be informed, and to others when special circumstances made such disclosure of benefit to the Navy.<sup>157</sup> Also:

The disclosure of information, *classified* or *unclassified*, that might aid a foreign power or which, for reasons of public policy, should not be disclosed to persons not of the Military or Naval Establishments, is prohibited except under circumstances specifically authorized by these regulations.<sup>158</sup>

The regulations also stated that “an officer, by virtue of his commission alone, is not authorized to have knowledge of *secret* or *confidential* matter.”<sup>159</sup> The term “documents” was to “embrace physical matter in the nature of publications (books, booklets, pamphlets, codes, ciphers), charts, blueprints, letters, messages, photographs, photographic negatives, sketches, plans, maps, writings, notes, and other like matter.”<sup>160</sup>

Document marking requirements were expanded to include marking the first page, the cover, and the title page, if any. Also, each sheet of a secret document was to be stamped or marked.<sup>161</sup>

In general, the 1938 Navy regulations on classification appeared to be more detailed than the 1936 Army regulations on that subject. Neither service’s regulations applied to information or materials not under their control.

### **Navy Classification Regulations of 1940**

Navy regulations of 1940 were essentially the same as those of 1938.

## Army Classification Regulations of 1941

Army regulations of 1941<sup>162</sup> contained several changes from their 1936 regulations. The definition for “document” was significantly expanded to include engineering data and “correspondence and plans relating to research and development projects.” When classified information was distributed to persons not subject to military law, they were to be informed that the information “affects the national defense of the United States within the meaning of the Espionage Act and that its transmission to an unauthorized person is prohibited.”<sup>163</sup> The specific wording to be on such documents was given in Sect. II.17.b:

This document contains information affecting the national defense of the United States within the meaning of the Espionage Act, 50 U.S.C., 31 and 32, as amended. Its transmission or the revelation of its contents in any manner to an unauthorized person is prohibited by law.

Documents or materiel requiring classification “will be assigned the least restrictive classification consistent with the proper safeguarding of the information or materiel concerned. Overclassification will be avoided.”<sup>164</sup> The definition of Secret<sup>165</sup> omitted reference to injury to an individual, but reference to an individual was retained in the definition of Confidential.<sup>166</sup> Examples were given for items to be classified as Secret, Confidential, and Restricted.

Typewritten matter in Secret documents transmitted within inner and outer covers “will be protected by a cover sheet, or by a method of folding, from direct contact with the inner cover.”<sup>167</sup> After the recipient opened the inner cover, “the inner cover will be destroyed by burning if the subject matter of the inclosure has been in contact therewith.”<sup>168</sup> The regulations required that “At every headquarters an inspection will be made each day immediately before the close of business to insure that all secret and confidential documents and cryptographic devices have been properly put away.”<sup>169</sup>

## Pertinent Statutes

The Congress, in January 1938, passed a statute that made it unlawful “to make any photograph, sketch, picture, drawing, map, or graphical representation” of certain “vital military or naval installations or equipment” defined by the president in the interests of national defense, without first obtaining permission from proper authority.<sup>170</sup> This Act appears to be similar in intent to the 1869 Army regulation mentioned earlier and to have evolved from that regulation; other Army regulations of 1897 and 1908; and the 1898, 1911, and 1917 statutes also mentioned previously. Table 2.1 gives the chronology of, and legal authorities for, the control of information under those regulations and statutes.

**Table 2.1. Chronology of, and legal authorities for, the control of information, 1869–1938**

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1869	Limited information control by the War Department about certain fortifications began.  “Commanding officers of troops occupying the regular forts built by the Engineering Department will permit no photographic or other view of the same to be taken without the permission of the War
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Department.” General Orders, No. 35, Headquarters of the Army, Adjutant General’s Office, April 13, 1869.

1897 Additional restrictions were imposed on written and pictorial descriptions about certain Army lake and coastal defenses.

“Neither written nor pictorial descriptions of [the lake and coastal defenses of the United States] will be made for publication without the authority of the Secretary of War nor will any information be given concerning them which is not contained in the printed reports and documents of the War Department.” General Orders, No. 9, Headquarters of the Army, Adjutant General’s Office, March 1, 1897.

1898 A statute made War Department regulations for the protection of harbor defenses or fortifications applicable to civilians.

*“Be it enacted by the Senate and House of Representatives of America in Congress assembled, That any person who shall willfully, wantonly, or maliciously trespass upon, injure, or destroy any of the works or property or material of any submarine mine or torpedo, or fortification or harbor defense system owned or constructed or in process of construction by the United States, . . . or shall knowingly, willfully or wantonly violate any regulation of the War Department that has been made for the protection of such mine, torpedo, fortification or harbor-defense system shall be punished . . . by a fine of not less than one hundred nor more than five thousand dollars, or with imprisonment for a term not exceeding five years, or with both, in the discretion of the court.”* 30 Stat. 717 (1899), July 7, 1898.

1908 Army promulgated regulations concerning “photographic or other views” and “written” and “pictorial descriptions” on “permanent works of defense.”

“The taking of photographic or other views of permanent works of defense will not be permitted. Neither written nor pictorial descriptions of these works will be made for publication without the authority of the Secretary of War, nor will any information be given concerning them which is not contained in the printed reports and documents of the War Department.”<sup>a</sup>

1911 A statute on espionage and the protection of information recorded in a variety of forms of expression on an expanded list of “national defense” facilities was enacted (Defense Secrets Act of 1911).

*“Be it enacted by the Senate and House of Representatives of America in Congress assembled, That whoever, . . . when lawfully or unlawfully upon any vessel, or in or near any [navy yard, naval station, fort, battery, torpedo station, arsenal, camp, factory, building, office, or other place connected with the national defense], without proper authority, obtains, takes, or makes, or attempts to obtain, take, or make, any document, sketch, photograph, photographic negative, plan, model, or knowledge of anything connected to the national defense to which he is not entitled; . . . shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both.”* 36 Stat. 1084, §1. March 3, 1911.

**Table 2.1 (continued)**

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1917 Espionage Act of 1917 replaced Defense Secrets Act of 1911. This 1917 Act included a comprehensive description of the defense facilities covered and the forms of expression regulated. However, the Act required “intent” to injure the United States before obtaining information could be punished.

*“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled: . . . That (a) whoever, for the purpose of obtaining information respecting the national defense with intent or reason to believe that the information to be obtained is to be used to the injury of the United States, or to the advantage of any foreign nation, goes upon, enters, flies over, or otherwise obtains information concerning any vessel, aircraft, work of defense, navy yard, naval station, submarine base, coaling station, fort, battery, torpedo station, dockyard, canal, railroad, arsenal, camp, factory, mine, telegraph, telephone, wireless, or signal station, building, office, or other place connected with the national defense, owned or constructed, or in progress of construction by the United States or under the control of the United States, or of any of its officers or agents, or within the exclusive jurisdiction of the United States, or any place in which any vessel, aircraft, arms, munitions, or other materials or instruments for use in time of war are being made, prepared, repaired, or stored under any contract or agreement with the United States, or with any person on behalf of the United States, or otherwise on behalf of the United States, or any prohibited place within the meaning of section six of this title; or (b) whoever for the purpose aforesaid, and with like intent or reason to believe, copies, takes, makes, or obtains, or attempts or induces or aids another to copy, take, make, or obtain, any sketch, photograph, photographic negative, blue print, plan, map, model, instrument, appliance, document, writing, or note of anything connected with the national defense; . . . shall be punished by a fine of not more than \$10,000, or by imprisonment for not more than two years, or both.”*

*“Sect. 6. The President in time of war or in case of national emergency may by proclamation designate any place other than those set forth in subsection (a) of section one hereof in which anything for the use of the Army or Navy is being prepared or constructed or stored as a prohibited place for the purposes of this title; Provided. That he shall determine that information with respect thereto would be prejudicial to the national defense.”* 40 Stat. 217 (1917), June 15, 1917.

1938 A statute was enacted prohibiting making photographs, sketches, or maps of vital military and naval defensive installations and equipment, as defined by the President. No intent to injure the United States was required.

*“Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, whenever, in the interests of national defense, the President shall define certain vital military and naval installations or equipment as requiring protection against the general dissemination of information relative thereto, it shall be unlawful to make any photograph, sketch, picture, drawing, map, or graphical representation of such vital military and naval installations or equipment without first obtaining permission of the commanding officer of the military or naval post, camp, or station concerned, or higher authority, and promptly submitting the product obtained to such commanding officer or higher authority for censorship or such other action as he may deem necessary. Any person found guilty of a violation of this section shall upon conviction be punished by a fine of not more than \$1,000 or by imprisonment for not more than one year, or by both such fine and imprisonment.”* 52 Stat. 3, January 12, 1938.

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<sup>a</sup>Dallas Irvine, *The Origin of Defense-Information Markings in the Army and Former War Department*, National Archives and Record Service, unpublished manuscript, 1972, pp. 5-6.

## REFERENCES

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<sup>1</sup> Articles of War, Continental Congress, Art. 28, adopted June 30, 1775 by the Continental Congress, *Journals of the Continental Congress, 1774-1789*, Vol. 2, 1775, May 10-September 20, Library of Congress, Washington, U.S. Government Printing Office, Washington, D.C., 1905, p. 116. Punishment for violation of this prohibition was made more severe (the death penalty was imposed) by revisions to the Articles of War on November 7, 1775. *Journals of the Continental Congress, 1774-1789*, Vol. 3, 1775, September 21-December 30, p. 331.

<sup>2</sup> Andrew Patterson, Jr., “CONFIDENTIAL”--*The Beginning of Defense-Information Marking*, Sterling Chemistry Laboratory, Yale University, New Haven, Conn., unpublished manuscript, April 30, 1980, p. 6. Hereafter cited as “Patterson.” Dr. Patterson was on the chemistry faculty of Yale University and became interested in defense-information markings through a prior interest in undersea mine warfare. Dr. Patterson kindly provided me with a copy of this unpublished manuscript in late 1989, for which I am much indebted.

<sup>3</sup> Patterson, *Ibid.*

<sup>4</sup> *Journals of the Continental Congress, 1774-1789*, **1**, 1774, U.S. Government Printing Office, Washington, D.C., 1904, p. 26.

<sup>5</sup> *Journals of the Continental Congress, 1774-1789*, **1**, 1774, U.S. Government Printing Office, Washington, D.C., 1904, pp. 101-102.

<sup>6</sup> *Journals of the Continental Congress, 1774-1789*, **2**, 1775, U.S. Government Printing Office, Washington, D.C., 1905, p. 22.

<sup>7</sup> *Journals of the Continental Congress, 1774-1789*, **3**, 1775, U.S. Government Printing Office, Washington, D.C., 1905, pp. 342-343.

<sup>8</sup> *Journals of the Continental Congress, 1774-1789*, **2**, 1775, U.S. Government Printing Office, Washington, D.C., 1905, p. 208.

<sup>9</sup> *Journals of the Continental Congress, 1774-1789*, **3**, 1775, U.S. Government Printing Office, Washington, D.C., 1905, p. 393.

<sup>10</sup> *Journals of the Continental Congress, 1774-1789*, **3**, 1775, U.S. Government Printing Office, Washington, D.C., 1905, p. 427.

<sup>11</sup> D. W. Hoffman, *Governmental Secrecy and the Founding Fathers*, Greenwood Press, Westport, Conn., 1981, p. 14. Hereafter cited as “Hoffman.”

<sup>12</sup> *Journals of the Continental Congress, 1774-1789*, **13**, 1779, U.S. Government Printing Office, Washington, D.C., 1909, p. 5.

<sup>13</sup> *Journals of the Continental Congress, 1774-1789*, **2**, 1775, U.S. Government Printing Office, Washington, D.C., 1905, p. 253.

<sup>14</sup> *Journals of the Continental Congress, 1774-1789*, **3**, 1775, U.S. Government Printing Office, Washington, D.C., 1905, p. 392; *Secret Journals of the Acts and Proceedings of Congress*, **2**, Thomas B. Wait, Boston, 1820, p. 5.

<sup>15</sup> *Journals of the Continental Congress, 1774-1789*, **7**, 1777, U.S. Government Printing Office, Washington, D.C., 1907, p. 274.

<sup>16</sup> Articles of Confederation, Art. 9, Para. 7.

<sup>17</sup> Hoffman, p. 16.

<sup>18</sup> *Journals of the Continental Congress, 1774-1789*, **26**, 1784, U.S. Government Printing Office, Washington, D.C., 1928, pp. 331-332.

<sup>19</sup> M. Farrand, ed., *The Records of the Federal Convention of 1787*, Vol. I, Yale University Press, New Haven, Conn., 1911, pp. 15-17.

<sup>20</sup> Hoffman, p. 21.

<sup>21</sup> M. Farrand, ed., *The Records of the Federal Convention of 1787*, Vol. III, Yale University Press, New Haven, Conn., 1911, pp. 86-87.

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<sup>22</sup> *The Public Statutes at Large of the United States of America*, R. Peters, Ed., **3**, Charles C. Little and James Brown, Boston, 1846, p. 475. Resolution of March 27, 1818.

<sup>23</sup> Hoffman, p. 33.

<sup>24</sup> Hoffman, p. 37.

<sup>25</sup> See, for example, *Totten v. United States*, 92 U.S. 105 (1875); *U.S. v. Reynolds*, 345 U.S. 1 (1952); *Weinberger v. Catholic Action of Hawaii*, 454 U.S. 139 (1981); 5 U.S.C. §552(b)(1); 50 U.S.C. §783(b).

<sup>26</sup> J. D. Richardson, *A Compilation of Messages and Papers of the Presidents, 1789-1897*, Vol. I, U.S. Government Printing Office, Washington, D.C., 1896, p. 71. Hereafter cited as "Richardson."

<sup>27</sup> Richardson, pp. 76-77.

<sup>28</sup> Hoffman, p. 70.

<sup>29</sup> See, for example, "Reform in the Classification and Declassification of National Security Information: Nixon Executive Order 11,652," *Iowa Law Rev.* **59**, 110-143 (1973-1974), pp. 111-113.

<sup>30</sup> 1 Stat. 28 (July 27, 1789).

<sup>31</sup> Dallas Irvine, *Origin of Defense-Information Markings in the Army and Former War Department*, draft unpublished manuscript, The National Archives, Washington, D.C., Nov. 1971, p. 44. The author would like to express his appreciation to Dr. Edwin Alan Thompson, former director of the Records Declassification Division, National Archives, for providing a copy of Mr. Irvine's unpublished manuscript. The materials provided by Dr. Thompson contained copies of documents collected by Mr. Irvine, including the Army and Navy classification regulations and associated materials cited later in this chapter. Hereafter cited as "Irvine."

<sup>32</sup> Cox, p. 34. A. M. Cox, *The Myths of National Security: The Peril of Secret Government*, Beacon Press, Boston, 1975, p. 34.

<sup>33</sup> J. R. Wiggins, *Freedom or Secrecy*, rev. ed., Oxford University Press, New York, 1964, p. 95.

<sup>34</sup> J. G. Randall, *Constitutional Problems Under Lincoln*, rev. ed., Peter Smith, Gloucester, Mass., 1963, p. 508.

<sup>35</sup> W. H. McNeil, *The Pursuit of Power: Technology, Armed Force, and Society Since A.D. 1000*, University of Chicago Press, Chicago, 1982, p. 146.

<sup>36</sup> G. Hartcup, *The War of Invention*, Brassey's Defence Publishers, London, 1988, pp. 1-3.

<sup>37</sup> Patterson, pp. 9-14.

<sup>38</sup> Patterson, pp. 9-10.

<sup>39</sup> See, for example, B. and F. M. Brodie, *From Crossbow to H-Bomb*, Indiana University Press, Bloomington, Ind., 1973, pp. 9-11, 90, 103, 123. Hereafter cited as "Brodie."

<sup>40</sup> Brodie, pp. 106-107.

<sup>41</sup> Patterson, p. 105.

<sup>42</sup> Patterson, *Ibid.*

<sup>43</sup> Patterson, p. 107, citing *Queen's Regulations and Orders for the Army*, HMSO, London, 1868, Sect. 5, Para. 184.

<sup>44</sup> Patterson, p. 108, citing *Queen's Regulations and Orders for the Army, 1868, Sect. 7, Part III, Para. 363.*

<sup>45</sup> Patterson, p. 108, citing *Queen's Regulations and Orders for the Army*, 1868, Sect. 29, Para. 1470.

<sup>46</sup> R. Eells and P. Nehemkis, *Corporate Intelligence and Espionage*, MacMillan, New York, 1984, p. 35. Hereafter cited as "Eells and Nehemkis."

<sup>47</sup> Patterson, p. 11.

<sup>48</sup> Patterson, p. 16.

<sup>49</sup> Patterson, p. 37.

<sup>50</sup> Patterson, p. 39, citing *Broad Arrow*, X, p. 430, Apr. 5, 1873.

<sup>51</sup> Patterson, pp. 46-47.

<sup>52</sup> Patterson, p. 50, citing *London Gazette*, Supplement, No. 24573, p. 2633, (Thursday, Apr. 18, 1878).

<sup>53</sup> Patterson, p. 54, citing *Broad Arrow*, XXXIX, p. 789 (Dec. 10, 1887).

<sup>54</sup> Eells and Nehemkis, p. 37.

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- <sup>55</sup> Patterson, p. 110.
- <sup>56</sup> Patterson, p. 111.
- <sup>57</sup> Patterson, p. 112.
- <sup>58</sup> Patterson, p. 55.
- <sup>59</sup> Patterson, p. 112, citing *Queen's Regulations and Orders of the Army*, 1892, Sect. XXI.
- <sup>60</sup> Patterson, p. 113, citing *Queen's Regulations and Orders of the Army*, 1893, Sect. XXI, Para. 11.
- <sup>61</sup> Patterson, p. 114, citing *Queen's Regulations and Orders of the Army*, 1894, Sect. XXI, para. 11.
- <sup>62</sup> Patterson, p. 114, citing *Queen's Regulations and Orders of the Army*, 1894, Sect. V, Para. 52A. The Official Secrets Act was "An Act to Prevent the Disclosure of Official Documents and Information," Law Reports, 52 and 53 Vict. 1889, Chap. 52, pp. 269-272.
- <sup>63</sup> Patterson, p. 116.
- <sup>64</sup> Patterson, p. 117.
- <sup>65</sup> Patterson, p. 117, citing *King's Regulations and Orders of the Army*, 1904, para. 2112.
- <sup>66</sup> Patterson, p. 118, citing *Army Orders*, London, HMSO, 1910, AO 133/1909, dated May 1, 1909.
- <sup>67</sup> Patterson, p. 119, citing *Army Orders* 16 of January 1914.
- <sup>68</sup> Patterson, p. 121.
- <sup>69</sup> Patterson, p. 123, citing *Queen's Regulations and Admiralty Instructions*, 1879, Ch. XLVII, Para. 1885.
- <sup>70</sup> Patterson, p. 124, citing *Queen's Regulations and Admiralty Instructions*, 1887, App. XXXVII.
- <sup>71</sup> Patterson, p. 124.
- <sup>72</sup> Patterson, p. 124A.
- <sup>73</sup> Patterson, p. 124A.
- <sup>74</sup> Patterson, p. 125.
- <sup>75</sup> Patterson, pp. 126-127, citing *King's Regulations and Admiralty Instructions*, HMSO, London, 1906, Art. 1844, Ch. XLVII.
- <sup>76</sup> Patterson, p. 127.
- <sup>77</sup> Patterson, p. 129.
- <sup>78</sup> Patterson, pp. 129-130 and Table I, citing *Report of the Committee on the Issue, Care, and Custody of Confidential Books, 1913*.
- <sup>79</sup> Patterson, p. 130.
- <sup>80</sup> Patterson, p. 132.
- <sup>81</sup> Patterson, p. 131.
- <sup>82</sup> Patterson, p. 132.
- <sup>83</sup> Patterson, p. 134.
- <sup>84</sup> Patterson, pp. 136-137.
- <sup>85</sup> Patterson, p. 139.
- <sup>86</sup> Patterson, p. 98.
- <sup>87</sup> Patterson, p. 95.
- <sup>88</sup> *General Orders, No. 35*, Headquarters of the Army, Adjutant General's Office, Washington, D.C., Apr. 13, 1869.
- <sup>89</sup> Patterson, p. 142.
- <sup>90</sup> *General Orders, No. 9*, Headquarters of the Army, Adjutant General's Office, Washington, D.C., Mar. 1, 1897.
- <sup>91</sup> *General Orders, No. 52*, War Department, Adjutant General's Office, Washington, D.C., Aug. 24, 1897.
- <sup>92</sup> Letter from Brig. Gen. Arthur Murray, Chief of Artillery, to The Adjutant General, War Department, untitled, Oct. 3, 1907.
- <sup>93</sup> *Memorandum for the Acting Secretary of War*, from Major General Wm. P. Duvall, General Staff, Assistant to Chief of Staff, War Department, Nov. 12, 1907.
- <sup>94</sup> *Circular, No. 78*, War Department, Washington, D.C., Nov. 21, 1907, Item II.

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<sup>95</sup> H. C. Relyea, “The Presidency and the People’s Right to Know,” Chapter 1 in *The Presidency and Information Policy*, ed., H. C. Relyea, Proceedings of the Center for the Study of the Presidency, 4 (1), 1981, p. 11.

<sup>96</sup> H. C. Relyea, “The Evolution of Government Security Classification Policy: A Brief Overview (1775-1973),” pp. 842-884, in *Government Secrecy*, Hearings Before the Subcommittee on Intergovernmental Relations of the Committee on Government Operations, U.S. Senate, 93d Congress, 2d Sess., 1974, p. 848. Hereafter cited as “Relyea-1974.”

<sup>97</sup> *Memorandum*, Office of the Judge Advocate General, War Department, Washington, D.C., May 19, 1913.

<sup>98</sup> Relyea-1974, p. 850.

<sup>99</sup> *General Order*, No. 36, Navy Department, Washington, D.C., Aug. 20, 1909.

<sup>100</sup> *Changes in Navy Regulations and Naval Instructions*, No. 7, Sect. 713, Navy Department, Washington, D.C., Sept. 15, 1916.

<sup>101</sup> Irvine, p. 42.

<sup>102</sup> 30 Stat. 717 (1899), July 7, 1898.

<sup>103</sup> 36 Stat. 1084 (Mar. 3, 1911).

<sup>104</sup> Jack Robinson, “The British Official Secrets Act, an Examination,” *J. Natl. Class. Mgmt. Soc.*, 8, 88-110 (1972), p. 89.

<sup>105</sup> Ann Rogers, *Secrecy and Power in the British State, A History of the Official Secrets Act*, Pluto Press, London, 1997, p. 23.

<sup>106</sup> *General Orders*, No. 64, Headquarters, American Expeditionary Forces, Sect. I.1, France, Nov. 21, 1917.

<sup>107</sup> *Ibid.*, Sect. I.2.

<sup>108</sup> *Ibid.*

<sup>109</sup> *Ibid.*, Sect. 4.

<sup>110</sup> *Ibid.*, Sect. 5.

<sup>111</sup> W.L. Brown, “The Interagency Classification Review Committee, Past and Future,” *J. Natl. Class. Mgmt. Soc.* 11, 8-14 (1975), p. 9.

<sup>112</sup> Irvine, p. 30.

<sup>113</sup> Patterson, pp. 154-155.

<sup>114</sup> *Compilation of Orders*, Changes No. 6, Sect. 176.1 - .3, War Department, Washington, Dec. 14, 1917.

<sup>115</sup> *Ibid.*, Sect. 176.4

<sup>116</sup> Irvine, p. 31.

<sup>117</sup> Irvine, p. 31.

<sup>118</sup> *General Order*, No. 370, “Correspondence and Information,” Navy Department, Washington, D.C., Feb. 20, 1918.

<sup>119</sup> *General Order*, No. 370, §8.

<sup>120</sup> 40 Stat. 217, 218 (June 15, 1917), codified at 18 U.S.C. §§793, 794.

<sup>121</sup> Trading with the Enemy Act of October 6, 1917, Ch. 106, 40 Stat. 411.

<sup>122</sup> Trading with The Enemy Act of October 6, 1917, Ch. 106, §10(i), 40 Stat. 422.

<sup>123</sup> Act of October 6, 1917, Ch. 95, 40 Stat. 394.

<sup>124</sup> Relyea-1974, p. 852.

<sup>125</sup> H. C. Relyea, “Shrouding the Endless Frontier—Scientific Communications and National Security: The Search for Balance,” pp. 75-124 in *Striking a Balance: National Security and Scientific Freedom*, ed. H. C. Relyea, American Association for the Advancement of Science, Washington, D.C., May 1985, p. 81.

<sup>126</sup> *United States Navy Regulations, 1920*, Chap. 52, Art. 2005, U.S. Government Printing Office, Washington, D.C., 1920, pp. 685-686.

<sup>127</sup> *United States Navy Regulations, 1920*, Art. 123, Sect. (2), p.37.

<sup>128</sup> *United States Navy Regulations, 1920*, Art. 123, Sect. (6), p. 38.

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- <sup>129</sup> *Army Regulations*, No. 330-5, “Documents - ‘Secret,’ ‘Confidential,’ and ‘For Official Use Only,’ ” U.S. War Department Washington, D.C., Jan. 22, 1921, Sect. I, Par. 2.
- <sup>130</sup> *Army Regulations*, No. 330-5, Sect. II, Par. 3(a), 1921.
- <sup>131</sup> *Army Regulations*, No. 330-5, Sect. IV, Par. 9, 1921.
- <sup>132</sup> AR 330-5, Sect. I, Par. 1, 1921.
- <sup>133</sup> AR 330-5, Sect. V, Par. 12, 1921.
- <sup>134</sup> AR 330-5, Sect. V, Par. 13, 1921.
- <sup>135</sup> *United States Navy Regulations, 1920*, Reprinted 1932, United States Government Printing Office, Washington, D.C., 1932.
- <sup>136</sup> *United States Navy Regulations, 1920*, 1932 reprinting, Art. 75 1/2, Par. (1), p. 25.
- <sup>137</sup> *United States Navy Regulations, 1920*, 1932 reprinting, Art. 76, Par. (9), p. 26.
- <sup>138</sup> *United States Navy Regulations, 1920*, 1932 reprinting, Ch. 52, Art. 2005, Par. (7), p. 686.
- <sup>139</sup> *Army Regulations*, No. 330-5, “Documents - ‘Secret,’ ‘Confidential,’ ‘For Official Use Only,’ and ‘Restricted,’ ” U.S. War Department, Washington, D.C., Feb. 12, 1935, Sect. V, Par. 11.
- <sup>140</sup> Appendix A, “Summary of Changes in AR 3350, As Revised,” to *Revision of AR 330-5, Documents*, Memorandum for War Department Chief of Staff from the Military Intelligence Division, G-2, War Department General Staff, Jan. 3, 1936.
- <sup>141</sup> AR 330-5, 1935, Sect. VI.
- <sup>142</sup> AR 330-5, 1935, Sect. IV, Par. 14.
- <sup>143</sup> AR 330-5, 1935, Sect. VII, Par. 20.
- <sup>144</sup> *Revision of AR 330-5, Documents*, Memorandum for War Department Chief of Staff from the Military Intelligence Division, G-2, War Department General Staff, Jan. 3, 1936.
- <sup>145</sup> *Army Regulations*, No. 330-5, “Documents - ‘Secret,’ ‘Confidential,’ and ‘Restricted,’ ” War Department, Washington, D.C., Feb. 11, 1936.
- <sup>146</sup> AR 330-5, 1936, Sect. II, Par. 4.
- <sup>147</sup> AR 330-5, 1936, Sect. II, Par. 11.
- <sup>148</sup> AR 330-5, 1936, Sect. II, Par. 10.
- <sup>149</sup> AR 330-5, 1936, Sect. IV, Par. 16.a.
- <sup>150</sup> AR 330-5, 1936, Sect. IV, Par. 17.
- <sup>151</sup> AR 330-5, 1936, Sect. IV, Par. 16(b).
- <sup>152</sup> AR 330-5, 1936, Sect. IV, Par. 18.
- <sup>153</sup> AR 330-5, 1936, Sect. IV, Par. 31.
- <sup>154</sup> *United States Navy Regulations, 1920*, Reprinted 1938, U.S. Government Printing Office, Washington, D.C., 1939.
- <sup>155</sup> *United States Navy Regulations 1920*, 1938 reprinting, Art. 75 1/2, Par. (1)(a), p. 25.
- <sup>156</sup> *United States Navy Regulations 1920*, 1938 reprinting, Art. 75 1/2, Par. (1)(b), p. 25(1).
- <sup>157</sup> *United States Navy Regulations 1920*, 1938 reprinting, Art. 75 1/2, Par. (4), pp. 25(2)-25(3).
- <sup>158</sup> *United States Navy Regulations 1920*, 1938 reprinting, Art. 75 1/2, Par. (5)(b), p. 25(3).
- <sup>159</sup> *United States Navy Regulations 1920*, 1938 reprinting, Art. 75 1/2, Par. (5)(e), p. 25(3).
- <sup>160</sup> *United States Navy Regulations 1920*, 1938 reprinting, Art. 76, Par. (1)(a).
- <sup>161</sup> *United States Navy Regulations 1920*, 1938 reprinting, Art. 76, Par. (1)(b).
- <sup>162</sup> *Army Regulations*, No. 380-5, “Safeguarding Military Information,” War Department, Washington, D.C., June 18, 1941.
- <sup>163</sup> AR 380-5, 1941, §I.4.a.
- <sup>164</sup> AR 380-5, 1941, §I.7.
- <sup>165</sup> AR 380-5, 1941, §I.8.a.
- <sup>166</sup> AR 380-5, 1941, §I.9.a.
- <sup>167</sup> AR 380-5, 1941, §II.18.a(3).
- <sup>168</sup> AR 380-5, 1941, §II.18.a(4)(b).

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<sup>169</sup> AR 380-5, 1941, §II.20.d.

<sup>170</sup> Act of January 12, 1938, Ch. 2, §§1-5, 52 Stat. 3, codified at 18 U.S.C. §§795, 796, and 797.