

Secrets of Freedom

By C. L. Sulzberger

FOREIGN AFFAIRS

Democratic governments are puzzled by contradictions between the desire to inform their populations freely and completely while preserving from public disclosure legitimate secrets deemed essential to national security in a nuclear-missile world.

The inherent contradictions can never satisfactorily be resolved. France, for example, has kept on the books for more than a century and during three republics statutes that would be considered repressive censorship by many Americans. West Germany, with relatively recent memories of dictatorship, tends to lean over backwards in favor of freer news media.

The British, most governable of democratic peoples because they are both pragmatic and patriotic by long tradition, have been trying to elaborate safeguard legislation for more than sixty years. The so-called Official Secrets Act actually comprises three separate laws of 1911, 1920 and 1939. It bans disclosure of information "prejudicial to the safety or interests of the state" or possession of any official document by anyone who "has no right to retain it."

This strict interpretation has sometimes produced such ridiculous exaggerations as preventing press mention of King Edward VIII's romance when the whole world knew about it. The London Sunday Telegraph won an action brought against it by the Government for publishing a patently overclassified report. Now a quiet inquiry is under way on whether modifications of existing law are desirable.

The U.S. Government has had little success in its own attempts to bridge the gap between public freedom and national security. Despite the First Amendment to the Constitution which prohibits any law abridging press freedom, two attempts were made (in 1798 and 1918) to legislate against revealing what was officially deemed secret by banning violations as "sedition."

Under existing statutes, as interpreted by the courts, the Government has occasionally attempted to prosecute disclosures of classified information as "espionage." This is manifestly absurd. Nevertheless, it is obvious certain secrets such as names of undercover agents abroad, movements of atomic submarines, the exact design or specification of some weapons, or the targeting program of strategic arms should not be public property.

A new effort to face this problem is now being prepared by the executive branch, which has an interagency committee representing the Depart-

ments of Defense, State and Justice; the White House, the Atomic Energy Commission, the Central Intelligence and National Security Agencies, seeking to agree on revision of protective laws.

Their ideas are to be included in a complex legal reform bill which, if drafted in time, is to be presented to Congress next month. The problems involved are so complex that few observers expect legislative approval in much less than three years.

The Justice Department wants to simplify existing procedures by: (1) having less official information classified; (2) insisting on swifter declassification procedures; (3) creating an administrative set-up to deal with violations of classification. The criminal laws are being re-examined with respect to security leakage. Point (3) of the program is being studied by the interagency committee which is headed by John Eisenhower.

The Administration is understandably touchy about relations with the news media, which it is often accused of curbing—and it is not the first Administration to suffer from such reproaches. It also acknowledges that the habit of classifying official documents has been grossly exaggerated.

Attorney General Richard G. Kleindienst recently told me: "Our laws are often taken advantage of by bureaucrats to conceal mistakes under wrongly used classification stamps. It is necessary to define more precisely the areas of real security and then to enact specific laws to protect these; but in accordance with First Amendment safeguards of a free press."

Judgments involved concerning "real security" and total "freedom" enter a gray area of dispute in which even different executive departments disagree. The Pentagon has rigid ideas of defining matters to be considered of paramount national interest.

Congress will have an excruciatingly difficult time in deciding what may properly be termed secret and how it should be kept. In an era of electronic bugging devices, copying machines and tape recorders it is harder to insure against leakage and in an American society where all forms of censorship are repugnant it is a delicate task to except certain types of information.

All one can hope is that when the legislature has finally acted, the United States will find it is leaning neither toward excessive restrictions nor toward total license that could destroy freedom's capacity to defend itself.