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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA, ) CR. NO. S-05-240 GEB  
11 )  
12 Plaintiff, ) WRITTEN MOTION IN SUPPORT OF  
13 v. ) INVOCATION OF CLASSIFIED  
14 ) INFORMATION PROCEDURES ACT  
15 HAMID HAYAT, and ) AND PRETRIAL HEARING REGARDING  
UMER HAYAT, ) THE SAME  
16 )  
17 Defendants. ) Date: Aug. 19, 2005  
Time: 1:00 p.m.  
18 ) Judge: Hon. G.E. Burrell, Jr.

16 The United States of America, by and through its undersigned  
17 counsel, respectfully files this written motion in support of its  
18 previous oral motion for a hearing pursuant to Section 2 of the  
19 Classified Information Procedures Act, 18 U.S.C. App. III ("CIPA").

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1 The court has currently set that hearing for August 19, 2005<sup>1</sup>.

2 DATED: July 6, 2005

Respectfully submitted,

3 MCGREGOR W. SCOTT  
4 United States Attorney

5  
6 /s/ R. STEVEN LAPHAM  
7 R. STEVEN LAPHAM  
8 Assistant United States Attorney

9 /s/ TICE-RASKIN  
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12 Attorneys for Plaintiff  
13 UNITED STATES OF AMERICA  
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27 <sup>1</sup>This motion includes much of the same legal authority  
28 previously provided to the Court in the government's June 27, 2005  
Notice of Invocation of Classified Information Procedures Act, as  
well as updated factual information.



1 U.S. Code Cong. & Admin. News 4294, 4297. CIPA permits "the trial  
2 judge to rule on questions of admissibility involving classified  
3 information before introduction of the evidence in open court. Id.  
4 This procedure . . . permit[s] the government to ascertain the  
5 potential damage to national security of proceeding with a given  
6 prosecution before trial." Id. CIPA, among other things, created a  
7 pretrial procedure for ruling upon the admissibility of classified  
8 information. Id. The Act also clarified the court's powers under  
9 Fed.R.Crim.P. 16(d)(1) to deny or restrict discovery in order to  
10 protect national security. Id.

11 III. DEFINITIONS, PRETRIAL CONFERENCE,  
12 PROTECTIVE ORDERS AND DISCOVERY

13  
14 A. Definitions of Terms. Section 1 of CIPA defines  
15 "classified information" and "national security," both of which are  
16 terms used throughout the statute. Subsection (a) defines  
17 "classified information" as "any information or material that has  
18 been determined by the United States Government pursuant to an  
19 Executive Order, statute, or regulation, to require protection  
20 against unauthorized disclosure for reasons of national security. .  
21 . ." Subsection (b) defines "national security" as "the national  
22 defense and foreign relations of the United States."

23 B. Pretrial Conference. Section 2 provides that "[a]t any  
24 time after the filing of the indictment or information, any party  
25 may move for a pretrial conference to consider matters relating to  
26 classified information that may arise in connection with the  
27 prosecution." After such a motion is filed, Section 2 states that  
28 the district court "shall promptly hold a pretrial conference to

1 establish the timing of requests for discovery, the provision of  
2 notice required by Section 5 of [CIPA], and the initiation of the  
3 procedure established by Section 6 of [CIPA]."

4 C. Protective Orders. Section 3 of CIPA requires the court,  
5 upon the request of the United States, to issue an order "to protect  
6 against the disclosure of any classified information disclosed by  
7 the United States to any defendant in any criminal case. . . ."

8 D. Discovery of Classified Information by the Defendant.  
9 Section 4 provides, in pertinent part, that "[t]he court, upon  
10 sufficient showing, may authorize the United States to delete  
11 specified items of classified information from documents to be made  
12 available to the defendant through discovery under the Federal Rules  
13 of Criminal Procedure, to substitute a summary of the information  
14 for such classified documents, or to substitute a statement  
15 admitting the relevant facts that classified information would tend  
16 to prove." Like Rule 16(d)(1) of the Federal Rules of Criminal  
17 Procedure, Section 4 of CIPA provides that the United States may  
18 demonstrate, in an in camera, ex parte submission to the Court, that  
19 the use of such alternatives is warranted. United States v.  
20 Sarkissian, 841 F.2d at 965 (ex parte proceedings under CIPA  
21 concerning national security information appropriate where "the  
22 government is seeking to withhold classified information from the  
23 defendant and an adversary hearing with defense knowledge would  
24 defeat the purpose of the discovery rules."); United States v.  
25 Yunis, 867 F.2d 617, 622-23 (D.C. Cir. 1989)<sup>2</sup>.

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27 <sup>2</sup> Ex parte hearings are generally disfavored. See, e.g., United  
28 States v. Kenney, 911 F.2d 315, 321 (9th Cir.1990). "In a case  
involving classified documents, however, *ex parte*, *in camera*

1 The legislative history of Section 4 makes clear that the Court  
2 may take national security interests into account in determining  
3 whether to permit discovery to be denied, restricted or deferred.<sup>3</sup>

4 IV. SECTION 5 AND 6 OF CIPA; NOTICE  
5 AND PRETRIAL EVIDENTIARY RULINGS

6 There are three critical pretrial steps in the handling of  
7 classified information under Sections 5 and 6 of CIPA. First, the  
8 defendant must specify in detail the precise classified information  
9 he reasonably expects to disclose. Second, the Court, upon motion  
10 of the United States, shall hold a hearing pursuant to Section 6(a)  
11 to determine the use, relevance and admissibility of the proposed  
12 evidence. Third, following the Section 6(a) hearing and formal  
13

14  
15 hearings in which government counsel participates to the exclusion  
16 of defense counsel are part of the process that the district court  
17 may use in order to decide the relevancy of the information."  
18 United States v. Klimavicius-Viloria, 144 F.3d 1249, 1261 (9th Cir.  
19 1998). "Such a hearing is appropriate if the court has questions  
20 about the confidential nature of the information or its relevancy."  
21 Id. "Further, while these statutes specify written submissions, they  
22 do not rule out hearings in which government counsel participate."  
23 Id.

24 In a similar vein, courts have explained that the very purpose  
25 of seeking a protective order under Rule 16(d)(1) would be lost in  
26 certain instances if the application were not pursued *ex parte* and  
27 *in camera*. United States v. Ott, 827 F.2d 473, 576-77 (9th Cir.  
1987) (finding that the status of a security clearance of defense  
counsel was irrelevant and that Congress had a legitimate interest  
in ensuring that sensitive security information was not  
unnecessarily disseminated); United States v. Pelton, 578 F.2d 701,  
707 (8th Cir. 1978) ([a]n adversary proceeding would have defeated  
the very purpose of the requested order by revealing [the  
witnesses'] identities to [the defendant]), cert. denied, 439 U.S.  
964 (1978); In re Taylor, 567 F.2d 1183, 1187-89 (2d Cir. 1977) (*in  
camera, ex parte* proceedings serve to resolve conflict between  
defendant's rights to discovery and Government's claim of  
privilege).

28 <sup>3</sup> S. Rep. No. 96-823, 96<sup>th</sup> Cong., 2d Sess. 6 (1980), reprinted  
in 1980 U.S. Code Cong. & Ad. News at 4300.

1 findings of admissibility by the Court, the United States may move  
2 to substitute an admission of relevant facts or summaries for  
3 classified information that the Court rules is admissible.

4       A.    The Section 5(a) Notice Requirement.    The linchpin of CIPA  
5 is Section 5(a), which requires a defendant who intends to disclose  
6 (or cause the disclosure of) classified information to provide  
7 timely pretrial written notice of his intention to the court and the  
8 United States. Section 5(a) expressly requires that such notice  
9 "include a brief description of the classified information." Such  
10 notice "must be particularized, setting forth specifically the  
11 classified information which the defendant reasonably believes to be  
12 necessary to his defense." United States v. Collins, 720 F.2d 1195,  
13 1199 (11<sup>th</sup> Cir. 1983) (emphasis added); see also United States v.  
14 Yunis, 867 F.2d at 623 ("a defendant seeking classified information  
15 . . . is entitled only to information that is at least 'helpful to  
16 the defense of [the] accused.'"); United States v. Smith, 780 F.2d  
17 1102, 1105 (4<sup>th</sup> Cir. 1985) (en banc). This requirement applies to  
18 both documentary exhibits and oral testimony, whether it is  
19 anticipated to be brought out on direct or cross-examination. See,  
20 e.g., United States v. Wilson, 750 F.2d 7 (2d Cir. 1984), cert.  
21 denied, 479 U.S. 839 (1986); United States v. Collins, 720 F.2d 1195  
22 (11<sup>th</sup> Cir. 1983).

23       If a defendant fails to provide a sufficiently detailed notice  
24 far enough in advance of trial to permit the implementation of CIPA  
25 procedures, Section 5(b) allows the Court to preclude disclosure of  
26 the classified information. Similarly, if the defendant attempts to  
27 disclose at trial classified information which is not described in  
28

1 his Section 5(a) notice, preclusion is the appropriate remedy under  
2 Section 5(b) of CIPA. See United States v. Smith, 780 F.2d at 1105  
3 ("A defendant is forbidden from disclosing any such information  
4 absent the giving of notice."); see generally United States v.  
5 North, 708 F. Supp. 389 (D.D.C. 1988), appeal dismissed, 859 F.2d 216  
6 (D.C. Cir. 1985), cert. denied, 450 U.S. 1004 (1989).

7       B. The Section 6(a) Hearing. The purpose of the hearing  
8 pursuant to Section 6(a) of CIPA is "to make all determinations  
9 concerning the use, relevance, or admissibility of classified  
10 information that would otherwise be made during the trial or  
11 pretrial proceeding." 18 U.S.C. App. III, § 6(a). The statute  
12 expressly provides that if the motion of the United States under  
13 Section 6(a) is filed before trial or the relevant pretrial  
14 proceeding, "the court shall rule [on the use, relevance, or  
15 admissibility of the classified information at issue] prior to the  
16 commencement of the relevant proceeding." Id. (emphasis added).

17       Section 6(b) of CIPA requires that before any hearing is  
18 conducted under subsection (a), the United States must notify the  
19 defendant of the hearing and identify the classified information  
20 which will be at issue. If the information was not previously made  
21 available to the defendant, the United States may, with the Court's  
22 approval, provide a generic description of the material to the  
23 defendant.

24       At the Section 6(a) hearing, the Court hears the defense  
25 proffer and the arguments of counsel, and then rules whether the  
26 classified information identified by the defense is relevant under  
27 Rule 401 of the Federal Rules of Evidence. United States v. Smith,  
28

1 780 F.2d at 1106; see generally United States v. Yunis, 867 F.2d at  
2 622.<sup>4</sup> The Court's inquiry does not end there, however, for under  
3 Rule 402 of the Federal Rules of Evidence, "[n]ot all relevant  
4 evidence is admissible at trial." Id. The Court must also  
5 determine whether the evidence is cumulative, "prejudicial,  
6 confusing, or misleading," so that it should be excluded under Rule  
7 403 of the Federal Rules of Evidence. United States v. Wilson, 750  
8 F.2d at 9. At the conclusion of the Section 6(a) hearing, the Court  
9 must state in writing the reasons for its determination as to each  
10 item of classified information.

11 C. Substitution Pursuant to Section 6(c). In the event that  
12 the Court rules that one or more items of classified information are  
13 admissible, the United States has the option of "substituting"  
14 information for the classified information at issue, pursuant to  
15 Section 6(c) of CIPA. The United States may move for permission to  
16 provide the defense either a substitute statement admitting relevant  
17 facts that the classified information would tend to prove, or  
18 substitute summary of the classified information that would  
19 otherwise be disclosable. See United States v Smith, 780 F.2d at  
20 1105. The Court must grant the motion for substitution "if it finds  
21 that the admission or summary will leave the defendant in  
22 substantially the same position as would disclosure." United States  
23 v. North, 910 F.2d 843, 899 (D.C. Cir. 1990), superseded in part on  
24

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25 <sup>4</sup> CIPA does not change the "generally applicable evidentiary  
26 rules of admissibility." United States v. Wilson, 750 F.2d at 9;  
27 accord United States v. Yunis, 867 F.2d at 623. Rather, CIPA alters  
28 the timing of rulings concerning admissibility, so as to require  
them to be made before trial. United States v. Poindexter, 698 F.  
Supp. 316, 318 (D.D.C. 1988); accord United States v. Smith, 780  
F.2d at 1106.

1 other grounds, 920 F.2d 940 (1990), cert. denied, 500 U.S. 941  
2 (1991).

3 V. OTHER RELEVANT CIPA PROCEDURES

4 A. Interlocutory Appeal. Section 7(a) of CIPA provides for  
5 an interlocutory appeal by the United States from any decision or  
6 order of the trial judge "authorizing the disclosure of classified  
7 information, imposing sanctions for nondisclosure of classified  
8 information, or refusing a protective order sought by the United  
9 States to prevent the disclosure of classified information." The  
10 term "disclosure" relates both to information which the court orders  
11 the United States to divulge to the defendant as well as to  
12 information already possessed by the defendant which he or she  
13 intends to make public. Section 7(b) instructs the Court of Appeals  
14 to give expedited consideration to any interlocutory appeal filed  
15 under subsection (a).

16 B. Introduction of Classified Information. In order to  
17 prevent "unnecessary disclosure" of classified information, section  
18 8(b) permits the Court to order admission into evidence of only a  
19 part of a writing, recording or photograph. Alternatively, the  
20 Court may order into evidence the entire writing, recording or  
21 photograph with all or part of the classified information contained  
22 therein excised. Excision of such classified information may not be  
23 authorized, however, if fairness requires that the whole document,  
24 recording or photograph be considered.

25  
26 Section 8(c) establishes a procedure for addressing the  
27 problems that may emerge during the taking of testimony from a  
28 witness who possesses classified information not previously found to

1 be admissible. Section 8 (c) provides that, during the examination  
2 of a witness, "the United States may object to any question or line  
3 of inquiry that may require the witness to disclose classified  
4 information not previously found to be admissible [in a Section 6(a)  
5 hearing]." Following such an objection, the court must "take such  
6 suitable action to determine whether the response is admissible as  
7 will safeguard against the compromise of any classified  
8 information." Id.

9 C. Security Procedures. Section 9 of CIPA required the Chief  
10 Justice of the United States to prescribe security procedures for  
11 the protection of classified information in the custody of federal  
12 courts. On February 12, 1981, Chief Justice Burger promulgated  
13 these procedures. A copy of those rules are attached hereto as  
14 Exhibit A and provide for, among other things, the appointment of a  
15 Court Security Officer, the establishment of secure quarters for in  
16 camera proceedings, appropriate clearances for court personnel, and  
17 procedures for the custody and handling of classified material.

## 18 VI. CONCLUSION

19  
20 In sum, the government presently has reached the conclusion  
21 that there are at least some classified materials which arguably may  
22 be discoverable in this case, and which require handling in  
23 accordance with CIPA procedures. The government will apprise the  
24 Court regarding the government's need to utilize CIPA procedures in  
25 connection with other pretrial and trial issues as they arise.  
26  
27  
28

1 EXHIBIT A

2 SECURITY PROCEDURES ESTABLISHED PURSUANT TO PUB.L. 96-456, 94 STAT.  
3 2025, BY THE CHIEF JUSTICE OF THE UNITED STATES FOR THE PROTECTION  
4 OF CLASSIFIED INFORMATION

5 1. Purpose. The purpose of these procedures is to meet the  
6 requirements of Section 9(a) of the Classified Information  
7 Procedures Act of 1980, Pub.L. 96-456, 94 Stat. 2025, which in  
8 pertinent part provides that:

9 ". . . [T]he Chief Justice of the United States, in consultation  
10 with the Attorney General, the Director of Central Intelligence, and  
11 the Secretary of Defense, shall prescribe rules establishing  
12 procedures for the protection against unauthorized disclosure of any  
13 classified information in the custody of the United States district  
14 courts, courts of appeal, or Supreme Court. . . ."

15 These procedures apply in all proceedings in criminal cases  
16 involving classified information, and appeals therefrom, before the  
17 United States district courts, the courts of appeal and the Supreme  
18 Court.

19 2. Court Security Officer. In any proceeding in a criminal case or  
20 appeal therefrom in which classified information is within, or  
21 reasonably expected to be within, the custody of the court, the  
22 court shall designate a court security officer. The Attorney General  
23 or the Department of Justice Security Officer, with the concurrence  
24 of the head of the agency or agencies from which the classified  
25 information originates, or their representatives, shall recommend to  
26 the court persons qualified to serve as court security officer. The  
27 court security officer shall be selected from among those persons so  
28 recommended.

The court security officer shall be an individual with demonstrated  
competence in security matters, and shall, prior to designation,  
have been certified to the court in writing by the Department of  
Justice Security Officer as cleared for the level and category of  
classified information that will be involved. The court security  
officer may be an employee of the Executive Branch of the Government  
detailed to the court for this purpose. One or more alternate court  
security officers, who have been recommended and cleared in the  
manner specified above, may be designated by the court as required.

The court security officer shall be responsible to the court for  
document, physical, personnel and communications security, and shall  
take measures reasonably necessary to fulfill these  
responsibilities. The court security officer shall notify the court  
and the Department of Justice Security Officer of any actual,

1 attempted, or potential violation of security procedures.

2  
3 3. Secure Quarters. Any in camera proceeding--including a pretrial  
4 conference, motion hearing, or appellate hearing--concerning the  
5 use, relevance, or admissibility of classified information, shall be  
6 held in secure quarters recommended by the court security officer  
7 and approved by the court.

8  
9 The secure quarters shall be located within the Federal courthouse,  
10 unless it is determined that none of the quarters available in the  
11 courthouse meets, or can reasonably be made equivalent to, security  
12 requirements of the Executive Branch applicable to the level and  
13 category of classified information involved. In that event, the  
14 court shall designate the facilities of another United States  
15 Government agency, recommended by the court security officer, which  
16 is located within the vicinity of the courthouse, as the site of the  
17 proceedings.

18  
19 The court security officer shall make necessary arrangements to  
20 ensure that the applicable Executive Branch standards are met and  
21 shall conduct or arrange for such inspection of the quarters as may  
22 be necessary. The court security officer shall, in consultation with  
23 the United States Marshal, arrange for the installation of security  
24 devices and take such other measures as may be necessary to protect  
25 against any unauthorized access to classified information. All of  
26 the aforementioned activity shall be conducted in a manner which  
27 does not interfere with the orderly proceedings of the court. Prior  
28 to any hearing or other proceeding, the court security officer shall  
certify in writing to the court that the quarters are secure.

4. Personnel Security--Court Personnel. No person appointed by the  
court or designated for service therein shall be given access to any  
classified information in the custody of the court, unless such  
person has received a security clearance as provided herein and  
unless access to such information is necessary for the performance  
of an official function. A security clearance for justices and  
judges is not required, but such clearance shall be provided upon  
the request of any judicial officer who desires to be cleared.

The court shall inform the court security officer or the attorney  
for the government of the names of court personnel who may require  
access to classified information. That person shall then notify the  
Department of Justice Security Officer, who shall promptly make  
arrangements to obtain any necessary security clearances and shall  
approve such clearances under standards of the Executive Branch  
applicable to the level and category of classified information  
involved. The Department of Justice Security Officer shall advise  
the court in writing when the necessary security clearances have  
been obtained.

1 If security clearances cannot be obtained promptly, personnel in the  
2 Executive Branch having the necessary clearances may be temporarily  
3 assigned to assist the court. If a proceeding is required to be  
4 recorded and an official court reporter having the necessary  
5 security clearance is unavailable, the court may request the court  
6 security officer or the attorney for the government to have a  
7 cleared reporter from the Executive Branch designated to act as  
8 reporter in the proceedings. The reporter so designated shall take  
9 the oath of office as prescribed by 28 U.S.C. § 753(a).

6 Justices, judges and cleared court personnel shall not disclose  
7 classified information to anyone who does not have a security  
8 clearance and who does not require the information in the discharge  
9 of an official function. However, nothing contained in these  
10 procedures shall preclude a judge from discharging his official  
11 duties, including giving appropriate instructions to the jury.

10 Any problem of security involving court personnel or persons acting  
11 for the court shall be referred to the court for appropriate action.

12 5. Persons Acting for the Defendant. The government may obtain  
13 information by any lawful means concerning the trustworthiness of  
14 persons associated with the defense and may bring such information  
15 to the attention of the court for the court's consideration in  
16 framing an appropriate protective order pursuant to Section 3 of the  
17 Act.

16 6. Jury. Nothing contained in these procedures shall be construed to  
17 require an investigation or security clearance of the members of the  
18 jury or interfere with the functions of a jury, including access to  
19 classified information introduced as evidence in the trial of a  
20 case.

19 After a verdict has been rendered by a jury, the trial judge should  
20 consider a government request for a cautionary instruction to jurors  
21 regarding the release or disclosure of classified information  
22 contained in documents they have reviewed during the trial.

22 7. Custody and Storage of Classified Materials.

23  
24 a. Materials Covered. These security procedures apply to all papers,  
25 documents, motions, pleadings, briefs, notes, records of statements  
26 involving classified information, notes relating to classified  
27 information taken during in camera proceedings, orders, affidavits,  
28 transcripts, untranscribed notes of a court reporter, magnetic  
recordings, or any other submissions or records which contain  
classified information as the term is defined in Section 1(a) of the  
Act, and which are in the custody of the court. This includes, but  
is not limited to (1) any motion made in connection with a pretrial

1 conference held pursuant to Section 2 of the Act, (2) written  
2 statements submitted by the United States pursuant to Section 4 of  
3 the Act, (3) any written statement or written notice submitted to  
4 the court by the defendant pursuant to Section 5(a) of the Act, (4)  
5 any petition or written motion made pursuant to Section 6 of the  
6 Act, (5) any description of, or reference to, classified information  
7 contained in papers filed in an appeal, pursuant to Section 7 of the  
8 Act and (6) any written statement provided by the United States or  
9 by the defendant pursuant to Section 8(c) of the Act.

6  
7 b. Safekeeping. Classified information submitted to the court shall  
8 be placed in the custody of the court security officer who shall be  
9 responsible for its safekeeping. When not in use, the court security  
10 officer shall store all classified materials in a safe or safe-type  
11 steel file container with built-in, dial-type, three position,  
12 changeable combinations which conform to the General Services  
13 Administration standards for security containers. Classified  
14 information shall be segregated from other information unrelated to  
15 the case at hand by securing it in a separate security container. If  
16 the court does not possess a storage container which meets the  
17 required standards, the necessary storage container or containers  
18 are to be supplied to the court on a temporary basis by the  
19 appropriate Executive Branch agency as determined by the Department  
20 of Justice Security Officer. Only the court security officer and  
21 alternate court security officer(s) shall have access to the  
22 combination and the contents of the container unless the court,  
23 after consultation with the security officer, determines that a  
24 cleared person other than the court security officer may also have  
25 access.

17 For other than temporary storage (e.g., brief court recess), the  
18 court security officer shall insure that the storage area in which  
19 these containers shall be located meets Executive Branch standards  
20 applicable to the level and category of classified information  
21 involved. The secure storage area may be located within either the  
22 Federal courthouse or the facilities of another United States  
23 Government agency.

21 c. Transmittal of Classified Information. During the pendency of a  
22 trial or appeal, classified materials stored in the facilities of  
23 another United States Government agency shall be transmitted in the  
24 manner prescribed by the Executive Branch security regulations  
25 applicable to the level and category of classified information  
26 involved. A trust receipt shall accompany all classified materials  
27 transmitted and shall be signed by the recipient and returned to the  
28 court security officer.

## 26 8. Operating Routine.

27  
28 a. Access to Court Records. Court personnel shall have access to  
court records only as authorized. Access to classified information

1 by court personnel shall be limited to the minimum number of cleared  
2 persons necessary for operating purposes. Access includes presence  
3 at an in camera hearing or any other proceeding during which  
4 classified information may be disclosed. Arrangements for access to  
5 classified information in the custody of the court by court  
6 personnel and persons acting for the defense shall be approved in  
7 advance by the court, which may issue a protective order concerning  
8 such access.

9 Except as otherwise authorized by a protective order, persons acting  
10 for the defendant will not be given custody of classified  
11 information provided by the government. They may, at the discretion  
12 of the court, be afforded access to classified information provided  
13 by the government in secure quarters which have been approved in  
14 accordance with § 3 of these procedures, but such classified  
15 information shall remain in the control of the court security  
16 officer.

17 b. Telephone Security. Classified information shall not be discussed  
18 over standard commercial telephone instruments or office  
19 intercommunication systems.

20 c. Disposal of Classified Material. The court security officer shall  
21 be responsible for the secure disposal of all classified materials  
22 which are not otherwise required to be retained.

## 23 9. Records Security.

24 a. Classification Markings. The court security officer, after  
25 consultation with the attorney for the government, shall be  
26 responsible for the marking of all court documents containing  
27 classified information with the appropriate level of classification  
28 and for indicating thereon any special access controls that also  
appear on the face of the document from which the classified  
information was obtained or that are otherwise applicable.

Every document filed by the defendant in the case shall be filed  
under seal and promptly turned over to the court security officer.  
The court security officer shall promptly examine the document and,  
in consultation with the attorney for the government or  
representative of the appropriate agency, determine whether it  
contains classified information. If it is determined that the  
document does contain classified information, the court security  
officer shall ensure that it is marked with the appropriate  
classification marking. If it is determined that the document does  
not contain classified information, it shall be unsealed and placed  
in the public record. Upon the request of the government, the court  
may direct that any document containing classified information shall  
thereafter be protected in accordance with § 7 of these procedures.

1 b. Accountability System. The court security officer shall be  
2 responsible for the establishment and maintenance of a control and  
3 accountability system for all classified information received by or  
4 transmitted from the court.

5 10. Transmittal of the Record on Appeal. The record on appeal, or  
6 any portion thereof, which contains classified information shall be  
7 transmitted to the court of appeals or to the Supreme Court in the  
8 manner specified in § 7(c) of these procedures.

9 11. Final Disposition. Within a reasonable time after all  
10 proceedings in the case have been concluded, including appeals, the  
11 court shall release to the court security officer all materials  
12 containing classified information. The court security officer shall  
13 then transmit them to the Department of Justice

14 Security Officer who shall consult with the originating agency to  
15 determine the appropriate disposition of such materials. Upon the  
16 motion of the government, the court may order the return of the  
17 classified documents and materials to the department or agency which  
18 originated them. The materials shall be transmitted in the manner  
19 specified in § 7(c) of these procedures and shall be accompanied by  
20 the appropriate accountability records required by § 9(b) of these  
21 procedures.

22 12. Expenses. Expenses of the United States Government which arise  
23 in connection with the implementation of these procedures shall be  
24 borne by the Department of Justice or other appropriate Executive  
25 Branch agency.

26 13. Interpretation. Any question concerning the interpretation of  
27 any security requirement contained in these procedures shall be  
28 resolved by the court in consultation with the Department of Justice  
Security Officer and the appropriate Executive Branch agency  
security officer.

14. Term. These procedures shall remain in effect until modified in  
writing by The Chief Justice after consultation with the Attorney  
General of the United States, the Director of Central Intelligence,  
and the Secretary of Defense.

1 15. Effective Date. These procedures shall become effective  
2 forty-five days after the date of submission to the appropriate  
3 Congressional Committees, as required by the Act.

4 Issued this 12th day of February, 1981, after taking into account  
5 the views of the Attorney General of the United States, the Director  
6 of Central Intelligence, and the Secretary of Defense, as required  
7 by law.

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/s/WARREN E. BURGER Chief Justice of the United States