



~~TOP SECRET~~ ~~UMBRKA~~

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

WASHINGTON, D.C. 20301

DECLASSIFIED IN FULL
Authority: EO 13526
Chief, Records & Declass Div, WHS
Date: OCT 26 2012

January 7, 1987

MEMORANDUM FOR THE SECRETARY OF DEFENSE

SUBJECT: Sentencing Affidavit for Jonathan Pollard --
ACTION MEMORANDUM

Attached is an affidavit prepared for your signature. It is intended for use by the Court in assessing an appropriate sentence for Jonathan Pollard. The affidavit has been approved by CIA, DIA, NSA and Navy.

This document is lengthier than I would normally approve for your signature. The reason for the length is consistent with the scope of Pollard's espionage activities. Succinctly, he disclosed an incredible quantity of intelligence publications which encompassed a similarly broad scope and variety of intelligence information. Even so, only a handful from among the many thousands compromised are described herein. Those described are available for your review should you desire to do so.

It is the opinion of the intelligence agencies, and one which I share, that we must describe Pollard's activities with particularity. A lesser description of the damage he has done to the national security would risk an erroneous assumption by the sentencing judge that Pollard's disclosures to an ally have really done little to harm the United States. Of course, the probable consequence of such an assumption would be an inappropriate sentence. The factual descriptions of Pollard's activities contained in both the classified and unclassified sentencing memoranda which will be submitted by the U.S. Attorney are similarly lengthy.

This document will be handled in compartmented channels. Navy personnel will carry it to and from the judge, and one copy will be placed in the Department of Justice security vaults for review by defense counsel who have been properly cleared. The affidavit assumes that the Director of Naval Intelligence will provide permanent storage for it in his office.

I strongly recommend that you sign the affidavit.


H. Lawrence Garrett, III

Attachment

~~UNCLASSIFIED UPON REMOVAL~~
~~ATTACHMENT~~

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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Authority: EO 13526
Chief, Records & Declass Div, WHS
Date: OCT 26 2012

UNITED STATES OF AMERICA)
)
 v.)
)
 JONATHAN JAY POLLARD,)
 defendant.)
 _____)

Criminal No. 86-0207

DECLARATION OF THE SECRETARY OF DEFENSE

CASPAR W. WEINBERGER HEREBY DECLARES AND SAYS:

1. (U) I have been the Secretary of Defense and the chief executive officer of the Department of Defense (DOD), an executive department of the United States, 10 U.S.C. 131, since 20 January 1981. As Secretary of Defense, I have authority, direction and control over the DOD, 10 U.S.C. 133(b), and am a member of the National Security Council.

2. (U) As Secretary of Defense, I possess original classification authority for TOP SECRET information, including Sensitive Compartmented Information (SCI). SCI is information which derives from sources or methods which are especially vulnerable to unauthorized disclosures. That vulnerability may

~~TOP SECRET UMBRA~~

stem from particularly fragile acquisition methodology, from sources especially susceptible to counter measures or deception techniques or even from danger to human life if the substantive information obtained is exposed. The fact that I possess this classification authority means that I am authorized to determine the significance and the proper classification of national security information, including TOP SECRET, SENSITIVE COMPARTMENTED INFORMATION (SCI), on behalf of the United States. The information I have prepared for the Court is submitted based upon my personal review of relevant information and my discussions with personnel who are knowledgeable about the data described herein.

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3. (U) The information in this declaration is submitted for use by the Court as an aid in determining an appropriate sentence for the defendant, Jonathan Jay Pollard. It is my purpose to explain the nature and significance of the defendant's actions as I perceive them to have affected the security of the United States. I have detailed a considerable quantity of highly sensitive information, and therefore request that the Court review this document and deliver it under Court seal back into the hands of its bearer immediately upon completion of review. I also request that no one else be permitted to review this document unless it is necessary as a matter of law to do so, and then only if proper clearance and

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access is ascertained. Should the document again be required by the Court, or by any Court with jurisdiction over this case, it will immediately be made available. I have directed that this document be retained by the Director of Naval Intelligence who will be responsible for its safekeeping and further delivery to the Court as required.

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4. (U) I believe it is necessary to understand the purpose of intelligence acquisition before one can comprehend the significance of its loss. There are two primary reasons for gathering and analyzing intelligence information. The first, and most important in my view, is to gain the information required to direct U.S. resources as necessary to counter threats of external aggression. The second reason is to obtain the information necessary to efficiently and effectively direct the foreign policy of the United States. It necessarily follows that inappropriate disclosure of properly classified intelligence information intended to serve these purposes can be used to frustrate both the defensive and foreign policy goals of the United States, regardless of its recipient.

a. Intelligence information disclosed to a hostile foreign power can be used to produce counter measures, promote disinformation techniques, and even permit the more efficient and effective utilization of resources in manners inimical to

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U.S. interests.

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b. Unauthorized disclosures to friendly powers may cause as great a harm to the national security as to hostile powers because, once the information is removed from secure control systems, there is no enforceable requirement nor any incentive to provide effective controls for its safekeeping. Moreover, it is more probable than not that the information will be used for unintended purposes. Finally, such disclosures will tend to expose a larger picture of U.S. capabilities and knowledge, or lack thereof, than would be in the U.S. interest to reveal to another power, even to a friendly one.

5. (U) In this case, the defendant has admitted passing to his Israeli contacts an incredibly large quantity of classified information. At the outset I must state that the defendant's unlawful disclosures far exceed the limits of any official exchange of intelligence information with Israel. That being true, the damage to national security was complete the moment the information was given over. Ideally, I would detail for the Court all the information passed by the defendant to his Israeli contacts; unfortunately, the volume of data we know to have been passed is too great to permit that. Moreover, the defendant admits to having passed to his Israeli handlers a

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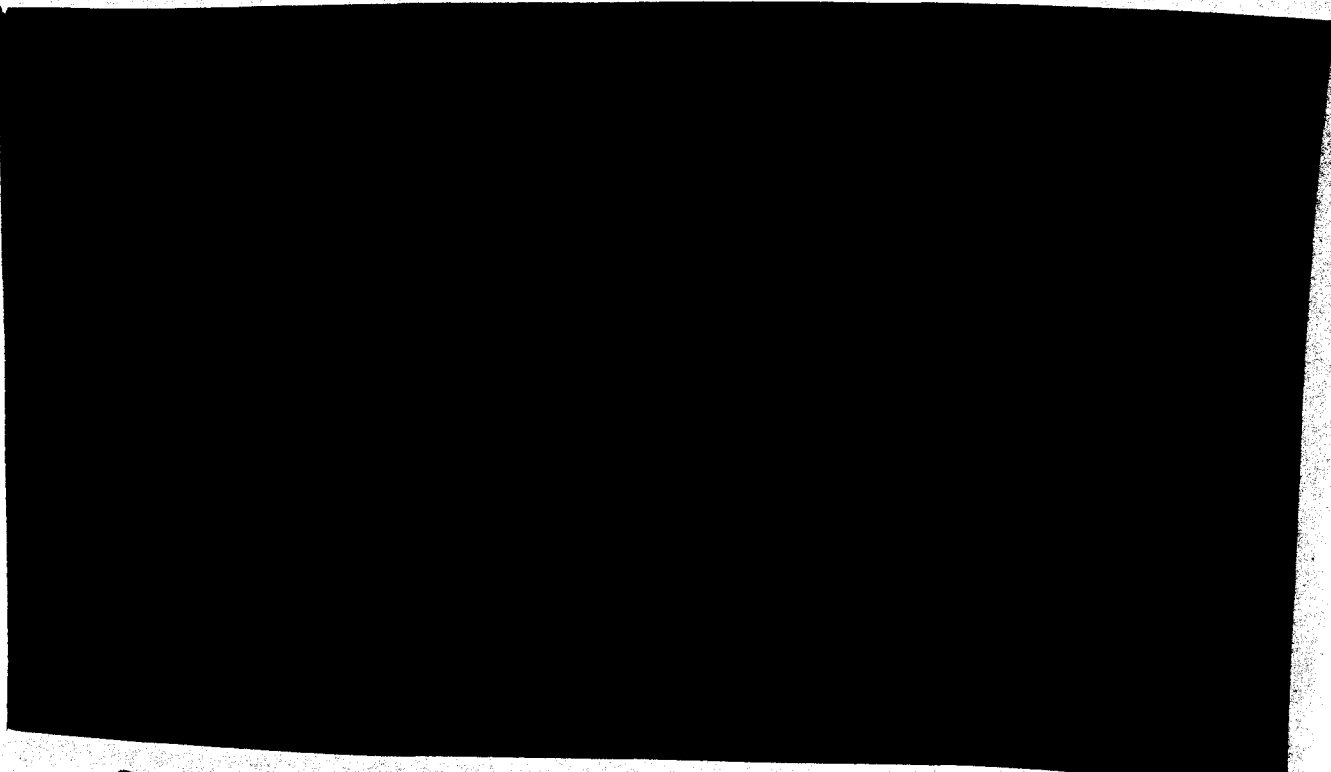
[REDACTED]

quantity of documents great enough to occupy a space six feet by six feet by ten feet. I have chosen to present in three parts the data I consider significant. In the first part I have detailed the categories of information compromised and given brief but specific examples of actual documents passed. In the second part I explain the harm I perceive to have occurred, again with specific examples. In the third part I capsule the overall significance of the defendant's activities.

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PART ONE

CATEGORIES OF INFORMATION DISCLOSED



DOS 3.3(b)(1), (6)

OSD 3.3(b)(1), (6)

CIA 3.3(b)(1)

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DIA 3.3(b)(1), (6)
OSD 3.3(b)(1), (6)
DoS 3.3(b)(1), (6)
CIA 3.3(b)(1)

OS 3.3(b)(1),
(6)

OSD 3.3(b)(1),
(6)

CIA
3.3(b)(1)

DIA 3.3(b)
(1),(6)

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OSD 3.3(b)(1),
(6)

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NSA 3.3(b)(3)

+ 5 U.S.C. 552(b)(3)

Section 6 of P.L. 86-36

OSD 3.3(b)(1),
(6)

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OSD 3.3(b)(1)
(6)

NSA 3.3(b)
(3), (6)
+ 50 USC
552(b)(3);

Section 6,
P.L. 86-36

NSA
3.3(b)(3),
(6) +
E.O. 13526
552(b)(3),
Section 6,
P.L. 86-36

OSD 3.3(b)(1),
(6)

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OSD 3.3(b)(1),
(6)

NSA

3.3(b)(3)

(6) + 5 U.S.C.

552(b)(3),

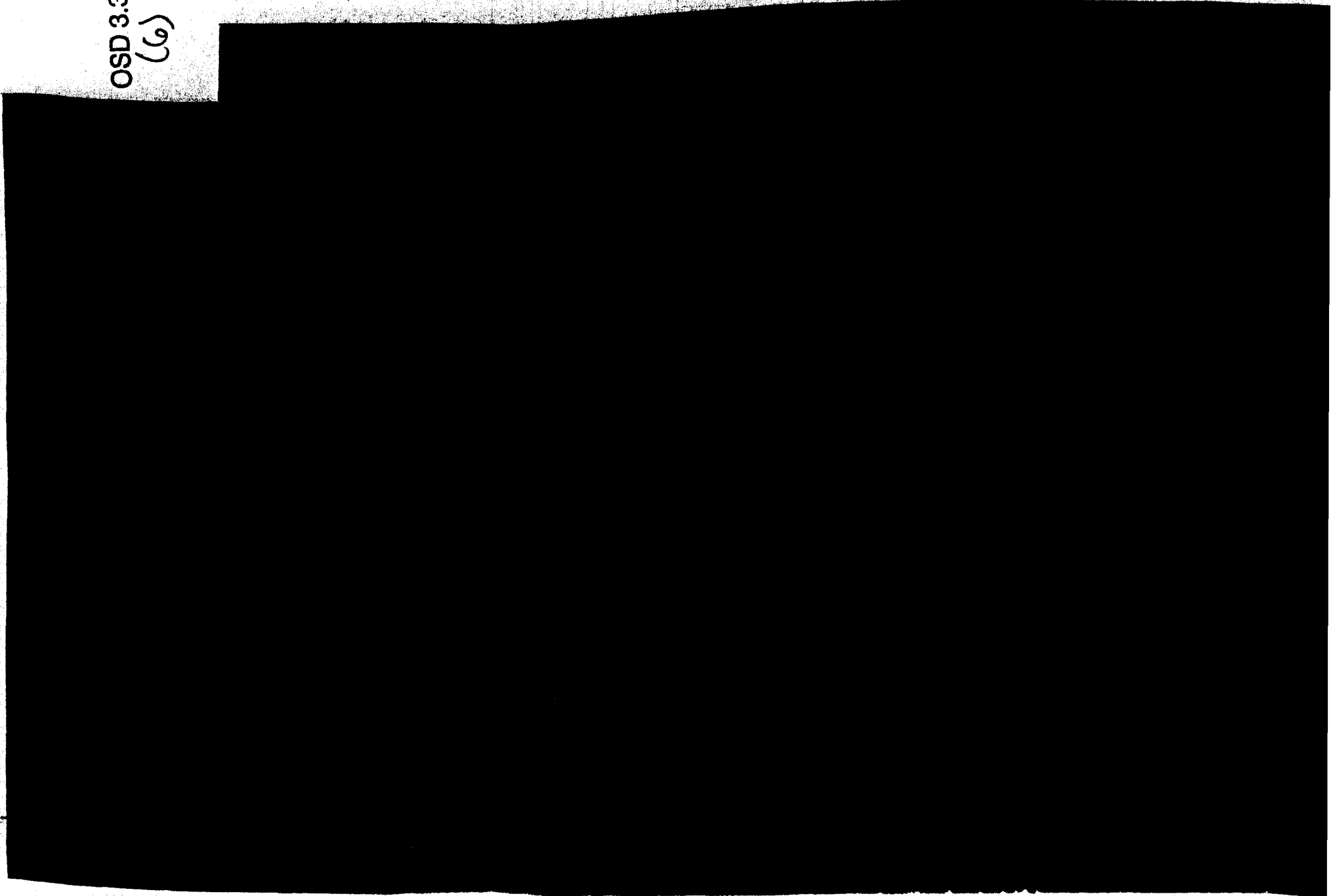
section 6,

P.L. 86-36

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OSD 3.3(b)(1),
(6)

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OSD 3.3(b)(1)
(6)

DoS 3.3(b)(1),
(6)

DIA

3.3(b)
(1),(6)

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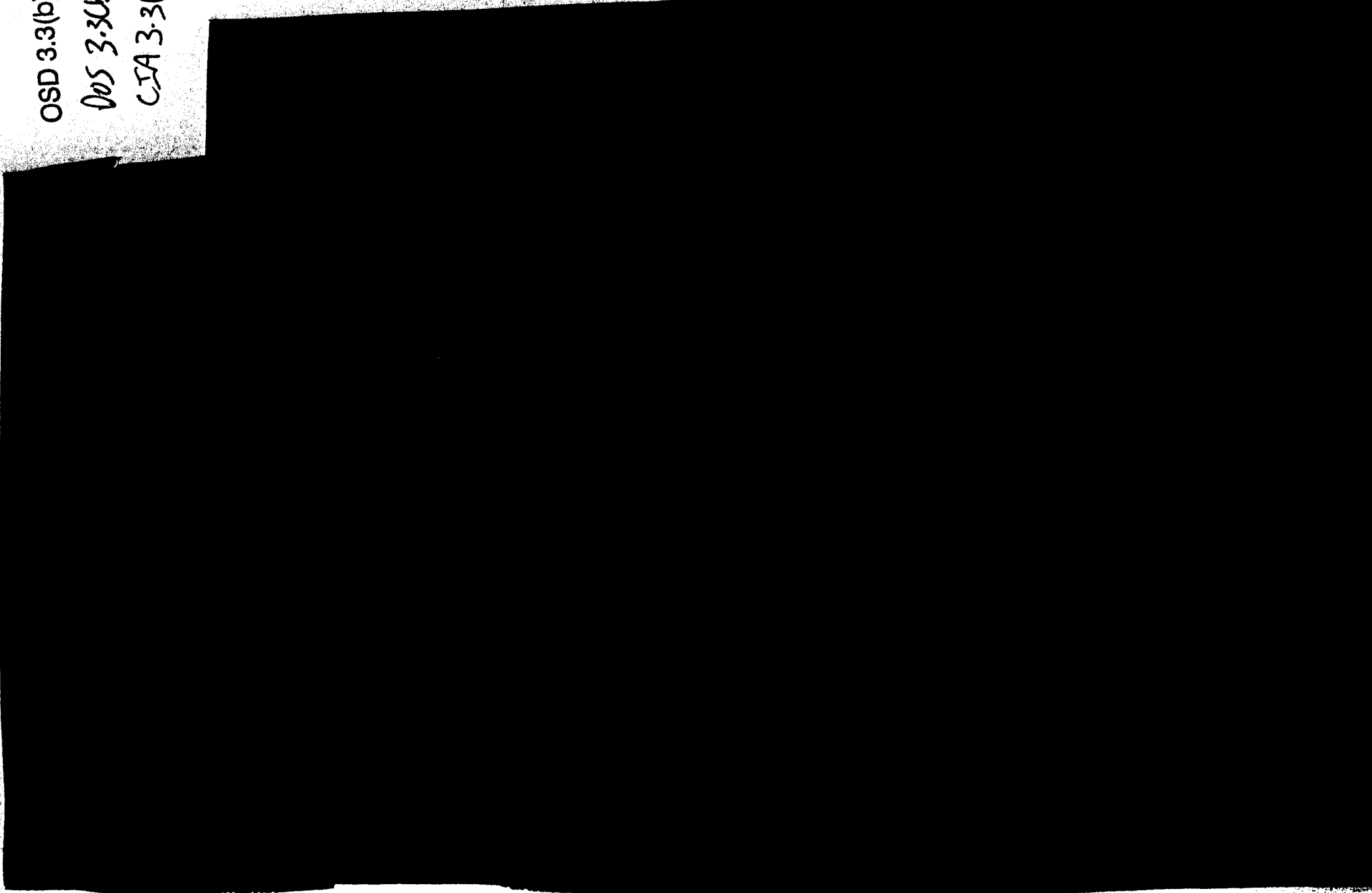


OSD 3.3(b)(1) (C)

DoS 3.3(b)(1), (C)

CIA 3.3(b)(1)

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OSD 3.3(b)(1),(6)
DOS 3.3(b)(1),(6)
CJA 3.3(b)(1)

NSA 3.3(b)
(3), (6) +
5 U.S.C. 552(b)(3)
Section 6, P.L. 86-36

NSA 3.3(b)
(1),(6)

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OSD 3.3(b)(1)
(6)

NGA
3.3(b)(1),
(6)

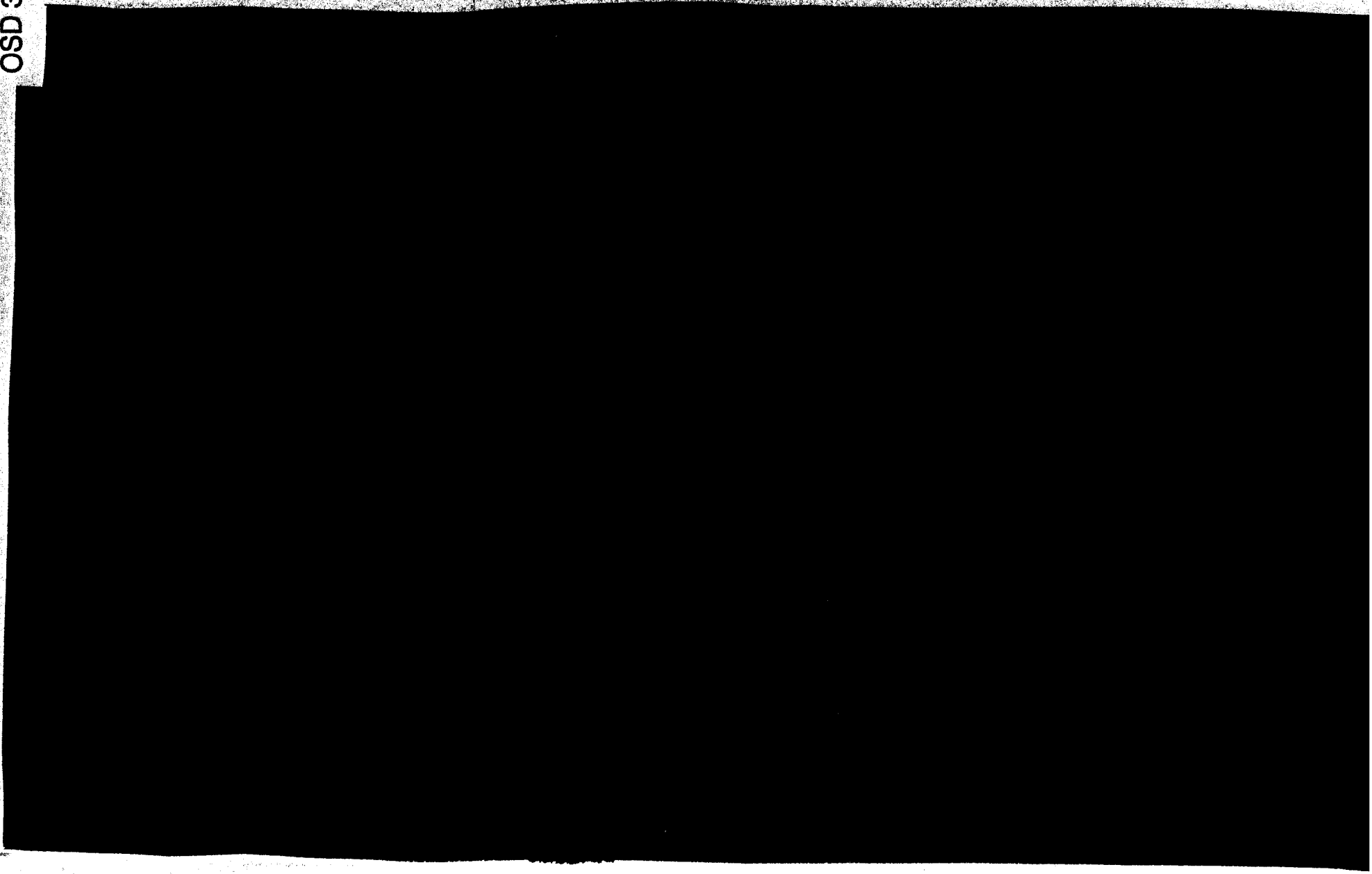
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3.3(b)(6)

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OSD 3.3(b)(1),
(6)

DIA
3.3(b)(1),
(6)

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OSD 3.3(b)(1),
(6)

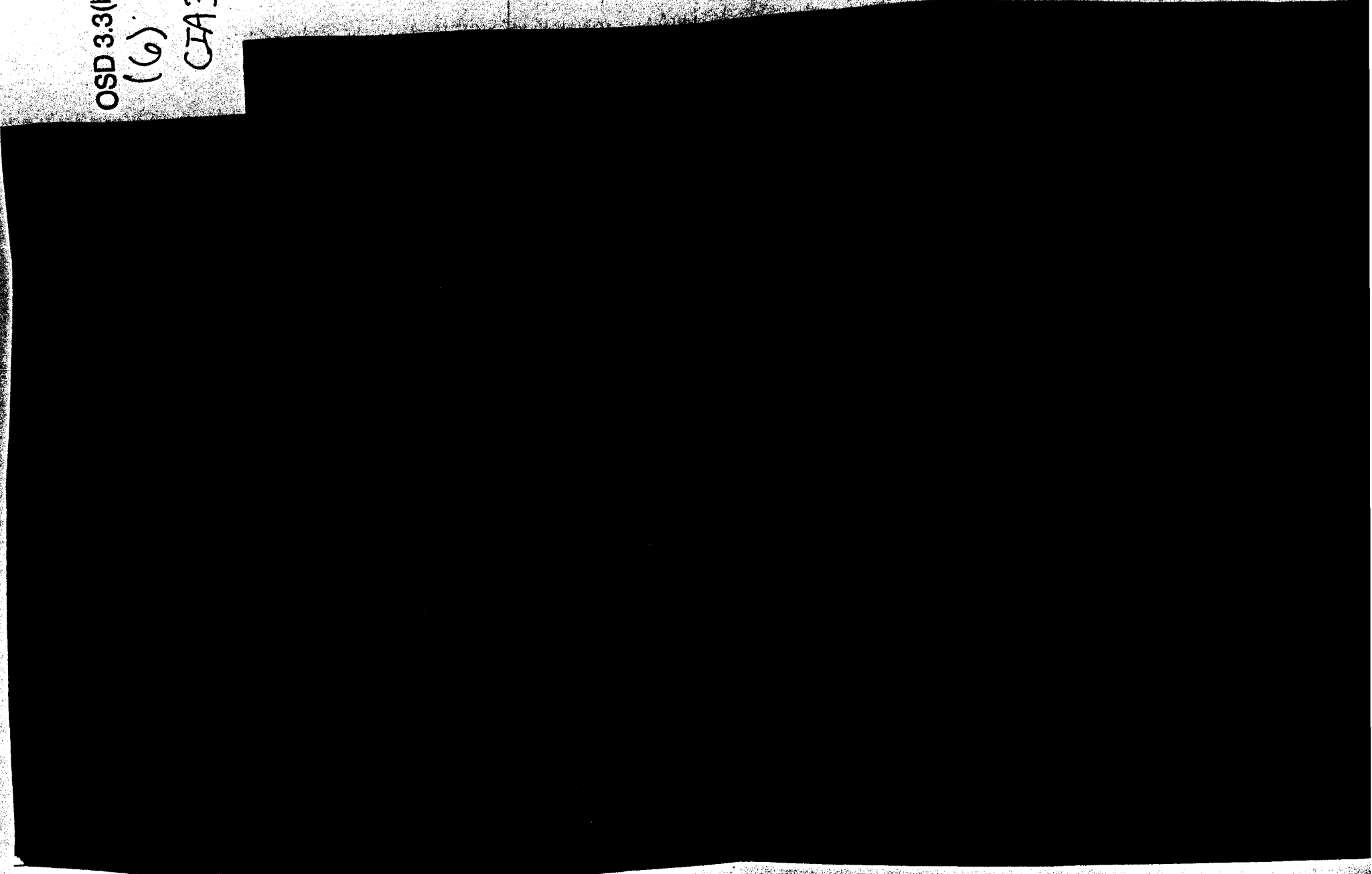
DIA
3.3(b)
(1),(6)

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OSD 3.3(b)(1),
(6)

CIA 3.3(b)(1)

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OSD 3.3(b)(1),
(6)

DoS 3.3(b)
(1), (6)

DIA 3.3(b)
(1)

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[REDACTED]

PART TWO
DAMAGE TO THE NATIONAL SECURITY

OSD 3.3(b)(1),
(6)

14 [REDACTED] As noted previously, the breadth of the disclosures made by the defendant was incredibly large. Accordingly, the damage to U.S. national security interests resulting from those activities is similarly broad. I will detail herein, the more pertinent aspects of damage to U.S. national security as I perceive them:

DOS 3.3(b)(1),
(6)

a. Damage to Intelligence Sharing Agreements.

Since the activities of the defendant impact directly on U.S. intelligence activities, it is appropriate to begin with intelligence. It should be obvious that the United States has neither the opportunity nor the resources to unilaterally collect all the intelligence information we require. We compensate with a variety of intelligence sharing agreements with other nations of the world. In some of these arrangements there is virtually a full partnership which stems from recognition of common and indelible interests. Most, however, are fashioned on a quid pro quo basis. For example, the United States agrees to share with an ally certain types of intelligence information in exchange for desired information or other valuable assistance. Further, once such agreements are entered into, decisions to disclose particular classified documents or items of intelligence information are made by high level officials after a careful evaluation of the costs of

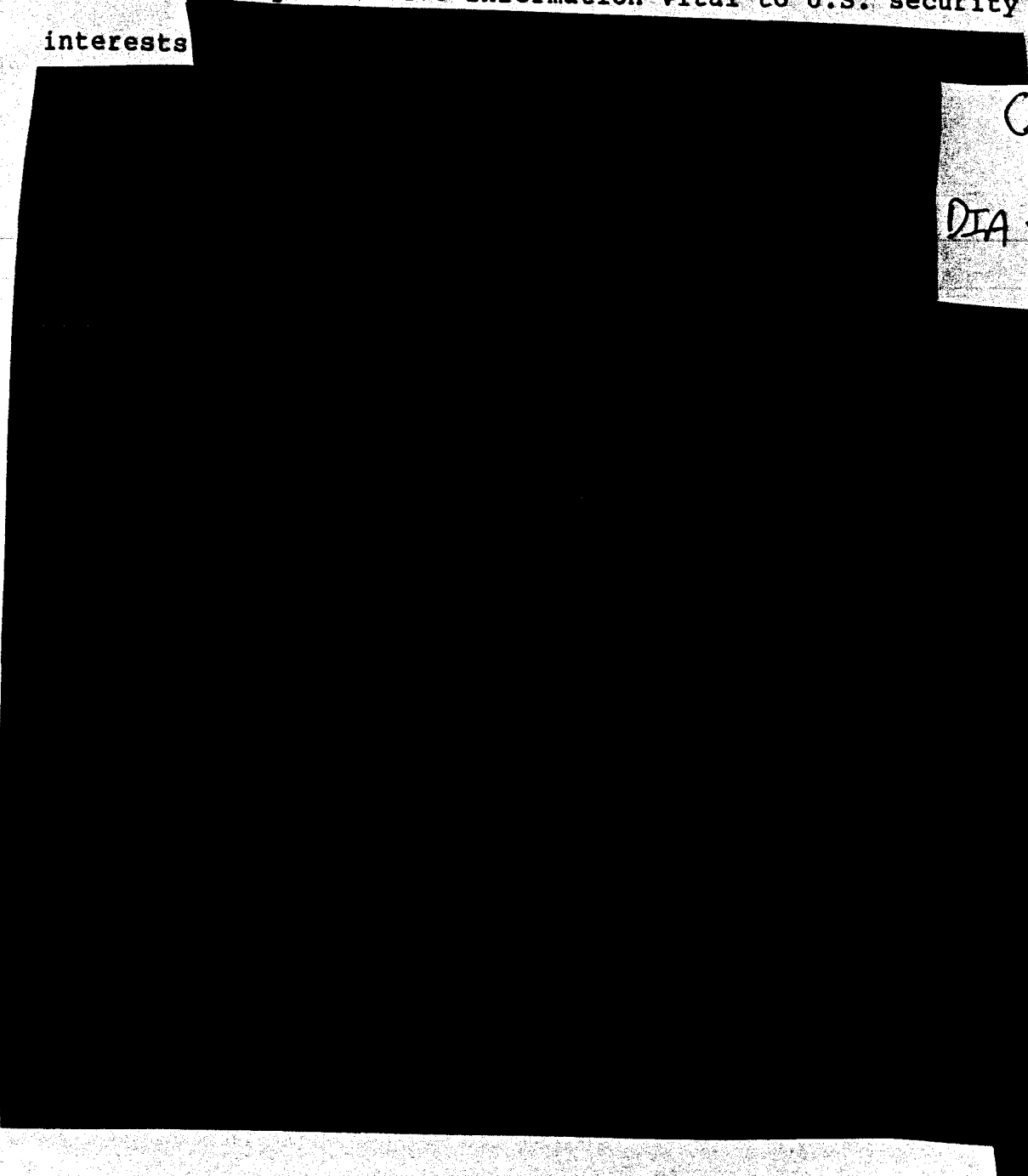
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OSD 3.3(b)(1),
(6)

disclosure to our national security versus the benefits expected to be obtained if disclosure is approved. In some instances, especially sensitive intelligence information that is sought by an ally is traded because the ally agrees to furnish equally sensitive information vital to U.S. security interests

DoS
3.3(b)(1),
(6)



(CIA 3.3(b)
(1)
DIA 3.3(b)(1),
(6)

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CIA 3.3(b)
(1)

OSD 3.3(b)(1),
(6)
DoS 3.3(b)(1),
(6)

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DoS 3.3(b)(1),(6)

OSD 3.3(b)(1),
(6)

CIA

3.3(b)(1)

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OSD 3.3(b)(1),
(6)
DoS 3.3(b)(1),
(6)

CIA

3.3(b)(1)

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OSD 3.3(b)(1),

(6)

DOS

3.3(b)(1),

(6)

DIA 3.3(b)

(1),(6)

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[REDACTED]

disclosure is vitally important for U.S. interests because all criteria must be balanced against one another. For example, the requirement to protect sources and methods of information acquisition, as well as the requirement to protect the substantive information received, must conform with the recipients "need" for that information and the expectation of benefit for the United States. This usually means that substantive information is redacted from the original documents containing the information prior to disclosure. The result is

OSD 3.3(b)(1),
(6)

OS 3.3(b)(1),
(6)

[REDACTED]

(CIA 3.3(b)
(1)

The defendant has specifically identified more than 800 U.S. classified publications and more than 1,000 U.S. classified messages and cables which he sold to Israel. Of

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[REDACTED]

[REDACTED]

[REDACTED]

To the best of my knowledge, not one of the publications he provided them was authorized for official release to Israel in unredacted form.

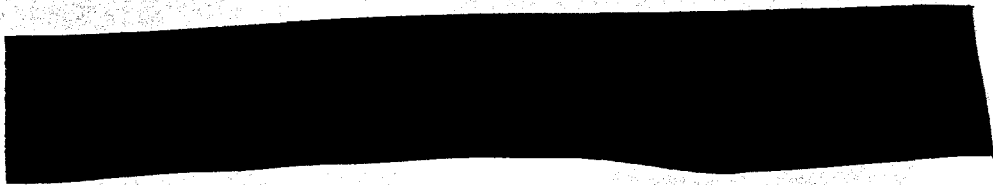
15. [REDACTED] The actions of the defendant have jeopardized the substantive intelligence information he provided to the Israelis, as well as the sources of that information, by placing it outside of a U.S. controlled security environment.

The United States, and virtually all of those who cooperate with us by sharing intelligence, have developed a system of protecting classified information which depends on the reliability of individuals for its effectiveness. It is also a system which varies its requirements for protection with the sensitivity of the information at stake. All classified material is required to be placed in proper storage, appropriate to its classification level, and all personnel who have custody are accountable for ensuring that proper procedures for protecting it are followed. The system necessarily depends on the integrity and reliability of the individual. So long as an individual is accountable for classified material in his custody, we can generally assume that personal interest will guarantee its safekeeping. It is when an individual obtains custody of classified material for

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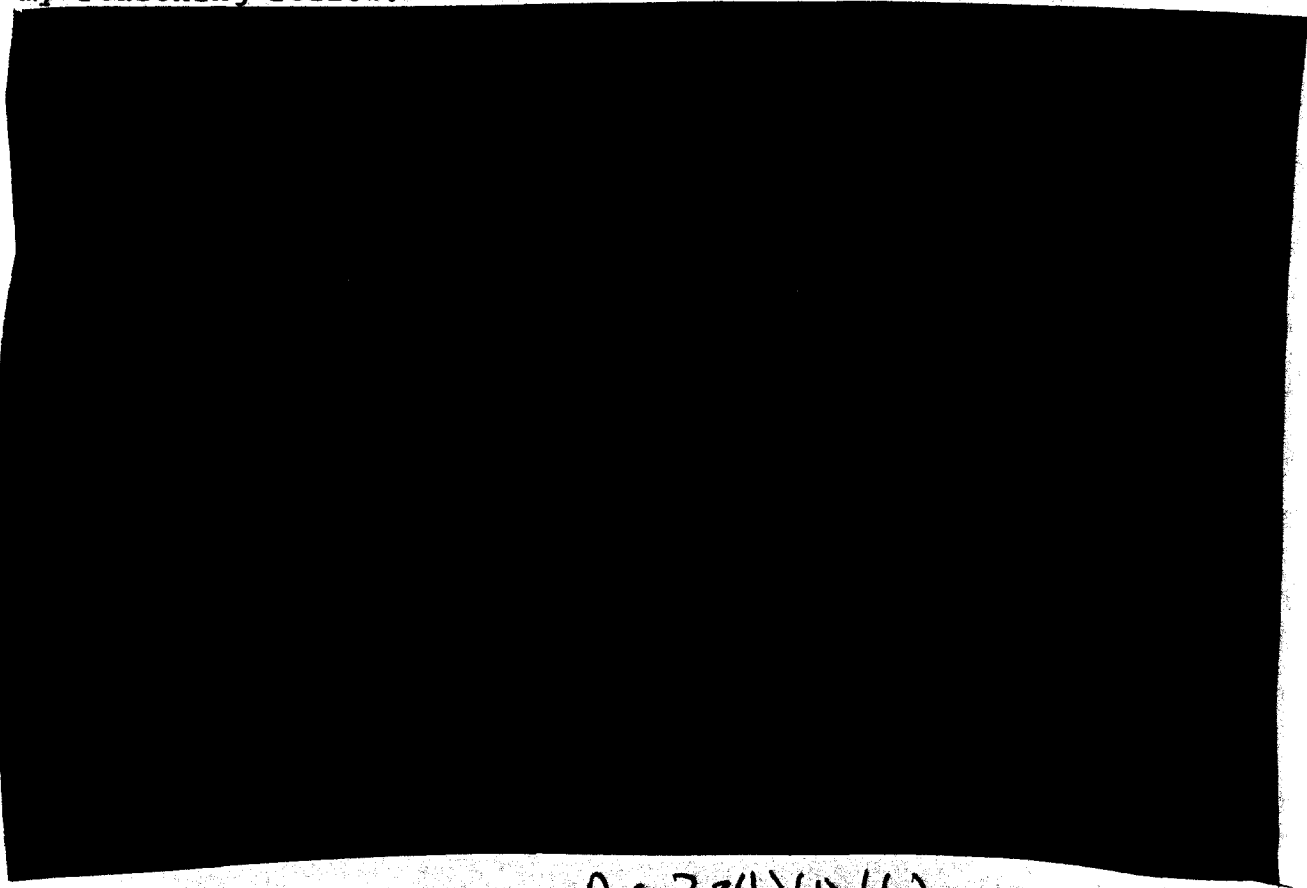
(JA 3.3(b)(1) OSD 3.3(b)(1),(6)
OS 3.3(b)(1),(6)

[REDACTED]



which he is not responsible that safekeeping is jeopardized. In such an instance, there is no real incentive to adequately protect such information. One example of an occasion when this happens in the normal course of business is the necessary use of couriers to carry highly sensitive information from one location to another. The defendant frequently acted as such a courier, and it was his abuse of this system, a system necessarily dependent on the integrity of the individual, which permitted his espionage activities to occur. Moreover, in a situation such as this one, there is every incentive to use the acquired information in a person's self interest. Examples of my reasoning follow:

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OSD 3.3(b)(1),(6) Dos 33(b)(1),(6)



OSD 3.3(b)(1),
(6)

DoS 3.3(b)
(1), (6)

DIAS 3.3(b)
(1), (6)

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(IA 3.3(b)(1))

OSD 3.3(b)(1),
(6)

POS 3.3(b)

(1), (6)

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OSD 3.3(b)(1)(6)

DoS 3.3(b)

(1)(6)

CIA 3.3(b)

(1)

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OSD 3.3(b)(1),(6)

DOS 3.3(b)
(1),(6)

LIA 3.3(b)
(1)

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OSD 3.3(b)(1)
(6)

DOS 3.3(b)(1)
(6)

CIA 3.3(b)
(1)

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OSD 3.3(b)(1),
(6)

DoS 3.3(b)
(1),(6)

CIA 3.3(b)
(1),(6)

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DoS 3.3(b)(1),
(6)
OSD 3.3(b)(1),
(6)

CIA 3.3(b)
(1)

DIA 3.3(b)
(1), (6)

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OSD 3.3(b)(1)
(b)

(IA 3.3(b)
(1)

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OSD 3.3(b)(1)
(6)

OS 3.3(b)
(1)(6)

CIA 3.3(b)
(1)

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OSD 3.3(b)(1),
(6)

DoS 3.3(b)
(1), (6)

CIA
3.3(b)(1)

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OSD 3.3(b)(1),
(6)

DOS 3.3(b)(1),
(6)

NSA 3.3(b)
(3), (6) +
5 U.S.C. 552(b)
(3),
Section 6,
P.L. 86-36

[REDACTED]

PART THREE
THE SIGNIFICANCE OF THESE DISCLOSURES

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21. [REDACTED] HARM TO U.S. FOREIGN POLICY:

In my opinion, the defendant's unlawful disclosures to the government of Israel have harmed U.S. foreign policy. My conclusions flow directly from the information I have discussed previously.

[REDACTED]

OSD 3.3(b)(1)(6)

CIA 3.3(b)(1)

[REDACTED]

[REDACTED]

22. [REDACTED] COMPROMISED SOURCES AND METHODS:

I will not repeat the difficulties in reacquiring damaged sources of intelligence acquisition which have been compromised.

[REDACTED]


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[REDACTED]



OSD 3.3(b)(1),(6)
DOS 3.3(b)(1),(6)

NGA 3.3(b)(1),(6)
CIA 3.3(b)(1)

[REDACTED]

23.  RISK TO U.S. PERSONNEL:

Finally, the United States must expect some amount of risk to accrue directly to U.S. persons from the defendant's activities. 

 concomitant risk with which I, as Secretary of Defense, am particularly concerned, is that U.S. combat forces, wherever they are deployed in the world, could be unacceptably endangered through successful exploitation of this data. 

24. (U) I have provided the foregoing statements to provide

OSD 3.3(b)(1),(6)
CIA 3.3(b)(1)

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my views of the significant harm caused to national security by the defendant and as an aid to the Court. The data provided represents my opinions and conclusions stemming from my review of the data compromised, as well as from information obtained by me in my capacity as Secretary of Defense and as a member of the National Security Council. The defendant has substantially harmed the United States, and in my view, his crimes demand severe punishment. Because it may not be clear to the court that the defendant's activities have caused damage of the magnitude realized, I felt it necessary to provide an informed analysis to the Court so that an appropriate sentence could be fashioned. My foregoing comments will, I hope, dispel any presumption that disclosures to an ally are insignificant; to the contrary, substantial and irrevocable damage has been done to this nation. Punishment, of course, must be appropriate to the crime, and in my opinion, no crime is more deserving of severe punishment than conducting espionage activities against one's own country. This is especially true when the individual spy has voluntarily assumed the responsibility of protecting the nation's secrets. The defendant, of course, had full knowledge and understanding of the sensitivities of the information unlawfully disclosed. To demonstrate that knowledge, I have attached copies of non-disclosure agreements which he voluntarily executed. Should the Court require further

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OSD 3.3(b)(1) (6)

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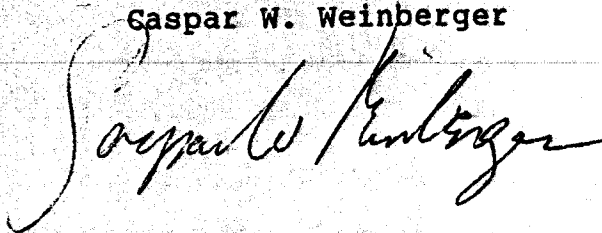
[REDACTED]

information or explanation of anything contained herein, you may provide the bearer of this document with your requirements and I will respond to them.

Under penalties of perjury, I hereby declare the foregoing statements to be true and correct to the best of my knowledge information and belief.

Executed this [REDACTED] day of [REDACTED] 198⁷.

Gaspar W. Weinberger



OSD 3.3(b)(1), (6)

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[REDACTED]

GLOSSARY

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1. **TOP SECRET (TS):** Information which if inappropriately disclosed would cause exceptionally grave damage to the national security of the United States.
2. **SECRET (S):** Information which if inappropriately disclosed would cause serious damage to the national security of the United States.
3. **CONFIDENTIAL (C):** Information which if inappropriately disclosed would cause damage to the national security of the United States.

OSD 3.3(b)(1),(6)

[REDACTED]

8. TOP SECRET CODEWORD (TSC): Top Secret information derived from intelligence sources and methods.

[REDACTED]

9. SECRET CODEWORD (SC): Secret information derived from intelligence sources and methods.

[REDACTED]

OSD 3.3(b)(1),(6)

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[REDACTED]