

## **Witnesses and Confidential or Classified Information**

Prosecutions involving issues of war, national security or espionage may involve witness testimony and classified information. Classified information is defined as information that should not be disclosed to the public because of the sensitivity of the information or the source from which the information was derived. Prosecutors and defense attorneys should avoid divulging classified information during the witness's testimony. Under the Classified Information Procedures Act, the attorneys are to avoid any unnecessary or inadvertent disclosure of classified information.

### **Questioning of Witness and Role of the Judge**

If the witness is asked a question during a defendant's trial that would require him or her to divulge classified information, the prosecution may object to the question or inquiry that would have required the witness to disclose classified information. The trial court judge has a duty to ensure that classified information is not divulged during the defendant's trial and to ensure that all safeguards possible will be taken to protect the classified information.

The prosecution should not provide the witness with extensive written instructions prior to his or her testimony about how to answer questions that would reveal classified information because such written information may be discoverable under the Jencks Act.

### **Use of Exhibits Containing Classified Information**

If either the prosecution or defense attorney seeks to introduce exhibits containing classified information for the witness to identify during the defendant's trial, the classified information should be extruded or redacted from the document or evidence. The information should not be visible to the witness or to the jury. If the classified information is not properly redacted from the evidence sought to be admitted, the trial court judge should prohibit the admission or usage of such evidence.

Both sides must be cautious in not only their questioning of a witness that is privy to classified information but also with respect to the type of evidence that either side seeks to admit during the defendant's trial. The issue of the disclosure of confidential information should be dealt with during the pre-trial phase of the trial.