pensation for the deaths of civilians in the crash of an Air Force plane testing secret electronics equipment, plaintiffs sought discovery of the Air Force's investigation report on the accident, and the government resisted on a claim of privilege as to the nondisclosure of military secrets. The Court accepted the Government's claim, holding that courts must determine whether under the circumstances the claim of privilege was appropriate without going so far as to force disclosure of the thing the privilege is designed to protect. The private litigant's showing of necessity for the information should govern in each case how far the trial court should probe. Where the necessity is strong, the court should require a strong showing of the appropriateness of the privilege claim, but once the court is satisfied of the appropriateness the privilege must prevail no matter how compelling the need.[599]

Reynolds dealt with an evidentiary privilege. There are other circumstances, however, in which cases must be "dismissed on the pleadings without ever reaching the question of evidence."[600] In holding that federal courts should refuse to entertain a breach of contract action seeking enforcement of an agreement to compensate someone who performed espionage services during the Civil War, the Court in *Totten v. United States* declared that "public policy forbids the maintenance of any suit in a court of justice, the trial of which would inevitably lead to the disclosure of matters which the law itself regards as confidential."[601]

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[599] 345 U.S. at 7–8, 9–10, 11. Withholding of information relating to governmental employees' clearances, disciplines, or discharges often raises claims of such privilege. *E.g.*, Webster v. Doe, 486 U.S. 592 (1988); Department of the Navy v. Egan, 484 U.S. 518 (1988). After the Court approved a governmental secrecy agreement imposed on CIA employees, Snepp v. United States, 444 U.S. 507 (1980), the government expanded its secrecy program with respect to classified and "classifiable" information. When Congress sought to curb this policy, the Reagan Administration convinced a federal district judge to declare the restrictions void as invasive of the President's constitutional power to manage the executive. National Fed'n of Fed. Employees v. United States, 688 F. Supp. 671 (D.D.C. 1988), *vacated and remanded sub nom.* American Foreign Service Ass'n v. Garfinkel, 490 U.S. 153 (1989). For similar assertions in the context of plaintiffs suing the government for interference with their civil and political rights during the protests against the Vietnam War, in which the plaintiffs were generally denied the information in the possession of the government under the state-secrets privilege, *see* Halkin v. Helms, 598 F.2d 1 (D.C. Cir. 1978); Ellsberg v. Mitchell, 709 F.2d 51 (D.C. Cir. 1983). For review and analysis, *see* Quint, *The Separation of Powers Under Carter*, 62 TEX. L. REV. 785, 875–80 (1984).

[600] *Reynolds*, 345 U.S. at 11, n.26.

[601] 92 U.S. 105, 107 (1875). *See also* Tenet v. Doe, 544 U.S. 1, 9 (2005) (reiterating and applying *Totten's* "broader holding that lawsuits premised on alleged espionage agreements are altogether forbidden"). The Court in *Tenet* distinguished Webster v. Doe on the basis of "an obvious difference . . . between a suit brought by an acknowledged (though covert) employee of the CIA and one filed by an alleged former spy." Id. at 10.