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# Legal Briefing

for



# Seminar 2014

DI\_Legal

This briefing is classified

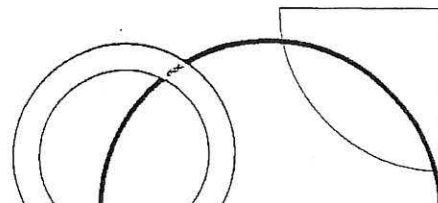
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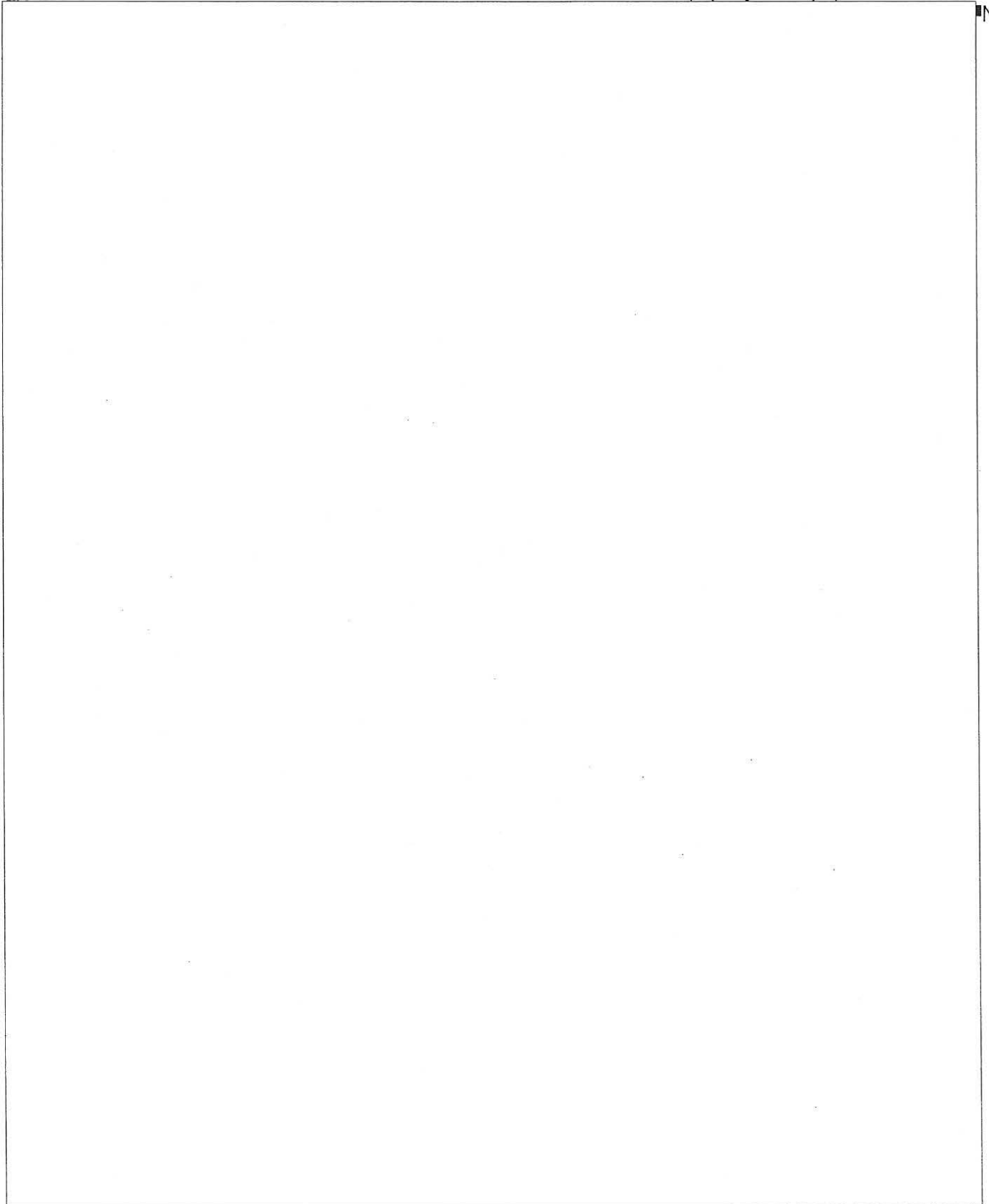
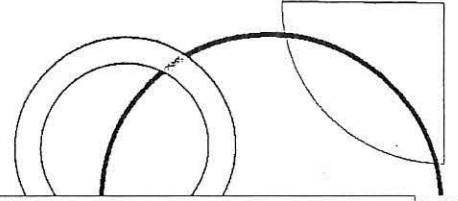
# Overview

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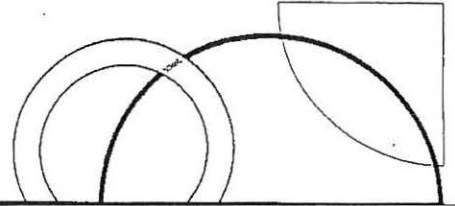
- Who do you work for and why does it matter?
- Legal Framework for Intel Activities
- Information Cycle and Key Ops Law Issues
- Communication and Records
- Advanced Prep for
- Outreach
- Ethics



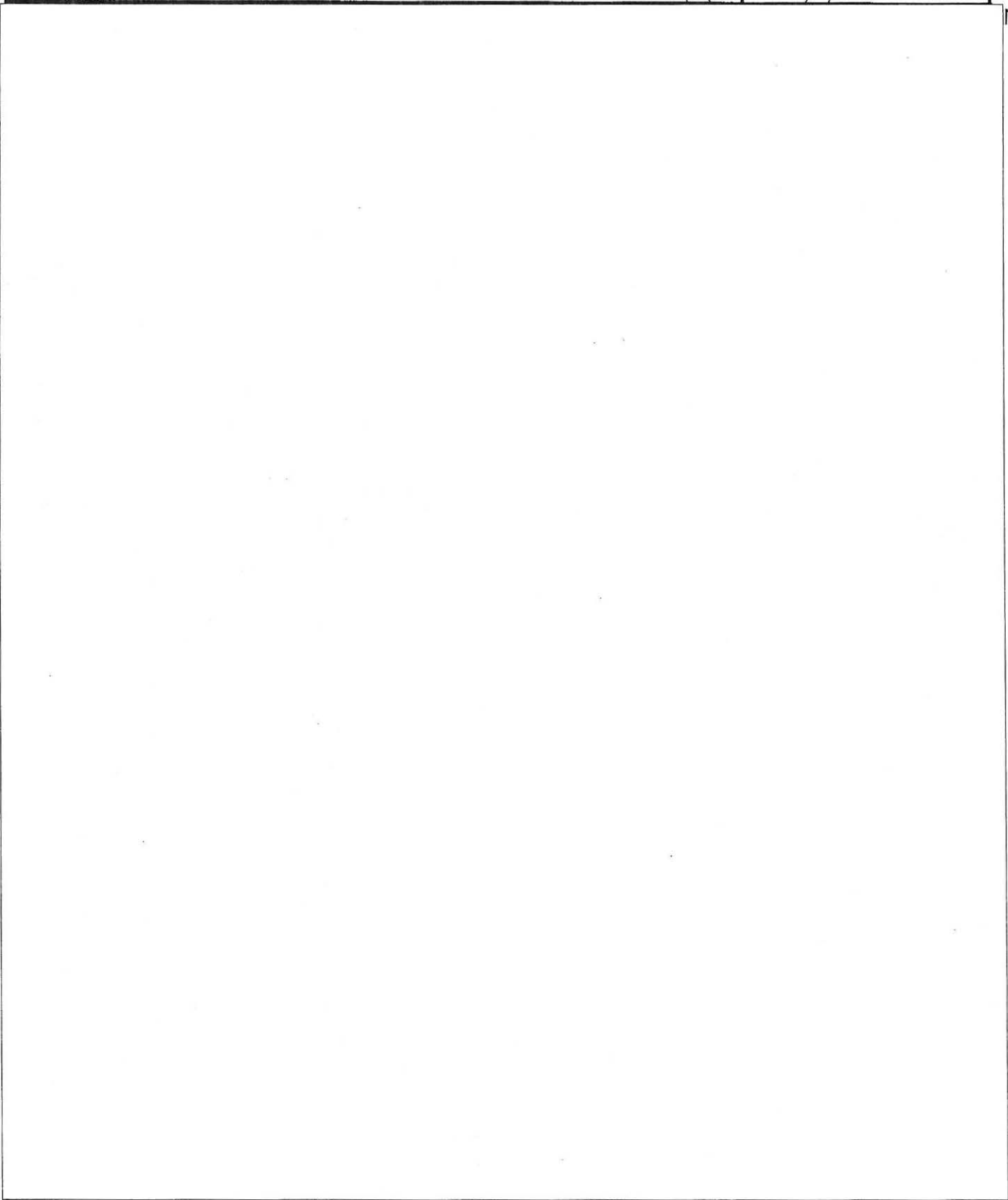
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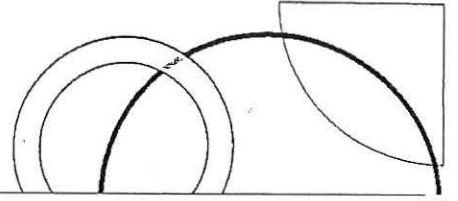


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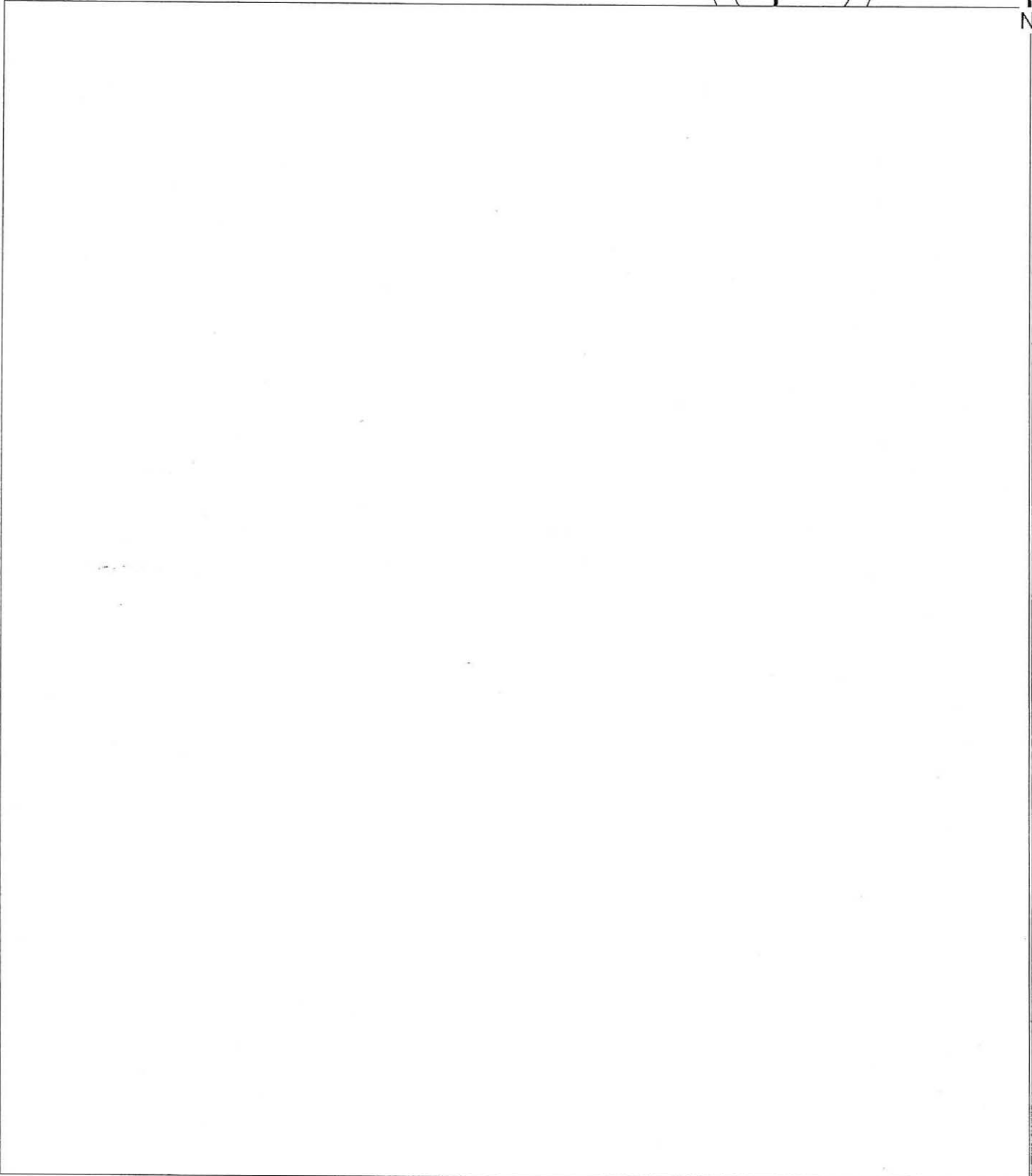


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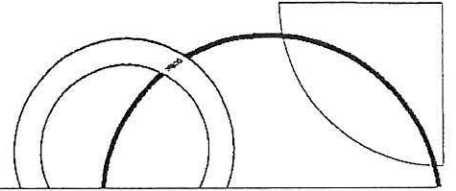




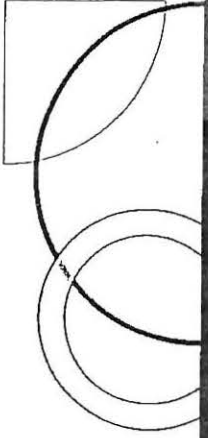
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# Legal Framework for Intelligence Activities

## The Constitution

- USPs enjoy constitutional rights and protections from their government – they carry these rights with them overseas.
- Non-USPs in the US also enjoy some of these rights
- Statutes
  - Including Nat'l Security Act of 1947, FISA/FAA, etc.
- Executive Order 12333
  - Issued by President, legally binding
- Headquarters Regulation 2-2 (formerly 7-1) (implements E.O. 12333)
  - Includes Attorney General Guidelines, Annexes A and B

- 
- Policy documents (not legal documents)



# Rules Governing Intelligence Activities

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- There are legal limits on what intelligence activities CIA officers may undertake (as  must think of yourselves as intelligence officers)
- Limits exist to protect the rights of U.S. persons → Generally, limits apply to United States Persons (USPs) and activities occurring in the U.S.

# Balancing Act

- ***“Timely, accurate, and insightful information about the activities, capabilities, plans, and intentions of foreign powers, organizations, and persons, and their agents, is essential to informed decisionmaking in the areas of national security, national defense, and foreign relations. Collection of such information is a priority objective and will be pursued in a vigorous, innovative, and responsible manner that is consistent with the Constitution and applicable law and respective of the principles upon which the United States was founded.” (emphasis added)***  
–Executive Order 12333, § 2.1.

**Bottom line:** If you see a USP or activity occurring in the US, take a step back and think about possible legal issues. DI\_Legal and component attorneys for the appropriate NCS component are available for all questions!

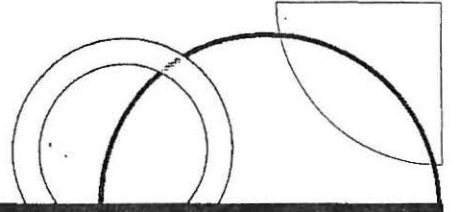


# Definition: United States Persons

- A USP is:
  - A U.S. citizen
  - An alien known by CIA to be a lawful permanent resident
  - An unincorporated association substantially composed of U.S. citizens or lawful permanent residents
  - A corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government
- HR 2-2, Annex C

# United States Persons

- Presumptions:
  - Outside US → non-USP unless specific info to the contrary
  - Inside US → USP unless specific info to the contrary



# Information Cycle

- Collection
- Retention
- Dissemination



# Information Cycle: Collection

## General Rules:

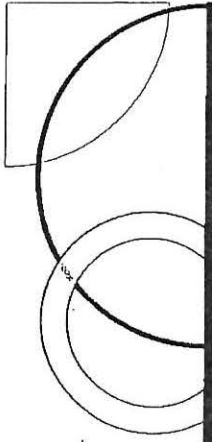
- Must have FI, CI, or other approved purpose relating to CIA's mission
- Must use the least intrusive technique available
- Can't ask others to do what we can't do ourselves
- Emergency collection provisions exist in some cases, but those situations are very rare
- Also, keep in mind that collection must be in accordance with any and all additional laws and regulations governing the activity: FISA, ECPA, etc.



# Information Cycle: Collection

## What is Collection?

- A CIA employee may gather info in various ways, including:
  - Open Source information (newspaper articles, etc.)
  - Researching in CIA databases
  - Engaging outside experts to share insights and knowledge (analytic outreach)
  - Attending a conference
  - Asking other government agencies
  - Asking liaison services
  - Tasking assets on the ground
  - Exploiting digital media

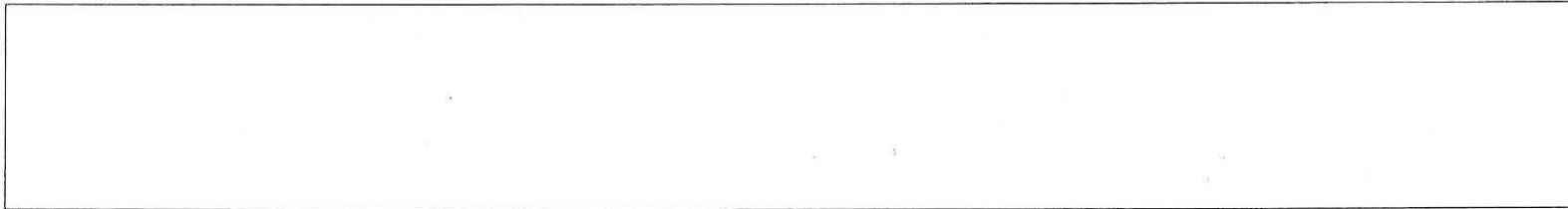


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# Information Cycle: 4 Basic Principles Governing Collection

- **Purpose of Collection** – FI or CI  
(You must be able to articulate a legitimate purpose before undertaking a collection activity)
- **Location of Collection** – Inside or Outside the US?  
(Sounds simple but computers make it more confusing! )
- **Target of Collection** – USP or non-USP?
- **Collection Technique**

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## 4 Basic Principles: Purpose of Collection

• *You must be able to articulate a legitimate purpose before undertaking a collection activity.*

• E.O. 12333 authorizes CIA to collect:

- Foreign intelligence
- Counter-intelligence

• **No collection for the purpose of acquiring information solely concerning the domestic activities of USPs.**



# 4 Basic Principles: Location of Collection

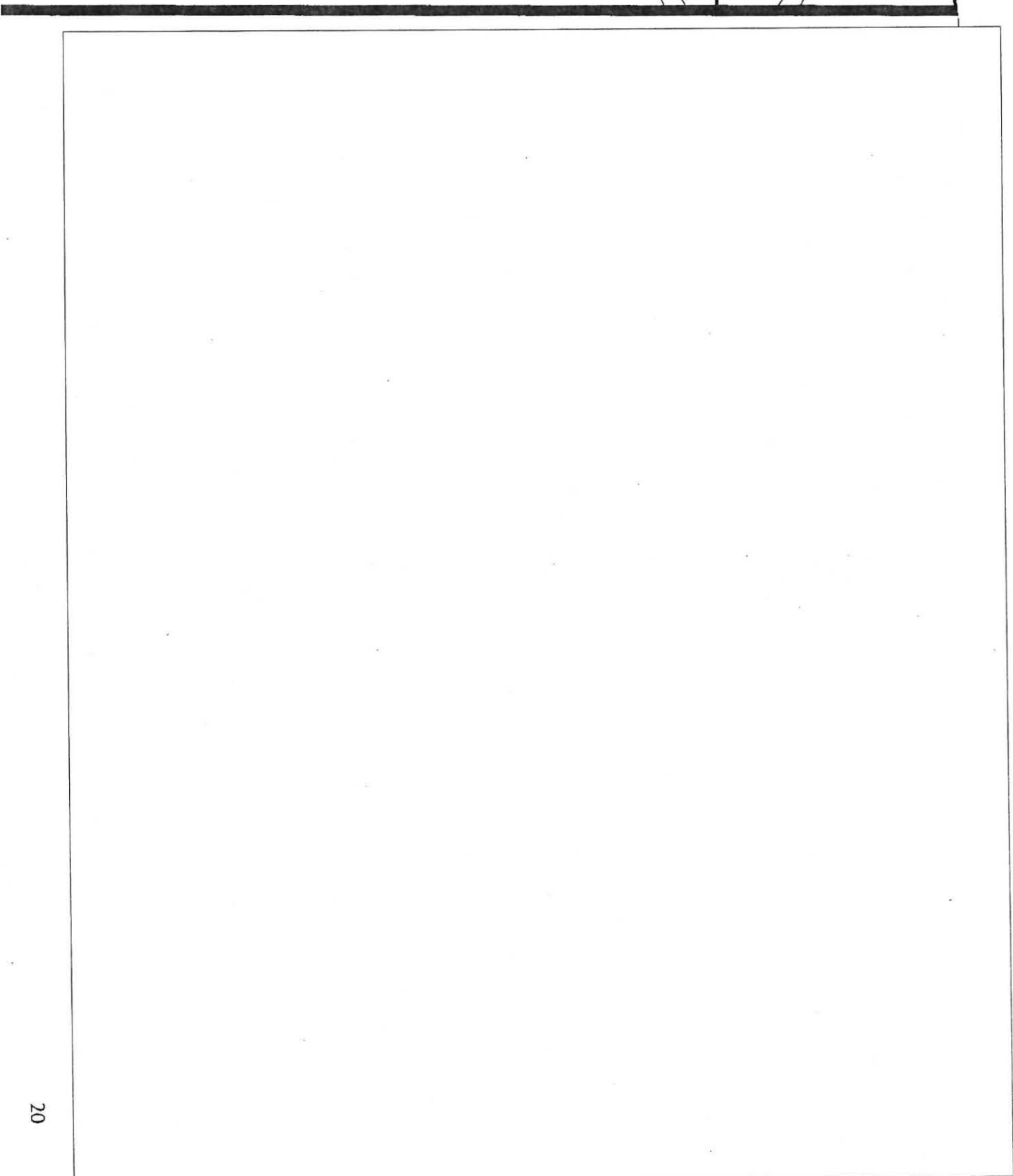
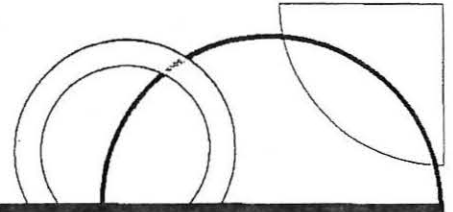
- Where is the activity being undertaken?
  - Inside the US?
  - Outside the US?
- Sounds simple but computers make it more confusing!



## 4 Basic Principles: Target of Collection

- Is the target:
  - A USP?
  - A non-USP?
- Presumptions:
  - Outside US → non-USP unless specific info to the contrary
  - Inside US → USP unless specific info to the contrary

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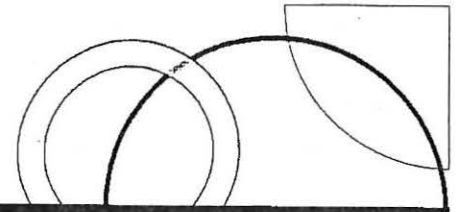
# 4 Basic Principles of Collection

Remember: Purpose, Location, Target, Technique

- (1) Start out with an authorized **purpose** for conducting collection
- (2) Then think about what approvals are required for:
  - **Location**: Inside the US? Outside the US?
  - **Target**: Is the target a USP? A non-USP?
  - What **technique** are you thinking of using:

Remember, some techniques cannot be used in the U.S. or to collect on a USP

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# 4 Basic Principles of Collection

Remember: Purpose, Location, Target, Technique

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- What's the problem?
- Can it be resolved?

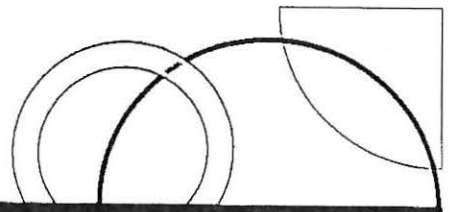
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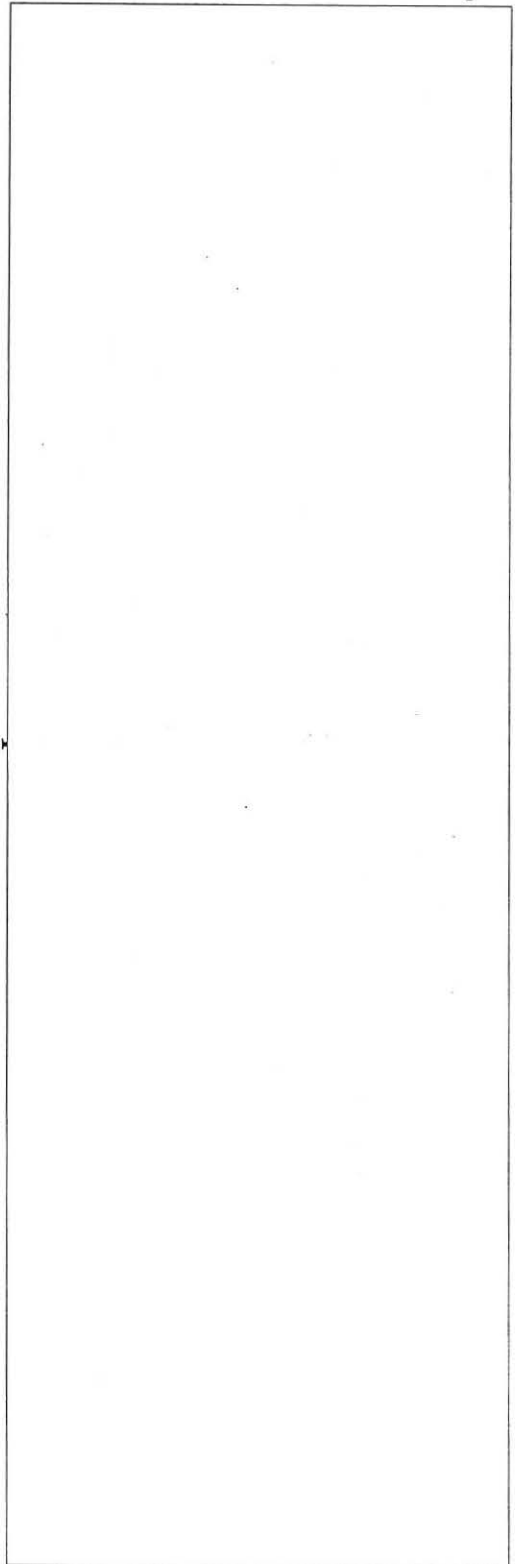
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# 4 Basic Principles of Collection

Remember: Purpose, Location, Target, Technique



◦ What's the problem?



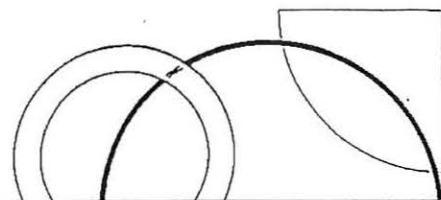
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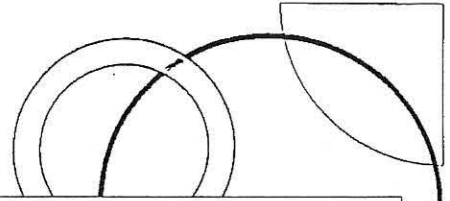
# Key Ops Law Issues: Collection *on* United States Persons

- **Special Rules for collection, retention, and dissemination on USPs:**
  - Purpose must be FI/CI/CT/etc. only
    - Collection/retention/dissemination generally not permitted on purely domestic activities of USPs
  - Minimization requirements for USP info (discussed later)
  - Special collection targeted at a USP requires a FISA order

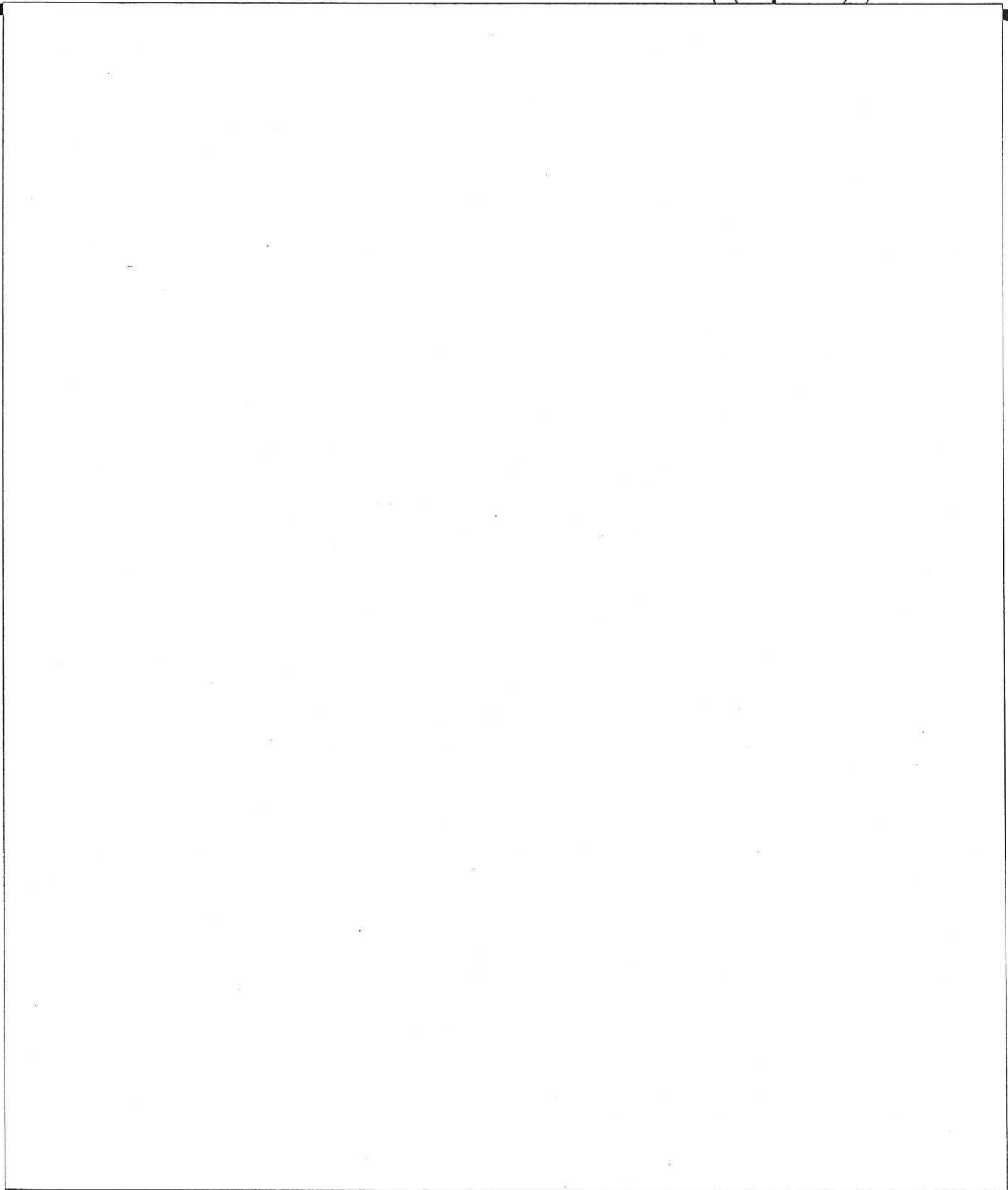


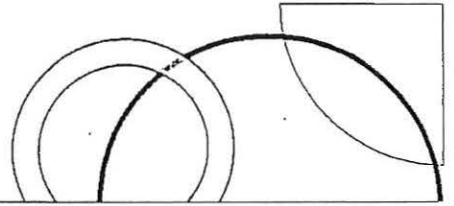


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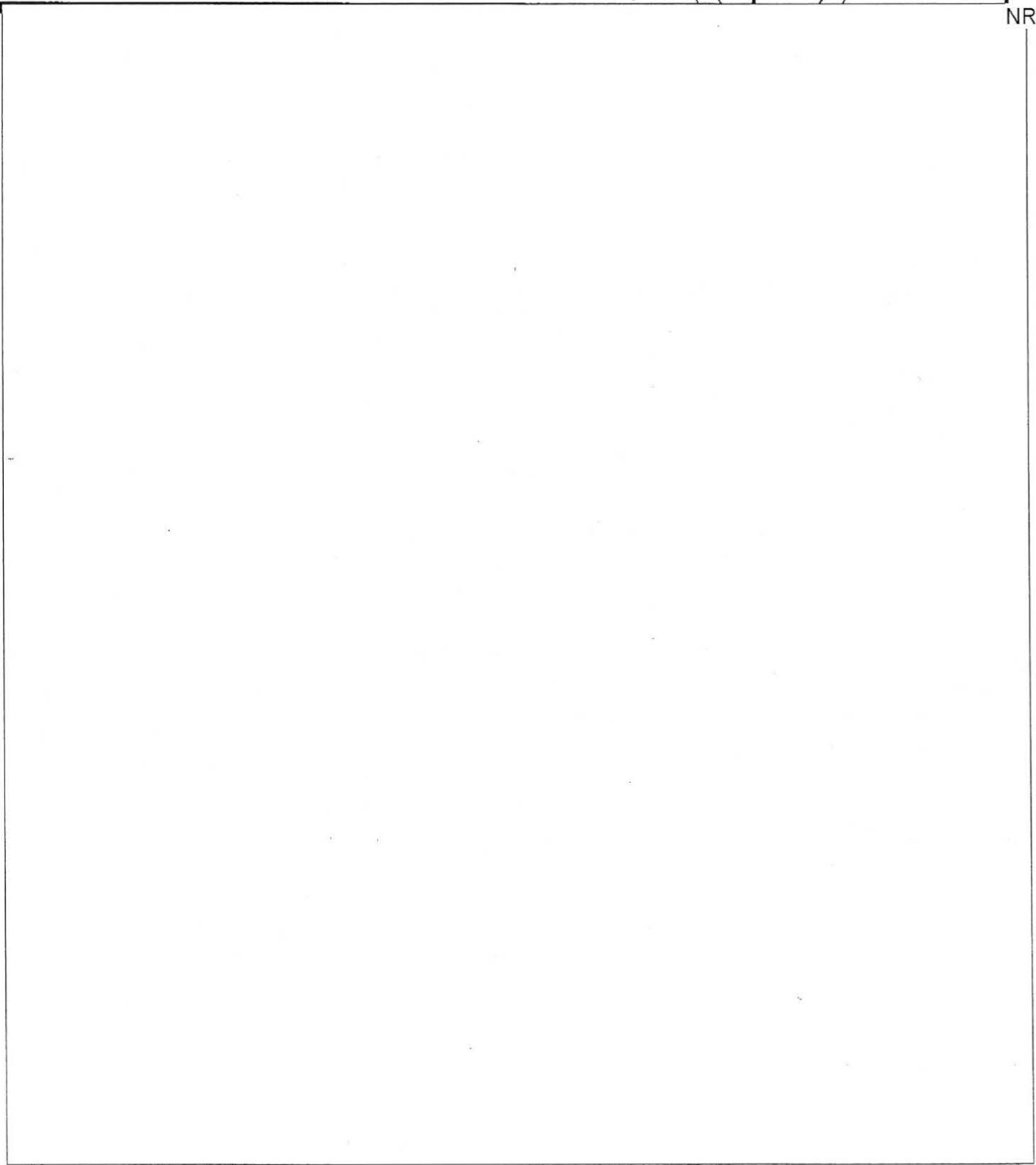


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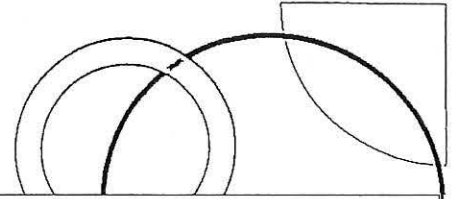




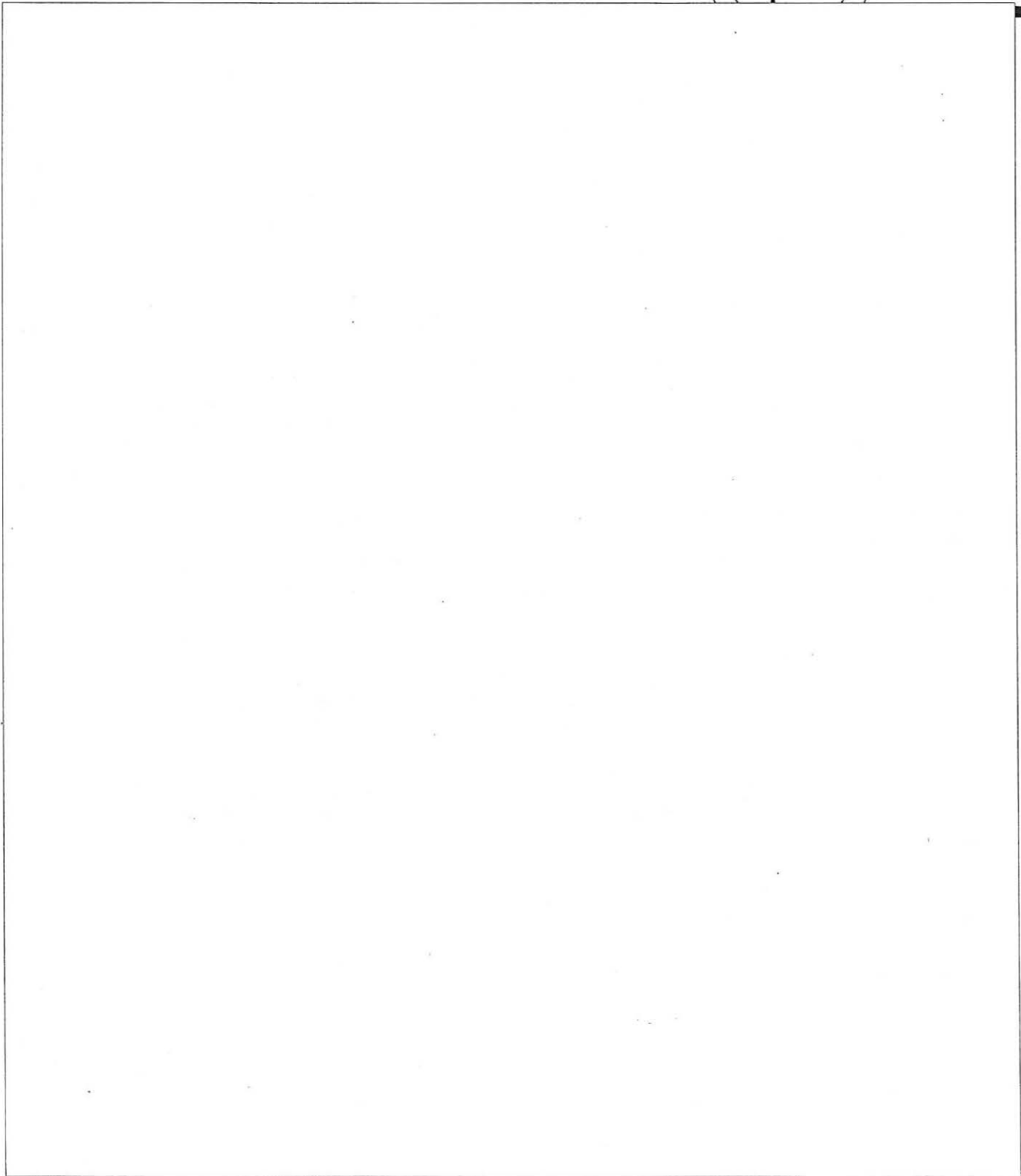
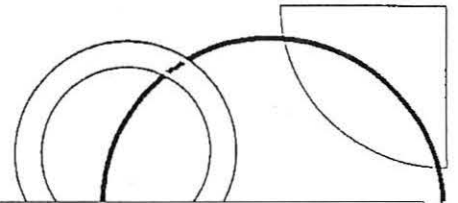
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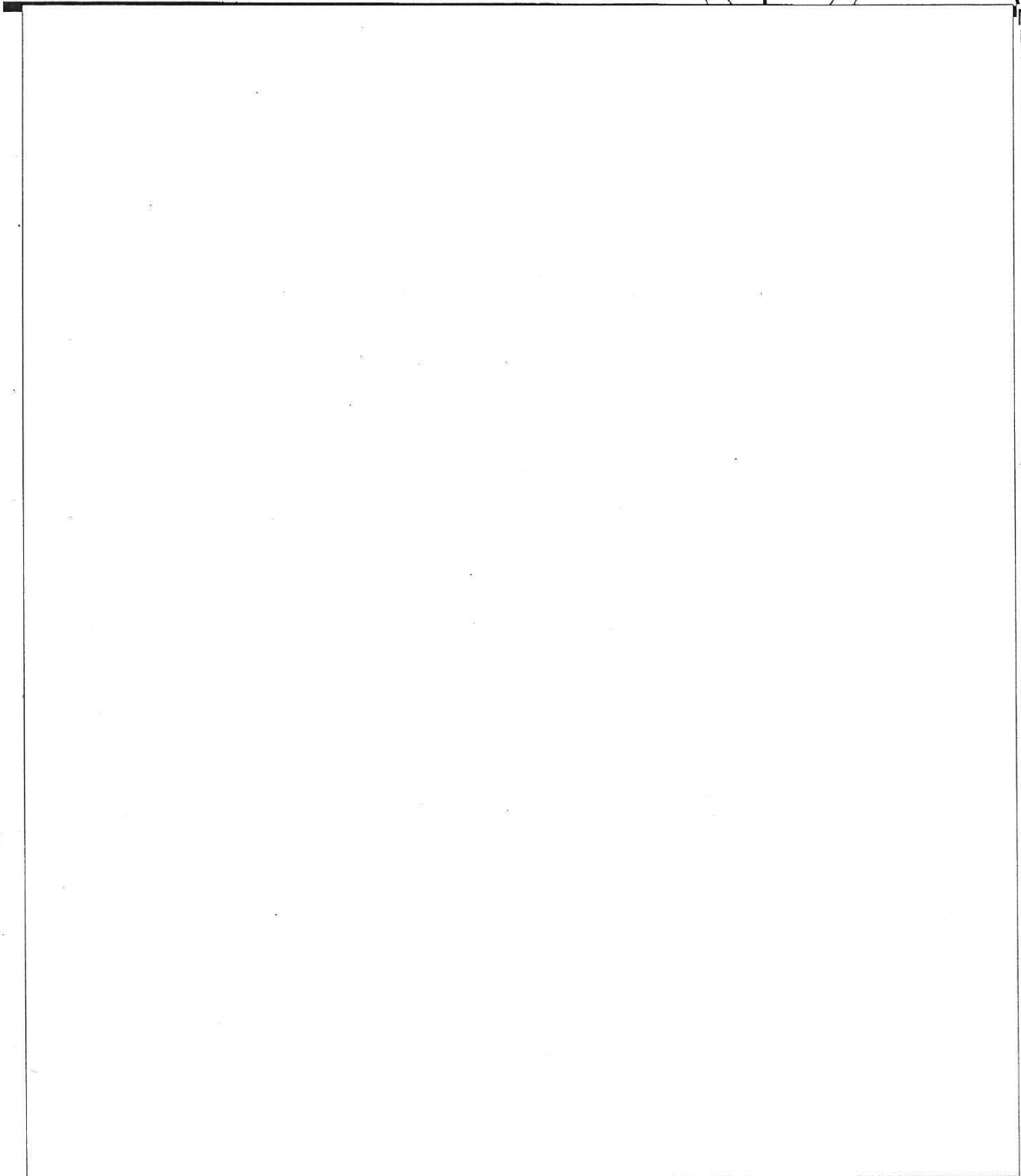
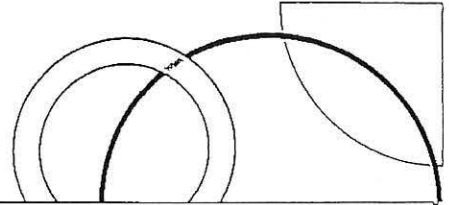
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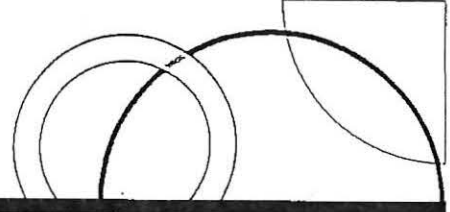


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# Retention and Dissemination

- Retention = Keeping information
- Dissemination = Sharing information



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# Key Ops Law Issues: Retention and Dissemination

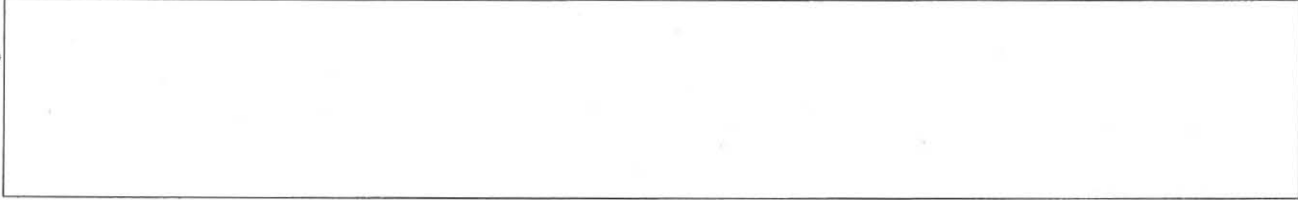
*What if I want to retain and use (disseminate) information gained in an MFAC, cable, or a DI Finished Intel product?*

- Minimization requirements for USP info:
  - Info about a USP may be disseminated **within CIA** to employees with a **need to know** and **outside CIA if necessary to a lawful activity** of the US
  - USP's identity **may be retained and disseminated if reasonably believed it may become necessary to understand or assess such info**
    - How much is necessary? Can you say "an identified USP" and that's enough?

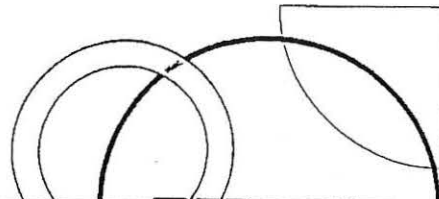




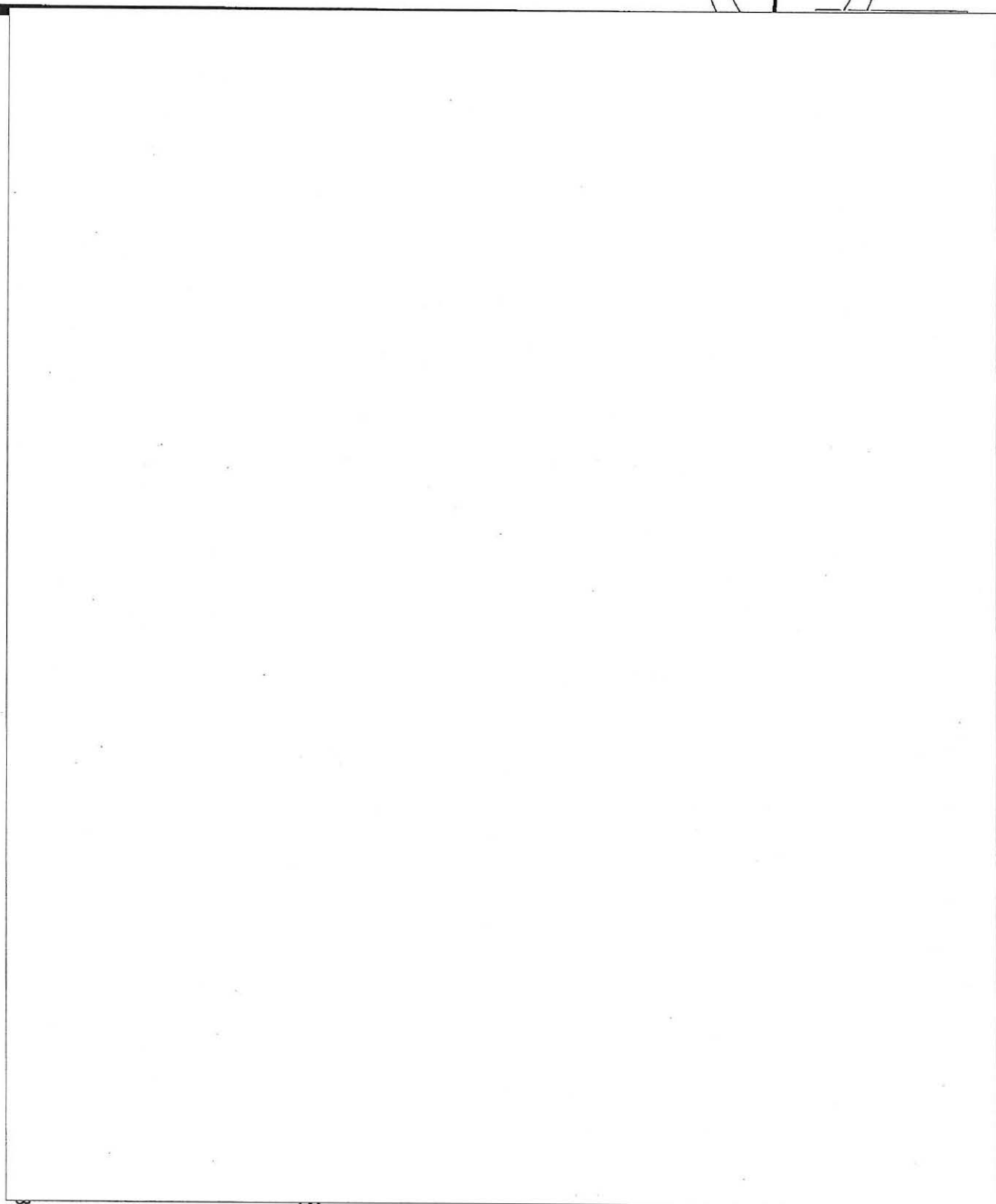
# Key Ops Law Issues: Retention and Dissemination

- Special procedures for retention and dissemination of certain types of info:
  - FISA info must be appropriately caveated/marked
  - Dissemination outside the IC
  - 
  - Etc.

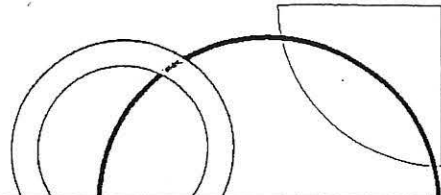
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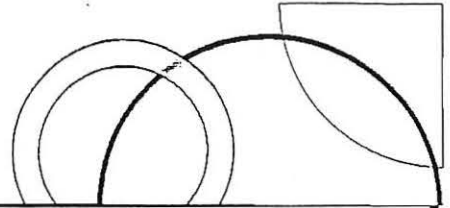
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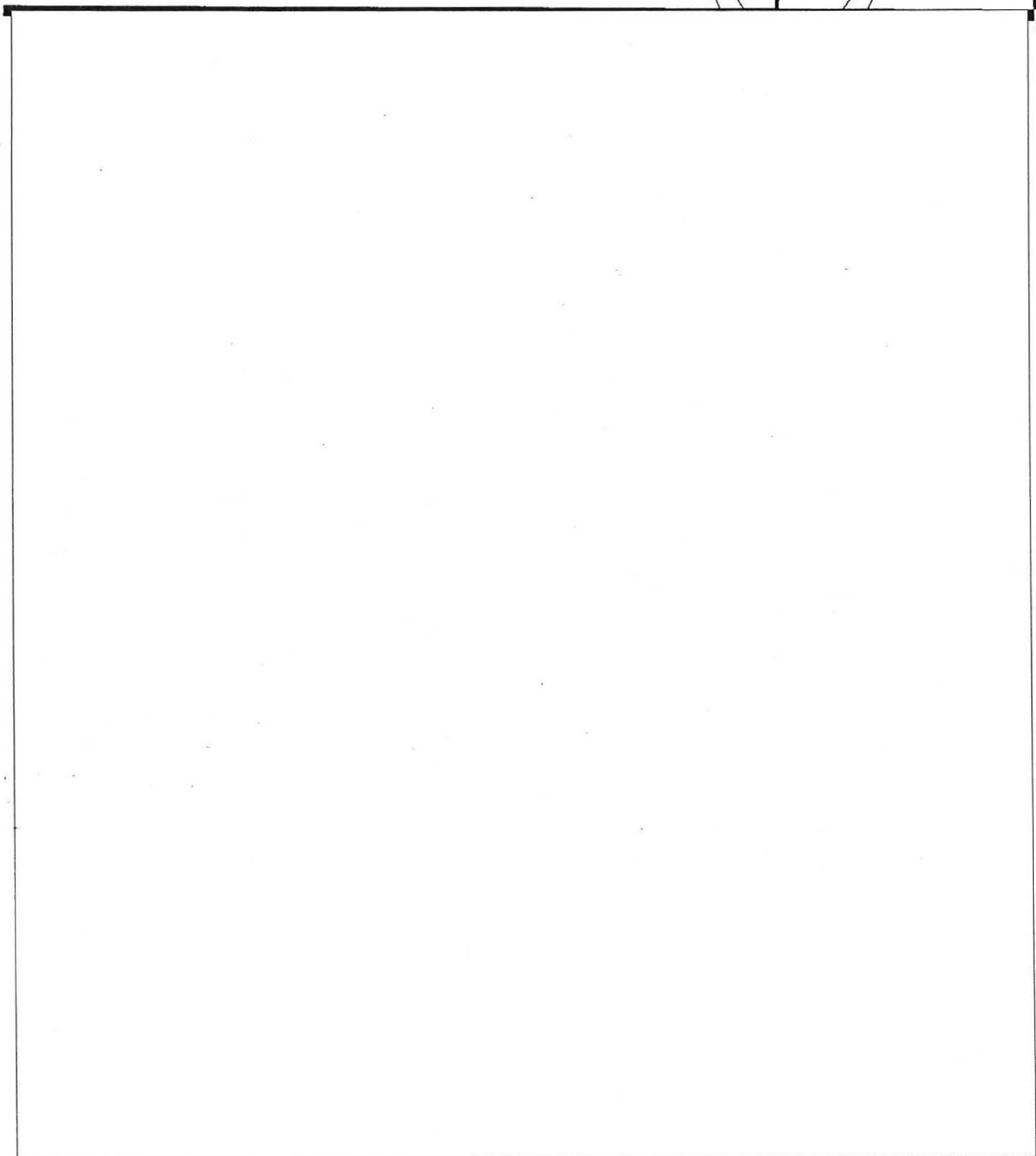
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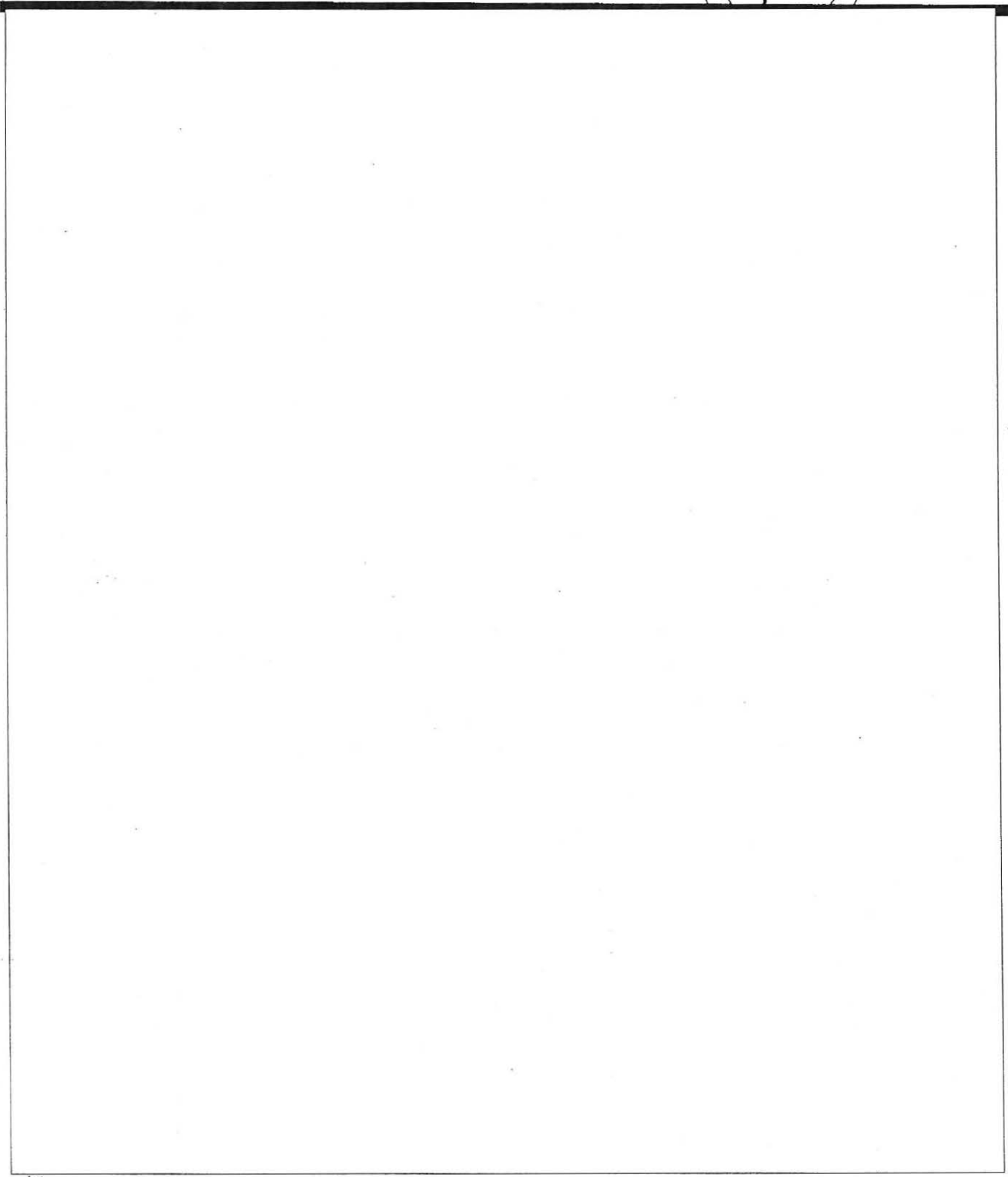
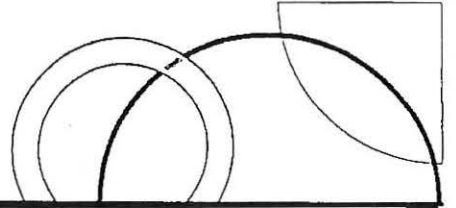


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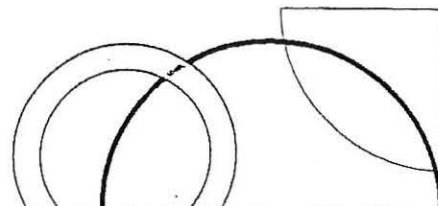
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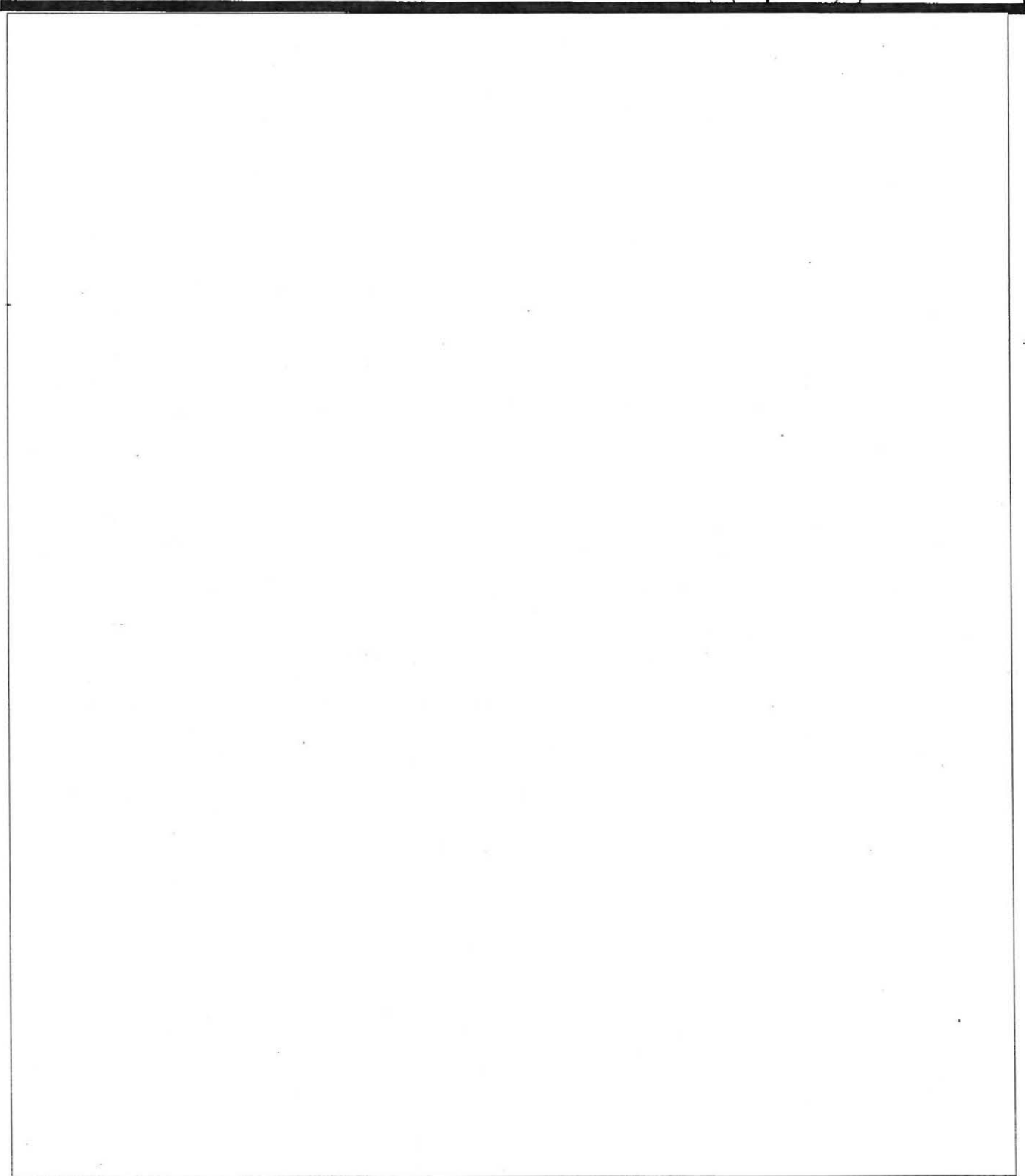
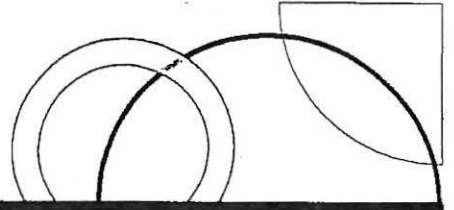


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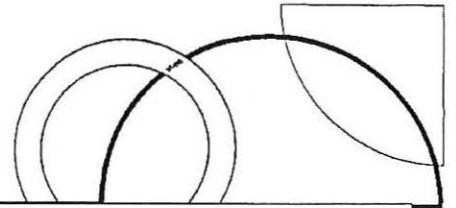
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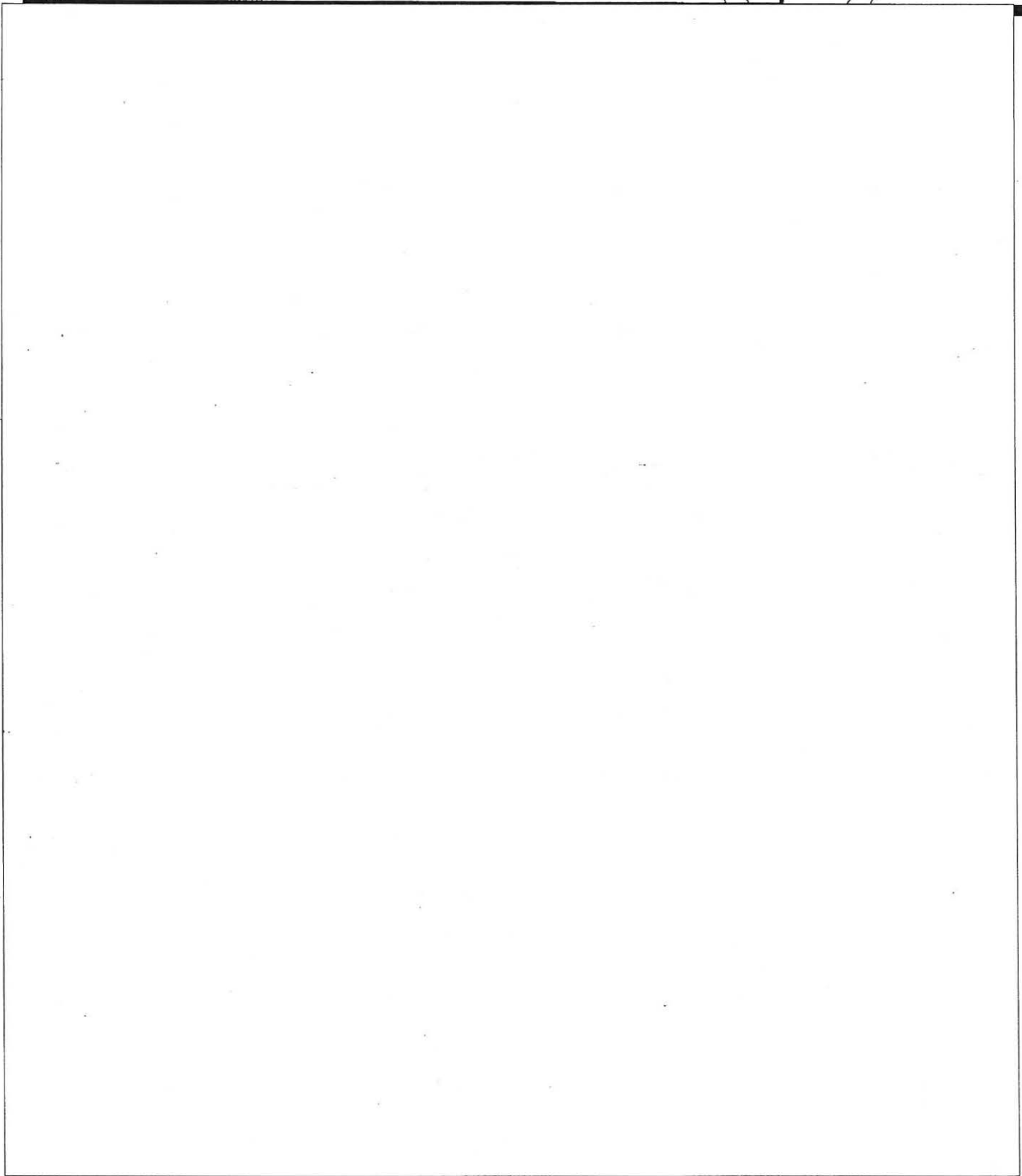
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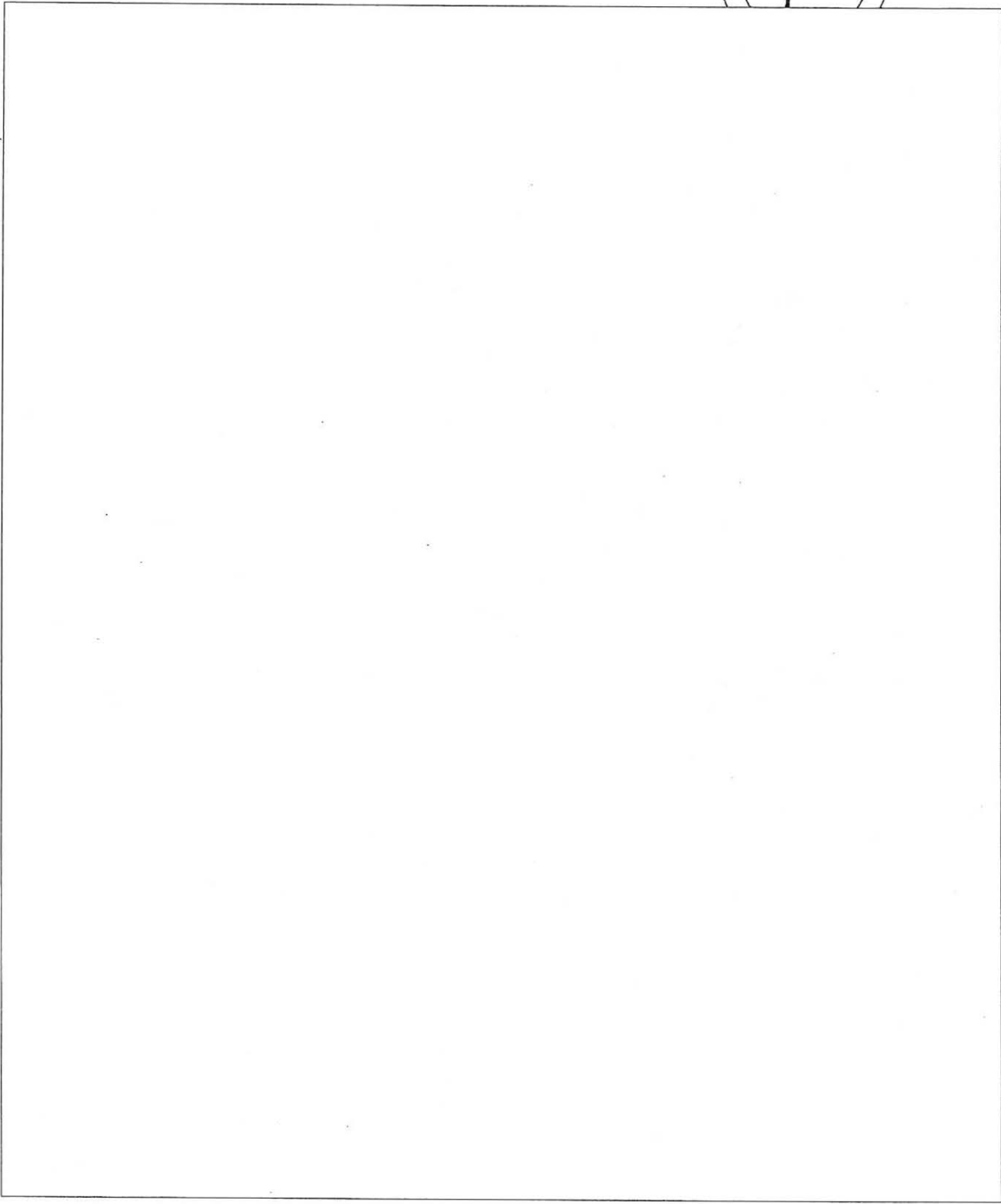
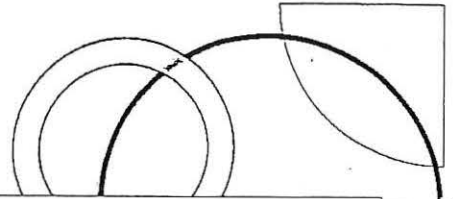
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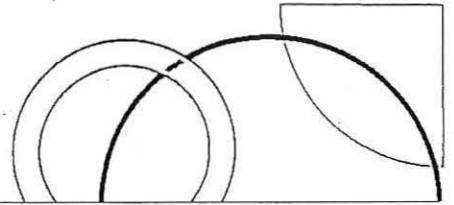
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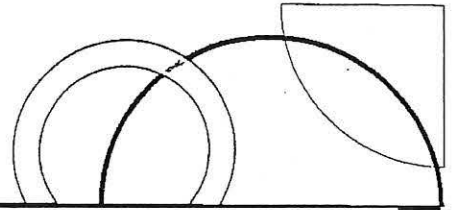




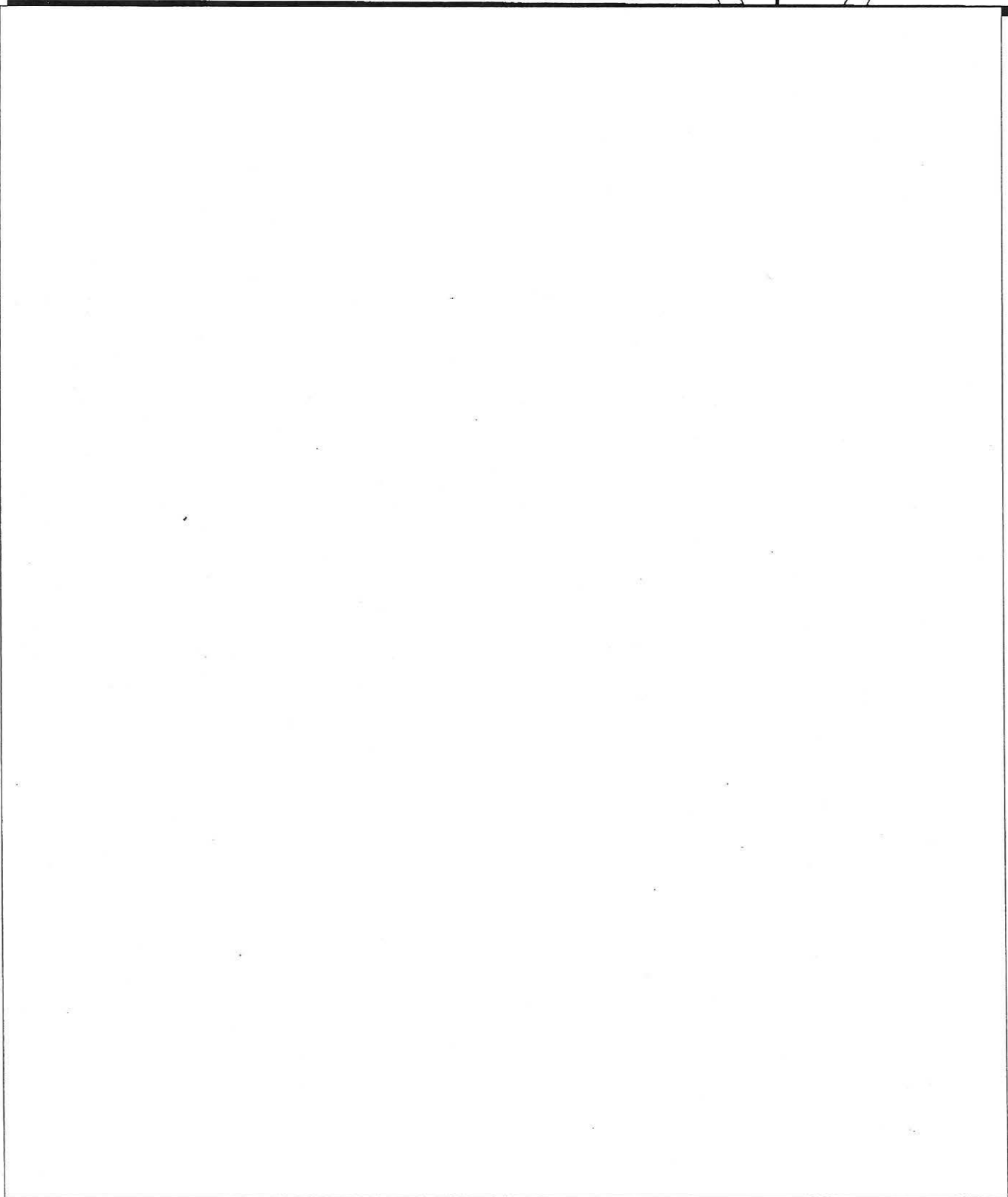
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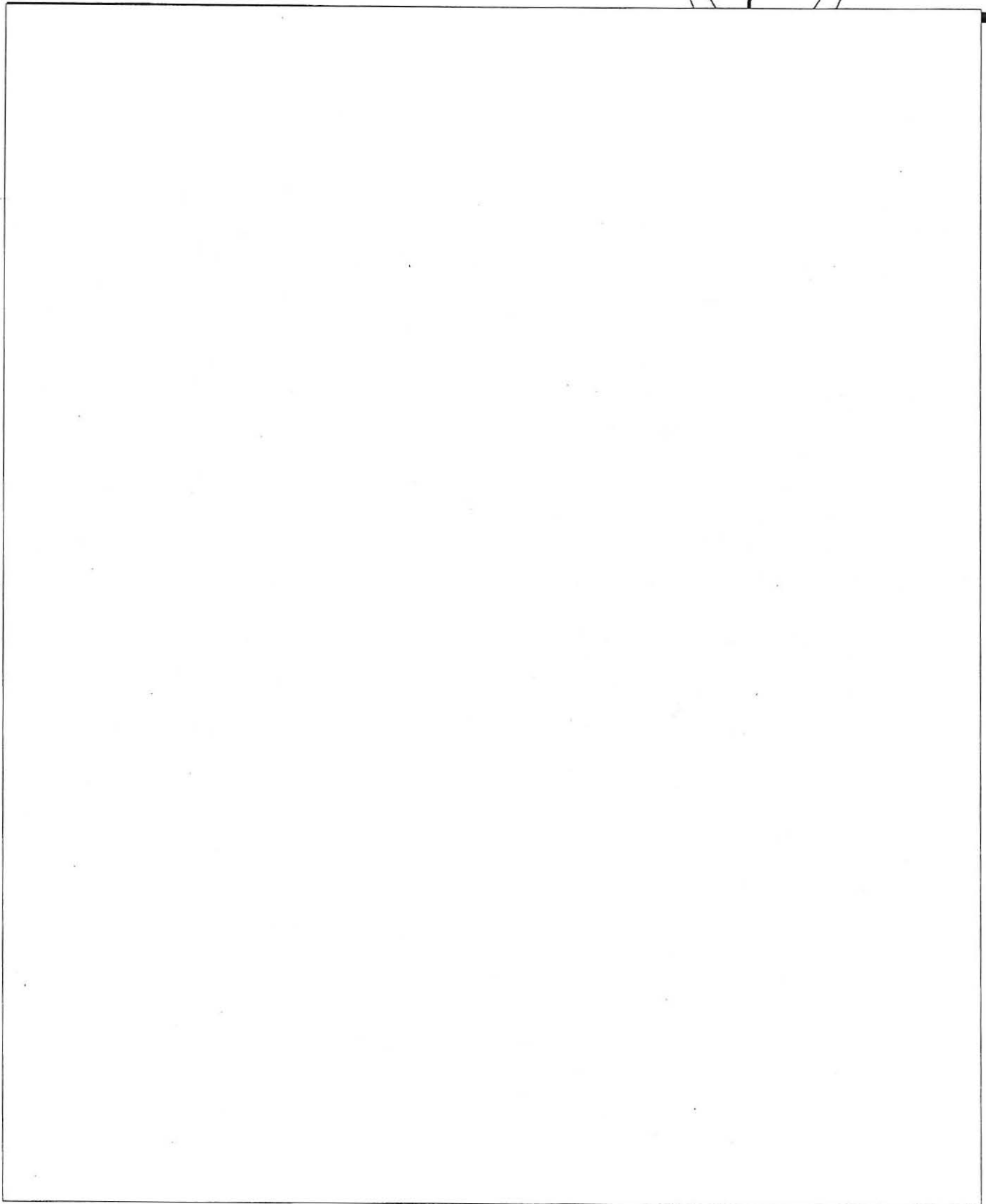
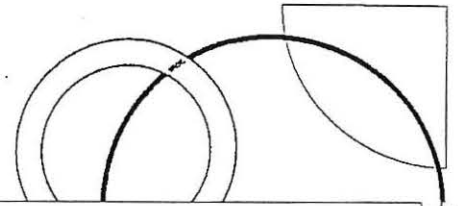


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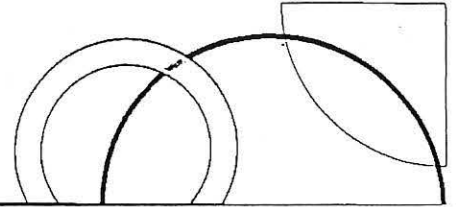


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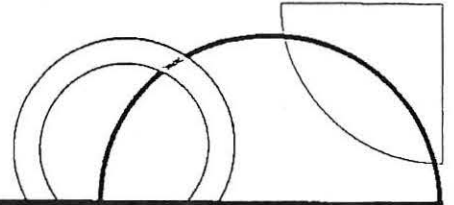




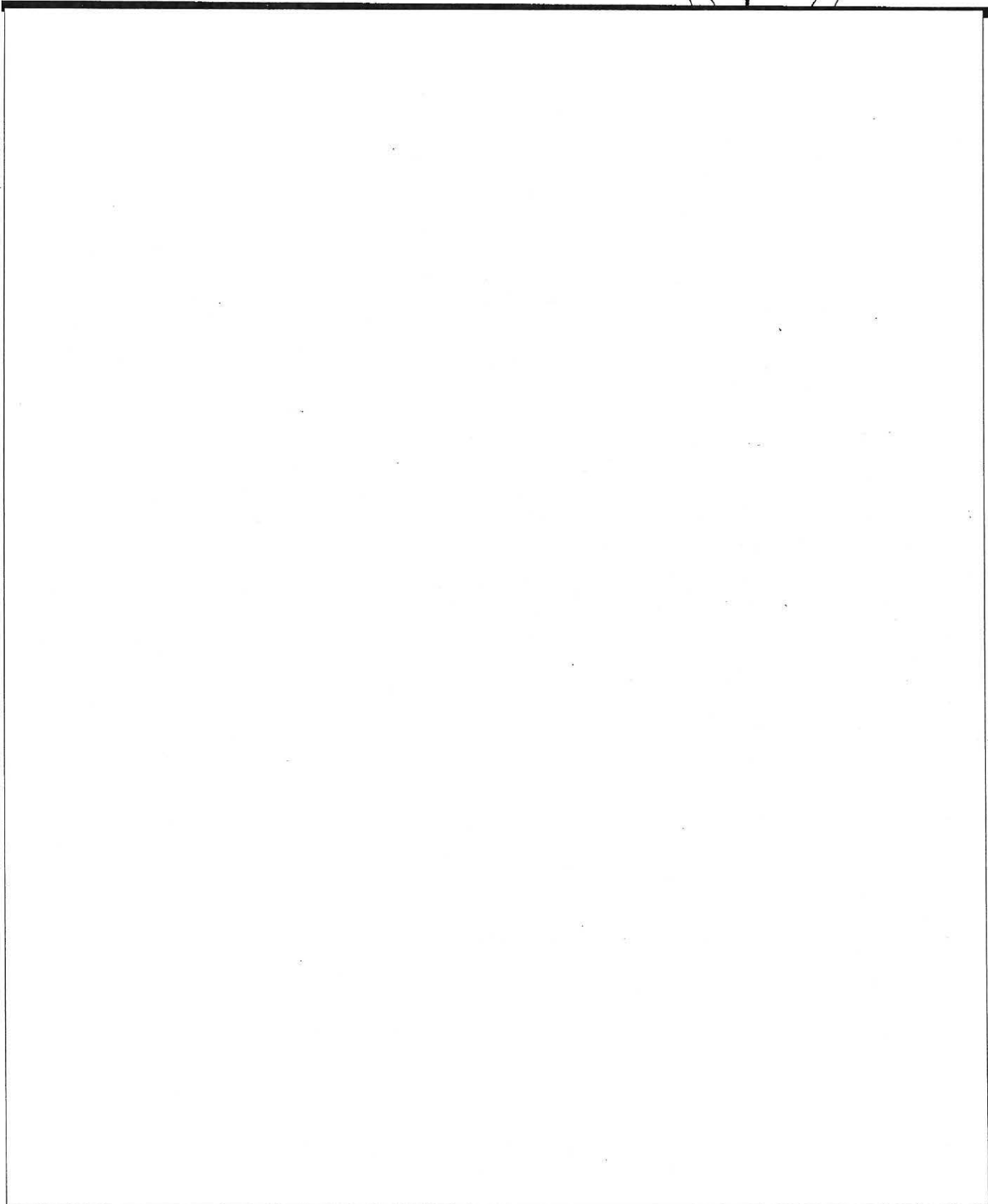
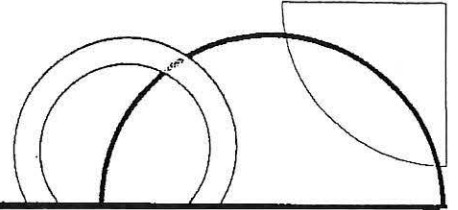
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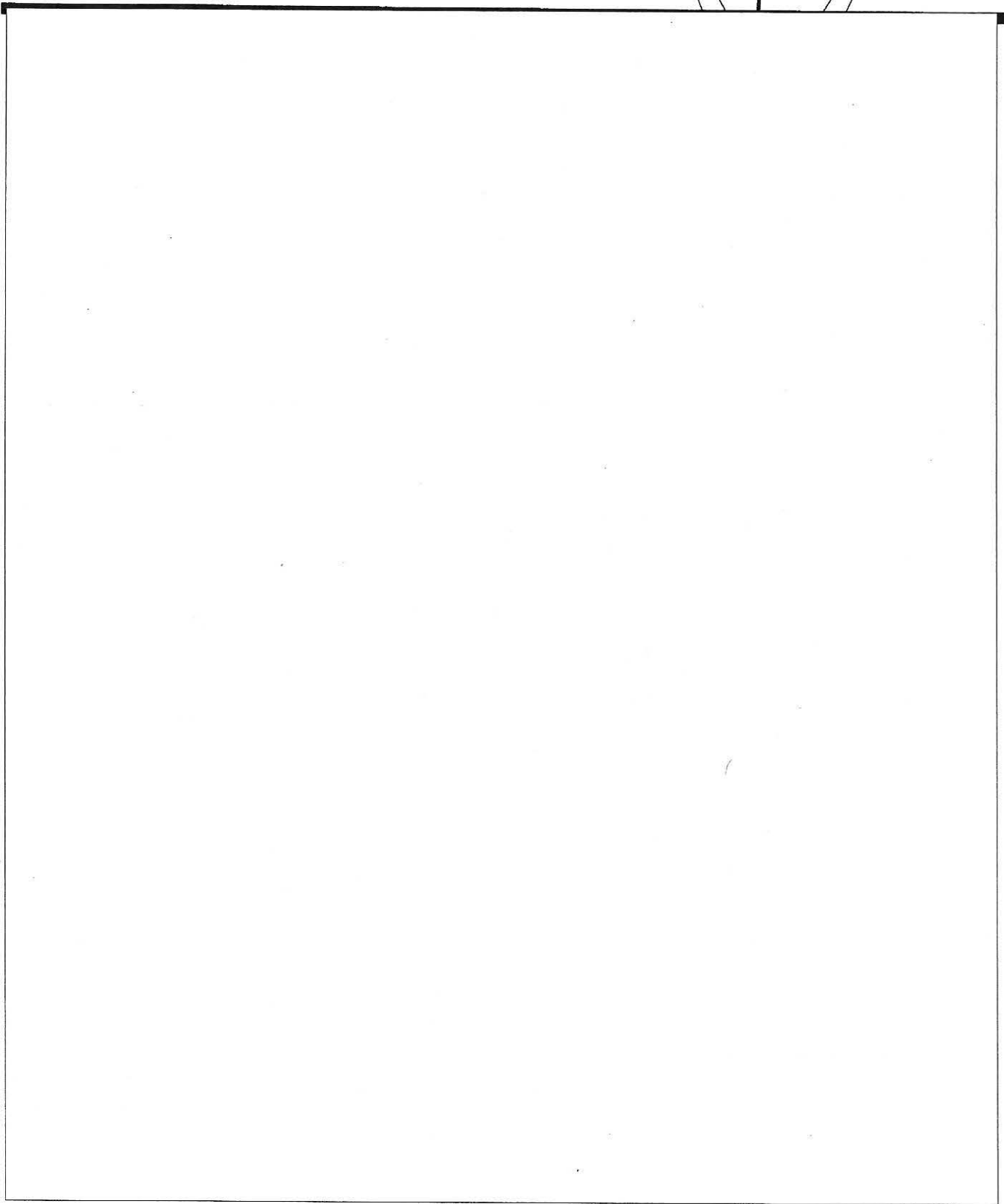
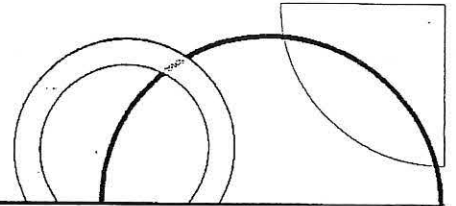
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