

MEMORANDUM

Date: January 12, 1994

To: Paul Richard, Deputy Staff Secretary

From: Marc H. Monheimer, Senior Advisor to the Archivist

Subject: Proposal for Bulk Declassification



Attached is copy of a Memorandum to me from Mike Kurtz, Acting Assistant Archivist for the National Archives, which explains the background of the materials for the proposed bulk declassification executive order which I gave you last Friday. State probably and the FBI definitely will be the most reluctant. The NSC has advised Steve Garfinkel that NARA and Steve should contact the FBI, CIA, DOD and State directly to brief them on the proposal. NSC is making calls to senior officials ahead of time. Mike is convinced, as am I, that if we are to get anywhere, we really need clear, high level Administration support. Let me know if you need more.



Date : JAN 11 1994

Reply to

Attn of : Michael J. Kurtz

Subject :

Background on Proposed Executive Order for Bulk Declassification

To :

Marc Monheimer

Approximately two months ago Steve Garfinkel, Director of the Information Security Oversight Office, contacted the Acting Archivist, Trudy Peterson, to propose a one-time Executive Order for bulk declassification of selected record collections in the holdings of the National Archives. Dr. Peterson welcomed the suggestion and asked the writer, as Acting Assistant Archivist for the National Archives, to work with Mr. Garfinkel in drafting a proposal.

Our proposal, presented to National Security Council staff at a briefing on January 7, would declassify approximately 50 million pages of material. Specifically, all World War II and prior classified records (21.6 million pages) would be opened, as well as selected post-war files deemed by the staff of the National Archives to have little remaining sensitivity (27.2 million pages).

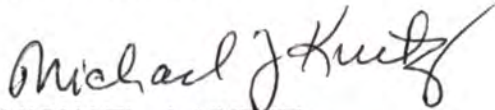
Issuance of the proposed Executive Order would demonstrate the President's continuing commitment to openness, enhance public access to records, and increase the scope and accuracy of the historical record. Further, a reduction of 50 million classified pages out of a total of 325 million pages would substantially lessen security costs for the National Archives.

Some agency resistance can be expected. The FBI, in particular, has serious concerns about declassifying sources. I should note, though, that declassification does not equate with immediate release. There is a screening process by National Archives staff for records with privacy or law enforcement concerns. To a lesser extent, the CIA also is concerned about sources. However, the CIA predecessor information we propose to declassify really identifies generic sources of intelligence, such as British intelligence, rather than individuals. The State Department has had a long-running concern about foreign government information. However, given the age of the documents, there can be little if any impact on current diplomatic negotiations.

These are contentious issues, but it is important to note that these categories constitute only between 1% and 5% of the material proposed for declassification under this one-time Order. This estimate reflects the types of information withheld both under the provisions of the current Executive Order

on national security information and the draft developed by the PRD-29 task force.

Based on the discussion at the January 7 briefing, I believe that preliminary sessions with the affected Agencies to explain the proposal and resolve problems are essential. But a key ingredient to facilitate these discussions is an expression of high-level Administration interest and support. This would send a positive signal to the Agencies and aid in reaching workable solutions where needed.

A handwritten signature in cursive script, reading "Michael J. Kurtz". The signature is written in dark ink and is positioned above the printed name.

MICHAEL J. KURTZ
Acting Assistant Archivist
for the National Archives

New Policy on Declassifying Secrets Is Debated

By NEIL A. LEWIS
Special to The New York Times

WASHINGTON, Jan. 13 — The Clinton Administration, which is preparing a new post-cold war policy on the release of Government secrets, is engaged in an intense debate over how long information should remain classified.

A draft report of a new policy would require that all Government secrets, with few exceptions, be automatically released after 40 years.

Although that would mean that vast stockpiles of secrets could automatically become public for the first time, several organizations have told the Ad-

ministration that 40 years is far too long a period.

The groups, including the National Security Archive and the American Civil Liberties Union, said the need for a shorter period was demonstrated by recent disclosures about secret Government-sponsored radiation experiments on unwitting Americans in the 1950's through the early 1970's.

Holding Officials Accountable

"Forty years is much too long," said Sheryl L. Walter, the general counsel of the National Security Archive, a private organization that catalogues Government information and presses for

greater openness. "The whole reason to disclose secrets is to keep Government officials accountable by letting them know that their decisions will be held to the light of public scrutiny."

A senior White House official who is involved in seeking to fulfill President Clinton's promise for a more open information policy said officials were seriously considering reducing the 40-year time frame.

So far, the process of establishing a new policy on Government secrets has involved a tug-of-war between the groups pressing for greater openness and the established order, as represented by officials of Government

agencies that have historically maintained national security secrets, like the Defense Department and the Central Intelligence Agency.

In the middle of the debate is the White House, which, one official said, "is trying to come up with a plan that would fulfill the President's pledge for more openness while protecting really sensitive information, and doing it at a reasonable cost."

The official said the draft report had been completed by a special panel of officials from agencies involved in keeping secrets. It has been forwarded to the National Security Council, a White House agency, which is expected to modify its recommendations in the next several weeks, including perhaps reducing the 40-year time frame.

The nation's policy on how to maintain secret information is not contained

in statutes but has historically been the prerogative of the President. Previous policies have been put in place by executive order.

Administration officials said it would probably be several months before Mr. Clinton issued a final executive order.

Presidents Jimmy Carter and Richard M. Nixon each adopted executive orders that they said were aimed at curtailing the fast-growing number of classified documents. But their efforts were widely deemed by historians and journalists to have had little effect.

Trudy H. Peterson, the Acting Archivist of the United States, said that even a period of 30 years would be unnecessary. In a letter to Vice President Al Gore last month, Ms. Peterson said: "In our experience, there is virtually no information over 30 years old that requires continued classification. Most

documents of this age are so irrelevant to current security concerns that continued withholding seems inappropriate if not laughable."

The National Archives has estimated it has 300 million to 400 million classified documents dating from the World War I era to the mid-1950's. Countless other documents are housed at other Government agencies.

The draft report says that even if Government agencies have the authority to classify and withhold information, they should still disclose the information if they believe the public interest in disseminating the information outweighs the need for classification.

Such a balancing test was urged by Ms. Walter and others like Gary Stern of the American Civil Liberties Union, and they both applauded its inclusion in the draft policy.

Israel-Syria Talks Hinge On Clinton Meeting

By CLYDE HABERMAN
Special to The New York Times

JERUSALEM, Jan. 13 — After months of being shoved to the side, Israel's peace talks with Syria are about to regain center stage, but senior Israeli officials say they do not know if the negotiations can be pulled out of the bog they are in.

The key for them is a meeting scheduled for Sunday in Geneva between President Clinton and President Hafez al-Assad of Syria, an encounter that has received such a buildup here that one could be forgiven an impression that the rest of Mr. Clinton's European journey is a mere cover for his appoint-

ment with the Syrian.

Israelis want Mr. Assad to give the American President "the magic word," as one official put it: a statement that he is ready to "normalize" relations with Israel in return for an Israeli withdrawal from the strategically important Golan Heights, which Israel captured from Syria in the 1967 war and virtually annexed in 1981.

If he raises the prospect of "normalization" — defined by the Israelis as diplomatic relations, open borders and trade — then "he will find in Israel a partner ready to do business with him," Deputy Foreign Minister Yossi Beilin said today. The tit for tat would

be Israeli recognition of Syrian sovereignty over the Golan Heights, paving the way for an eventual withdrawal.

Despite more than two years of talks and occasional glimmers of hoped-for progress, the two nations have basically gone nowhere. Syria offers peace, but says it first wants Israel to commit itself to leaving the Golan, where about 13,000 Israelis live. Israel says it is prepared to pull back, at least partly, but first wants to hear what the Syrians mean by peace. They have been like that, the Alphonse and Gaston of Middle East diplomacy, for many months.

The question now is whether the equation is about to change and, if so,

whether it will qualify as a breakthrough.

Some Israeli officials and academic experts see an imminent shift, arguing that Mr. Assad will not risk going to Geneva empty-handed if he wants to improve relations with the United States, especially to get Syria scratched from Washington's list of countries that sponsor terrorism.

There are other subjects likely to be taken up with Mr. Clinton, including the fate of several hundred Jews remaining in Syria, the alleged Syrian involvement in Middle East drug trafficking, Syria's links to Iran, its abetment of radical Palestinian groups and its continued purchases of advanced weapons like Scud missiles from North Korea.

But the core issue is generally considered to be the future of the Golan, a source of much of Israel's water and a

plateau that Syria had used before 1967 to shell northern Israeli settlements.

"I would guess that this is the time for Assad to say publicly, or at least to whisper in Mr. Clinton's ear, what he means by full peace," said Moshe Maoz, a Hebrew University professor who specializes in Syrian affairs.

Optimists here have been encouraged by signals like reported remarks last week by Abdel Halim Khaddam, Syria's Vice President, that "normalization" is a part of talks with Israel.

If the talks in Geneva go well, the United States is expected to announce a resumption of long-suspended peace talks in Washington on Jan. 24, not only between Israel and Syria but also between Israel and Jordan, Lebanon and the Palestinians. The Palestinian track, however, has been overtaken by the "declaration of principles" signed

in September by Israel and the Palestine Liberation Organization, whose negotiators are still struggling to turn it into a workable agreement.

Not all Israelis are sure they will hear magic words from Geneva.

Foreign Minister Shimon Peres, normally a leading optimist, cautioned today that Mr. Assad "keeps the cards very close to his chest" and that while the meeting with Mr. Clinton "is an opportunity, it is not yet progress."

Opinion polls suggest that Israelis overwhelmingly oppose a full withdrawal from the Golan, many of them convinced that the main reason for years of quiet on the Syrian border is that fact that their tanks command the plateau, 40 miles from Damascus.

Job hunting? Check today's Times.

Moving to Revise Head Start To Still G.O.P. Complaints

By CATHERINE S. MANEGOLD
Special to The New York Times

WASHINGTON, Jan. 13 — The Clinton Administration has moved to still Republican complaints about one of its top domestic priorities — an effort to help disadvantaged pre-schoolers get a better start in life — by promising to improve the quality of the Head Start program.

Backers of the \$3.3 billion program from the Administration and Congress have agreed to correct widespread flaws before undertaking efforts to expand the program's reach. That commitment came first in a report made public on Wednesday by a Department of Health and Human Services advisory committee, whose members included child welfare experts from both sides of the political divide, and then in a Senate hearing.

The report called for general improvements in the quality of individual programs, more Federal monitoring, increased flexibility at the local level and a broadened mission to help children under the age of 4.

Donna E. Shalala, the Secretary of Health and Human Services, called the advisory committee's work an opening to "refocus and re-energize Head Start."

'Head Start Has to Adapt'

At a news conference on Wednesday, she urged careful growth and in a nod to Head Start's critics she cautioned, "We don't want to just pour money" into the 28-year-old program.

"At a time when many of this nation's children and their families face poverty and teen pregnancy, joblessness and violence, Head Start has to adapt to keep pace," she said.

Nowhere, however, did the report address the cost of changes. And several Congressional leaders and child welfare experts warned against raising unrealistic expectations of the program's ultimate scope.

"It is important that on the national level we do not over-promise or make commitments we can't keep," said Representative Susan Molinari of Staten Island, the ranking Republican on the House Education and Labor Subcommittee on Human Resources.

But the report and the hearing before the Senate Labor and Human Resources Committee seemed to mark a compromise over Head Start between critics who have long complained of quality problems and backers of the popular program who have struggled to expand Head Start's mission and scope.

The advisory panel that prepared the report included staff aides from committees from both houses of Congress and from both parties.

"What is different about this report is that all the appropriate players were brought to the table," said a Congressional staff member familiar with the committee's work. "People took it pretty seriously."

The report promises a revamped Federal program that could serve some children year-round with all-day educational and other activities.

The report notes that existing services are uneven across the country and that improvements are needed in salaries, physical facilities and training of teachers.

The report says an improved program would reach more, and younger, children. About 1.8 million children are eligible for Head Start services and of those, only 721,000 children between the ages of 3 and 4 years old participated last year. Several members of the advisory committee recommended extending the program to children from birth.

President Clinton last year called for a \$1.4 billion increase in financing for Head Start to be made up of a \$500 million allotment for summer programs and a \$874 million request in the 1994 budget. Yet several child welfare experts said yesterday that they believed there may be a retreat in the offering from that and other broad promises.

Measured Language

Quoting from an Administrative report, Douglas J. Besharov, a scholar at the American Enterprise Institute and a member of the Head Start advisory committee, noted that several low-income programs were earmarked for increased financing while no new money was similarly slated for the Head Start program.

In testimony before the Senate panel, he drew attention to the promise of a "gradual increase" in one program and "significant new funding" for another, but then pointed out that the same draft only outlined an intention to "facilitate linkages" between Head Start and other child care programs.

Senator Edward M. Kennedy, Democrat of Massachusetts, praised the program's outline and intent, but stressed that "quality issues" had to be addressed.

He also conceded that past efforts by Democrats in Congress to expand the program in times when Republican administrations were cutting social programs had led to largely uncontrolled growth.

"Now the question is, quite frankly, whether we can deal with the bureaucracies, because a lot of them are out there and, by God, they don't want their ox getting gored," he said.

OSHA to Business: Slow Down, You Work Too Fast

By EUGENE SCALIA

Today in Los Angeles, California's Occupational Safety and Health Standards Board opens hearings to consider requiring, by law, that employers in the state "adjust" their "work pace." The "adjustment" Cal-OSHA has in mind is downward.

To those surprised to find the no-longer-so-Golden State girding to require its (remaining) businesses to do less, welcome to the safety and health juggernaut that is "ergonomics." Ergonomists define their discipline as the study of workers' relation to their environment; "ergonomic measures" are the favored solution to carpal tunnel syndrome and other "cumulative trauma disorders" (CTDs) purportedly caused by repetitive, forceful motions at work.

The Cal-OSHA hearings result from the state assembly's requirement that an "ergonomics" rule be adopted to "minimize the instances of injury from repetitive motion." A similar mandate is pending in Congress, where Labor Secretary Robert Reich has testified that CTDs are the "occupational diseases of the information age." The federal Occupational Safety and Health Administration already has promised a draft standard by fall, and for several years now it has been prosecuting companies under the federal act's "general duty clause." So, for instance, fed OSHA has charged that risk of "death or serious physical harm" lurks in the hand motions that produce Pepperidge Farm's delightful Milano cookies.

Ergonomics' appeal lies in its unquestionable premise and its equally unquestionable—and unquestionably attractive—conclusion. The premise: Hard work is tiring and sometimes uncomfortable, even painful. The conclusion: Work less and you'll feel better. Why, I've experienced the very thing myself!

Though usually packaged in pseudo-scientific jargon, ergonomists' remedies reflect a similar rough common sense. CTDs, the theory goes, are the product of repetition, force and posture. To cure them, reduce repetitions—"adjust" the work pace, hire seven employees to do the work of five, give employees frequent "rest periods." As for force, lessen it by dropping the weight of what employees press, lift and carry. "Redesign the workstation" to improve employees' posture.

All of these measures are either expressed or implied in the proposed California standard; they are to be taken by employers (to an indeterminate extent) on a finding of such CTD "symptoms" as "pain from movement." The measures already are being demanded by federal and state OSHA regulators in cases like that against Pepperidge Farm.

Nor is this the limit of ergonomists' agenda, for they have in store for employees a still greater freedom—unemployment. OSHA inspectors may not be engineers, they may not be physicians, but they can surely recognize that if a given operation required no workers at all, illness and injury would disappear. Automation is, accordingly, a commonly proposed ergonomic measure. This past fall at a job safety conference in Chicago, a meat-packing-plant manager swelled with pride at a film of one of his company's fully automated operations, with nary a worker in sight: We used to have hurt backs, hurt shoulders, he commented—but not anymore. Union members in the audience were wise to take note.

Most ambitious of all, however, is ergonomists' program to reach beyond physical conditions of the workplace to address the very terms of employment. Increasingly, ergonomists and their critics are finding that employee reports of CTDs—which are difficult to verify objectively—correlate more strongly with generalized job dissatisfaction than with a job's physical demands. With admirable persistence, ergonomists are now recommending changes to the "psycho-social" conditions of the workplace. The research arm of OSHA has recommended mandatory ergonomics programs to address, among other things, "opportunity for advancement," worker "feedback," and "management style and climate."

Perhaps instead, "psycho-social causes" ought to occasion some last-minute reflections on the doubtful science underlying ergonomics. In the words of ergonomics guru Don Chaffin, what the field lacks is "good evaluations that hold up to scientific scrutiny."

While no one doubts that hard work can become tiring and uncomfortable, respected physicians question, first, whether CTDs exist as a diagnosable condition falling within OSHA's authority to address "illness" and "injury." While disputing this, ergonomists acknowledge, second, that an ailment carrying all the symptoms of a CTD might have causes other than repetition and force, and therefore not be a CTD at all—diagnosis is hard in any given case.

Third, and perhaps most notable of all, ergonomists readily confess not to know the levels at which repetition and force become "hazardous." In other words, while commanding business on pain of civil or even criminal penalty to reduce repetition and force to nonhazardous levels, OSHA regulators do not know themselves where this line between legal and illegal conduct lies. Such a mandate is probably unconstitutional, and is certainly stupid policy.

Before parading naked for his countrymen, the emperor who wore no clothes paid a hefty sum to clever tailors who assured him they had woven a fine garment indeed. Other countries—notably, Australia—have invested small fortunes in "ergonomic reform," only to see their CTD "epidemics" wax and wane regardless of the measures taken. As ergonomics rises to the top of the nation's labor agenda, policy makers would do well to take careful measure of the science underlying it.

Mr. Scalia, a lawyer in Washington, represents management in occupational safety and health matters.

THE WALL STREET JOURNAL THURSDAY, JANUARY 13, 1994

White House Weighs Plan To Declassify U.S. Secrets

By a WALL STREET JOURNAL Staff Reporter

WASHINGTON — The Clinton administration is considering a plan that would automatically declassify government secrets within 40 years.

The plan being debated in the National Security Council, would greatly revamp the classification system in place since the Reagan administration. It would require government officials to keep information unclassified, for instance, if they determine that the public interest requires it. No such "balancing" test currently is required.

The Federation of American Scientists, a liberal advocacy group that obtained and released copies of the plan, said the proposal doesn't go far enough. The group said government secrets should be declassified within 20 years.

**REGULATORY
CHOKEHOLD**

Letters to the Editor

Here's the Way I Remember It

The only memory loss in Al Hunt's Jan. 6 column is his own ("Clinton Allegations Cause GOP Memory Loss," op-ed, Politics & People).

Mr. Hunt argues that my request for the appointment of a "special counsel" to examine the burgeoning Whitewater controversy is somehow inconsistent with a statement I made last November opposing the re-authorization of the Independent Counsel Act. The statement Mr. Hunt cites as inconsistent is this: "We ought to have confidence in our nation's attorney general—confidence that she can conduct criminal investigations with independence and without the intrusion of politics."

Now, here's what Mr. Hunt forgot. The very next sentences of my remarks make this point: "In fact, the attorney general already has the authority to appoint special counsels in cases that merit an independent review. This authority exists with or without an independent counsel statute, and it has been invoked by past attorneys general. . . ." It didn't fit Mr. Hunt's argument, but the fact is I opposed the independent counsel statute in part because the attorney general already has the authority to appoint special counsels, the same authority Republicans, Democrats and editorial writers for many of the nation's most respected newspapers have now urged Attorney General Reno to use.

Mr. Hunt then suggests I would be critical of any final report "exonerating the Clintons." In fact, I have provided Attorney General Reno with a list of seven individuals, including such prominent Democrats as former Carter administration At-

torneys General Griffin Bell and Benjamin Civiletti, whom I believe would be suitable for appointment as Whitewater special counsel. All seven individuals have reputations for integrity and competence that are unassailable, and whose conclusions wouldn't be second-guessed by me, or I believe most Republicans.

I hate to disappoint Al Hunt, but I'll have to decline his nomination for his political inconsistency award—the facts disqualify me.

SEN. BOB DOLE (R., Kan.)
Senate Republican Leader

Washington

Politics & People

By Albert R. Hunt



Yeltsin is about American politics. More significant, however, as President Clinton sits down for talks in Moscow today, is that it just may be that the Clinton administration has been similarly naive about Russian politics.

The administration considers its Russian policy a shining success in a sea of foreign policy problems. The strong showing of neo-fascists and communists in last month's parliamentary elections may have shocked the Clintonites, but it didn't change their self-congratulatory posture. The chief architect of this policy, Russia expert and former Time magazine editor Strobe Talbott, newly designated as deputy secretary of state, has won fawning reviews from most of his former colleagues in the diplomatic press corps.

Yet the administration clearly underestimated the economic disaster in Russia; it's still unsure of how to spend much of the

In June 1992 Russian President Boris Yeltsin, after a sojourn with George Bush at Camp David, met with congressional leaders at the Russian Embassy.

As he was talking with Democratic congressional leaders Thomas Foley and George Mitchell and their Republican counterparts, Bob Michel and Bob Dole, the Russian leader noted, almost casually, that "we are all looking forward to President Bush's re-election."

Not quite, interrupted Speaker of the House Foley, telling a surprised Boris Yeltsin that while everybody likes George Bush, some not only weren't "looking forward" to his re-election but didn't think it would happen.

The anecdote is of little consequence except to show how stunningly naive Mr.

\$3 billion it got Congress to appropriate for Russian aid last year; the Russians shamefully have been given a veto over some security arrangements in Eastern Europe, and our policy rests almost exclusively on Boris Yeltsin.

Most of the administration talk about economic progress there is a mirage. In a country with no modern history of markets, it's not surprising that when you start eliminating central planning what you get is a black, not a free, market. Russia, as Federal Reserve Chairman Alan Greenspan noted in a speech earlier this year, lacks the "rudimentary institutions," most prominently a legal system, to convert to a market-based system, meaning that any transition is likely to be "significantly stretched out." The physical infrastructure, notes Wellesley College Russia expert Marshall Goldman, is dreadful: More than 70% of all Russian factories are models of inefficiency, with work forces of more than 1,000 employees.

The predictable result is rampant inflation and negative growth. The Russians, the line goes, are terrific at converting steel into scrap. One prominent economist, after spending time in Russia, concluded there's one solution: Send 150 million people away for a few years, raze the country and start from scratch.

This makes the debate about economic shock therapy in Russia—after the parliamentary elections Mr. Talbott was said to advocate more therapy and less shock—a false choice. The advocates cite Poland as a success. But Poland has a history of markets: More than three-quarters of the farms there never were collectivized, and there was a smaller but not insignificant retail market. The therapy-with-less-shock proponents ignore the example of Ukraine, which makes Russia look good.

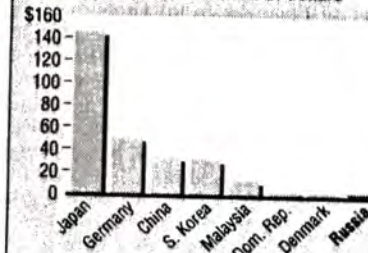
Thus the inescapable conclusion is that economically as well as politically, what the U.S. does will have, at most, a marginal effect, which raises questions about

why we're pouring billions of dollars into this mess. Most of the \$3 billion appropriated in 1993 lies in limbo. One preliminary plan called for 15% of the money earmarked for military housing relocation to be set aside for local Russian housing officials. Congressional experts pointed out that this would constitute nothing more than a payoff; in a tight fiscal climate at home few Americans will cotton to spending millions of their tax dollars to bribe corrupt Russians. Similarly, there's widespread speculation about huge ripoffs by the ubiquitous "consultants."

The simple fact is that Russia is an economic midget, ill-equipped to receive large amounts of outside aid. Trade is a pretty

Drop in the Bucket

U.S. trade with Russia and other selected countries in 1992, in billions of dollars



Source: "U.S. Foreign Trade Highlights, 1992"

decent measure of economic standing and the U.S. has more commerce with 38 nations; Russia ranks behind Denmark and slightly ahead of Costa Rica. While Strobe Talbott proclaims Russia as our top foreign policy priority, Bill Clinton says economics is the pre-eminent international issue; there's a conflict.

It's also incongruous that a country so economically decimated is an imperialistic threat, notwithstanding its history. For the foreseeable future, Russia may be a nuisance, sometimes even a dangerous one, to its newly independent immediate

neighbors, but the possible re-emergence of a super-power threat is ludicrous.

Someday Russia, with considerable resources, may be an important country again. But that hardly rests solely on Boris Yeltsin's success, as the administration would have you believe.

The Russian leader is a brave man. He thrives on crises. But he shows much less talent for the coalition crafting or constituency building essential to governance; indeed, he seems more like American politicians who thrive on running for office but are restless serving. It's dicey to so totally base policy on this one man.

There still are important issues. This third-rate country has 25,000 nuclear weapons. Mr. Talbott, and top Defense Department officials, deserve credit for negotiating a nuclear pact with Ukraine; let's hope it will stick. It's essential that further dismantling and destruction of nuclear weapons take place in Russia and other former Soviet states. We ought to give whatever money it takes to facilitate that. The U.S. also ought to remove barriers to Russian exports and help fund and launch new businesses as opposed to trying to privatize bloated existing structures.

But when President Clinton, as he did the other day, predicts that Russia is on the way to again becoming "a very great nation," it's a delusion. In the same session with columnists, the president suggested that it would be good to tailor the administration's Russian policy to a slogan that would fit on a bumper sticker: "I think our slogan would be there needs to be more reform and more social service support—more attempts to build a safety net to deal with the consequences of reform, but not an attempt to slow down the reform effort. . . . Then if you said therapy, then you'd have all kinds of other ambiguous things you could get in there."

The president may need not only a better slogan but a more realistic policy.

PROPOSED EXECUTIVE ORDER ON BULK DECLASSIFICATION

**DECLASSIFIES SPECIFIC RECORDS
WITHOUT REVIEW**

WORLD WAR II AND BEFORE

SELECTED POST-WAR RECORDS

**RECORDS RELEASED BY PROPOSED
EXECUTIVE ORDER**

WORLD WAR II AND PRIOR - 21.6 MILLION PAGES

**PRE-1950 DOCUMENTS PREVIOUSLY WITHHELD - 1.4
MILLION PAGES**

**SELECTED POST-WAR RECORDS - 25.8 MILLION
PAGES**

**TOTAL PAGES DECLASSIFIED - 48.8
MILLION**

PRO

**DEMONSTRATES PRESIDENT'S
COMMITMENT TO OPENNESS**

ENHANCES PUBLIC ACCESS TO RECORDS

**INCREASES ACCURACY OF HISTORICAL
RECORD**

PRO

**RELEASES LARGE AMOUNTS OF RECORDS
QUICKLY**

**EFFICIENT USE OF PERSONNEL
RESOURCES**

SAVES MONEY ON SECURITY COSTS

CON

AGENCY RESISTANCE

**RISK OF INADVERTENT RELEASE OF
STILL SENSITIVE INFORMATION**

**DOES NOT INCLUDE CERTAIN
RECORDS OF GREAT INTEREST TO
RESEARCHERS**

DECLASSIFICATION FY 1993

TOTAL PAGES V. TOTAL HOURS



Declassification Proposal

Total Classified
325



Proposed Declassified
50

(millions of pages)

PROCESS FOR ISSUING PROPOSED EXECUTIVE ORDER

COORDINATE WITH OMB

PROPOSAL SENT TO AGENCIES BY NSC

NARA/ISOO BRIEF AGENCIES

SIX WEEKS FOR AGENCY COMMENT

EXECUTIVE ORDER SIGNED BY PRESIDENT

11/23/93

Revision of EO.

Interagency Policy Group!

Historical Review



FOIA review



686-1824

Bill Ryan 202/541-3200
NCCB/

Keeler letter

Carol Roddey

with the President's letter

- change Elders letter to archbishop Keeler.

1-800-759-7243 · 207:4420#

Frank

Chad + 5640

Celeste 793 1190

Ted Barreau X 512 4200

Carl Cannon 4528250

Bill Gilcher

MARCH 22 cong rec.

Jerry Berna

What is he talking about?

**PHOTOCOPY
PRESERVATION**

**REVISION OF EXECUTIVE ORDER 12356:
ISSUES AND OPTIONS**



**PHOTOCOPY
PRESERVATION**

**REVISION OF EXECUTIVE ORDER 12356:
ISSUES AND OPTIONS
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DESIGNATION OF ORIGINAL AND DERIVATIVE CLASSIFIERS

ISSUE: Should classifiers be designated and should we distinguish between original classifiers and derivative classifiers?

OPTION 1: Do not designate either original or derivative classifiers.

PROS:

- Simplifies system by eliminating the need to designate classifiers.
- Eliminates the "myth" that original classifiers actually make classification determinations.

CONS:

- Eliminates all personal accountability for classification decisions.
- Increases the number of people who can classify to everyone who has a clearance.
- Increases training costs tremendously in order for the system to function properly.
- Threatens increased classification.
- Fuels criticism that anyone and everyone may classify information.

OPTION 2: Designate original classifiers but not derivative classifiers.
(Current system.)

PROS:

- Establishes accountability for the original classification process.
- Provides a systemic check on the quality and quantity of original classification decisions.

CONS:

- Creates burden of having to designate original classifiers.
- Suggests all original classification decisions are actually made by high level officials.
- Foregoes accountability for most classification actions, which are derivative.

OPTION 3: Designate both original and derivative classification authorities. (November 10, 1993 draft.)

PROS:

- Provides full accountability for classification decisions.
- Provides a systemic check on the quality and quantity of classification decisions.
- Minimizes costs associated with training nonclassifiers.

CONS:

- Creates burden of having to designate original and derivative classifiers.
- Increases costs associated with training derivative classifiers.

DECISION:

OPTION 1 _____

OPTION 2 _____

OPTION 3 _____

ALTERNATIVE OPTION:

THE BALANCING TEST

ISSUES: Should there be a balancing test; if so, where in the Order; and should its application be discretionary or mandatory?

OPTION 1: No balancing test. (Current system.)

PROS:

- No litigation over application of balancing test.
- Simplifies classification process.

CONS:

- Results in classification of information even though the public interest in disclosure may outweigh the need for secrecy.
- Results in a system more regressive than under the Carter Order.
- Appears to regress from openness goals of PRD 29 and standards set in the leaked August 31 draft.

OPTION 2: Include discretionary balancing test in the declassification process only.

PROS:

- Introduces the concept of balancing at the phase that most often involves the public.
- Minimizes the litigation burden for a system that includes balancing.

CONS:

- Results in uneven application or avoidance because of discretionary language.
- Results in litigation over the application of the balancing test.

OPTION 3: Include a discretionary balancing test at both the time of original classification and the declassification process. (November 10, 1993 draft.)

PROS:

- Introduces the concept of balancing at both ends of the classification process, which has never been done before.
- Minimizes the litigation burden for a system that includes balancing.
- Encourages more thoughtful classification decisions, and less rote classification.

CONS:

- Results in uneven application or avoidance because of discretionary language.
- Results in litigation over the application of the balancing test. (Justice Department believes a balancing test at the front end will invite more difficult litigation.)

OPTION 4: Include a mandatory balancing test during the declassification process.

PROS:

- Goes beyond any balancing provision previously used, promoting the commitment to openness.
- More likely to result in a greater amount of information being declassified.

CONS:

- Mandatory balancing will introduce complicated extended litigation.
- Likely to increase backlog and costs in responding to access requests.
- Adds another step to the declassification process.

OPTION 5: Include a mandatory balancing test at both the time of original classification and the declassification process.

PROS:

- Goes beyond any balancing provision previously used, promoting the commitment to openness.
- More likely to result in a greater amount of information being declassified.
- More likely to result in less information being classified.

CONS:

- Mandatory balancing will introduce complicated extended litigation.
- Likely to increase backlog and costs in responding to access requests.
- Adds another step to the classification and declassification process.

DECISION:

OPTION 1 ____

OPTION 2 ____

OPTION 3 ____

OPTION 4 ____

OPTION 5 ____

ALTERNATIVE OPTION:

SCOPE AND TREATMENT OF FOREIGN GOVERNMENT INFORMATION

ISSUES: What standards define the scope of Foreign Government Information and what level of deference should it receive in the declassification process?

OPTION 1: Information expressly or impliedly received in confidence and no declassification without the foreign government's consent. (Current system.)

PROS:

- Least likely to result in controversy with foreign government.
- Will not require retraining.

CONS:

- Much innocuous information remains classified.
- Prevents bulk or automatic declassification of almost all older materials.
- Appears to regress from openness goals of PRD 29 and standards set in the leaked August 31 draft.

OPTION 2: Information expressly or impliedly received in confidence but declassified in accordance with U.S. standards.

PROS:

- Includes all information a foreign government wants maintained in confidence.
- Does not prevent bulk or automatic declassification of older information.

CONS:

- Classifies some innocuous information.
- Automatic declassification may upset foreign government.
- Appears to regress from openness goals of PRD 29 and standards set in the leaked August 31 draft.

OPTION 3: Information expressly received in confidence and no declassification without the foreign government's consent.

PROS:

- Reduces volume of information being classified.
- Declassification actions unlikely to result in controversy with foreign government.

CONS:

- May limit sharing of information by a foreign government.
- Prevents bulk or automatic declassification of almost all older materials.
- Appears to regress from openness goals of PRD 29 and standards set in the leaked August 31 draft.

OPTION 4: Information expressly received in confidence and declassified in accordance with U.S. standards. (November 10, 1993 draft.)

PROS:

- Reduces volume of information being classified.
- Does not prevent bulk or automatic declassification of older information.

CONS:

- May limit sharing of information by a foreign government.
- Automatic declassification may upset foreign government.

DECISION:

OPTION 1 _____

OPTION 2 _____

OPTION 3 _____

OPTION 4 _____

ALTERNATIVE OPTION:

NUMBER OF CLASSIFICATION LEVELS

ISSUE: How many classification levels should the system include?

OPTION 1: Retain three levels of classification. (Current system.)

PROS:

- Will not require retraining.
- Saves money by enabling lower safeguarding standards for Confidential.
- Provides greatest compatibility with foreign classification systems.

CONS:

- Requires dubious sensitivity distinctions among the various levels.
- Requires the use of subjective modifiers for Top Secret and Secret.
- Appears to regress from openness goals of PRD 29 and standards set in the leaked August 31 draft.

OPTION 2: Two level classification system, Top Secret and Secret with Secret at current threshold of Confidential (damage to national security).

PROS:

- Simplifies the current system.
- Recognizes the large-scale interchangeability of Secret and Confidential in current system.
- Eliminates use of Confidential level to classify information for handling purposes rather than national security.
- Creates greater uniformity in safeguarding standards.

CONS:

- Appears "gimmicky" because the threshold for classification stays the same.
- Requires the use of subjective modifier for Top Secret.
- Requires retraining on the application of the classification levels.
- Requires lowering of safeguarding standards for Secret in order not to increase costs.

OPTION 3: Two level classification system, Top Secret and Secret with Secret at current threshold of Secret (serious damage to national security).

PROS:

- Decreases amount of classified information by raising the threshold.
- Simplifies the current system.
- Creates greater uniformity in safeguarding standards.

CONS:

- Invites wholesale litigation over the meaning of "serious."
- Requires retraining on the application of the classification levels.
- Requires lowering of safeguarding standards for Secret in order not to increase costs.
- Requires the use of subjective modifiers for Top Secret and Secret.

OPTION 4: Single classification level with two levels of protection.

PROS:

- Simplifies current system.
- Eliminates subjective modifiers.
- Creates greater uniformity in safeguarding standards.
- Reduces safeguarding costs if special access programs are fully incorporated into "enhanced protection system."

CONS:

- Appears "gimmicky" because the threshold for classification stays the same and the two level protection scheme looks like a two level classification system.
- Increases safeguarding costs because baseline standards will exceed current standards for protecting Confidential.
- Requires extensive retraining because, on its face, the system is very different from the current system.

DECISION:

OPTION 1_____

OPTION 2_____

OPTION 3_____

OPTION 4_____

ALTERNATIVE OPTION:

PORTION MARKING

ISSUES: Should waivers from the portion marking requirement be allowed? If so, who should have the authority to grant such waivers?

OPTION 1: Allow waivers to be issued by the agency head. (Current system.)

PROS:

- Retains decision making with the agency of origin.
- Facilitates the issuance of waivers.

CONS:

- Results in the issuance of questionable waivers.
- Results in overclassification from failure to portion mark. (GAO has identified failure to portion mark as a major cause of overclassification.)
- Delays the declassification process.
- Creates confusion when non-portion marked information is transmitted outside office of origin.

OPTION 2: Allow waivers to be issued by the Director of ISOO.

PROS:

- Permits waivers with the perception of greater objectivity.
- Allows non-justified requests to be denied.

CONS:

- Results in overclassification from failure to portion mark. (GAO has identified failure to portion mark as a major cause of overclassification.)
- Delays the declassification process.
- Creates confusion when non-portion marked information is transmitted outside office of origin.

OPTION 3: No waivers from portion marking requirement. (November 10, 1993 draft.)

PROS:

- Promotes Government-wide uniformity in classification decisions.
- Reduces overclassification.
- Facilitates the declassification process.
- Eliminates abuses of portion marking waivers.
- Facilitates the derivative classification process.

CONS:

- Eliminates flexibility and increases costs in areas in which waivers are appropriate.
- Slows the original classification process.
- Portion marking, as a process, may result in the disclosure of sensitive information.

DECISION:

OPTION 1 _____

OPTION 2 _____

OPTION 3 _____

ALTERNATIVE OPTION:

DURATION OF ORIGINAL CLASSIFICATION DECISIONS

ISSUES: How long should information remain classified from the time of its original classification? Should there be exceptions from automatic declassification for specific information?

OPTION 1: Except for information for which the classifier is able to establish a specific date or event for declassification, information shall remain classified until reviewed and declassified by the agency of origin. (Current system, "OADR.")

PROS:

- Allows information to remain classified for as long as sensitivity continues.
- Avoids arbitrary time frames.
- Assuages concerns of foreign governments about premature declassification.

CONS:

- Keeps almost all information classified indefinitely.
- Encourages original classifiers to avoid consideration of duration of sensitivity.
- Undermines credibility of the classification system.
- Requires expenditures to safeguard non-sensitive information.
- Appears to regress from openness goals of PRD 29 and standards set in the leaked August 31 draft.

OPTION 2: Except for information for which the classifier is able to establish an earlier date or event for declassification, set a short fixed time frame (5 to 10 years) at which information is automatically declassified. However, each agency head may establish specific categories of information for which automatic declassification does not apply.

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PROS:

- Promotes earlier declassification of information not excepted.
- Gives subject matter experts the opportunity to establish duration.
- Allows excepted information to remain classified for as long as sensitivity continues.
- Avoids arbitrary time frames for excepted information.

DURATION OF ORIGINAL CLASSIFICATION DECISIONS

ALTERNATIVE OPTION:

—THERE SHOULD BE A REBUTTABLE PRESUMPTION THAT ALL CLASSIFIED INFORMATION WILL BE DECLASSIFIED NO LATER THAN 10 YEARS FROM THE DATE OF CREATION.

—AGENCY HEADS SHOULD BE GIVEN SIX MONTHS TO IDENTIFY CATEGORIES OF INFORMATION THAT ARE UNLIKELY TO BE DECLASSIFIED IN TEN YEARS AND ALLOWED TO CLASSIFY SUCH INFORMATION FOR 15 OR 20 YEARS. CATEGORIES REVIEWED AND APPROVED BY SENIOR GOVERNMENT-WIDE DECISION BODY.

—A DOCUMENT COULD BE EXEMPTED FROM AUTOMATIC DECLASSIFICATION AT THE END OF 10, 15, OR 20 YEARS ONLY BY THE HEAD OF THE AGENCY, DEPUTY, OR SENIOR OFFICIAL ON A CASE-BY-CASE BASIS, UNLESS IT FELL WITHIN ONE OF THE CATEGORIES OF INFORMATION, ELIGIBLE IN THE DRAFT ORDER, FOR CONTINUED CLASSIFICATION BEYOND 20 YEARS.

PROS:

- PROMOTES EARLIER DECLASSIFICATION OF INFORMATION NOT EXCEPTED.
- ALLOWS EXCEPTED INFORMATION TO BE PROTECTED FOR THE APPROPRIATE TIME FRAME
- PROMOTES GREATER WILLINGNESS TO RELEASE INFORMATION WITHOUT REVIEW OR WITH A VERY LIMITED REVIEW.
- LOW COST TO GOVERNMENT, HIGH BENEFIT TO THE PUBLIC, AND FEW RESOURCES DIVERTED FROM REAL FOIA, PRIVACY ACT AND MANDATORY DECLASSIFICATION REQUESTS.

CONS

- WILL BE CRITICISM THAT TOO MUCH WILL BE EXEMPTED FOR TOO LONG.
- STILL REQUIRES SOME REVIEW OF DOCUMENTS

CONS:

- Historically, virtually assures that almost all information will be excepted.
- Invites inconsistent application of exception categories by different agencies.
- Keeps almost all information classified indefinitely.
- Requires expenditures to safeguard non-sensitive information.
- Appears to regress from openness goals of PRD 29 and standards set in the leaked August 31 draft.

OPTION 3: Except for information for which the classifier is able to establish an earlier date or event for declassification, set a short fixed time frame (5 to 10 years) at which information is automatically declassified. However, a list of specific categories excepted from automatic declassification shall be listed in the executive order.

PROS:

- Promotes earlier declassification of information not excepted.
- Allows excepted information to remain classified for as long as sensitivity continues.
- Avoids arbitrary time frames for excepted information.
- Diminishes parochial interests and promotes uniformity in the establishment of exception categories.

CONS:

- Agencies will insist on exception categories that will virtually assure that almost all information can be interpreted as falling within an exception.
- Invites inconsistent application of exception categories by different agencies.
- Keeps almost all information classified indefinitely.
- Requires expenditures to safeguard non-sensitive information.
- Appears to regress from openness goals of PRD 29 and standards set in the leaked August 31 draft.

OPTION 4: Except for information for which the classifier is able to establish an earlier date or event for declassification, set a short fixed time frame (5 to 10 years) at which information is automatically declassified. However, agencies may extend classification as information approaches declassification date and declassified information may be reclassified following an access request.

PROS:

- Goes farther toward automatic declassification than any prior system.
- Places the burden on keeping information classified rather than on declassifying information.
- Eliminates inconsistencies associated with the establishment and application of exception categories.
- Allows agencies to extend classification on information that remains sensitive.
- Allows agencies to classify previously declassified information that remains sensitive as long as it has not been disclosed under proper authority.

CONS:

- Arbitrary automatic declassification at short time frames necessitates review before disclosure.
- Sensitive information remaining in files will require agencies to commit significant resources to review for extensions if agencies are afraid to wait for an access review.
- Allowing reclassification invites criticism from requesters that automatic declassification is a gimmick.
- Increases possibility that sensitive information will be disclosed.
- Automatic declassification at short time frames without front-end exception categories invokes agency fear and criticism.

OPTION 5: Except for information for which the classifier is able to establish an earlier date or event for declassification, set a short fixed time frame (5 to 10 years) at which information is automatically declassified. However, agencies may extend classification as information approaches declassification date, but information may not be classified or reclassified following an access request.

PROS:

- Goes farther toward automatic declassification than any prior system.
- Places the burden on keeping information classified rather than on declassifying information.
- Eliminates inconsistencies associated with the establishment and application of exception categories.
- Allows agencies to extend classification on information that remains sensitive.

CONS:

- Classified information that remains sensitive will require agencies to commit significant resources to review for extensions prior to the date of declassification.
- Information that still meets the standards for classification will be declassified and disclosed.
- Automatic declassification at short time frames without front-end exception categories and without possibility of reclassification will invoke intense agency fear and criticism.

DECISION:**OPTION 1** ____**OPTION 2** ____**OPTION 3** ____**OPTION 4** ____**OPTION 5** ____**ALTERNATIVE OPTION:**

DECLASSIFICATION OF OLDER INFORMATION

ISSUES: Should there be a "drop dead" date for declassifying older, permanently valuable information? Should there be exceptions? Should systematic review for declassification be continued?

OPTION 1: Rely exclusively on systematic review at 25 or 30 years for declassifying older records.

PROS:

- Least likely to result in declassification of information that remains sensitive.
- Allows focusing of resources on information most likely to be of interest to researchers.

CONS:

- Systematic review is labor and cost intensive.
- Will never result in declassification of a significant portion of the current classified universe.
- Invites continued criticism that the system is no better than Cold War systems.
- Results in a system more regressive than under the Nixon and Carter Orders.

OPTION 2: Establish a system with automatic declassification at approximately 40 years that includes narrow exceptions while maintaining a systematic review program at approximately 20 to 25 years. (November 10, 1993 draft.)

PROS:

- Provides a declassification system that goes beyond any previously used.
- Results in the automatic declassification of many millions of pages of older records with minimum resource expenditure.
- Allows systematic review to focus on subjects of intense researcher interest at an earlier time period.

CONS:

- Exceptions may limit volume of automatic declassification.
- Extremely difficult to come up with comprehensive list of narrow exceptions.
- Reference to 40 years invites criticism from both sides (too long, too short).
- Automatic declassification may result in the disclosure of information that remains sensitive.

OPTION 3: Establish a system with automatic declassification of all information at approximately 60 years (no exceptions) while maintaining a systematic review program at approximately 20 to 25 years.

PROS:

- Provides a declassification system that goes beyond any previously used.
- Results in the automatic declassification of all older records with minimum resource expenditure.
- Allows systematic review to focus on subjects of intense researcher interest at an earlier time period.
- Simple system to implement.

CONS:

- Reference to 60 years will invite strong criticism from openness advocates, while not assuaging security concerns of the opposing side.
- Automatic declassification may result in the disclosure of information that remains sensitive.

DECISION:

OPTION 1 _____

OPTION 2 _____

OPTION 3 _____

ALTERNATIVE OPTION:

ESTABLISHMENT OF DECLASSIFICATION DATABASE

ISSUE: Should a Government-wide database of declassified information be established?

OPTION 1: No database.

PROS:

- Avoids the significant costs of establishing a database.
- Avoids the threat to inadvertent disclosure that a database represents.

CONS:

- Inconsistent declassification decisions will continue to be made and information will remain classified unnecessarily.
- Ignores the use of technology to enhance declassification.
- Invites horror stories about inconsistent declassification.
- Continues inefficiency and redundancy in reviews of the same or similar information.
- Appears to regress from openness goals of PRD 29 and standards set in the leaked August 31 draft.

OPTION 2: Establish database that involves discretionary agency participation.

PROS:

- Less expensive to establish than a mandatory system.
- Establishes first step toward creation of a more comprehensive database.

CONS:

- A discretionary system with limited participation results in an incomplete system.
- Inconsistent declassification decisions will continue to be made and information will remain classified unnecessarily.
- Invites horror stories about inconsistent declassification.
- Continues inefficiency and redundancy in reviews of the same or similar information.
- Appears to regress from openness goals of PRD 29 and standards set in the leaked August 31 draft.

OPTION 3: Establish a mandatory database.

PROS:

- Declassification decisions will be consistent throughout Government.
- More information will be declassified.
- Declassification process will be more efficient and less reliant on human resources.
- Unclassified portions of database may be available for public use.

CONS:

- Will involve significant start-up costs.
- Poses a threat of inadvertent disclosure.
- Establishment must overcome tremendous agency reluctance.

DECISION:

OPTION 1 _____

OPTION 2 _____

OPTION 3 _____

ALTERNATIVE OPTION:

SPECIAL ACCESS PROGRAMS

ISSUES: Should Special Access Programs (SAPs) exist; if so, should we eliminate acquisition SAPs? What level of oversight is necessary?

OPTION 1: Retain SAP system as it currently exists: Any agency head may create; no limits on subject; oversight limited to selected agency personnel and ISOO Director only.

PROS:

- Maximizes protection of very sensitive or vulnerable programs.
- Retains agency hegemony over information deemed most critical to that agency.

CONS:

- Undermines the credibility of the regular classification system.
- Absence of outside oversight invites perception of abuse.
- Programs are generally far more costly than regular programs.
- Invites suspicion, criticism and "horror stories."

OPTION 2: Retain current options for application but increase external oversight.

PROS:

- Maximizes protection of very sensitive or vulnerable programs.
- Increased oversight should minimize abuses.

CONS:

- Undermines the credibility of the regular classification system.
- Programs may still be more costly than regular programs.
- Suspicion, criticism and "horror stories" may diminish but will not go away.

OPTION 3: Retain current options for application but increase external oversight and require outside approval for continuation over an extended period. (November 10, 1993 draft.)

PROS:

- Maximizes protection of very sensitive or vulnerable programs.
- Increased oversight should minimize abuses.
- Provides an external mechanism to limit SAPs that continue over an extended period.
- Increases credibility of approved SAPs if outside panel appears to be objective.

CONS:

- Undermines the credibility of the regular classification system.
- Programs may still be more costly than regular programs.
- Suspicion, criticism and "horror stories" may diminish but will not go away.
- Outside scrutiny poses a slightly greater security risk; adds a layer of bureaucracy; and may be viewed as a gimmick.

OPTION 4: Eliminate acquisition SAPs and increase external oversight for other SAPs.

PROS:

- Reduces the number of SAPs.
- Eliminates the SAPs perceived to be the most expensive and the most susceptible to abuse.
- Increased oversight should minimize abuses.
- Reduces security costs.

CONS:

- Increases risk of compromise of state of the art technology.
- May shorten or diminish a weapon system's combat effectiveness.
- Will create intense reaction within the military services.

OPTION 5: Eliminate SAPs, incorporate SAPs into specially protected programs of a single level classification system with dual levels of protection.

PROS:

- Simplifies the system.
- Standardizes levels of protection.
- Reduces costs of some systems.
- Increases credibility of regular classification system.

CONS:

- Increases risk of compromise of state of the art technology.
- May shorten or diminish a weapon system's combat effectiveness.
- Will create intense reaction within the military services.
- Necessitates retraining and adoption of new nomenclature.

OPTION 6: Eliminate all SAPs.

PROS:

- Reduces criticism of the security classification system.
- Reduces security costs.
- Forces agencies to enforce need-to-know.

CONS:

- Increases risk of compromise of state of the art technology and intelligence sources and methods.
- May shorten or diminish a weapon system's combat effectiveness.
- Will create intense reaction within the military services and intelligence community.

DECISION:

OPTION 1 _____

OPTION 2 _____

OPTION 3 _____

OPTION 4 _____

OPTION 5 _____

OPTION 6 _____

ALTERNATIVE OPTION:

INTERAGENCY SECURITY CLASSIFICATION APPEALS PANEL

ISSUES: Should there be an appeals panel to review an agency's actions on classification challenges and mandatory review requests? If so, who should be on the panel?

OPTION 1: No panel.

PROS:

- Preserves agency discretion regarding agency information.
- Avoids costs associated with additional bureaucratic layers.

CONS:

- No external mechanism within the executive branch to hear classification challenges or access appeals.
- Appears to regress from openness goals of PRD 29 and standards set in the leaked August 31 draft.
- May result in more information remaining classified unnecessarily.

OPTION 2: Establish appeals panel comprised of senior executives within the civil service.

PROS:

- Establishes an outside entity to hear challenges and appeals.
- Increases possibility of greater openness.
- Increases public's recourse and perception of objectivity in decisions regarding classification and declassification.
- Keeps participation at level of management more likely to be familiar with the system and with more time to devote to the task.

CONS:

- Panel removes decisions from the agency of origin which is most likely to have the greatest amount of expertise in the subject matter.
- Establishing a panel adds a bureaucratic layer.
- Staff work to prepare for panel decisions is expensive and time consuming.
- Resources devoted to external appeals may increase internal backlog of individual requests.

OPTION 3: Establish appeals panel comprised of top management political appointees.

PROS:

- Establishes an outside entity to hear challenges and appeals.
- Increases possibility of greater openness.
- Increases public's recourse and perception of objectivity in decisions regarding classification and declassification.
- Participation at level of management perceived to be more objective than career bureaucrats.

CONS:

- Panel removes decisions from the agency of origin which is most likely to have the greatest amount of expertise in the subject matter.
- Establishing a panel adds a bureaucratic layer.
- Staff work to prepare for panel decisions is expensive and time consuming.
- Resources devoted to external appeals may increase internal backlog of individual requests.
- Top management may not have the expertise or time to devote to this task.

OPTION 4: Establish appeals panel comprised of non-executive branch personnel appointed by the President.

PROS:

- Establishes an outside entity to hear challenges and appeals.
- Increases possibility of greater openness.
- Increases public's recourse and perception of objectivity in decisions regarding classification and declassification.
- Participation of non-Government personnel perceived to be the most objective.

CONS:

- Panel removes decisions from executive branch expertise.
- Establishing a panel creates a bureaucratic layer.
- Staff work to prepare for panel decisions is expensive and time consuming.
- Resources devoted to external appeals may increase internal backlog of individual requests.
- Lack of expertise more likely to result in poor or delayed decisions.
- Use of non-Government personnel increases personnel security costs and poses greater risk of inadvertent or unauthorized disclosure.

DECISION:**OPTION 1** ____**OPTION 2** ____**OPTION 3** ____**OPTION 4** ____**ALTERNATIVE OPTION:**

INFORMATION SECURITY POLICY ADVISORY COUNCIL

ISSUES: Should there be an advisory council consisting of Government and non-Government representatives to advise on classification matters? What should be the extent of the council's function?

OPTION 1: No council.

PROS:

- Avoids costs associated with creating and supporting a council.
- Keeps responsibility for classification issues within the agencies that create the information.

CONS:

- No formal mechanism within the executive branch to hear recommendations from interested members of the public on the classification system.
- Appears to regress from openness goals of PRD 29 and standards set in the leaked August 31 draft.

OPTION 2: Establish a council comprised of Government and non-Government representatives whose function is solely advisory.

PROS:

- Allows non-Government individuals an opportunity to participate in classification policy.
- Increases possibility of greater openness.
- Increases public's perception of objectivity in classification policy.

CONS:

- Council may diminish the flexibility of executive branch officials to establish policy.
- Establishing a council runs counter to the Administration's order to reduce the number of advisory committees.
- Staff work to support the council increases costs.

OPTION 3: Establish a council comprised of Government and non-Government representatives authorized to establish Government-wide policy priorities, e.g., mandate topics for declassification review.

PROS:

- Increases possibility of greater openness.
- Increases public's recourse and perception of objectivity in decisions regarding classification and declassification.
- Allows non-Government individuals an opportunity to participate in classification policy.

CONS:

- Council may diminish the flexibility of executive branch officials to establish policy.
- Council removes decisions from the agency of origin which is most likely to have the greatest amount of expertise in the subject matter.
- Establishing specific priorities, e.g., declassification topics, diverts resources, which delays processing individual requests and appeals.
- Staff work to support the council increases costs.
- Establishing a council creates an additional bureaucratic layer.
- Use of non-Government personnel increases personnel security costs and poses greater risk of inadvertent or unauthorized disclosure.

DECISION:

OPTION 1 _____

OPTION 2 _____

OPTION 3 _____

ALTERNATIVE OPTION:

Section 1.6 *Duration of Classification.*

(a) At the time of original classification, the original classification authority shall attempt to establish a specific date or event for declassification based upon the duration of the national security sensitivity of the information. The date or event shall not exceed the time frames in paragraph (b), below.

(b) If the original classification authority cannot determine an earlier specific date or event for declassification, information originally classified under this Order shall be marked for automatic declassification ten years from the date of the original decision, except as provided in paragraph (c), below.

(c) At the time of original classification, the original classification authority may exempt from automatic declassification under paragraph (b), above, specific information, the release of which, even after the passage of ten years, could reasonably be expected to:

- (1) reveal an intelligence source, or an intelligence method that remains active;
- (2) reveal information that would clearly assist in the development or use of weapons of mass destruction;
- (3) reveal information that would clearly impair United States cryptologic systems or activities;
- (4) reveal information that would clearly impair the development or use of state of the art technology within a United States weapon system, intelligence gathering system, or counterintelligence system;

high enough to make



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(5) reveal foreign government information received by the United States with the clear expectation that the information would be protected for a period greater than ten years; or

(6) violate a statute, treaty, or international agreement.

(d) Information marked for an indefinite duration of classification under predecessor orders, for example, "Originating Agency's Determination Required," or information classified under predecessor orders that contains no declassification instructions shall be declassified in accordance with Part 3 of this Order.

* * * * *

Section 3.4 Automatic Declassification.

(a) Information classified under this or any predecessor order shall be automatically declassified 25 years from the date of its creation. Within three years from the date of the issuance of this Order, all classified information more than 25 years old shall be automatically declassified, subject to paragraph (b), below.

(b) An agency head may exempt from automatic declassification under paragraph (a), above, specific information, the release of which should be expected to:

*higher std than
"could" be
expected to.*

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- (1) identify a confidential human intelligence source, or reveal ^{technology to} information not publicly available about a specific application of an intelligence source or method that remains active;
- (2) reveal information ^e [not publicly available] that would clearly assist in the development or use of weapons of mass destruction;
- (3) reveal information ^e [not publicly available] that would clearly impair United States cryptologic systems or activities;
- (4) reveal information ^e [not publicly available] that would clearly impair the application of state of the art technology within a United States weapon system, intelligence gathering system, or counterintelligence system; or
- (5) violate a statute, treaty, or international agreement.

(c) Any exemption as provided in paragraph (b), above, requires a written justification that identifies the specific information, explains why the information must remain classified for a longer period of time, and establishes a specific date or event for automatic declassification. The agency head or senior agency official shall provide the executive secretary of the Interagency Security Classification Appeals Panel, established in Section 5.4 of this Order, with a copy of such a justification at least 180 days before the information is otherwise subject to automatic declassification under paragraph (a), above. The Panel may direct the agency not to exempt the information or to designate the information for automatic declassification at an earlier date than recommended. The Panel's decision may be appealed to the National Security Council. The information will remain classified while the appeal is pending.

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(d) Information exempted from automatic declassification under this Section shall remain subject to the mandatory and systematic declassification review provisions of this Order.

(e) The Secretary of State shall commence negotiations with the appropriate officials of a foreign government or international organization of governments to modify any treaty or international agreement that requires the classification of information longer than 25 years from the date of its creation, unless the treaty or international agreement pertains to information that may otherwise remain classified beyond 25 years under this Section.

Section 3.5 *Systematic Declassification Review.*

(a) Each agency that has originated classified information under this Order or its predecessors shall establish and conduct a program for systematic declassification review. This program shall apply to historically valuable records excepted from automatic declassification under Section 3.4 of this Order. Agencies shall prioritize the systematic review of records based upon:

(1) the degree of researcher interest and the likelihood of declassification upon review; or

(2) recommendations of the Information Security Policy Advisory Committee, established in Section 5.5 of this Order, on specific subject areas for systematic review concentration.

Paul

Point of View

By Steven Aftergood

A Disappointing Draft on the Declassification of Federal Documents

SCHOLARS almost universally agree that the federal government's current system for classifying national-security information is an anachronism and should be changed. Regrettably, the Clinton Administration's first draft of a new executive order on classification does not live up to the expectations of those who had hoped for thoroughgoing reform.

Historians studying the cold war—as well as concerned citizens who seek to monitor national-security policies—have long criticized both the government's rules for classifying and declassifying documents and the arbitrary way in which those rules have been applied. At present, myriad regulations and guidelines dictate access to classified documents. Most government agencies do not even attempt to follow a timetable for declassifying material. Innumerable documents dating back as far as World War I remain inaccessible to members of the public—ostensibly, but implausibly, because their disclosure could damage national security. The National Archives alone hold more than 300 million pages of pre-1960 documents that must be re-



THOMAS KERR FOR THE CHRONICLE

task was assigned to an interagency committee headed by Steven Garfinkel, director of the Information Security Oversight Office.

The preliminary draft prepared by the task force—a draft that, ironically, was leaked to the public but not officially released—is a distinctly mixed bag, reflecting the continuing tensions among government agencies about the limits and demands of national security.

In several respects, the new draft order appears to be a substantial improvement over the current system. It establishes a maximum period during which documents

around until they reached 40 years old, when they would be automatically declassified.

Considerable money and staff time could be saved if the maximum period that a document could remain classified were set at 20 years. Reviews of some especially sensitive documents would still be needed before they were declassified, because a few types of information might remain sensitive after 20 years. This would include the names of confidential sources whose safety might be jeopardized if they were identified, or previously unpublished details of the design of weapons of mass destruction. But painstaking review must become

viewed before they can be declassified.

The classification system is established by Presidential executive order, which means that the rules have been repeatedly revised by new Presidents, creating a confusing and sometimes inconsistent labyrinth. In 1978, President Carter ordered that "declassification of classified information shall be given emphasis comparable to that accorded to classification." If that instruction was ever obeyed in practice, it certainly has not been since the early 1980's, when President Reagan deleted it from his own executive order on classification. Declassification has been de-emphasized, and the volume of classified information has continued to grow.

Last year, according to government statistics, some 5.8 million decisions to classify information were made. Although this is a vast number, it is a healthy 11-per-cent drop from the previous year. That's the good news. The bad news is that systematic declassification (in which documents are declassified, upon review, after a given period of years) dropped even faster—by around 30 per cent. Declassification is simply not a priority, especially for agencies with few resources to carry it out. The net result is a continued expansion of classified material.

One need not be a frustrated historian spending ever more time petitioning a non-responsive government agency to open its records in order to recognize that the system is broken. Any taxpayer would be alarmed to learn that billions of dollars are spent each year to provide security for the huge inventories of secret documents.

With the end of the cold war, many people inside and outside academe believe that the moment has now arrived for a correspondingly dramatic restructuring of government-information policy. While no one suggests that there are no secrets that deserve protection any longer, it is hard to find anyone who would deny that far too much information is being withheld under the elastic aegis of national security.

Last April, President Clinton issued Presidential Review Directive 29, calling for a re-evaluation of the security-classification system and preparation of a new executive order that would conform to "the reality of the current, rather than the past, threat potential." The

may remain classified; it emphasizes automatic declassification procedures; and it creates administrative mechanisms that will help improve the operation of the system, such as requiring each government agency to provide an accounting of the cost of putting the system into effect, periodic audits by the Inspector General, and sanctions for negligent classification.

On closer examination, however, the draft does not fulfill expectations. Several of its provisions lack precision or contain unnecessarily expansive exceptions that could vitiate the impact of the new order. Some of the major problems:

■ *The maximum time that documents may remain classified is far too long.* The draft would allow existing secrets to remain classified for as long as 40 years, after which documents would be automatically declassified, with some narrow exceptions. Although automatic declassification will be welcome, because it will finally permit the disclosure of millions of documents dating from the 1950's and earlier, the 40-year allowance is hardly the bold departure needed. The provision does not even match the maximum of 30 years set by President Nixon's executive order, let alone President Carter's maximum of 20 years.

The Nixon and Carter orders were badly written, contained gaping loopholes, and were never effectively enforced. No one would suggest that they be reinstated. But consider that those cold-war Presidents set a more ambitious standard than does the current draft.

A consensus has emerged among scholars and concerned citizens that the maximum duration of classification should be no more than 20 years, with only the narrowest of exceptions allowed.

■ *The process for systematically reviewing documents for declassification won't work.* Records would be subject to systematic review, on a page-by-page basis, when they were 25 years old. Such review is a costly, labor-intensive process that is notoriously slow and painful. In contrast, not only did the Carter executive order direct such review when documents were 20 years old; it also set a deadline for completing the review, which the new draft order does not. Under the draft order, it seems all but inevitable that systematic review of many classified documents would *never* be undertaken. Many or most documents would sit

the exception, limited to narrow categories of information, not the standard practice.

■ *Classified documents created after the executive order takes effect would remain secret too long.* According to the draft order, new classified documents would be placed on an automatic declassification schedule: New "Secret" documents would be declassified after no more than 10 years and "Top Secret" documents after no more than 15 years. Again, this compares unfavorably with the Nixon schedule for declassification of "Top Secret" records after 10 years and with Carter's 6 years.

OF COURSE, a 15-year declassification schedule that is actually followed would be preferable to a 6-year schedule that was ignored, but it should be possible to do better. Unfortunately, the draft order contains generous provisions allowing classification to be renewed as soon as the date for automatic declassification approaches. If these provisions are not modified, we may see very little actual automatic declassification.

A revised draft order on secrecy is to be prepared this month and forwarded to the National Security Council for review. Congress and the general public probably will be allowed to comment on the revised draft before it takes effect. It is therefore vital that scholars, their professional societies, and other concerned members of the public convey their experiences and expectations for reform to government officials, including Anthony Lake, President Clinton's National Security Adviser.

The authors of the draft executive order have labored in good faith to raise the classification system out of its present morass. But the simple fact is that, because most members of the task force represent agencies concerned with protecting classified materials, their interests do not fully encompass or mirror the concerns of public consumers of government information. The cold war is over; it is time for the Berlin Wall of government secrecy to come down too.

Steven Aftergood directs the Project on Secrecy and Government at the Federation of American Scientists in Washington.

PHOTOCOPY
PRESERVATION

[The Chronicle of Higher Education
November, 17, 1993, Sect. A p. 56]

INFORMATION

MEMORANDUM FOR THE PRESIDENT

FROM: ANTHONY LAKE

SUBJECT: PRD-29 Classification Review

As you are aware, PRD-29 was issued on April 26, 1993, and directed a review of the manner in which we protect national security information. That review is to be completed by November 30, 1993, at which time a draft of a proposed new executive order superseding Executive Order 12356 will be submitted to the NSC.

An initial draft now being circulated among the executive branch agencies establishes the commitment to openness of this Administration regarding the classification process. It represents a first attempt at making significant revisions to the existing executive order on classification. It is anticipated that there will be further improvements in the draft in attempting to strike the proper balance between greater openness and the need to protect information which is vital to our security.

News stories and commentary appearing in the New York Times and Washington Post have misrepresented the substance of our draft executive order when compared to the previous efforts of the Nixon and Carter administrations.

A number of points require clarification. First, our order establishes a 40-year "drop dead" date. Critics have stated that both the Nixon and the Carter Executive Orders established shorter "drop dead" dates, 30 and 20 years respectively, for the automatic declassification of all classified documents. In fact neither the Nixon nor the Carter Executive Orders had automatic declassification dates that applied to information classified before their respective orders came into effect.

The Nixon order required systematic **review** for all records 30 years or older that had been classified before its issuance date of 1972, and then, only by the Archivist. Automatic declassification at 30 years applied only prospectively, to documents classified **after** the effective date of the order. Even then, agency heads could exempt any information deemed by that agency head to warrant continued classification.

cc: Vice President
Chief of Staff

The Carter order established systematic **review** for classified information for purposes of subsequent declassification at 20 years. The Carter order contained no "drop dead" date, either retrospectively or prospectively.

Our proposed Executive Order, if implemented, will be the first Order to establish a "drop dead" date for previously classified information. Furthermore, our current draft establishes a requirement for **systematic review** after 25 years, splitting the difference between the Nixon order (30 years) and the Carter order (20 years).

The "drop dead" date of 40 years for automatic declassification as currently written in our draft will result, literally, in millions of pages of classified documents being declassified within two years of the effective date of our order. In order to protect our most vital secrets we have proposed to exempt four narrow categories of information from automatic declassification.

We have also been criticized for the proposed **duration of classification** periods established at the time of original classification currently required in our order. Critics argue that both the Nixon and the Carter orders were more favorable. Respectively, Nixon established a standard of 10 years for "Top Secret" information, 8 years for "Secret" and 6 years for "Confidential." The Carter order established a 6-year standard for all levels of classification.

Our current draft establishes a 10-year standard for "Secret" and a 15-year standard for "Top Secret." The major difference, however, is that the current draft provides for **no exceptions** at the time of original classification. Any extension of classification will require another classification decision shortly before the information is automatically declassified. Both the Nixon and the Carter orders permitted exceptions at the time information was originally classified. In practice, therefore, over 90 percent of all material classified under the Nixon and the Carter orders was excepted from automatic declassification at the time it was originally classified. Our current draft will not permit such exceptions.

The focus of the effort thus far has been to establish common sense procedures and the necessary accountability required to break the long-held practice of excessive and costly classification. At the same time, we are seeking to protect those secrets which truly impact on security.

September 30, 1993

ACTION

MEMORANDUM FOR ANTHONY LAKE

THROUGH: GEORGE J. TENET
FROM: MICHAEL J. WAGUESPACK
SUBJECT: PRD-29 Classification Review

As you are aware, the New York Times and the Washington Post have carried articles which are critical of the first draft of our proposed new executive order on the classification system. At Tab I is a memorandum to the President which provides him with background on the PRD-29 process and which clarifies some misstatements and omissions in this morning's articles.

PRD-29 was issued on April 26, 1993, and directed a review of the manner in which we protect national security information. That review is to be completed by November 30, 1993, at which time a draft of a proposed new executive order superseding Executive Order 12356 will be submitted to the NSC. An initial draft is now being circulated among the various executive branch agencies for comment. The comments provided by the executive branch agencies will be considered for incorporation into a second draft which will then be submitted to the NSC staff. We anticipate that we will then circulate that draft for formal coordination and comment by relevant Congressional Committees and public interest groups.

The draft that is now being circulated among the executive branch agencies establishes the commitment to openness of this Administration regarding the classification process. It represents a first attempt at making significant revisions to the existing executive order on classification. It is anticipated that there will be further improvements in the draft in attempting to strike the proper balance between greater openness and the need to protect information which is vital to our security.

News stories and commentary appearing in the New York Times and Washington Post have misrepresented the substance of our draft executive order when compared to the previous efforts of the Nixon and Carter administrations. A number of misleading points made in those stories and commentary require clarification. We have attempted to clarify those issues in the memorandum to the President at Tab I.

In addition to the changes addressed in the memorandum to the President, some of the other major changes to the existing

executive order (E.O. 12356) that are contained in the first draft currently being circulated include:

- o Introducing a new term "national security protected information" in order to clarify that not all information related to national defense or foreign relations warrants classification.
- o Requiring classifiers to identify or describe the damage to national security at the time a document is classified. The order also requires that the name and position of the original classifier be included as one of the essential classification markings. These provisions are intended to make rote classifying more difficult and make classifiers more accountable to minimize excessive classification.
- o Prohibiting classification when there is a reasonable doubt about the need to classify. This reinforces the openness theme in the preamble and sends a clear message to classifiers that classification should be done with restraint.
- o Reducing the levels of classification from three to two, "Top Secret" and "Secret," since it is recognized that the current levels of "Secret" and "Confidential" are largely interchangeable.
- o Eliminating the presumption that any category of information is automatically classified, thereby eliminating automatic classification of information that may not meet classification standards.
- o Instructing original classifiers to use classified addenda when national security protected information constitutes only a small portion of an otherwise unclassified document. As a result, more information will be readily available to the public.
- o Allowing agency heads to declassify information if the public interest for the information outweighs the national security interest in continued classification, even if the information in question continues to meet the standards for classification.
- o Requiring individuals to challenge classification decisions they believe to be improper.
- o Establishing a security classification appeals panel to allow for an independent review of final agency decisions in the areas of classification challenges and declassification reviews.

The focus of the effort thus far has been to establish common sense procedures and the necessary accountability required to break the long-held practice of excessive and costly classification. At the same time, we are seeking to protect those secrets which truly impact on security.

Attached for your consideration is a side-by-side comparison of the provisions of the current Executive Order and our first draft.

Concurrence by: Neal Wolin

RECOMMENDATION

That you forward the memorandum to the President at Tab I.

Attachments

Tab I Memorandum for the President
Tab II Comparison of New Draft with E.O. 12356 (Reagan
 Administration)
Tab III Copies of Washington Post and New York Times articles

30 September 1993

THURSDAY, SEPTEMBER 30, 1993

New Proposal Would Automatically Limit Secrecy

By NEIL A. LEWIS

Special to The New York Times

WASHINGTON, Sept. 29 — Trying to establish a post-cold-war policy for classifying Government documents, the Clinton Administration is considering a proposal intended to give the public easier access to sensitive information but still allow officials considerable discretion to withhold some secrets.

The proposal was drafted by a committee of Government officials ordered in April by President Clinton to design a new system for the United States to keep its secrets. A major part of the proposal is to automatically declassify virtually all Government documents after 40 years.

Steven Garfinkel, director of the Information Security Oversight Office, who headed the committee that drafted the proposal, said today that if this provision was adopted it would be the first time that Government secrets would be automatically disclosed without the need to wait for a review.

Mr. Garfinkel said that if the provision was included in the final policy put forward by Mr. Clinton, it would mean the immediate release of "hundreds of millions of documents" that have never been declassified.

"If, for example, this is adopted in 1994, it would take effect two years later in 1996," Mr. Garfinkel said. "That would mean that, with few exceptions, any document from 1956 or earlier would be automatically disclosed."

He said the National Archives estimated that it had 300 million to 400 million classified documents from the World War I era up to 1956. Other Government agencies also have large numbers of documents, he said.

Mr. Garfinkel said that the proposal was being circulated to Government agencies for their views and that a final draft was to go to the White House by Nov. 30.

It would then be up to the President whether to put the new system into effect. The classification system has always been considered a Presidential

prerogative and has largely been defined by executive order.

President Jimmy Carter and President Richard M. Nixon before him adopted executive orders that they said would curtail the burgeoning number of classified documents. But their efforts were widely deemed by historians and journalists to have had little effect.

The Clinton draft proposal has already attracted critics. In an article on the Op-Ed page of The New York Times on Thursday, two advocates of greater Government openness contend that the proposal does not fulfill the promise to streamline the Government's disclosure process.

Tom Blanton, the executive director of the National Security Archive, a private library of Government documents, and Steven Aftergood of the Federation of American Scientists,

wrote in the article that the Clinton draft proposal did not "even meet the formal standards of openness set by President Richard M. Nixon at the height of the cold war."

Mr. Blanton and Mr. Aftergood said that the 40-year period for declassifying virtually all documents was far too long. They said Mr. Nixon set a 30-year period and Mr. Carter set 20 years.

Mr. Garfinkel disputed that view, saying that Mr. Blanton and Mr. Aftergood had misunderstood the Nixon and Carter executive orders. He said that while Mr. Nixon the classified status of documents to last 30 years his order dealt only with documents from the date of the order in 1972. Any documents from 1942 or earlier were not automatically released but had to be reviewed for possible declassification.

Draft of Secrets Disclosure Order Draws Mixed Reviews

By George Lardner Jr.
Washington Post Staff Writer

An executive order on national security information, now in draft form, would trigger the disclosure of millions of aging government secrets and require explicit justification for the classification of new records.

Critics who have studied the initial draft proposal, however, say it represents less of a change than it might seem at first and would still permit more government secrecy than orders issued in the 1970s by presidents Richard M. Nixon and Jimmy Carter at the height of the Cold War.

The proposal calls for the automatic declassification, with certain exceptions, of all classified information that is 40 years old. The Nixon

order called for automatic declassification after 30 years, and the Carter order, after 20 years. The order now in effect, issued by President Ronald Reagan in 1982, does not provide for automatic declassification.

The Clinton administration draft would eliminate the "Confidential" stamp commonly applied to the least sensitive documents and permit only two levels of classification: Secret and Top Secret, according to a copy of the draft obtained by The Washington Post.

But the proposed definition for the new "Secret" classification is the same as the current definition for "Confidential," information whose disclosure "reasonably could be ex-

pected to cause damage to the national security."

Under the proposal, all documents now legitimately classified as "Confidential" could retain that status for six years and then be upgraded to "Secret." The only difference would be that under the proposed new order, government censors would have to place their names or some other identifying label on a document stamped secret and write down "a concise reason" for the secrecy.

Documents could be stamped "Top Secret" under the proposal if disclosure could reasonably be expected to cause "grave damage to the national security." That is less rigorous than the Reagan order now in effect, which limits "Top Secret" to infor-

mation whose disclosure would cause "exceptionally grave damage."

The 54-page proposal was drawn up after interagency consultations by the director of the governmentwide Information Security and Oversight Office, Steven Garfinkel, and has been distributed to U.S. intelligence agencies and other affected departments for comment. It is scheduled to be submitted to President Clinton and the National Security Council by Nov. 30.

"The predicate here is greater openness," asserted a White House official who asked not to be identified. The official emphasized that the draft is likely to undergo several revisions and will be reviewed in some fashion by interested members of Congress and perhaps the public,

Longtime critics of government secrecy said they were not impressed, although they conceded the proposal was "better" in many respects than the 1982 Reagan order.

"It would be hard to make the current system much worse than it is," said Steve Aftergood, director of the Federation of American Scientists' project on government secrecy. "The question is, are we moving to a post-Cold War system or not. The answer seems to be not."

Aftergood said he also feared that "this draft is as good as it's going to get," adding, "The only pressure on this draft [from the intelligence agencies and other government offices] will be to make it even weaker."

Tom Blanton, director of the non-profit National Security Archive, criticized provisions that would allow information classified as Top Secret to retain that status for 15 years. "Nixon said 10 years, and Carter said

six," Blanton observed. "So it's worse than Nixon and Carter again."

According to a recent report by the General Accounting Office, there are an estimated 304,248,500 pages of documents awaiting declassification review at the National Archives dated prior to 1960, including at least 23,500 prior to World War II. Many documents have remained classified not because of White House rules but because the sheer number of items has overwhelmed available staff.

A congressional expert said that "as an absolutist, I would give the draft a C-minus, but as a realist, an A-minus." He said positive steps in the plan include creation of a governmentwide database of declassified information and a "public interest" test that can be applied in determining whether a document should be declassified even if it meets the standards for continued secrecy.

Secrets and More Secrets

By Steven Aftergood
and Tom Blanton

HISTORIANS and journalists cheered last April when President Clinton ordered a sweeping review of the cold war rules for Government secrecy. Headlines predicted the imminent release of millions of classified documents, some dating back to World War I. But in crucial respects, the first draft of that review, which leaked out in Washington this week, does not even meet the formal standards of openness set by President Richard M. Nixon at the height of the cold war.

The draft proposal — the work of a task force of career secrecy bureaucrats — is full of rhetorical lip service to the idea of openness. For example, it claims credit for setting a "maximum life span" for classified information — what the archival world

Steven Aftergood heads the secrecy and government project of the Federation of American Scientists. Tom Blanton is executive director of the National Security Archive, a non-governmental research institute.

calls a drop-dead date. But the proposed implementing language sets that date at 40 years — with exceptions for even longer withholding.

By contrast, in his 1972 executive order President Nixon set a drop-dead date at 30 years, and in 1978 President Jimmy Carter chose 20 years. And this summer former Secretary of State Lawrence Eaglebur-

What happened to Clinton's promise of openness?

ger told a group of historians that most secret documents could be released within 10 years without damaging the national security.

Presidents Nixon and Carter also formulated better "sunset" standards — setting a date at the time of classification for the automatic release of the document. The draft proposal says new top-secret documents would have sunsets of 15 years (unless they were granted extensions for additional decades).

The draft proposal would make

some valuable improvements. It would eliminate the presumption that any national security information is classified; establish a Government-wide database of declassified documents; and penalize abuse of classification, whether negligent or willful.

But the contradictions overwhelm the reforms. The draft order would allow — but it would not require — Government officials to consider the public's need to know when they decide whether to classify documents. And the order would perpetuate an unrealistic aspect of the old system: all agencies would be required to conduct systematic review of classified documents older than 25 years — something that has never worked in the past and will not work today.

It is impractical, perhaps even impossible, to review all of the countless documents that are over 25 years old. Without real change, taxpayers will wind up spending millions of dollars for page-by-page reviews and still suffer an enormous bottleneck of dusty secrets. And without real change in this draft proposal, secrecy reform will never fulfill even this draft report's promise: to balance "the need to protect critically sensitive information with the public's need to know." □

My Paper Prison

The black bars
of this cell run horizontally
through the records
of my life.

BY TERRY ANDERSON

FOR SEVEN YEARS, WHILE I SAT chained in a series of secret cells in Lebanon, millions of Americans felt themselves to be held hostage, too. They watched their Government stumble, lie, break laws and generally show itself unable to handle the dilemma forced on it by a tiny group of fanatical, fundamentalist Moslems in one of the Middle East's smallest countries.

During that time, the American people took the hostages to their hearts in a way difficult to understand. It was very personal, beyond just a vague concern for compatriots in trouble. They came to care deeply about us. Tens of thousands wore bracelets with our names. And they rejoiced with us when, one by one, we were restored to freedom.

In the 15 months since my release on Dec. 4, 1991, I have begun to understand the depth of that feeling. But I haven't yet been able to understand why this drama gripped so many people so personally — among them Ronald Reagan, who risked his Presidency over it. Now I'm at work on a book about my experience. As part of that effort, I have been trying to obtain whatever Government files I can under the Federal Freedom of Information Act. I have never had occasion to use the act before, despite some 25 years in journalism. I've worked mostly in the field, where facts are what jump up in front of you, or behind you, not something you winnow out of a pile of dusty Government documents. Nonetheless, I was familiar with the act, and with its stated purpose: to help people like me gain access to Government files concerning us, or major public issues.

Like many others before me who have tried, I have found the Freedom of Information Act to be badly misnamed — a joke or an insult, I'm not sure which. The Government has persistently refused me access to records and files about my capture and incarceration in Lebanon. Its lack of cooperation has been at times comical, at times unbelievable.

Terry Anderson is a 1992-93 fellow at the Freedom Forum Media Studies Center at Columbia University and the author of "Den of Lions," forthcoming from Crown in September. Claudia Kalb contributed to this article.

The Freedom of Information Act was conceived in the 1950's by members of Congress desperate to gain the release of files on people who had come under attack by Senator Joseph McCarthy for supposed disloyalty. Approved finally by Congress in 1966, the act established as law the simple belief that Government records should be available to the public. The burden of proof was to be on the Government to justify keeping information classified. It hasn't worked out that way.

Presidents from Eisenhower through Carter encouraged the declassification of files through executive orders. But in 1982, President Reagan issued an order that reversed Freedom of Information Act advances, eliminated routine declassification and even allowed reclassification of documents already released, violating the intent and purpose of the act.

Last summer, I sent requests for information under the act to 10 agencies. I wanted files on myself, my fiancée, two other hostages (with their permission) and the group known as Islamic Jihad. I wrote to the C.I.A., the F.B.I., the State Department, the National Security Council, the Justice Department, the Drug Enforcement Agency (D.E.A. agents had been involved with Lieut. Col. Oliver North in efforts to win our release), the Defense Intelligence Agency and the intelligence arms of the Army, Navy and Air Force.

My research assistant, Claudia Kalb, began clearing out a space in the basement for the files I knew would shortly be forthcoming. It was weeks before the replies began trickling in. The first were all much the same, and all violated the first and most basic requirement of the Freedom of Information Act — that requests be responded to within 10 days. The C.I.A.'s letter was typical: "Since we cannot respond within the ten working days stipulated by the F.O.I.A., you have the right to consider this a denial and may appeal."

Appeal what? We hadn't even started yet. Over the next few months, as our correspondence began to pile up, several themes developed. All fell under the general heading of withholding, delaying, ignoring and redacting — blacking out information in documents released in huge bars and blocks.

The first theme Claudia dubbed the "Delayed Delay." A Defense Department postcard warned

that my request was "in excess of" 940 others. The Air Force begged forgiveness, blaming "a large backlog of initial requests" as well as "limited personnel resources," and informing me that they would be "unable to complete [my] request within the statutory time requirements." The National Security Council advised that it would "make every effort to expedite our response." A phone call six months later revealed that my request hadn't even begun to be processed. I have still heard nothing further.

The second theme was "Where Is It Hiding?" When I began my search, Freedom of Information experts advised me to file the same request to several agencies. Each agency might edit different pages, so I might be able to compare the same documents edited by, say, the C.I.A. and the National Security Council, and piece together the whole thing. The tactic has been useful. It also provides another benefit: Very often one agency will locate a document in its files that originated with another agency whose officers have maintained they have nothing. The Army, for example, found C.I.A. documents that the C.I.A. itself couldn't seem to locate. (The documents, under the act, were sent back to the C.I.A. for review. That agency denied them to me.)

We decided to call the third category "Where Did This Come From?" I've received a number of documents I never asked for and don't want. The Air Force, for instance, sent me reports on terrorism in Spain, Turkey, India and Colombia. I received as well a great pile of reports from the Foreign Broadcast Information Service. This is an agency that monitors foreign news broadcasts and distributes summaries to other departments (and to the public). Why were they classified in the first place?

The largest and most creative theme we labeled "You've Got to be Kidding." The Air Force sent me 61 pages of documents they deemed relevant to my request. Twenty-six were totally blank, 20 showed only addresses with all text redacted, 3 were newspaper reports and 3 were reports on terrorism in countries outside the Middle East.

The Army sent me 633 pages in random order. What was not edited was innocuous and less informative than most (Continued on page 48)

Most likely, Russia will stumble for years from crisis to crisis, neither a dictatorship nor a democracy.

rapid privatization of the economy — demanded by the International Monetary Fund as a condition of assistance. Western investment would still be fitful and uneven, partly because of Russian ambivalence toward foreign businesses, partly because of Western reluctance to provide enough aid to guarantee loans and stabilize the ruble.

The economy would remain a mixture of state ownership and private enterprise as authorities try to blend the efficiency of the market with the social protections of the welfare state. Transportation, mining, the weapons industry and most other heavy manufacturing might remain in the hands of Government, although officials and former officials could enrich themselves by funneling goods into the private marketplace. Entrepreneurs might begin producing some consumer items, like clothing, furniture, toys, books and music tapes, but private businessmen would still be involved mostly in stealing state-made goods and selling them.

Agriculture would remain largely under the jurisdiction of collective farms or state farms, for very few individual farmers would be willing to risk going out on their own. Inconsistent Government policies would continue to undermine confidence; farmers permitted to lease land one year might be thwarted by local officials the next. Only half steps would be taken toward private land ownership — acreage

might have to be held at least a decade before being sold, for example — and farmers would have no network of financial institutions from which they can get loans.

Politically, in this scenario, Russia would be neither a dictatorship nor a full-fledged democracy but would stumble from crisis to crisis, along what might seem to many Russians the brink of anarchy. No new Constitution could have emerged from the contentious atmosphere; the old, Soviet-era charter would have been amended into an even stranger patchwork. The legislative and executive branches would continue to vie for dominance, but their maneuvers might bring about a crude balance of power. The economic tribulations and the specter of political disorder would promote an illiberal mood in the public, but the spirit of open debate would still be pervasive. The press would remain irreverent.

For years, Russia's problems have boiled up as if they were volatile chemicals that must eventually decay or explode. The notion that they can endure indefinitely, without resolution, has always seemed improbable. But Stephen F. Cohen, the director of Russian studies at Princeton University, takes a long perspective, cautioning that Russia moves very slowly, usually in gray areas where dichotomies and clear-cut categories do not exist. The issues and choices can remain undecided for a long time, he believes, and Russia's course might very well zigzag between advance and retreat. Even if democracy and the private economic sector grow, the country will find its own particular formulas and not adopt those of the United States.

Russia is caught in competing impulses that coexist with each other: an opening to the West and a xenophobia, an embrace of political pluralism and a deep desire for order and authority, an infatuation with the free market and a revulsion over its methods and results. These uneasy contradictions make muddling through probably the most likely scenario of all.

And the hard winters still come to the village of Nizhneangarsk. ■

ANDERSON

(Continued from page 35)

newspaper reports from the Middle East. The Defense Intelligence Agency was more cooperative. It said it had indeed found documents relevant to my request — 40,000 of them. I knew many would be useless, so I asked for an index. Impossible, the agency said. The index is classified.

The F.B.I.'s Freedom of Information Act officers have taken to amending the agency's form letter personally. The last line reads, "We solicit your understanding and assure you that we will process your request as soon as possible." The last four words are crossed out by hand.

My favorite response also came from the F.B.I. It concerned my request on Islamic Jihad and nine terrorists I cited by name: "Your request for information about the ... individuals will not be processed by the F.B.I. without either proof of death or a notarized authorization [privacy waiver] from that person."

"Proof of death can be a copy of a death certificate, obituary or a recognized reference source. Waivers of personal privacy must be notarized, must specifically identify the person waiving privacy (including full names, dates, and places of birth, and present address). ...

"Without proof of death or a notarized authorization, the disclosure of law enforcement records or information about another private citizen is considered an unwarranted invasion of personal privacy."

I filed Freedom of Information Act requests because I wanted to find out both what the Government had been doing and what it had not been doing and why. One of my primary goals was to determine how well Government officials were informed. Did they know who my captors were? Did they understand their psychology, their philosophy, their conduct? How much did they know about me? Were they in possession of derogatory or incorrect information that I haven't had the chance to review?

All of the responses, from the most useless to the most absurd, make one thing clear: First requests are not taken seriously. The one document

that I did receive back on appeal from the Defense Intelligence Agency showed that the preliminary reviewer had been too quick to classify it. The large paragraphs entirely blacked out on my first request were completely decensored in my appeal, revealing information that should never have been classified in the first place. Unfortunately, very few people have the time to push their requests through to the end — especially journalists who work under tight deadlines.

Admittedly, we're fortunate even to have a Freedom of Information Act. The United States is the only country that does. But given its existence, shouldn't we expect that the Government hold it to reasonable standards? No doubt there are times when withholding information is justified. The act is subject to widespread misuse by requesters conducting technological espionage or criminals.

In such delicate areas, the Government has a right to national secrets. In my case, I was the focus of highly sensitive investigations. I am fully aware that some of the information I am seeking names intelligence agents and sources who cannot, and should not, be revealed. Where lives and national security are at stake, I am quick to justify caution.

At the same time, I can't believe that much of the information in those files poses any danger to national security. The hostage crisis is over. It is time now to judge our leaders on how well they have done the jobs we elected them to do. We cannot judge them without information. Could it be that they do not wish to be judged, and that is why the system makes it so hard to come by that information?

Of my 50 requests, I've received 20 denials, 9 from the agencies to which they were originally sent, 11 from agencies whose files had turned up elsewhere. Twenty-three of my requests have not yet been processed. In all, I've received roughly 1,500 pages, 90 percent of them from just two agencies. The sum total of what I've learned from released documents is just about zero. Nearly a fifth of the pages are heavily — or totally — redacted. Many others are press reports. Still others are dated after my release. I feel as if I've been banging and banging on a

locked room, only to find, when the door is opened a crack, that there's nothing inside.

What should be done? With a new administration in Washington, there is renewed hope that the classification trend of the 80's will be reversed and that the Freedom of Information Act will rediscover its roots. Members of Congress, including Senator Daniel Patrick Moynihan and Representatives Louise M. Slaughter and Nita M. Lowey, are pressing the White House for action on the problem. That might be enough. It's not the law that has to be changed, but the culture of noncooperation among bureaucrats. Firm direction could do that.

My recommendation is that President Clinton promptly issue a new executive order on classification that will restore reasonable access to information. A policy paper sent to President Clinton by a group of news-media organizations recommends that the President insure that information be withheld only when its release would cause "demonstrable harm" to release it — harm that would have to be identified at the time of classification or when an agency refuses to declassify.

Such a Presidential order would more fairly balance the public's right to know and the need to maintain national security. Authority to classify needs to be limited and checked. It makes no sense to permit documents to be reclassified after they have been released to the public. A schedule for systematic declassification remains to be created.

Freedom of Information Act requesters have a responsibility as well. We have to follow through on requests — and in so doing, force the Government to take us seriously.

My story is not unusual. The act also allowed the inordinate delay of P.O.W.-M.I.A. documents; of records relating to the assassination of President John F. Kennedy; of documents pertaining to the history of United States export licensing to Iraq prior to the Persian Gulf War.

I've given up on getting any substantive information in time for my book. What I find more difficult to accept is that I may have to wait longer for my files than I did for my freedom. ■



ANDERSON AND BLACKED-OUT DOCUMENTS THAT THE ARMY SENT IN RESPONSE TO HIS REQUESTS UNDER THE FREEDOM OF INFORMATION ACT

CIA to Open Up Secrets, 'Warts and All,' Director Says

Reuter

CIA Director R. James Woolsey announced yesterday he was lifting the veil on a broad range of Cold War secrets as part of an effort to open the spy agency, "warts and all," to closer public scrutiny.

In testimony before the House Permanent Select Committee on Intelligence, Woolsey said he had approved a new "block review" system for releasing secret analyses on topics of special historical interest 30 years or older.

"This means that for these records we will be doing away with the painstaking, line-by-line review in favor of scanning documents so they may be declassified at greater speed," he said.

This category would include thousands of analytical papers and more than 350 so-called national intelligence estimates, Woolsey said. Such estimates, prepared for the president, synthesize the views of the CIA with those of the other parts of the U.S. intelligence community.

Woolsey said documents relating to the Korean War and deepening U.S. involvement in Vietnam in the early 1960s would be among those to be declassified through the new system. He did not say when this material would be released.

But he said the agency was completing declassification work begun last year under his predecessor, Robert M. Gates, of more than 500 national estimates done between 1947 and 1983 on the the former Soviet

Union. "When the protection of certain information is no longer required, then we owe it to our citizens to work hard to disclose as much of that information as we can, consistent with our mission—warts and all," Woolsey said.

He said he also had ordered declassification review of "significant Cold War covert actions" more than 30 years old, including activities in support of democracy in France and Italy in the 1940s and 1950s, support to anti-Sukarno rebels in Indonesia in 1958, support to Tibetan guerrillas in the 1950s and early 1960s, operations against North Korea during the Korean War and operations in Laos in the 1960s.

Woolsey said the agency also was declassifying its files on Berlin at the

height of the Cold War and planned to release next year the first unclassified history of the CIA.

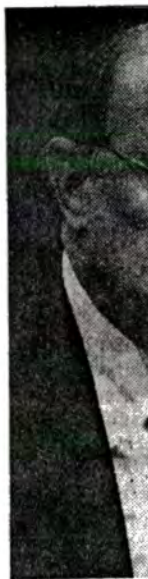
He said the agency expected to declassify and release within the next month 80 percent to 90 percent of the 10,000 or more pages of CIA material related to the 1963 assassination of President John F. Kennedy. It initially sought to withhold them last month.

Woolsey said he was building on moves to greater openness started by Gates, who announced plans to declassify records on the 1961 Bay of Pigs invasion of Cuba, the overthrow of the president of Guatemala in 1954 and the 1953 coup that installed the late Shah Mohammed Reza Pahlavi in Iran. Those documents are expected to be released by

the end of this year and, at least in some cases, reflect significant errors by the CIA.

The CIA is taking the wraps off national intelligence estimates on the Soviet Union from 1947 to 1961 on Thursday, along with previously classified articles from its quarterly journal, "Studies in Intelligence."

Woolsey said the declassification of records, including embarrassing ones, was consistent with President Clinton's goal of changing the way classified information is handled and was in the interest of better understanding the Cold War. But he emphasized that some old secrets would remain classified to protect intelligence sources and methods—for instance, the names of Cold War spies in the East Bloc.



R. JAMES WOOLSEY
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REVISED 9/28/93

PRESS GUIDANCE FOR PRD-29
REVIEW OF CLASSIFICATION PROCEDURES
NATIONAL SECURITY INFORMATION

o A PRESIDENTIAL REVIEW OF OUR PRESENT CLASSIFICATION SYSTEM AND THE WAY WE PROTECT NATIONAL SECURITY INFORMATION WAS DIRECTED ON APRIL 26, 1993. THE REVIEW IS TO BE COMPLETED BY NOVEMBER 30, 1993, AT WHICH TIME A DRAFT OF A PROPOSED NEW EXECUTIVE ORDER SUPERSEDING E.O. 12356 IS TO BE PRESENTED BY THE TASK FORCE FOR FORMAL COORDINATION UNDER THE PROVISIONS OF E.O. 11030.

o THE ONGOING REVIEW PROCESS CALLS FOR A SERIES OF PRELIMINARY DRAFTS TO BE DEVELOPED AND COMMENTED UPON PRIOR TO SUBMISSION OF THE FORMAL DRAFT BY THE TASK FORCE ON NOVEMBER 30, 1993. THE **FIRST** SUCH DRAFT HAS BEEN CIRCULATED TO THE VARIOUS EXECUTIVE BRANCH AGENCIES FOR COMMENT.

o THE COMMENT PERIOD ENVISIONED FOR THE FIRST DRAFT WILL BE COMPLETED BY OCTOBER 15, 1993. ANOTHER DRAFT, WHICH WILL INCORPORATE COMMENTS ELICITED DURING THIS COMMENT PERIOD WILL THEN BE DEVELOPED. THE SECOND DRAFT WILL THEN BE CIRCULATED FOR FURTHER COMMENT.

o THIS **FIRST DRAFT** ESTABLISHES THE DIRECTION OF THIS ADMINISTRATION REGARDING THE CLASSIFICATION PROCESS. AT THE SAME TIME IT MUST BE REALIZED THAT **THIS DRAFT REPRESENTS ONLY THE FIRST EFFORTS** IN THE DEVELOPMENT OF WHAT IS INTENDED TO BE, IN THE END, A SIGNIFICANT CHANGE IN THE WAY THE GOVERNMENT CLASSIFIES AND SAFEGUARDS NATIONAL SECURITY INFORMATION.

o SOME OF THE **MAJOR CHANGES** TO THE EXISTING EXECUTIVE ORDER (E.O. 12356) CONTAINED IN THIS DRAFT INCLUDE:

- o STRESSES IN THE PREAMBLE AND THROUGHOUT THE ORDER THE ADMINISTRATION'S **COMMITMENT TO OPENNESS** PRINCIPALS AND BALANCING THE NEED TO PROTECT CRITICALLY SENSITIVE INFORMATION WITH THE PUBLIC'S NEED TO KNOW.
- o INTRODUCES A NEW TERM "NATIONAL SECURITY PROTECTED INFORMATION" IN ORDER TO **CLARIFY THAT NOT ALL INFORMATION RELATED TO NATIONAL DEFENSE OR FOREIGN RELATIONS WARRANTS CLASSIFICATION.**
- o REQUIRES CLASSIFIERS TO IDENTIFY OR DESCRIBE THE DAMAGE TO NATIONAL SECURITY AT THE TIME A DOCUMENT IS CLASSIFIED. THIS IS INTENDED TO **MAKE ROTE CLASSIFYING MORE DIFFICULT, MAKE CLASSIFIERS MORE ACCOUNTABLE, AND MINIMIZE EXCESSIVE CLASSIFICATION.**
- o PROHIBITS CLASSIFICATION WHEN THERE IS A REASONABLE DOUBT ABOUT THE NEED TO CLASSIFY. THIS REINFORCES THE OPENNESS THEME IN THE PREAMBLE AND SENDS A CLEAR MESSAGE TO CLASSIFIERS THAT **CLASSIFICATION SHOULD BE DONE WITH RESTRAINT.**
- o **REDUCES THE LEVELS OF CLASSIFICATION FROM THREE TO TWO, "TOP SECRET" AND "SECRET,"** SINCE IT IS RECOGNIZED THAT

THE CURRENT "SECRET" AND "CONFIDENTIAL" LEVELS ARE LARGELY INTERCHANGEABLE. THIS ACTION SHOULD ALSO HELP CURB EXCESSIVE CLASSIFICATION.

- ELIMINATES THE PRESUMPTION THAT ANY CATEGORY OF INFORMATION IS AUTOMATICALLY CLASSIFIED. THIS WILL ELIMINATE AUTOMATIC CLASSIFICATION OF INFORMATION THAT MAY NOT MEET CLASSIFICATION STANDARDS. THIS WILL ALSO ENCOURAGE U.S. OFFICIALS HANDLING FOREIGN GOVERNMENT INFORMATION TO OBTAIN EXPLICIT INSTRUCTIONS CONCERNING THE SENSITIVITY OF THE INFORMATION.
- LIMITS THE SCOPE OF "FOREIGN GOVERNMENT INFORMATION" TO INFORMATION EXPRESSLY RECEIVED IN CONFIDENCE RATHER THAN INFORMATION RECEIVED IN IMPLIED OR EXPRESSED CONFIDENCE. THIS ELIMINATES THE PRESUMPTION THAT ALL INFORMATION OBTAINED ON FOREIGN SOIL OR INDIRECTLY TIED TO A FOREIGN OFFICIAL IS "FOREIGN GOVERNMENT INFORMATION" WHICH REQUIRES CLASSIFICATION.
- ABOLISHES THE INDEFINITE DURATION OF CLASSIFICATION BY ELIMINATING THE USE OF "ORIGINATING AGENCY'S DETERMINATION REQUIRED" (OADR) AND ESTABLISHES A 10 YEAR LIMIT FOR "SECRET" INFORMATION AND A 15-YEAR LIMIT FOR "TOP SECRET" INFORMATION. ANY EXTENSION WILL REQUIRE ANOTHER FORMAL CLASSIFICATION DECISION JUST PRIOR TO AUTOMATIC DECLASSIFICATION OF THE INFORMATION. THIS CHANGE WILL ELIMINATE OVERCLASSIFICATION THAT HAS BEEN ASSOCIATED WITH THE INDISCRIMINATE USE OF THE INDEFINITE DURATION OF CLASSIFICATION, I.E. "OADR".
- PROHIBITS THE RECLASSIFICATION OF INFORMATION AFTER IT HAS BEEN DECLASSIFIED AND RELEASED TO THE PUBLIC UNDER PROPER AUTHORITY. THIS REVISION IS DESIGNED TO REMOVE THE PROVISION OF E.O. 12356 WHICH ALLOWS FOR RECLASSIFICATION OF INFORMATION THAT MANY BELIEVE IS SUBJECT TO ABUSE.
- DIRECTS AGENCIES TO ESTABLISH PROCEDURES FOR PROCESSING CHALLENGES TO CLASSIFICATION AND FOR ENSURING THAT CHALLENGERS ARE NOT SUBJECT TO RETRIBUTION. E.O. 12356, WHILE ENCOURAGING CHALLENGES TO PERCEIVED IMPROPER CLASSIFICATION, DOES NOT PROVIDE ANY MECHANISM FOR PROCESSING SUCH CHALLENGES, NOR DOES IT PROTECT AGAINST RETRIBUTION.
- REQUIRES THE AUTOMATIC DECLASSIFICATION OF INFORMATION THAT IS 40-YEARS OLD, THEREBY ESTABLISHING A MAXIMUM LIFE SPAN FOR ALL NATIONAL SECURITY PROTECTED INFORMATION. IT IS INTENDED THAT THERE WILL ONLY BE FOUR NARROW CATEGORIES EXEMPTED FROM THIS PROVISION, SUCH AS THE IDENTITY OF A HUMAN INTELLIGENCE SOURCE. THE NEW ORDER WILL ALSO REQUIRE ALL NATIONAL SECURITY PROTECTED INFORMATION MORE THAN 40-YEARS OLD PRIOR TO THE ISSUANCE OF THIS ORDER TO BE DECLASSIFIED WITHIN TWO YEARS OF THE EFFECTIVE DATE OF THE ORDER, EXCEPT THAT INFORMATION FALLING WITHIN VERY NARROW EXEMPTIONS.

- REQUIRES A **SYSTEMATIC DECLASSIFICATION REVIEW** FOR ALL PERMANENTLY VALUABLE RECORDS THAT ARE **25 YEARS OLD**. THIS WILL REDUCE THE TIME FRAME FOR THE COMMENCEMENT OF A SYSTEMATIC REVIEW PROGRAM AND WILL SHIFT THE BURDEN OF THE PROGRAM FROM THE NATIONAL ARCHIVES TO THE ORIGINATING AGENCIES. THE CURRENT ORDER REQUIRES THE NATIONAL ARCHIVES TO CONDUCT SUCH REVIEWS ON ARCHIVAL RECORDS THAT ARE 30 YEARS OLD, EXCEPT FOR CERTAIN INTELLIGENCE OR CRYPTOLOGIC FILES, WHICH ARE REVIEWED AS THEY BECOME 50 YEARS OLD.
- REQUIRES THE ARCHIVIST TO ESTABLISH A **GOVERNMENT-WIDE DECLASSIFICATION DATABASE**. THIS PROVISION IS INTENDED TO ENHANCE THE DECLASSIFICATION PROCESS THROUGH THE AVOIDANCE OF DUPLICATION AND NON-UNIFORM RESULTS. THE CURRENT EXECUTIVE ORDER HAS NO SUCH PROVISION.
- LIMITS THE ESTABLISHMENT OF **SPECIAL ACCESS PROGRAMS (SAPS)** AND PROVIDES FOR GREATER OVERSIGHT OF SUCH PROGRAMS. THIS ORDER SEEKS TO REDUCE SIGNIFICANTLY THE NUMBER OF SPECIAL ACCESS PROGRAMS BY ESTABLISHING STANDARDS AND DEFINITIONS THAT LIMIT THEIR AUTHORIZATION. E.O. 12356 HAS NO SUCH PROVISION. THIS ORDER WILL ALSO SIGNIFICANTLY INCREASE THE INTERNAL AND EXTERNAL OVERSIGHT OF SAPS.
- ESTABLISHES AN **INDEPENDENT PANEL TO HEAR APPEALS FOR CLASSIFICATION CHALLENGES AND MANDATORY REVIEW APPEALS**. E.O. 12356 CONTAINS NO SUCH PROVISION.
- **INCREASES PERSONAL AND SENIOR MANAGEMENT ACCOUNTABILITY** FOR CLASSIFICATION DECISIONS. THIS ORDER SEEKS TO REMEDY A MAJOR SHORTCOMING IN THE CURRENT BY EMPHASIZING THE ROLE AND RESPONSIBILITY OF SENIOR MANAGEMENT AND BY TYING ITS EFFECTIVENESS TO THE PERFORMANCE PLANS OF ITS IMPLEMENTERS, INCLUDING ORIGINAL CLASSIFIERS.

January 22, 1993

file
FOIA

The Honorable William Clinton
The White House
Washington, D.C. 20006

The Honorable Albert Gore
Old Executive Office Building
Washington, D.C. 20501

Dear Mr. President and Mr. Vice President:

We represent organizations of publishers, broadcasters, and journalists throughout the United States. On behalf of our clients, we write to submit to you the enclosed information policy paper entitled "Maintaining An Informed Democracy," which addresses the urgent need for a fundamental alteration of the policies and practices governing access to and dissemination of information adopted by recent administrations.

As explained in the enclosed policy paper, your Administration will have an enormous opportunity to fulfill the ideal of participatory democracy -- as embodied in the First Amendment and such legislative enactments as the Freedom of Information Act -- through its information and access policies. We look forward to working with the Administration towards reaching that goal. We would appreciate an opportunity to meet with appropriate Administration officials at a mutually convenient time to discuss these matters.

Yours sincerely,

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MAINTAINING AN INFORMED DEMOCRACY

AN INFORMATION POLICY PAPER FOR

PRESIDENT WILLIAM CLINTON

AND

VICE PRESIDENT ALBERT GORE

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In his Inaugural Address, President Clinton called for a reinvigoration of American democracy. "To renew America," he declared, "we must revitalize our democracy." President Clinton will have an extraordinary opportunity to fulfill the ideal of participatory democracy in America through his presidential authority over policies and practices governing access to and dissemination of information to the public and the press. This ideal is embodied in the First Amendment right of citizens to petition and be informed about their government, and in a number of laws, including the Freedom of Information Act, which were enacted in the hopes of fostering greater citizen involvement and government accountability. However, the meaningful exercise of these rights requires the political will of the President, and his continued personal commitment to open government, an informed electorate, and a free press. The numerous scandals that have plagued previous administrations provide a telling reminder of the price that democracy pays for secret government.

The 1992 election reflected the resurgence of citizen interest in the direction of our nation, at home and abroad, and a manifest desire to become more involved in the future of our country. The election, in which all three major candidates acknowledged the widening gulf between the federal government and the American public, can be viewed as recognition that in our country, citizens are both the governors and the governed. To fulfill this mandate it is essential that the new President establish policies aimed at maintaining an informed democracy. When information is withheld from the public, the government has necessarily undermined the public trust. When government activity is conducted in secret, it virtually ensures that once mobilized, public opinion will greet the activity with suspicion and cynicism.

To achieve this goal, however,

President Clinton must reverse the information policies and practices of previous administrations. From 1980-1992, those administrations systematically reduced public access to information about their government. This was accomplished through a series of stringent controls and practices governing the disclosure of information to the public and the media including: a secret regulatory review process delaying for two years the use of warning labels on children's aspirin concerning Reye's Syndrome; the excessive classification of information; requirements for secrecy contracts for government employees overriding their rights under the Constitution and whistleblower protection laws; extensive delays and denials of requests by citizens, researchers, and journalists under the Freedom of Information Act; the elimination of independent reporting during combat; and more.

The new President's ability to create an informed democracy involves a commitment to this goal in his choices of personnel and policy, and this commitment must apply to the everyday availability of information about the workings of our government as well as the extraordinary events of war. Through this commitment, the President will take a critical step towards fulfilling his Inaugural aspiration to "give this capital back to the people to whom it belongs."

I. PERSONNEL PRIORITIES

The President's commitment to open government, an informed electorate, and a free press should be made known to all presidential appointees and government officials. The commitment to these beliefs should be assessed in the records of presidential appointees and future judges. It is of particular importance in areas where secrecy is permitted but may be abused. However, it is also essential for the President to act in support of these policies by moving quickly to appoint new key personnel committed to these principles in particular positions. These include selecting a *new Director of the OMB Office of Information and Regulatory Affairs*, a *new Director of the Office of Information and Security Oversight*, *new Department of Justice officials with authority over the Office of Information and Privacy* and a *new Archivist of the United States*.

II. A NEW EXECUTIVE ORDER FOR NATIONAL SECURITY INFORMATION

No one can question the need for secrecy in areas of weapons technology and deployment, diplomatic negotiations, or intelligence sources and methods, when such secrecy is based on a substantial, identifiable harm. However, the system for classifying such information must be well managed and protected from abuse.

Since the days of President Franklin D. Roosevelt, it has been the prerogative of the President to establish by executive order the policy governing classified information generated by the Executive Branch. Over the years, it has been the practice of almost every new President to issue his own executive order governing the definition and protection of classified information. Until recently, it was also part of the practice to ensure the management, downgrading, declassification, and public disclosure of such information.

From President Eisenhower through President Carter, executive orders reflected a trend towards limited classification and a system of integrity. Policies achieving these goals have included:

- Narrowing the criteria for classification
- Reducing discretionary authority of government personnel for classification
- Reducing the volume of classified information
- Creating schedules for systematic declassification.

While no classification policy has been without its critics, Executive Order 12356 issued by President Reagan, which is still in effect, has been widely viewed as reversing a desirable trend away from overclassification. Instead, it has

institutionalized a return to a classification policy of extraordinary scope, unreviewable authority, and decreased accountability in the executive branch. It did so by expanding the classification criteria, widening the discretionary authority for classification, eliminating systematic downgrading and declassification of information; and authorizing the reclassification of publicly released information. Furthermore, throughout recent administrations, there has been virtually no oversight of "special access" activities and projects including the military's "black budget" which grew from \$5 billion to over \$22 billion between 1981 and 1988.

President Clinton should act immediately to develop and issue a new executive order on classified information that:

- Balances the public's interest in access to information against the need for classifying for national security reasons
- Places equal emphasis upon classification and declassification
- Narrows the criteria for classification
- Reduces the discretionary authority of government personnel to classify information
- Reduces the volume of classified information
- Creates schedules for systematic declassification
- Eliminates the authority to reclassify information in the public domain
- Creates greater accountability and information security management standards for all classified information including compartmentalized and special access information.

III. STRENGTHENING ACCESS LAWS AND POLICIES

The importance of the personal commitment and the political will of the President and Cabinet officials to the ideals of open government is perhaps most clearly demonstrated with regard to The Freedom of Information Act, the Government in the Sunshine Act, and related provisions found in the Administrative Procedures Act and the Federal Advisory Committee Act. Recent administrations, as well as many of their executive and political appointees, made no secret

of their disdain for these laws. The failure of these administrations to implement the disclosure policy which underlies the Freedom of Information Act prolonged the investigation and declassification of millions of pages of documents about the POW-MIA efforts of our government; blocked access to and required separate legislation to release the records related to the assassination of President John F. Kennedy; prevented former hostage Terry Anderson from gaining access to records regarding his own capture and interrogation by terrorists; and enabled government officials to withhold the history of U.S. export licensing to Iraq prior to the Persian Gulf War. Recent administrations have failed as well to respond adequately to the need to provide expeditious public access to government electronic records.

Certain actions will lend immediate credibility to and strengthen the Freedom of Information Act, the Government in the Sunshine Act, and related laws:

- Designate Justice Department official to review, oversee, and make recommendations for change in the Office of Information and Privacy.
- Support executive policies and legislation to strengthen FOIA (including ensuring public access to electronic records).
- Designate high level Justice Department official to oversee, review, and seek recommendations for proper implementation of FOIA, the Government in the Sunshine Act, and the Privacy Act; to stop egregious delays and arbitrary denials; and to restructure the management and mission of the Office of Information and Privacy.
- Adopt policy limiting FOIA denials and defense of such denials to standard of demonstrable harm.
- Separate the functions of FOIA appeals and FOIA policy from inside

the Office of Information and Privacy.

- Establish standards and schedule for resolving and settling all outstanding FOIA litigation (see related 1977 Griffin Bell letter).
- Announce Attorney General's intent to comply with disclosure policy underlying FOIA.
- Prohibit political abuse, through any means (including delay or selective processing), of FOIA and related laws.
- Conduct study and seek recommendations for needs related to requests for electronic and other formats.
- Mandate vigorous enforcement of the Government in the Sunshine and Federal Advisory Committee acts.
- Ensure that agency public affairs officials, including those of the Department of Justice, respond promptly and responsibly to all inquiries from the press and public.

IV. THE OMB OFFICE OF INFORMATION AND REGULATORY AFFAIRS AND THE NATIONAL ARCHIVES

The Office of Information and Regulatory Affairs (OIRA) was created in 1981 with an emphasis upon Information Resources Management (IRM) in the Federal government, and reducing the burden on the public of government information collection including, for example, complex forms for tax collection, government procurement, and benefits programs. However, since the OIRA's creation, recent administrations have ignored the statutory mandates of Information Resources Management and Paperwork Reduction, and have sought to vitiate the information infrastructure needs of the Federal government. Instead, they politicized OIRA by empowering it through two executive orders with an unaccountable and heavy handed regulatory review process. This movement was carried out by the Deregulation Task Force, and then by an entity known as the Council on Competitiveness. At no time has the presidentially-appointed Administrator of OIRA had any experience or background in the statutory mission for Information Resources Management.

Certain changes in the operation of OIRA

will improve the information policies and practices of the Federal government, and will help to ensure that the statutory goals of OIRA are met:

- The Presidential nominee for OIRA Administrator should have professional qualifications consistent with the statutory mission and enumerated functions of OIRA.
- OIRA should be included as a separate line item within the budget of OMB to ensure greater oversight and accountability.
- The OIRA Administrator must give balanced emphasis to all its statutory and enumerated functions.

Greater controversy exists with regard to the use of OIRA to engage in the review of agency rulemaking activities. OIRA is not statutorily empowered to pursue these activities, but has instead been assigned this responsibility under Executive Orders 12291 and 12498. While the Congress has conceded the prerogative of the President to authorize the review of rulemaking activity, it has objected strenuously to it doing so as a substitute for OIRA's other statutory responsibilities, and doing so in secret. The result of the regulatory review activities of recent administrations is to create a two-tier rulemaking process in which agencies are governed by the Administrative Procedures Act and must notify the public of what and why they are acting, while OMB has secretly imposed its will under the rubric of the Executive Order: "consistent with presidential policy." To the extent that any White House office engages in regulatory review, it must be done in accordance with the standards of openness, public accountability, and timeliness required of agencies. This can be achieved by supporting enactment of the "Regulatory Review in the Sunshine Act" introduced by Senator John Glenn, and in the interim by imposing the same standards through an executive order.

President Clinton should also act to appoint a new Archivist of the United States. The current administration of the National Archives does not have the confidence of the Congress, the archival and research community, or journalists. In addition, on January 6, 1993, Federal District Court Judge Charles R. Richey ruled that "the Archivist has breached his statutory duty to prevent the unlawful destruction of federal records."

V. COMPETITIVENESS AND INFORMATION POLICY

The desire to increase the competitiveness of the U.S. economy through Federal information policy has frequently served to inhibit, if not diminish, opportunities for advances in commerce, science, and technology. During recent administrations, this was pursued through attempts to create a new Freedom of Information Act exemption for information of "commercial value," barring of foreigners from U.S. scientific conferences, the review of private scientific papers by the Pentagon, and restrictions on the travel of foreign scientists and professors in the U.S. In other instances, restrictions on disclosure of export licenses granted by the Commerce Department enabled administration officials to assist Iraq, Syria, and other nations without knowledge by the public or Congress that law and policy were being violated to do so.

It is essential that information policy not be used as a broad brush to control access to and dissemination of information. It should be applied carefully to stated policy objectives. For example, the export licensing system should be made more accountable and visible to outside scrutiny; there should be more reporting of export data and end-use information; and specific information about non-proprietary licensing information should be made available to the public after the license has been granted.

Furthermore, the creation of disclosure restrictions on "commercially valuable" information should not be undertaken. The Freedom of Information Act already contains exemptions for trade secrets and other proprietary information which existed before the information was acquired by the government. New proprietary rights in government information should not be created.

Patent secrecy should not be expanded. It undermines the very "bargain" created in the law: inventors gain a limited monopoly in return for providing the public with the new knowledge behind the patent.

VI. THE MILITARY AND THE MEDIA

During the years 1983-1992, the Pentagon's policy governing media coverage of Americans in combat sharply curtailed the tradition of independent news coverage and civilian control of news information during wartime. While the differences in the duration and location of the conflicts have varied, recent administrations executed plans to block or reduce media coverage of and public accountability for U.S. military activities. This occurred despite the media's record of respecting and complying with the rules for maintaining military security and protecting our fighting troops. This policy also served to undermine the credibility, public support, and recognition of our military's good deeds made possible through independent press coverage.

During the invasion of Grenada on October 25, 1983, reporters were barred from the island until after the invasion was complete. During the invasion of Panama on December 20, 1989, the President and the Pentagon restrained "in-country" media, delayed the deployment of the DOD National Media Pool created in the wake of the Grenada press blockade, and detoured reporters away from the fighting once they arrived in Panama. During the Persian Gulf War beginning in August 1990, the President and the Pentagon delayed deploying the DOD National Media Pool, and for the first time required exclusive coverage by media pools, arrested reporters who traveled by themselves, required military escorts of reporters "at all times," and imposed compulsory censorship and prepublication review by military officials.

The President and the Department of Defense, together with the head of Central Command, and the heads of the service branches should:

- Adopt the May, 1992 Statement of Principles on Military-Media Relations
- Maintain civilian control of press policy
- Rescind the proposed September 1992 "Eligibility Criteria for News Media Membership in the DOD National Media Pool"
- Establish ongoing dialogue and training with military officials and media organizations for military and media education
- Ensure development of a military public affairs plan as a primary element of military operations plans
- Ensure proper training of military public affairs officers
- Adopt as a mutual military-media objective the goal of informing the American public with timely, accurate, independent, and thorough reporting in a manner consistent with preserving military security during wartime.

VII. GOVERNMENT SUBPOENAS AND THE IMPERSONATION OF JOURNALISTS

Under the Attorney General's Guidelines, in place for nearly 20 years, the Federal government may not subpoena the media unless the information sought is essential to the case and cannot be obtained from other sources. Similar strictures apply to government efforts to obtain journalists' toll records from telephone companies.

According to the Reporters Committee for Freedom of the Press, only 10 percent of the total subpoenas served on the press in 1989 arose in Federal cases, and Attorneys General Meese and Thornburgh rarely departed from the Attorney General's Guidelines. However, this practice was ignored during the tenure of Attorney General William P. Barr. During his first few weeks in office, Attorney General Barr approved at least three subpoenas aimed at uncovering the confidential source of a magazine writer, and obtaining broadcast video footage or transcripts from two networks.

The new Attorney General should:

- Issue a statement to the Department of Justice that it will strictly honor the standards contained in the Attorney General's Guidelines
- Meet with representatives from the media community, along with the heads of the Civil and Criminal divisions, to understand the basis for the policy contained in the guidelines and avoid future legal battles over confidential sources and information.

In addition to problems involving subpoenas of journalists by the Department of Justice, the Federal Bureau of Investigation in 1987 used a reporter's name and credentials as a journalist as a subterfuge to gain access to a convicted spy who wanted to tell his story to the press. An FBI agent posing as the reporter's attorney used his name to enter the prison and interview the prisoner. The journalist did not become aware of the use of his name or credentials for three years, and the FBI refused to discuss the use of his name and credentials with him.

The new Attorney General should:

- Remove authorization from the Attorney General's Guidelines issued in 1981 which permits FBI agents to pose as members of the news media and ask members of the news media about professional or confidential relationships with others.

VIII. CONCLUSION

In his Inaugural Address and campaign for the Presidency, Mr. Clinton challenged the American people to join him in revitalizing the institutions of American democracy. That effort cannot succeed, however, without free and informed debate — an essential element of a strong and vigorous democracy. By adopting the recommendations set forth

above, President Clinton can take a historic step towards fulfilling this ideal.

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<TOR> 931004172800

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AM-FOIA Policy,400
Administration Pledges to Make More Information Available
By JAMES H. RUBIN=
Associated Press Writer=

WASHINGTON (AP) — The Clinton administration promised to make more government information available to the public Monday as it revoked a 12-year-old restriction on the Freedom of Information Act.

“Federal departments and agencies should handle requests for information in a customer-friendly manner,” President Clinton said in a statement. “Our commitment to openness requires more than merely responding to requests from the public.”

At the Justice Department, officials said the administration is rescinding a 1981 rule that let federal agencies withhold information whenever they could show “a substantial legal basis.”

The new policy, by contrast, presumes that information should be made public, the department said.

From now on the department will only defend an agency sued under FOIA if it can show it was “reasonably foreseeable that disclosure would be harmful” to some legitimate interest.

There are more than 500 such lawsuits pending, and officials said there is an additional huge backlog of requests for information under FOIA.

Associate Attorney General Webster Hubbell likened the new policy to “a ship that’s about to turn in a different direction.”

“This is an important step and a big first step. A responsible government is a government that lets people know what it is doing,” Hubbell told a news conference.

To demonstrate the administration’s support for open government, he said a meeting Tuesday of some 600 FOIA officers throughout the government will be open to reporters and the public. The annual meeting will examine specific ways of administering the new policy.

Hubbell also said the change could eventually save taxpayers money by cutting paperwork and reducing the number of lawsuits under FOIA.

He acknowledged that protecting privacy could pose a problem but said the first step now will be to see if someone named in a FOIA request opposes release of the information. If no privacy claim is made, Hubbell said, that would bolster the presumption the information should be disclosed.

In a memo to Cabinet officials and other heads of federal agencies, Attorney General Janet Reno said it is time to deal with the growing backlog of FOIA requests.

“The American public’s understanding of the workings of its government is a cornerstone of our democracy,” she said.

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**DECLASSIFYING OLDER MATERIALS: A COMPARISON OF
EXECUTIVE ORDERS 11652, 12065, 12356 AND THE DRAFT ORDER
DATED AUGUST 31, 1993**

E.O. 11652 (Nixon)	E.O. 12065 (Carter)	E.O. 12356 (Reagan)	Draft order dated August 31, 1993
No automatic declassification for older material classified under prior orders. Automatic declassification for 30 year old material applied only prospectively and permitted broad exemption. Information classified under prior orders to be reviewed for declassification by the Archivist when 30 years old.	No automatic declassification for older material classified under prior orders or this order. Information classified under prior orders and this order to be reviewed for declassification by the Archivist and originating agencies when 20 years old.	No automatic declassification for older material classified under prior orders or this order. Information classified under prior orders and this order to be reviewed for declassification by the Archivist when 30 years old (intelligence information when 50 years old). Other agencies encouraged but not required to conduct systematic review programs.	If implemented, would be first system to authorize automatic declassification for older material classified both under prior orders and this order. Automatic declassification to take place when material is 40 years old, with four narrow exemption categories. Also, information classified under prior orders and this order to be reviewed for declassification by the Archivist and originating agencies when 25 years old.

***DURATION OF CLASSIFICATION: A COMPARISON OF
EXECUTIVE ORDERS 11652, 12065, 12356 AND THE DRAFT ORDER
DATED AUGUST 31, 1993***

E.O. 11652 (Nixon)	E.O. 12065 (Carter)	E.O. 12356 (Reagan)	Draft order dated August 31, 1993
Unless exempted, Top Secret information to be declassified 10 years after origination, Secret eight years, and Confidential six years. Broad exemptions permitted at the time of original classification. Over 90% of classification decisions were exempted from automatic declassification, making the rule meaningless.	Unless exempted, all levels to be declassified six years from origination. Broad exemptions permitted at the time of original classification. Over 90% of classification decisions were exempted from automatic declassification, making the rule meaningless.	Information to be classified as long as required by the national security. If it can be determined at the time of origination, information to be marked with a date or event for automatic declassification. Otherwise, agency review required for declassification. Over 90% of classified decisions marked to require agency review.	Unless an earlier date or event is specified, Secret information to be declassified 10 years after origination, and Top Secret 15 years. No exemptions at the time of original classification. Extensions to duration of classification require another classification action at the end of the classification cycle.



DEPARTMENT OF THE AIR FORCE
WASHINGTON DC 20330-1000

OFFICE OF THE SECRETARY

ISOO Conference Committee
55 LeMay Plaza South
Maxwell AFB, AL 36112-6335

Dear Conference Attendee:

6 October 1993

Plans for the ISOO Declassification Conference are being finalized. We wanted to provide you with some additional information about the conference and the Montgomery area to help facilitate your planning. A copy of the draft agenda is at atch 1.

LODGING/TRANSPORTATION

The Madison Hotel is in the heart of downtown, close to the Visitor's Center, the Capitol (which is a scaled down replica of the US Capitol), and the Civil Rights Memorial. A map is provided at atch 2. For those of you with rental vehicles, parking should be no problem at the Madison; however, parking is virtually unavailable on Maxwell AFB. We have arranged for bus transportation to/from Maxwell during the conference. You will be given a complete schedule of all transportation/events at registration on Tuesday evening. If you will not have a rental vehicle and need transportation from the Montgomery airport, please notify the ISOO conference committee at (205) 953-2161, DSN 493-2161, FAX (205) 953-3780.

CONFERENCE SOCIAL EVENTS

Registration and the reception will be in the Ballroom at the Madison beginning at 5:30 PM, with opening remarks at 6:30 PM. PLEASE NOTE THE CHANGE IN TIME FROM OUR ORIGINAL LETTER. There will be a cash bar and light hors d' oeuvres will be served. The restaurant at the Madison is open for dinner from 5-9 PM. The Madison will have a breakfast buffet available for the two mornings of the conference. There will be coffee and juice available at the conference center.

Due to our luncheon speakers' heavy commitments, our "formal" luncheon was changed to Thursday. We have arranged an additional more casual lunch for Wednesday. The cost of this lunch was not included in the registration advanced meal fee, and will be collected at the registration on Tuesday night. If you have not mailed your registration form please add \$10.00 for the lunch on Wednesday. If you have mailed your registration form, the fee will be collected at registration.

DRESS/CLIMATE

Attendees are requested to wear appropriate CIVILIAN casual business attire for conference activities (coat and tie are not required). As we will be doing some walking on the last day of the conference, please bring an umbrella and walking shoes. The cruise on the Betsy Ann riverboat will be very casual, again comfortable shoes and a light jacket/sweater would be appropriate. The climate in Montgomery at the end of October is very inconsistent. Rain is not unusual, nor is a sudden drop in temperature (i.e. 65 degrees).

We are looking forward to a great conference and I hope your stay in Montgomery, Alabama will be enjoyable. If there are any questions concerning conference administration, please call the ISOO Conference Committee at (205) 953-2161, or DSN 493-2161. We can also be reached by FAX at (205) 953-3780 or DSN 493-3780.

Linda L. Smith

LINDA L. SMITH, Colonel, USAFR
SAF/AAZD Team Chief

2 Atchs

1. Agenda
2. Map

DRAFT

TUESDAY, OCTOBER 26, 1993

5:30PM - 7:30PM

*Meet and Greet/Registration
The Madison Hotel Ballroom
Hors d'oeuvres and Cash Bar*

WEDNESDAY, OCTOBER 27, 1993

8:30AM

*Registration/Refreshments
Air Force Quality Center, Building 1400A
Maxwell Air Force Base*

9:00AM

*Welcome
Laura L.S. Kimberly
Information Security Oversight Office*

9:15AM

*Opening Address
The Honorable
John D. Podesta
Assistant to the President and
White House Staff Secretary*

9:40AM

*PRD 29 Update
Steven Garfinkel, Director
Information Security Oversight Office*

10:30AM

BREAK

10:45AM

*Technology: Application to the
Declassification Process*

*Larry M. Lawrence
MITRE Corporation*

*Frank M. Machak
Department of State*

DRAFT

DRAFT

12:15PM

LUNCH

2:00PM

Critics Corner

*Steven Aftergood, Senior Research Analyst
Federation of American Scientists*

*Professor Thomas G. Paterson
Department of History, University of Connecticut*

*Thomas S. Blanton, Executive Director
National Security Archive*

3:00PM

BREAK

3:15PM

Critics Corner Continued

4:00PM

Adjournment

6:00PM - 9:00PM

Riverboat Dinner Cruise on the Betsy Anne
Optional. Casual Dress
Transportation provided

THURSDAY, OCTOBER 28, 1993

8:00AM

Refreshments
Air Force Quality Center, Building 1400A
Maxwell Air Force Base

8:30AM - 10:30AM

Tours

Air Force Historical Research Agency
Building 1405, Maxwell Air Force Base

Air University Library
Building 1405, Maxwell Air Force Base

Air Force War Gaming Center
Building 1406, Maxwell Air Force Base

DRAFT

DRAFT

Each tour will last approximately 20 minutes and will be a walking tour.

10:30AM

Mandated Declassification Projects

*Steven D. Tilley
Jeanne Schauble
National Archives and Records Administration*

*James J. Smith
National Security Agency*

*John F. Pereira
Central Intelligence Agency*

*Colonel John A. Brown (USAF)
Department of Defense*

12:30PM

LUNCH

*Speaker
Dr. Joel Goodman
Director
HMR / ENT Project*

1:45PM

Agency Declassification Programs

*Lt Col Daniel J. Manix (USAFR)
Department of the Air Force*

*Michael J. Kurtz
Jeanne Schauble
National Archives and Records Administration*

*John F. Pereira
Central Intelligence Agency*

*Joseph H. Chaddic
Department of States*

*Miles D. Gray
Department of Energy*

DRAFT

DRAFT

*James J. Smith
National Security Agency*

*Ella W. Nargele
Department of the Navy*

*Sherry L. Davis
Federal Bureau of Investigation*

2:45PM

BREAK

3:00PM

Agency Declassification Programs (continued)

3:45PM

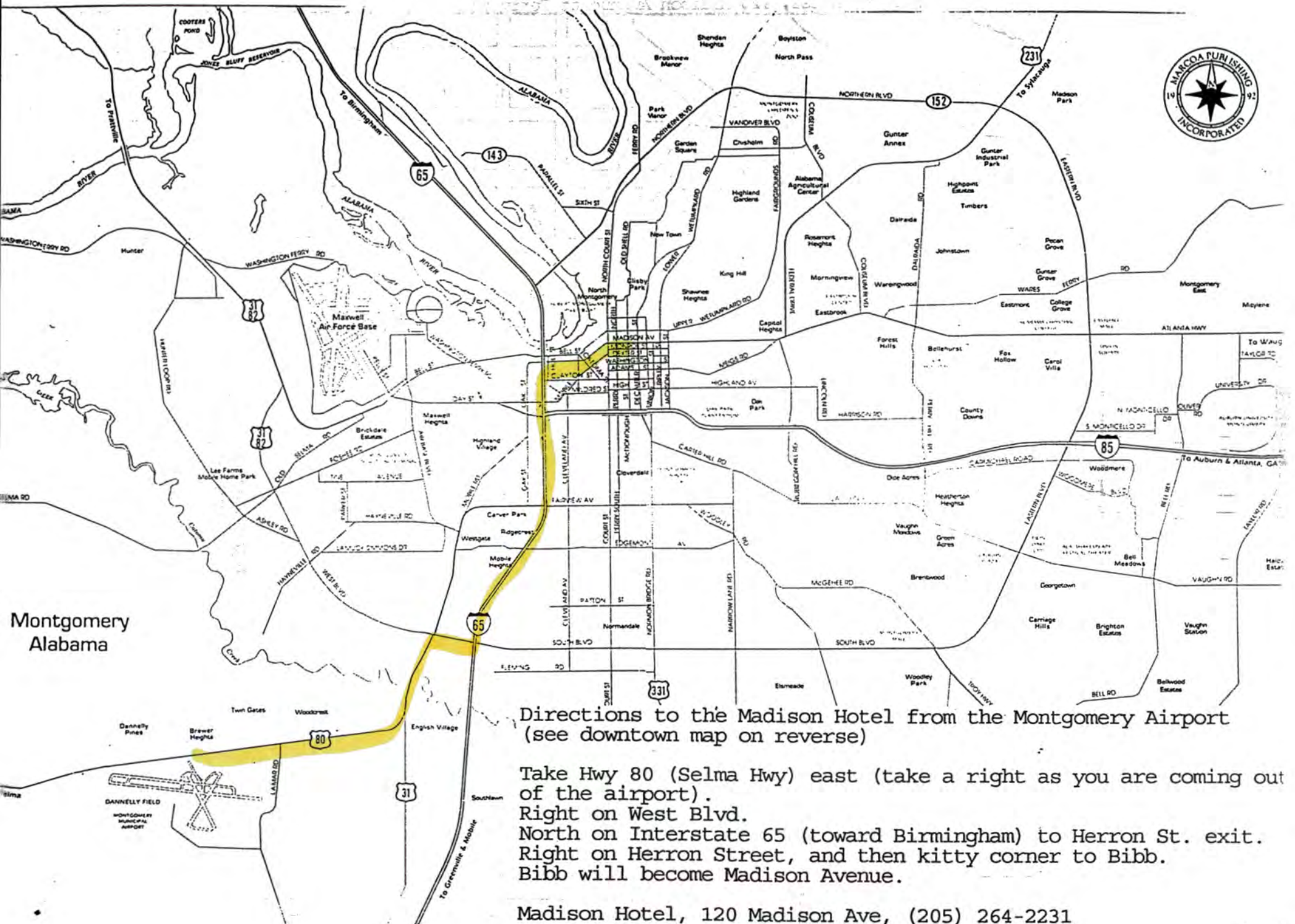
Open Forum

4:15PM

Adjournment

Transportation to and from the airport will be provided.

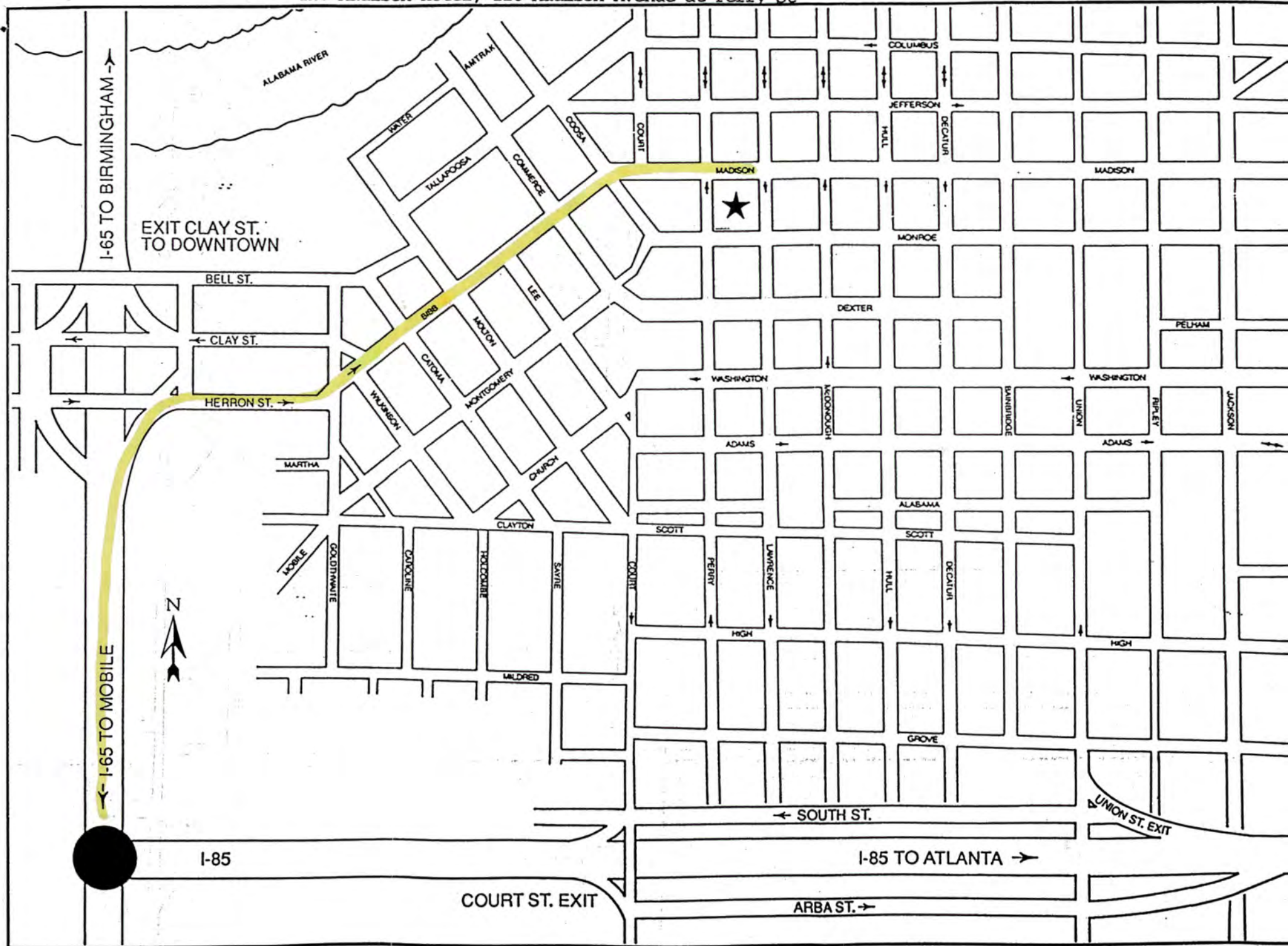
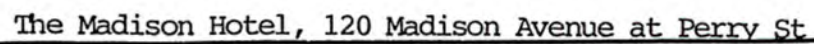
DRAFT



Directions to the Madison Hotel from the Montgomery Airport
(see downtown map on reverse)

Take Hwy 80 (Selma Hwy) east (take a right as you are coming out of the airport).
Right on West Blvd.
North on Interstate 65 (toward Birmingham) to Herron St. exit.
Right on Herron Street, and then kitty corner to Bibb.
Bibb will become Madison Avenue.

Madison Hotel, 120 Madison Ave, (205) 264-2231





SOCIETY OF
PROFESSIONAL
JOURNALISTS

FOUNDED
IN 1909
AS SIGMA DELTA CHI



November 4, 1993

Mr. Steven Garfinkel
Director
Information Security Oversight Office
750 17th Street, N.W., Suite 530
Washington, DC 20006

Re: Security Classification System Review

Dear Mr. Garfinkel:

As the National Freedom of Information Chairwoman for the Society of Professional Journalists, I am writing to comment on the draft of the new executive order (E.O. 12356) on classification of national security information.

I testified before the task force in June, and I appreciated the opportunity to share the Society's views about the new order at that time. With the draft proposal, however, I must say it is a bit disturbing that non-governmental organizations were not given a formal opportunity to share their views. While my comments here have not been solicited by the task force, I nevertheless hope they will be considered prior to submission of a final draft to the National Security Council.

The task force is to be commended for reversing some of the egregious provisions of the classification order under the Reagan and Bush administrations, and for proposing rules that will, to some degree, make the system more open and accountable. These include provisions to eliminate the presumption that any category of information is automatically classified; to establish a government-wide database of declassified documents; to require monitoring of the system; and to penalize both willful and negligent abuse of classification.

The draft proposal, however, does not go nearly far enough. First, the criteria for classifying information is too broad and will not result in any significant change in the current practice of classifying too much information and withholding information crucial to public policy debates. The order should require, not just permit, a balancing of

BAKER & HOSTETLER
SUITE 1100
1050 CONNECTICUT
AVE., N.W.
WASHINGTON,
D. C., 20036
202-861-1500
FAX: 202-861-1783

Mr. Steven Garfinkel
November 4, 1993
Page 2

the public's interest in disclosure of the information at all stages of the classification and declassification process.

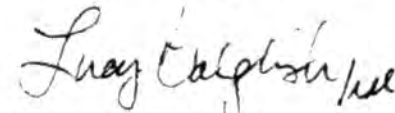
Second, the proposal calls for the automatic declassification, with certain exceptions, of all classified information that is 40 years old. This is a grossly excessive time period. The automatic declassification date should be 20 years. Certainly the Clinton Administration can match or improve on the time periods imposed by Presidents Nixon and Carter.

Third, the proposal calls for an excessively lengthy schedule for initial classification of documents. The maximum time period for classifying information at the Top Secret and Secret levels should be 10 and 6 years, not the proposed 15 and 10 years. The authority to extend classification beyond these dates should be limited to a few high-level officials.

Because declassification will remain an onerous process, the proposed plan would merely exacerbate current problems. Review will take so long that increasing backlogs will precipitate, rather than abate, continued secrecy. Ironically, the draft plan does not permit as much government candor as many aspects of the Nixon Administration's classification rules. The task force can, and should, do better.

As always, we are ready to provide any additional information that may help the task force. Please feel free to contact me or Henry Hoberman of Baker & Hostetler, which serves as the Society's counsel.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Lucy Dalglish".

Lucy Dalglish

cc: Mr. Anthony Lake
Mr. John Podesta



AMERICAN CIVIL LIBERTIES UNION FOUNDATION

CENTER FOR NATIONAL SECURITY STUDIES

Also a project of the Fund for Peace

93 OCT 29 P5:31

122 Maryland Ave., NE
Washington, D.C. 20002
(202) 675-2327
FAX (202) 546-1440

Kate Martin
DIRECTOR

October 29, 1993

National Headquarters
132 West 43rd Street
New York, NY 10036
(212) 944 9800

Nadine Strossen
PRESIDENT

Ira Glasser
EXECUTIVE DIRECTOR

By Hand

John Podesta
Staff Secretary to the President
Office of the Staff Secretary
The White House
Washington, DC 20500

Dear John:

We have prepared written comments concerning the draft executive order on classification. Enclosed is a memo we have circulated outlining the major outstanding issues in the draft. While we believe that the August 31 draft represents some progress compared to the existing order, there are several important unresolved issues discussed in the attached memo.

We are preparing a more detailed list of comments that we will send you shortly. We are also sending these materials to Steven Garfinkel and George Tenet.

Sincerely,

Kate Martin

Sheryl Walter
General Counsel
National Security Archive

Enc:

MEMORANDUM

October 26, 1993

To: Interested Persons
From: American Civil Liberties Union, National Security
Archive and Federation of American Scientists
Re: Analysis of Draft Executive Order on Classification
circulated by PRD 29 Task Force

The Presidential Task Force assigned to draft a new executive order on classification of national security information to replace President Reagan's E.O. 12356 has completed a draft which is now being circulated within the Executive Branch for comments.

Following is an outline of the major issues that need to be addressed in the current draft in order for it to effect a real change in the system and restore the public's right to know government information.

- * The criteria for classifying information related to the national defense or foreign policy are too broad and will not result in any significant change in the current practice of classifying too much information and withholding information crucial to public policy debates. In order to remedy this:

The order should require that in determining whether to classify information or declassify it, the public interest in knowing the information must be balanced with the potential harm to national security from disclosure. Such a test would mean, for example, that the concept or cost of weapons systems would have to be public, although the details could be kept secret.

The public interest balancing test should be included at all stages of classification and declassification.

In addition, the classification categories in section 1.5 of the new order need to be narrowed.

- * The draft allows for information to be initially classified for longer periods of time than did the Carter and Nixon orders, although the exceptions for extending classification are narrower. Thus, the maximum time period for classifying information classified at the **Top Secret** and **Secret** levels should be 10 and 6 years, respectively, not the suggested 15 and 10 years. The authority to extend classification beyond these periods should be limited to a few high-level officials.

- * The provisions in the current draft for declassifying historical documents are unlikely to result in significant amounts of information being made public.

The automatic declassification schedules are longer than in the Nixon and Carter orders, although again the exceptions are narrower. For the next ten years, there would be no automatic declassification of documents less than 40 years old. The automatic declassification date should be 20 years and not the suggested 40 years.

The proposed reliance on systematic review to declassify documents more than 25 years old is unrealistic and prohibitively expensive. Automatic declassification should be substituted for systematic review for documents more than 20 years old. Instead of systematic review for more recent documents, the order should require block review of files relating to important topics with an emphasis on topics of broad public interest.

For further information, please call Gary Stern or Mark Srere at 202-675-2327, or Sheryl Walter at 202-797-0882.

Steve Harpster

Meeting on 11/2 to discuss agency comments / public comments.
draft to NSC by 11/11.

- Tone is important in determining whether or not to classify and at what level.
- real doubt, when in doubt don't classify.

among foreign allies
★ expectation^y that the US will play a lead role in defining openness

Concern for premature release:

- derivative classification w/ 10 years
- original classification extended
- how to prevent derivative document from being released.

Communications
Need

Bob Barnett
202 / 434-5034

Rita
Braver

Technology

Mitre Study - Declass Databases

WAIS - Wide area information search

Gopher -



Steve Aftergood -

recall 78 order - declass shd to hv comparable emphasis as classification.

bulk declassification

criticisms

too long.

40 year maximum, Aftergood would set maximum at 20.

10-15 year scheme too long.

- Historians

- 30 year ~~rule~~ rule for automatic declassification
- define exemptions tightly.
- empower archivists to make declass decisions
- relieve NSC of reviewing WH materials
- clarify distinction between personal/public papers
- prohibit deletion from computer files.

Tom Blanton - Nat'l Security Archives

- time for a paradigm shift / quantum leap.

discovery in gov't is major threat facing us.

- ① balance the public right to know w/ national security
- explicit test on the front end
- ② 40 year rule is a non-starter. Shd be 20 years with good exceptions
- grace periods for agencies to identify sensitive materials
- ③ turn the incentive structure around.
- ④ foreign gov't information - shd raise the rest of the world to
our "stds."
- ⑤ dedas database - may become the "led" of access and accountability.
- ⑥ reclassification issue. dedas decision based on a request is to
prevent embarrassment.

Both the President and Vice President believe that government cannot function unless it is accountable, and further, that accountability requires knowledge of what the government is doing. These principles animate the major initiatives of the Administration: From the economic plan to the National Service Act, from NAFTA to health care, the message is clear - we must as individuals and as a country take responsibility ~~of~~ for ourselves, and that responsibility requires an informed body politic.

This proposed executive order, then should not be ~~was~~ seen in a vacuum. It is part of a general scheme that honors the covenant ^{between} ~~to~~ a citizen ~~and~~ and the American government. Let me describe for you then, a few of the steps the Administration has taken to open up government.

With all of that said, you should know that I do not have a background in intelligence work. Although my position requires me to process classified documents, I have not been faced with the decision whether or not to classify materials. I am not readily familiar with ^{all of} the political, governmental, and inertial forces that drive the classification process, and in that regard, you are my teachers. However, I stand before you with an abiding conviction that knowledge is power; and that the more broadly knowledge is disseminated, the more powerful the American people become.

It Thus, I see my role this morning as describing the outlines of the administration's commitment to openness in government of which this draft executive order is a part.

Professional ethics

~~My background in commercial litigation~~ required me to
at the same time ~~zealously guard~~ the confidences of my clients while assisting
the court in its task of ascertaining truth and dispensing
justice. I thus became familiar with nearly every trick
~~subterfuge~~ designed to hide, restrict, secrete or otherwise make information
unavailable. I learned that the system could be manipulated
- by endless interrogatories, mind-numbing depositions, and
gargantuan document productions - all in the name of
winning at any cost. And make no mistake, those costs are
enormous, both in terms of legal fees, and in terms of
wasted time and effort. Small wonder I gave up the
delights of practice in order to push paper at the WH!

~~The injustice of inappropriately withholding information~~
~~in the legal context~~ leaks

Thank you's - acknowledgements: - Payne & Laura

Podesta's regret that he is unable to join this conference.

However, he is participating in settlement negotiations in the Armstrong case, ~~hope~~ with an eye towards ~~regularization~~ regular filing, storage and eventual dissemination of presidential records.

We hope that the results of this process will permit in greater access to presidential records, resulting in greater accountability to the American people who are after all, both the consumers of our products, and our collaborators in the democratic enterprise.

Before I move to the body of my talk this morning, a few remarks are in order. Prior to joining the administration, I practiced law in San Francisco.

our vital national interests while promoting legitimate access to the workings of government and the decisions of its officials.

I have been immensely impressed over the past few days as I delved into the intricacies and ~~understandings~~ of your work so far. I am sure that your expertise and dedication will result in an approach to information security that will serve our country well as we face the ~~new~~ challenges of the end of the twentieth century and the beginning of the 21st.

~~There are many~~

~~things that we must do to ensure that we are prepared for the challenges of the future.~~

We all know that change is inevitable. Our challenge is to embrace change, make it our friend, and not to shrink from the challenges change imposes. We have seen the Iron Curtain fall, the Berlin Wall crumble, and

Department, opt in favor of ~~a~~ access. ~~rather than~~ along those lines, materials need to ~~to~~ have an appropriate level of classification, ~~properly~~ accurately reflecting ~~whether~~ the amount of damage that disclosure might inflict on the interests of the United States.

along ~~with~~ with discarding the presumption that ^{specific} categories of information are automatically classified, I would hope that the end product of these discussions will abolish classifications of unlimited duration in favor of release on a date certain ~~in~~ unless reclassified.

There should be both a declassification review ~~and~~ after a stated period of time, as well as automatic declassification.

~~For~~ These, I think are the major principles to guide a rational classification scheme designed to ~~not~~ serve

will now begin its analysis with a presumption in favor of disclosure, and then and only then will it look to see if the disclosure would harm governmental and privacy interests. Even though a ^{FOIA} request might technically or arguably fall within an exemption, Justice ~~now~~ this ~~consider~~ agency ~~will~~ will now deny such requests only when necessary.

~~That~~ I see the preparation of an executive order on national security protected information as ~~governed by~~ animated by the same principles. One, there should be a commitment to openness. We should both herald our triumphs ^{reveal} and ~~afford~~ our mistakes so that we and future generations are not doomed to repeat them.

We not avoid routine classification, like the Justice

of the vital links between the government and the governed. ~~The President~~ At the same time, the President recently reiterated his belief and commitment to service that goes beyond responding to citizen requests. He has called for agency-initiated distribution of information, and the enhancement of public access through the use of electronic distribution systems.

The Department of Justice, under the able leadership of Attorney General Reno and Associate Attorney General Hubbard, have developed FOIA guidelines that meet the challenge thrown down by the President. In a stunning turnabout from previous practice, the Justice Department will no longer be withholding of information solely because there is a substantial legal basis for doing so. Justice

The Administration has undertaken major changes in the regulatory review process. The role of the Office of Management and the Budget in the development of federal regulations has been returned to its rightful one of coordination, rather than a court of last resort, and a secret one at that. The Office of Information and Regulatory Affairs (OIRA) now ensures that information concerning proposed regulations is available to the affected agencies, and to the general public.

Similar considerations govern the Administration's approach to the Freedom of Information Act. For too long, agencies have used the FOIA as an excuse for inaction rather than a request for cooperation. ~~For~~ demands FOIA's requirements should not be seen as an imposition; they are, I submit one

the Soviet Union dissolved. We now have former Warsaw Pact nations clamoring for admission to NATO. ^{for the same} ~~These developments~~ spirit that we reexamined our place in the world, so must we reexamine our role in the writing of that world's history. ~~government~~ While vigilant for our security and foreign interests, we must keep in mind our greatest weapon - a knowledgeable citizenry that ~~for~~ cares about and participates in its government. I think we have started down the right road, and I'm excited ~~as~~ to learn what this journey will bring.

Thank you.



CENTER FOR NATIONAL SECURITY STUDIES
Also a project of the Fund for Peace

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Nadine Strossen
PRESIDENT

Ira Glasser
EXECUTIVE DIRECTOR

November 1, 1993

Mr. John Podesta
Staff Secretary to the President
Office of the Staff Secretary
The White House
Washington, DC 20500

Dear John:

Enclosed are joint comments on the draft executive order.
Please contact any of us if you have any questions or comments.

Thanks for considering our views.

Sincerely,

Gary M. Stern
Legislative Counsel

November 1, 1993

TO: PRD 29 TASK FORCE, INFORMATION SECURITY OVERSIGHT OFFICE

FR: AMERICAN CIVIL LIBERTIES UNION, NATIONAL SECURITY ARCHIVE,
AND FEDERATION OF AMERICAN SCIENTISTS

RE: ANALYSIS OF DRAFT EXECUTIVE ORDER ON CLASSIFICATION
CIRCULATED BY PRD 29 TASK FORCE

The following are our comments on the August 31 draft Executive Order on classification prepared by the PRD 29 Task Force. We first discuss the major issues that we believe need to be addressed in the current draft in order for it to effect real change in the system and restore the public's right to know government information. We then address other substantive matters that should be corrected. Finally, we have provided a section-by-section commentary of technical changes that we think will clear up ambiguities and better ensure that the intent of increased openness is achieved with the new order. We appreciate your consideration of our views, and hope that you will provide a mechanism for further public comment before the final version is presented to the President.

MAJOR ISSUES

- * The proposed criteria for classifying information related to the national defense or foreign policy are too broad and will not result in any significant cure of the current problem of classifying too much information crucial to public policy debates. In order to remedy this:

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Public interest balancing should be included at all stages of classification and declassification.

In addition, the classification categories in section 1.5 of the new order need to be narrowed.

- * The draft allows for information to be initially classified for longer periods of time than did the Carter and Nixon Executive Orders, although the exceptions for extending classification are narrower. Thus, the maximum time periods for classifying information at the **Top Secret** and **Secret** levels should be 10 and 6 years, respectively, not the suggested 15 and 10 years. In addition, the authority to extend classification beyond these periods should be limited to a few high-level officials.

- * The provisions in the current draft for declassifying historical documents are unlikely to result in significant amounts of information being made public.

The automatic declassification schedules are longer than in the Nixon and Carter orders, although again the exceptions are narrower. For the next ten years, there would be no automatic declassification of documents less than 40 years old. An automatic declassification date should be established, but it should be 20 years and not the suggested 40 years.

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PREAMBLE

We commend the recognition in the draft, as set forth in the preamble, that the end of the Cold War provides an opportunity to "emphasize our commitment to an open Government." We would urge you to explain in greater detail the reasons for openness: that unless the American people can inform themselves about the activities of their government, there can be no democratic decision-making. At the same time we are concerned about the vagueness of the reference to maintaining information in confidence and about the reference to our national priorities. The national priority is defending the nation; classifying information is simply a means to that end. We suggest that the preamble simply refer to the fact that the national interest requires that certain critically sensitive information related to the national defense be exempted from public disclosure.

FOREIGN GOVERNMENT INFORMATION (SEC. 1.1(d))

The claimed need to protect "foreign government information" is often invoked and has contributed greatly to the problem of overclassification. Foreign government documents, not information, should be classified only when the foreign government expressly requires that the specific documents be held in confidence and the documents relate to the national defense or foreign policy of the United States. Oral information received from a foreign government should be classified according to the usual standards. Most such communications will either relate to current diplomatic negotiations or may be classified in order to protect the identity of a confidential intelligence source.

U.S. government information generated as a result of a joint arrangement with foreign governments (see section 1.1(d)(2)) may be classified if it otherwise meets the standards of the order. If information does not meet classification standards, the U.S. should not agree to keep it secret. The present draft would create a potentially large loophole. See also CLASSIFICATION CATEGORIES below.

Foreign government documents should be marked with U.S. classification markings. There should be no attempt to incorporate a foreign government's system into ours. Thus section 1.7(e) should be rewritten.

CLASSIFICATION AND DECLASSIFICATION STANDARDS (SEC. 1.2)

As noted above, public interest balancing must be an integral part of the process if excessive secrecy is to be ended. The public interest in knowing the information should be taken into account at the time of the initial and all subsequent classification determinations, the declassification stage, and during any appeal process. Moreover, classification and declassification decisions should always take into account what is already publicly known about the subject matter, even if there have been no official disclosures. Accordingly, we recommend that the following underlined language be included in section 1.2(a):

(4) the original classification authority determines that the release of the information reasonably could be expected to result in damage to the national security, taking into account what is already publicly known or reported about the subject matter of the information, and the original classifier is able to identify or describe the damage; and

(5) the original classification authority determines that the damage outweighs the public interest in disclosure.

Sections 1.5, 1.8(d), 3.2(b), 5.4(c) should also be changed accordingly.

Upon receipt of a FOIA request or request for mandatory declassification review, the order should require a new determination of whether the harm to national security continues to outweigh the public interest in disclosure, taking into account currently available public information. This provision should replace section 3.2(b), which will now be redundant.

Along these same lines, subsection 1.2(c) should also be amended by adding to the end of the sentence a phrase such as:

"but such disclosure must be taken into account in making a determination whether to continue to classify the information."

CLASSIFICATION LEVELS (SEC. 1.3)

The definition of Secret is virtually identical to the definition of Confidential in Executive Order 12356 § 1.1(a)(3). Merely establishing two instead of three classification levels will not reduce classification because almost everything that was formerly classified as Confidential would now likely be

reclassified as Secret. The new requirement to identify or describe the damage is an important addition, but it will not reduce classification significantly if the Confidential standard is de facto retained by the way in which the definitions are now drawn. If the new Executive Order truly is to eliminate the category "Confidential" and limit the system to two levels, then the current definition of Secret should be maintained: information whose disclosure would cause "serious" damage to the national security.

CLASSIFICATION CATEGORIES (SEC. 1.5)

The new categories, while fewer in number, do not effectively limit the type of information that may be classified to information whose disclosure would in fact damage the national security. The new categories are too broad and will not achieve the Task Force's stated goal of "[c]urb[ing] excessive classification by reducing the number of classification categories and narrowing their range." PRD 29 Task Force, Comparison Chart at 3.

One way of limiting the scope of these categories is to require public interest balancing in this section, as suggested above. Another way to limit these categories is to require that information may be classified only if its unauthorized disclosure "demonstrably" (not "reasonably") could be expected to cause serious damage of the types listed.

Regarding the specific categories:

Section 1.5(a). It is not clear why section (a)(1) is needed, given that section (a)(2) covers information that would increase the vulnerability of the United States military, etc. As written, section (a)(1) would permit the classification of information whose disclosure would be likely to result in U.S. public opinion objecting to the U.S. military engaging in armed conflict or participating in peacekeeping operations. That is precisely the kind of information that the public has a right to know. Because section (a)(2) provides the necessary protection for military information, section (a)(1) should be deleted.

Section 1.5(b) describes information that would "damage relations between the United States and another country or international organization of governments; impede current diplomatic negotiations; or reveal foreign government information." Although the protection for current diplomatic negotiations and foreign government documents, not information, makes sense, the first clause protecting information that would damage foreign relations is too broad. It should be limited to information where a specific and significant change in U.S.

foreign relations can be identified as a likely outcome of disclosure. Embarrassment by itself should not be a basis for classification and it should be made clear that the older the information is, the less likely it is that disclosure would cause a significant change in current U.S. foreign relations.

Section 1.5(e) -- which reads "damage the ability of the United States to relate or apply critical research or technology to the national defense or foreign relations of the United States" -- should be eliminated as redundant to § 1.5(a)(2). It is vague and overbroad and could threaten scientific research.

The order should also provide that:

- The classification of basic scientific research information is prohibited.
- Intelligence activities, sources, and methods shall not presumptively be classified, and shall be governed by the same standards applicable to other national security information.
- The intelligence budget shall not be classified.
- Information relating to illegal or unconstitutional activity by a official of the Federal Government shall not be classified.

UPGRADES and EXTENSIONS (SECS. 1.3(d), 1.6(e))

"Upgrades" and "extensions" should be treated as wholly new classification decisions, and not a pro forma way to unnecessarily prolong secrecy. See sections 1.3(d) and 1.6(e). Accordingly, to make it more difficult to accomplish than initial classification, upgrades and extensions should require higher level review along the following lines: only agency heads and senior agency officials, but not delegated original classifiers, should be able to upgrade or extend classification; similarly, only agency heads should be able to upgrade or extend classification a second time. No other original classification authorities should be authorized to extend the duration of classification. This important limitation was also adopted by Presidents Nixon (Executive Order 11652, section 5(B)) and Carter (E.O. 12065, section 1-402) in their Orders and it is essential that the new order should live up to this past standard by incorporating these checks on perpetual secrets.

DURATION OF CLASSIFICATION (SECS. 1.6(d), 1.3(d))

As noted above, the duration of classification for Secret information should be changed from 10 years to 6 years, and for Top Secret information from 15 years to 10 years.

The new duration periods should apply to the greatest extent possible to information marked "OADR" under predecessor orders. It is important that declassification of older documents should date from the time of the original classification decision. To do otherwise would lead to keeping old material secret longer than newer material. Subsections 1.6(d)(2) and (3) should therefore require that the time for declassification be calculated "from the date of original classification," and not from the effective date of the new Order.

UNCONTROLLED DISSEMINATION (SECS. 1.1(i), 1.3(a), 1.5)

The purpose of the Executive Order is to protect against the unauthorized disclosure of classified information. References throughout the draft order to "uncontrolled dissemination" should be deleted because they are at the very least redundant and, at worst, they place too much power in the hands of agencies to deny other agencies needed information. This new concept seems ill-considered and at odds with the effort to make government work more efficiently by removing, rather than erecting, new barriers to the flow of information between agencies. The concept of "need to know" can be maintained, without doing it along agency lines.

ACTION AFTER PUBLIC DISCLOSURE OR REQUEST FOR INFORMATION (SEC. 1.8(c) & (d))

Information that has been declassified but not released to the public should only be reclassified if it meets the exemptions for automatic declassification under section 3.4(b).

Previously undisclosed information that has been requested under the FOIA (subsection 1.8(d)) should only be classified with the personal approval of the agency head.

AUTOMATIC DECLASSIFICATION (SEC. 3.4(a))

The automatic declassification date should be changed from 40 to 20 years for all information. Current law already establishes a limit of 30 years for State Department and Kennedy

assassination records. See 22 U.S.C. § 4351. The CIA itself has committed to declassify some historical materials after 30 years and in some cases after ten years. In addition, President Nixon required the Archivist to declassify all documents that were more than 30 years old and that were not specifically exempted in writing by an agency head.¹ Moreover, President Nixon initiated "an immediate and systematic declassification of World War II documents" on August 3, 1971, yielding speedy bulk declassification of documents even less than 30 years old.² Finally, President Carter directed automatic declassification for documents that were 20 years old, with the usual allowance for exemptions of "specific, limited categories of information."³ The goal of a 20 year life span for the vast majority of "secrets" needs to be a fundamental part of this new order to underscore the Administration's goal of sharply reducing secrecy.

Exceptions to automatic declassification (Sec. 3.4(b))

The proposed exceptions are narrowly drafted and reasonable. We suggest that the exception for information identifying a confidential human intelligence source in subsection (b)(1) be amended to provide that in the case of sources now dead, the information may be withheld only if its disclosure would cause physical harm to persons still living.

Systematic Declassification Review (Sec. 3.5)

Systematic review should be replaced by automatic declassification after 20 years and block review of more recent documents in files relating to prioritized topics of broad public interest. Systematic review of the type set up in the draft

¹ Strictly speaking, Nixon's 30 year maximum life span required systematic review of previously classified documents, not automatic declassification. (Automatic declassification at 30 years was required for any future classified documents that might be exempted from prior automatic declassification.) However, Nixon directed that no old material remain classified after the "30 year deadline" unless it was specifically exempted in writing by an agency head. [E.O. 11652, section 5(E); the "30 year deadline" for declassification of old documents is also cited in the President's March 8, 1972 speech.]

² Statement by the President announcing E.O. 11652, March 8, 1972.

³ E.O. 12065, section 3-402 required that except, for the specific, limited categories identified by agency heads, all remaining classified material "shall be declassified automatically at the end of twenty years from the date of original classification." (Emphasis added.)

order has historically failed to produce the kinds of results that are the aim of this new order. Because it is a labor intensive and costly undertaking, systematic review, unlike automatic declassification and block review, will never make available historical documents.

TRANSFER TO NATIONAL ARCHIVES (SEC. 3.3(d))

This section needs to be strengthened so that the Archives can require agencies either to declassify records or to transfer still-classified records and reimburse the Archives for the expense of declassification that the Archives undertakes when the agency has not complied with its duty to declassify. Otherwise, there is a real danger that agencies will stop forwarding to the Archives their historical materials and may use this section as the reason why they cannot comply, claiming that they lack the money and staff to declassify the material. The result would be that the Archives will lose control over important historical documents, which will be in danger of being lost or destroyed.

DECLASSIFICATION DATABASE (SEC. 3.8)

Although this database sounds good in theory, in practice it appears that it is being designed not to aid in the release of more information, but rather to limit releases to what has previously been declassified. Such a database would be a waste of time and money as well as contravening the purpose of the new Order to make more, not less, government information available to the public. If this provision is retained, it should contain stronger language as to the intent of establishing the database.

SPECIAL ACCESS PROGRAMS (SEC. 4.4(b))

As noted above, SAPs should be limited only to intelligence and operations programs in order to eliminate the most frequently abused category of SAPs. In addition, the order should make clear that cover stories or other active deception practices should not be utilized as a security measure in special access programs, except regarding combat operations in time of armed conflict. The United States should renounce the use of official deception because of the damage to the credibility of the government and to the political well-being of the nation. This problem is not substantially mitigated by the reporting of deception activities to a small group of Members of Congress and their staff.

INTERAGENCY SECURITY CLASSIFICATION APPEALS PANEL (SEC. 5.4)

In order for a new appeals panel to exercise effective oversight on declassification decisions, its members should be independent of the "user" agencies within the Executive Branch. Thus Option Six is the only alternative that provides a truly independent review authority. We suggest that this panel also be given jurisdiction to hear FOIA appeals, subject to reversal only by the President.

SCOPE OF ORDER (SEC. 6.1(a))

Section 6.1(a) -- "Nothing in this Order shall supersede any requirement made by or under the Atomic Energy Act of 1954, as amended, or the National Security Act of 1947" -- simply states the law. However, the Executive Order should also make clear both that the reference in the National Security Act to protecting sources and methods means sources and methods that qualify for classification under this order and that the classification standards for sources and methods are the same as for other information.

RIGHT OF CONGRESS TO RECEIVE CLASSIFIED INFORMATION (SEC. 4.2)

The authority of Congress to demand and receive information from the Executive Branch and the President's authority to claim executive privileges are constitutional matters not subject to change by an Executive Order. Therefore, we do not think that section 4.2(d) concerning disseminations of information outside the Executive Branch should be included in the Order. If the subject of dissemination to Congress is addressed at all, we suggest that the order make clear that while there is an executive privilege, classification per se is not a basis for withholding information from Congress.

TECHNICAL CORRECTIONS

- * Section 1.1(c): "'National security protected information' means information that has been determined pursuant to this Order or any predecessor order to require protection against unauthorized disclosure or uncontrolled dissemination." (Emphasis added.)

The phrases "or any predecessor order" and "or uncontrolled dissemination" are both superfluous and should be deleted.

- * Section 1.3(c): "If there is a reasonable doubt about the appropriate level of classification, it shall be classified at the Secret level." (Emphasis added.)

To clarify the requirement that the authority has already determined that the material requires classification, add to beginning of sentence the underlined phrase: "If it is determined that information needs to be classified but there is . . ." This change also is consistent with section 1.2(b).

- * Section 1.4(c)(4): "Each delegation of original classification authority . . . shall identify the official by name or position title."

The "position title" should be required in every instance to make it clear that classification authority is associated with the job as well as the individual. This could be done by changing "or" to "and".

- * Section 1.7(a) Identification and Markings

The effective date of original classification (which may be the same as the date of the document) should probably be added to the required markings, since other sections (such as 1.6(b) & (c)) depend upon it.

- * Section 1.7(b): "Specific information contained in paragraph (a), above, shall be excluded if it would unnecessarily reveal additional national security protected information."

Any information "excluded" under this provision should be maintained on file for possible inspection by ISOO, the Inspector

General, or other authorized personnel, in order to incorporate accountability for such exclusion decisions.

- * Section 1.7(g): "The original classification authority shall, whenever practicable, use a classified addendum whenever national security protected information constitutes a small portion of an otherwise unclassified document."

In order to most effectively reduce secrecy, this provision should be addressed to all producers of classified documents, and should apply to any document from which national security protected information can reasonably be segregated from the unclassified material, not just those with "small portions" of classified information.

- * Section 1.8(a)(2)-(4).

Delete the "to" at the beginning of these three subsections, as they are redundant.

- * Section 1.8(b): "Basic scientific research information not clearly related to the national security may not be classified." (Emphasis added.)

As recommended above under CLASSIFICATION CATEGORIES (pp. 8-9), the underlined language should be deleted to make clear that basic scientific research information is not classified.

- * Section 2.3: Classification Guides

The "concise reason for classification" required in section 1.7(a)(5) should also be required to be identified in any new classification guides for clarity, consistency, and to ensure appropriate classification.

- * Section 3.2(a): ". . . Agencies shall coordinate their [declassification] review of national security protected information with other agencies that have a direct interest in the subject matter."

Declassification authorities at originating agencies should be given unrestricted authority to declassify. Further, when

originating agencies cannot be located or are unresponsive, the agency in possession should be authorized to declassify in order to avoid excessive delays and unnecessary continued secrecy.

- * Section 3.4(e): "The Secretary of State shall commence negotiations with the appropriate officials of a foreign government . . . to modify any treaty . . . that requires the classification of information longer than 40 years . . . unless the treaty . . . pertains to information that may otherwise remain classified beyond 40 years under this Section." (Emphasis added.)

As currently drafted, this provision operates circularly with section 3.4(b)(4), which permits information to remain classified beyond 40 years "under this Section" if a treaty requires it. The underlined words should be deleted to make clear that the only treaties that are exempt from renegotiation by the Secretary are those that require the secrecy of information in categories (1)-(3) of subsection 3.4(b), and not category 3.4(b)(4).

A new subsection should also be added directing that:

"The Secretary of State, in the course of modifying treaties or agreements in accordance with section 3.4(e) or in negotiating new treaties, shall (1) seek to ensure that information shall be classified only if it meets the requirements of this order and that such information shall not be classified beyond 20 years and (2) encourage all parties to seek declassification as early as possible."

Finally, language should be added that directs agencies to actually negotiate this issue and refrain from automatically inserting into such instruments language that limits access to information and then assuming that foreign governments will demand its presence as a condition of their agreement and participation.

- * Section 4.4(a)(1) Special Access Programs: ". . . These officials shall keep the number of these programs at an absolute minimum, and shall establish them only upon a specific finding that: (1) The vulnerability of, or threat to, specific information is exceptional; or (2) the normal criteria for determining eligibility for access applicable to information classified at the same level are not deemed sufficient to protect the information from unauthorized disclosure."

To ensure that special access programs are set up only when truly needed, they should be established only when both requirements are met. Therefore, the "or" between (1) and (2) should be changed to "and".

- * Section 4.1(h): "'Special access program' means a program authorized by an agency head for a specific class of national security protected information that imposes safeguarding and access requirements that exceed those normally required for information at the same classification level." (Emphasis added.)

SAPs must of course be authorized, but authorization should be a requirement, not part of the definition. If SAPs are authorized by definition, then unauthorized SAPs would not be SAPs at all, and could not be in violation of the Order. Section 4.4(a) makes it sufficiently clear that legitimate SAPs must be authorized by agency heads. Accordingly, the phrase "authorized by an agency head" should be deleted.

- * Section 4.5 Access by Historical Researches and Former Presidential Appointees.

Broaden the definitions to include former government employees who have not been Presidential appointees, but who need access to their own papers for research and writing purposes (such as career diplomats).

- * Section 5.3 Information Security Oversight Office.

Add a subsection that requires that directives issued by ISOO be subject to public notice and comment: "Directives issued by the Director of the Information Security Oversight Office shall be subject to public notice and comment."

Please contact Kate Martin at the ACLU (202-675-2327), Sheryl Walter at the National Security Archive (202-797-0882), or Steve Aftergood at the Federation of American Scientists (202-675-1012) for more information.

November 1, 1993

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As noted above, public interest balancing must be an integral part of the process if excessive secrecy is to be ended. The public interest in knowing the information should be taken into account at the time of the initial and all subsequent classification determinations, the declassification stage, and during any appeal process. Moreover, classification and declassification decisions should always take into account what is already publicly known about the subject matter, even if there have been no official disclosures. Accordingly, we recommend that the following underlined language be included in section 1.2(a):

(4) the original classification authority determines that the release of the information reasonably could be expected to result in damage to the national security, taking into account what is already publicly known or reported about the subject matter of the information, and the original classifier is able to identify or describe the damage; and

(5) the original classification authority determines that the damage outweighs the public interest in disclosure.

Sections 1.5, 1.8(d), 3.2(b), 5.4(c) should also be changed accordingly.

Upon receipt of a FOIA request or request for mandatory declassification review, the order should require a new determination of whether the harm to national security continues to outweigh the public interest in disclosure, taking into account currently available public information. This provision should replace section 3.2(b), which will now be redundant.

Along these same lines, subsection 1.2(c) should also be amended by adding to the end of the sentence a phrase such as:

"but such disclosure must be taken into account in making a determination whether to continue to classify the information."

CLASSIFICATION LEVELS (SEC. 1.3)

The definition of Secret is virtually identical to the definition of Confidential in Executive Order 12356 § 1.1(a)(3). Merely establishing two instead of three classification levels will not reduce classification because almost everything that was formerly classified as Confidential would now likely be

reclassified as Secret. The new requirement to identify or describe the damage is an important addition, but it will not reduce classification significantly if the Confidential standard is de facto retained by the way in which the definitions are now drawn. If the new Executive Order truly is to eliminate the category "Confidential" and limit the system to two levels, then the current definition of Secret should be maintained: information whose disclosure would cause "serious" damage to the national security.

CLASSIFICATION CATEGORIES (SEC. 1.5)

The new categories, while fewer in number, do not effectively limit the type of information that may be classified to information whose disclosure would in fact damage the national security. The new categories are too broad and will not achieve the Task Force's stated goal of "[c]urb[ing] excessive classification by reducing the number of classification categories and narrowing their range." PRD 29 Task Force, Comparison Chart at 3.

One way of limiting the scope of these categories is to require public interest balancing in this section, as suggested above. Another way to limit these categories is to require that information may be classified only if its unauthorized disclosure "demonstrably" (not "reasonably") could be expected to cause serious damage of the types listed.

Regarding the specific categories:

Section 1.5(a). It is not clear why section (a)(1) is needed, given that section (a)(2) covers information that would increase the vulnerability of the United States military, etc. As written, section (a)(1) would permit the classification of information whose disclosure would be likely to result in U.S. public opinion objecting to the U.S. military engaging in armed conflict or participating in peacekeeping operations. That is precisely the kind of information that the public has a right to know. Because section (a)(2) provides the necessary protection for military information, section (a)(1) should be deleted.

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As noted above, the duration of classification for **Secret** information should be changed from 10 years to 6 years, and for **Top Secret** information from 15 years to 10 years.

The new duration periods should apply to the greatest extent possible to information marked "OADR" under predecessor orders. It is important that declassification of older documents should date from the time of the original classification decision. To do otherwise would lead to keeping old material secret longer than newer material. Subsections 1.6(d)(2) and (3) should therefore require that the time for declassification be calculated "from the date of original classification," and not from the effective date of the new Order.

UNCONTROLLED DISSEMINATION (SECS. 1.1(i), 1.3(a), 1.5)

The purpose of the Executive Order is to protect against the unauthorized disclosure of classified information. References throughout the draft order to "uncontrolled dissemination" should be deleted because they are at the very least redundant and, at worst, they place too much power in the hands of agencies to deny other agencies needed information. This new concept seems ill-considered and at odds with the effort to make government work more efficiently by removing, rather than erecting, new barriers to the flow of information between agencies. The concept of "need to know" can be maintained, without doing it along agency lines.

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assassination records. See 22 U.S.C. § 4351. The CIA itself has committed to declassify some historical materials after 30 years and in some cases after ten years. In addition, President Nixon required the Archivist to declassify all documents that were more than 30 years old and that were not specifically exempted in writing by an agency head.¹ Moreover, President Nixon initiated "an immediate and systematic declassification of World War II documents" on August 3, 1971, yielding speedy bulk declassification of documents even less than 30 years old.² Finally, President Carter directed automatic declassification for documents that were 20 years old, with the usual allowance for exemptions of "specific, limited categories of information."³ The goal of a 20 year life span for the vast majority of "secrets" needs to be a fundamental part of this new order to underscore the Administration's goal of sharply reducing secrecy.

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¹ Strictly speaking, Nixon's 30 year maximum life span required systematic review of previously classified documents, not automatic declassification. (Automatic declassification at 30 years was required for any future classified documents that might be exempted from prior automatic declassification.) However, Nixon directed that no old material remain classified after the "30 year deadline" unless it was specifically exempted in writing by an agency head. [E.O. 11652, section 5(E); the "30 year deadline" for declassification of old documents is also cited in the President's March 8, 1972 speech.]

² Statement by the President announcing E.O. 11652, March 8, 1972.

³ E.O. 12065, section 3-402 required that except, for the specific, limited categories identified by agency heads, all remaining classified material "shall be declassified automatically at the end of twenty years from the date of original classification." (Emphasis added.)

order has historically failed to produce the kinds of results that are the aim of this new order. Because it is a labor intensive and costly undertaking, systematic review, unlike automatic declassification and block review, will never make available historical documents.

TRANSFER TO NATIONAL ARCHIVES (SEC. 3.3(d))

This section needs to be strengthened so that the Archives can require agencies either to declassify records or to transfer still-classified records and reimburse the Archives for the expense of declassification that the Archives undertakes when the agency has not complied with its duty to declassify. Otherwise, there is a real danger that agencies will stop forwarding to the Archives their historical materials and may use this section as the reason why they cannot comply, claiming that they lack the money and staff to declassify the material. The result would be that the Archives will lose control over important historical documents, which will be in danger of being lost or destroyed.

DECLASSIFICATION DATABASE (SEC. 3.8)

Although this database sounds good in theory, in practice it appears that it is being designed not to aid in the release of more information, but rather to limit releases to what has previously been declassified. Such a database would be a waste of time and money as well as contravening the purpose of the new Order to make more, not less, government information available to the public. If this provision is retained, it should contain stronger language as to the intent of establishing the database.

SPECIAL ACCESS PROGRAMS (SEC. 4.4(b))

As noted above, SAPs should be limited only to intelligence and operations programs in order to eliminate the most frequently abused category of SAPs. In addition, the order should make clear that cover stories or other active deception practices should not be utilized as a security measure in special access programs, except regarding combat operations in time of armed conflict. The United States should renounce the use of official deception because of the damage to the credibility of the government and to the political well-being of the nation. This problem is not substantially mitigated by the reporting of deception activities to a small group of Members of Congress and their staff.

INTERAGENCY SECURITY CLASSIFICATION APPEALS PANEL (SEC. 5.4)

In order for a new appeals panel to exercise effective oversight on declassification decisions, its members should be independent of the "user" agencies within the Executive Branch. Thus Option Six is the only alternative that provides a truly independent review authority. We suggest that this panel also be given jurisdiction to hear FOIA appeals, subject to reversal only by the President.

SCOPE OF ORDER (SEC. 6.1(a))

Section 6.1(a) -- "Nothing in this Order shall supersede any requirement made by or under the Atomic Energy Act of 1954, as amended, or the National Security Act of 1947" -- simply states the law. However, the Executive Order should also make clear both that the reference in the National Security Act to protecting sources and methods means sources and methods that qualify for classification under this order and that the classification standards for sources and methods are the same as for other information.

RIGHT OF CONGRESS TO RECEIVE CLASSIFIED INFORMATION (SEC. 4.2)

The authority of Congress to demand and receive information from the Executive Branch and the President's authority to claim executive privileges are constitutional matters not subject to change by an Executive Order. Therefore, we do not think that section 4.2(d) concerning disseminations of information outside the Executive Branch should be included in the Order. If the subject of dissemination to Congress is addressed at all, we suggest that the order make clear that while there is an executive privilege, classification per se is not a basis for withholding information from Congress.

TECHNICAL CORRECTIONS

- * Section 1.1(c): "'National security protected information' means information that has been determined pursuant to this Order or any predecessor order to require protection against unauthorized disclosure or uncontrolled dissemination." (Emphasis added.)

The phrases "or any predecessor order" and "or uncontrolled dissemination" are both superfluous and should be deleted.

- * Section 1.3(c): "If there is a reasonable doubt about the appropriate level of classification, it shall be classified at the Secret level." (Emphasis added.)

To clarify the requirement that the authority has already determined that the material requires classification, add to beginning of sentence the underlined phrase: "If it is determined that information needs to be classified but there is . . ." This change also is consistent with section 1.2(b).

- * Section 1.4(c)(4): "Each delegation of original classification authority . . . shall identify the official by name or position title."

The "position title" should be required in every instance to make it clear that classification authority is associated with the job as well as the individual. This could be done by changing "or" to "and".

- * Section 1.7(a) Identification and Markings

The effective date of original classification (which may be the same as the date of the document) should probably be added to the required markings, since other sections (such as 1.6(b) & (c)) depend upon it.

- * Section 1.7(b): "Specific information contained in paragraph (a), above, shall be excluded if it would unnecessarily reveal additional national security protected information."

Any information "excluded" under this provision should be maintained on file for possible inspection by ISOO, the Inspector

General, or other authorized personnel, in order to incorporate accountability for such exclusion decisions.

- * Section 1.7(g): "The original classification authority shall, whenever practicable, use a classified addendum whenever national security protected information constitutes a small portion of an otherwise unclassified document."

In order to most effectively reduce secrecy, this provision should be addressed to all producers of classified documents, and should apply to any document from which national security protected information can reasonably be segregated from the unclassified material, not just those with "small portions" of classified information.

- * Section 1.8(a)(2)-(4).

Delete the "to" at the beginning of these three subsections, as they are redundant.

- * Section 1.8(b): "Basic scientific research information not clearly related to the national security may not be classified." (Emphasis added.)

As recommended above under CLASSIFICATION CATEGORIES (pp. 8-9), the underlined language should be deleted to make clear that basic scientific research information is not classified.

- * Section 2.3: Classification Guides

The "concise reason for classification" required in section 1.7(a)(5) should also be required to be identified in any new classification guides for clarity, consistency, and to ensure appropriate classification.

- * Section 3.2(a): ". . . Agencies shall coordinate their [declassification] review of national security protected information with other agencies that have a direct interest in the subject matter."

Declassification authorities at originating agencies should be given unrestricted authority to declassify. Further, when

originating agencies cannot be located or are unresponsive, the agency in possession should be authorized to declassify in order to avoid excessive delays and unnecessary continued secrecy.

- * Section 3.4(e): "The Secretary of State shall commence negotiations with the appropriate officials of a foreign government . . . to modify any treaty . . . that requires the classification of information longer than 40 years . . . unless the treaty . . . pertains to information that may otherwise remain classified beyond 40 years under this Section." (Emphasis added.)

As currently drafted, this provision operates circularly with section 3.4(b)(4), which permits information to remain classified beyond 40 years "under this Section" if a treaty requires it. The underlined words should be deleted to make clear that the only treaties that are exempt from renegotiation by the Secretary are those that require the secrecy of information in categories (1)-(3) of subsection 3.4(b), and not category 3.4(b)(4).

A new subsection should also be added directing that:

"The Secretary of State, in the course of modifying treaties or agreements in accordance with section 3.4(e) or in negotiating new treaties, shall (1) seek to ensure that information shall be classified only if it meets the requirements of this order and that such information shall not be classified beyond 20 years and (2) encourage all parties to seek declassification as early as possible."

Finally, language should be added that directs agencies to actually negotiate this issue and refrain from automatically inserting into such instruments language that limits access to information and then assuming that foreign governments will demand its presence as a condition of their agreement and participation.

- * Section 4.4(a)(1) Special Access Programs: ". . . These officials shall keep the number of these programs at an absolute minimum, and shall establish them only upon a specific finding that: (1) The vulnerability of, or threat to, specific information is exceptional; or (2) the normal criteria for determining eligibility for access applicable to information classified at the same level are not deemed sufficient to protect the information from unauthorized disclosure."

To ensure that special access programs are set up only when truly needed, they should be established only when both requirements are met. Therefore, the "or" between (1) and (2) should be changed to "and".

- * Section 4.1(h): "'Special access program' means a program authorized by an agency head for a specific class of national security protected information that imposes safeguarding and access requirements that exceed those normally required for information at the same classification level." (Emphasis added.)

SAPs must of course be authorized, but authorization should be a requirement, not part of the definition. If SAPs are authorized by definition, then unauthorized SAPs would not be SAPs at all, and could not be in violation of the Order. Section 4.4(a) makes it sufficiently clear that legitimate SAPs must be authorized by agency heads. Accordingly, the phrase "authorized by an agency head" should be deleted.

- * Section 4.5 Access by Historical Researches and Former Presidential Appointees.

Broaden the definitions to include former government employees who have not been Presidential appointees, but who need access to their own papers for research and writing purposes (such as career diplomats).

- * Section 5.3 Information Security Oversight Office.

Add a subsection that requires that directives issued by ISOO be subject to public notice and comment: "Directives issued by the Director of the Information Security Oversight Office shall be subject to public notice and comment."

Please contact Kate Martin at the ACLU (202-675-2327), Sheryl Walter at the National Security Archive (202-797-0882), or Steve Aftergood at the Federation of American Scientists (202-675-1012) for more information.

November 1, 1993

TO: PRD 29 TASK FORCE, INFORMATION SECURITY OVERSIGHT OFFICE

FR: AMERICAN CIVIL LIBERTIES UNION, NATIONAL SECURITY ARCHIVE,
AND FEDERATION OF AMERICAN SCIENTISTS

RE: ANALYSIS OF DRAFT EXECUTIVE ORDER ON CLASSIFICATION
CIRCULATED BY PRD 29 TASK FORCE

The following are our comments on the August 31 draft Executive Order on classification prepared by the PRD 29 Task Force. We first discuss the major issues that we believe need to be addressed in the current draft in order for it to effect real change in the system and restore the public's right to know government information. We then address other substantive matters that should be corrected. Finally, we have provided a section-by-section commentary of technical changes that we think will clear up ambiguities and better ensure that the intent of increased openness is achieved with the new order. We appreciate your consideration of our views, and hope that you will provide a mechanism for further public comment before the final version is presented to the President.

MAJOR ISSUES

- * The proposed criteria for classifying information related to the national defense or foreign policy are too broad and will not result in any significant cure of the current problem of classifying too much information crucial to public policy debates. In order to remedy this:

The order should require that information may be classified only if the potential harm to national security from disclosure outweighs the public interest in disclosure. The public interest in disclosure applies not only to information relevant to public debate on foreign policy and national defense matters, but also includes the scientific, technological, and economic benefits of disclosure. Such a test would mean, for example, that the concept or cost of weapons systems would have to be public, although the details could be kept secret. Consideration should also be given to the efficiency costs within the government from restricting information and to the monetary costs of classification.

Public interest balancing should be included at all stages of classification and declassification.

In addition, the classification categories in section 1.5 of the new order need to be narrowed.

- * The draft allows for information to be initially classified for longer periods of time than did the Carter and Nixon Executive Orders, although the exceptions for extending classification are narrower. Thus, the maximum time periods for classifying information at the **Top Secret** and **Secret** levels should be 10 and 6 years, respectively, not the suggested 15 and 10 years. In addition, the authority to extend classification beyond these periods should be limited to a few high-level officials.

- * The provisions in the current draft for declassifying historical documents are unlikely to result in significant amounts of information being made public.

The automatic declassification schedules are longer than in the Nixon and Carter orders, although again the exceptions are narrower. For the next ten years, there would be no automatic declassification of documents less than 40 years old. An automatic declassification date should be established, but it should be 20 years and not the suggested 40 years.

The proposed reliance on systematic review to declassify documents more than 25 years old is unrealistic and prohibitively expensive. Automatic declassification should be substituted for systematic review for documents more than 20 years old. Instead of systematic review for more recent documents, the order should require block review of files relating to prioritized topics with an emphasis on issues of broad public interest.

- * The draft does not go far enough to restrict the use of special access programs. Special access programs should only be used for intelligence and operations programs. Acquisition and other existing special access programs should be protected under the standard classification system. As is widely acknowledged, the best way to keep truly sensitive information secret is to limit the number of secrets.

SUBSTANTIVE ISSUES

PREAMBLE

We commend the recognition in the draft, as set forth in the preamble, that the end of the Cold War provides an opportunity to "emphasize our commitment to an open Government." We would urge you to explain in greater detail the reasons for openness: that unless the American people can inform themselves about the activities of their government, there can be no democratic decision-making. At the same time we are concerned about the vagueness of the reference to maintaining information in confidence and about the reference to our national priorities. The national priority is defending the nation; classifying information is simply a means to that end. We suggest that the preamble simply refer to the fact that the national interest requires that certain critically sensitive information related to the national defense be exempted from public disclosure.

FOREIGN GOVERNMENT INFORMATION (SEC. 1.1(d))

The claimed need to protect "foreign government information" is often invoked and has contributed greatly to the problem of overclassification. Foreign government documents, not information, should be classified only when the foreign government expressly requires that the specific documents be held in confidence and the documents relate to the national defense or foreign policy of the United States. Oral information received from a foreign government should be classified according to the usual standards. Most such communications will either relate to current diplomatic negotiations or may be classified in order to protect the identity of a confidential intelligence source.

U.S. government information generated as a result of a joint arrangement with foreign governments (see section 1.1(d)(2)) may be classified if it otherwise meets the standards of the order. If information does not meet classification standards, the U.S. should not agree to keep it secret. The present draft would create a potentially large loophole. See also CLASSIFICATION CATEGORIES below.

Foreign government documents should be marked with U.S. classification markings. There should be no attempt to incorporate a foreign government's system into ours. Thus section 1.7(e) should be rewritten.

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Systematic Declassification Review (Sec. 3.5)

Systematic review should be replaced by automatic declassification after 20 years and block review of more recent documents in files relating to prioritized topics of broad public interest. Systematic review of the type set up in the draft

¹ Strictly speaking, Nixon's 30 year maximum life span required systematic review of previously classified documents, not automatic declassification. (Automatic declassification at 30 years was required for any future classified documents that might be exempted from prior automatic declassification.) However, Nixon directed that no old material remain classified after the "30 year deadline" unless it was specifically exempted in writing by an agency head. [E.O. 11652, section 5(E); the "30 year deadline" for declassification of old documents is also cited in the President's March 8, 1972 speech.]

² Statement by the President announcing E.O. 11652, March 8, 1972.

³ E.O. 12065, section 3-402 required that except, for the specific, limited categories identified by agency heads, all remaining classified material "shall be declassified automatically at the end of twenty years from the date of original classification." (Emphasis added.)

order has historically failed to produce the kinds of results that are the aim of this new order. Because it is a labor intensive and costly undertaking, systematic review, unlike automatic declassification and block review, will never make available historical documents.

TRANSFER TO NATIONAL ARCHIVES (SEC. 3.3(d))

This section needs to be strengthened so that the Archives can require agencies either to declassify records or to transfer still-classified records and reimburse the Archives for the expense of declassification that the Archives undertakes when the agency has not complied with its duty to declassify. Otherwise, there is a real danger that agencies will stop forwarding to the Archives their historical materials and may use this section as the reason why they cannot comply, claiming that they lack the money and staff to declassify the material. The result would be that the Archives will lose control over important historical documents, which will be in danger of being lost or destroyed.

DECLASSIFICATION DATABASE (SEC. 3.8)

Although this database sounds good in theory, in practice it appears that it is being designed not to aid in the release of more information, but rather to limit releases to what has previously been declassified. Such a database would be a waste of time and money as well as contravening the purpose of the new Order to make more, not less, government information available to the public. If this provision is retained, it should contain stronger language as to the intent of establishing the database.

SPECIAL ACCESS PROGRAMS (SEC. 4.4(b))

As noted above, SAPs should be limited only to intelligence and operations programs in order to eliminate the most frequently abused category of SAPs. In addition, the order should make clear that cover stories or other active deception practices should not be utilized as a security measure in special access programs, except regarding combat operations in time of armed conflict. The United States should renounce the use of official deception because of the damage to the credibility of the government and to the political well-being of the nation. This problem is not substantially mitigated by the reporting of deception activities to a small group of Members of Congress and their staff.

INTERAGENCY SECURITY CLASSIFICATION APPEALS PANEL (SEC. 5.4)

In order for a new appeals panel to exercise effective oversight on declassification decisions, its members should be independent of the "user" agencies within the Executive Branch. Thus Option Six is the only alternative that provides a truly independent review authority. We suggest that this panel also be given jurisdiction to hear FOIA appeals, subject to reversal only by the President.

SCOPE OF ORDER (SEC. 6.1(a))

Section 6.1(a) -- "Nothing in this Order shall supersede any requirement made by or under the Atomic Energy Act of 1954, as amended, or the National Security Act of 1947" -- simply states the law. However, the Executive Order should also make clear both that the reference in the National Security Act to protecting sources and methods means sources and methods that qualify for classification under this order and that the classification standards for sources and methods are the same as for other information.

RIGHT OF CONGRESS TO RECEIVE CLASSIFIED INFORMATION (SEC. 4.2)

The authority of Congress to demand and receive information from the Executive Branch and the President's authority to claim executive privileges are constitutional matters not subject to change by an Executive Order. Therefore, we do not think that section 4.2(d) concerning disseminations of information outside the Executive Branch should be included in the Order. If the subject of dissemination to Congress is addressed at all, we suggest that the order make clear that while there is an executive privilege, classification per se is not a basis for withholding information from Congress.

TECHNICAL CORRECTIONS

- * Section 1.1(c): "'National security protected information' means information that has been determined pursuant to this Order or any predecessor order to require protection against unauthorized disclosure or uncontrolled dissemination." (Emphasis added.)

The phrases "or any predecessor order" and "or uncontrolled dissemination" are both superfluous and should be deleted.

- * Section 1.3(c): "If there is a reasonable doubt about the appropriate level of classification, it shall be classified at the Secret level." (Emphasis added.)

To clarify the requirement that the authority has already determined that the material requires classification, add to beginning of sentence the underlined phrase: "If it is determined that information needs to be classified but there is . . ." This change also is consistent with section 1.2(b).

- * Section 1.4(c)(4): "Each delegation of original classification authority . . . shall identify the official by name or position title."

The "position title" should be required in every instance to make it clear that classification authority is associated with the job as well as the individual. This could be done by changing "or" to "and".

- * Section 1.7(a) Identification and Markings

The effective date of original classification (which may be the same as the date of the document) should probably be added to the required markings, since other sections (such as 1.6(b) & (c)) depend upon it.

- * Section 1.7(b): "Specific information contained in paragraph (a), above, shall be excluded if it would unnecessarily reveal additional national security protected information."

Any information "excluded" under this provision should be maintained on file for possible inspection by ISOO, the Inspector

General, or other authorized personnel, in order to incorporate accountability for such exclusion decisions.

- * Section 1.7(g): "The original classification authority shall, whenever practicable, use a classified addendum whenever national security protected information constitutes a small portion of an otherwise unclassified document."

In order to most effectively reduce secrecy, this provision should be addressed to all producers of classified documents, and should apply to any document from which national security protected information can reasonably be segregated from the unclassified material, not just those with "small portions" of classified information.

- * Section 1.8(a)(2)-(4).

Delete the "to" at the beginning of these three subsections, as they are redundant.

- * Section 1.8(b): "Basic scientific research information not clearly related to the national security may not be classified." (Emphasis added.)

As recommended above under CLASSIFICATION CATEGORIES (pp. 8-9), the underlined language should be deleted to make clear that basic scientific research information is not classified.

- * Section 2.3: Classification Guides

The "concise reason for classification" required in section 1.7(a)(5) should also be required to be identified in any new classification guides for clarity, consistency, and to ensure appropriate classification.

- * Section 3.2(a): ". . . Agencies shall coordinate their [declassification] review of national security protected information with other agencies that have a direct interest in the subject matter."

Declassification authorities at originating agencies should be given unrestricted authority to declassify. Further, when

originating agencies cannot be located or are unresponsive, the agency in possession should be authorized to declassify in order to avoid excessive delays and unnecessary continued secrecy.

- * Section 3.4(e): "The Secretary of State shall commence negotiations with the appropriate officials of a foreign government . . . to modify any treaty . . . that requires the classification of information longer than 40 years . . . unless the treaty . . . pertains to information that may otherwise remain classified beyond 40 years under this Section." (Emphasis added.)

As currently drafted, this provision operates circularly with section 3.4(b)(4), which permits information to remain classified beyond 40 years "under this Section" if a treaty requires it. The underlined words should be deleted to make clear that the only treaties that are exempt from renegotiation by the Secretary are those that require the secrecy of information in categories (1)-(3) of subsection 3.4(b), and not category 3.4(b)(4).

A new subsection should also be added directing that:

"The Secretary of State, in the course of modifying treaties or agreements in accordance with section 3.4(e) or in negotiating new treaties, shall (1) seek to ensure that information shall be classified only if it meets the requirements of this order and that such information shall not be classified beyond 20 years and (2) encourage all parties to seek declassification as early as possible."

Finally, language should be added that directs agencies to actually negotiate this issue and refrain from automatically inserting into such instruments language that limits access to information and then assuming that foreign governments will demand its presence as a condition of their agreement and participation.

- * Section 4.4(a)(1) Special Access Programs: ". . . These officials shall keep the number of these programs at an absolute minimum, and shall establish them only upon a specific finding that: (1) The vulnerability of, or threat to, specific information is exceptional; or (2) the normal criteria for determining eligibility for access applicable to information classified at the same level are not deemed sufficient to protect the information from unauthorized disclosure."

To ensure that special access programs are set up only when truly needed, they should be established only when both requirements are met. Therefore, the "or" between (1) and (2) should be changed to "and".

- * Section 4.1(h): "'Special access program' means a program authorized by an agency head for a specific class of national security protected information that imposes safeguarding and access requirements that exceed those normally required for information at the same classification level." (Emphasis added.)

SAPs must of course be authorized, but authorization should be a requirement, not part of the definition. If SAPs are authorized by definition, then unauthorized SAPs would not be SAPs at all, and could not be in violation of the Order. Section 4.4(a) makes it sufficiently clear that legitimate SAPs must be authorized by agency heads. Accordingly, the phrase "authorized by an agency head" should be deleted.

- * Section 4.5 Access by Historical Researches and Former Presidential Appointees.

Broaden the definitions to include former government employees who have not been Presidential appointees, but who need access to their own papers for research and writing purposes (such as career diplomats).

- * Section 5.3 Information Security Oversight Office.

Add a subsection that requires that directives issued by ISOO be subject to public notice and comment: "Directives issued by the Director of the Information Security Oversight Office shall be subject to public notice and comment."

Please contact Kate Martin at the ACLU (202-675-2327), Sheryl Walter at the National Security Archive (202-797-0882), or Steve Aftergood at the Federation of American Scientists (202-675-1012) for more information.