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MEMORANDUM FOR: Deputy General Counsel

STAT FROM: [redacted]
Special Assistant to the DCI for Compartmentation

SUBJECT: Executive Order 12065

1. As promised in the meeting called by the Director of Information Services on 19 February 1981, the following are proposals for changes in Executive Order 12065 formulated by the APEX Control Staff. These comments are keyed to the paragraph numbers in the Executive Order:

1-201. In view of the Director of Central Intelligence holding Cabinet status under President Reagan, it may be appropriate to place him after the Secretary of Energy in the list of officials with Top Secret classification authority.

1-204. It is suggested that the title of this paragraph be changed to "Limitations on Delegation of Original Classification Authority."

1-303. Unauthorized disclosure of classified foreign government information.... (This change would make specific the intent to protect only classified information.)

4-101. Add to existing test: For special access programs relating to intelligence sources and methods, access approvals shall be in accordance with applicable DCI directives.

4-103. Add to existing text: For special access programs relating to intelligence sources and methods, standards for control and protection will be as prescribed in DCI directives or National Foreign Intelligence Board policies.

4-201. Delete the words, "...and, for matters pertaining to intelligence sources and methods, by the Director of Central Intelligence." Substitute the following: For special access programs pertaining to intelligence sources and methods, this function will be executed by the Director of Central Intelligence, who will prescribe security policies and standards for such programs.

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4-202(b). The number of persons having access will be maintained at a minimum commensurate with the objective of providing extra protection for the information involved. (The requirement that programs be "reasonably small" is clearly indefinable.)

4-204. Delete "Each of those agency heads shall also establish and maintain a system of accounting for special access programs." Substitute: Each of those agency heads, and for intelligence-related special access programs, the Director of Central Intelligence shall also establish and maintain a system of accounting for special access programs.

4-401. Delete existing text and substitute: Reproduction of classified documents may be prohibited or restricted by the originator. (This removes the mandatory strictures on reproduction of Top Secret material, but permits originators to impose special requirements.)

4-202. Delete existing text and substitute: Dissemination of classified documents by recipients may be restricted by originators. (This permits the use of an ORCON-type restriction on documents of any classification.)

4-405. Delete the final words, "...they are used." Substitute: ...after such a determination has been made.

2. Again, without great passion, I suggest that the only effective and economical process for achieving declassification of intelligence information is to require that a declassification date be determined as a part of the classification process. Perforce, such a date would begenerally well beyond the 6-, 20- and 30-year periods mentioned in 12065 and would be considered reprehensible by the present historians. The out for such complaints would be provision for classification review on request for documents beyond a specified age, preferably not less than ten years.

3. I have worried this problem for some years as a result of FOIA involvement and I cannot conceive any other process of equeal economy and clarity. Alternatives require some sort of substantive review and knowledgeable people to do the reviews. And the review process ambiguity is rampant.

4. The above provides the extent of changes conceived by this Staff to date. If further changes occur to us, we will advise you. If you require further development of the information provided, please call.

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