

TAB

THE WHITE HOUSE
WASHINGTON

March 15, 1973

MINUTES OF MARCH 7, 1973
MINUTES OF THE INTERAGENCY CLASSIFICATION
REVIEW COMMITTEE

Participants: Chairman John S. D. Eisenhower
Robert T. Andrews - Defense
Charles N. Brower - State
Lawrence R. Houston - CIA
Charles L. Marshall - AEC
James B. Rhoads - Archives
Leon Ulman - Justice

STATINTL Attending:

Fredericka Paff - Justice
Mark A. Spiegel - State
Richard C. Tufaro - Domestic Council

Proceedings:

Ambassador Eisenhower began by describing his meeting at the National Archives of the previous day with the Associated Press Managing Editors Association. This meeting had been requested, at the suggestion of Herbert Klein, by Wendell C. Phillippi of the Indianapolis News and President of the Association. Ambassador Eisenhower said the meeting with these representatives of the press had been congenial. Dr. Rhoads and Dr. O'Neill briefed the gathering of reporters on the efforts by the Archives to declassify its voluminous World War II holdings by 1975. Dr. Rhoads said he believed the group left the meeting with a better appreciation of the magnitude of the declassification task. It was pointed out that the interview was given on an off the record basis. Ambassador Eisenhower said it would be preferable to have it on the record in order to publicize the work of the Committee. Mr. Tufaro said he would call Mr. Phillippi to advise him that the meeting could be treated as on the record.

Ambassador Eisenhower then turned to the following items which are numbered to accord with the agenda:

1. Since there were no additions or deletions, the minutes of the January meeting were approved by the Committee. Mr. Houston asked if he could briefly introduce an item of pending business, namely, the Associated Press request for the declassification of CIA documents related to the overthrow of Guatemalan President Arbenz. He gave the Chairman a copy of a letter from Dr. Schlesinger to Mr. Ehrlichman, explaining that the Agency would re-consider the request and attempt to accommodate the Associated Press without compromising its sources and methods of intelligence gathering. Ambassador Eisenhower agreed to permit withdrawal of the appeal from the Committee agenda.
2. Mr. Brower outlined some of the problems involved with application of the 30 year declassification rule to documents originated by foreign governments. In conversations with the embassy representatives of various foreign governments, particularly Great Britain, State Department officials have learned that these governments are concerned about the disclosure of their classified information by the United States after only 30 years when the same information may remain classified in the country of origin for perhaps 50 years or more. The Executive Order provides that the only documents which may be exempted from the 30 year rule are those which have been extended by a personal determination of the Department Head. State Department holdings of classified documents originated by foreign governments are so voluminous that it would be physically impossible for the Secretary of State to personally consider them on a case-by-case basis. Mr. Brower proposed that the solution to this problem may be an amendment to the Order stating that sensitive foreign documents may be exempted from the 30 year rule and remain classified until released by the foreign government without a personal determination by the Department Head. Otherwise it seems that foreign governments will have to make a decision whether to share their classified information with the United States in light of our 30 year declassification rule. As Mr. Brower pointed out, it is obvious that these governments will be reluctant to confide in the United States under such terms and our access to the sensitive information of foreign countries will diminish considerably.

Dr. Rhoads stated that both the British and Canadian governments are operating under a 30 year rule although documents of a very sensitive

nature, similar to our exempt documents, are being exempted from declassification. Moreover, the British and Canadians have declassified most of their World War II documents. Since the British exemption standards are applied on a basis similar to that of the United States, it seems that some sort of reciprocal agreement can be arranged which would be more useful than adoption of a strict 50 year rule.

Mr. Houston concurred in Dr. Rhoads' judgment, saying that the British have cleared much intelligence material for release. Mr. Marshall, however, noted that the AEC has in its possession certain British documents relating to the Manhattan District project which cannot be released for an indefinite period of time.

Mr. Tufaro asked whether the Departments have made a blanket assumption that all foreign classified material is exempt from the General Declassification Schedule. The representatives of State and AEC replied that this is not the case. On all classified documents submitted to the United States by foreign governments our government is apprised of the wishes of those governments with respect to their confidentiality.

Mr. Tufaro said that it would be unreasonable to give a blanket extension to the 30 year rule. It would be preferable to give separate consideration to that sensitive portion of foreign material which warrants classification beyond the 30 year limit. Mr. Brower reminded the Committee that the authority to withhold material in this manner is not presently contained in the Executive Order. The language of the Order would have to be amended to permit this type of exemption.

Ambassador Eisenhower suggested that the solution to the problem might be a liberal interpretation of the existing language of the Order to allow delegation of the Department Heads' responsibility for determining whether foreign classified documents warrant exemption from the 30 year rule. Mr. Ulman, however, thought that amendment of the Executive Order is the clearest way to handle the problem because it would leave no doubt as to the existence of authority to withhold such documents if a test case arises. It was the sense of most of the group that a liberal interpretation of the power of Department Heads to exempt from the 30 year rule is the better option. It was then suggested that additional study of the problem is also needed and that a subcommittee should discuss it further and present recommendations to the Committee. It was decided that officials from the State Department, the National Archives and the CIA should form a subcommittee to be chaired by Mr. Tufaro.

3. Mr. Tufaro noted that the draft Progress Report has an inconsistency between the figures quoted in the body of the report and those in the appendix. This is due to the fact that the appendix incorporates figures from the most recent quarterly reports while those in the body of the report are from the October 1972 quarterly reports. He said that the earlier figures will be changed to reflect the latest reports.

He went on to say that the positive accomplishments of the declassification program which are contained in the Progress Report make it worth publicizing. He asked the Committee members to submit specific comments in writing if they wish to make changes in the content of the report. In reply to one question, it was noted that the addressee of the report would be the President. Mr. Andrews suggested that the report should be viewed with two considerations in mind. First, the Moorhead Committee would probably want to examine it. Second, the question of executive privilege could become involved on the ground that it is a Presidential advisory paper. Mr. Brower said that he does not believe executive privilege would be a problem with this report.

4. Ambassador Eisenhower turned the discussion of this item over to Mr. Tufaro. With regard to the quarterly reports, Mr. Andrews stated that the Defense Department's objections to the Report of Classification Abuses had not been reflected in the final drafts. The Defense Department believes this report should be limited to repeated or intentional classification abuses. As presently drafted the report would cover every instance of technical violation. Mr. Tufaro replied that the instructions state that it is only necessary to report those abuses which are discovered in connection with a departmental inspection program. He also pointed out that it is impossible to detect the repeated abuser unless a record is kept of individual violations. Mr. Andrews then asked if it is necessary to submit the names of classification abusers to the ICRC. Mr. Tufaro responded that the Committee is not really interested in lists of names, but rather just in ensuring that the Departments maintain their own records reflecting the individuals' names. It was suggested that the requirement for the submission of names of violators be dropped from the quarterly report. Ambassador Eisenhower directed that the form for reporting classification abuses be re-drafted to incorporate this change.

Mr. Andrews also reported that Defense is presently conducting a

feasibility study on the statistical reporting requirement. He said he hopes the report requirements can be re-considered in light of Defense's findings on the cost feasibility. The Department does not want to be charged by the Moorhead Committee with failure to follow the rules. Mr. Tufaro said that everyone should keep in mind that there is always the possibility of revising the quarterly reports if they do not work well within the next year.

In response to a question from Mr. Ulman, it was noted that publication of the data index system and the quarterly reports in the Federal Register is optional, but that the ICRC appeals procedures should be published.

As to the current condition of the appeals procedures, it was reported that they are in final form for publication with only the ICRC jurisdiction relative to the disclosure of intelligence sources and methods remaining to be decided. Until this question is resolved, publication of the procedures will be postponed.

Mr. Tufaro also asked whether Appendix B of the Progress Report (the Order designating certain Federal officials with classification authority) should be published in the Federal Register. The Committee members agreed that it should be considered an expansion of Executive Order 11652 and should be a matter of public record.

5. With respect to the current status of the World War II declassification project, Mr. Tufaro reported that he had met with Alan Thompson of National Archives and learned that NARS is experiencing difficulty in expediting security clearances for the people involved in the project. Examination of Top Secret documents requires a full field clearance which takes 90 days for processing. By getting the World War II material downgraded from Top Secret to Secret, processing time can be reduced to about 30 days. It was agreed by the Committee members that ICRC action on this should consist of a memorandum from Ambassador Eisenhower to the Department Heads asking that Top Secret material in the National Archives be downgraded to Secret.

New Business

1. Mr. Ulman asked if any of the Committee members had views on whether it is possible to classify a document which should have been classified 2 years ago and is presently the subject of Freedom of

Information Act litigation. Mr. Brower replied that the State Department has done this before, though under different circumstances. The members of the Committee seemed to agree that as long as there has been no disclosure of the material to date, classifying it now would not be improper.

2. Ambassador Eisenhower told the Committee that it had been suggested at his meeting with the press that some departments have denied declassification requests on the ground of insufficient particularity when, in fact, the documents have been located. He said he was shocked at this suggestion and told the reporters that he was certain it is not occurring. He reminded the Committee members that the ground of insufficient particularity should not be used as a reason for denial when documents are being withheld because they warrant continued classification.

3. Mr. Houston mentioned that the CIA has received a new declassification request for OSS documents relating to the activities of a former CIA agent. The Agency seems to have found a way to satisfy the requester by answering his specific questions, but without furnishing documents which might disclose sources or methods.

Ambassador Eisenhower adjourned the meeting. The next meeting will be held on Wednesday, April 4 at 10:00 A. M.