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09 FEB 1981

MEMORANDUM FOR THE RECORD

SUBJECT: Meeting With Officials From ISOO and NARS,  
5 February 1981 (U)

1. In attendance were Steve Garfinkel, Harry Mason, and Laura Kimberly from ISOO; Milton Gustafson, Edwin A. Thompson, and Jo Anne Williamson from NARS; and, representing the Agency, [redacted] from FPLG, [redacted] from RMD, [redacted] from CRD, and [redacted] from IPD.  
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2. This meeting was a followup to an earlier meeting with Harry Mason of ISOO. NARS officials, particularly Mr. Thompson, Chief of the Records Declassification Division, were concerned over the fact that, in responding to FOIA requests, the Agency sometimes invoked FOIA exemption (b)(3) only for information when a case could be made for asserting (b)(1) as well. They were afraid that that could not assure us that the information would not be inadvertently released in the future. Classified material is stored in a separate vault at NARS. Unclassified material is kept in the archives boxes, and the archivists are charged with screening the boxes before they are made available to researchers to ensure that documents covered by NARS restrictions or FOIA exemptions are not included. NARS takes the position that all of the FOIA exemptions other than (b)(1) are discretionary and that their personnel are authorized to make these judgments. Subsequently, Mr. Gustafson, who is Chief of the Diplomatic Branch at NARS, approached ISOO, asking whether the CIA was

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3. In the earlier meeting, Mr. Mason seemed to be persuaded that, depending upon the context, [redacted] often has to be excised from documents. The DDO spokespersons explained their reluctance to claim that the release of information over 30 years old warranted continued classification, i.e., that its unauthorized disclosure would result in "at least identifiable damage to the national security," even though it concerns intelligence sources and methods. Mr. Mason was also assured that the courts had consistently ruled that the CIA statutes, 50 U.S.C. 403(d)(3) and 50 403 U.S.C. 403g, were valid (b)(3) statutes. In addition, he was advised that we did not consider the application of these statutes to be discretionary and that it was incumbent upon NARS

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to develop and implement procedures to ensure that none of our (b)(3) information is ever disclosed to researchers without CIA's prior approval. (Much of this had been discussed previously with Mr. Thompson in telephone conversations with [redacted] (U)

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4. The 5 February meeting, which was held at CIA Headquarters Building, was convened at the request of Mr. Thompson. It started out with Mr. Thompson summarizing the problem. He seemed somewhat perplexed by the fact that CIA representatives had reviewed these documents under the systematic review program and had certified their need for continued classification. Yet, when the documents were referred to the Agency in connection with FOIA requests, the CIA did not claim the (b)(1) exemption. He asked once again if it would not be simpler for the Agency to cite (b)(1) as well as (b)(3), and suggested that ISOO could promulgate a definition of "identifiable damage" broad enough to cover the information in question. The DDO spokespersons pointed out that the reviewing officials, knowing that they might have to sign affidavits at a later date, would refuse to do this. It was pointed out that it seemed ironic for NARS and ISOO to criticize the Agency for declassifying information when they are constantly admonishing federal agencies against needless classification. (U)

5. Mr. Gustafson again questioned the need to withhold this information under (b)(3), noting that researchers can very easily insert the initials CIA in the blanks. The importance of avoiding official acknowledgement of the location of CIA stations in particular locations was explained to him, along with the possible consequences of such an acknowledgement. When Mr. Gustafson questioned whether the Agency's two statutes qualified as valid (b)(3) laws, he was assured that the courts had consistently accepted them as such. This was verified by Messrs. Thompson and Garfinkel. (U)

6. Once that there was general acceptance of the fact that the (b)(3) information identified by the Agency would have to be protected from inadvertent disclosure, the discussion got around to ways and means. The NARS people seemed to think that the best thing would be to place the sanitized version of the document in the archives box, attached to a withdrawal sheet explaining the location of the full-text version. Instead of storing the full-text copy in an envelope at the back of the archives box--the usual practice--Mr. Gustafson believed that it would be preferable to set up a special file. As an added precaution, it was suggested that the Agency might ask the Archivist to add a new general restriction to cover the sort of information the Agency wants protected. What is needed is a letter from the DCI to the

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Archivist of the United States, requesting that a restriction be placed on all documents containing information relating to intelligence sources and methods. The letter would have to explain in some detail just what constitutes an intelligence source or a method, and should also note that such things as the names, titles, etc., of Agency personnel and organizational units are included. The letter would have to specify the period of time that the information has to be protected. For example, we could have the restriction good for 75 years after the date that the document was originated. Or we could have the restriction effective for a lesser period of time, such as 40 years, after which time it would be subject to a second review by the Agency. Mr. Thompson and Mr. Garfinkel offered to review our letter in draft to make certain that it met their needs. Later, in a telephone conversation with [redacted] Mr. Thompson offered to consult with the drafter at any time. The CIA people present at the meeting seemed to agree that it would be appropriate that OGC prepare the letter for the DCI's signature. (U)

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7. Moving on to another topic, Mr. Thompson questioned [redacted] on the matter of the restrictions the Agency has placed on access to the OSS records accessioned by NARS last year. When [redacted] indicated that the CIA might not be willing to liberalize them, Mr. Thompson pointed out that the OSS records in RG 226 had been open to researchers for years, without any requirement that NARS obtain the consent of individuals whose names appear in the documents. He stated, further, that he regarded the restrictions as totally unreasonable and that NARS never should have accepted the records under those terms. Mr. Thompson said that, unless an accommodation was reached, NARS would have to return the records to CIA's custody. [redacted] observed that a William Cassidy of California had notified IPD of his intention to request the records under the FOIA unless NARS made them available to researchers. (U)

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8. Actions required of the Agency:

a. Some office (OGC would seem to be the logical component) must be tasked with drafting a letter from the DCI to the Archivist of the United States asking that NARS add to its general restrictions provisions for the protection of intelligence sources and methods, etc., as discussed in paragraph 6, above. If further guidance is needed, Mr. Thompson of NARS can be reached on 523-3165. (U)

b. We need to resolve the problem of the restrictions placed upon the OSS records which NARS finds unacceptable.

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Otherwise, NARS is apt to return the records to the CIA and we will be faced with processing them under the FOIA--in which case, only that information which, if disclosed, would clearly constitute an unwarranted invasion of the privacy of others can be withheld. (Under guidelines approved by former DCI William Colby, with few exceptions, names appearing in OSS documents have been released in fulfilling FOIA requests.) (U)

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c. We obviously need to sharpen our criteria as to what information requires classification beyond 20 years. It must appear to NARS that the Agency's left hand does not know what its right hand is doing.

Yet

FPLG, when considering the same documents under the FOIA, sometimes says "not so!" To further complicate the situation, when such documents are considered in connection with mandatory review requests from the Presidential libraries, FPLG, in order to protect the information, will maintain that classification must be continued. (Under GSA regulations, such documents are not public records and access is controlled exclusively by classification and donor restrictions.) (U)



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