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ER 1604x 88

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SUBJECT:

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ROUTING AND RECORD SHEET

SUBJECT: (Optional) Response to John Buchanan, Chairman, People for the American Way, declining invitation to attend 13 June 1988 conference

STAT

FROM: John L. Helgerson
Director of Congressiona

NO. OCA 88-1300

DATE 26 APR 1988

TO: (Officer designation, room number, and building)	DATE RECEIVED	DATE FORWARDED	OFFICER'S INITIALS	COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)
1. William Baker Director of Public Affairs		4/26		
2.				
3. Executive Registry	26 APR 1988			
4.				
5. Executive Director	27 APR 1988			
6.				
7. Deputy Director of Central Intelligence P	27 APR		RG	
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9. Return to Director of Congressional Affairs				
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Central Intelligence Agency

Washington, D.C. 20505

27 APR 1988

OCA 88-1300

Mr. John H. Buchanan, Jr.
Chairman
People for the American Way
2000 M Street, Suite 400
Washington, D.C. 20036

Dear Mr. Buchanan:

I very much appreciate your inviting me to participate in your People for the American Way conference on 13 June 1988. You have picked a challenging and important subject for discussion. Unfortunately, my schedule will not permit me to attend. Thank you again for thinking of me.

Sincerely,

/s/ Robert M. Gates

Robert M. Gates
Deputy Director of Central Intelligence

Distribution:
Orig. - Addressee
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DATE APR 1988

REMARKS:

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Remarks 20 APR 1988

John - per our agreement you may want to work up reply for Bob. He indicated to me "regrets" would appear to be in order.

STAT

D/PAO

Executive Secretary

19 Apr 88
Date

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Executive Secretary

19 Apr 88

Date

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Per Diane, should go to Public affairs first thing tomorrow morning. Mr. Gates talked to Public affairs about this.

Betty
4/18/88

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The non-partisan constitutional liberties organization.

April 11, 1988

The Honorable Robert M. Gates
Deputy Director of Intelligence
Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Gates:

I am writing to invite you to participate in People For the American Way's conference on government secrecy and the Congress entitled, "Does Congress Have a Need to Know?" It will be held in the Russell Senate Caucus Room from 11:30 am until 2:00 pm on Monday, June 13, 1988.

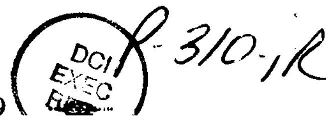
Last December, People For the American Way released a comprehensive study entitled Government Secrecy: Decisions Without Democracy (a copy is enclosed). It documents a rise of lifetime publication restrictions on current and former federal employees; a dramatic increase in the classification of documents; the growth of 400% over seven years in the Pentagon's "black budget"; new restrictions on the free flow of scientific and research data; and the proliferation of National Security Decision Directives.

We at People For the American Way are concerned about how this trend effects citizens' ability to be informed participants in their government, and whether it compromises our system of checks and balances. These issues are especially important in the aftermath of the Iran-Contra affair and in this election year as the agenda for a new administration is debated.

The primary focus of the conference will be a panel discussion on Congress's "need to know" and the limits on Executive decision-making under our constitutional system. I would like you to serve on the panel. Your vast experience and knowledge would be bring an invaluable perspective to the discussion.

Norman Ornstein of the American Enterprise Institute will be the moderator. William Colby, Rep. Lee Hamilton, Rep. William Dickinson, and Scott Armstrong of the National Security Archive have agreed to participate on the panel. Others we have invited are Sen. George Mitchell, Clark Clifford, and Cokie Roberts of National Public Radio.

The panel will be the centerpiece of the conference. It is structured to provide ample opportunity for discussion and



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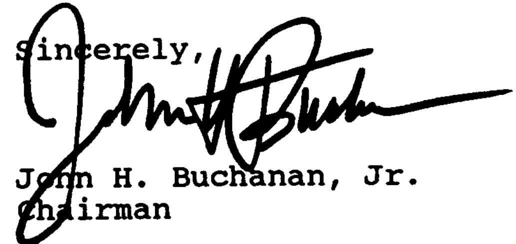
We have reserved the Russell Caucus Room in the Russell Senate Office Building for the event. Once again, the date is Monday, June 13, 1988 from 11:30 until 2:00 pm. We expect an audience of over 250 government officials, congressional staff, research institution specialists, scholars, and information specialists. We anticipate C-SPAN coverage and national press attention. The proceedings from the conference will be published and distributed widely to the media and the public.

Please do not hesitate to contact me if you have any questions or suggestions about the conference, or if we can be of assistance. Thank you for your consideration.

Sincerely,



John H. Buchanan, Jr.
Chairman

JHB:DCC:me
Enclosures

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GOVERNMENT SECRECY: DECISIONS WITHOUT DEMOCRACY

People For The American Way

The nonpartisan constitutional liberties organization.

Preface by
Arthur Schlesinger, Jr.

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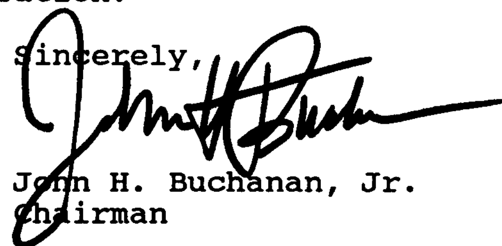

John H. Buchanan, Jr.
Chairman

JHB:DCC:me
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GOVERNMENT SECRECY: DECISIONS WITHOUT DEMOCRACY

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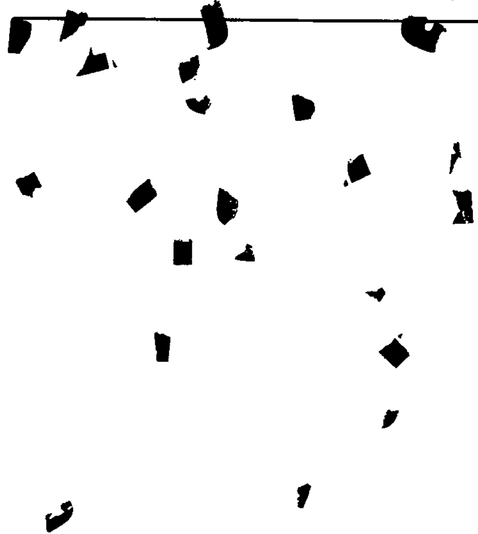
DECISIONS WITHOUT DEMOCRACY



People For The American Way

The nonpartisan constitutional liberties organization.

Preface by

Arthur Schlesinger, Jr.

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"A popular Government without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives."

James Madison

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GOVERNMENT SECRECY: DECISIONS WITHOUT DEMOCRACY

by
Steven L. Katz

Preface by
Arthur Schlesinger, Jr.

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Acknowledgements

Several individuals provided valuable assistance in reviewing this report. David Cohen emphasized the impact of secrecy on decreasing the political efficacy of citizens. Tony Podesta addressed the ways in which secrecy undercuts the role of elected officials in our representative form of government. Gary Bass and David Plocher were particularly helpful in understanding the White House Office of Management and Budget. Deep gratitude must also be extended to those in government who provided valuable assistance and insight. These individuals are career government professionals who are dedicated to the principle of maintaining an informed citizenry in a democratic society.

Recognition must also be given to the staff of People For the American Way. Especially important contributions resulted from the foresight and guidance of Melanne Verveer, the editing of Nancy Stella, the invaluable and artful work of Jill Craig in producing this report, the technical editing of Timmy Napolitano and Nadine Wesoski, and the assistance of Maria Pica.

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People For the American Way is most grateful for the generous support it has received from the Field Foundation, the Benton Foundation, and the Deer Creek Foundation.

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It is also essential to acknowledge several other public interest organizations. Many of these groups have pioneered the territory of excessive government secrecy and have worked to make our government more accountable and responsive. In many cases, the public education goals of People For the American Way pursued with this report has been made possible by the efforts and achievements of these organizations: Access Reports, Advocacy Institute, American Association for the Advancement of Science, American Civil Liberties Union, American Library Association, American Newspaper Publishers Association, American Society of Newspaper Editors, Center for Defense Information, Center for Investigative Reporting, Inc., Common Cause, Constitutional Research Institute, Data Center, FOIA Inc., Government Accountability Project, National Academy of Sciences, National Newspaper Association, National Security Archives, OMB Watch, Project for Military Procurement, Public Citizen, Reporters Committee for a Free Press, Society for Professional Journalists.

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Preface
By Arthur Schlesinger, Jr.

Secrecy is the bane of democracy because it is the enemy of accountability. The framers of the American Constitution designed a system of government intended to bring power and accountability into balance. The secrecy system, as it has been nurtured by the executive branch over the last forty years and with special zeal over the last seven years, is the indispensable ally and instrument of the Imperial Presidency.

Now no one can question the right of the state to keep certain things secret. Weapons technology and deployment, diplomatic negotiations, intelligence methods and sources, military contingency plans are among the areas where secrecy is entirely defensible. Secrecy is defensible too in certain domestic areas: personal data given the government on the presumption it would be kept confidential -- tax returns, personnel investigations and the like; and official decisions that, if prematurely disclosed, would lead to speculation in land or commodities, preemptive buying, higher governmental costs and private enrichment.

But the contemporary state has extended the secrecy system far beyond its legitimate bounds. In doing so, the target is far less to prevent the disclosure of information to enemy governments than to prevent the disclosure of information to the American Congress, press and people. For governments have discovered that secrecy is a source of power and an efficient way of covering up the embarrassments, blunders, follies and crimes of the ruling regime.

When governments claim that a broad secrecy mandate is essential to protect national security, they mostly mean that it is essential to protect the political interests of the administration. The harm to national security through breaches of secrecy is always exaggerated. The secrecy system has been breached since the beginning of the republic -- from the day in 1795 when Senator Mason of Virginia enraged President Washington by giving the secret text of Jay's Treaty to the *Philadelphia Aurora*, or the day in 1844 when Senator Tappan of Ohio enraged President Tyler by giving the secret text of the treaty annexing Texas to the *New York Evening Post*. No one has ever demonstrated that such leaks, or the publication of the Pentagon Papers either, harmed national security. No one can doubt that these disclosures benefited the democratic process.

The republic has survived great crises -- the War of 1812, the Civil War, the First and Second World War -- without erecting the suffocating structure of secrecy the Reagan administration proposes today. One wonders what greater crisis justifies the extreme measures taken and contemplated by the Reagan administration since 1981. The consequences for American democracy of the cult of secrecy may be dire. For the secrecy system not only safegaurds the executive branch from accountability for its

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incompetence and its venality. Worse, it emboldens the state to undertake rash and mindless adventures, as the Iran-contra scandal sadly reminds us. "Though secrecy in diplomacy is occasionally unavoidable," wrote James Bryce, who was not only an acute student of comparative government but also a distinguished diplomat, "it has its perils .... Publicity may cause some losses, but may avert some misfortunes." Perhaps President Reagan will one day regret that the press had not exposed his secret intentions toward Iran in time to block his ill-considered policy, as President Kennedy regretted that the *New York Times* had not played up its story on the exile invasion of Cuba. "If you had printed more about the operation," he told a *Times* editor, "you would have saved us from a colossal mistake."

Because the secrecy system is controlled by those on whom it bestows prestige and protection, it has long since overridden its legitimate objectives. The religion of secrecy has become an all-purpose means by which the American Presidency seeks to dissemble its purposes, bury its mistakes, manipulate its citizens and maximize its power. This People For the American Way report by Steven L. Katz is a meticulous and dispassionate account of the growth and widening reach of the secrecy system and of the danger it poses to American democracy. It is not too late for Congress to bring the secrecy system under control and redress the balance between presidential power and presidential accountability.

The issue is hardly new. "Executive secrecy," John Taylor of Caroline, the philosopher of Jeffersonian democracy, wrote in 1814, "is one of the monarchial customs, plausibly defended, and certainly fatal to republican government ... How can national self government exist without a knowledge of national affairs? or how can legislatures be wise or independent, who legislate in the dark upon the recommendation of one man?"

December 1987
New York

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GOVERNMENT SECRECY: DECISIONS WITHOUT DEMOCRACY

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Foreword
By John H. Buchanan, Jr.
Chairman, People For the American Way

During 1987, Americans celebrated the 200th anniversary of a system of government where "we the people" rule.

From our nation's founding, we have understood that an informed citizenry is essential to a democracy. Only an informed citizenry can debate public issues, hold elected officials accountable for their actions, and offer meaningful consent to the actions of their government.

Over the years, Americans have supported the principle of a free flow of information and ideas. During my own years in Congress, we enacted the Freedom of Information Act, which both symbolizes and protects the people's right to know what their government is doing in their name.

In recent years, however, a curtain of secrecy has fallen over many activities of our government. For many of us, the Iran-contra scandal was a rude awakening as we learned of secret actions by a shadow government operating from the White House basement. But the headlines of 1987 are just a small part of the larger story of the growth of excessive government secrecy -- secrecy that denies Americans the information we need about our government and our entire society.

In this report, People For the American Way tells the story of the institutionalization of secrecy throughout the federal government. This is the story of unprecedented controls on information: not only on defense and foreign policy issues where legitimate secrets do need to be protected but on a host of topics vital to our daily lives, from toxic wastes to occupational hazards, from new technology to the health of our children.

The report warns that excessive secrecy could become a permanent part of our government -- unless the people take notice and their elected officials take action. And this report offers an action agenda to reverse the institutionalization of secrecy and restore the American tradition of open government.

Most importantly, this report makes clear that the American people are being denied the information we need to participate in our political system and to hold our elected officials accountable for their actions. Instead of the free and open debate that is the essence of the American way, our system is increasingly characterized by "decisions without democracy": actions taken unilaterally by the Executive Branch and kept secret from Congress, the news media, and, ultimately, from the people.

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I sincerely believe that a citizenry better informed about the decisions of government is essential to the preservation and strengthening of our democratic values and our constitutional system. Only as informed citizens are we empowered to assume our rightful role as the masters, not the servants, of government.

December 1987
Washington, D.C.

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Executive Summary

Government secrecy affects the lives of all Americans. In today's complex world, what we don't know can hurt us. The importance of secrecy to the security of our nation is undeniable; however, excessive government secrecy is a serious national problem. Indeed, it has been expanded without regard to constitutional protections and has been used to restrict and circumvent the very laws that Congress passed to promote an informed citizenry and a responsive government. The result, increasingly, is a government shaping our society and our lives through decisions without democracy.

This report demonstrates that government secrecy involves the unlimited executive authority to control resources and activities both inside and outside the government. Such authority is unilaterally exercised to control governmental and social institutions upon which we depend. Excessive secrecy is not a victimless practice; it affects individuals and the future of our democratic institutions.

The Iran-contra scandal enabled Americans to see that the arrangements created at the highest level of government in pursuit of "national security" have consequences for our republic. The president secretly authorized arms sales to Iran that violated our nation's laws and foreign policy -- and contradicted the president's public pledge not to make deals with terrorists. Most disturbing is the fact that official U.S. policy was apparently created and implemented without the president's knowledge.

These events, however, were born from a secrecy system that is well established, virtually unchallenged by Congress, and given considerable deference by the courts. The years 1981-1987 stand as the most recent chapter in the development of secrecy which provides the executive branch with more power and less accountability than any other branch of government.

The National Security Council, which quietly marked its 40th anniversary in 1987, has been extensively utilized by President Reagan to issue more than 200 "secret laws" on national policy matters. Congress has virtually no knowledge of the issuance of any of the orders. Even in the case of pertinent national security matters, the appropriate committees of Congress are not informed. These have included orders that: in 1981 first sent funds for covert training of Nicaraguan rebels to Argentina; in 1983 authorized Central Intelligence Agency (CIA) training and support of secret counter terrorist squads in the Middle East for the purpose of "preemptive strikes;" in 1985 authorized agencies other than the CIA, such as the National Security Council, to engage in covert operations; and in 1986 authorized the Libyan "disinformation" campaign.

In achieving our nation's greatest military build-up during peacetime, the Reagan administration has shrouded much of the expansion, and many of the problems, in secrecy. In what is known as the Pentagon's "black budget," highly classified spending for secret weapons programs has increased from $5 billion in 1981 to at least $22 billion

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for 1988. Congress has been almost powerless to stop the expansion of secret spending even though increasing evidence points to waste of taxpayers' dollars through mismanagement, fraud, and abuse.

The growth of secrecy can be traced to the exercise of virtually unilateral presidential power in such areas as information classification, when, for example, documents are stamped "Top Secret" or restrictions such as secrecy contracts are imposed on government employees.

Since 1981 the already overloaded classification system has grown by almost two million new documents annually. This increase reverses the 30-year trend toward narrowing the classification criteria and systematizing declassification. The president has also taken unprecedented action authorizing "reclassification" of publicly released documents. Government officials have demanded the return of materials from individuals, libraries, and other institutions around the country. While information classification is essential for protecting vital secrets, overclassification overloads the system and defeats the effectiveness and integrity of such protection.

The Reagan administration's obsession with secrecy has also led to mandatory secrecy contracts for millions of government employees, many of whom have no access to classified information. Hundreds of thousands of others, including Cabinet officials, are subject to lifetime censorship agreements requiring government review of any writings or speeches even after they have stopped working for the government. These requirements infringe upon First Amendment rights, allow government officials to censor embarrassing or dissenting views, filter and narrow public debate, and prevent government and the people from learning from past mistakes. The expansion of these restrictions, in some cases unprecedented even during the most xenophobic periods in American history, has created a bureaucracy of secrecy that threatens to isolate the government from the governed.

While secrecy is often a shapeless force, its pervasiveness has become disturbingly clear in the growing gap between authority and accountability. Whether the subject has been information policy in general or specific regulatory issues about health and safety, the White House Office of Management and Budget (OMB) has become the Reagan administration's policy power base. OMB has instituted policies which increase secrecy and has conducted its own activities in secret.

The opening for such activity came as the result of a law passed by Congress to decrease wasteful paperwork volume in government, but President Reagan used OMB's powers under the act in ways beyond the boundaries set by Congress. President Reagan granted OMB unprecedented authority to control the content and the volume of all government publications, to set the information collection policies of all federal agencies, and to rewrite almost all federal regulations and studies.

The enormous role that OMB has been given in government between 1981 and 1987 is evidenced by the application of OMB's authority to oversee activities affecting

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the daily lives of Americans. By 1986 a White House report showed that OMB was reviewing and rewriting a diverse range of regulations in areas in which it had no expertise. These included civil rights, mental retardation, and cancer risks.

For three years, OMB delayed plans of the Department of Health and Human Services to place warning labels on aspirin about the fatal link between aspirin and Reye Syndrome, a life threatening condition following influenza and chicken-pox in children. Government and private medical experts concluded that 30 percent of 1,200 cases of Reye Syndrome reported annually were fatal. OMB officials responded instead to aspirin manufacturers, with whom they had met privately, who feared commercial loss if warning labels became required.

OMB's review of federal studies of occupational illness have also perpetuated health risks to citizens. Reports of birth defects and miscarriages associated with the use of video display terminals (VDTs) on computers by women led a federal agency to propose the first major scientific research project to examine this health issue. Approximately 10 million American women sit at VDTs every day. OMB thwarted the planned study, substituting a modified version submitted by industry representatives that omitted many of the questions essential to measuring the relationship of stress at work and problems of fertility.

No one is surprised to learn that government is powerful. However, it is disturbing to discover that the exercise of so much power is characterized by secrecy. OMB bypasses federal laws specifically enacted to provide citizens with knowledge of and access to government decision-making. While positioned close to the president, OMB operates from deep within an already inaccessible bureaucracy. Just as in other improper uses of government secrecy, OMB has avoided accountability and undercut the checks and balances of our constitutional system. It has made decisions without democratic input and has protected private interests, often negotiating behind closed doors.

The bureaucracy of secrecy has made citizens the lowest priority of those who "need to know." When information is not disclosed to the public, however, our government has failed to exercise its best means of maintaining the public trust.

Since 1981 the government has imposed unprecedented restrictions on information. Through attacks on the Freedom of Information Act, controls on the media, and interference with scientific and academic freedom, the government has sharply limited the free flow of information in our society.

The Freedom of Information Act, the only right to government information that the public can enforce in court, has enabled Americans to live safer and healthier lives and to govern themselves more economically and efficiently. Nonetheless, that law has been subject to administration attacks between 1981 and 1987. For example, the administration has increased the ability of the defense establishment and law enforcement agencies to deny access to records. Recently, President Reagan announced he would soon try to limit access to scientific information.

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The Reagan administration has repeatedly pressured the news media to either alter or kill certain articles, even when the information had been previously published. The CIA has threatened to prosecute major newspapers and magazines for espionage. The FBI has told former government employees that they should not publish newspaper articles commenting on current events. The potential for creating the equivalent of an "Official Secrets Act" in the United States has been greatly increased by these actions and may result from the prosecution of government employees who unlawfully disclose information -- not to foreign powers or their agents but simply to the press. In Grenada, the press was kept off the battlefield, and the public was forced to rely on official Defense Department accounts. The public was manipulated by a "disinformation" campaign aimed at derailing Libya's President Gadhafi.

Outside the walls of government, secrecy has become the catchword to cover many activities well beyond anything understood as "national security." There has been an increasing trend toward controlling information that does not originate with the government, but rather in the academic and scientific communities. Government censorship agreements have been imposed on certain scientists and university professors as part of the procedure in awarding federal grants. Military authority has been extended by President Reagan to control access to unclassified computerized information belonging to corporations, universities, and private libraries. Officials from several agencies have forced private scientific conferences to exclude foreigners and stopped the presentation of hundreds of papers on scientific subjects. In each instance the information at issue was neither classified nor government property.

At universities and colleges across the country, government controls restrict teachers and students from exercising academic freedom and threaten to hinder intellectual inquiry. The government has asked universities to conduct surveillance of foreign students at U.S. colleges and universities regarding their course work and use of library materials, laboratory equipment and computers. In some cases, it has restricted college course enrollment to "U.S. citizens only," denied immigration visas to foreigners coming to study or teach, and sought deportation of tenured professors.

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It is incumbent upon a democratic government to maintain policies permitting broad citizen access to information and wide dissemination of information. The public also has a responsibility to demand that government fulfill these democratic ideals. The urgency, however, should be addressed by the president, Congress and government officials.

Those in government who are in the best position to make changes must deepen their commitment and seek to make our system more accountable and more responsive. Respect for the law must be reinstituted as the highest of priorities. The executive branch must work closely with Congress to improve procedures and safeguards concerning the creation, notification, and accountability of covert activities. A thorough review must be conducted of secrecy measures and presidential power, from "national security" to

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decision-making affecting health and safety -- from the CIA to OMB. Present policies for secrecy contracts for federal workers, government censorship, overclassification of information, interference in our nation's libraries and universities, and much more must be reversed. Practical considerations such as improving information classification management and accountability of government, especially in an electronic information age, must be immediately addressed. These and many other specific recommendations are presented and addressed to presidential candidates and members of Congress.

Lastly, all citizens must continue to utilize the laws and processes available to become well-informed about government activities and to participate in the democratic process. U.S. Supreme Court Justice Oliver Wendell Holmes stated that majorities are prone to "sweep away all opposition." Governments strongly prefer acquiescence to dissent, but the test of democracy is not the ability of government to arrogate power to itself. Secrecy poses many questions for the people of the United States, the most important of which is whether Americans will acknowledge the demands of maintaining a democracy.

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Chapter 1 Opening Our Eyes To Secrecy

Government secrecy in the United States requires the special attention of all Americans. It is a subject we have come to know best in moments of national crisis: official secrecy too often displaces important constitutional protections and democratic values. When major decisions and actions are shrouded in secrecy they can profoundly affect the character and stability of our government as well as the quality of our lives. Nonetheless, we are both unprepared and surprised when our government is made to account in the sunlight for questionable activities it has conducted in the dark.

The manner in which Americans experience secrecy reflects how little we know about its purpose and effect. An American pilot is shot down over the jungles of Central America -- we discover a clandestine White House operation in Nicaragua. An Iranian arms dealer becomes angry -- we learn of a secret White House arms deal with Iranian terrorists. During the Iran-contra hearings which followed, we learned that the director of the Central Intelligence Agency (CIA) was planning to create a secret government within the government -- described by Oliver North as an "off-the-shelf, self-sustaining, stand-alone entity that could perform certain activities on behalf of the United States."[1]

The truth is that official secrecy is not best, or solely, understood in terms of misdeeds on a grand scale. Forced to consume large doses of small facts, we learn very little about the underlying potential in our government for such problems that are likely to reoccur.

Secrecy is a fact of government. It is a normal practice; however, it can be applied for both legitimate and wrongful purposes. While it would be unrealistic to deny the importance of secrecy to the security of the nation, excessive secrecy undercuts our democracy and may be used to violate the procedures and rights guaranteed by the Constitution. National security is not very well served when official secrecy is used to exclude top advisers or to cover up questionable activities, thwart the checks and balances system of government, avoid accountability and permit waste and abuse, hinder

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scientific and technological progress, suppress intellectual and academic freedom, and restrict public debate.

Why should Americans want to know more about government secrecy? In our nation, citizens are the governors and the governed. It is our responsibility to understand government, and to the extent that secrecy is a factor or an obstacle in that process, we need to be informed. Citizens need to know about the authorization and application of secrecy as well as ways of detecting and preventing its misuse.

In celebrating the Bicentennial of the Constitution in 1987, we are especially mindful of the ideas important to the earliest champions of American democracy. James Madison once poignantly declared:

> A popular Government without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.[2]

SUPERPOWER SECRECY

In the aftermath of World War II, the atomic bomb became the "winning weapon." It was the means to becoming a superpower and the greatest object of secrecy in government. Congress placed military and civilian agencies in charge of its development, while its use was determined largely by the president.

The superpower presidency was thus inaugurated; nuclear politics permanently fused together "national security" and the traditional foreign policy and defense authority of the president. Full realization of this power required new institutions and operational arrangements. The political climate foreshadowed the Cold War -- secrecy was preeminent. Not unlike the effect of an atomic blast, the federal landscape was permanently altered.

The strong executive branch that emerged forty years ago established the modern institutions and systems of government secrecy in America. These include the protection of new technology and resources through the Atomic Energy Commission and the Invention Secrecy Act; executive branch administration of defense and national security through the Department of Defense, the National Security Council, and the information classification system; intelligence, counterintelligence, surveillance, and covert operations through the Central Intelligence Agency and the National Security Agency.[3]

Americans may be familiar with one or more of these components of secrecy in our government. Most, however, remain unaware that a bureaucracy of secrecy exists, wields enormous power and produces decisions without democracy.

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SECRECY UNCHECKED

The secrecy system has expanded rapidly within four decades. There has been little challenge from Congress, considerable deference by the courts, and almost no awareness by citizens.

Each of the three co-equal branches of government engages in some type of secrecy, but not with equal scale, scope, or authority. In our courts, documents can be sealed -- but only by judges. Trials are presumptively open to public observation. In Congress, "executive sessions" are closed to the public, and secret government documents are received in such meetings -- but only senators and representatives may authorize these closed gatherings to occur.

In the executive branch, the president authorizes thousands of federal employees to create millions of secret documents; billions of dollars are put into a "classified" budget and are approved with little detailed review by the entire Congress or citizens. The president's Office of Management and Budget, which has control of federal regulations, studies, and statistics, has reduced access to government information and ignores federal laws requiring public notice of decision making. The Iran-contra scandal has been the most recent cause of national crisis for Americans, and we are especially mindful that secrecy has provided the executive branch with more power and less accountability than any other branch of government.

The president can secretly pursue policies which the public might not support if asked. These bypass Congress and the citizenry and bypass our constitutional system. Conducting a "secret war" in Central America illustrates this problem. Three months after President Reagan first entered office in 1981, he authorized the CIA to conduct covert activities in Nicaragua.[4] Several months later, the president authorized secret training of Nicaraguan rebels in Argentina. The training was funded by millions of dollars in U.S. support.[5] Public knowledge of these policies might have prevented the Iran-contra scandal.

Noted historian Garry Wills, writing in 1987 in honor of the Bicentennial of the Constitution, wrote that:

> The wartime justification of secrecy used to be: the citizens must be kept in the dark to keep the enemy from knowing what one's country is doing and taking action on that knowledge. The modern presidency takes the old means and makes it the end: the citizens are kept in the dark about what the enemy already knows.[6]

What purposes justify secrecy? How much information should be kept secret? How long should it be kept secret? When does secrecy undercut democracy? When does secrecy violate constitutional guarantees? Americans have the right to ask these questions, and have a need to know the answers!

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The value of an informed citizenry cannot be overemphasized in a democratic society. As Thomas Jefferson reminded us:

> I know of no safe depository of the ultimate powers of society, but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it away from them, but to inform their discretion by education.[7]

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Chapter 2 The President's "Secret Laws"

A window through which to view the problems of excessive secrecy is the series of directives termed the president's "secret laws" by Rep. Jack Brooks (D-TX), Chairman of the House Government Operations Committee. The concept of a "secret law" in America conflicts with every basic notion of democracy under the Constitution, and yet such laws exist. They are created by the president as national security directives and have been issued through the National Security Council (NSC) by each president since President Truman.[1] In 1976, a special Senate committee studying presidential power concluded:

> In recent years, the National Security Action Memorandums of Presidents Kennedy and Johnson and the National Security Action Directives of President Nixon represent a new method for promulgating decisions, in areas of gravest importance. Such decisions are not specifically required by law to be published in any register, even in a classified form; none have prescribed formats or procedures; none of these vital Executive decisions are revealed to Congress or the public except under irregular, arbitrary, or accidental circumstances.[2]

President Reagan has designated these "national security decision directives," (NSDDs). He has used NSDDs to authorize an array of activities which included the Libyan disinformation campaign[3] and the use of Presidential Findings by agencies other than the Central Intelligence Agency (CIA), such as the NSC, to conduct covert operations.[4] In 1987, the public learned that in 1983 President Reagan had authorized, through an NSDD, CIA training and support of secret counter terrorist squads in the Middle East to be used for "preemptive strikes."[5]

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As of June 24, 1987, President Reagan had signed and issued at least 280 NSDDs [Appendix A]. Today, as in years before, Congress remains uninformed about the issuance and content of these directives. No complete list of them is publicly available because the National Security Council claims that such a list of the president's NSDDs is classified. One public requester seeking unclassified information about an NSDD received the following response from the National Security Council: "The NSC has no publications program and, most of the information in our files is classified and, therefore unavailable to the public."[6] These directives illustrate some of the problems which exist on a much wider scale in the government secrecy system.

"NATIONAL SECURITY" CAN BE USED TO HIDE NATIONAL POLICYMAKING

"National security" can be invoked to shroud many decisions concerning United States policy and activity, hiding these from congressional and public view. In this regard, President Reagan defined the NSDDs which he issues through the National Security Council:

> This series shall be used to promulgate Presidential decisions implementing national policy and objectives in all areas involving national security.[7]

Indeed, NSDDs issued by President Reagan involve a variety of national policies for which responsibility is shared by Congress and which affect various existing statutes. An examination of approximately 50 NSDDs reveals their application to many national policies: civil defense, world economic summits, telecommunications, commercial satellites and space vehicles, resettlement of Indochinese refugees in the United States, production and handling of nuclear materials, and terrorism.[8] Other NSDDs issued by President Reagan have involved measures affecting millions of the nation's civil servants and have been viewed as both extreme and unconstitutional approaches to government. These have included, for example, NSDDs requiring government employees to sign secrecy contracts, agree to lifetime government censorship of any writing they seek to publish, and to undergo periodic lie-detector tests.[9]

NSDDs that involve the United States militarily in other countries are especially worthy of scrutiny. They demonstrate unaccountable use of presidential power and potentially damaging consequences for the nation. By secretly engaging our nation in military activity, the president jeopardizes the essential support of Congress and the American public. Recent examples include U.S. operations in Nicaragua and the surrounding region and military preparations for the invasion of Grenada.

In July 1983, President Reagan issued NSDD 100, "Enhanced U.S. Military Activity and Assistance for the Central American Region." The president achieved three military goals with NSDD 100: U.S. military activity in Nicaragua, military training in El Salvador, and placing U.S. forces in the Caribbean three months before the October 1983 invasion

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of Grenada. In addition, the president required that the Secretary of Defense and the Secretary of State, without revealing the secret law or fully disclosing the administration's plans, persuade Congress and the public to support the administration's actions. President Reagan stated in NSDD 100:

> The increasing threat to U.S. national interests in Central America requires that we strengthen our diplomatic and security efforts in the region. The consolidation of a Marxist-Leninist regime in Nicaragua, committed to the export of violence and totalitarianism, poses a significant risk to the stability of Central America. Our ability to support democratic states in the region, and those on the path to democracy, must be visibly demonstrated by our military forces.
>
> A program of expanded U.S. military activities and exercises both in the Caribbean Basin and on the Pacific coast of Central America will commence as soon as possible.
>
> The Secretary of State and the Secretary of Defense will prepare a coordinated legislative, diplomatic, and public affairs strategy that supports these initiatives.[10]

The Iran-contra scandal reflects the serious consequences of secretly planned U.S. military involvement in which Congress and many government foreign policy professionals are kept ignorant of preparations. More importantly, it reveals the potential for secret development of U.S. foreign policy -- one perhaps contradicting and superseding publicly proclaimed policy.

SECRECY PROMOTES FUGITIVE POLICYMAKING

The problem worsens where such secret laws are fugitive instruments for policymaking, mobilizing executive branch personnel and federal resources in ways that conflict with national policy and may violate our laws.

NSDDs that sustain covert activity abroad by the United States merit especially careful examination. While covert activity may be necessary in certain situations, it must be conducted in accordance with procedures for informing Congress and only as necessary to protect America's vital interests.

The use of NSDDs for covert operations occurred very early in the Reagan administration, initiating what has been called the president's "secret war" in Nicaragua.[11] In November 1981, President Reagan, in response to a proposal by CIA Director William Casey, issued NSDD 17 establishing a $19 million CIA covert operation in Nicaragua and authorizing the CIA to recruit a force of 500, to be supplemented by at least 1,000 Nicaraguan rebels being trained in Argentina.[12] In 1987, reports indicated that NSDD 17 directed an estimated $50 million to Argentina to train Nicaraguan rebels.[13]

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ALTERED DOCUMENT

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The Iran-contra scandal demonstrated that covert operations are vulnerable to the abuse of authority, secret development of questionable American foreign policy, and misrepresentation of United States interests. Foremost among the instruments of secrecy authorizing these activities was a single NSDD issued by President Reagan. It contravened the president's own public policy on covert action, embodied in the president's executive order on covert action which explicitly limited "special activities" to the CIA.[14] Nonetheless, the National Security Council engaged in secret activities in the Middle East and Central America, and bypassed the required reporting of covert operations to Congress.

National Security Decision Directive 159, entitled "Covert Action Policy Approval and Coordination Procedures" was issued by President Reagan on January 18, 1985 [Appendix B]. It has two important components. First, President Reagan authorized agencies other than the CIA, such as the National Security Council, to undertake covert operations by virtue of a Presidential Finding. A Finding is a document signed by the president, required by law, granting intelligence agencies permission to undertake specific covert operations. Findings are required by law specifically so that covert activities are accountable through the president. Second, President Reagan exempted a broad range of covert activities by agencies other than the CIA from being labelled covert action. This provision functions as an escape clause because it eliminates the need for a covert action Finding, and eliminates the requirements for reporting to Congress.

Specifically, NSDD 159 was central to White House arms-for-hostages transactions with Iran, allowing the National Security Council to mount a covert operation and directing that it be excluded from the law requiring that it be reported to Congress. The arms sale to Iran was a radical departure from ongoing U.S. policy -- an arms embargo had been in effect since the Shah was deposed by the Ayatollah Khomeni. In fact, Secretary of Defense Weinberger and Secretary of State Schultz opposed the secret law. Secretary Weinberger stopped a June 1985 attempt to issue an NSDD establishing essentially the same plan.[15] Nonetheless, the "Covert Action Finding Regarding Iran" was signed by the president, prompting shipment to Iran of 4000 TOW antitank missiles, spare parts for radar systems purchased by the Shah and other military equipment. The CIA played an integral role, serving as a conduit for three shipments of more than 2000 missiles in 1986.[16] The new arms sale effort violated current prohibitions on such transactions set in U.S. foreign policy and the Arms Export Act.[17]

The second application of NSDD 159 for fugitive U.S. policymaking was its use by Oliver North and others who did not want their covert activity in Central America to be reported to Congress. North and others interpreted the president's directive to mean that a Presidential Finding was not required. North's interpretation was based on an escape clause in NSDD 159, in which President Reagan states:

> However, the provision of routine support in the form of personnel, funds, equipment, supplies, transportation, training, logistics, and facilities by Government components other than the CIA to support a covert action shall not in itself be considered a separate covert action by the supplying agency.[18]

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Essentially everything the NSC and its "enterprise" did in Nicaragua can be included in the above list of "routine support." Relying on the above provision in NSDD 159, the result, however, was that the NSC operation was not considered a covert operation, Congress was uninformed, and the NSC's secret war in Nicaragua continued. It was only at a later date that a veteran CIA official, accustomed to the use and intent of Presidential Findings for accountability of covert operations, required that one be obtained from President Reagan. During the Iran-contra hearings in the summer of 1987, former National Security Advisor John Poindexter claimed that he destroyed the only copy of the Finding ultimately obtained to authorize NSC operations in Central America. The NSC, however, continued to insist that it was not accountable. On July 13, 1987, the following exchange occurred between U.S. Senator George Mitchell (D-ME) and Oliver North:

> *Senator Mitchell:* Since the law requires that before any covert action could be conducted, the President must specifically authorize it, since you've testified that you conducted a covert operation, and since you've further testified that the President neither designated the National Security Council to conduct covert operations nor did he make a Finding authorizing this covert operation, what was the legal basis for your activities with respect to this covert operation?
>
> *Oliver North*: The National Security Council staff is not included within the constraints that are depicted in either the executive order [on covert operations] or the NSDD [159] as an intelligence agency. And thus, in neither case does the law provide that the president had to do what you are saying he had to do.[18]

SECRECY DEFEATS THE CHECKS AND BALANCES SYSTEM

The secret laws reflect the extent to which the president and the executive branch exercise unreviewable authority and escape accountability. Regardless of the relationship of such directives to current policy, Congress has virtually no knowledge of their issuance; even in the case of pertinent national security matters, the appropriate committees of Congress are not informed. Even specific requests from Congress, seeking to fulfill its intelligence oversight responsibilities under the law, have been ignored by current and past administrations.[19]

These points were underscored at a 1987 hearing of the House Government Operations Subcommittee. The chairman of the Oversight and Evaluation Subcommittee of the House Select Committee on Intelligence, Congressman Anthony Beilenson (D-CA):

> What I have to say about NSDDs, as they are called, will be brief. It is based on an incomplete understanding of this form of Presidential decision. That is because the Permanent Select Committee on Intelligence does not receive copies of NSDDs.[20]

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SECRECY DEFEATS ACCOUNTABILITY

The lack of congressional access to NSDDs creates special problems of accountability. Even when these laws are discovered and Congress, for example, calls for partial or complete revocation, the executive branch continues, undetected, to implement its original plans.

The problem is put in perspective by the more conventional system of presidential proclamations and executive orders. These are issued according to a numerical accounting system and by law must be published in the *Federal Register* and reproduced in the *Code of Federal Regulations*.[21] Furthermore, while confidential or classified executive orders have been issued and not published, they are accounted for in the numbering system. Congress, particularly its intelligence committees, has been granted access to these records. This system is particularly useful to ensure that executive orders that have been rescinded are in fact "off the books."[22]

Two recent examples illustrate that the same is not true with the NSDDs. Even when the president has promised to rescind a particular NSDD program, there is no way to monitor such action.

National Security Decision Directive 84. NSDD 84, "Safeguarding National Security Information," was issued by President Reagan in 1983 as a major policy initiative of the administration to stop unlawful disclosures of classified information by government employees. Its requirements include a secrecy contract for certain government employees, possibly every Cabinet official, pledging lifetime government censorship of all writings.

The directive was publicly revealed as a Department of Justice memorandum. U.N. Ambassador Jeane Kirkpatrick refused to sign her lifetime censorship contract, which was presented to her by the State Department as she prepared to leave her U.N. post.[23] Congress, government employees, and the public reacted negatively to the plan.

On February 15, 1984, President Reagan agreed to suspend the lifetime censorship provision of NSDD 84 -- but the practice in fact widened. Unknown to Congress, the Reagan administration had already been using a censorship contract developed by the CIA.[24] NSDD 84 had merely revised this contract and extended its application throughout the government.

President Reagan interpreted suspension of the censorship portion of NSDD 84 in the narrowest possible terms: refrain from using the revised censorship contract. The president then continued a widespread program of censorship agreements using the original CIA contract. In September 1986, the General Accounting Office revealed several startling statistics resulting from a study that did not even include the Central Intelligence Agency or the National Security Agency: 11 agencies alone reported 290,000 government workers had been required to sign the lifetime censorship contract because of access to intelligence information, and the policy continued in numerous agencies ranging from the Agency for International Development to the Securities and Exchange

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Commission.[25] The practice has also been extended to hundreds of government contractors and university research scientists who have received federal grants. Thus, executive branch practice has been a far cry from rescinding the censorship program. Moreover, Congress could not hold the president to his word: NSDD 84 remains effectively intact today.

National Security Decision Directive 145. NSDD 145, "National Policy on Telecommunications and Automated Information Systems Security," was issued by President Reagan in 1984 to govern the security of telecommunications and computerized information systems. It set unprecedented restrictions on access to computerized information that is not classified and is held not only by the federal government but also by private companies, libraries, and universities. Furthermore, the president gave the enforcement authority for the new policy to a highly secretive military entity -- the National Security Agency.

Public awareness of this directive, a very technical subject area, occurred almost by accident: the resignation of former White House National Security Advisor John Poindexter for his role in the Iran-contra scandal. Although the directive was known to a small number of exceptionally well-informed citizens, public awareness of NSDD 145 heightened during the investigation of Poindexter's final days at the National Security Council. Among the orders and directives that drew attention was a Poindexter memorandum that was the Reagan administration's first attempt to implement NSDD 145.[26]

Congress, librarians, scientists, information companies, and concerned citizens reacted quickly and demanded withdrawal of the Poindexter memorandum. The reasons for concern were obvious: awesome reach beyond the government, its military authority, and questionable constitutionality. Congress also responded with legislation to address the legitimate needs for computer security, creating more reasonable controls and supplanting NSDD 145.[27]

In this case, the administration was eager to disassociate itself from Poindexter and withdrew the implementing memorandum on March 17, 1987. While NSDD 145 appears to be dormant, strong evidence exists that another implementing memorandum will be produced.[28]

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National policymaking, fugitive policy instruments, and the lack of accountability for action authorized by the president are troubling qualities of National Security Decision Directives and presidential power. By using the National Security Council to create unreviewed policies, the president has ignored our constitutional system of separation of powers and checks and balances. However, the use of such directives and the propensity for excessive secrecy is an institutional problem. It is not unique to the Iran-contra affair or the Reagan administration, and it is not likely to disappear in 1988.

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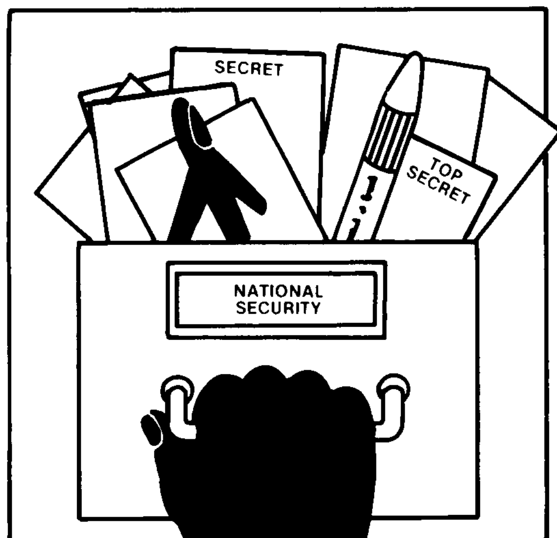

Chapter 3 "National Security": Password for Secrecy

"National security" is a policy term that is frequently invoked, but rarely reduced to a set of discernible principles. The power of national security cannot be denied. However, it is a formidable justification to be overcome by citizens who demand greater government accountability and strive to engage in informed public debate.

National security is a high-stakes concept when applied and produces losses equal in proportion to its accomplishments. In several misdirected White House policies, Americans have observed how often secrecy -- justified by "national security" -- isolates executive action from public scrutiny and from the exercise of good judgment.

At his sentencing for perjury, former Nixon aide Egil Krogh, chief of the White House "plumbers" unit during Watergate, expressed these thoughts about burglarizing the office of Daniel Ellsberg's psychiatrist:

> I see now ... the effect that the term "national security" had on my judgment. The very words served to block critical analysis. It seemed at least presumptuous if not unpatriotic to inquire into just what the significance of national security was ... The discrediting of Dr. Ellsberg, which today strikes me as repulsive and an inconceivable national security goal, at the time would have appeared a means to diminish any influence he might have had in mobilizing opposition to the course of ending the Vietnam War that had been set by the President. Freedom of the President to pursue his planned course was the ultimate national security objective.[1]

A national journalist commented in 1987 that President Reagan has "cheapened the concept of national security" because an obsession with information security makes the president unable to distinguish between vital secrets and other information.[2] If everything is made secret in the name of national security, the meaning and integrity of the concept is endangered.

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We have seen this to be true in the use of National Security Decision Directives. Overall, the list of areas in which the current administration has aggressively used national security to justify excessive secrecy is regrettably a long one:

* Information classification and reclassification.
* Unprecedented classified defense and intelligence spending.
* Secrecy contracts and lifetime censorship of writings of some government employees.
* Controls on the press.
* Toughening of information access laws.
* Restriction of access to non-government data banks.
* Reducing of publication and dissemination of government information.
* Restricting of scientific and academic freedom.
* Ideological censorship of foreign visitors.

CLASSIFYING INFORMATION

Information classification is most familiar to Americans as the system used to stamp government information, documents, and records "Top Secret," "Secret," or "Confidential." It originated in the 1800s with our nation's military in order to safeguard such information as weapon designs, the layouts of installations, and the construction of ships. Since World War II, it has grown steadily as a instrument of the president and the executive branch for controlling information throughout the federal government. It has become the greatest means of achieving government secrecy in America.

Information classification is technically an internal government system, created by executive order of the president, restricting access to information to federal employees with a "need to know." The practice and the consequences, however, are much broader.

It includes layers of classification that some say are above "Top Secret," but which the government says are merely special clearances, not classifications. The classification system governs the length of time information remains secret and the extent to which persons within the government and the public have access.

Statutes establishing parallel restrictions on information include the Atomic Energy Act, the National Security Act, and the Invention Secrecy Act. The National Security Act, for example, requires the Director of Central Intelligence to "protect intelligence sources and methods from unauthorized disclosure." It is the presidential security classification system, however, that is used to actually implement these statutory secrecy requirements.

The staggering power of the classification system results from its basis in presidential authority and the scope of its widespread use throughout the executive branch and the federal government. Since 1981, for example, an average of 15 million

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documents have been classified annually by at least 7000 government officials. This power is significantly reinforced by the inertia of Congress and the deference of the courts.

PRESIDENTIAL AUTHORITY

Presidential authority for the creation and operation of the classification system began with a single defense statute but now rests more broadly on Article II of the Constitution. In 1940, President Franklin Roosevelt issued the first executive order setting classification policy. Reflecting earlier classification arrangements, it was a purely military policy, and Roosevelt claimed authority under a defense installations law.[3] Truman followed suit in 1950.[4]

By 1951, the superpower presidency was emerging. President Truman looked to broader authority for classifying information -- "the authority vested in me by the Constitution and statutes, and as President of the United States."[5] He cancelled all prior orders including his own and extended classification well beyond traditional defense matters to agencies throughout the federal government.

Considered by many to be the high-water mark of classification breadth, Truman authorized almost every agency in the federal government to classify information. Following the precedents of authority and practice, almost every successive president since Truman has issued his own executive order on information classification.[6] These too have transcended traditional military matters, extending into the realms of national security, defense, foreign policy, and law enforcement. They have for the most part, however, successively limited the criteria and discretionary power of the Truman order.

From President Eisenhower through President Carter, however, new information classification orders reflected a trend toward 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 classification.
* Creating schedules for systematic declassification.

In the Pentagon Papers case, the Supreme Court had to determine whether President Nixon's control over information extended to stopping publication of classified documents in the *New York Times*. Justice Potter Stewart, in a concurring opinion, reminded Americans that:

> When everything is classified, then nothing is classified, and the system becomes one to be disregarded by the cynical or the careless, and to be manipulated by those intent on self-protection or self-promotion. I should suppose, in short, that the hallmark of a truly effective internal security system would be the maximum possible disclosure, recognizing

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that secrecy can best be preserved only when credibility is truly maintained.[7]

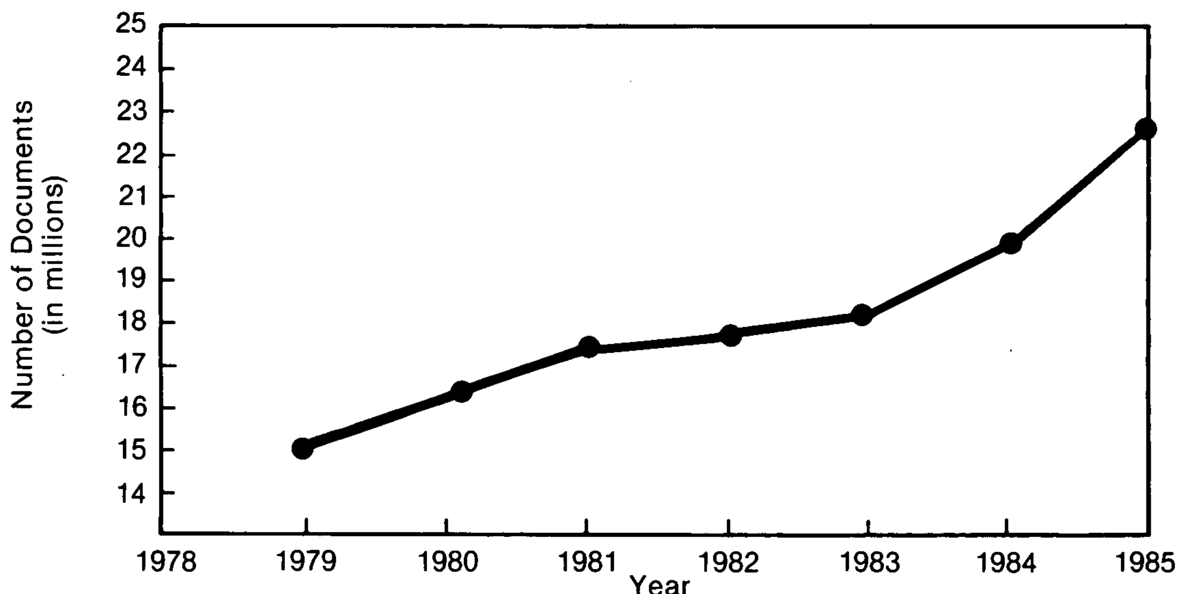
REVERSING THE TREND TOWARD OPENNESS

No existing classification policy has ever been perceived as a perfect one, especially by succeeding administrations. Even reformers who advanced the trend towards a policy more rational in scope and application may be faulted in some ways. However, the Reagan policy is widely viewed as reversing a desirable trend away from overclassification. It has marked a return to a classification policy of indefinite scope, unreviewable authority, and decreased accountability in the executive branch.

President Reagan has increased the total volume of classification as much as 10% annually, a fact attributable to the president's classification policy and his enormous military build-up. Reversing a thirty-year trend, President Reagan has increased the criteria for classification; widened the discretionary authority of government personnel to classify information; de-emphasized declassification; and in an unprecedented action has authorized the government to reclassify documents previously released to the public.

Increasing classification. Statistics are the beginning of the story. Classification during the Reagan administration has increased steadily on an annual basis.[8] As stated by Congressman Glenn English (D-OK), Chairman of the House Government Information Subcommittee, "The history of classification policy for thirty years has been a history of continual circumscription of classification authority. This trend of narrowing classification authority was not broken until the promulgation of E.O. 12356 by President Ronald Reagan in 1982."[9]

Classified Government Documents 1979-1985



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Expanding classification criteria. Massive military build-up during the Reagan administration has been a major factor in the significant increases in classification, but another contributing factor has been the president's expansion of the criteria for classification. When President Reagan entered office, the prevailing classification policy had addressed the tendency toward overclassification, in part, by identifying specific categories of information subject to classification. Earlier orders simply based classification on the prospective damage that might result from disclosure. President Reagan added three new categories and modified an existing one.

Widening discretionary authority for classification. President Reagan also widened the discretionary authority for classification. Under the executive order issued by President Carter, the policy had been -- when in doubt, don't classify.[10] The Reagan order requires that when in doubt, do classify![11] The emphasis on classification has allowed low-level officials to continually increase the volume of classified information. Although subject to higher review, the volume of documents becomes unmanageable, review is delayed, and overclassification results.

De-emphasizing declassification. President Reagan also de-emphasized declassification, reversing a long-standing presidential policy. Since President Kennedy, each successive administration had maintained a system and schedule for automatically downgrading and declassifying information.[12] Congressional hearings held prior to the issuance of the Reagan order revealed the particular importance of a declassification system, according to one scholar, to conducting reliable historical research:

> To understand the relationships between the individuals, institutions, and ideas which encompass political, diplomatic or military history, the historian needs not one document or even 10 documents, but an array of information from a broad spectrum of sources. Therefore, the ideal declassification process for historical research is the very kind of orderly declassification which this draft Executive Order will now eliminate.[13]

Despite these and other concerns, President Reagan eliminated existing declassification schedules, as well as the policy of systematic declassification and downgrading of information within federal agencies. In its place, the Reagan order limits "systematic" review to such departments as the National Archives, which has little control over information of timely importance in areas such as health, safety, or the environment.[14] In addition, requirements for "mandatory review" leading to declassification are conditioned upon outside requests for information. Lastly, the mandatory review section exempts from declassification a wide range of "[i]nformation originated by a President, the White House Staff, by committees, commissions, or boards appointed by the President, or others specifically providing advice and counsel to a President or action on behalf of a President."[15] Documents related to the mandate and work of the Tower Commission, created by President Reagan to probe the Iran-contra affair, are within this category.

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Authorizing reclassification. President Reagan is the first president to authorize the reclassification of previously released information. Earlier orders included strict prohibitions against reclassification.[16] The Reagan order permits reclassification of information that has been declassified and released to the public if it is determined in writing that (1) the information requires protection in the interest of national security and (2) the information "may reasonably be recovered."[17] The order also places reclassification control within the purview of the Information Security Oversight Office (ISOO), which oversees implementation of the classification order on behalf of the executive branch. However, the ISOO has considered the reclassification statistics too low to report.

Reclassification, however, is not merely a matter of degree or statistical significance. It reflects the power of the government, as well as the tension between national security and the First Amendment. The government argues that retrieval authority must exist where declassification mistakes have been made or, for example, where sudden shifts in international events may make information sensitive again. First Amendment specialists argue that the government has been given too much power to "plug history," restrict public debate, and arbitrarily recall documents to official secrecy status even though many persons outside of government may have already seen them.

In 1981, the Reagan administration was already "rattling the saber" of reclassification before its new executive order became final. At that point, the Carter order, which expressly prohibited reclassification, was still in effect. Substituting power for law, the Justice Department demanded the return of declassified copies of documents it had released more than two years earlier to James Bamford, author of the first thorough profile of the highly secret National Security Agency.[18] Pursuant to a Freedom of Information Act request, the Criminal Division of the Justice Department had supplied Bamford with a summary about whether the NSA or the CIA had violated criminal statutes in conducting certain types of electronic surveillance.

The Justice Department could not yet legally reclassify the document and instead told Bamford that "the declassifier lacked the requisite authority under the Executive Order to effect the 'declassification.'"[19] When Bamford cited the Carter executive order, prohibiting reclassification, as grounds for denying the Justice Department's reclassification demands, he was threatened with legal action, as well as a variety of other threats, if the information was ever published.[20] Subsequently, however, the government vacated its retrieval effort but did secure materials at a private research center where Bamford had conducted research.

In another case, the CIA attempted to reclassify material from a book written by former employee Ralph McGehee, a 25 year veteran of the agency. The information had appeared in other publications and had been subject to rigorous CIA review and subsequent approval in an earlier draft manuscript in 1980. The work was resubmitted because the author was rewriting and revising it for an interested publisher. The information included the identity of a publicly known CIA training facility in Virginia,

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the size and training received by the author's CIA training class in the 1950s, and personnel procedures from that period.[21]

Later in 1981, the National Archives, in conjunction with the Department of the Air Force, attempted to retrieve declassified copies of Air Force records released to a researcher writing a book on U.S.-Israeli relations. Its approach was to request a "loan-back" of 47 pages for purposes of reproduction and record keeping. A second letter assured the researcher that the materials would be returned immediately, and he returned the documents. A month later, the National Archives claimed that declassification mistakes had been made, and proceeded to withhold 11 pages and delete liberally from 7 pages of the materials. The researcher threatened legal action against the Archives and, in the controversy that followed, the Archives admitted that it had misled the researcher. The materials were returned to him in their entirety.[22]

Since the Reagan order became effective in 1982, reclassification has been successfully enforced in the courts in the only court case to arise thus far. The National Security Agency pursued reclassification of material held in the library of a private educational institution. The library houses the private papers of several former federal officials once prominently involved in national defense. The NSA was specifically interested in a collection of papers on the subject of cryptology, or secret codes, donated by a former NSA employee who was a leading authority on the subject. The NSA had not only reviewed the documents for release, but also "provided for secure shipment of the collection to safeguard the materials and facilitate the in transit insurance arrangements."[23] Some of the materials had been used by author James Bamford in his book *The Puzzle Palace* about the NSA. Unaccustomed to public attention and seeking greater control of cryptographic information, NSA personnel visited the library and demanded removal of 33 key documents from public availability.

The NSA was challenged in court by a distinguished group of educational organizations led by the American Library Association, but the court deferred entirely to the NSA. Experts in the field believe that the court actually increased the government's reclassification power -- simply requiring it to assert a national security interest in a set of documents. However, the executive order contains a two-part standard for proper reclassification. In addition to the existence of a national security interest, the "information," and not merely particular documents, must be reasonably recoverable.[24] The court did not address this issue, and since the information appeared in thousands of copies of *The Puzzle Palace*, its reasonable recovery was unlikely.

A SECOND TYPE OF RECLASSIFICATION?

Reclassification is also believed to exist in another situation, when the government classifies documents and records that had been declassified or scheduled for declassification but not publicly released. The Information Security Oversight Office does not believe that this is reclassification.

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This view is not shared by others, including Congressman Glenn English (D-OK), Chairman of the House Government Information Subcommittee. Congressman English illustrates his point by citing a General Accounting Office (GAO) report he used in investigating drug smuggling. The GAO report had the following history: it was published in 1975, classified at the request of the Drug Enforcement Administration (DEA), and given an automatic declassification date of May 30, 1980. In 1982, however, after President Reagan created reclassification authority, "a request for a copy of the G.A.O. report was made under the Freedom of Information Act. At the time of the request, D.E.A. reclassified the report and notified G.A.O. in November 1982. G.A.O., in turn, notified all recipients that the report was reclassified."[25]

Whether or not this is truly "reclassification" as specifically authorized by President Reagan, its frequent occurrence is made likely by two other provisions of the Reagan order: (1) elimination of a system for automatic downgrading and declassification and (2) increased authority for lower-level officials to classify documents after a FOIA request is received.[26] Since the Information Security Oversight Office does not consider this to be reclassification, the extent of such activity has never been evaluated.

OVERCLASSIFICATION

Agency officials too often forget that government can best serve the public interest by keeping the people's trust and dispelling distrust by supplying the most current information available. These goals are undercut by unjustifiably increasing the volume of classified information and the duration of its protection.

Overclassification is an inherent problem in the executive branch. On the one hand, management of government information is a massive task. On the other hand, essentially all authority to classify or declassify rests with the same officials. The responsibilities to both manage and control disclosure become confused, and the executive branch often tries to protect its own territory, place itself above accountability, and control information for political or other self-serving reasons.

Overclassification has prevailed regardless of the reforms a president institutes to decrease unnecessary classification. President Carter, for example, expressly required:

* Balancing the public's interest in access to information against the need to classify for national security reasons;[27]
* Placing equal emphasis upon classification and declassification.[28]

Nonetheless, a 1979 study by the General Accounting Office[29] reported the prevalence of overclassification at the largest classifying agency, the Department of Defense. GAO reported that:

* Information not related to national security was classified.
* Mere references to classified documents were classified.
* Information was classified inconsistently.

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* Information that lost some of its sensitivity was not downgraded.
* When there was a doubt about the level of classification, a higher level of classification was assigned.

Action by the Reagan administration shows the unobstructed reach of the executive branch, and the interagency rivalries involved in controlling information. On April 29, 1986, senior administration officials, including the Director of the Arms Control and Disarmament Agency and an assistant secretary of defense, testified in a public Senate hearing about a hotly debated question: Are the Soviets violating two treaties that limit the size of underground nuclear explosions?

The Reagan administration insisted that the Soviets were not "likely" in compliance. The Pentagon supported the administration's view, but the government's Arms Control Agency did not. Leading government laboratories found strong evidence that the Soviets were in compliance. The CIA determined that its previous estimates of Soviet nuclear tests were too high.[30]

Shortly after the Senate hearings, the Pentagon contacted the Senate Armed Services Committee and indicated that portions of the public testimony, as well as certain questions by Senators, were classified. The Arms Control and Disarmament Agency, however, had sent the Senate committee a letter stating that no deletions were necessary on security grounds. When the Senate report was published in 1987, the challenged questions and answers were deleted. In addition, the Senate Foreign Relations Committee, which held hearings on the same subject, also bowed to Pentagon requests to modify the substance of testimony of senior military officials.[31]

Over the years, many recommendations to reduce overclassification and place controls on unchecked power have traveled through Congress and the executive branch. Reforms have been sought through new executive orders on classification.[32] Particular concern has been raised over the fact that increased espionage may result from the unmanageable amounts of information that is classified.[33]

The urgency to address the overclassification problem remains, and the findings bear repeating. Classifying too much information:

* Causes excessive government secrecy.
* Obstructs public disclosure of government information and knowledge of government activity.
* Creates an unmanageable volume of information for effective security controls, efficient cost-management, and adequate declassification.
* Adversely effects decision-making by decreasing access to information within and between federal agencies.
* Jeopardizes the protection of information that truly warrants classification.
* Breeds mistrust between Congress and the administration, with the likelihood that claims of executive privilege will lead to a constitutional clash.

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ABOVE TOP SECRET?

Executive Orders since the one issued by President Eisenhower in 1953 have allowed only three classification levels: "Top Secret," "Secret," and "Confidential." However, secret classifications above "Top Secret" have also been thought to exist. Senior government officials have, over time, given credence to this belief.

In 1968, for example, the Senate Foreign Relations Committee was investigating the 1964 alleged North Vietnamese attack on U.S. ships known as the Tonkin Gulf incident. Secretary of Defense Robert McNamara was testifying but declined to answer a question about radio intercepts. His answer would have revealed that U.S. intelligence sources knew that North Vietnamese patrol boats were about to attack the U.S.S. Turner Joy. McNamara explained that he could not respond to the question because, "Clearance is above Top Secret for the particular information involved in this situation." One bewildered Senator then asked, "I thought Top Secret was Top Secret?"[34]

In the years since, the debate over what are today termed "special access programs" has heightened significantly. These terms refer to specialized codes and markings within the classification system. The government explains these as clearance and routing mechanisms for sending information rather than classification of information. At least since President Nixon, executive orders on classification have recognized the right to create "special departmental arrangements."[35] President Reagan's executive order specifically recognizes "Special Access Programs" as part of the classification system.[36]

CLEARANCE OR CLASSIFICATION?

In earlier days, the government's use of special markings may have been better managed and more precise. For example, the State Department may have placed routing marks on an overseas cable sent to organizations such as NATO or to a particular allied nation. Even today, the system includes many specialized arrangements which range from simple routing marks to narrowly defined clearance codes for technical information. For example, a recent advertisement in the *Washington Post* for computer operators listed clearances required for applicants: "TOP SECRET SI/TK-POLY-SCI a plus!"[37]

Today a multiplicity of code words are operative for an extensive number of special access programs and projects involving the "compartmentalization" of classified information. These are used extensively for national security and defense purposes, particularly for weapons systems research and development as well as for intelligence activities and covert operations. Defense analysts, members of Congress, and others have stated with increasing frequency that such secret classifications lead to abuses. Secret classifications defy oversight and accountability, permit waste and fraud, and allow for cover-up of unlawful activity. Evidence of these abuses has been discovered in projects ranging from defense spending[38] to illegal government programs helping Nazi war criminals immigrate to the United States.[39] More recently, special access arrangements were used for many communications related to the Iran-contra scandal.

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ACCESS WITHOUT ACCOUNTABILITY

There remains, however, great uncertainty as to the number and uses of the special access programs in the U.S. government. President Reagan has required all agency heads to "establish and maintain a system of accounting for special access programs." The president also grants "nondelegable access to all such accountings" to the director of the oversight office for information classification.[40] However, this authority apparently has never been exercised, and no information has appeared about special access programs in the six annual reports prepared for President Reagan by the Information Security Oversight Office.

Part of the problem is the breadth of institutional secrecy under President Reagan. Defense development and intelligence activities are the two major areas using special access programs. The Reagan order grants sole and complete authority for intelligence special access programs to the Director of Central Intelligence. As a result, in order for overseers to investigate those programs, the CIA Director must grant permission, and the auditors must survive the CIA's lengthy clearance process.

COUNTING IN THE DARK

The experience of the General Accounting Office (GAO) illustrates the problems associated with ensuring accountability. In 1987, the director of GAO's national security and international affairs division stated that he had about 12 auditors cleared for special access programs. In 1986, GAO had only "a small handful, two or three, maybe, and that was up from zero before that."[41]

Demands for more information about special access programs are met with arguments that too many auditors will make the information less secure. However, the estimated volume and evidence of abuse of such secret classifications has drawn attention to the subject. In 1987, a journalist investigating the subject of classified defense spending stated that he believed that at least 10,000 special access programs existed.[42] In 1986, GAO conducted a study of the implementation of a presidential directive requiring lifetime censorship contracts for government employees whose work involves certain special access programs. GAO learned that 21 agencies, led by the departments of Defense, State, and Justice, maintained special access programs, and the report did not even include the CIA or the National Security Agency.[43] Reflecting on the widespread use of special access programs, GAO also reported that hundreds of thousands of government employees must sign secrecy contracts because their work involves special access programs.[44]

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CLASSIFIED SPENDING: THE "BLACK BUDGET"

The widest application of special access programs, and a subject of much current scrutiny and controversy relates to secret or classified defense spending. Popularly called the "black budget," classified defense spending in the Reagan administration has increased from $5 billion in 1981, to at least $22 billion for 1988.[45] One investigator who broadened cost factors to include classified sections of military operations and personnel budgets (e.g. the National Security Agency employs an estimated 50,000-60,000 employees, but these figures and the NSA budget are classified) produced a higher figure of $35 billion.[46] The Stealth bomber, estimated to be the Pentagon's costliest weapon system in history, is one of the "black budget" items. The Pentagon's 1988 "black budget" proposed a list of 200 items.[47]

Addressing this issue, Senator Paul Simon (D-IL) pointed out: "When we realize that the 'black budget' for fiscal year 1988 equals one-third of the deficit reduction target we need to reach this year, then I hope we can also agree that change must occur in this critical area."[48]

Classified spending is proposed by the Department of Defense in two categories: (1) project labels are given, but the costs are not revealed, and (2) projects are listed in code names, but the costs are revealed. The first situation is believed to account for $11 billion, one-half of the 1988 "black budget."[49] Examples include the Air Force's Advanced Cruise Missile (ACM) and the Army's "Project Sierra." Illustrative of the second category are three Air Force listings that amount to $8.2 billion: "Special Programs," "Special Update Programs," and "Selected Activities." Another Air Force entry includes an anti-radiation missile, labeled "Tacit Rainbow," which conducts a search-and-destroy mission while airborne.[50]

The problems of accountability and oversight of the "black budget" result from a double-punch of classified spending and special access programs. For classified spending, Congress permits certain agencies to use "certificates" instead of conventional vouchers that show precisely how agencies spend their funds. As a result, the General Accounting Office cannot perform a full-scale audit even though billions of dollars are spent.[51]

In addition, the courts have been very protective of agencies such as the CIA that operate in almost total secrecy. Constitutional challenges have been waged to gain access to CIA classified finances for violating Article I, Section 9 of the Constitution which requires that a "regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time." Rejecting this argument, the Supreme Court in 1973 determined that citizens lack judicial standing to challenge classified spending, reasoning that relief is available through the electoral process.[52] In 1977, a federal court determined that a single congressman also lacked standing to determine the use of public funds for illegal CIA activities.[53]

Improving accountability and oversight is an important responsibility of Congress. The "black budget" and the breadth of attendant special access programs has never been

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as extensive as it is today, but Congress has not ventured very far toward reforms in these matters in past years. Today, however, an effort is beginning, and the evidence of a need for more scrutiny includes considerations of inefficiency, waste, and fraud.

The defense industry is famous for delays and cost overruns, and observers fear that these problems run rampant in the "black budget" where virtually no checks and balances operate. One staunch defender of the Reagan military build-up, Senator Dan Quayle (R-IN) has argued unconvincingly that because of less oversight, "black programs are the most efficient programs we probably have."[54] However, former Deputy Defense Secretary David Packard, the chairman of the president's Blue Ribbon Commission on Defense Management, stated the reverse: "The interesting thing we found is that not all of those programs are well managed, either. So our investigation didn't quite support the theory that if you classify a program, it's automatically managed better."[55]

Fraud is also a serious problem. In 1986, there were three criminal convictions involving research and development for the supersecret Stealth bomber. In one case, an engineer working for Northrup Corporation on the Stealth project was convicted of defrauding the contractor of $600,000. A congressional investigative subcommittee has predicted that it will uncover kickbacks involving "the theft of several millions of dollars over the course of four or five years."[56]

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National security is not well served by overclassification of information, the lack of accountability of government officials or misuse of taxpayers dollars. Nonetheless, as a password for secrecy, national security has been used by the executive branch to perpetuate such harmful practices in our government. Congressional and public support are essential requirements for major U.S. policy and action, yet today Congress remains on the periphery, and citizens are given the lowest priority of those who "need to know." In the executive branch, the president is responsible, yet all too often remains unaccountable for excessive secrecy. The abuse of the concept of "national security" to justify anything the government wants to keep secret has fostered a bureaucracy of secrecy that threatens to isolate the government from the governed.

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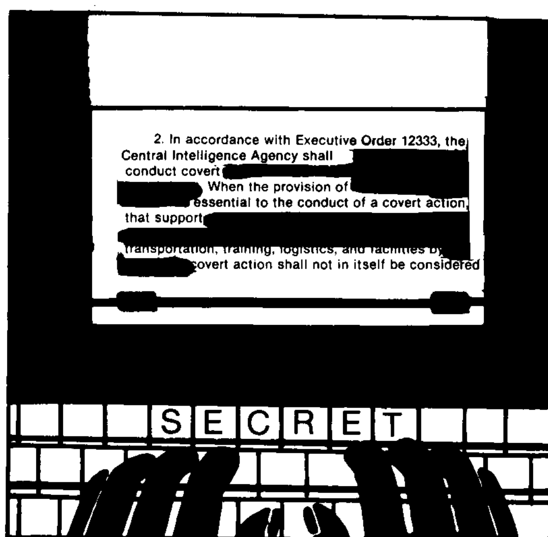

Chapter 4 Government Employees: Sworn To Secrecy

Since entering office in 1981, President Reagan has redefined federal information policy in terms of information security. In addition to issuing a restrictive information classification policy, a more visible and corollary policy has been to control the communications of government employees to the outside world. This has included major policy initiatives imposing secrecy agreements, lifetime prepublication review, controls on press contacts, and polygraph testing of employees. Crucial to the president's administrative regimen of controls has been the approval of an increasingly more conservative judiciary. In recent years, the constitutionality of executive branch measures has been upheld by the courts, further encouraging the expansion of government controls.

EXECUTIVE BRANCH CONTROLS

Information security is a legitimate concern in the management of vital secrets. It is an especially compelling issue at a time when information classification has been increasing significantly. It is, however, particularly discouraging to learn that more information is being locked up and more communication controls are being imposed on people experienced in government.

Two of the strongest Reagan measures to control communication have been issued as National Security Decision Directives (NSDDs). These are NSDD 84, "Safeguarding National Security Information," issued on March 11, 1983, and NSDD 196, "Counterintelligence/Countermeasure Implementation Task Force," issued November 5, 1985. Federal workers at all levels of government, including Cabinet officers, are affected by these orders.

National Security Decision Directive 84, designed to protect national security information, was released by the Justice Department shortly after it was signed by President Reagan.[1] In fact, NSDD 84 had been developed by an interagency team convened by Attorney General William French Smith at the request of the president's Assistant for National Security Affairs, William P. Clark. The group consisted of leading

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officials and legal authorities at the departments of Justice, Defense, the Treasury, and Energy as well as the Central Intelligence Agency.[2]

NSDD 84 imposed four new requirements:

(1) All federal employees with access to classified information must sign a nondisclosure agreement, pledging never to disclose classified information to which they had access.

(2) Federal employees whose work involves intelligence-related special access programs, "Sensitive Compartmented Information" (SCI), must sign a contract pledging lifetime prepublication review.

(3) Federal agencies shall set rules for media contacts with agency personnel.

(4) Federal agencies may require lie detector tests in investigations of unauthorized disclosures of information.

The prepublication review provision attracted public attention when departing U.N. Ambassador Jeane Kirkpatrick refused to sign it. She was presented with the secrecy contract by State Department security officials. Kirkpatrick defended her refusal to sign the agreement, saying "it binds you not to write, not even from unclassified material that may have come to you in the course of your work in the State Department. It is an extraordinary document. You could never write after signing it."[3]

NSDD 196, also an unpublished directive, was issued by President Reagan in 1985. It sought to reduce espionage by requiring periodic lie detector tests of government employees and contractors. Those affected by NSDD 196 include agency employees, as well as cabinet officials whose work involves special access programs, particularly the Sensitive Compartmented Information access programs. It was Secretary of State George Shultz who first drew public attention to this order when he reacted by stating, "the minute in this government I am told that I am not trusted is the day that I leave."[4]

The following discussion focuses upon the nature and scope of secrecy agreements concerning nondisclosure of information and lifetime prepublication review.

NONDISCLOSURE AGREEMENTS

The nondisclosure agreements required by NSDD 84 demonstrate the unlimited breadth and power of government controls on communication in our society. The "Classified Information Nondisclosure Agreements (Standard Forms 189 and 189A)" [Appendix C] apply to 3.5 to 4 million government employees and contractor employees whose work involves access to classified or "classifiable" information.[5] When this requirement was first set, almost one-half the federal work force was estimated to have security clearances.[6]

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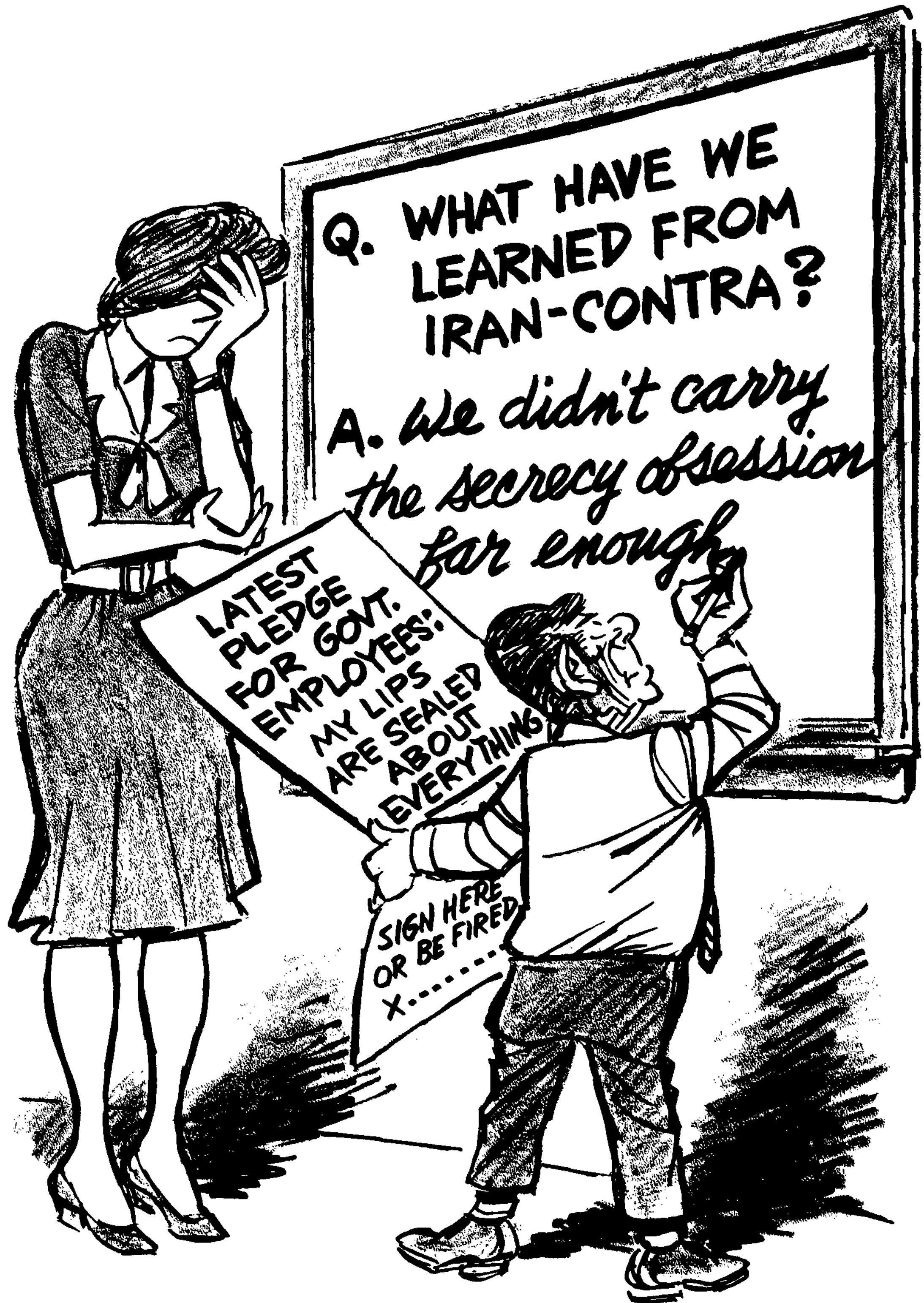

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The 1986 annual report to the president by the Information Security Oversight Office reported that 69 federal agencies have implemented the directive.[7] The Air Force, for example, stated that 765,000 Air Force military and civilian officials had signed the nondisclosure agreement.[8] The number of Pentagon employees who have signed the agreement is placed at 1.5 million.[9] Another means of visualizing the application of the agreement is simply by calculating the number of federal employees and contractors with clearances for classified information. In 1986, the GAO determined from a study of 41 agencies, excluding the CIA and the National Security Agency, that "about 2.2 million federal and 1.4 million contract employees held security clearances at the end of 1985."[10]

The consequences of violating the terms of the nondisclosure pledge are indeed strong, even though its national security purpose is obvious enough to clearly emphasize compliance. However, the government states in the nondisclosure agreement and in related guidelines[11] that its enforcement powers include:

* Injunctive relief to prevent disclosure.
* Penalties for security violations and revocation of security clearance.
* Administrative sanctions (including job transfer and firing), financial penalties, and "initiation of criminal prosecution against an individual, if approved by the Department of Justice."

In 1987, members of Congress called upon President Reagan to withdraw the nondisclosure agreement, citing serious constitutional problems with the directive.[12] First Amendment violations may result because the agreements restrain free speech, including an impermissible burden on the right to petition the government. Similarly, it is believed that the agreements conflict with so-called "whistle-blower" laws, which give government employees the right to cite "mismanagement, a gross waste of funds, an abuse of authority, ... a substantial and specific danger to public health or safety," or illegality.[13] Lastly, there is strong concern about the indefinite standard of "classifiable information" which gives the government great control, especially considering the president's exclusive authority to set the boundaries of classified information, to limit declassification, and to engage in reclassification of information.

Initial progress has been made to reduce the scope, ambiguity, and repercussions of the nondisclosure agreements. In August 1987, the Information Security Oversight Office informed the Air Force that its practice of requiring all employees to sign nondisclosure pledges, including at least 150,000 with no access to secrets, was not the intent of the administration.[14] In addition, the administration has instructed agencies--temporarily -- not to withdraw the security clearances of employees who refuse to sign the nondisclosure agreements.[15] Legal action challenging the constitutionality of the mandatory secrecy agreements has been taken by the National Federation of Federal Employees which represents an estimated 150,000 federal workers and the American Federation of Government Employees which represents approximately 700,000 federal workers.[16]

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The lawsuit is particularly focused upon the term "classifiable." On August 11, 1987, the administration released a new definition "classifiable," which it believed clarified the term by defining it as information that was classified but had not been designated as such. While it is recognized that some derivative use of classified information may not have been labeled as such, the concept of classifiable, even under the new definition, would allow the government to make unilateral decisions to classify whenever a query or request for the information has been made. Some in Congress believe that such a policy constitutes a broader form of predisclosure and prepublication review by the government.

PREPUBLICATION REVIEW

In the past, intelligence agencies, relying upon statutory authority to "protect intelligence sources and methods from unauthorized disclosure,"[17] have been the primary entities requiring prepublication review. Employees involved in covert intelligence operations have routinely had their speeches and writings reviewed for content that discloses classified information without authorization. The Supreme Court determined that this practice was constitutional in 1980[18] and that even unclassified material was subject to review.[19]

Prepublication review has been a practiced method of controlling information at the CIA. For example, the editor of *Periscope*, the publication of the Association of Former Intelligence Officers, has stated: "Everyone who writes for my publication is bound by a contractual prepublication review agreement by some agency or department of the federal government. Many writers worry about the lawyers determining whether it's libelous or suitable to print. We worry about the lawyers after we get through the publication review process."[20]

The prepublication review agreement required by NSDD 84 was, in fact, a revised version of the CIA's Form 4193 [Appendix D]. Congress reacted strongly in opposition to NSDD 84, particularly its lifetime censorship program. Temporary statutory restrictions, lasting 5-6 months, were placed on implementation of the prepublication review requirements by any agencies so as to allow time for congressional review.[21] On February 15, 1984, shortly before the congressional restraints ended, President Reagan agreed to suspend the prepublication provisions of NSDD 84, and National Security Advisor Robert McFarlane issued a suspension order "to all agencies affected by NSDD 84."[22]

The practice of imposing prepublication review requirements on government workers was, nonetheless, widened. Unknown to Congress, the Reagan administration had already been using the CIA's lifetime censorship contract, Form 4193, as a "boilerplate" secrecy contract throughout the government. The General Accounting Office reported that at the end of 1983, excluding the CIA and the National Security Agency, 23 agencies had required 119,000 employees to sign Form 4193. "An unknown number of former employees also have signed the agreement. The Department of Defense estimated that, of 156,000 military and civilian employees who had signed agreements, about 45,000 were former

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employees" who had been reassigned to work no longer involving highly classified information.[23]

President Reagan interpreted suspension of the lifetime censorship provision of NSDD 84 in the narrowest possible terms: not implementing a revised Form 4193 contract. The General Accounting Office conducted another study and concluded that in 1985 the number of employees required to sign Form 4193 had risen to 300,000. The most astounding figure reported by the GAO was that in addition to lifetime censorship agreements, prepublication review regulations applied to an estimated 3.5 million federal employees.[24] As part of the August 1987 lawsuit challenging the constitutionality of the nondisclosure forms, the American Federation of Government Employees is also challenging the constitutionality of the Form 4193 lifetime censorship contract.[25]

Prepublication review poses important constitutional questions not only regarding possible First Amendment violations but also about the way in which Americans can learn about their government. Issues to consider include whether:

* Political debate will be filtered.
* Information will be subject to broad manipulation or censorship.
* Officials of the current administration will be put in a position to censor former officials.
* Timely publication of opinion pieces and articles in newspapers will be delayed.
* An extensive bureaucracy will develop around lifetime censorship.

The effects of prepublication review include its potential impact on the most important officials of every administration: cabinet officers. From the president on down, all cabinet officers have access to the type of information that triggers lifetime censorship contracts. This means that many books and articles they write about their experience and issues to which their experience lends insight will be subject to censorship by the government.

The impact of such restraint was illustrated during congressional hearings on NSDD 84. There, the chairman of the board of Time, Inc., listed the books and articles by former senior officials that would have to undergo government censorship. The list included books and magazine articles by former officials including: three presidents, a Joint Chief of Staff, chairman of the board, three secretaries of state, a director of central intelligence, five ambassadors, and important aides, including Watergate burglar G. Gordon Liddy.[26]

Our need to ensure that the voices of former government employees can be expressed to policymakers was underscored in 1987 by meetings of former cabinet officials. On September 26, 1987, seven former Defense secretaries gathered to discuss United States policies ranging from nuclear arms to the Persian Gulf. The group discussion, taped for public television, found both "peril and promise" for the United States.[27] If prepublication review had been required of these officials, the program would have had to be approved by the government. Another example of the value of public

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debate involving former policymakers was a reunion of former Kennedy administration officials. On March 5, 1987, marking the 25th year since the Cuban Missile Crisis, former cabinet members and staff from the Kennedy administration gathered. Those present included former Secretary of Defense Robert McNamara, former Secretary of the Treasury C. Douglas Dillon, and former Under Secretary of State George Ball. For one week, these former officials and other important aides to President Kennedy met with scholars and policy experts to publicly reflect on "those '13 days' when the world seemed to tremble on the brink of nuclear apocalypse." As stated by Harvard professor Richard Neustadt, addressing the small group of Kennedy alumni: "You are the only people we have access to who have had to face the problems of escalation in a nuclear crisis. You are the only people there are to talk to about your perceptions, your feelings, your concerns. For any future leader who has to face the prospects of a crisis escalating out of hand, you have valuable lessons to offer."[28] The Reagan administration prepublication review measures, however, would jeopardize the availability of such information to future administrations and generations.

While President Reagan's efforts to control information and communication has at times been protested by Congress and the public, it has received less opposition from the courts. The Supreme Court's 1980 decision in the *U.S. v. Snepp* case[29] is the most powerful enforcement tool the government now possesses. However, the government has used the decision, which required a CIA employee to submit to prepublication review, to impose censorship agreements on federal workers in a variety of agencies. The *Snepp* case involved a former CIA agent who published a book criticizing U.S. practices during the Vietnam War. The Court held that Snepp had violated his agreement by not providing the CIA "an opportunity to determine whether the material he proposed to publish would compromise classified information or sources." Furthermore, the Supreme Court awarded damages to the government in the form of a "constructive trust," into which Snepp was required to "disgorge the benefits of his faithlessness."

Federal intelligence agencies, acting on the expanded power they perceive has been endowed by the courts, have begun to threaten and prosecute past and present employees under espionage law. In one case, the National Security Agency (NSA) had a warning delivered by the FBI to two former Air Force communications intelligence specialists who had written an article for the *Denver Post* challenging the Reagan administration's account of the Soviet downing of Korean Air Lines Flight 007. In the warning, the NSA reminded one author of his "secrecy agreement with the agency," and told him that his "disclosure is technically a violation of the Espionage Act and any further disclosures should be cleared with the NSA."[30]

Espionage law, however, is now clearly operational against misanthropic government employees not only for disseminating information to foreign agents, as was intended by those perfecting the law, but also for disclosing information to the press. In the 1985 *U.S. v. Morison* case,[31] a government employee was convicted of violating an espionage law[32] for "willfully" communicating to a British military journal, *Jane's Defense Weekly*, copies of photographs taken by a reconnaissance satellite. He was also convicted

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of violating another provision of the espionage law for having kept intelligence documents at his home.[33]

The Supreme Court may make a final determination in the *Morison* case in 1987. However, three important concerns have surrounded the case:

(1) There has been a rush in recent years by the courts to give the espionage statutes the broadest possible application.

(2) Congress did not intend the espionage statutes to extend to publications as well as specific agents and foreign governments.

(3) The United States will have the equivalent of an "Official Secrets Act" if the Supreme Court upholds the conviction.

The above controls on government employees are extraordinary measures of information security that unwisely displace constitutional guarantees and democratic values. These restrictions on communication and information in our society have the potential to further isolate our government from accountability, to remove responsibility for policies and activities from elected officials, and to undercut the ability of citizens to engage in informed debate about their nation.

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Prepublication review contracts, nondisclosure agreements, and extension of secrecy controls through the courts between 1981 and 1987 have a disturbing similarity to policies during the McCarthy era of the 1950s. That was a period of heightened fear and distrust of those outside government. Officials stigmatized citizens and arrogantly displaced constitutional guarantees. Today, loyalty oaths are replaced by secrecy contracts; information disclosure is defined in terms of "leaks," and the espionage law is wielded by government officials beyond the intent of the law. Government employees are sworn to secrecy.

These practices threaten to erect a wall between government employees, Congress, citizens, and the press. Never before have First Amendment guarantees of Americans been conditioned upon government employment to this extent.

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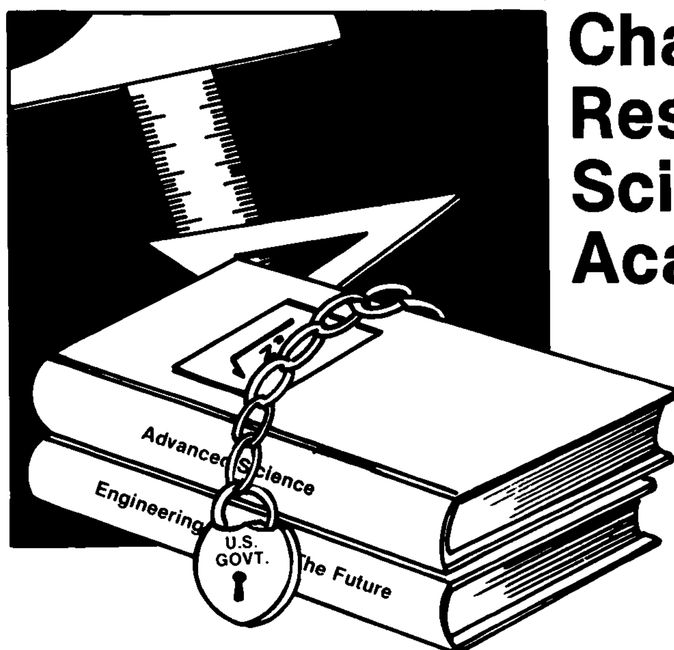

Chapter 5 Restricting Scientific and Academic Freedom

SCIENCE AND TECHNOLOGY

Scientific and technological developments in the United States have prompted government concern about the "dual use" of technology by the military and civilians. A leading physicist put this development into perspective: "Nikita Khrushchev is supposed to have commented that the buttons on a soldier's pants represent an important military technology, since they free his hands to hold a rifle."[1]

National security controls on the scientific, technological, and academic communities have had a long history in the United States because of the use of atomic and nuclear technology for weapons. Thus, in 1946, Congress enacted the Atomic Energy Act.[2] It established a category of protected information called Restricted Data, and today virtually all information related to nuclear weapons and nuclear energy is "born classified."[3]

In 1951, Congress enacted the Invention Secrecy Act which allows the Department of Defense to review patent applications, impose a secrecy order, and block an invention's use in the civilian sector.[4] Earlier authority for this activity dated from the World War I era. Today, however, secrecy orders are permissible even where the government has no property interest or right in the invention.

Despite these and other statutory controls, as well as the massive classification system, the government is pursuing more aggressive measures. Increasingly, U.S. defense

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policy, foreign policy, and trade policy are combined through a single national security interest to control scientific communication and the free exchange of ideas.

RUNNING IN PLACE: SECRECY AND THE SCIENCE RACE

Edward Teller, an outspoken physicist and considered the "father of the hydrogen bomb," said: "Secrecy is not compatible with science, but it is even less compatible with democratic procedure."[5] Scientific and technological advancement result from multiple postulations, experiments, and conclusions, as well as verifications, from many sources around the world. The "science race" is best visualized as the Olympic relays where runners from many nations pass a baton to begin the next lap -- instead of a lone climber scaling Mt. Everest.

An excellent illustration of the situation may be found in the recent advances in superconductor technology, believed to revolutionize existing technology from electrical generation to computers. The race started in Zurich and culminated in Houston, Texas. Notably, the Houston team was led by a Chinese-American working with other Chinese-born scientists, most of whom are not U.S. citizens.[6]

Ironically, and sadly, these successes have led to increased government controls. On July 25, 1987, the Reagan administration announced that it was denying all foreign officials permission to attend a major superconductivity conference sponsored by the White House and the Department of Energy.[7] On July 28, 1987, President Reagan addressed the conference and announced an eleven-point "Superconductivity Initiative" that included: changes in the Freedom of Information Act to withhold "commercially valuable" scientific information and "strengthening the patent laws," which means increasing the government's power to impose secrecy orders on patents.[8]

A leading physicist said in response that superconductivity "has been an international project from the start. The openness here has been just astonishing. That is why the advances have come so fast. If we start closing the doors now, the United States stands to be a very big loser."[9]

SECRECY AND COMPETITIVENESS

In such actions, the government has extended the "dual use" theory beyond national security to such areas as economics or, in the current parlance, "competitiveness." As in the past, singular events have triggered expanded controls on scientific communication beyond reasonable boundaries. In 1979, it was the Soviet invasion of Afghanistan. In 1987, it is the illegal transfer of technology by Japanese and Norwegian companies to the Soviets to make quieter submarines. One scientist placed the issue in perspective by stating:

> I have no wish to minimize the irresponsibility of the Toshiba/Kongsberg actions. But let me suggest that the greatest threat to our military security is not from unscrupulous corporate executives, or inadequate

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> export regulations or Soviet espionage. The danger is that Mr. Gorbachev is beginning to recognize why it is that they have been compelled to rely so heavily on technology purloined from the West.
>
> The *Glasnost* reforms in the Soviet Union are aimed at emulating the open system that has given us our technological advantage. The final irony of the silent Soviet submarines would be for the United States to move toward the sort of restrictions that have held back the Soviet Union.[10]

Do increased U.S. restrictions on access and activity of foreigners help or hinder the competitiveness of American industry? While it is clear that the United States is a point of origin for much technology transfer, the situation is not as unbalanced in favor of foreign countries as some would argue.

Strong evidence shows that foreign students, engineers, and scientists are playing an integral role in the success of American industry. Nonetheless, the Reagan administration's restrictions on technology transfer often cause corporations to forego this talent pool. A vice-president at Monsanto Corporation states: "Sometimes you fight to get them because they're the best. Other times it's just too much hassle." Many large corporations still make the effort. At Rockwell International Corporation's main research center, 60 of 300 scientists are foreign. The restrictions on technology transfer are a formidable hurdle to overcome. General Electric's chief scientist, Roland W. Schmitt, has said: "So far we've lucked out in that a significant number of those foreign nationals have decided to stay. The United States has many research centers, including our main facility at G.E., that would have been dead in the water had they not been available."[11]

MELTDOWN MENTALITY

Increased governmental concern over militarily useful information reaching the Soviets and other adversaries has received equal attention from American scientists. In 1982, the National Academy of Sciences (NAS) issued a report, *Scientific Communication and National Security*, which found that, while there is a "substantial transfer" of U.S. technology to the Soviet Union, "very little" was attributable to open scientific communication.[12]

President Reagan acknowledged the NAS conclusions and then proceeded to expand the secrecy-security controls on scientific and technological research conducted with federal grants or contracts. In late 1982, President Reagan issued a National Security Study Directive calling for a special panel to develop policies to control scientific information.[13] In September 1985, the president issued National Security Decision Directive 189, "National Policy on the Transfer of Scientific, Technical and Engineering Information," calling for use of the classification system to "control information generated during federally funded fundamental research in science, technology and engineering at colleges, universities and laboratories." The directive ordered all agency heads to initiate classification of such information prior to the award of grants,

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contracts, or cooperative agreements, and "periodic review" of grants, contracts, and agreements for "potential classification."[14]

The Reagan administration's initiative to control scientific, technological, and engineering information extended well beyond the atomic energy laws or the classification system. Target authorities have included: the Arms Export Control Act of 1976, administered by the State Department through the International Traffic in Arms Regulations; and the Export Administration Act of 1979 (extended in 1985), administered by the Commerce Department through the Export Administration Regulations. The application of the Export Administration Act not only covers international exchanges of information in the form of documents, records, and papers but also restricts access of foreign nationals to information in the United States. The application of these authorities relies upon the Militarily Critical Technologies List, prepared and maintained by the Defense Department. In an unclassified version, this list is 212 single-spaced pages. The Defense Authorization Act of 1984 also gave the Secretary of Defense authority to withhold technical information under the control of DOD from disclosure under the Freedom of Information Act.[15]

The information increasingly subject to secrecy controls is neither classified information, nor is it always government owned. Instead, the indefinite national security concept is used to restrict scientific communication, attendance at professional conferences, enrollment in university classes, access to university laboratories and computers, access to computerized information, and the ability of foreign intellectuals to come to the United States.

CHRONOLOGY OF GOVERNMENT INTERFERENCE

A brief chronology, compiled from publicly available sources, helps illustrate the nature and extent of national security controls imposed on the scientific and academic community:

1980: Department of Commerce forced American Vacuum Society, organizer of a small international meeting on magnetic bubble memory devices, to rescind invitations to certain foreign nationals. In a phone call, the Commerce Department threatened to fine the Society and imprison its president, stating that an agent was on hand to arrest him.[16] The Society wrote invitees in Hungary, Poland, and the Soviet Union rescinding the invitations. Scientists en route from the People's Republic of China were admitted to the meeting subject to signing an agreement not to "reexport" information to any national from a list of 18 countries.[17]

1980: Department of State stopped nine Soviet citizens from traveling to a conference on lasers, electro-optical systems, and inertial confinement fusion organized by the Institute of Electrical and Electronics Engineers and the Optical Society of America.[18]

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1982: U.S. Customs officials seized a shipment of computer science textbooks which a U.S. professional society was shipping to Japan.[19]

1982: U.S. Customs officials confiscated the luggage of five visiting Chinese scholars, removing scientific journals, classroom notebooks, thesis and lecture materials, slides, innocuous computer software, and rock music cassettes.[20]

1982: Department of Commerce and Department of Defense officials forced the withdrawal of more than 100 of 700 papers at the twenty-sixth Annual Technical Symposium of the Society of Photo-Optical Instrumentation Engineers.[21]

1984: Department of Defense and National Aeronautics and Space Administration (NASA) jointly sponsored a professional conference with the American Ceramics Society on composite materials but restricted attendance to "U.S. citizens only."[22]

1984: The International Traffic in Arms Regulations were implemented by the American Institute of Aeronautics and Astronautics to restrict non-U.S. citizens from attending certain composite materials sessions at the Institute's conference. Proof of citizenship required a birth certificate, naturalization papers, U.S. passport, or voter registration card.[23]

1984: The Society for the Advancement of Material and Process Engineering closed conference sessions on metal matrix and carbon-carbon to non-U.S. citizens. About 20 percent of the Society's 5,000 members are foreign nationals.[24]

1985: The Department of Defense required cancellation of a special session of the Society for Photo-Optical Instrumentation Engineers, organized by one of its members at a military base, stating that such presentations could not be made in open session. Ultimately, 28 of the 43 proposed papers, revised under DOD review, were presented in closed session, attendees were required to sign an agreement controlling dissemination of export-controlled DOD technical data.

1986: The Pentagon oversaw the selection of papers for presentation at the Linear Accelerator Conference. Initially, 13 were refused clearance, and after an appeal 3 papers were still banned.[25]

1987: The U.S. Army obtained a secrecy order from the Patents Commissioner when an Israeli mathematician, working in Israel, requested a U.S. patent for an invention involving "zero-knowledge proofs." Cryptological applications of proofs have occurred, but new discoveries are generally considered as advances in theoretical science. Withdrawal of the secrecy order was forced because the government is not permitted to classify work that foreigners do in their own country.[26]

1987: President Reagan and the Department of Energy barred foreign officials from attending a national conference on superconductor technology.

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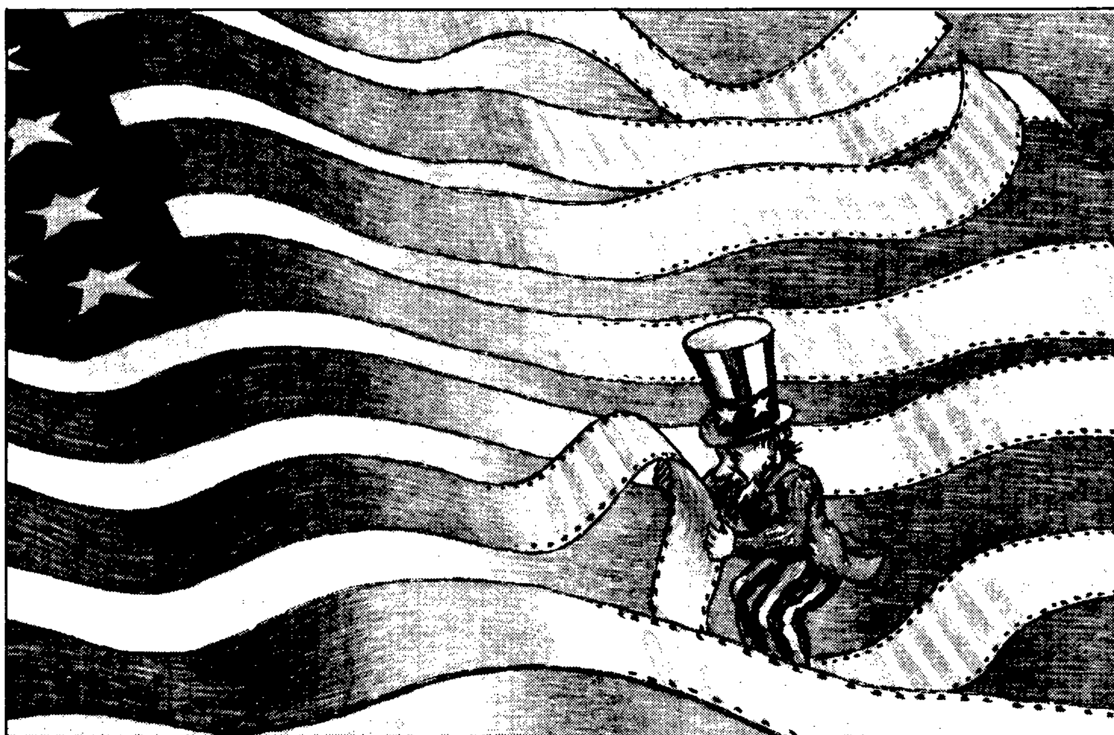

Giora Carmi

COMPUTERIZED INFORMATION

Particularly because of the growth of the electronic information age and computers, the government has accelerated efforts to control access to telecommunications and computerized information. It is an especially important subject area because it involves the government's right to control information that is neither classified nor government property. Instead, it includes data bases belonging to private corporations, universities, and libraries.[27]

The concern over access to such information pertains, as President Carter stated in 1977, to materials "that would be useful to an adversary." The problem is a genuine one, but there is great difficulty in balancing legitimate protections with necessary freedoms. The potential for moving our nation towards a "national security state" is nowhere greater than in allowing the government to extend its control over information or maintain surveillance over practices regarding the use of telecommunications or computerized information.

Federal arrangements for protecting the information must be reasonably designed to ensure public accountability, and not simply to create another institutional form of secrecy. Under President Carter, for example, telecommunications information policy included classified and "unclassified, but sensitive," information. The Defense Department was made responsible for information related to national security. Importantly, the

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Secretary of Commerce was responsible for non-national security and unclassified systems, particularly for private sector information security needs.[28]

Under President Reagan, however, the scope of the government's control of telecommunications and computerized information has been increased, and the mechanisms to do so are more secret. In 1984, President Reagan issued National Security Decision Directive 145, eliminating the counterpart authorized by President Carter in 1977. By definition, President Reagan emphasizes information as "sensitive, but unclassified." The boundaries of government control have been extended beyond government property or even reasonable national security concerns. The arrangements for protecting the information, notably including the property of private corporations, and universities, has been centralized in the military, specifically the highly secretive National Security Agency.

In the National Security Council directive implementing NSDD 145, former National Security Advisor John Poindexter stated that the scope of "sensitive, but unclassified information" now subject to government control would include:

> Other government interests ... related but not limited to the wide range of government or government-derived economic, human, financial, industrial, agricultural, technological, and law enforcement information, as well as the privacy or confidentiality of personal or commercial proprietary information provided to the U.S. by its citizens.[29]

The Poindexter memorandum announced the creation of a new unit within the National Security Agency and described the NSA's responsibilities as:

> to include all computers and communications security for the Federal Government and private industry ... including non-national security sensitive information.

The potential impact of NSDD 145 in the private sector is staggering. By 1986 the Information Industry Association reported that there were 3200 electronic data bases available worldwide through 486 on-line information services. Seventy percent of these data bases are produced in the United States, and all but two of the 20 largest data base companies are U.S. corporations.[30] In 1986, one of the nation's largest electronic publishers, Mead Data Central, was visited by officials from the Air Force, the FBI, and the CIA. Mead Data Central has clients in 46 countries, and its information is entirely unclassified. Nonetheless, the government stated its desire to monitor Mead's clients and limit their access to information. In June 1987, Columbia University was visited by two FBI agents who told its library administrators that it wanted them to report on the use of materials by foreign nationals in the school's science libraries.[31]

These activities reflect how aggressively the Reagan administration has implemented its policy. The Columbia University visit is notable because three months

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earlier, in March 1987, the Poindexter memorandum implementing NSDD 145 was officially withdrawn by National Security Advisor Frank Carlucci.

In Congress, legislation passed the House supplanting NSDD 145 while creating effective computer security policies. If passed by the Senate, the law would provide a more limited definition of "sensitive" information and would remove the National Security Agency from its policy development and enforcement role. Instead, responsibility for policies within the federal government, as well as civilian agencies and the private sector, would be in the hands of the Department of Commerce and the National Bureau of Standards.[32] In the meantime, NSDD 145 is intact, and both White House and Pentagon proposals for implementation are expected during the remainder of the Reagan administration.[33]

CONTROLS ON CAMPUS: ACADEMIC FREEDOM

On college and university campuses across the United States, the restrictions discussed above are felt by many scientists. In addition, there have been prepublication review contracts, controls on foreign scholars, course enrollment by foreign students and their computer access, and immigration restrictions on foreign visitors. These distinct controls strike at the heart of academic freedom. In some cases, the relationship to national security is questionable, in others it has been nonexistent.

PREPUBLICATION REVIEW

Prepublication review agreements in academia revisit the controls imposed by President Reagan under National Security Decision Directive 84. The directive's provisions for lifetime prepublication review applied to university researchers because certain research grants are government-sponsored. The same experience has occurred in universities as in federal agencies -- prepublication contracts have been imposed despite President Reagan's agreement in 1984 to rescind that portion of NSDD 84. In addition, the practice of using prepublication review in science-related government grants has led to a trend in other government-sponsored university research contracts in areas involving neither military nor classified information.

Prepublication review in the academic community raises several unique problems, including elimination of the valuable expertise and insight that the academic community often provides to government. Such insight is denied in three ways: (1) former government officials are prevented from further exploring the areas in which they have worked after they leave government to take university positions; (2) current government officials can thwart criticism of their practices and policies by deciding that information should never be publicized; and (3) government censorship generally will filter the debate in academic forums, greatly diminishing an essential value of universities.

Adding to these concerns is the growing number of federal agencies requiring prepublication review contracts. Most troubling is the fact that these limitations are

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required where the information is not only unclassified, but outside the scope of national defense concerns.

A Harvard University report identified several such instances in which prepublication review has been required or proposed:[34]

* Department of Housing and Urban Development: "Study on Changing Economic Conditions of the Cities."
* Health Resources and Sciences Administration: "Workshop for Staff of Geriatric Education Centers."
* National Institute for Education: "Education and Technology Centers."
* Environmental Protection Agency: "Conference on EPA's Future Agenda."
* Food and Drug Administration: "Development of a Screening Test for Photo-carcinogenesis on a Molecular Level."
* National Institutes of Health: "International Comparison of Health Science Policies."
* Department of the Air Force: "Measurement of Lifetime of the Vibrational Levels of the B State of N_2."

RESTRICTED ACCESS: COURSES, COMPUTERS, AND COLLEAGUES

Just as federal agencies have sought to regulate areas of scientific communication, so too has the government asserted power to control teaching activity. These government actions have startled the academic community and, while some have refused to accept the restraints imposed by government, many feel that there is no alternative. The following are some examples of these governments actions since 1981:

1981: Department of State asked officials at major universities to cooperate in prohibiting visiting students from the People's Republic of China from engaging in research and studies in certain scientific and technological areas. The request would have required close personal surveillance of student activities.[35]

1981: Department of State imposed restrictive conditions on a Hungarian engineer's scheduled stay at Cornell University to study electronics. The visit was cancelled.[36]

1982: Department of Commerce concerns caused the National Library of Medicine to deny nationals from Communist countries on-line access to its MEDLINE service, a computerized index of articles appearing in some 3,000 medical and biomedical journals.[37]

1984: A college course at the University of California at Los Angeles was restricted to "U.S. Citizens Only." It was determined that lecture materials concerned unclassified technical data appearing on the Munitions Control List regulated by the International Traffic in Arms Regulations.[38]

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unclassified technical data appearing on the Munitions Control List regulated by the International Traffic in Arms Regulations.[38]

1987: The FBI established a "Library Awareness Program" within its national counterintelligence effort. The FBI program seeks the assistance of college and public librarians in creating surveillance records on library use by foreigners. By September 1987, FBI officials had visited approximately 20 libraries in the New York area.[39]

Controls on access to computerized information have been the subject of a special initiative by the Reagan administration. This issue reexamines National Security Decision Directive 145 issued by President Reagan in 1985, creating military authority to control access to "sensitive, but unclassified, information."

Although implementation of the directive has been in abeyance since March 1987, it is expected to be revitalized, and its application would be wide ranging. Intended to improve computer security the directive affects unclassified information not only in the possession of the government, but in universities and libraries.

IMMIGRATION RESTRICTIONS

In addition to access controls the government may place on foreign students, scientists, and scholars at universities, one of the strongest measures used has been to deny immigration visas. This has been done using the ideological exclusion provisions of the McCarran-Walter Act,[40] a McCarthy-era immigration law enacted over the veto of President Harry Truman.

The Act has been used by several administrations to exclude and deport foreign visitors invited to lecture or teach at universities and colleges in the United States. The law reflects a xenophobic period in American history, when unwise compromises of important democratic freedoms were made. The denial of rights in this case is to Americans, whose First Amendment rights include hearing and judging ideas for themselves, rather than allowing the government to serve as censor.

In 1972, the Supreme Court interpreted the McCarran-Walter Act to deny a visa to Ernest Mandel, a Belgian journalist and Marxist theoretician invited to speak at Stanford University in 1969. Mandel had described himself as a "revolutionary Marxist" on his visa application in 1969 as well as on two previous applications allowing successful visits to the United States in 1962 and 1968. The 1969 visa was denied on the grounds that his "1968 activities while in the United States went far beyond the stated purposes of his trip ... represent[ing] a flagrant abuse of the opportunities afforded to him to express his views in this country."[41] The Supreme Court rejected claims made by American university professors who claimed they had a right to hear and communicate with foreigners. Since *Mandel v. Kleindienst*, a disturbingly long list of visa denials have been implemented against visiting scholars and speakers. In addition, there have been deportation proceedings against tenured foreign-born professors.[42] Congress is currently trying to change the law to terminate the government's authority to deny visas or deport

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States simply because of their political affiliations, in this case allegedly with communist groups. The Court upheld a U.S. Court of Appeals decision saying that if the State Department wanted to bar foreign visitors invited to speak in the United States, it must certify to Congress that the visitors would constitute a threat to national security.[44]

The Reagan administration has been notable for its use of the McCarran-Walter Act to ban foreign visitors to prevent Americans from hearing views the administration does not support. The administration claims that its actions are authorized under provisions of law that grant broad foreign policy powers as well as provisions that authorize visa denials on the basis of membership of or affiliation with certain political organizations. Particular instances have involved visa denials to:

- Hortensia Allende, widow of Salvadore Allende, Chile's last democratically elected president. Mrs. Allende was invited to speak by the Archdiocese of San Francisco and Stanford University and would have made comments critical of current U.S. policy in Chile.
- Nicaraguan Interior Minister Tomas Borge, who was invited to speak and would have criticized President Reagan.
- Former Italian General Nino Pasti, a former NATO official, who was invited to speak and would have been critical of U.S. missile deployment in his homeland and Western Europe.
- Farley Mowat, Canadian naturalist and author of *Never Cry Wolf*, and Italian playwright Dario Fo.

As noted American author Kurt Vonnegut stated in testimony before a Senate subcommittee considering elimination of these restrictions:

> No other nation has a law like our First Amendment. But then again no other Western bloc country has anything quite like the McCarran-Walter Act. We have damaged our own reputation while gaining nothing with enforcement of this law. It is the free exchange of ideas, no matter how outrageous, that has made us strong. I don't think we have to be afraid of any idea. We are very good at testing them when given a chance.[45]

******

Government restrictions on scientific, academic, and intellectual freedom pose some of the most serious problems for the future of our nation. Free exchange of ideas serves as a practical requirement for scientific and technological advancement. Government secrecy measures, however, interfere with meeting this basic requirement. The academic community is an essential forum for independent learning, thinking, and debate. Our nation values the education of its children and their preparation for a world of uncertainties. Nonetheless, government secrecy measures have inhibited the intellectual prosperity of our nation's colleges and universities and have begun to isolate teachers and students from their colleagues and counterparts around the world.

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Government infringement upon First Amendment guarantees augment the practical handicaps resulting from excessive government secrecy in the scientific, technological, and academic communities. Efforts to stop the public presentation of scientific papers, that are neither classified or government property -- yet are prohibited from public presentation -- pose serious problems under the Constitution. The government's use of export and import laws to justify such action creates a heavy burden of proof, as yet unmet, regarding the proper use of these laws. When the government decides to deny a visa to a visiting scientist, scholar, or writer, it is violating the First Amendment rights of Americans to decide for themselves the value of ideas expressed by such persons. The many instances of government interference from 1981 to 1987 reflect the capacity of our government for unilateral action. The strength of our democracy and the future of our nation, however, require a more limited and well-balanced role of government.

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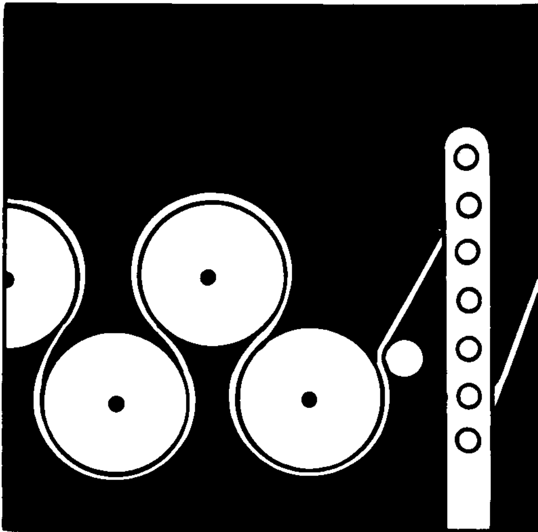

Chapter 6 Stopping The Presses

The United States is in the midst of an evolving "information age," when policies about information become decisions about the future of society itself. These decisions are most keenly felt by Americans regarding their daily forum and source of information: the press. Despite the rights that allow Americans to navigate the maze of government agencies to acquire documents and records, it is the press that regularly and systematically brings most information to the public's attention.

The role of the press has produced a complex and tense working relationship between the news media and the executive branch. President Kennedy launched the modern media presidency by being the first to use the live television press conference as a communication tool of the White House. Other presidents have lacked President Kennedy's telegenic quality, but the role of the media in general has, nonetheless, expanded.

In recent years, Americans have witnessed the power of information, the dynamics of its control, and its capacity for truth as well as manipulation. President Nixon was well known for his distrust of the press which he converted into presidential power to broaden control over information. Nixon's unsuccessful attempt to obtain a court order to stop the *New York Times* from publishing the Pentagon Papers remains a landmark in history.

President Reagan has been equally distrustful of the press and appears to be willing to compromise First Amendment freedoms. The Reagan administration has planned and implemented an aggressive agenda of controls on the press and for most of Reagan's tenure as president has simultaneously tried to disarm and manipulate the news media. In the wake of the Iran-contra scandal, some may say that the administration is getting its just desserts, but scorn will not erase past practices or uproot policy. As in any presidency, many events take place that cannot be simply wished away.

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GRENADA, SPIES, AND LIBYA

THE INVASION OF GRENADA

In October 1983, furor over national security controls on communication reached its highest level since the Pentagon Papers when President Reagan ordered a news blackout during the invasion of Grenada. The threat was made to shoot any U.S. reporters who tried to reach the island on their own. Coverage of the initial stages of the assault was selectively provided by the Defense Department's own public relations personnel.[1]

RESPONDING TO ESPIONAGE ACTIVITY

In May 1986, President Reagan telephoned the publisher of the *Washington Post*, Katherine Graham, and urged her not to publish an article about intelligence-gathering operations involving American submarines.[2] The president's phone call belied a stronger administration effort. Within days, CIA Director William Casey threatened to prosecute the *New York Times*, the *Washington Post*, the *Washington Times*, *Newsweek*, and *Time* magazine for publishing information about U.S. intelligence gathering operations. He alleged that the news organizations had violated a section of the espionage law, enacted in 1950 but never applied. Discussions between the administration and the *Washington Post* in May 1986 marked the sixth time in a twelve-month period that government officials had pressed the newspaper to withhold or alter an impending article.[3]

In a case now before the Supreme Court, the Reagan administration is pursuing an unprecedented application of our nation's espionage laws to news publishers.[4] In the past, the espionage laws have applied only to disclosure of information to hostile foreign governments and their agents. Many believe that if the Reagan administration is successful before the Supreme Court, the United States will essentially have created an Official Secrets Act. Even if the person who disclosed the information is never identified, the mere publication of information would be prohibited and punishable. A newspaper or any other media in which the information appears could be held criminally liable.

DISINFORMATION ABOUT LIBYA

In October 1986, it was revealed that a White House disinformation campaign against Libyan leader Moammar Gadhafi had been perpetrated in the U.S. and world news media. It had been authorized by President Reagan through use of a National Security Decision Directive issued in mid-August 1986, seeking a "regime change" in Libya. The president directed the CIA to mount a campaign of "disinformation" to make Gadhafi think that a second U.S. attack or a coup d'etat was imminent.[5] President Reagan justified the action by contending it was legitimate if it made Gadhafi "go to bed at night wondering what we might do."[6]

While the press is often the subject of government criticism, the government uses the media extensively and, as the Libyan case illustrates, is capable of extensive manipulation of the facts.

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DISTRUST AND DISCLOSURE

A 1987 study by the Reporters Committee for Freedom of the Press has identified more than 135 actions by the Reagan administration aimed at restricting public and media access to government information and intruding on editorial freedom.[7]

The Reagan administration's distrust of the press has been central to a wide array of information controls that are spread throughout society. It has shaped federal information policy in terms of "information security" and defined information disclosure as "leaks."

Control of information has been the emphasis of the information policy of the Reagan administration. In 1986, White House spokesman Larry Speakes defended reducing presidential news conferences and the administration's tightening of controls on information to the media, saying: "I don't know a corporation ... that doesn't try to control the message that goes to the public ... that's the way the game is played."[8] However, public office and democratic government have greater requirements of trust and accountability to the citizens than do corporations, and there are no shareholders waiting in the wings, assisted by squads of lawyers, ready to file a lawsuit.

The Reagan administration has exerted unprecedented control over information available to the press, creating secrecy-security policies throughout government. National Security Decision Directive 84, issued in 1983, not only clamps down on employees by imposing secrecy agreements, but requires of all agencies that: "Appropriate policies shall be adopted to govern contacts between media representatives and agency personnel."[9]

Other incidents have occurred lately throughout the agencies. In September 1983, for example, the Commerce Department placed new restrictions on journalists. It imposed a "lock-up" on reporters being given a view of a major report on durable goods before the official release time -- they were required to sit in a locked room without access to a telephone.[10]

In 1985, a State Department bureau chief barred staff members from talking to a *New York Times* reporter, Leslie H. Gelb, who once headed the office. The new bureau chief also removed a photograph of Mr. Gelb from the waiting room wall. A note in large handwriting was placed in the picture frame reading:

> Removed For Cause. The P.M. Director, 1977-1979, did willingly, willfully, and knowingly publish in 1985 classified information the release of which is harmful and damaging to the country.[11]

Gelb had written an article on U.S. contingency plans to deploy nuclear weapons in certain foreign countries. Part of the information had already appeared in the international press. The *New York Times* story included information that the plan had been prepared without notifying officials of the recipient countries.

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In 1986, the FBI formed a special team of agents to investigate disclosures of "sensitive" information to news organizations. Among the cases being investigated, FBI agents were trying to track down the source of a *New York Times* article about the alleged role of Panamanian army commander Gen. Manuel Antonio Noriega in international drug trafficking and illicit concealment of funds.[12]

In recent months, the president's preoccupation with leaks has led to a volley of charges exchanged between the executive branch, witnesses in the Iran-contra hearings, and Congress. Lt. Col. Oliver North went so far as to justify lying to Congress because he felt that its Members and staff could not be trusted to withhold information from the press.[13] A recent study by the Senate Select Committee on Intelligence concluded that about two-thirds of the disclosures of classified information came from the executive branch. The study examined eight prominent newspapers, and determined that 98 of 147 such disclosures were perpetrated by anonymous sources within the Reagan administration.[14]

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The value of a free press in the United States cannot be overemphasized. The press has successfully kept the public informed, despite the difficulty of obtaining from our government even information that is not officially secret. The news media possesses unique resources to appraise the public of government actions, and is essential as a forum for public debate. The institutional nature of government secrecy in the United States, and the continued growth of our government in general, require a strong and independent source of information.

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Chapter 7 Citizen Access: The Freedom of Information Act

In addition to the controls that allow the government to restrict the flow of information handled by government employees, contractors, and specific sectors of society, such as scientists, the government also imposes controls upon the general public. The principal instrument governing the disclosure of information about the federal government to the public is the Freedom of Information Act.

Many Americans may be familiar with the existence of the Freedom of Information Act (FOIA) but remain uncertain as to its use. The Freedom of Information Act has allowed the public to learn about many activities of the federal government. The results have enabled Americans to live safer and healthier lives and to govern themselves more economically and efficiently.

WHAT THE FREEDOM OF INFORMATION ACT DOES

Enacted in 1966, the Freedom of Information Act stands alone as the legal basis for public access to records of federal agencies. The FOIA gives all persons this access right, enforceable in court, except to the extent that such records are specifically protected from disclosure.[1] Examples of key exemptions to the Act's rule of disclosure include classified information and commercial trade secrets. It is encouraging to note that since the enactment of the FOIA many states have enacted a similar open information law.

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From its earliest days of passage through the present, the FOIA has reflected the constant push and pull of the separation of powers between Congress and the executive branch. Its support in Congress has always been bipartisan. Democrats and Republicans together created the law and, in 1974, passed crucial amendments over the veto of President Gerald Ford.

HOW THE FREEDOM OF INFORMATION ACT BENEFITS SOCIETY

The contributions of the Freedom of Information Act to American society have been significant. The use of the FOIA by the public and the press has had a positive impact on government efficiency and spending, and on the health and safety of citizens and has promoted essential principles of democracy. The following are important examples of the use of the Freedom of Information Act in ways that have benefited our society. Freedom of Information Act requests have uncovered:

Atomic Energy Commission: An eleven-year Atomic Energy Commission study of cancer rates of 30,000 workers in "Plutonium City," an atomic bomb facility in Hanford, Washington, during World War II, was publicly disclosed for the first time in 1978. The Department of Energy, superceding the Atomic Energy Commissioner, abandoned the study in 1975, citing the "imminent retirement" of the chief scientist. The scientist's retirement date was six years later. The study was shelved because of the extensive findings directly linking work at "Plutonium City" with increased cancer rates among workers.[2]

Department of Defense: Federal audits of the top ten defense contractors showed that between 1974-1975, these contractors charged the Department of Defense for $2 million in lobbying costs and $2.5 million in entertainment costs. New Pentagon policies were subsequently established to end such charges.[3]

Department of Justice: In 1986, Department of Justice records revealed political favoritism in awarding a $622,905 grant for domestic violence prevention to a controversial group with no background or expertise in preventing family violence. An inquiry into the propriety of the grant was launched by the Criminal Justice Subcommittee in the House of Representatives.[4]

Federal Bureau of Investigation: Records revealed secret operations of Cointelpro against the antiwar movement in the United States 1965 - 1975.

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Records and documents revealed covert FBI investigation of public interest groups, including Physicians for Social Responsibility.

Documents revealed extensive intelligence files were compiled for more than 50 years on many distinguished American writers including: Carl Sandburg, William Faulkner, Edna St. Vincent Millay, Pearl Buck, Ernest Hemingway, John Steinbeck, Archibald MacLeish, Thomas Wolfe, John Dos Passos, and others.[5]

Food and Drug Administration:

Previously undisclosed test results showed the presence of a cancer-causing chemical in hundreds of liquor products sold in the United States. These included bourbons, sherries, and fruit brandies. Canada already bans dozens of liquor products for this reason.[6]

Data that the Food and Drug Administration held linked an arthritis drug to severe liver damage that resulted in dozens of deaths. The drug in question, Oraflex, was removed from the market amidst allegations that the FDA had rushed through the approval.[7]

Transcripts and records from a Fertility and Maternal Health Advisory Committee revealed a 1987 FDA deregulation recommendation to delete birth defect warnings from progestational drugs and that the FDA reached its decision using an improperly designed study and ignored authoritative birth defect research.[8]

Internal Revenue Service:

A 1973 IRS survey of compliance with federal tax laws revealed extensive evasion by small businesses coupled with non-detection by the IRS. The survey detailed that 33% of all small businesses (i.e. with assets less than $1 million) were underpaying taxes; 28% went entirely undetected by the IRS. A statistic for 1969 showed that small businesses had underpaid $641 million in federal taxes. Disclosure led to improvement of IRS enforcement and increased attempts to recover back taxes.[9]

National Aeronautics and Space Administration:

Federal audits of NASA revealed to the public for the first time a history of poor management at NASA. These disclosures revealed agency mismanagement and waste of billions of dollars. Experts have concluded that mismanagement, detailed in federal audits, severely hurt the space program and is directly linked to safety

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problems that culminated in the Challenger explosion and the death of seven astronauts. In 1987, a Pulitzer Prize was awarded to the *New York Times* for investigative reporting that used the FOIA.[10]

National Institutes of Health: A study was conducted for the NIH showing a clear connection between the administration of certain medications to mothers during childbirth and the impairment of brain development. At the time of the study, 95% of all births in the United States were medicated. Disclosure revealed that government review of the study eliminated key findings, diluted the author's conclusions, and prevented publication in a medical journal. The study was unpublished when obtained.[11]

A study conducted by the House Government Information Subcommittee reported that over 400 cases like those cited above were reported in the news media between 1972 and 1984.[12]

THE REAGAN ADMINISTRATION'S "ONSLAUGHT" AGAINST THE FOIA

Despite these disclosures that protect our lives and improve our government, President Reagan has led the effort to prevent greater executive branch accountability by the public and Congress. Since 1981 Reagan administration officials have called the Freedom of Information Act a "highly overrated instrument" and have worked to decrease the rights of citizens granted by the Act and increase the government's power to withhold information.[13]

In the past seven years, President Reagan's initiative has changed the shape of the Freedom of Information Act, with attacks on several fronts, employing an array of methods:

1982: President Reagan's executive order on information classification granted agency officials authority to classify and reclassify records upon review of a FOIA request.

1984: President Reagan and CIA Director William Casey persuaded Congress to pass the CIA Information Act, broadening the CIA's ability to exempt its operational files from FOIA disclosure.

1984: The Defense Authorization Act of 1984 gave the Secretary of Defense authority to withhold DOD technical information from FOIA disclosure.[14]

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1986: The Anti-Drug Abuse Act of 1987 was used as vehicle for the passage of the Freedom of Information Reform Act of 1986. These amendments increased the ability of the FBI and other law enforcement agencies to withhold records and gave the Office of Management and Budget new authority to set guidelines and fee schedules for the Freedom of Information Act.[15]

1987: The Office of Management and Budget issued uniform FOIA fee schedules and guidelines.[16]

1987: The Department of Justice issued a memorandum imposing guidelines and requirements for implementation of OMB fee schedule and guidelines.[17]

1987: President Reagan issued an executive order giving corporations increased power to review materials requested for release under FOIA and that may be exempt from disclosure under Exemption 4.[18]

Changes in the law, particularly concerning law enforcement, fee guidelines, and business notification, merit further discussion.

LAW ENFORCEMENT

Freedom of Information Act amendments passed as part of the comprehensive drug control legislation in 1986 reflect a particular legislative tactic -- the use of other statutes to dilute the Freedom of Information Act. It is a particularly effective tactic because omnibus legislation, such as the drug bill in 1986 or the trade bill in 1987,[19] carries immense political momentum, and new provisions can be easily added and buried.

In technical terms, the amendments provide limited exemptions for records that "could reasonably be expected to interfere with enforcement proceedings, would deprive a person of a right to a fair trial or impartial adjudication, could reasonably be expected to disclose the identity of a confidential source, or could reasonably be expected to endanger the life or physical safety of any individual."[20] The main forces behind the amendment affirm the broader design of the changes. Senator Orrin Hatch (R-UT), President Reagan's chief advocate in Congress for strengthening government control of information and weakening the Freedom of Information Act, believes the changes will

> considerably enhance the ability of Federal law enforcement agencies such as the FBI and the DEA [Drug Enforcement Agency] ... and greatly enhance the ability of all Federal law enforcement agencies to withhold additional law enforcement information.[21]

Justice Department officials who lobbied hard for the amendments were quoted as saying the amendments "make real changes."[22] Senator Hatch bluntly described the meaning of the new law enforcement provisions, stating "there likewise should be no misunderstanding that they will logically operate as exclusions -- not mere exemptions

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to be applied whenever the special circumstances specified in them are found by the agency to exist."[23]

Agencies will no longer have to review their files when information is requested on subjects including FBI records on foreign intelligence, counterintelligence, and international terrorism. These are the very files, however, that have revealed highly questionable surveillance and covert operations involving the antiwar movement, as well as legal, political, and public interest groups. A recent example is the discovery of a 1982 FBI operation inside the Physicians for Social Responsibility.

FEE WAIVERS, SCHEDULES, AND GUIDELINES.

These changes affect the often debated subject of the cost of government information to the public. Some believe that government has a responsibility to inform its citizens, and that citizens should not be charged a separate cost to ensure that this responsibility is fulfilled. Counter arguments are made that government information costs include not only printing and publication but also searching for and reviewing records pursuant to FOIA requests, as well as subsequent litigation costs. In many ways it reflects the continual tension between Congress and the executive branch over control of the federal government. Recent changes do not offer much hope that the dilemma has been resolved or that the public will be better off.

The Office of Management and Budget Fee Schedule. The Office of Management and Budget's (OMB) fee schedule and guidelines add to the ever-increasing power of the agency under the Reagan administration. However, Congress saw OMB as an alternative to the Justice Department, whose recent guidelines have been viewed with dissatisfaction by congressional overseers.

Among the concerns about the OMB guidelines is that they set wholly new definitions of "news media," "educational institutions," and "commercial use." Congressman Glenn English (D-OK), Chairman of the House Subcommittee on Government Information, believes that OMB "approached its responsibilities in good faith," but strongly disapproves of many of the definitions and suggests that OMB may have overstepped the law that limited its role to writing a uniform schedule of fees.

English has termed OMB's definition of news "broad, vague, and useless." He believes OMB invites agencies to evaluate the news value of information and that Congress specifically rewrote part of the law to remove agencies from such an editorial position.[24] "Educational institutions" are defined in a way that hinders scholarly and scientific research reliant upon government records. Unfortunately, the combined effect of the broad OMB definitions and the "advisory" Department of Justice memorandum have already been invoked to deny fee waivers for educational research. Furthermore, these denials illustrate the power that low level government officials now wield to determine what is and is not in the public interest. For example, the Department of the Air Force recently denied a fee waiver to a professor researching U.S. involvement in Southeast Asia. The Air Force stated:

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> We do not believe that there is a genuine public interest in the documents you have requested. Secondly, we seriously question the value to the public of these records ... Since there have been voluminous books and studies previously published on Southeast Asia, we do not feel the records will meaningfully contribute to the public development or understanding of the subject. The value at best may be marginal.[25]

Individual scholars, according to OMB, must have a fee waiver request presented under some official authority of their institution. In one recent denial of a fee waiver, the Department of Defense told a tenured history professor, who had requested a fee waiver on university letterhead: "Future requests on behalf of [name of university], should indicate such, so that the University's ownership of records provided and possible publication royalties are recognized."[26]

The planned sale of a report, booklet, or book based on information sought in a FOIA request will taint it as a "commercial use" and vitiate the possibility of a fee waiver -- but according to one agency, so does a professor's teaching salary! The Department of the Air Force recently denied a fee waiver to a college professor stating:

> The fact that you intend to use the information in your college classes is not a relevant factor because as a college professor you are paid a salary and, therefore, would derive monetary benefit from the information requested.[27]

Lastly, the guidelines specifically exclude independent scholars and students -- those not affiliated with an educational institution -- from qualifying for the fee waiver.

Department of Justice Memorandum. The Justice Department Memorandum, "New FOIA Fee Waiver Policy Guidance," advising agencies on implementation of the OMB guidelines, was not required by law, requested by Congress, or solicited by a single federal agency. Instead, it reflects the continued determination of the Reagan administration and Justice Department to press for restriction of the Freedom of Information Act as they have for the past seven years.

The Justice Department enters the area of FOIA, without any authority to issue binding guidance, and undercuts the very intention of Congress in giving responsibility for developing fee guidelines to OMB. On the meaning of the "fee waiver standard," addressed by OMB in a single sentence, the Justice Department devoted 12 single-spaced pages of advice.

Congressman English, in a letter asking the Attorney General to withdraw the memorandum, stated:

> Let there be no confusion about the congressional intent. Congress rewrote the FOIA fee waiver rules in order to make more people eligible

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> libraries, and other requesters would find it easier to qualify for fee waivers. This change in the FOIA was an integral part of a package of amendments that included raising the fees for a narrowly defined class of commercial users of the FOIA ... Whether the Justice Department likes it or not, that is the intent of the amended FOIA.[28]

BUSINESS NOTIFICATION PROCEDURES

President Reagan issued Executive Order 12600, "Predisclosure Notification Procedures For Confidential Commercial Information," on June 23, 1987. Its purpose is "to implement the section of the President's Competitiveness Initiative seeking to better protect intellectual property."[29] Intellectual property is a legal term for inventions, formulas, designs, methods, processes, and writings, as well as scientific, literary, and musical creations and even computer programs, for which property rights are created through patents, copyrights, trademarks, and trade secrets.

The Freedom of Information Act already exempts the disclosure of trade secrets,[30] and Federal agencies have generally given corporations notification of the release of submitted records, and often the chance to challenge the FOIA request. Because the Reagan executive order has only been in existence a short time, its impact is not yet known.

Concerns about the order, however, include: direct presidential action amending the Freedom of Information Act, avoiding the legislative and public hearing process; the potential for broadening the trade secret exemption to information that is neither a "trade secret" nor "intellectual property;" the ability of corporations to prevent disclosure simply by stamping everything submitted as "confidential commercial information;" and the ability of corporations to delay timely release of information valuable to the public.

THE FUTURE OF THE FREEDOM OF INFORMATION ACT

The Freedom of Information Act, after twenty years of operation, remains the single statutory mechanism granting an enforceable right of public access to government records. The Act has served effectively as an instrument and a symbol of open information policies in our democratic society. In recent years we have witnessed an onslaught of attempts to weaken the access rights of citizens, and increase the power of government to control the flow of information. As the original passage and improvements of the Freedom of Information Act have shown, **access to information is not a partisan issue.** Opponents of the Act must be required to substantiate their claims and not simply attack the Act as a source of problems originating elsewhere, or as a means of limiting access to information. Changes in the law must be carefully balanced with its enormous benefit to American society, especially for the oversight and accountability of government.

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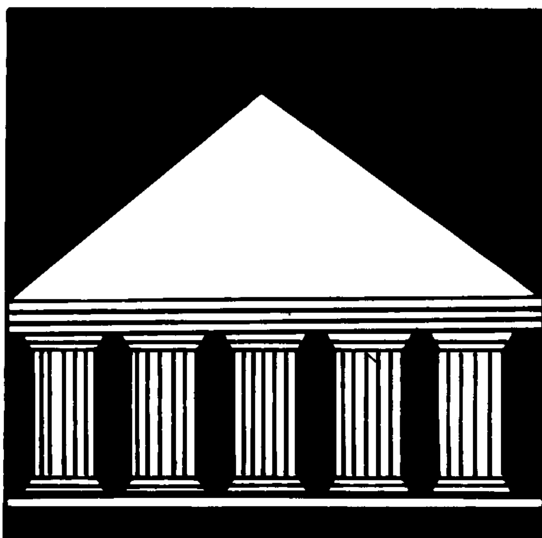

Chapter 8 Policy Powerhouse: The Office of Management And Budget

The Office of Management and Budget (OMB) is best known to Americans as former home to David Stockman, President Reagan's first OMB director. Stockman and the Reagan administration were able to transform OMB into one of the most powerful, yet secretive, agencies in the government. What makes a lesser known federal office the source of so much controversy and turbulence?

Despite its roots in the old Bureau of the Budget, which OMB superceded in 1970, OMB's role in the government is much broader than number crunching. In 1986, Congress stepped back to view OMB's dimensions. In the report that followed, *Office of Management and Budget: Evolving Roles and Issues*, Congress cited "95 statutes, 58 executive orders, 5 regulations and 51 circulars which reflect OMB's operational authorities."[1] The subjects covered by these measures are all-encompassing, from arms control[2] to water resources.[3]

The controversy and turbulence surrounding OMB has been about the exercise, growth, and secrecy of OMB's extraordinary control over the federal government. Congress acted to increase OMB's authority to improve the efficiency of the federal government. Then President Reagan expanded these new responsibilities beyond the intent, and consent, of Congress. During the Reagan administration OMB has been reinvented as the power base of the executive branch. As Congress observed in its study, OMB operates under the guise of a federal management agency, but it exhibits a "persistent confusion between management and control."[4]

OMB's control and its ability to manipulate the bureaucracy has led to increased government secrecy as both an end and a means. The opening for such activity came as the result of the Paperwork Reduction Act, passed by Congress to decrease wasteful paperwork volume in government, but President Reagan used OMB's powers under the Act in ways beyond the intended boundaries set by Congress. President Reagan granted OMB unprecedented authority to control the content and the volume of all government publications and to set the information collection policies of all federal agencies.[5] The result: less information is available to fewer people about government.

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As a means, President Reagan has endowed OMB with authority to rewrite federal regulations and studies, but the process has been conducted secretly. In 1985, disturbed that President Reagan had created a "superagency," Congressman John Dingell (D-MI), Chairman of the House Energy and Commerce Committee, stated:

> While Congress expected everyone to play by the same rules, the OMB has rewritten the rules to give itself a special advantage. It engages in secret communications with agency officials and outside parties, leaving other interested parties on the sidelines watching a different game. A regulation may be blocked through OMB's clandestine intervention at the behest of a particular industry while limiting the presentation of opposing views by other industry representatives and the general public who might benefit from the proposed rule. This secret process is simply incompatible with a regulatory review process purportedly designed to promote rationality in decision making.[6]

OMB bypasses federal laws specifically enacted to provide citizens with knowledge of and access to government decision-making. In general, OMB reaches from behind the curtain of government into the lives of Americans. OMB is a subtle and complex force that makes unrestrained use of unaccountable power.

OMB CONTROL OF GOVERNMENT INFORMATION

The Reagan administration's action at OMB reflects a pattern throughout the government of reduced flow of information to the public. It seems that only the justification used in other areas of government has shifted, from "national security" to "cost/benefit." The consequences of secrecy remain the same: defeating the accountability of officials and agency activity, thwarting the checks and balances of our government, and undermining the democratic process. The Reagan administration assault against public service information began in 1981. It was significantly advanced in 1985 through the issuance of a comprehensive information management policy entitled OMB Circular A-130.[7] Implementation of this policy has emboldened executive branch control of government publications, information collection and dissemination, and privatization of government printing. It has also undercut protections and rights guaranteed by law and decreased the effectiveness of government programs.

CONTROL OF GOVERNMENT PUBLICATIONS

The free flow of information in a democracy is essential to maintaining an informed citizenry, as well as helping people improve the quality of their lives. Government publications have historically been an important source of public information. These materials are relied upon by Americans to learn about their government, to be advised on health and safety matters, and to discover job and educational opportunities, as well as to become educated on other issues affecting their lives.

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When President Reagan entered office in 1981, government publications were immediately targeted as an expendable resource. The president quickly expanded OMB's limited budgetary authority to review government publications[8] and initiated a campaign to reduce government information as part of a "war on waste." Few would argue that government programs cannot be improved, but the emphasis in this case was not to create better information resources -- simply less. President Reagan kicked off the new OMB campaign by stating:

> The federal Government is spending too much money on public relations, publicity, and advertising. Much of this waste consists of unnecessary and expensive films, magazines, and pamphlets.[9]

As the new "information czar," OMB established stringent controls on federal agencies. It declared a moratorium on new periodicals, pamphlets, and audiovisual products; required OMB review and approval of plans to publish such materials in the future; and mandated use of OMB publication control systems.[10]

OMB's publications policy terminated the availability of much information of public importance. In 1982, OMB issued its *List of Publications Terminated and Consolidated by Agency*, in which 2,000 publications were dropped.[11] One government publications librarian assessed the damage, stating:

> Well-known government titles have ceased publication since the moratorium. Some of them can be verified among 2,000 titles announced in OMB's *List of Government Publications Terminated and Consolidated by Agency*. Others have simply failed to appear in print. No announcement was needed for reference librarians to notice that the annual Handbook of Labor Statistics failed to arrive on schedule in 1982, but it was not immediately apparent that it had ceased publication. It gradually became clear that numerous federal statistical sources had been terminated.[12]

OMB steamed ahead despite strong opposition by the nation's librarians and others. By 1984 a second OMB report claimed reduction of 3,848 government publications.[13] One private, nonprofit group, OMB Watch, created to monitor the actions of OMB, determined that "over 43% of all federal publications were affected by the campaign against waste."[14] The "waste" included publications on such wide ranging subjects of public concern as income taxes, drug abuse, automobile safety, and radioactive fallout. Some of these were:

A Woman's Guide to Social Security
Emergency Management
Handbook of Labor Statistics
Health Resources Statistics
Housing and Urban Development Trends
Oil Pollution Abstracts

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Poison Control Center Bulletin
The Car Book
The Right To Read
Unemployment Rates for State and Local Governments
Your Housing Rights[15]

OMB's systematic efforts to cut back publications have continued to grow, snowballing into more comprehensive controls on information. In 1985, OMB issued an expanded "Government Publications" policy, increasing the frequency of OMB review of agency publication policy to every year, and expanding the types of materials subject to OMB scrutiny.[16]

CONTROL OF INFORMATION COLLECTION AND DISSEMINATION

OMB's control of government publications demonstrated its ability to block a direct communication channel between government and the public. However, OMB's control extends deep into all the information functions of federal agencies. The following is a list of ways in which this is accomplished. Records are maintained by agencies to help determine whether the government and others in society are complying with air safety, environmental, civil rights, or consumer protection laws. Information collected about specific government programs increases effectiveness in programs ranging from immigration reform to drug enforcement. Surveys are conducted by agencies to better administer government programs for public health care delivery, agriculture, or heat and fuel needs. All such information is especially important to concerned citizens and nonprofit groups that fill gaps in public policy by helping Congress formulate programs. OMB's control of information is strong evidence that policies about information are decisions about the very nature of society itself.

"PRIVATIZING" GOVERNMENT PRINTING

OMB action in March 1987 reveals its central role in determining whether government is responsible for informing its citizens and taxpayers. Bridging the areas of government publication and information policy are the very regulations that determine how information is printed and distributed.

For the Reagan administration, government printing is a primary target of its drive for "privatization," shifting functions of government to the commercial sector. Like other recent OMB stratagems, privatization has been pursued without considering its effect on government responsibilities. Government and commerce differ in many obvious ways. Foremost is the fact that public needs must be met efficiently but should not be conditioned upon profitability.

OMB's effort to privatize government information has been advanced in regulations that undercut the system created in law more than fifty years ago.[17] That system requires federal printing to be performed by the Government Printing Office (GPO) under the auspices of the congressional Joint Committee on Printing. Congressman

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Major Owens (D-NY), who was a professional librarian before entering Congress, in 1987 stated:

> The benefits of this requirement as it has been implemented over the last 68 years has been invaluable: it has rid Government printing of the corruption with which it was once plagued, assured that printing is carried out as economically and efficiently as possible, provided universal public access to Government publications through the GPO-administered depository library system, and given Congress the powerful oversight tool it needs to preserve the free flow of Government information to the public.[18]

OMB's manipulation of federal regulations has, in this case, usurped these requirements supplanting benefits and reforms. OMB also permitted certain provisions to be issued as final rules without any opportunity for public comment. In particular, the new regulations remove the requirement that federal agencies obtain approval of the Joint Committee on Printing in Congress before transferring printing to commercial firms. Without centralized review, the government printing operation will be less efficient. While the government will be expected to print and publish, it will be both unable to plan and uncertain of personnel and budgetary needs. OMB has substituted "private" policy for public policy, dismantling the government's information infrastructure.

UNDERCUTTING PROTECTIONS AND RIGHTS

OMB's control of information collection affects the determination of whether government and others in society are complying with the law. OMB wields the power simply to tell agencies to stop collecting such information. The areas range widely from worker safety to fair housing opportunities. In most cases, OMB lacks the expertise to understand the importance of the information or the consequences of its disapproval.

OMB, for example, decreased assurances of a safe workplace for Americans in a January 1987 decision about information collection. Wood dust exposure in wood manufacturing factories has been linked to increased risks of nose, throat, and stomach cancer. The Department of Labor's Occupational Safety and Health Administration (OSHA) had recently stepped up its effort to determine the need for new worker protection regulations. In January 1987 OMB ordered OSHA to stop visiting wood and wood product manufacturers to make necessary evaluations, terming them "unapproved information collection."[19]

In another matter of occupational safety, OMB changed regulations dealing with mine workers' safety by scaling back safety record-keeping requirements. The Department of Labor's Mine Safety and Health Administration had sought to record defects in "self-propelled" mining equipment such as trucks and loaders. In 1984, the Mine Safety and Health Administration reported that between 1980 and 1983, 154 deaths and 10,000 injuries were attributable to accidents involving such equipment. This information ensures that defects are not overlooked, that necessary repairs are made, and that maintenance is

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performed regularly. OMB, however, wanted to leave the responsibility up to the mining companies, requiring only a signed certification that inspections have occurred.[20]

Compliance with civil rights laws has also been affected by OMB decisions that reduced the effectiveness of agencies responsible for stopping housing discrimination as well as those working to increase the number of minority-owned businesses in the United States. In 1985, OMB issued a decision barring the Veterans Administration and the Department of Housing and Urban Development (HUD) from collecting information that the two agencies use to remedy housing discrimination and administer civil rights programs. The information included the race, sex, and ethnic background of applicants for home mortgage insurance. One HUD official stated, "This is no casual effort by OMB, it's a concerted action. The surest way to stop [civil rights] enforcement is to remove information about who is in the programs."[21] Pressure from a group of federal agencies and Congress forced OMB to reverse its decision.[22]

Also in 1985, another OMB decision meant that compliance with the Equal Employment Opportunity laws by television stations throughout the country became less certain. OMB disapproved of Federal Communications Commission (FCC) annual reporting requirements on the race and sex of employees of cable television stations.[23]

In another interference with the FCC, the administration moved towards achieving its goal of eliminating the Fairness Doctrine, the rule that broadcasters must give equal time to opposing views of controversial issues of public importance. OMB disapproved of FCC forms used to notify political candidates of their right to respond to TV and radio station editorials.[24] FCC compliance with the Fairness Doctrine was diminished, a goal which the administration championed throughout 1987.

DECREASING THE EFFECTIVENESS OF GOVERNMENT PROGRAMS

Information is collected by federal agencies to evaluate public needs and to improve the effectiveness and responsiveness of government programs. OMB, however, can choose to undermine these programs simply by disapproving of information collection.

Communities that suffer from chronically poor economic conditions or severe economic dislocation may be prevented from improving their lot in life. In June 1987, OMB disapproved of a plan by the Department of Commerce's Economic Development Administration to evaluate local technical assistance projects it has provided in the past. The systematic evaluations could have indicated the progress of such programs, as well as targeted areas of continuing need.[25]

An effort to increase the utility of federal reports on medical policy and reviews of medical treatments and devices for nearly one million medical professionals was undercut by OMB in June 1987. The Food and Drug Administration (FDA) publishes its *Drug Bulletin* three to four times annually and it serves as an important forum for government and the medical community. Rapid medical advances and improvements in health care practices have raised important questions about the scope and utility of the

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FDA publication. FDA decided to conduct its first readership survey in 15 years. OMB's disapproval of the survey forced FDA to continue making relatively uninformed editorial and budget decisions about the publication.[26]

In 1985, the Indian Health Service tried to pursue a recommendation from Congress for improving its community-based outreach program for Native Americans. Congress has fought to maintain funding levels for the program despite President Reagan's efforts to phase it out. Congress recommended that the Indian Health Service set up a systematic evaluation of service delivery problems to the Native American communities. It was an attempt to resolve problems of geographic isolation, lack of access to health service facilities, and inadequate emergency services. OMB disapproved of the evaluation and information collection plan, referring in part to "apathetic respondent behavior."[27]

These and other examples demonstrate OMB's ability to manipulate federal programs, undermine the intent of laws, and decrease the protections and rights of citizens. OMB's activities in these areas involve technical and often complex matters which the public cannot ordinarily understand or resolve. OMB's review process is inaccessible, and its rulings are difficult to challenge even by agencies which have expertise in the areas concerned.

OMB CONTROL OF GOVERNMENT REGULATIONS

It has been no secret that President Reagan has made deregulation of industry a priority of his presidency. However, two facts are virtually secret: (1) OMB is the administration's most subtle and powerful agent in reducing the number of government regulations; and (2) OMB uses its authority to rewrite regulations. Central to this authority has been the issuance of two executive orders by President Reagan, E.O. 12291 and 12498, which gave OMB the power to effectively control agency decisions.[28] Simply stated, since OMB controls federal regulations, OMB controls the laws. Regulations are the engines of federal law, determining the behavior of institutions and industries, and the strength of protections and rights.[29]

OMB's role in shaping life in America has been permeated by secrecy. Its unaccountable power and unreviewable authority are an unsuitable environment for decision-making in a democracy. In 1986, a Senate investigation of OMB's interference with agency regulations reached the following conclusions about the impact of President Reagan's expansion of OMB's authority:

> Executive Orders 12291 and 12498 together effectively exert a "cradle to grave" influence over the agency rulemaking process and there is widespread concern that the secrecy and delay imposed by OMB compromise the principles of openness and fairness under which agencies strive to develop their regulations.[30]

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In several instances these practices have caused OMB to perpetuate serious health risks in society, in others OMB has substantively altered regulations despite its lack of expertise in the subject area. A regulation affecting an airline may seem impersonal, but a regulation affecting a drug or a hazardous substance is not. In 1986, a federal court ruled that the government's unlawful delay in issuing regulations governing storage of hazardous waste in tanks was caused by OMB. The court further stated that:

> The use of E.O. 12291 to create delays and to impose substantive changes raises some constitutional concerns. Congress enacts environmental legislation after years of study and deliberation, and then delegates to the expert judgement of the EPA Administrator the authority to issue regulations carrying out the aim of the law. Under E.O. 12291, if used improperly, OMB could withhold approval until the acceptance of certain content in the promulgation of any new EPA regulation, thereby encroaching upon the independence and expertise of EPA. Further, unsuccessful executive lobbying on Capitol Hill can still be pursued administratively by delaying the enactment of regulations beyond the date of a statutory deadline. This is incompatible with the will of Congress and cannot be sustained as a valid exercise of the President's Article II powers.[31]

ASPIRIN AND REYE SYNDROME

OMB's interference with regulations to decrease human health risks is nowhere more apparent than in the case of the fatal link between aspirin and Reye Syndrome (pronounced "rye") in children. In June 1982, the Department of Health and Human Services (HHS) announced its proposal to use radio advertisements and place warning labels on containers of aspirin warning parents of the possible dangers. OMB, positioned by the Reagan executive order to review the proposed regulation, chose to ignore authoritative medical findings by the U.S. Centers for Disease Control (CDC) and experts in the field of rare diseases, siding instead with the aspirin industry to prevent the labeling. Within five months of the proposed HHS campaign, OMB placed a phone call to the Secretary for Health and Human Services who withdrew the proposed regulation for further study.[32]

Strong evidence supported the need for preventive measures in 1982, if not earlier. Reye Syndrome is a life threatening condition that may follow influenza or chicken pox infections in children. At the end of 1981, the CDC, the Public Health Service facility in Atlanta, reported that an estimated 1,200 cases of Reye Syndrome occurred annually, and the death rate was 30% for reported cases. Permanent brain damage and other problems may occur even if the affected child does not die. However, Reye Syndrome is difficult to diagnose because its symptoms are easily confused with other illnesses, including meningitis, encephalitis, or even drug overdose hallucinations.[33] Four studies conducted between 1978 and 1981 by the state health departments of Ohio, Michigan, and Arizona provided the most convincing evidence of a fatal link between aspirin use by children and Reye Syndrome. The Ohio study alone showed that children

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who came down with Reye Syndrome were ten times as likely to have taken aspirin as those who did not contract the disease.[34]

The CDC reports prompted the Surgeon General, Dr. Everett Koop, to issue an advisory cautioning against the use of aspirin for children with influenza or chicken pox. The Surgeon General was joined by the CDC, the Food and Drug Administration, and the American Academy of Pediatrics in urging the government to warn parents and physicians of potential dangers.

OMB, however, chose to listen to aspirin manufacturers, who met with OMB officials privately, and estimated that the industry could lose $100 million in sales. The aspirin makers commissioned their own study which concluded, amazingly, that there was no relationship between aspirin and Reye Syndrome. The FDA and even OMB's own analysts rejected these conclusions.[35]

OMB's final decision on warnings was not made, however, by its analysts but by its regulatory affairs chief. Ignoring all authoritative scientific evidence, affirmations of the fatal link between aspirin use in children and Reye Syndrome by the White House Office of Science and Technology Policy, and even OMB's own statisticians, the regulatory affairs chief told the Secretary of Health and Human Services to withdraw the proposed warnings. The decision was based on a conversation with the OMB official's wife, a pediatrician who did not accept the scientific conclusions, and the intense lobbying by the aspirin industry.[36]

Since 1982, the evidence supporting warning labels has increased. In 1983, the *New England Journal of Medicine* reported that Reye Syndrome was 10 to 20 times more common than doctors had believed.[37] In 1984, another study by the U.S. Centers for Disease Control concluded that children suffering from influenza or chicken pox were 12 to 25 times more likely to contract Reye Syndrome if treated with aspirin, than those who were not.[38] In 1984, 190 cases of Reye Syndrome were reported, 26% of them were fatal, and many survivors suffered brain damage.[39] Finally in 1985, the aspirin industry entered into an agreement with the Department of Health and Human Services to issue warning labels and public service announcements against aspirin use for flu or chicken pox in children. The industry remained reluctant, however, to state the relationship of aspirin to Reye Syndrome. If OMB had not interfered many children could have been saved from the fatal and permanently disabling effects of Reye Syndrome.

ASBESTOS AND CANCER

A second example has been OMB's interference with the Environmental Protection Agency's proposed ban on certain asbestos products and uses. Asbestos is a known cancer-causing material used in buildings for insulation, floor and ceiling tiles, paints and joint compounds. EPA was supported in its efforts by scientific studies demonstrating the harmful effects of asbestos. Following an lengthy investigation, Congress acted to remove asbestos from schools and other public buildings.

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In order to preserve commercial interests in asbestos, OMB disagreed with Congress and the EPA. OMB delayed its review of the EPA proposed ban for many months, stating that "cost/benefit" standards had not been met. According to this standard, OMB created a "discounting human lives saved" concept in order to decrease the value of the benefits of asbestos regulations, as weighed against the costs of the regulation to the industry. As stated by House Energy and Commerce Chairman John Dingell (D-MI) in a thorough review of OMB interference with EPA asbestos regulations:

> Under this discounting approach, the OMB's cost-benefit analysis of the proposed asbestos regulations computes human life at a base value of $1 million -- and then discounts that value over the 30 to 40 year latency period for asbestos-related cancer. This arbitrary and callous discounting methodology would reduce the value of life to a figure as low as $22,500, thereby undervaluing the benefits of health and safety regulations and thwarting the regulation of many toxic substances evaluated under the cost-benefit criteria of Executive Order 12291.[40]

While the problem of public exposure to asbestos persisted, OMB worked secretly to undercut EPA's ban. OMB met twelve times with representatives from the asbestos industry,[41] and was particularly responsive to officials from Canada, where asbestos is a major export product. In 1986, it was revealed that the director of OMB's regulatory review office met secretly with Canadian officials to assure them of OMB's intent to undercut the ban. In a subsequent communication, the OMB official stated that OMB "remains opposed to [the] banning and it will actively work toward this end in [the] regulatory process."[42]

CHEMICALLY TREATED FOOD

In another example, the delay and burden of passing OMB's "cost/benefit" test posed a continued risk to human lives from chemically treated fruits and vegetables. In 1985, the Food and Drug Administration proposed regulations banning certain uses of sulfites which had led to twelve deaths. During a lengthy delay posed by OMB's "cost/benefit" review, a 44-year old woman died after eating sulfite-treated food in a restaurant.[43]

At a 1986 Senate hearing on OMB policy making, Senator Carl Levin (D-MI), Chairman of the Subcommittee on Governmental Affairs, stressed that, "These are obvious life and death decisions. Who's making these decisions has been hidden from the public."[44]

OMB's power and control over the federal government is unprecedented. It is especially ironic that an administration so outwardly committed to "decentralizing" the federal government has centralized its power at OMB so quickly. Within one month of entering office, President Reagan empowered OMB to oversee regulations proposed by federal agencies, requiring agencies to conform with OMB's "cost/benefit" analyses and gave OMB broad authority over the content and fate of regulations.[45] In 1985, through an order implemented by then OMB official Douglas Ginsburg, President Reagan made

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OMB responsible for the regulatory program of the federal government.[46] As Congress observed in its comprehensive 1986 report:

> The Reagan Administration's designation of OMB's Office of Information and Regulatory Affairs (OIRA) as its central clearance arm for regulatory policy capitalized on a national mandate for regulatory relief and set in motion -- administratively -- the most sweeping reform of the regulatory process in 35 years.[47]

Since 1981 the requirement that agencies adopt OMB's substantive recommendations has permitted OMB to rewrite agency regulations and supplant them with the administration's own policies. The White House's commitment to this process was boldly demonstrated when Congress threatened action in 1986 to eliminate the OMB office responsible for regulatory review. OMB Director James Miller III pledged that, if Congress eliminated OMB's office for reviewing and rewriting regulations:

> We will do it in the White House. If [you take] the office out of the White House, we will do it in the Justice Department. If you take the office out of the Justice Department, we will do it in Commerce.[48]

Just what does OMB do that it refuses to stop? An analysis of OMB regulatory review from 1981-1986 by OMB Watch, revealed that ten federal agencies have been subject to the harshest OMB action. In these agencies, 30%-40% of the regulations proposed have been either altered or not approved by OMB.[49] The top ten agencies on the "OMB Hit List" include:

* Department of Labor
* Department of Education
* Department of Housing and Urban Development
* Department of Health and Human Services
* Department of Commerce
* Department of Transportation
* Environmental Protection Agency
* Small Business Administration
* Department of Energy
* Veterans Administration

Is it possible for a federal agency, created and staffed for overseeing management and budget issues, to evaluate the substance of regulations at these and other agencies? The 700-page *Regulatory Program* issued by the White House shows that by 1986 OMB was reviewing and rewriting a diverse range of regulations in areas which it had no expertise. These included civil rights,[50] mental retardation,[51] and cancer.[52] In addition to lacking expertise in these and other subjects, OMB's activity remains unaccountable, and its business is conducted in virtual secrecy.

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OMB CONTROL OF FEDERAL STUDIES

OMB's authority to review proposed regulations is coupled with its authority over other proposed agency activity including federal studies and surveys. Such studies can range from air quality to welfare reform, and often have a important impact on improving the quality of the environment, the safety of the workplace, and the assurance of a good standard of living. Just as in the regulatory area, OMB has the power to rewrite, redesign, or simply reject proposed studies. Many observers believe that OMB's interference with federal studies constitutes a more egregious abuse of its authority than in the regulatory area.[53] This is because it prevents the government from identifying new developments and problems, many of which are within the scope of protections required by law.

OMB's review of vital studies related to health and the environment have come under especially sharp criticism. In 1986, Congressman Ted Weiss (D-NY), Chairman of a House subcommittee investigating OMB review practices, found that OMB was:

> seven times more likely to reject or revise studies with an environmental or occupational health focus than to reject or revise studies that focused on infectious or other diseases. In addition, studies focusing on reproductive health hazards were more likely to be rejected by OMB than were other types of studies.[54]

In 1987, scientists from the Harvard School of Public Health examined OMB's review of 51 studies proposed by the U.S. Centers for Disease Control during 1984-1986. The report concluded that OMB's review process was:

> poorly documented and often demonstrated a dismaying ignorance of the fundamentals of science and public decisionmaking ... the health policy implications are serious; OMB is clearly interfering with the substance of CDC research. OMB has delayed, impeded, and thwarted governmental research efforts designed to answer public demands for information on serious public health questions.[55]

OMB has abused its authority by rejecting and delaying timely and important studies. It has bowed to pressure from affected industries while failing to incorporate the findings of authoritative researchers and specialists. Most distressing, however, are the human consequences of OMB's actions. The most compelling evidence comes from specific cases of OMB review.

OMB's review of federal studies in the area of occupational illness has had especially important consequences. In 1984-85, OMB rejected four studies of occupational health hazards. Three were resubmitted and eventually approved contingent on adopting OMB's changes.[56] Occupational health hazards cause the death of an estimated 100,000 Americans annually, and cause sickness among 400,000 more.[57] Health risks to pregnant women in the workplace are a particularly growing concern. Recent statistics show that

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63% of married American women are employed during the year before giving birth. More than 300,000 of these women work in occupations where they risk exposure to substances known to cause birth defects.[58]

Study of Video Display Terminals. One controversial OMB decision concerns a study of the reproductive health hazards to women using video display terminals (VDTs) on computers. Congress reported that "approximately 10 million American women use VDTs every day making this a very important issue to American workers."[59]

The National Institute for Occupational Safety and Health (NIOSH) had been planning a study of women using VDTs since 1982. The study was triggered by reports of birth defects and miscarriages associated with women's VDT use, and the federally funded study was planned as the first major scientific research endeavor to examine this health issue.

The study design was completed in 1985, but OMB refused to approve it. NIOSH amended the study to meet OMB's concerns but in 1986 OMB responded by offering a conditional approval only if 69 questions were omitted. Many of the questions were essential to measure the existence of stress at work and problems of fertility.

Congress became alarmed at OMB's interference with the NIOSH study and, after a thorough investigation, found many disturbing aspects of OMB's review of the VDT study: OMB's redesign of the study conflicted with established methods for evaluating occupational stress; OMB had adopted design changes to reduce the potential impact on the corporation whose workers were to be studied; the target corporation had provided OMB with a new design by two consulting scientists, neither of whom specialized in occupational stress or women's health; and one of the target corporation's consulting scientists later stated that their conclusions did not support the changes proposed for the NIOSH study.

Study of Infant Mortality Rates. A second case involves the issue of infant mortality rates in the United States and illustrates the unresponsiveness of government to address important problems because the decisions are placed in the hands of OMB. In 1984, the Children's Defense Fund, analyzing census records determined that the earlier trends of lower infant mortality rates had failed to continue in recent years. In order to further explore the problem, the Public Health Service proposed a study of the relationship between federal funding cuts and infant mortality rates. The proposed study sought to determine whether maternal and child health and nutrition programs were inadequately funded and a cause of higher infant mortality rates in some states. The administration had challenged the Children Defense Fund's findings when first released, attributing them to statistical fluctuations. In 1985, OMB disapproved the Public Health Service study under its regulatory review powers, as a significant regulatory act that was "inconsistent with the Administration's policies."

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The enormous role which OMB has been given in government between 1981-1987 is evidenced not only by the breadth of authority, but by its application to everyday concerns to Americans. It may seem ironic that such power has been centralized in one White House office by a president who has promised the nation a "new federalism" of decentralized government. The behavior of OMB has shown that nothing could be farther from the truth.

No one is surprised to learn that government is powerful, but it is disturbing to discover that so much power has been exercised in secrecy. While positioned close to the president, OMB operates from deep within an already inaccessible bureaucracy. Just as in other improper uses of government secrecy, OMB has avoided accountability and undercut the checks and balances of our constitutional system. It has made decisions without democratic participation, and has protected private interests, often negotiated behind closed doors.

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Conclusion and Recommendations

Government secrecy affects the lives of all Americans. In today's complex world, what we don't know can hurt us. The importance of secrecy to the security of our nation is undeniable; however excessive secrecy is a serious national problem. It permeates most policies under the guise of making our nation secure and effects controls over a vast array of people and practices well beyond the traditional realm of national security. Moreover, government secrecy has become increasingly institutionalized throughout our government without any sensitivity or attempt to reconcile it or balance it with democratic values. Indeed, it has been expanded without regard to constitutional protections and has been used to restrict and circumvent the very laws that Congress passed to promote an informed citizenry and a responsive government.

When secrecy is used to bypass the consensus of Congress and citizens, then our constitutional system is also bypassed. When information is not disclosed to the public, the government has failed to exercise the best means of maintaining the public trust and dispelling distrust. When government activity is conducted in secret to prevent public opinion from mobilizing, it is virtually ensuring that once mobilized, public opinion will oppose the activity.

Secrecy often seems to operate as a shapeless force, but it can regularly be identified in its consequences. Today it is seen in an unrestrained use of unaccountable power to restrict information, control communication, escape public scrutiny, and restrict public debate. Our nation's stability is weakened by covert actions pursued with indifference to the law, "confidential" spending involving billions of dollars, and decisions affecting human health and safety made in isolation by officials who possess authority but no expertise in the substance of the regulations.

The years 1981-1987 -- the eve of our Constitution's bicentennial -- stand as the most recent chapter in our nation's history when the confidence of Americans in their government has been shaken because citizens are given the very lowest priority among those who "need to know."

It is incumbent upon a democratic government to maintain policies permitting citizens to have broad access to information, and wide dissemination of information. The public also has a responsibility to demand that government fulfill these democratic ideals. The urgency, however, remains in the government, where policies improving our democratic system and reducing institutional secrecy can be achieved by the president and by Congress. For this reason, the recommendations presented here are addressed to presidential candidates and members of Congress.

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RECOMMENDATIONS FOR CANDIDATES FOR PRESIDENT

RESPECT FOR THE LAW IN GOVERNMENT

In this year of the Bicentennial of the Constitution, it is important that the president, government officials, and citizens rededicate themselves to respect for the law as the highest of priorities.

Indeed, the president must demonstrate respect for the law in the operation of government. The president is required by the Constitution to "faithfully execute the laws of the United States." To reduce excessive government secrecy, execution of the law requires compliance with the laws including: accountability in areas ranging from covert operations to wasteful spending; citizen access to information; constitutionally protected rights of expression and association; and congressional oversight of the executive branch and its agencies.

COVERT OPERATIONS

Covert operations should be limited. By their very nature and as a matter of policy covert operations are not accountable to many in government. They lack the broad congressional or popular support necessary for actions necessary to protect America's vital interests. Furthermore, even the bureaucracies required to implement covert plans, such as those of the Department of Defense or the Department of State, often will not immediately lend their essential support. The inevitable result is that a dangerously small circle of zealous actors are tempted by secrecy to unilaterally commit the nation to perilous actions.

The executive branch must work closely with Congress to improve procedures and safeguards concerning the creation, notification, and accountability of covert activities. Moreover, specific improvements in the intelligence oversight process are essential.

NATIONAL SECURITY DECISION DIRECTIVES

National Security Council directives, such as the National Security Decision Directives of the Reagan administration, should be carefully drafted so that they do not circumvent the law or the oversight role of Congress. Unless classified, they should be published in the *Federal Register*, like other executive orders. The president must be willing to share such directives with the appropriate committees of Congress, whether classified or unclassified.

INFORMATION CLASSIFICATION

Information classification is a powerful authority of the president affecting the entire federal government. The president, as administrator of the laws and as Commander in Chief, has broad authority to issue an executive order on classification of information. However, Congress also has a role in this area.

Executive Order. A new executive order, returning to the 30-year trend towards openness that was halted by President Reagan, should be developed in conjunction with Congress. That executive order should be formulated in a more open manner and return to a balanced policy that includes disclosure of information as practiced by earlier

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administrations. Decreasing the amount of information classified should be pursued in several ways:

* continued reduction of original classification authority.
* reduction of derivative classification authority.
* reinstitution of automatic schedules for information declassification.
* elimination of reclassification authority.

Several steps should be taken to produce more open formulation of the executive order:

* public announcement of plans to revise security classification rules.
* public circulation of the draft order for sixty days for public comment and subsequent consideration of these comments by the president.
* provide the proposal to Congress with sufficient time to permit interested congressional committees to consider the draft order, hold hearings, and prepare comments.
* requiring the National Security Adviser or other officials charged with policy responsibility for presidential security classification to provide written findings detailing the problems that any proposed changes in security classification policies and practice are intended to solve. They should also provide written explanations to Congress and to the public as to the purpose and scope of such proposed changes. If the findings or explanations are classified, then a classified version should be provided to congressional committees and an unclassified version should be made public.

Special Access Programs. Confusion over the number and use of special access programs and codes requires internal clarification and accountability. New policies must be created to govern these programs.

Presidential guidelines should be developed within the executive order on classification for controlling the creation, use, and accountability of special access programs. These should set forth the purposes of such programs -- from mere routing of information to protecting intelligence sources and methods. Guidelines should limit the authority for use of special access programs. Agency heads should not be given the broad authority for creation and evaluation as created by the current executive order.

Information Security Oversight Office. The Information Security Oversight Office (ISOO) is a joint office of the General Services Administration (GSA) and the National Security Council (NSC). It is responsible for monitoring the classification of information in the government and issues an annual report to the president. The task is an enormous one because of the millions of classified documents and thousands of employees engaged in the process of classification.

ISOO requires a larger staff to exercise its oversight function. The staff is currently comprised of no more than fifteen individuals including the director. Many of the oversight responsibilities of the office simply go unfulfilled because of staff shortages. Individual agencies are consequently allowed too much evaluation discretion over their own classification activity.

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ISOO should maintain an increased number of field staff and auditors to examine classification activity in government facilities outside of Washington, D.C. ISOO should be granted greater authority to identify and audit "special access" programs within the government. The office should also be utilized to evaluate specific agencies responsible for overclassification. In this sense, the ISOO should not simply be given a list of narrow, routine oversight responsibilities but should be authorized to conduct a variety of discretionary and evaluative long-term oversight projects.

Lastly, the ISOO annual report, now directed specifically to the president, should be formally sent by the ISOO Director to the Speaker of the House and the Senate leadership, to be referred to minority leaders and pertinent oversight committees.

RESTRICTIONS ON UNCLASSIFIED INFORMATION

National security controls have been applied to activity ranging from scientific conferences to computerized information. This practice should be the focus of review to identify the questionable basis of such action. It is a matter of much dispute whether the export laws and arms control regulations were intended to apply to traditional scientific communication, and important First Amendment issues are at stake.

In addition, the government has extended its control over information that is neither classified nor necessarily government property through policies that restrict access to computerized information. President Reagan's National Security Decision Directive 145 encompasses activity in libraries, universities, and corporations. This directive should be withdrawn, and to the extent that legitimate concern exists over "sensitive, but unclassified information," there should be a full-fledged debate in Congress and with the public over the subject.

PREPUBLICATION REVIEW POLICIES

Prepublication review of government employees violates the First Amendment by imposing unconstitutional prior restraints. A thorough review must be conducted of the current policies and practices requiring certain government employees, federal contractors, and federally funded university researchers to sign lifetime prepublication review contracts.

Such policies, to the extent that they are necessary, must exist only to serve a narrowly drawn national security objective. These policies should be reasonably calculated to ensure that the experience of government officials and employees will be available for public discussion of American policy, that scientific and technological development is not hindered, and that First Amendment principles of free speech and the right to petition government are not denied.

The current administration has effectuated its goals in this area by the use of Form 4193, National Security Decision Directive 84, and special agency contracts. The prepublication review policies outside of intelligence agencies, lifetime and otherwise, should be terminated.

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FREEDOM OF INFORMATION ACT

Presidential support for the Freedom of Information Act is essential and practices designed to decrease information disclosure must be rejected. The tone and practices of the Reagan Administration must be criticized for keeping more information from citizens and undercutting accountability of elected officials and the bureaucracy.

A special evaluation must be made of the function and authority of the Department of Justice regarding the FOIA. This includes the strong role with which legislative attacks on the FOIA have been mounted by the current Office of Legal Policy (OLP) and the extensive guidelines which OLP has imposed on all federal agencies to interpret new OMB fee guidelines for the use of FOIA. In particular, these guidelines should be revoked.

Administration of the FOIA in the agencies would be improved by increasing resources for handling FOIA requests. In addition, the idea for creating a separate FOIA/Information ombudsman office should be explored. Lastly, special attention should be given to the need for new policies and arrangements for handling electronic information and automated records pursuant to the FOIA.

OFFICE OF MANAGEMENT AND BUDGET

OMB's extraordinary power should be carefully reviewed and aligned with its actual statutory authority. Action should be taken to reduce both the power and personnel of OMB.

Executive orders 12291 and 12498 allow OMB regulatory review over federal agencies, federal information policy related to the collection and dissemination of government information, and power to determine the fate of proposed federal studies.

These executive orders have circumvented statutes designed to allow citizens to interact with federal agencies and have allowed the executive branch to conduct regulatory rule making in secret. They have supplanted the substantive knowledge of agencies and affected communities with executive branch policies lacking in subject matter expertise. They have led to excessive secrecy and abuse of agency authority. Health risks have been perpetuated, the work place has become less safe, and government resources for citizens have been eliminated. Both executive orders 12291 and 12498 should be repealed.

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RECOMMENDATIONS TO THE UNITED STATES CONGRESS

The United States Congress plays a multifaceted role in maintaining a balance between legitimate and excessive secrecy. Congress also preserves the rights of Americans to have access to government information and participate in an informed way in the democratic process. It does so through its oversight of federal agencies and their implementation and enforcement of our nation's laws. Congress has investigative authority to explore and uncover corrupt and improper practices, and legislative power to make necessary corrections in the law.

THE ROLE OF CONGRESS

Regardless of whether the president addresses the issues outlined in the manner described above, Congress must take the initiative in ensuring such reforms. Indeed, in the aftermath of the Tower Commission Report and that of the House and Senate select committees investigating the Iran-contra affair, Congress may well be on its way toward re-evaluating and modifying existing procedures and safeguards concerning the creation, notification, and accountability of covert intelligence activities.

Congress has responded effectively in the past, balancing the need to protect vital secrets with the public's right to be informed of government activities. Congress has demonstrated its ability to create limited statutory restrictions on information, comparable to those in the president's order on security classification, with the Atomic Energy Acts of 1946 and 1954. Moreover, in 1973 the House Committee on Government Operations formally recommended the creation of statutory security classification policy and procedure. Congress indicated it was willing to limit the prepublication review policy of NSDD 84 in 1983. Thus, the capability of Congress to act in any of these areas should not be doubted, and there is no reason to believe that Congress would be reluctant to address the other remaining issues including oversight of national security directives, restrictions on unclassified information or the extraordinary power assumed by OMB over information and regulatory matters.

RECOMMENDED CONGRESSIONAL REFORMS, HEARINGS, AND INVESTIGATIONS

Congress should consider holding hearings to examine how its various responsibilities are affected by current secrecy practices: first, to examine how its checks and balances role is affected; second, to evaluate its oversight of federal agencies; third, to hold hearings on specific laws, measures, and federal agencies.

The status of our information access laws and protections against excessive government secrecy should be examined, and particular laws and legislation should be recognized for their impact. Suggested topics for investigation, inquiry, and reform include:

NATIONAL SECURITY POWERS

(1) What is the scope of the president's "national security" power? What constitutional and statutory authorities exist, and how may the executive branch operationally protect national security interests?

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(2) Is all executive branch activity pursued for national security purposes? This includes not only evaluation and review of current congressional requirements for notification and reporting of activity but also precise identification by Congress of the breadth of related activity.

NATIONAL SECURITY DECISION DIRECTIVES

Specific reforms should include required reporting of presidential national security directives, such as President Reagan's National Security Decision Directives to the appropriate oversight committees. Furthermore, all directives authorized by the president and his appointees furthering national policy through mobilization of resources, funds, and personnel should be reported to Congress.

INFORMATION CLASSIFICATION

Classification of information should be examined by Congress with a view to reforms and possible legislation of a classification program. Management of the system could still be administered through the executive branch. While the executive branch has dominated control of information through classification, Congress can responsibly develop alternative policy.

Overclassification is a direct cause of decreased flow of information and the unmanageable information systems in the federal government and a possible factor in the growth of espionage cases. These problems, however, require greater congressional involvement in the origination of classification programs.

Improved management of information classification can result from improvements to the oversight office. The Information Security Oversight Office, a joint office of GSA and the National Security Council, is understaffed for the immense job it must perform. A current staff of 12-15 is inadequate and explains, in part, its inability to exercise many of its useful oversight functions. Authorization and appropriation committees of Congress should study and recommend improvements in this area.

SPECIAL ACCESS PROGRAMS

The use of special access programs must be evaluated by Congress for purposes of accountability and the prevention of fraud, waste, and abuse. An evaluation should include a review of the authority for creating such programs, as well as their use, duration, and termination.

THE "BLACK BUDGET"

Congress must scrutinize classified spending by the executive branch, both in the "black budget" for defense spending and for intelligence activity. Legislation should be developed to improve the knowledge of Congress and to ensure that defense projects are necessary, feasible, well managed and free of waste, fraud, and abuse.

GOVERNMENT EMPLOYEES

Congress should hold hearings and develop legislation to control the use of prepublication review, nondisclosure agreements, and polygraph testing of government employees.

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SCIENTIFIC AND TECHNOLOGICAL INFORMATION

The use of laws such as the Export Administration Act and arms control regulations to control scientific information and communication must be addressed. To the extent that these laws were never intended to control the communication of ideas, much less private ideas or unclassified information, Congress must establish their proper use by the executive branch.

Efforts to place restrictions on citizens and access to unclassified information should be scrutinized. Congress should support legislation (H.R. 145) developed in 1987 to improve computer security in and outside government.

Particular efforts should be made to hold hearings and develop legislation, if necessary, to protect the open communication of scientific and technological information.

Congress should amend existing laws used to exclude foreign visitors from entering the United States on ideological grounds, as well as those laws used to register foreign films and other material as "political propaganda."

FREEDOM OF INFORMATION ACT

The Freedom of Information Act requires vigilant protection as the single statutory right of access to information about the federal government. Its purpose as a disclosure law, not an information withholding instrument, must be ensured for the future.

Congress should determine the extent to which its recent action allowing OMB to create fee schedules and guidelines are consistent with its responsibility in this area. Furthermore, Congress must determine the extent to which recent Justice Department efforts to further shape these policies have been implemented. The Justice Department lacks authority to create binding policies in this area.

THE OFFICE OF MANAGEMENT AND BUDGET

Congress should examine the role of the Office of Management and Budget to determine the exact scope of its powers and authority created during the Reagan administration. These activities must be made consistent with the statutory authority of OMB under the Paperwork Reduction Act and other laws, including the Administrative Procedures Act. Congressional authorization and appropriations for OMB should be used to restrict OMB to its limited lawful role.

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Notes

NOTES: OPENING OUR EYES TO SECRECY

1. *Taking the Stand: The Testimony of Lt. Col. Oliver L. North*, (New York: Pocket Books, 1987), p. 443.

2. Letter to W.T. Barry, 1822.

3. The Atomic Energy Commission (1946); The National Security Council (1947); The Central Intelligence Agency (1949); The Department of Defense (1949); Executive Branch Information Classification (1951); The Invention Secrecy Act (1951); The National Security Agency (1952).

4. *The Chronology,* (New York: Warner Books, 1987), p.7. See also: *Washington Post*, 5 May 1983.

5. Clyde R. Mark, "Iran-Contra Affair: A Chronology," Congressional Research Service, Rept. No. 86-190-F. (Washington, D.C.: Library of Congress, 2 April 1987, Updated 29 April 1987), p. 5.

   "Rebel Fund Diversion Rooted in Early Policy," *Washington Post*, 1 January 1987, p. A1, A24.

6. Garry Wills, "Power Unchecked," *Washington Post Magazine*, 28 June 1987, p. 31.

7. Letter to William Charles Jarvis, 28 September 1820.

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NOTES : THE PRESIDENT'S "SECRET LAWS"

1. National Security Decision Directives (NSDD) under President Reagan; Presidential Directives (PD) under President Carter; National Security Decision Memorandums (NSDM) under Presidents Ford and Nixon; National Security Action Memorandums (NSAM) under Presidents Kennedy and Johnson; and National Security Council Presidential ("P") and "Mill" Papers under Presidents Truman and Eisenhower. Source: Judicial, Fiscal, and Social Branch. The National Archives. Washington, D.C.

2. Special Committee on National Emergency and Delegated Emergency Powers, "National Emergencies and Delegated Emergency Powers," U.S. Senate, 94th Congress, 2nd Session, S. Rept. No. 94-922, 28 May 1976, p. 16.

3. "State Dept. Acted to Block U.S.-Egypt Attack on Libya," *Washington Post*, 20 February 1987, p. A1, A27.

4. National Security Decision Directive 159, "Covert Action Policy Approval and Coordination Procedures," 18 January 1985.

5. Bob Woodward, *VEIL: The Secret Wars of the CIA 1981-1987* (New York: Simon and Schuster, 1987), p. 394.

6. Office of Information Policy and Security Review, National Security Council, Letter from the Director, 26 April 1984.

7. National Security Decision Directive 1, "National Security Council Directives," 25 February 1981, Revised 17 December 1981.

8. National Security Decision Directive 23, "U.S. Civil Defense Policy," 3 February 1982.

   National Security Decision Directive 25, "Preparations for the Economic and NATO Summits June 1982," 12 February 1982.

   National Security Decision Directive 60, "Preparations for the 1983 Summit," 9 October 1983.

   National Security Decision Directive 145, "National Policy on Telecommunications and Information Systems Security," 17 September 1984.

   National Security Decision Directive 94, "Commercialization of Expendable Launch Vehicles," 16 May 1983.

   National Security Decision Directive 68, Nuclear Materials, 18 November 1982. (official title not public).

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National Security Decision Directive 138, International Terrorism, 1984. (official title and exact date not public).

9. National Security Decision Directive 84, "Safeguarding National Security Information," 11 March 1983.

   National Security Decision Directive 196, "Counterintelligence/Countermeasure Implementation Task Force," 1 November 1985.

10. National Security Decision Directive 100, "Enhanced U.S. Military Activity and Assistance for the Central American Region," 23 July 1983.

11. John Prados, *Presidents' Secret Wars*, (New York: Wm. Morrow & Co., 1987).

12. Ibid., pp. 371, 379.

    See above, n. 5, pp. 173, 174, 187.

13. "Rebel Fund Diversion Rooted in Early Policy," *Washington Post*, 1 January 1987, p. A1, A24.

14. Executive Order 12333, Sec. 3 (4 December 1981).
    The order provides that "no agency except the CIA ... may conduct any special activity (elsewhere defined to include covert actions overseas) unless the President determines that another agency is more likely to achieve a particular objective."

    In its final report issued in 1987, the Iran-contra Committee concluded: "There was no Presidential determination that the NSC staff should conduct the Contra covert operation, and thus the NSC staff's covert action in support of the Contras violated the President's executive order." "Report of the Congressional Committees Investigating the Iran-Contra Affair," H. Rept. No. 100-433 and S. Rept. 100-216, 100th Congress, 1st Session, November 1987, p. 416.

15. Testimony by John Poindexter, Iran-contra Hearings, Federal News Service transcript, 20 July 1987, p. 12-1.

16. "Pentagon Fumbled on TOWS for Iran," *Washington Post*, 1 August 1987, p. A11.

17. "Weinberger Highlights a Problem: Did '85 Sales to Iran Break Law?" *Washington Post*, 1 August 1987, p. A10.

18. See above, n.6.

19. *Taking the Stand: The Testimony of Lt. Col. Oliver L. North*, (New York: Pocket Books, 1987), p. 527.

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20. The Intelligence Oversight Act requires that the intelligence committees of Congress be provided on request "any information or material concerning intelligence activities" in the possession of the intelligence community.

21. Prepared testimony of Rep. Anthony C. Beilenson, Committee on Government Operations Subcommittee on Legislation and National Security, 17 March 1987, p. 1.

22. This system began in 1907 and publication has been required since passage of the Federal Register Act in 1935 [44 U.S.C. 1505(a)].

23. Prepared statement of Harold Relyea, Specialist in American National Government, Congressional Research Service, Library of Congress. Before the House Committee on Government Operations, 17 March 1987, p. 2.

24. Angus MacKenzie, "Fit To Be Tied," *Quill*, July/August 1985, p. 13.

25. Form 4193.

26. General Accounting Office, "Information and Personnel Security: Data on Employees Affected by Federal Security Programs," GAO/NSIAD-86-189FS, September 1986, p. 3.

27. National Security Council, "National Policy on Protection of Sensitive, but Unclassified Information in Federal Government Telecommunications and Automated Information Systems," NTISSP No. 2, 29 October 1986.

28. The Computer Security Act of 1987, H.R. 145. Introduced 6 January 1987. Passed by the House of Representatives 22 June 1987.

    "To provide for a computer standards program within the National Bureau of Standards, to provide for Government-wide computer security, and to provide for the training in security matters of persons who are involved in the management, operation, and use of Federal computer systems, and for other purposes."

    "Reagan Rebuffed on Computer Files: House Bill Wrests Control of Access From the Military," *New York Times*, 23 June 1987.

29. Ross Gelspan, "Reagan Seeks Controls On Database Access," *Boston Globe*, 20 April 1987, p. 36-7.

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NOTES : "NATIONAL SECURITY" : PASSWORD FOR SECRECY

1. From John Shattuck, "National Security a Decade after Watergate," *Democracy* 3 (Winter 1983): 57.

2. Lou Cannon, "The High Cost of Secrecy," *Washington Post*, 20 July 1987, p. A2.

3. E. O. 8381, 5 *Federal Register*. 1145 et seq. (26 March 1940). Authority derived from 1938 statute concerning the security of armed forces installations and equipment and "information relative thereto." (52 Stat. 3)(1938). Power of enforcement was still vested in the Secretary of War and the Secretary of the Navy.

4. E.O. 10104, "Definitions of Vital Military and Naval Installations and Equipment," 15 *Federal Register*, 597 et seq. (1 February 1950). Truman added a fourth designation, "Top Secret," which paralleled American information classification categories with those used by our allies, principally the British.

5. E.O. 10290, "Prescribing Regulations Establishing Minimum Standards for the Classification, Transmission, and Handling, by Departments and Agencies of the Executive Branch of Official Information Which Requires Safeguarding in the Interests of the Security of the United States." 16 *Federal Register*, 9795 et seq. (27 September 1951).

6. President Eisenhower issued E.O. 10501, "Safeguarding Official Information in the Interests of the Defense of the United States," 18 *Federal Register* 7049 et seq. (9 November 1953).

   President Kennedy issued E.O. 10964, 27 *Federal Register* 8532 et seq. (20 September 1961).

   President Nixon issued E.O. 11652, "Classification and Declassification of National Security Information," 37 *Federal Register* 5200 et seq. (10 March 1972).

   President Carter issued E.O. 12065, 43 *Federal Register* 28949 (2 July 1978).

   President Reagan issued E.O. 12356, "National Security Information," 47 *Federal Register* 14874 et seq. (2 April 1982).

7. *New York Times Company v. United States*, 403 U.S. 713 at 729 (1971).

8. 1979 14,850,000
   1980 16,058,764
   1981 17,374,102
   1982 17,504,611
   1983 18,005,151
   1984 19,607,736
   1985 22,322,895

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Figures for 1979-1980: Annual Report to the President 1980-1981, Information Security Oversight Office, Washington, D.C., p. 10.

Figures for 1980-1982: Annual Report to the President FY 1982, Information Security Oversight Office, Washington, D.C., p. 8.

Figures for 1981-1985: Annual Report to the President FY 1985, Information Security Oversight Office, Washington, D.C., p. 13.

For 1986 the Information Security Oversight Office (ISOO) reported "statistical aberrations" in several categories including "Top Secret," derivative, and combined classification. See: ISOO, Annual Report To The President, FY 1986, Washington, D.C., pp. 16-19.

9. Glenn English, "Congressional Oversight of Security Classification Policy," *Government Information Quarterly*, No. 2 (1984), p. 166. The author is Chairman of the Government Operations Subcommittee on Government Information and Agriculture in the House of Representatives.

10. E.O. 12065 at Sec.1-101, issued by President Carter.
E.O. 11652, 37 *Federal Register*, 10053 (19 May 1971), issued by President Nixon. Implementing directive contained policy.

11. E.O. 12356, at Sec. 1.1(c).

12. E.O. 10964, issued by President Kennedy, 27 *Federal Register* 8532 (20 September 1961).
E.O. 11652, "Classification and Declassification of National Security Information," Issued by President Nixon, 37 *Federal Register* 5200 (10 March 1972).

13. "Security Classification Policy and Executive Order 12356," Committee on Government Operations, 97th Congress, 2nd Session, House Rept. No. 97-731, (12 August 1982), pp. 24-5.

14. E.O. 12356 at Sec. 3-3.

15. E.O. 12356 at Sec. 3.4.

16. E.O. 12065 at Sec. 1-607. Issued by President Carter.

17. E.O. 12356 at Sec. 1.6(b).

18. James Bamford, *The Puzzle Palace*, (New York: Penguin Books, 1983).

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20. "Agency Demands Documents Back," *New York Times*, 14 March 1982.
See: "Security Classification Policy and Executive Order 12356," Government Operations Committee, 97th Congress, 2nd Session, House Rept. No. 97-731, (12 August 1982), p. 22-3.

21. "CIA Veteran Decries Effort to 'Reclassify' Material in His Book," *Washington Post*, 4 April 1982, p. A12.

22. Letters from The National Archives to Mr. Stephen Green on file in the House of Representatives, Government Information Subcommittee on Government Information, Justice, and Agriculture, Washington, D.C.

    "Air Force Pulls Back on '53 Secret Papers," *Washington Post*, 5 April 1982, p. A5.

23. *American Library Association v. William Odom, Director, National Security Agency*, U.S. Court of Appeals (D.C. Circuit) No. 86-5337 (8 May 1987), p. 5.

24. E.O. 12356 at Sec. 1.6.(b).

25. See above, n.9, p. 171.

26. E.O. 12356 at Sec.1.6(c).

27. E.O. 12065 at Sec. 3-303.

28. E.O. 12065 at Sec. 3-301.

29. General Accounting Office, "Continuing Problems in DOD's Classification of National Security Information," 12 (LCD-80-16), (26 October 1979).

30. Ibid.

31. "How Public Remarks Became Classified Data," *Washington Post*, 20 February 1987, p. A18.

32. Committee on Government Operations, "Security Classification Policy and Executive Order 12356," 97th Congress, 2nd Session, House Rept. No. 97-731 (12 August 1982), pp. 27-49.

33. Permanent Select Committee on Intelligence, "United States Counterintelligence and Security Concerns--1986," House of Representatives, 100th Congress, 1st Session, Rept. No. 100-5, (4 February 1987).

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34. Senate Committee on Foreign Relations, U.S. Congress, "The Gulf of Tonkin, the 1964 Incidents," 90th Congress, 2nd Session, (20 February 1968), pp. 38-9.

    David Wise, *The Politics of Lying*, (New York: Random House, 1973), pp. 58-9.

35. E.O. 11652, "Classification and Declassification of National Security Information and Material," issued by President Richard Nixon, Section 9, 2 March 1972.

36. E.O. 12356 at Sec. 4.2.
    This provision gives authority to agency heads to "create special access programs to control access, distribution, and protection of particularly sensitive information classified pursuant to this Order or predecessor orders." It also grants the Director of Central Intelligence control over all special access programs related to "intelligence activities, or intelligence sources or methods."

37. *Washington Post*, 19 July 1987, Classified Ads, Section 905.

38. "Dancing in the Dark," *National Journal*, 11 April 1987, p. 867.

39. John Loftus, *The Belarus Secret*, (New York: Knopf, 1982). The Office of Special Investigations (OSI) of the criminal division of the Department of Justice, also known as the Nazi war crimes unit, revealed the State Department's responsibility for assisting Nazi war criminals to enter the United States and become U.S. citizens. The OSI investigators had to obtain special clearances "above Top Secret" to finally uncover the truth. Over time records of the State Department, the FBI, Immigration and Naturalization Service, and others became available only through special access clearances, even to investigators in Congress who were told that no such files existed.

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42. Lee Feinstein, "Secret Pentagon Budget Is Bulging: 200 Items On Current 'Black' List," *Cleveland Plain Dealer*, 20 February 1987.

43. General Accounting Office, "Information and Personnel Security: Data on Employees Affected By Federal Security Programs, GAO/NSIAD-86-189-FS, (September 1986), p. 11.

44. See above, n. 18.

45. See above, n. 38, p. 867.

46. Ibid., p. 871-2.

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48. Senator Paul Simon, "The Pentagon's Black Budget," *Congressional Record*, 18 March 1987, S3418.

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51. Louis Fisher, "Confidential Spending and Governmental Accountability," *George Washington Law Review* 47 (January 1979): 347.

52. *United States v. Richardson*, 418 U.S. 166,179 (1973).

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56. See above, n. 48.

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2. Department of Justice, "Interdepartmental Report on Unauthorized Disclosures of Classified Information," (31 March 1982).

3. Angus Mackenzie, "Fit To Be Tied," *Quill*, July/August 1982, p.13.

4. "White House Acts To Ease Concerns About Polygraphs," *New York Times*, 21 December 1985, p. A1.

5. "Secrecy Pledges Challenged Openly," *Washington Post*, 2 September 1987, p. A21.

6. General Accounting Office, "Polygraph and Prepublication Review Policies of Federal Agencies," (GAO/NSIAD-84-134), Washington, D.C. (11 June 1984), Report to Rep. Jack Brooks, Chairman, Government Operations Committee.

   See: Mark H. Lynch, "Secrecy Agreements and National Security," *Government Information Quarterly*, No.2, (1984), p.139.

7. ISOO, Annual Report to the President, FY 1986. Appendix B-Classified Information Nondisclosure Agreement FY 1986, p.35.

8. "Air Force Aide Balks at Secrecy Pact," *New York Times*, 4 July 1987.

9. "Air Force Whistle-Blower Could Lose Clearance," *Washington Post*, 4 July 1987.

10. General Accounting Office, "Information and Personnel Security: Data on Employees Affected by Federal Security Programs," (GAO/NSIAD-86-189FS) Washington, D.C. (September 1986), p. 2.

11. Classified Information Nondisclosure Agreement (SF-189), Includes Sample Indoctrination Briefing, Legislative and Executive Authorities and Questions/ Answers. Prepared by the Directorate of Security Plans and Programs Office of the Deputy Under Secretary of Defense for Policy, Department of Defense, Washington, D.C., (July 1985), p. 31.

12. Sen. Charles Grassley (R-IA); Rep. William Ford (D-MI), Chairman, House Post Office and Civil Service Committee; Rep. John Dingell (D-MI), Chairman, House Energy and Commerce Committee; and Rep. Patricia Schroeder (D-CO), Chairman, House Civil Service Subcommittee.

13. 5 U.S.C. Sec. 2302 (b)(8)(A).

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14. "Air Force Oversteps Security Policy," *Washington Post*, 24 August 1987, p. A5.

15. "Taking the Pledge," *Washington Post*, 28 August 1987, p. A21.

16. See above, n. 5.

17. 50 U.S.C. 403(d)(3).

18. *Snepp v. United States*, 444 U.S. 507 (1980).

19. See: Jonathan C. Medow, "The First Amendment and the Secrecy State: Snepp v. United States," *University of Pennsylvania Law Review*, 130 (April 1982): 775-844.

20. Information Security Oversight Office, "National Security Information: Different Perspectives," Washington, D.C., (5 December 1984), p. 22.

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22. Ibid., p. 15.

23. See above, n. 9.

24. See above, n. 9.

25. See above, n. 5.

26. Committee on Government Operations Hearing, "Review of the President's National Security Decision Directive 84 and the Proposed Department of Defense Directive on Polygraph Use," 98th Congress, 1st Session. (19 October 1983), pp. 158-9.

27. "Seven Former Defense Chiefs See Peril and Promise for U.S.," *New York Times*, 27 September 1987, p. A16.

28. J. Anthony Lukas, "Class Reunion," *New York Times Magazine*, 30 August 1987, p. 24.

29. *Snepp v. United States*, 444 U.S. 507 (1980).

30. George Lardner, Jr., "Authors of KAL Article Say Agent Warned of Espionage Law Violations," *Washington Post*, 3 February 1984, p. A2.

31. *United States v. Morison*, 604 F.Supp 655 (D. Md. 1985).

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33. 18 U.S.C. 793(3).

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2. Atomic Energy Act, 60 Stat. 755 (1946), amended 68 Stat. 919 (1956), current version, 42 U.S.C. 2011-2296 (1976).

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4. 35 U.S.C. 181-188 (1952).

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5. Edward Teller, "Secrecy in Science," *Los Angeles Times Magazine*, 5 July 1987, p. 4B.

6. Robert L. Park, "Only An Open Society Can Win the Science Race," *Newsday*, 3 May, 1987, p. 10.

7. "Superconductivity Conference to Exclude Foreign Officials," *Washington Post*, 25 July 1987, p. A2.

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    See also, Roland W. Schmitt, "Export Controls: Balancing Technological Innovation and National Security," *Issues in Science and Technology*, 6 (Fall 1984): 117.

12. National Academy of Sciences, *Scientific Communication and National Security*, Washington, D.C.: National Academy Press, 1982.

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    The president's review was classified and was conducted without input from universities or other sources outside the federal government.

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15. Harold Relyea, "Increased National Security Controls on Scientific Communication. *Government Information Quarterly*, No. 2 (1984): 177.

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17. Nicholas Wade, "Science Meetings Catch the U.S.-Soviet Chill," *Science* 207 (March 1980): 1056, 1058.

18. Nicholas Wade, "Government Bars Soviets from AVS and OSA Meetings," *Physics Today* 33 (April 1980): 81-3.

19. O.N. Garcia, "From the President: On a Matter of Importance -- Technical Information Flow," *Computer* (May 1982): p. 7.

20. Jeffrey Smith, "The Mysterious Chinese Luggage Incident," *Science* 216 (11 June 1982): 1204-5.

21. Robert L. Park, "Science and Secrecy," *Bulletin of the Atomic Scientists* (March 1985): p. 22.

22. Ibid., p. 23.

23. Ibid., p. 23.

24. Ibid., p. 23.

25. "Universities Feel Effect of Information Restriction," *Harvard Alumni Gazette*, June 1987, p. 21.

26. "Brief U.S. Suppression of Proof Stirs Anger," *New York Times*, 17 February 1987, p. C3.

27. See: Jerry Berman, "National Security vs. Access to Computer Databases: A New Threat to Freedom of Information," *First Principles* 12 (June 1987): 1, for the Center for National Security Studies, Washington, D.C.

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28. Presidential Directive 24 (PD-24), 16 November 1977.

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31. "Washington Feeling Insecure About Non-Secret Information," *New York Times*, 30 August 1987, p. E5.

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33. Ross Gelspan, "Reagan Seeks Controls On Database Access," *Boston Globe*, 20 April 1987, p. 36-7.

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35. Barbara Crossette, "State Department is Asking Colleges to Curb Research by Chinese," *New York Times*, 27 November 1981, pp. A1, A5.

    The requested information included "professional trips" taken by students; "specific experiments" conducted on campus; use of "instruments or specialized equipment (e.g. laser measuring devises, automatic analytical equipment, computers, etc.) that may be used during the course of the study program."

36. Gina Bari Kolata, "Attempts to Safeguard Technology Draw Fire," *Science* 212 (1 May 1981): 523-526.

37. Eliot Marshall, "Medical Data Bank: A Security Risk?" *Science* 216 (21 May 1982): 831.

38. Ibid.

39. "Libraries Are Asked By F.B.I. to Report On Foreign Agents," *New York Times*, 18 September 1987, pp. A1, B4.

40. 8 U.S.C. 1182(a) et seq.

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41. *Kleindienst v. Mandel*, 408 U.S. 753 (1972).

42. On August 28, 1986, a Federal judge ordered the deportation of Margaret Randall, a controversial poet and writer who teaches at the University of New Mexico, who gave up her U.S. citizenship to become a Mexican national in 1967. Others subjected to attacks under McCarran-Walter while working at U.S. universities include: Dennis Brutus, South African poet and writer, teaching at Northwestern University; Cosmo Pieterse, tenured professor at Ohio State University; Angel Rama, a Uruguay native and tenured professor at the University of Maryland.

    In addition, another section of McCarran-Walter, grounds of "prejudicial to the public interest," have been invoked to deny visas to Nobel Laureates Gabriel Garcia Marquez and Czelaw Milosz; authors Carlos Fuentes, Graham Greene, and Farley Mowat; playwright Dario Fo; actress Franca Rama; and Hortensia Allende, widow of slain Chilean President Salvador Allende. Before Pierre Trudeau became Prime Minister of Canada, he had been excluded after he attended an international conference on economics held in Moscow.

43. H.R. 1119 was introduced by Rep. Barney Frank (D-MA) on February 18, 1987. S. 28 was introduced by Sen. Daniel P. Moynihan (D-NY) on January 6, 1987.

44. "Court Upholds Curb on Visa Denials," *Washington Post*, 20 October 1987, p. A9.

    The case involved four speakers who were invited to speak in the U.S. but who were denied visas in late 1983. The four speakers included Nicaraguan Interior Minister Tomas Borge; former Italian general Nino Pasti, who belongs to a peace group allegedly affiliated with the Soviet Union; and two Cuban women allegedly tied to the communist party there.

    See: *Reagan v. Abourezk*, 785 F.2d 1043 (D.C. Circuit, 1986).

    See: *Reagan v. Abourezk*, 56 LW 4001 (U.S. Supreme Court, 1987).

45. "Verbatim: Testing Freedom," *New York Times*, 17 August 1986, sec. 4, p. 4.

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2. "CIA Weighs Action on Washington Post Article," *Washington Post*, 22 July 1986.

3. Of particular sensitivity was the reported ability of the National Security Agency to intercept and decode messages of other nations, including allies and neutrals. As noted in: Samuel G. Freedman, "Newspaper Cites Official Pressure," *New York Times*, 18 May 1986, p. A11.

4. 604 F.Supp 655, (D. Md. 1985). Espionage law involved is 18. U.S.C. 793 (d)(e).

5. "State Dept. Acted to Block U.S.-Egypt Attack on Libya," *Washington Post*, 20 February 1987, pp. A1, A27.

6. "The Reagan Administration and the News Media," The Reporters Committee for Freedom of the Press, March 1987, p.49.

7. Ibid.

8. "Speakes Defends Administration's Controls Over Public Information," *Los Angeles Times*, 27 September 1986.

9. National Security Decision Directive 84, "Safeguarding National Security Information," 11 March 1983, sec. 1d.

10. "U.S. Restricts Reporters In Bid To End News Leaks," *Wall Street Journal*, 25 October 1983, sec. 2, p. 53.

11. "State Department Bureau Bars Talks With Former Chief," *Washington Post*, 1 March 1985, p. A6.

12. "F.B.I. Unit Tracing Some Disclosures to Press," *New York Times*, 2 October 1986, pp. A1, A18.

13. Norman J. Ornstein, "North Errs on Leaks By Congress," *New York Times*, 17 July 1987.

14. "Executive Branch Leads The Leakers," *Washington Post*, 28 July 1987, p. A13.

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NOTES : CITIZEN ACCESS : THE FREEDOM OF INFORMATION ACT

1. The Freedom of Information Act, 5 U.S.C., Sec. 552.

2. *Washington Star*, 3 August 1978, p. A10. FOIA requester, *Washington Star*.

3. *Common Cause Magazine*, August 1981, pp.16-23. FOIA requester, Common Cause.

4. "Crisis Intervention for Traditionalists?" *Washington Post*, 24 June 1986, p. A24.

   Senator Edward M. Kennedy, "Freedom of Information After Twenty Years," *Congressional Record*, (26 June 1986), S8773-8775.

5. "Documents Show FBI Kept Files on Leading U.S. Writers," *Washington Post*, 30 September 1987, pp. A1, A7.

6. "Carcinogen Found in Many Liquor Products," *Washington Post*, 31 July 1987. 802 wines and spirits were tested, 95 of which would not meet Canada's import health standards. FOIA requester, The Center for Science in the Public Interest.

7. Testimony of Dr. Sidney Wolfe, House Subcommittee on Government Information, Justice, and Agriculture. Hearings on S.744, May-August 1984. FOIA requester, Public Citizen Health Research Group.

8. FOIA requester, Dr. Nancy Lord, Potomac, Maryland.

9. *New York Times*, 21 July 1975, p. 31. FOIA requester, The Corporate Accountability Group.

10. "NASA Wasted Billions, Federal Audits Disclose," *New York Times*, 23 April 1986, p. A1.

11. *San Francisco Examiner*, 14 January 1979, p. 13. FOIA requester, United Press International.

12. Jack Nelson, "The Information Act Comes Under Siege," *Los Angeles Times*, 23 March 1986, p. A1.

13. "Administration Calls FOIA 'Overrated,' Seeks Wide-Ranging Restrictions on It," *Washington Post*, 16 October 1981.

14. Harold Relyea, "Increased National Security Controls on Scientific Communication. *Government Information Quarterly*, No. 2 (1984), p. 177.

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15. Pub. L. No. 99-570, Sec. 1801-1804, 100 Stat. 3207, 3207-48 (1986). See 5 U.S.C. 552(a)(4)(A)(i), as amended.

16. "Uniform FOIA Fee Schedule and Guidelines," *Federal Register* 10012 (27 March 1987).

17. "New FOIA Free Waiver Policy Guidance," Department of Justice Memorandum, issued by Stephen J. Markman, Assistant Attorney General for Legal Policy, Office of Legal Policy, 2 April 1987.

18. E.O. 12600, "Predisclosure Notification Procedures for Confidential Commercial Information," issued by President Ronald Reagan, (23 June 1987).

19. See: Section 3201, "Freedom of Information Act Amendments of 1987," H.R. 1155, introduced in the House by Rep. Robert Michel (R-IL), House Minority Leader.

20. See above, n. 14.

21. "Freedom of Information Act Changes," *Congressional Record*, (15 October 1986), S16504.

22. Eve Pell, "FOIAbles of the New Drug Law," *Nation*, 13 December 1986, pp. 666-667.

23. Senator Orrin Hatch, "Freedom of Information Act Changes," *Congressional Record*, (15 October 1986), S16505.

24. Congressman Glenn English, "Implementation of the Freedom of Information Reform Act," *Congressional Record*, (22 April 1987).

25. Letter from U.S. Air Force Freedom of Information Manager. Identity of requester withheld for confidentiality.

26. Letter from the Director, Freedom of Information and Security Review, Office of Assistant Secretary of Defense. Name of requester withheld for confidentiality.

27. See above, n. 24.

28. Ibid.

29. Cover letter from the General Counsel, Executive Office of the President, Office of Management and Budget, sending proposed executive order, 13 February 1987.

30. 5 U.S.C., Sec. 1(b)(4).

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NOTES: POLICY POWERHOUSE : THE OFFICE OF MANAGEMENT AND BUDGET

1. Committee on Governmental Affairs, "Preliminary Catalogue of Office of Management and Budget Authorities and Directives," Office of Management and Budget: Evolving Roles and Issues, United States Senate, 99th Congress, 2nd Session, S. Rept. 99-134, (February 1986), pp. 395, 407.

2. 22 U.S.C. 2576(b).

3. E.O. 12322, 46 *Federal Register* 46561 (17 September 1981). All reports, plans or proposals relating to Federal or federally assisted water and related land resources projects submitted to Congress must be submitted beforehand for review and advice by OMB and when submitted to the Congress it must contain the advice received.

4. Ibid., p. XII.

5. OMB had been granted powers of limited information and regulatory review by the Paperwork Reduction Act of 1980 (44 U.S.C. 3504). The Paperwork Reduction Act created the OMB Office of Information and Regulatory Affairs (OIRA) for the purpose of reducing the volume and duplication of government paperwork. President Reagan broadened OIRA's role primarily by executive orders 12291 and 12498.

   For a fuller discussion of the intent and limits of the statutory powers of OIRA, see: OMB Watch, Washington, D.C., "OMB Control of Government Information," *Eye On Paperwork*, 2, (27 January 1986).

6. Energy and Commerce Subcommittee on Oversight and Investigations, "EPA's Asbestos Regulations -- A Case Study on OMB Interference in Agency Rulemaking," Committee Print 99-V, 99th Congress, 1st session (October 1985), p.V.

   Congressional concern over OMB was manifested in a number of hearings and other actions. One such action came in the form of a 1985 *amicus curae* brief filed by Members of Congress including the Chairmen of the House Committees on the Judiciary, Energy and Commerce, Government Operations, Education and Labor, and Post Office and Civil Service. The brief was filed in support of a lawsuit challenging OMB's interference with a proposed Occupational Safety and Health Administration rule regarding exposure to ethylene oxide. The suit was filed by the Public Citizen Health Research Group.

7. OMB Circular A-130, titled "Management of Federal Resources", 50 *Federal Register* 52730, (24 December 1985).

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8. U.S. Code, Title 44, section 1108, enacted May 11, 1922, section 1.

9. Statement by President Ronald Reagan, *Weekly Compilation of Presidential Documents*, April 20, 1981.

10. *OMB Bulletin*, "Elimination of Wasteful Spending on Government Periodicals, Pamphlets, and Audiovisual Products," 81-16 (21 April 1981): sec. 5, 7, 8.

11. U.S. Office of Management and Budget, "List of Government Publications Terminated and Consolidated by Agency," Washington, D.C., (1982).
"Government Restricting the Flow of Information to the Public," *New York Times*, 12 November 1982.

12. Judith E. Stokes, "Federal Publications Cutbacks: Implications for Libraries," *Government Information Quarterly*, No. 1 (1984): 49-50.

13. Office of Management and Budget, "Second Annual Report on Eliminations, Consolidations, and Cost Reductions of Government Publications," (6 January 1984).

14. "OMB Control of Government Publications: Review and Elimination," OMB Watch, Washington, D.C., (May 1986), p.10.

15. Ibid., p. 11.

    "Abridging Government Information: The Reagan Administration's War on Waste," *Dartmouth College Library Bulletin*, (April 1985), p. 58.

16. OMB Circular A-3, "Government Publications," (2 May 1985). Replacing OMB Circular A-3, "Government Periodicals," (18 May 1972).

17. The new regulations, Federal Acquisition Circular 84-25, amend the Federal Acquisition Regulation. They appear as a final rule in the *Federal Register* 52 (20 March 1987):9036.

18. Representative Major R. Owens, "A New Attack On The Right To Know," *Congressional Record*, (8 July 1987), E2772.

19. OMB Watch, Washington, D.C., *Monthly Review*, 2 (28 February 1987): 5.

20. OMB Watch, Washington, D.C., *Monthly Review*, 2 (28 February 1987): 10.

21. "OMB Effort to Curb Data Disputed," *Washington Post*, 15 May 1985.

22. "OMB Reverses Decision To Prohibit Collection Of Data on Race, Gender," *Washington Post*, 26 June 1985.

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23. OMB Watch, Washington, D.C., "OMB Control of Government Information," *Eye On Paperwork*, No.1 (27 January 1986): 8.

24. Ibid., p. 9.

25. OMB Watch, Washington, D.C., *Monthly Review* 7 (30 July 1987): 10.

26. Ibid.

27. See above, n. 18, p. 10.

28. E.O. 12291, 46 *Federal Register* 13193 (19 February 1981).
E.O. 12498, (4 January 1985). 50 *Federal Register* 1036, (8 January 1985).

29. See: OMB Watch, Washington, D.C., *Through The Corridors Of Power: A Guide to Federal Rulemaking*, (1987).

    See: Senate Committee on Governmental Affairs, "Oversight of the Office of Management and Budget Regulatory Review and Planning Process," 99th Congress, 2nd Session, S. Rept. 99-839, (28 January 1986).

    See: "Regulatory Policy," The Urban Institute Press, Washington, D.C., *The Reagan Experiment*,(1982), pp. 129-153.

30. Senate Committee on Environment and Public Works, "Office of Management and Budget Influence on Agency Regulations," S. Rept. 99-156, 99th Congress, 2nd Session (May 1986), p. ix.

31. *Environmental Defense Fund v. Lee M. Thomas, Administrator, U.S. Environmental Protection Agency, et al.*, U.S. District Court for the District of Columbia, Civil Action No. 85-1747, filed January 23, 1986, p. 9.

    See: Senate Committee on Environment and Public Works, "Office of Management and Budget Influence on Agency Regulations," S. Print 99-156, 99th Congress, 2d Session (May 1986), p. vii.

32. Tim Miller, "The O.M.B. Writes A Prescription," *The Nation*, 31 March 1984, p. 383.

33. Richard C. Thompson, "Reye Syndrome Spells Caution to Parents," *FDA Consumer*, October 1982, pp. 19-21.

    "Ads to Warn of Possible Link Between Aspirin, Reye's Syndrome," *Washington Post*, 21 September 1982.

34. See above, n. 27.

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35. See above, n. 27.

36. See above, n. 27, p. 384.

37. "Reye's Syndrome Found Widespread," *Washington Post*, 21 July 1983, p. A17.

38. "Study Reported to Tighten Link Of Aspirin and Reye's Syndrome," *New York Times*, 9 January 1985.

39. "Warning to Go on Aspirin Labels," *New York Times*, 24 January 1985.

40. House Energy and Commerce Subcommittee on Oversight and Investigations, "EPA's Asbestos Regulations -- A Case Study On OMB Interference In Agency Rulemaking," Committee Print 99-V, 99th Congress, 1st Session (October 1985) p. iv.

41. OMB Watch, Washington, D.C., "OMB Control Of Rulemaking: The End of Public Access," (1985), pp. 10-11.

42. "OMB Official Said Agency Would Fight an Asbestos Ban," *Washington Post*, 9 May 1986, p. A2.

43. See above, n. 26, p.21-2.

44. "The Silent Shift of Power," *Newsday*, 4 May 1986, p.7.

45. E.O. 12291, 46 *Federal Register* 13193 (19 February 1981).

46. E.O. 12498, (4 January 1985). 50 *Federal Register* 1036, (8 January 1985).

47. See above, n. 1, p. XIII.

48. "'Defunding' OMB's Rule Reviewers," *Washington Post*, 30 July 1986.

    "Lawmakers Want To Dethrone Rule Reviewers," *Washington Post*, 22 May 1986.

49. OMB Watch, Washington, D.C., *OMB Watcher*, (9 July 1987), p. 10.

50. Review of the administrative procedures for Section 5 of the Voting Rights Act of 1965, determining the existence of racially discriminatory voting practices.

51. Revisions for the standards for Intermediate Care Facilities for the Mentally Retarded, 51 *Federal Register* 7520.

52. Cancer Risk Guidelines, 29 CFR 1990.

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53. "OMB Seeks Restrictions on Agency Studies," *Washington Post*, 25 April 1985.

54. Committee on Government Operations, "Occupational Health Hazard Surveillance: 72 Years Behind And Counting," 99th Congress, 2nd Session, House Rept. 99-979, (8 October 1986), p. 27.

55. "OMB Review of CDC Research: Impact of the Paperwork Reduction Act," Released by the House Committee on Energy and Commerce.

56. See above, n. 39, p. 10.

57. *Morbidity and Mortality Weekly Report*, 35 (29 August 1986): 538.

58. "Reproductive Health Hazards in the Workplace," U.S. Congress, Office of Technology Assessment, OTA-BA-266, (December 1985), p. 33.

    See above, n. 39, pp. 7-8.

59. See above, n. 39, pp. 10-11.

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Appendix A

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NATIONAL SECURITY DECISION DIRECTIVES

National Security Decision Directives (NSDD) do not appear in published records of the president or the National Security Council. The following list of NSDDs has been compiled from those publicly known to exist. Some are now declassified, in partial or whole form, and are in the National Archives, Washington, D.C., Record Group 273, Records of the National Security Council.
* Indicates general subject and/or date, but specific title and/or date not public.

NSDD 1	"National Security Council Directives," February 25, 1981. Revised, December 17, 1981.
NSDD 2	"National Security Council Structure," January 12, 1982.
NSDD 3	"Crisis Management -- Special Situation Group," 1981. *
NSDD 5	"Conventional Arms Transfer Policy," July 8, 1981.
NSDD 6	"United States Non-Proliferation and Peaceful Nuclear Cooperation Policy," July 16, 1981.
NSDD 8	Space Transportation System Policy, 1981. *
NSDD 12	"Strategic Forces Modernization Program," October 1, 1981.
NSDD 13	"Nuclear Weapons Employment Policy." *
NSDD 17	Deterring Cuban Models / Covert Action in Nicaragua, November 23, 1981. *
NSDD 19	"Protection of Classified National Security Council and Intelligence Information," January 12, 1982.
NSDD 22	"Designation of Intelligence Officials Authorized to Request FBI Collection of Foreign Intelligence," January 29, 1982.
NSDD 23	"U.S. Civil Defense Policy," February 3, 1982.
NSDD 25	"Preparations for the Economic and NATO Summits, June 1982," February 12, 1982.
NSDD 26	"U.S. Civil Defense Policy," March 16, 1982.
NSDD 30	Anti-terrorist Policy / State Department, 1982. *
NSDD 32	National Strategy, May 1982. *
NSDD 35	MX Basing Mode, May 17, 1982. *
NSDD 38	"Staffing At Diplomatic Missions and Their Constituent Posts," June 2, 1982.
NSDD 42	National Space Policy, 1982. *
NSDD 47	"Emergency Mobilization Preparedness," July 22, 1982.
NSDD 50	Space International Payloads, August 6, 1982. *
NSDD 60	"Preparations for the 1983 Summit," October 9, 1982.
NSDD 68	Nuclear Materials, November 18, 1982. *
NSDD 75	Strategy Regarding Soviet Union/Covert Operation. *

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NSDD 77 "Management of Public Diplomacy Relative to National Security," January 14, 1983.
NSDD 80 "Shuttle Orbiter Production Capability," February 3, 1983.
NSDD 84 "Safeguarding National Security Information," March 11, 1983.
NSDD 85 "Eliminating the Threat from Ballistic Missiles," March 25, 1983.
NSDD 89 "The Export Administration Act," April 11, 1983.
NSDD 90 "United States Arctic Policy," April 14, 1983.
NSDD 91 ICBM Guidance, April 1983. *
NSDD 93 "Refugee Policy and Processing Refugees from Indochina," May 13, 1983.
NSDD 94 "Commercialization of Expendable Launch Vehicles," May 16, 1983.
NSDD 97 "National Security Telecommunications Policy," August 3, 1983.
NSDD 99 Lebanon. *
NSDD 100 "Enhanced U.S. Military Activity and Assistance for the Central American Region," July 28, 1983.
NSDD 102 "U.S. Response to Soviet Destruction of KAL Airliner," September 5, 1983.
NSDD 111 Middle East Policy, October 29, 1983. *
NSDD 113 Radio Telephone COMSEC Government Limousines. *
NSDD 119 Strategic Defense Initiative, 1984. *
NSDD 124 U.S. Objectives in Central America and Mexico, February 1984.*
NSDD 127 Strategic Policy. *
NSDD 138 International Terrorism, 1984. *
NSDD 143 "U.S. Third World Hunger Relief: Emergency Assistance," July 9, 1984.
NSDD 144 National Space Strategy, August 15, 1984. *
NSDD 145 "National Policy on Telecommunications and Automated Information Systems Security," September 17, 1984.
NSDD 156 "U.S. Third World Food Aid: A 'Food For Progress' Program," January 3, 1985.
NSDD 159 "Covert Action Policy Approval and Coordination Procedures," January 18, 1985.
NSDD 164 "National Security Launch Strategy," February 25, 1985.
NSDD 166 U.S. Support to Afghan Rebels, April, 1985. *
NSDD 167 "Food For Progress Program Implementation," April 29, 1985.
NSDD 168 "U.S. Policy Towards North Africa," April 30, 1985.
NSDD 172 Strategic Defense Initiative, 1985. *
NSDD 175 "Establishment of a Blue Ribbon Commission on Defense Management," June 17, 1985.
NSDD 178 Strategic Policy. *
NSDD 179 "Task Force on Combating Terrorism," July 20, 1985.
NSDD 181 Space Shuttle Pricing Policy, August 1, 1985. *
NSDD 189 "National Policy on the Transfer of Scientific, Technical, and Engineering Information," September 21, 1985.
NSDD 192 SDI/Narrow Interpretation of ABM Treaty, October 12, 1985. *
NSDD 196 "Counterintelligence / Countermeasure Implementation Task Force," November 1, 1985.
NSDD 197 "Reporting Hostile Contacts and Security Awareness," November 1, 1985.
NSDD 201 "National Security Emergency Preparedness Telecommunications Funding," December 17, 1985.

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NSDD 202	Arms Control. *
NSDD 207	Protection of Spouse of Foreign Heads of State. *
NSDD 219	Blue Ribbon Commission on Defense Management, April 1, 1986. *
NSDD ?	"Narcotics and National Security," April 8, 1986.
NSDD 254	"United States Space Launch Strategy," December 27, 1986.
NSDD 259	"U.S. Civil Defense Policy," February 9, 1987.
NSDD 266	"Implementation of the Recommendations of the President's Special Review Board," March 31, 1987.
NSDD 276	"National Security Council Interagency Process," June 9, 1987.
NSDD 280	"National Airlift Policy," June 24, 1987.

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Appendix B

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Extract From National Security Decision Directive 159

January 18, 1985

COVERT ACTION POLICY APPROVAL
AND COORDINATION PROCEDURES

Approval Procedures for Intelligence

1. Presidential Findings. The President shall approve all covert action Findings in writing. Under Section 662 of the Foreign Assistance Act of 1961, as amended, all covert actions undertaken by the Central Intelligence Agency must be authorized by a Presidential Finding that each such operation is important to US national security. E.O. 12333 and this Directive establish that covert actions (intelligence "special activities") undertaken by components other than CIA also require a Presidential Finding. Each covert action is also considered a significant anticipated intelligence activity under Section 501 of the National Security Act and is subject to certain Congressional reporting procedures. The Congressional reporting procedures for significant intelligence activities apply to all agencies of the intelligence community. Findings shall remain valid until formally cancelled. (S)

2. In accordance with Executive Order 12333, the Central Intelligence Agency shall conduct covert actions unless the President specifically designates another agency of the government. When the provision of substantial support by one government component to another is essential to the conduct of a covert action, indication of the extent and nature of that support shall be included as part of the Finding or Memorandum of Notification. However, the provision of routine support in the form of personnel, funds, equipment, supplies, transportation, training, logistics, and facilities by Government components other than CIA to support a covert action shall not in itself be considered a separate covert action by the supplying agency. (S)

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Partially Declassified / Released on 5 June 1987
under provisions of E.O. 12356
by B. Reger, National Security Council

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Appendix C

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CLASSIFIED INFORMATION NONDISCLOSURE AGREEMENT

An Agreement Between ______________________________ and the United States
(Name - Printed or Typed)

1. Intending to be legally bound, I hereby accept the obligations contained in this Agreement in consideration of my being granted access to classified information. As used in this Agreement, classified information is information that is either classified or classifiable under the standards of Executive Order 12356, or under any other Executive order or statute that prohibits the unauthorized disclosure of information in the interest of national security. I understand and accept that by being granted access to classified information, special confidence and trust shall be placed in me by the United States Government.

2. I hereby acknowledge that I have received a security indoctrination concerning the nature and protection of classified information, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information have been approved for access to it, and that I understand these procedures.

3. I have been advised and am aware that direct or indirect unauthorized disclosure, unauthorized retention, or negligent handling of classified information by me could cause irreparable injury to the United States or could be used to advantage by a foreign nation. I hereby agree that I will never divulge such information unless I have officially verified that the recipient has been properly authorized by the United States Government to receive it or I have been given prior written notice of authorization from the United States Government Department or Agency (hereinafter Department or Agency) last granting me a security clearance that such disclosure is permitted. I further understand that I am obligated to comply with laws and regulations that prohibit the unauthorized disclosure of classified information.

4. I have been advised and am aware that any breach of this Agreement may result in the termination of any security clearances I hold; removal from any position of special confidence and trust requiring such clearances; and the termination of my employment or other relationships with the Departments or Agencies that granted my security clearance or clearances. In addition, I have been advised and am aware that any unauthorized disclosure of classified information by me may constitute a violation or violations of United States criminal laws, including the provisions of Sections 641, 793, 794, 798, and 952, Title 18, United States Code, the provisions of Section 783(b), Title 50, United States Code, and the provisions of the Intelligence Identities Protection Act of 1982. I recognize that nothing in this Agreement constitutes a waiver by the United States of the right to prosecute me for any statutory violation.

5. I hereby assign to the United States Government all royalties, remunerations, and emoluments that have resulted, will result or may result from any disclosure, publication, or revelation not consistent with the terms of this Agreement.

6. I understand that the United States Government may seek any remedy available to it to enforce this Agreement including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement.

7. I understand that all information to which I may obtain access by signing this Agreement is now and will forever remain the property of the United States Government. I do not now, nor will I ever, possess any right, interest, title, or claim whatsoever to such information. I agree that I shall return all materials which have, or may have, come into my possession or for which I am responsible because of such access, upon demand by an authorized representative of the United States Government or upon the conclusion of my employment or other relationship with the Department or Agency that last granted me a security clearance. If I do not return such materials upon request, I understand that this may be a violation of Section 793, Title 18, United States Code, a United States criminal law.

8. Unless and until I am released in writing by an authorized representative of the United States Government, I understand that all conditions and obligations imposed upon me by this Agreement apply during the time I am granted access to classified information, and at all times thereafter.

9. Each provision of this Agreement is severable. If a court should find any provision of this Agreement to be unenforceable, all other provisions of this Agreement shall remain in full force and effect.

10. I have read this Agreement carefully and my questions, if any, have been answered to my satisfaction. I acknowledge that the briefing officer has made available to me Sections 641, 793, 794, 798, and 952 of Title 18, United States Code, Section 783(b) of Title 50, United States Code, the Intelligence Identities Protection Act of 1982, and Executive Order 12356, so that I may read them at this time, if I so choose.

11. I make this Agreement without mental reservation or purpose of evasion.

SIGNATURE	DATE	SOCIAL SECURITY NO. *(See notice below)*

ORGANIZATION

The execution of this Agreement was witnessed by the undersigned, who, on behalf of the United States Government, agreed to its terms and accepted it as a prior condition of authorizing access to classified information.

WITNESS AND ACCEPTANCE:

SIGNATURE	DATE

ORGANIZATION

NOTICE: The Privacy Act, 5 U.S.C. 552a, requires that federal agencies inform individuals, at the time information is solicited from them, whether the disclosure is mandatory or voluntary, by what authority such information is solicited, and what uses will be made of the information. You are hereby advised that authority for soliciting your Social Security Account Number (SSN) is Executive Order 9397. Your SSN will be used to identify you precisely when it is necessary to 1) certify that you have access to the information indicated above or 2) determine that your access to the information indicated has terminated. Although disclosure of your SSN is not mandatory, your failure to do so may impede the processing of such certifications or determinations.

STANDARD FORM 189 (8-83)
Prescribed by GSA/ISOO
32CFR 2003; E.O. 12356

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Appendix D

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Nondisclosure Agreement

An Agreement between ______________________________ **and the United States**
(Name—Printed or Typed)

1. Intending to be legally bound, I hereby accept the obligations contained in this Agreement in consideration of my being granted access to information known as Sensitive Compartmented Information (SCI). I have been advised and am aware that SCI involves or derives from intelligence sources or methods and is classified or classifiable under the standards of Executive Order 12356 or under other Executive order or statute. I understand and accept that by being granted access to SCI, special confidence and trust shall be placed in me by the United States Government.

2. I hereby acknowledge that I have received a security indoctrination concerning the nature and protection of SCI, including the procedures to be followed in ascertaining whether other persons to whom I contemplate disclosing this information have been approved for access to it, and that I understand these procedures. I understand that I may be required to sign subsequent agreements as a condition of being granted access to different categories of SCI. I further understand that all my obligations under this Agreement continue to exist whether or not I am required to sign such subsequent agreements.

3. I have been advised and am aware that direct or indirect unauthorized disclosure, unauthorized retention, or negligent handling of SCI by me could cause irreparable injury to the United States or could be used to advantage by a foreign nation. I hereby agree that I will never divulge such information unless I have officially verified that the recipient has been properly authorized by the United States Government to receive it or I have been given prior written notice of authorization from the United States Government Department or Agency (hereinafter Department or Agency) last granting me either a security clearance or an SCI access approval that such disclosure is permitted.

4. I further understand that I am obligated to comply with laws and regulations that prohibit the unauthorized disclosure of classified information. As used in this Agreement, classified information is information that is classified under the standards of E.O. 12356, or under any other Executive order or statute that prohibits the unauthorized disclosure of information in the interest of national security.

5. In consideration of being granted access to SCI and of being assigned or retained in a position of special confidence and trust requiring access to SCI and other classified information, I hereby agree to submit for security review by the Department or Agency last granting me either a security clearance or an SCI access approval all materials, including works of fiction, that I contemplate disclosing to any person not authorized to have such information, or that I have prepared for public disclosure, which contain or purport to contain:

(a) any SCI, any description of activities that produce or relate to SCI, or any information derived from SCI;
(b) any classified information from intelligence reports or estimates; or
(c) any information concerning intelligence activities, sources or methods.

I understand and agree that my obligation to submit such information and materials for review applies during the course of my access to SCI and at all times thereafter. However, I am not required to submit for review any such materials that exclusively contain information lawfully obtained by me at a time when I have no employment, contract or other relationship with the United States Government, and which are to be published at such time.

6. I agree to make the submissions described in paragraph 5 prior to discussing the information or materials with, or showing them to anyone who is not authorized to have access to such information. I further agree that I will not disclose such information or materials unless I have officially verified that the recipient has been properly authorized by the United States Government to receive it or I have been given written authorization from the Department or Agency last granting me either a security clearance or an SCI access approval that such disclosure is permitted.

7. I understand that the purpose of the review described in paragraph 5 is to give the United States a reasonable opportunity to determine whether the information or materials submitted pursuant to paragraph 5 set forth any SCI or other information that is subject to classification under E. O. 12356 or under any other Executive order or statute that prohibits the unauthorized disclosure of information in the interest of national security. I further understand that the Department or Agency to which I have submitted materials will act upon them coordinating with the Intelligence Community or other agencies when appropriate, and substantively respond to me within 30 working days from date of receipt.

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8. I have been advised and am aware that any breach of this Agreement may result in the termination of any security clearances and SCI access approvals that I may hold; removal from any position of special confidence and trust requiring such clearances or access approvals; and the termination of my employment or other relationships with the Departments or Agencies that granted my security clearances or SCI access approvals. In addition, I have been advised and am aware that any unauthorized disclosure of SCI or other classified information by me may constitute a violation or violations of United States criminal laws, including the provisions of Sections 641, 793, 794, 798, and 952, Title 18, United States Code, the provisions of Section 783 (b), Title 50, United States Code and the provisions of the Intelligence Identities Protection Act of 1982. I recognize that nothing in this Agreement constitutes a waiver by the United States of the right to prosecute me for any statutory violation.

9. I hereby assign to the United States Government all royalties, remunerations, and emoluments that have resulted, will result, or may result from any disclosure, publication, or revelation not consistent with the terms of this Agreement.

10. I understand that the United States Government may seek any remedy available to it to enforce this Agreement including, but not limited to, application for a court order prohibiting disclosure of information in breach of this Agreement.

11. I understand that all information to which I may obtain access by signing this Agreement is now and will forever remain the property of the United States Government. I do not now, nor will I ever, possess any right, interest, title, or claim whatsoever to such information. I agree that I shall return all materials which have or may come into my possession or for which I am responsible because of such access, upon demand by an authorized representative of the United States Government or upon the conclusion of my employment or other relationship with the Department or Agency that last granted me either a security clearance or an SCI access approval. If I do not return such materials upon request, I understand that this may be a violation of Section 793, Title 18, United States Code, a United States criminal law.

12. Unless and until I am released in writing by an authorized representative of the United States Government, I understand that all conditions and obligations imposed upon me by this Agreement apply during the time I am granted access to SCI and at all times thereafter.

13. Each provision of this Agreement is severable. If a court should find any provision of this Agreement to be unenforceable, all other provisions of this Agreement shall remain in full force and effect.

14. I have read this Agreement carefully and my questions, if any, have been answered to my satisfaction. I acknowledge that the briefing officer has made available to me Sections 641, 793, 794, 798, and 952 of Title 18, United States Code, Section 783 (b) of Title 50, United States Code, the Intelligence Identities Protection Act of 1982, and Executive Order 12356 so that I may read them at this time, if I so choose.

15. I make this Agreement without mental reservation or purpose of evasion.

______________________________ Signature

______________________________ Date

______________________________ Social Security Number (See Notice on Front)

______________________________ Organization

The execution of this Agreement was witnessed by the undersigned, who, on behalf of the United States Government, agreed to its terms and accepted it as a prior condition of authorizing access to *Sensitive Compartmented Information*.

WITNESS and ACCEPTANCE:

______________________________ Signature

______________________________ Date

______________________________ Organization

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Sensitive Compartmented Information Nondisclosure Agreement

SFN

SECURITY BRIEFING ACKNOWLEDGEMENT

I hereby acknowledge that I was briefed on the following SCI Special Access Program(s):

(Special Access Programs by Initials Only)

Signature of Individual Briefed

Date Briefed

Printed or Typed Name

Social Security Number (See Notice Below)

Organization (Name and Address)

I certify that the above SCI access(es) were approved in accordance with relevant SCI procedures and that the briefing presented by me on the above date was also in accordance therewith.

Signature of Briefing Officer

Printed or Typed Name

Social Security Number (See Notice Below)

Organization (Name and Address)

SECURITY DEBRIEFING ACKNOWLEDGEMENT

Having been reminded of my continuing obligation to comply with the terms of this Agreement, I hereby acknowledge that I was debriefed on the following SCI Special Access Program(s):

(Special Access Programs by Initials Only)

Signature of Individual Debriefed

Date Debriefed

Printed or Typed Name

Social Security Number (See Notice Below)

Organization (Name and Address)

I certify that the debriefing presented by me on the above date was in accordance with relevant SCI procedures.

Signature of Debriefing Officer

Printed or Typed Name

Social Security Number (See Notice Below)

Organization (Name and Address)

Notice: The Privacy Act, 5 U.S.C. 552a, requires that federal agencies inform individuals, at the time information is solicited from them, whether the disclosure is mandatory or voluntary, by what authority such information is solicited, and what uses will be made of the information. You are hereby advised that authority for soliciting your Social Security Account Number (SSN) is Executive Order 9397. Your SSN will be used to identify you precisely when it is necessary to 1) certify that you have access to the information indicated above, 2) determine that your access to the information indicated has terminated, or 3) certify that you have witnessed a briefing or debriefing. Although disclosure of your SSN is not mandatory, your failure to do so may impede the processing of such certifications or determinations.

FORM 9-83 4193 OBSOLETE PREVIOUS EDITIONS (Replace Forms 4066, 3968, 4193a and 4193b which are obsolete and will not be used.)

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"I know of no safe depository of the ultimate powers of society, but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it away from them, but to inform their discretion by education."

Thomas Jefferson

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