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108/NSDD
OHC

4 August 1988
OCA 2616-88

MEMORANDUM FOR: Deputy Director for Administration
Deputy Executive Secretary
C/ [redacted] /OGC
C/ [redacted] OGC
C/ [redacted]

FROM: [redacted] Legislation Division
Office of Congressional Affairs

STAT

SUBJECT: H.R. 5092 - Registration of NSDD's:
Hearing Before Brooks Subcommittee

1. On 3 August 1988, the Subcommittee on Legislation and National Security of the House Government Operations Committee held a hearing on H.R. 5092, the "Presidential Directives and Records Accountability Act." Briefly stated, this bill would require that virtually all Presidential documents, most especially National Security Decision Directives (NSDD's), be registered with the Federal Register and transmitted to the Congress. Present at the hearing were Representative Brooks, Subcommittee Chairman (as well as Chairman of the full Committee), Ranking Minority Member Horton and Subcommittee members Kleczma, Lukens and Walker. The hearing lasted about two hours.

2. Chairman Brooks began by reading a prepared opening statement (copy attached) outlining why he believed the legislation was necessary. The statement characterizes as abusive NSDD's on Libya, Grenada, contra training and NSDD 145 which established a role for the National Security Agency in the government's computer security. Attached to the statement is an exchange of correspondence between the House and the National Security Council concerning the former's request for NSDD's. Chairman Brooks also announced that the Subcommittee had invited National Security Advisor Colin Powell to appear, but that he had declined.

3. In his opening statement, Ranking Minority Member Horton was cautiously supportive of the effort but suggested that the opinions of former National Security Advisors be solicited. He also included in the record the Subcommittee's letter of invitation to National Security Advisor Powell along with his response. Horton noted the fact that the letter was dated several days prior to its actual receipt, two days before the hearing, at the National Security Council.

4. Representatives Stokes and Hamilton then appeared as witnesses. Each of their statements are attached. Both were generally supportive of H.R. 5092, although Hamilton's support was stronger than Stokes. Stokes made some suggestions to amend the bill so as to give greater security to the NSDD's actually transmitted to Congress.

5. Representative Walker, in his questioning of the witnesses, noted the security problems with transmitting the NSDD's to Congress. Brooks, in response, said he envisioned a system whereby the Federal Register published only the number or other "fact of" information concerning classified NSDD's and that the actual copies be maintained at the White House. Representative Walker also asked the witnesses if they would support an amendment providing similar treatment for supposedly parallel Congressional documents.

6. When this testimony was concluded, Chairman Brooks announced that Representative Dingell was unable to appear but that he would be sending a statement for the record.

7. The Subcommittee then heard testimony from Steven L. Katz, a representative of "People for the American Way" and the author of a recent work Government Secrecy: Decisions Without Democracy. He supported the bill.

8. Also appearing in support of the bill were representatives of the General Accounting Office (GAO) and law professor Peter Shane.

9. The Subcommittee then concluded the hearings, but made no announcements about when it might "mark up" the bill.



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Attachment
As stated

OCA/ [redacted] (4 August 1988)

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Distribution:

- Original - Addressees
 - 1 - D/OCA
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 - 1 - [redacted]
 - 1 - OCA Records
 - 1 - OCA/Leg/Subject: Legislation General
 - 1 - PS Signer
 - 1 - OCA Read

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Opening Statement of Chairman Jack Brooks
Hearing on H.R. 5092 - Presidential Directives and
Records Accountability Act
Wednesday, August 3, 1988

SECRET PRESIDENTIAL DIRECTIVES -- ENTITLED NATIONAL SECURITY DECISION DIRECTIVES, OR NSDDs -- ARE BEING USED TO PROMULGATE NATIONAL POLICY. TO DATE, THE PRESIDENT HAS USED AT LEAST 296 NSDDs TO ACCOMPLISH SUCH GOALS AS APPROVING TRAINING FOR CONTRAS, DIRECTING THE INVASION OF GRENADA AND ESTABLISHING A DISINFORMATION CAMPAIGN AGAINST LIBYA. THE CONGRESS, HOWEVER, IS NEITHER INFORMED OF NSDD POLICIES NOR, IN MANY INSTANCES, PERMITTED TO SEE THE DIRECTIVES THEMSELVES. INSTEAD, NSDDs HAVE BEEN SECRETED IN A STATUS OUTSIDE THE SCOPE OF CONGRESSIONAL REVIEW.

THE SUBCOMMITTEE HAS ENCOUNTERED THESE SECRET NSDDs INCREASINGLY IN THE CONDUCT OF ITS OVERSIGHT RESPONSIBILITIES. LAST YEAR, THE SUBCOMMITTEE HELD HEARINGS REGARDING NSDD 145 -- A DIRECTIVE WHICH ATTEMPTED TO PUT THE NATIONAL SECURITY AGENCY IN CHARGE OF THE COMPUTER SECURITY FOR THE ENTIRE FEDERAL GOVERNMENT AND PARTS OF THE PRIVATE SECTOR. AT THAT HEARING, REPRESENTATIVE BEILENSON, CHAIRMAN OF THE INTELLIGENCE COMMITTEE'S OVERSIGHT SUBCOMMITTEE, TOLD US THAT THE INTELLIGENCE COMMITTEE DOES NOT RECEIVE OR REVIEW NSDDs.

CONSEQUENTLY, I WROTE REQUESTING THAT THE GOVERNMENT OPERATIONS COMMITTEE BE GIVEN COPIES OF ALL SUCH PRESIDENTIAL DIRECTIVES. MY REQUEST WAS DENIED BY THE THEN NATIONAL SECURITY ADVISOR. I RAISED THIS ISSUE WITH THE SPEAKER OF THE HOUSE, AND HE WROTE LAST JULY DEMANDING TO SEE THESE DIRECTIVES.

IN A LETTER TO THEN NATIONAL SECURITY ADVISOR FRANK C. CARLUCCI, DATED JULY 8, 198, THE SPEAKER SAID:

"THEREFORE, IN MY CAPACITY AS SPEAKER OF THE HOUSE OF REPRESENTATIVES, I DEMAND TO SEE ALL NATIONAL SECURITY DECISION DIRECTIVES ISSUED TO DATE AND RELATED IMPLEMENTING DOCUMENTS AND TRUST THAT YOU WILL MAKE APPROPRIATE ARRANGEMENTS TO ASSURE THAT THIS IS ACCOMPLISHED."

HE FURTHER STATED:

"IT IS ESSENTIAL TO ESTABLISH A CONTINUING ARRANGEMENT TO KEEP THE CONGRESSIONAL LEADERSHIP INFORMED ON FUTURE DIRECTIVES OR POLICY DECISIONS OF THE SAME TYPE, MANY OF WHICH HAVE THE EFFECT OF LAW WITHOUT ANY CONGRESSIONAL SANCTIONS...I LOOK FORWARD TO HEARING FROM YOU PROMPTLY ON THIS ISSUE OF THE HIGHEST NATIONAL INTEREST. SINCERELY, JIM WRIGHT, THE SPEAKER."

ON AUGUST 7, 1987, MR. CARLUCCI REPLIED:

"WHILE IT IS NOT ALTOGETHER CLEAR WHAT LEGISLATIVE PURPOSE YOU FORESEE BEING SERVED BY SUCH ACCESS, YOUR REQUEST IS BEING GIVEN THE MOST SERIOUS CONSIDERATION. WE EXPECT TO BE ABLE TO RESPOND AT AN EARLY DATE." SIGNED FRANK C. CARLUCCI.

TO DATE, THE SPEAKER HAS RECEIVED NO FURTHER REPLY TO HIS JULY

I ASK UNANIMOUS CONSENT THAT THE FULL TEXT OF THESE TWO LETTERS, ALONG WITH MY LETTER TO MR. CARLUCCI, DATED MARCH 31, 1987, AND HIS RESPONSES DATED, APRIL 30, 1987, AND MAY 15, 1987, BE INCLUDED IN THE RECORD AT THE END OF MY OPENING STATEMENT.

THE USURPATION OF CONGRESSIONAL POWER THROUGH THE SECRET ISSUANCE OF NSDDs UNDERMINES THAT AUTHORITY, LEAVING CONGRESS AND THE NATION IN THE DARK AS TO HOW OUR GOVERNMENT IS BEING RUN. THE MOBILIZATION OF RESOURCES AND FORMULATION OF POLICY EFFECTED THROUGH THESE DIRECTIVES, WITHOUT CONGRESSIONAL OVERSIGHT, AMOUNTS TO NOTHING MORE THAN THE IMPOSITION OF SECRET LAW. AS SUCH, I BELIEVE THE UNCHECKED USE OF NSDDs POSES A SERIOUS THREAT TO OUR REPUBLIC.

THE SUBCOMMITTEE IS MEETING TODAY TO REVIEW LEGISLATION WHICH I INTRODUCED TO ADDRESS THIS PROBLEM. H.R. 5092, THE "PRESIDENTIAL DIRECTIVES AND RECORDS ACCOUNTABILITY ACT," WOULD REQUIRE THE REGISTRATION OF PRESIDENTIAL DIRECTIVES WITH THE OFFICE OF FEDERAL REGISTER AND THEIR DISCLOSURE TO THE SPEAKER OF THE HOUSE AND THE PRESIDENT PRO TEM OF THE SENATE. PRESENTLY, EXECUTIVE ORDERS MUST BE REGISTERED UNDER THE TERMS OF THE FEDERAL REGISTER ACT, BUT DIRECTIVES ARE NOT COVERED; MY BILL WOULD EXTEND THE COVERAGE OF THE FEDERAL REGISTER ACT TO ALL PRESIDENTIAL DIRECTIVES.

IN ADDITION, TO STRENGTHEN ACCOUNTABILITY, IT WOULD REQUIRE THAT OFFICERS AND EMPLOYEES OF THE EXECUTIVE OFFICE OF THE PRESIDENT SIGN A NOTICE OF THEIR OBLIGATIONS AND REQUIREMENTS CONCERNING THE CONTROL, MANAGEMENT AND PRESERVATION OF PRESIDENTIAL RECORDS. FURTHERMORE, H.R. 5092 ESTABLISHES AN OFFICE OF RECORDS MANAGEMENT WITHIN THE EXECUTIVE OFFICE OF THE PRESIDENT TO SECURE COMPLIANCE WITH STATUTORY REQUIREMENTS GOVERNING PRESIDENTIAL RECORDS AND TO OTHERWISE PROMOTE GOOD RECORDS MANAGEMENT PRACTICES. FINALLY, THE ARCHIVIST IS EXPLICITLY GIVEN FINAL AUTHORITY WITHIN THE EXECUTIVE BRANCH TO DETERMINE WHAT CONSTITUTES A PRESIDENTIAL RECORD.

IT IS IMPORTANT THAT THE CONGRESS ADDRESS THIS PROBLEM AND SEEK SOME RESOLUTION SO THAT A NEW ADMINISTRATION TAKING OFFICE IN JANUARY OF NEXT YEAR WILL BE PREVENTED FROM SUCCUMBING TO THE TEMPTATION OF CONDUCTING ITS ACTIVITIES THROUGH THESE OR SIMILAR, BUT ARTFULLY RENAMED, SUPER-SECRET DIRECTIVES. THIS PRACTICE IS SIMPLY INCOMPATIBLE WITH OUR CONSTITUTIONAL FORM OF GOVERNMENT.

The Speaker's Rooms
U.S. House of Representatives
Washington, DC 20515

July 8, 1987

The Honorable Frank C. Carlucci
Assistant to the President for
National Security Affairs
National Security Council
Washington, D.C. 20506

Dear Mr. Carlucci:

Recent disclosures in the press and my review of correspondence between you and Jack Brooks, Chairman of the Committee on Government Operations of the United States House of Representatives, compel me to communicate with you on a matter of the most paramount importance to our constitutional form of government. As Speaker of the House of Representatives I have a responsibility to do everything in my power to ensure that all powers under Article I of the Constitution be, and continue to be, vested in the Congress. The separation of powers doctrine so firmly embedded in the Constitution requires not only that each branch of government recognize and respect the prerogatives and functions entrusted to another, but also that each exchange the information necessary to govern wisely and to govern well.

In a letter to you on March 31, 1987, Chairman Brooks requested that you furnish to the Subcommittee on Legislation and National Security specific information on all National Security Decision Directives (NSDDs) issued by the present administration since 1981. Your response of May 15, 1987 denied that request in characterizing it as unprecedented, overbroad, and objectionable on legal and constitutional grounds. I appreciate, along with Chairman Brooks, your offer to explore the possibility of some reasonable alternative arrangements for disclosure, but cannot accept the position that the National Security Council alone should decide which of these documents are "properly" a matter of concern to committees of the Congress or to its elected leaders.

A review of the NSDDs which have been declassified so far indicates that they set forth and implement national policy in the most sensitive areas, over the widest range, and at the highest level of government. Of the few NSDDs made public, at least some have delegated executive authority where both the authority and its delegation have been questionable to the public and to Members of Congress who are charged with formulating and overseeing the laws of the United States. NSDD196, for example, ordered thousands of federal employees to take polygraph examinations and, when

disclosed, engendered specific congressional legislation on the subject. In appropriate cases, decisions such as these must be the subject of congressional scrutiny. Congress cannot react responsibly to new dictates for national policy set in operation by the executive branch behind closed doors, or request specific documents relative to its deliberations whose subject matter, let alone content, is known only to a few in the executive branch. Those of us with special responsibility for the government of the United States and the freedom and safety of its people cannot allow ourselves to be uninformed concerning the actions which one branch of this government intends unilaterally to take with respect to the functioning of domestic government either routinely or in the event of national emergency.

Therefore, in my capacity as Speaker of the House of Representatives I demand to see all National Security Decision Directives issued to date and related implementing documents, and trust that you will make appropriate arrangements to ensure that this is accomplished.

I am particularly concerned about recent press accounts (Miami Herald, July 5, 1987 and Philadelphia Inquirer, July 5, 1987) describing alleged plans within the executive branch to suspend the Constitution and declare martial law, not only in cases of war but also in the event of widespread internal dissent or national opposition to some U.S. military invasion abroad. That such documents should exist is extraordinary; that they should not have been shared with the leadership of Congress is simply unacceptable. Please advise me as soon as possible (1) whether such plans exist; and (2) whether they are contained in an NSSD. I wish to see such plans if they exist in any form.

It is essential to establish a continuing arrangement to keep the congressional leadership informed on future directives or policy decisions of the same type, many of which have the effect of law without any congressional sanctions. I would be willing to arrange sessions with the bipartisan House Leadership - consisting of myself, Majority Leader Tom Foley, Majority Whip Tony Coelho, Minority Leader Bob Michel, and Minority Whip Trent Lott - to review the directives as they are issued, with yourself or a representative. Such an arrangement would provide a proper forum to determine whether any committee of the House of Representatives should be advised as to the subject matter of a directive, and if so under what conditions.

I look forward to hearing from you promptly on this issue of the highest national interest.

Sincerely,

Jim Wright
The Speaker

THE WHITE HOUSE

WASHINGTON

August 7, 1987

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Dear Mr. Speaker:

This is to acknowledge your letter of July 8, 1987, in which you request the opportunity to see all National Security Decision Directives (NSDDs) signed by the President since 1981, as well as "related implementing documents."

As you know, I have recently corresponded with Chairman Jack Brooks concerning his request for a listing of NSDDs, and that request has been the subject of ongoing discussions between our staffs. Your request for access to the NSDDs themselves raises fundamental issues involving the relationship of the President and Congress and the nature of their respective constitutional roles and prerogatives in the conduct of national defense and foreign relations. While it is not altogether clear what legislative purpose you foresee being served by such access, your request is being given the most serious consideration. We expect to be able to respond at an early date.


On a separate matter, your letter expresses particular concern about recent press accounts "describing alleged plans within the Executive Branch to suspend the Constitution and declare martial law, not only in cases of war but also in the event of widespread internal dissent or national opposition to some U.S. military invasion abroad." You have asked (1) whether such plans exist, (2) whether they are contained in an NSSD (or an NSDD), and (3) for an opportunity to see such plans if they exist in any form.

I appreciate your concern at these reports. As you may know, such plans were alleged in the press reports to have been prepared by Lieutenant Colonel Oliver North during 1982. Colonel North has denied under oath the preparation of any such plans. I assure you categorically, moreover, that no such plans have been approved by or proposed to the President. They do not exist in any NSDD or any other form. The Executive Branch does have a responsibility for contingency planning to maintain law and order in time of extreme national emergency, such as nuclear attack.

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As contained in guidelines dated from as far back as the administration of President Eisenhower, such contingency planning has been and continues to be designed to ensure the preservation of the Constitution, the maintenance of civilian rule, and the continued functioning of the three Branches of our government. Planning on any other basis is simply unthinkable.

Sincerely,



Frank C. Carlucci

The Honorable James C. Wright, Jr.
Speaker of the House of Representatives
Washington, D.C. 20515

ONE HUNDRETH CONGRESS

Congress of the United States

House of Representatives

LEGISLATION AND NATIONAL SECURITY SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM 8-373
WASHINGTON, DC 20515
March 31, 1987

The Honorable Frank C. Carlucci
Assistant to the President for
National Security Affairs
National Security Council
Washington, D.C. 20506

Dear Mr. Carlucci:

Since the Reagan Administration took office in 1981, a number of wide-ranging policy initiatives have apparently been undertaken through the issuance of highly secret National Security Decision Directives (NSDDs). It is my understanding that the content of these directives is rarely made available even to Congressional committees that request them. Indeed, the very existence of numerous directives is generally not made known. Congressman Anthony Beilenson recently testified before my subcommittee that the House Permanent Select Committee on Intelligence does not receive copies of NSDDs and that the committee's requests for such documents have been refused.

Information developed by various sources suggests that at least 260 directives have been issued over the past six years. However, the subject matter and text of only a few of these is known. These include: NSDD 84, dealing with polygraphs and pre-publication censorship; NSDD 145, concerning computer security standards; NSDD 259, outlining protection plans for public officials in the event of a nuclear attack; and a decision directive, the text of which was submitted to the Congress by the President on March 31, implementing the Special Review Board's recommendations regarding operations of the National Security Council. There have also been unverified reports of NSDDs being used for such activities as establishing counterterrorism units headed by private citizens and training of Contras by foreign nations.

Implementation of policy decisions through the issuance of undisclosed directives poses a significant threat to Congress' ability to discharge its legislative and oversight responsibilities under the Constitution. Operational activities undertaken beyond the purview of the Congress foster a grave risk of the creation of an unaccountable shadow government--a development that would be inconsistent with the principles underlying our republic.

The Honorable Frank C. Carlucci
Page Two
March 31, 1987

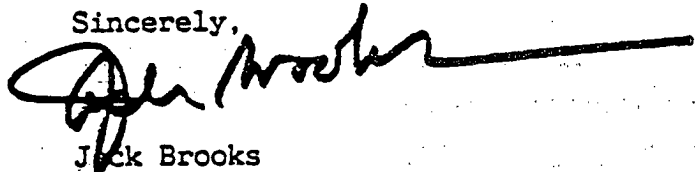
In an effort to determine how NSDDs have been used to establish and carry out undisclosed national security policies, the Legislation and National Security Subcommittee would appreciate your providing the following information with regard to all NSDDs:

1. The subject matter and a brief description of each.
2. The dates of issuance and, where appropriate, the date of expiration or rescission.
3. The level of classification of each.
4. The names and titles of persons to whom each of the directives has been made known.
5. A description of any follow-on documents produced as a result of an NSDD (such as NTSSP2 in the case of NSDD 145).

To expedite the work of the subcommittee, please provide the requested material by April 30, 1987. Thank you in advance for your cooperation in this matter.

With every good wish, I am

Sincerely,



Jack Brooks
Chairman

THE WHITE HOUSE —

WASHINGTON

April 30, 1987

Dear Mr. Chairman:

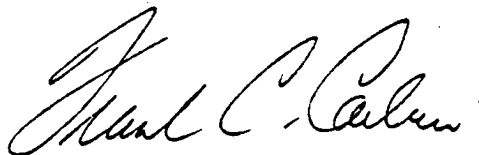
Thank you for your letter of March 31 requesting that I provide by April 30 certain information on all National Security Decision Directives issued by the President.

Historically, as President Kennedy advised the Chairman of the Senate Armed Services Committee in 1962, "the unbroken precedent" of the NSC had been "that its working papers and policy documents cannot be furnished to the Congress." It has been the practice of this Administration, however, when specifically requested by the Chairman of a House or Senate Committee on a matter directly within the Committee's jurisdiction, to provide briefings on the contents of a National Security Decision Directive or, in an appropriate case, to provide controlled access to an NSDD itself. This has proved to be a satisfactory means to accommodate the legitimate interests and requirements of the two Branches. It is also consistent with the President's policy to comply with congressional requests for information to the fullest extent consistent with constitutional and statutory obligations.

Your present request, however, concerns all Presidential directives on matters of national security from 1981 to date, involves the broadest possible range of classified subjects, and is without precedent. We expect to be able to advise you of our final determination by May 15, 1987.

With best wishes,

Sincerely,



Frank C. Carlucci

The Honorable Jack Brooks
Chairman, House Government
Operations Committee
United States House of Representatives
Washington, D.C. 20515

THE WHITE HOUSE

WASHINGTON

May 15, 1987

Dear Mr. Chairman:

As promised in my letter to you of April 30, I have considered further your request for a listing of and various other information on all National Security Decision Directives (NSDDs) issued by the President since 1981. That request is without precedent, so far as I am aware, and accordingly has necessitated a careful review of prior National Security Council (NSC) practice regarding congressional access to documents of this sort. It also has occasioned a thorough review of the legal authorities that would govern application of the doctrine of Executive privilege to the specific information you request.

NSDDs have served as a primary means, throughout the President's term in office, for the communication of guidance directly from the President to the most senior Executive branch officials, notably the Vice President, Secretary of State, Secretary of Defense, Director of Central Intelligence, and Chairman of the Joint Chiefs of Staff. NSDDs are signed by the President and address matters of critical importance in the field of national defense and foreign relations. These have included, among others, subjects of such sensitivity as nuclear weapons, strategic forces, and ongoing arms control negotiations.

In view of their subject matter, NSDDs typically are classified up to the Top Secret/Special Access level; accordingly, they are subject to restricted distribution on a need-to-know or must-know basis. As national security considerations have permitted, however, the texts of numerous NSDDs have been declassified; and in some cases, unclassified summaries of NSDDs have been made available through the White House Press Office. I enclose a listing of those NSDDs the texts or summaries of which have been made available to the public. The NSC would be pleased to provide you copies of any that may be of interest. Classification, restrictions on access, and declassification of NSDDs have been determined in accordance with applicable law. See generally Executive Order No. 12356 (April 1, 1982).

Depending upon the subject matter, implementation by responsible Executive branch officials of the guidance contained in an NSDD may entail preparation of numerous follow-on documents designed to provide more detailed instructions for implementation or execution of presidentially approved policy. Neither I nor the NSC staff have responsibility for such implementation or execution except in the rarest circumstances when the President

specifically so directs. This principle was reiterated in the NSDD the text of which was provided to Congress with the President's Message of March 31, 1987.

My review of those matters addressed by the President in NSDDs makes it clear that in no case have they thereby been exempt from appropriate congressional oversight. Current NSC practice, as described in my earlier letter, in fact is designed to ensure the House Committee on Government Operations and other committees of Congress can be informed on NSDDs that bear on matters properly before them. Such was the case, as you know, with respect to the Computer Security Act of 1987. I am committed to seeing it is also the case in other particular matters before your Committee.

I trust this information is responsive to your request and will be of assistance. At the same time, I am satisfied that your request for additional classified information on NSDDs -- a listing by dates, subject matter, addressees, classification levels, and related documents -- is overbroad and objectionable on legal and constitutional grounds.

Since Washington's day, our law has recognized the privilege of the Executive to decline to provide information to the Congress on the basis of national security or foreign policy considerations, when disclosure would be inconsistent with the President's performance of his constitutional duties and hence contrary to the public interest. The President's policy has been to comply with Congressional requests for information to the fullest extent, consistent with those duties. The current request is of so intrusive a nature, however, that were it to be pressed I would have no choice but to recommend that the President consider invoking Executive privilege. My staff nonetheless would be pleased to meet with your office to elaborate on these concerns, and also to explore the possibility of some reasonable alternative arrangements that might satisfy your interest in this area.

Sincerely,

Frank C. Carlucci

Attachment
List of Unclassified NSDDs/Summaries

The Honorable Jack Brooks
Chairman, House Government
Operations Committee
United States House of Representatives
Washington, D.C. 20515

List of Unclassified National Security Decision DirectivesFULL TEXT

<u>Title</u>	<u>Date Issued</u>
National Security Council Directives	02/25/81
National Security Council Structure	01/12/82
Conventional Arms Transfer Policy	07/08/81
Space Transportation System	no date
Preparations for the Economic and NATO Summits	02/12/82
U.S. Civil Defense Policy	03/16/82
Staffing at Diplomatic Missions and Their Constituent Posts	06/02/82
Emergency Mobilization Preparedness	07/22/82
Preparations for the 1983 Summit	10/09/82
Management of Public Diplomacy Relative to National Security	01/14/83
Shuttle Orbiter Production Capability	02/03/83
Safeguarding National Security Information	03/11/83
Eliminating the Threat from Ballistic Missiles	03/25/83
The Export Administration Act	04/05/83
United States Arctic Policy	04/14/83
Refugee Policy and Processing Refugees from Indochina	05/13/83
Commercialization of Expendable Launch Vehicles	05/16/83
National Security Telecommunications Policy	08/03/83

(List of Unclassified NSDDs continued) (FULL TEXT)

<u>Title</u>	<u>Date Issued</u>
National Security Launch Strategy	02/25/85
Food for Progress Program Implementation	04/30/85
Establishment of a Blue Ribbon Commission on Defense Management	06/17/85
National Policy on the Transfer of Scientific, Technical and Engineering Information	09/21/85
Reporting Hostile Contacts and Security Awareness	11/01/85
Civil Defense	02/07/87
Implementation of the Recommendations of the President's Special Review Board	03/31/87

List of Unclassified National Security Decision DirectivesPARTIAL TEXT

<u>Title</u>	<u>Date Issued</u>
U.S. Non-Proliferation and Peaceful Nuclear Cooperation Policy	07/16/81
Strategic Forces Modernization Program	10/01/81
Nuclear Weapons Employment Policy	no date
Protection of Classified NSC and Intelligence Information	01/12/82
Designation of Intelligence Officials Authorized to Request FBI Collection of Foreign Intelligence	01/29/82
U.S. Civil Defense Policy	02/03/82
Nuclear Force Structure	11/18/82
U.S. Response to Soviet Destruction of KAL Airliner	09/05/83
National Policy on Telecommunications and Automated Information Systems Security	09/17/84
U.S. Third World Food Aid: A "Food for Progress" Program	01/05/85
Task Force on Combatting Terrorism	07/20/85
Counterintelligence/Countermeasure Implementation Task Force	11/01/85

Fact Sheets and/or Press Releases on National Security Decision Directives

<u>Title</u>	<u>Date Released</u>
Press Release - Cancellation of Certain Presidential Directives from Carter Administration	01/12/82
Speech given by William P. Clark on National Security Strategy	05/21/82
Fact Sheet - National Space Policy	04/11/85
Press Statement - Creation of Economic Policy and Domestic Policy Council	04/11/85
Fact Sheet - Space Assistance and Cooperation Policy	01/16/87
Fact Sheet - Strategic Defense Initiative (SDI)	03/23/83
Press Release - Acts of Terrorism	04/17/84
Fact Sheet - Food Aid Initiative	07/10/84
Fact Sheet - National Space Strategy	08/15/84
Press Release - The President's Unclassified Report to the Congress on Soviet Noncompliance with Arms Control Agreements as Required by the FY85 Defense Authorization Act	02/01/85
Fact Sheet - National Security Launch Strategy	no date
Fact Sheet - The Strategic Defense Initiative	06/01/85
Fact Sheet - Building an Interim Framework for Mutual Restraint	06/10/85
Press Release - National Defense Stockpile Policy	07/08/85
Fact Sheet - Shuttle Pricing for Foreign and Commercial Users	08/01/85

(List of Fact Sheets and/or Press Releases continued)

<u>Title</u>	<u>Date Released</u>
Press Release - President's Unclassified Report on Soviet Noncompliance with Arms Control Agreements	12/23/85
Fact Sheet - Executive Order on Libya	01/07/86
Fact Sheet - Summary of a Directive Implementing the Recommendations of the Blue Ribbon Commission on Defense Management	04/02/86
Fact Sheet - Narcotics and National Security	04/08/86
Fact Sheet - Interim Restraint Policy: Responding to Soviet Arms Control Violations	05/27/86
Fact Sheet - United States Space Launch Strategy	12/27/86

**STATEMENT
OF
THE HONORABLE LEE H. HAMILTON
AUGUST 3, 1988
SUBCOMMITTEE ON LEGISLATION AND NATIONAL SECURITY
COMMITTEE ON GOVERNMENT OPERATIONS**

Mr. Chairman, Members of the Committee. I appreciate the opportunity to appear here today to discuss legislation to require the registration of National Security Decision Directives (NSDDs).

I support H. R. 5092 and urge its enactment. It provides for important record and bookkeeping of Presidential documents. It sets out reasonable procedures for registering crucial foreign policy decisions made in secret and for enhancing Congressional oversight. It does so:

- without any radical changes to current policy,
- without revealing information which must, for national security reasons, be kept secret, and
- without restricting the President's ability to make decisions or to carry out his constitutional responsibilities.

This bill would require three principal changes:

First, it would mandate that NSDDs be registered under the provisions of the Federal Register Act and that a copy of each directive be provided to the Speaker of the House and to the President pro tem of the Senate;

Second, it would require that officers and employees of the Executive Office of the President sign a notice of their obligations and requirements concerning the control, management and preservation of Presidential records; and

Third, it would establish an office of records management within the Executive Office of the President to secure compliance with statutory requirements governing Presidential records.

In my view, the registration of NSDDs and the requirement that they be provided to Congress are important reforms. This legislation is needed to protect against careless handling of Presidential documents. The Iran/Contra investigation showed that Presidential documents were not carefully handled. Some were even destroyed. The investigation revealed a surprising lack of care for key Presidential papers.

NSDDs have increased in number, scope, importance, and authority. They were originally position papers, but in recent years these directives have been used to initiate and determine policy. As of January 1, 1988, President Reagan had issued nearly 300 NSDDs. These important policy documents are beyond the reach of congressional oversight.

Executive branch officials argue that NSDDs involve policy implementation, not policy-making. Often, that is true. But these directives are sometimes significant foreign policy documents that define important policies and establish guidelines. They deserve careful handling and Congressional scrutiny.

The use of secret NSDDs to create policy infringes on Congress's constitutional prerogatives by inhibiting effective oversight and limiting Congress's role in policy-making. NSDDs are revealed to Congress only under irregular, arbitrary or accidental circumstances, if at all. Even the Intelligence Committees do not usually receive copies of NSDDs.

The widespread use of these directives can alter the tenuous balance of power between the Congress and the President. The secrecy and uncertain legality of NSDDs give the President extraordinary power to formulate or alter policy without the knowledge of Congress. The President can amend current NSDDs at will. If Congress cedes to the President the right to withhold information from it, the balance of decision-making power shifts dramatically toward the President.

In addition to the constitutional reasons, sound, practical reasons require the President to inform Congress of NSDDs. The inclusion of Congressional leadership, the intelligence committees, or some other bipartisan Congressional group would allow for thorough discussion and divergent advice on many important foreign policy decisions.

I support H.R. 5092 for several reasons:

First, it addresses the growing use of National Security Decision Directives as important statements of administration policy;

Second, it is an important first step in trying to obtain better accountability of important foreign policy decisions; and

Third, it will help insure that secret decisions are registered and appropriately disclosed to Congress along with other documents of public policy.

Finally, this bill, if enacted, promotes openness in government, reversing a trend toward greater secrecy in Presidential decision making. Such secrecy promotes undemocratic policy-making, defeats the checks and balances in our system, and prevents accountability. I realize that even if NSDDs are registered, this or the next administration may devise another method to bypass disclosure of information. But whenever Congress is confronted with a procedure which excludes it from policy-making, it must act to ensure its ability to carry out its constitutional responsibilities.

Congress's authority under the Constitution should not be subverted by a secret process. The Congress cannot accept the notion that some important foreign policy decisions can be known only by certain unelected officials in the President's Office.

NSDDs can have profound effects on our security interests. The President must be accountable for them. This legislation is a first step towards greater accountability. Additional steps may be necessary in the future.

Mr. Chairman, Secrecy is of course sometimes necessary in government. But denying Congress knowledge of key foreign policy decisions is neither necessary nor desirable. With its requirements for registering and reporting NSDDs to Congress, H.R. 5092 represents a modest but important response to excessive secrecy in government.

Thank you.

TESTIMONY OF THE HONORABLE LOUIS STOKES

SUBCOMMITTEE ON LEGISLATION AND NATIONAL SECURITY

COMMITTEE ON GOVERNMENT OPERATIONS

AUGUST 3, 1988

GOOD MORNING, MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE,
AND THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU IN
SUPPORT OF H.R. 5092, THE PRESIDENTIAL DIRECTIVES AND RECORDS
ACCOUNTABILITY ACT.

I WILL CONFINE MY REMARKS TO SECTION 2 OF THE BILL WHICH
WOULD REQUIRE THAT ALL "EXECUTIVE DIRECTIVES" ISSUED BY THE

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PRESIDENT BE FILED WITH THE OFFICE OF THE FEDERAL REGISTER AND IMMEDIATELY PROVIDED TO THE APPROPRIATE COMMITTEES OF THE HOUSE AND SENATE. I AM INTERESTED IN THIS LEGISLATION BECAUSE IT WOULD REQUIRE FOR THE FIRST TIME THAT SO-CALLED NATIONAL SECURITY DECISION DIRECTIVES BE PROVIDED TO CONGRESS.

AS I UNDERSTAND IT, MR. CHAIRMAN, EACH PRESIDENT PROMULGATES A NUMBER OF CLASSIFIED DIRECTIVES DURING HIS ADMINISTRATION, WHICH HAVE BEEN VARIOUSLY TERMED PRESIDENTIAL DIRECTIVES (PDs), NATIONAL SECURITY DECISION MEMORANDA (NSDMs), NATIONAL SECURITY DECISION DIRECTIVES (NSDDs), ETC. THE ESSENCE OF THESE DOCUMENTS IS THAT THEY REPRESENT POLICY PRONOUNCEMENTS AND INSTRUCTIONS TO EXECUTIVE BRANCH OFFICIALS

ON HOW TO IMPLEMENT VARIOUS POLICY DECISIONS IN THE NATIONAL SECURITY ARENA. THESE DOCUMENTS ARE CLOSELY HELD WITHIN THE EXECUTIVE BRANCH AND THEY ARE NOT ROUTINELY PROVIDED TO CONGRESS.

IT HAS BEEN THE EXPERIENCE OF THE PERMANENT SELECT COMMITTEE ON INTELLIGENCE THAT WE RARELY ARE AWARE OF THE EXISTENCE OF SPECIFIC NSDDs. SELECTED DOCUMENTS OF THIS CATEGORY HAVE ON OCCASION BEEN MADE AVAILABLE FOR REVIEW AT THE WHITE HOUSE WHEN WE HAVE HEARD OF THEM AND ASKED ABOUT THEM, BUT SUCCESSIVE ADMINISTRATIONS HAVE SOUGHT TO WITHHOLD OTHERS OR TO DENY ROUTINE ACCESS TO THEM ON THE GROUNDS THAT THEY ARE PRESIDENTIAL DOCUMENTS - WHATEVER THAT MEANS. ALTHOUGH THERE

HAVE NOT BEEN MANY COMMUNICATIONS BETWEEN THE PERMANENT SELECT COMMITTEE ON INTELLIGENCE AND THIS ADMINISTRATION ON THE SUBJECT, IT IS MY IMPRESSION, BASED ON WHAT WE DO KNOW, THAT OFFICIALS OF THE NATIONAL SECURITY COUNCIL AND OTHER OFFICIALS OF THE PRESIDENT'S STAFF CONSIDER THEM TO BE COVERED BY THE DOCTRINE OF EXECUTIVE PRIVILEGE.

WHILE IT IS NOT MY PURPOSE TO EITHER DEFINE OR DEBATE WHAT THAT DOCTRINE MAY ENCOMPASS, I HAVE ALWAYS UNDERSTOOD THAT EXECUTIVE PRIVILEGE HAS BEEN ASSERTED MOST OFTEN TO COVER ADVICE RECEIVED BY THE PRESIDENT FROM HIS SUBORDINATES AND THE DETAILS OF INTERNAL EXECUTIVE BRANCH CONSIDERATION OF POLICY OPTIONS. I HAVE RARELY HEARD IT SERIOUSLY ADVANCED AS COVERING

DIRECTIVES FROM THE PRESIDENT SETTING FORTH POLICY AND
INSTRUCTING EXECUTIVE BRANCH OFFICIALS ON HOW TO IMPLEMENT THAT
POLICY. THAT IS WHY I BELIEVE THAT, INSOFAR AS THIS
LEGISLATION TOUCHES ON NSDDs OR THEIR LIKE, IT IS AN IMPORTANT
STEP FORWARD IN EXECUTIVE BRANCH ACCOUNTABILITY TO CONGRESS FOR
NATIONAL SECURITY POLICY DECISIONS.

UNDER THE CONSTITUTION, CONGRESS SHARES AUTHORITY WITH THE
PRESIDENT IN THE MAKING OF FOREIGN POLICY. AS A PRACTICAL
MATTER, 535 MEMBERS OF CONGRESS CANNOT AGREE ON EVERY DECISION
MADE BY A PRESIDENT. THAT IS WHY WE HAVE A CHIEF EXECUTIVE WHO
MUST MAKE MOST DECISIONS AND WHO MUST CARRY THEM OUT. BUT, THE
PRESIDENT'S RESPONSIBILITY DOES INCLUDE KEEPING CONGRESS

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INFORMED OF WHAT HE IS DOING. IT INCLUDES LISTENING TO THE
ADVICE HE MAY RECIEVE FROM CONGRESS FROM TIME TO TIME. HIS
POWER TO ACT CAN BE CIRCUMSCRIBED BY STATUTE AND BY THE
AVAILABILITY OF FUNDS. AS A PRACTICAL MATTER, IT CAN ALSO BE
CIRCUMSCRIBED BY THE LACK OF PUBLIC SUPPORT FOR HIS DECISIONS.
FOR ALL THESE REASONS, CONGRESS MUST BE APPRISED OF WHAT A
PRESIDENT IS DOING, EVEN IN THE CASE OF SENSITIVE NATIONAL
SECURITY MATTERS.

FURTHER, WHAT WE DO KNOW OF NSDDs SUGGEST THEY SHOULD BE OF
DIRECT CONCERN TO CONGRESS. THEY MAY SET MAJOR POLICY
DECISIONS. AS INSTRUCTIONS GIVEN TO EXECUTIVE BRANCH OFFICIALS
WHO ARE TO IMPLEMENT THEM, THEY ARE SOMETIMES THE ONLY RECORD

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OF SECRET POLICY AND SOMETIMES ARE A SIGNIFICANT CHECK ON THE
AUTHORITY OF INDIVIDUAL EXECUTIVE BRANCH OFFICIALS.

FINALLY, THEY REPRESENT INFORMATION WHICH CONGRESS SIMPLY
MUST HAVE IN THE AREA OF NATIONAL SECURITY IF IT IS TO HAVE A
NATIONAL SECURITY ROLE. IS THE SECRET POLICY OF THE UNITED
STATES THE SAME AS THE PUBLIC POLICY OF THE UNITED STATES?
AND, EXACTLY WHAT IS THE POLICY OF THE UNITED STATES WITH
RESPECT TO VERY SENSITIVE MATTERS SUCH AS TERRORISM,
PARAMILITARY COVERT ACTIONS, ETC.?

WHAT I THINK THESE QUESTIONS AND OUR GENERAL UNDERSTANDING
OF NSDDs TELL US IS THAT THEY ARE SIGNIFICANT DOCUMENTS AND

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ONES WHICH CONGRESS SHOULD REGULARLY REVIEW IN ITS OVERSIGHT

OF NATIONAL SECURITY ACTIVITY. NOW, IT CAN BE SAID AND OUGHT

TO BE SAID THAT SOME NSDDs WILL BE VERY SENSITIVE. THAT IS WHY

I THINK IT IS FULLY APPROPRIATE THAT H.R. 5092 REQUIRES THAT

THE RULES AND THE PROCEDURES OF EACH HOUSE FOR THE PROTECTION

OF SENSITIVE INFORMATION APPLY IN ANY TRANSMISSION AND

RETENTION BY COMMITTEES OF CONGRESS OF CLASSIFIED NSDDs.

I ALSO AGREE WITH THE PROVISION OF SUBSECTION 2(A) WHICH

EXCLUDES FROM THE DEFINITION OF "EXECUTIVE DIRECTIVE"

PRESIDENTIAL FINDINGS UNDER THE HUGHES-RYAN AMENDMENT.

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MR. CHAIRMAN, I HAVE ONLY TWO SUGGESTIONS WITH RESPECT TO SECTION 2 OF THE BILL. THE FIRST IS MORE BY WAY OF A QUESTION. DOES SUBSECTION 2(B)(1) TAKE APPROPRIATE PRECAUTIONS FOR THE PROTECTION OF SENSITIVE NSDDs THAT MUST BE PROVIDED TO THE OFFICE OF THE FEDERAL REGISTER? WOULD IT NOT BE MORE APPROPRIATE TO REQUIRE THE RETENTION OF CERTIFIED COPIES OF THESE DOCUMENTS BY AN INDEPENDENT EXECUTIVE BRANCH OFFICIAL WITHIN THE NATIONAL SECURITY ESTABLISHMENT OF THE GOVERNMENT UNTIL SUCH TIME AS THEY WOULD BE ORDINARILY PROVIDED TO THE ARCHIVES?

MY SECOND POINT IS ONLY TO REEMPHASIZE AN EARLIER COMMENT. I BELIEVE THAT IT MAY BE POSSIBLE TO IMPROVE UPON THE LANGUAGE

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IN SUBSECTION 2(B)(2) IN ORDER TO MORE CLEARLY SET FORTH

PROTECTIONS FOR NSDDs PROVIDED TO CONGRESS, POSSIBLY INCLUDING

A PROVISION WHICH PERMITS THE TRANSMISSION DIRECTLY TO

COMMITTEES OF JURISDICTION AND OF ONLY THOSE PARTS OF AN NSDD

RELATING TO EACH COMMITTEE'S SPECIFIC JURISDICTIONAL INTEREST.

I HAVE BEEN TOLD, FOR INSTANCE, THAT SOME NSDDs MAY COVER A

RANGE OF TOPICS WHICH, UNDER OUR SYSTEM, WOULD RESULT IN

REFERRALS OF THE SAME DOCUMENT TO A NUMBER OF COMMITTEES. YET,

THE MATERIAL IN SUCH DOCUMENTS COULD BE SEGREGATED DEPENDING ON

THE JURISDICTION OF THE COMMITTEES INVOLVED SO THAT ONLY THOSE

MATTERS WOULD BE PROVIDED TO A PARTICULAR COMMITTEE WHICH DEALT

WITH ITS JURISDICTIONAL CONCERN.

MR. CHAIRMAN, IN CLOSING I WOULD LIKE TO EXPRESS MY SUPPORT FOR THE EFFORT YOU HAVE LAUNCHED WITH H.R. 5092. IT IS MY HOPE THAT IN YOUR HEARINGS YOU WILL HEAR FROM THE EXECUTIVE BRANCH A BETTER EXPLANATION THAN I MYSELF HAVE HEARD OVER THE PAST SEVERAL YEARS AS TO WHY NSDDs OR SIMILAR DOCUMENTS ARE NOT ROUTINELY PROVIDED TO CONGRESS UNDER APPROPRIATE SECURITY CONDITIONS. I DO NOT UNDERSTAND THE APPROACH WHICH DENIES THEM TO CONGRESS ON THE BASIS OF SOME RESERVATION OF EXECUTIVE AUTHORITY. INsofar AS THESE DOCUMENTS SET THE POLICY OF THE UNITED STATES GOVERNMENT AND PROVIDE DIRECTION TO EXECUTIVE BRANCH OFFICIALS, I BELIEVE IT IS FULLY APPROPRIATE THAT CONGRESS REVIEW THEM.

MR. CHAIRMAN, I THANK YOU FOR THE OPPORTUNITY TO TESTIFY
BEFORE THE SUBCOMMITTEE AND I AM AVAILABLE TO ANSWER ANY
QUESTIONS.