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Special Issue: Automatic Declassification

If the Clinton Administration wanted to reduce excessive government secrecy, there are a number of steps it could take right away by Executive Order. This issue of *S&GB* focuses on automatic declassification, one of the more important and consequential measures that could be adopted.

This procedure could help diminish the backlog of billions of classified documents dating back 75 years or more, and could help prevent the buildup of new secret government files that would otherwise be classified indefinitely.

Remarkably, some form of automatic declassification has been advocated by four of the last eight Presidents, including two Republicans and two Democrats. No less remarkably, its implementation has been effectively blocked by a recalcitrant bureaucracy.

The challenge for the Clinton Administration, therefore, will be to take the widely accepted principle of automatic declassification and finally make it work.

Long Advocated

Some type of automatic declassification procedure, by which a document is declassified after the passage of a predetermined period of time without requiring formal review, has been advocated or accepted by most Presidents since the early days of the Cold War classification system.

In 1953, President Eisenhower directed that "to the fullest extent practicable," a specific date or event should be cited at the time a document is classified, after which it would be automatically downgraded or declassified. (Executive Order 10501, sec. 4a).

In 1961, President Kennedy revised and elaborated this provision, based on the diversity of categories of national security information and the differing degrees of threat they may pose. Thus, information originated by foreign governments, information controlled by statutes such as the Atomic Energy Act, as well as intelligence and cryptography were all to be exempt from automatic procedures (though they were still ultimately subject to declassification). There was also a vague exemption for unspecified "extremely sensitive information" that could be individually designated by agency heads. Another category of information could be deemed sensitive for an indefinite period yet would still be automatically downgraded to the lowest classification level, though not automatically declassified. Finally, everything else was to be automatically downgraded at three year intervals, and automatically declassified twelve years after issuance. (E.O. 10964, section 1).

In 1972, President Nixon declared that Kennedy's system had "failed" to bring about timely declassification. He defined an even more incisive general declassification schedule by which Top Secret information would be downgraded to Secret after two years, to Confidential after

two more years, and declassified after a total of ten years. Similarly, information originally classified as Secret would be declassified after a total of eight years, and Confidential information after six years. Nixon allowed for the possibility that some exceptional classified information "may warrant some degree of protection" beyond the scheduled declassification period. Such exceptions had to be approved in writing along with an ultimate declassification date, were to "be kept to the absolute minimum," and were limited to four specified categories: foreign government information; statutorily protected information; information on a system, plan, or project whose protection is essential to national security; or classified information that would place a person in immediate jeopardy. (E.O. 11652, section 5).

In 1978, President Carter directed that automatic declassification should occur not more than six years from the date of classification. Senior officials were granted authority, to be used "sparingly", to extend the period for declassification to no more than twenty years after classification, and no more than thirty years for foreign government information. (E.O. 12065, section 1-4).

In 1982, President Reagan all but abolished automatic downgrading and declassification. Furthermore, he permitted automatic declassification decisions effected under previous Executive Orders to be invalidated at the originating agency's discretion. (E.O. 12356, section 1.4).

Some general lessons emerge from this history. First, the diversity of types of classified information always dictated the possibility of exceptions and exemptions. It was never deemed possible to employ a fully automatic declassification system. On the other hand, until the Reagan era it was always recognized that some form of automatic declassification was desirable and, in fact, necessary for the system to function properly.

Never Effectively Implemented

Automatic declassification has never been successfully implemented, as the national security bureaucracy has tended to ignore or to defeat even the most explicit directions from the President.

Thus, according to Steven Garfinkel of the Information Security Oversight Office, "The Carter idea of six year automatic declassification was a fiction-- the system just didn't do it. Classifiers created this fiction called six year review which is not provided for in the Carter order. What we ended up seeing was that more than half of the documents classified were marked for six year review rather than six year declassification. And then you add to those the ones that were marked for twenty year review, which was an exception" allowed by Carter.

"By the time you added all these 'exceptions' together, you got over 90% of the material being marked as an exception. And so it was really a fiction.... The same thing happened with the Nixon order. Everything was marked in the excepted category or most of it was

marked in the excepted category," Garfinkel said.

How can that be? According to Garfinkel, "There are whole major categories that ordinarily are not conducive to knowing when the sensitivity is going to lapse, for example foreign affairs-- six years, eight years, ten years, you're very often dealing with the same people, the same issues, and your bureaucrat is quite logically going to be very nervous about opening something up that's going to, you know, create a big issue between two countries. The same thing obviously would be true in the intelligence area."

"The interesting thing is, there are certain areas that are conducive, for example, wars. Much of the information in Desert Storm/Desert Shield had tremendous sensitivity for a very short period of time. And one of the things we've been real pleased to see is that a lot of that material already has been declassified."

Garfinkel's rather apologetic view of the declassification system seems to be that the system has responded rationally to genuine national security considerations, even when that meant defying Presidents who were bold enough to order automatic declassification within several years.

That view is flawed for at least a couple of reasons. First, it blithely relegates open, accountable government to secondary, non-essential status. At the same time, it ignores the damage done by excessive secrecy.

Secondly, the widespread failure to declassify is manifestly irrational and not driven by plausible national security considerations. Everyone can cite their favorite example of this system-wide failure. Recall the World War I document that was maintained in classified files at the National Archives until last June and which took eight months to get declassified. Even now, there are at least three other still-classified documents at the Archives from the very same *day*.

The Need for Enforcement

Garfinkel is certainly right, however, that the automatic downgrading and declassification did not work very well even when there was a President who favored it. This suggests the need for an enforcement mechanism beyond the issuance of a Presidential directive, or the nominal enforcement provisions previously put in place.

Such enforcement might be assigned to a more aggressive, Cabinet-level version of the existing Information Security Oversight Office. Alternatively, the Inspector General Act could be modified to direct each agency's Inspector General to monitor and enforce compliance with declassification procedures.

Automated Downgrading and Declassification?

Once there is a will to implement automatic downgrading and declassification, classification officials say there may be at least one new way to facilitate it with the help of automated data processing systems.

The increasing volume of classified material that is stored or processed electronically creates the possibility of using computers to automate downgrading and declassification, and otherwise speed the declassification review process.

According to Albert L. Thomas, formerly a classification officer at Kirtland Air Force Base, "Artificial intelligence techniques offer many possibilities" for automating declassification. "AI techniques could include the ability to tag each portion determined to be classified or unclassified with the rules that make it classified or unclassified. Computers can also be used to make immediate changes to document classifications as classified portions are regraded or removed." (see NCMS, *Classification Management*, vol. 26, 1990, pp. 115-118).

This approach may be suitable to certain categories of information and types of documents, such as those that are susceptible to keyword searches, but it is unlikely to be a panacea.

Cost Considerations

A revitalized declassification program may initially involve new expenditures, as more resources are devoted to undoing decades of overclassification, but net costs are sure to decline along with the volume of unnecessarily classified material that currently has to be protected by expensive security measures.

Recent legislative action highlights one aspect of the problem. While largely ignoring unnecessary classification, Congress recently directed the Pentagon to install expensive new advanced locks on the estimated 200,000 safes and filing cabinets that are used by government and industry to store classified material. Posing as defenders of national security, the driving forces behind this Congressional action also happen to have ties to the lock makers that will earn up to \$500 million from the new requirement. (*Washington Post*, 11/1/92, p. H1).

At any rate, a reduction in the vast amount of permanently classified material would produce a similar reduction in the money that is spent to protect it.

The Bottom Line

Adopting automatic declassification, which has long been supported on a bipartisan basis, is easy enough. The challenge is to make it work. The following options should be considered to help meet this challenge:

- **Impose a quota on exceptions.** Since not all classified documents are created equal, some allowance for exceptions to the rule of automatic declassification will have to be made. But to prevent the exceptions from becoming the rule, they should not be permitted to exceed a certain quota or fixed fraction of the total. Further, they should require written justification from a responsible senior official, and be subject to independent review.
- **Declare documents of a certain age presumptively unclassified.** Reviewing the entire backlog of untold billions of existing secret documents for declassification would be tremendously burdensome. But because of the dereliction of previous Administrations, which indiscriminately classified trivial matters along with some information that might still pose a genuine threat to national security, much of the more recent material may require review prior to release. To simplify the problem, virtually all documents older than perhaps twenty years (and not subject to statutory restrictions) should be declared unclassified and transferred to the Archives.
- **Establish an enforcement mechanism.** Even a brilliantly conceived Executive Order on declassification will be resisted by the national security bureaucracy, as previous orders have been in the past. Therefore the Administration must not only set a new standard for classifying and declassifying information, but should also create an effective, ongoing enforcement mechanism to ensure that it is finally put into practice.
- **Assign an interim authority to make it happen.** A senior official or National Security Council working group should be assigned initial responsibility for seeing that automatic declassification procedures are promptly put in place throughout the government. This authority should develop implementing directives, coordinate declassification procedures, and assure sufficient resources. The authority should define the automatic declassification schedule for preventing the buildup of new classified documents, and the automatic classification termination date for reducing the backlog of existing secret documents, as well as the nature and quantity of allowable exceptions. The authority should also determine whether new incentives or penalties are necessary to guarantee the cooperation of classification bureaucrats.

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