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Reclassification of Public Documents at the National Archives

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Abstract

In the past several months, a controversy has erupted over the review and removal, by defense and intelligence agencies, of previously public records held by the National Archives. The legal basis of these programs is examined; their history is traced; the story of their revelation in the press and the reaction of the Archives and other governmental bodies is told; and conclusions are offered about the future of such activities.

Since shortly after the Civil War, the United States government has kept certain information secret. As described in detail in the 1997 report of the Moynihan Commission on Protecting and Reducing Government Secrecy, the number of "classified" documents increased geometrically, even exponentially, through World War I, World War II, and the Cold War. Millions of documents had been stamped "Confidential", "Secret", or other security classifications, and remained out of the public view long after there was any need for them to (S. Doc. No. 105-2, 1997) With the end of superpower struggle, questions began to be raised about the need for the continued withholding of so many documents, about the cost to the government, (Relyea, 2005) the public, and even the national security the program had been designed to safeguard, in that government agencies were prevented from communicating potentially useful information to one another. Also, researchers wished to access documents describing periods that were increasingly of, and only of, historical interest. A movement gathered to examine the necessity for classification, with an eye to declassifying as much as could safely be released to the public. In 1995, President Bill Clinton issued an Executive Order providing for the rapid declassification of the records maintained by various agencies. They were to be made public at the National Archives. By this year, over a billion pages had been declassified.

However, in the past several months, media reports have revealed that officials of the Central Intelligence Agency, the United States Air Force, and other government agencies, have, with the cooperation of the National Archives and Records Administration (NARA), systematically gone through large numbers of public documents at the National Archives in search of those which, in their estimation, were erroneously declassified and ought to be kept secret. Many thousands of pages have been pulled from public view, puzzling and incensing historians and supporters of open government.

In this paper, I will examine how this "reclassification" occurred. In particular, I will attempt to determine if it represents a broad, high-level government information policy, or the policy of a small number of agencies and officials. I will look at the genesis of the policy in law, trace its history, and discuss effects of the policy on public access to government records in general. Classification is a broad and complex issue. Much has been made of the idea that too much material is classified, that new categories of classification are being introduced, that agencies do not share information with one another, resulting in intelligence failures of the sort that led to the 9/11 disaster. However, this paper is concerned only with the issue of *re*classification, that is, whether Executive Branch agencies can restrict information in the National Archives once it has been made public.

Authority for Declassification and Reclassification

President Clinton issued Executive Order 12958, titled *Classified National Security Information*, on April 17, 1995 (Executive Order No. 12958, 1995) It replaced EO 12356, issued in 1982 by Ronald Reagan, as the basic authority governing classification, and parallels the earlier order fairly closely section by section. (The Reagan order had replaced EO 12065, issued by Jimmy Carter.) (Executive Order No. 12356, 1982) Whereas 12356 encouraged classification, calling for erring on the side of caution and maintaining classified status in cases of doubt, the Clinton order prescribed that "if there is significant doubt about the need to classify information, it shall not be classified." (Section 1.2 b) The order noted that information would not be declassified just because of the unauthorized disclosure of it, or of similar information. (Section 1.2 c) Like EO 12356, it described levels of classification, and listed which officials had

authority to classify and the grounds for classification, but while the Reagan order set the duration of classification as "as long as necessary," (Section 1.4) the Clinton order set a basic ten year term, after which classification was to be reviewed (Section 1.6) It retained 12356's ban on classification to "conceal violations of the law," "prevent embarrassment," or "prevent or delay the release of information that does not require protection." (1.6, 1.8 respectively)

Another important change concerned reclassification: while 12356 allowed it on the grounds of national security, if the information could "reasonably be recovered," and if the move was reported to the Information Security Oversight Office (a body within NARA, about which more later) (1.6c), 12958 banned it for documents that had been "released under proper authority," allowing it only on a document-by-document basis with the "personal participation" of a high official such as an agency head. (Section 1.8 c)

EO 12958's impact was more pronounced in the area of declassification. Where 12356 had called for declassification "as soon as national security considerations permit" (3.1 a), 12958 ordered that within 5 years, all material more than 25 years old should be declassified whether or not it had been reviewed to see if continued classification were warranted, and in the future, documents would be declassified as they turned 25, unless they met certain content conditions and the agency head made a specific statement to this effect well in advance (3.4). (EO 12356 had demanded that every document be reviewed before declassification. (3.4)) Each agency was to formulate a plan for complying with the order, while the Archivist of the United States was to formulate a similar plan for information in the Archives. However, if an agency in the course of its review came across information originating with or classified by another agency, it was to refer the information to that agency, rather than releasing it. (Section 3.7, 4.2 h). The Information Security Oversight Office (ISOO), within the Office of Management and Budget, which under

the Reagan order was more concerned with insuring that each agency classified documents properly (5.2), was now to oversee each agency's plans for declassification, and report to the President on progress towards it. (5.3) However, like 12356, EO 12958 made an major exception, exempting information restricted under the Atomic Energy Act of 1954 from declassification. (6.2, 6.1)

An important aspect of EO 12958's declassification procedures was that it left them entirely in the hands of individual agencies. The National Archives might have custody of documents, but not the authority over their classification status; NARA cannot really argue with an agency decision to declassify or not. (*Drowning* (Leonard), 2006) Also, the requirements and deadlines of the order made it difficult for agencies to perform full, document by document reviews of their holdings prior to declassification. It was assumed they would use sampling and other "risk management" techniques to make decisions about large batches. If some classified material got through, this was considered acceptable in pursuit of the larger goal of declassification. (ISOO, 2006)

A later order, EO 13142 of November, 1999, extended the deadline for declassification, and transferred the ISOO to the National Archives and Records Administration. (Executive Order No. 13142, 1999) The procedures for declassification were codified at 32 CFR 2001.

In the meantime, there were legislative enactments that affected reclassification. In the wake of the scandal involving Wen Ho Lee, a scientist at the Los Alamos nuclear laboratory who was accused of passing secrets to a foreign government, or at least of keeping sensitive data on an unsecured computer, Congress passed the so-called Lott-Kyl amendments. Named for their sponsoring Senators, Trent Lott of Mississippi and John Kyl of Arizona, these were sections of the Defense Department appropriations bills for fiscal year 1999 and 2000. (Public Law 105-261,

Section 3161, "Protection Against Inadvertent Release of Restricted Data and Formerly Restricted Data," and Public Law 106-65, Section 3149, "Supplement To Plan For Declassification Of Restricted Data And Formerly Restricted Data", respectively.) The original amendment authorized the Department of Energy to search all records it planned to release under EO 12958 for "restricted data" (RD) and "formerly restricted data", two special classification categories unique to DOE, describing information on nuclear weapons and reactor construction, and their military deployment and use. (*Drowning* (Podonsky), 2006) (Remember that EO 12958 did not apply to such nuclear information.) The second amendment extended this review to "all records subject to Executive Order No. 12958 that were determined before the date of the enactment of that Act to be suitable for declassification" – in other words, any agency's records. DOE was to train reviewers for this task, and report to the Senate Armed Services and House National Security Committees on the progress of the search. Neither section mentioned reclassification.

Of course, it has become a cliché to say that after September 11, 2001, everything changed. President Bush had already shown certain tendencies towards secrecy, for instance, transferring his materials from when he was Governor of Texas to his father's Presidential library, and putting materials from previous Presidents under tighter control. (See Executive Order 13233, November 1, 2001.) On March 19, 2002, the President's Chief of Staff, Andrew Card, (Card, 2002) sent out a "Memorandum for the Heads of Executive Departments and Agencies", which included "guidance" from ISOO on the handling of information about weapons of mass destruction. It specifically provided that "if sensitive information was classified and subsequently declassified, but it never was exposed to the public under proper authority, it

should be reclassified in accordance with Executive Order 12958", though it also called for consultation with ISOO concerning any reclassification.

A year later, on March 25, 2003, President Bush issued Executive Order 13292, which amended EO 12958, largely reverting to the conditions of EO 12356. The rule on reclassification (Section 1.7 c) was rephrased, allowing it if "(1) the reclassification action is taken under the personal authority of the agency head or deputy agency head, who determines in writing that the reclassification of the information is necessary in the interest of the national security; (2) the information may be reasonably recovered; and (3) the reclassification action is reported promptly to the Director of the Information Security Oversight Office."

History of Reclassification Actions

EO 12958 did lead to large-scale declassification. The CIA even set up an electronic system, called CREST, to allow researchers to search its declassified documents. (ISOO, 2006) But at the same time, the first extensive review of documents at NARA was conducted by the Department of Energy, under the authority of the Lott-Kyl amendments. DOE trained as many as 2000 document reviewers and went through over 200 million pages, setting aside 37 million for detailed inspection, of which 35 million were returned to NARA's shelves. (The remaining 2 million are still being reviewed.) (Lardner, 2001; *Drowning* (Podonsky), 2006) The total number of pages actually removed is 21,354, and over 20 reports have been sent to Congress. In theory, the DOE reviewers were only looking for RD and FRD, but when the reviewers discovered what

they considered “national security information” covered by 12958 that had been declassified, they removed it from the shelves and referred it to the originating agencies. DOE did not mention this in their annual reports. (ISOO, 2006) According to the later Congressional testimony of the DOE’s Glenn Podonsky, this did not actually constitute reclassification, but rather, the identification of material that was by its nature classified and never had been properly declassified, a sort of legal/semantic argument worthy of a Gilbert and Sullivan operetta, which would be used again and again to justify the intrusions into records held by NARA.

It was this review that provided the inspiration, and the pattern, for subsequent reviews by other agencies without statutory authority or reporting (Aid, 2006). They were less than content with the declassification regime imposed by EO 12958, and had strongly opposed it, winning the extension of time under EO 13142. In fact, they were finding actual examples of documents that had been declassified by other agencies without consulting the originating agency, such as by the State Department of CIA documents. In 1999, it was discovered that several years previously, even before EO 12958, a number of boxes had been improperly released by State due to “communications breakdowns.” The boxes were withdrawn and examined, and almost ten thousand pages removed, but the remaining documents were not returned to the shelves. (Aid, 2006) According to NARA, the review was conducted in a hurried manner which led to mishandling and the loss of the original order and provenance of documents. (NARA, 2006)

In order to avoid further damage to collections, (NARA, 2006) in October, 2001, the Archives reached a secret agreement with the CIA, (Shane, 2006, April 16) allowing for the withdrawal from public access of documents the CIA considered to have been improperly declassified. This three-page “Memorandum of Understanding” (MOU) promised that if NARA

was notified by the CIA or otherwise "became aware" that classified or sensitive CIA documents had been released, it would take the entire boxes containing them off the shelves for 30 days, to give the CIA a chance to resolve the issue. If the CIA could not do so within that time, however, it would give NARA a date by which it thought it could, and if it could not meet that date, it would update NARA monthly on the progress of its investigation. After six months, NARA could return the boxes to the shelves, keeping out those documents that were still in question, though the CIA could still review those boxes. If the CIA wanted documents withheld from public view, it had to put "tabs" on them explaining why, though on the withdrawal sheets that would replace the documents in the public boxes, there would be no explanation or even mention of the CIA's role in removing them. If anyone asked for the removed documents, NARA would consult with the CIA, but not refer the requester to the CIA; it would "stand as a surrogate" between the requester and the agency, keeping the Agency's role secret. CIA inspectors would receive NARA training in handling documents and follow NARA rules, and NARA would inform the CIA if there was any mishandling of documents by either side. (MOU, 2001)

At the same time, in the wake of 9/11, and in response to the Card memo, NARA was conducting its own review of its *un*classified holdings to identify and remove from open shelves "records of concern" that might be useful to terrorists. (ISOO, 2006) This helped lead to reviews at Presidential libraries, by NARA staff and representatives of the Federal Emergency Management Agency (FEMA) and the Air Force. The agencies already conducting broad reviews used the "records of concern" program as a sort of cover, since the same sort of withdrawal sheets were used.

In March, 2002, NARA agreed to another secret MOU, this one with the Air Force. NARA characterized it as dealing with "specific re-review activity", as opposed to the "generic

and procedural" CIA memo. (NARA, 2006) The released version contains significant redactions, completely eliminating the name of one of the agencies involved in the review and withdrawal. It begins with an executive summary which states clearly that the document review would be performed by the Air Force Declassification Office, which would have "operational control," and that it was in the interest of NARA, the Air Force, and the secret agency not to draw the attention of the public to the action. AFDO could request whole records series be removed from the shelves for inspection, and if it found any classified documents in the series, it would inform NARA to keep it off the shelves for a more detailed inspection. If it found documents it wanted withdrawn, as in the CIA MOU, it would tab them with the reason, but the withdrawal sheets seen by the public would not show the reason. The final decision on withdrawal or return would be up to the unnamable agency. If researchers requested the documents, AFDO was to expedite its review, but NARA was in no way to acknowledge the role of AFDO, the other agency, except by saying in bureaucratese that AFDO inspectors were at NARA to help implement EO 12958. (MOU, 2002)

The agreements were signed by Michael J. Kurtz, Assistant Archivist, and he claimed that he had briefed his superior, John W. Carlin, the Archivist from 1999 to 2005, about them. But Carlin claimed to have no knowledge of the program. (Shane, 2006, April 18) When a new Archivist, Allen Weinstein, took over in February, 2005, did not know about the agreements either.

In the course of the reviews, over 40 million pages of documents were "surveyed" (meaning sampled to determine if further review were necessary) by the agencies, and 6.1 million "audited" (reviewed page by page.) (Aid, 2006) Up to 30 document reviewers worked in a special secured room costing millions of dollars. Boxes removed from the shelves at NARA

needed to be reprocessed by NARA staff before being put back on in public view, but because of staff shortages, this can take a long time. Thus, the security re-reviews could keep material away from the public for long periods. Starting in 2003, the ISOO was required to report removals of documents in its annual report, but apparently did not do so in this case, on the grounds that the documents had never been properly declassified, so were not really reclassified. (Shane, 2006, February 21)

Revelation of Reclassification Activity

By 2005, researchers who used the Archives were finding that documents they had previously accessed were somehow no longer available. Some of them, the researchers had already copied for their own use; others had been published, in works such as *Foreign Relations of the United States*, (Shane, 2006, February 21), or on CREST. One of these researchers was Matthew Aid, a businessman and amateur intelligence historian who worked with the National Security Archive, a group at George Washington University in Washington, D.C., which obtains documents through Freedom of Information Act requests and publishes them. Aid began to document examples of information missing from the Archives, finding, for instance, a State Department memo from 1946 that was on the Web already (at http://state.gov/www/about--state /history/intel/100--109.html.) Whole record groups had been taken out of CREST.

There had actually been inklings of what was going on. In a 2001 article in the Washington Post, George Lardner reported on the DOE Lott-Kyl reviews. (Lardner, 2001) And NARA officials had acknowledged the CIA reclassification program at a meeting of the State

Department's Historical Advisory Committee June 2003, minutes of which were posted on the Web at http://www.state.gov/r/pa/ho/adcom/mtgnts/21201.htm .(NARA, 2006)

In December of 2005, Aid wrote to Kurtz about what he had discovered, and followed up with a memorandum containing examples of documents that had been public but subsequently removed. NARA responded by briefing Aid, acknowledging document reviews took place (which NARA could not prevent) and commenting on its concerns about lack of uniform standards for, and quality in, document reviews, and documents gone missing during reviews. In January, Aid was given a detailed breakdown of documents removed. On January 27, 2006, ISOO head William Leonard met with the historians, and, having heard their concerns, ordered an audit of reclassification practices. (Shane, 2006, March 3)

The National Security Archive posted its report, written by Aid, on its website on February 21. It accused the CIA, the USAF, and others of conducting an expensive program of review and withdrawal that netted mainly old and insignificant documents, some of which had already been published. For many of them, the only reason for withdrawal seemed to be that they might embarrass the agency, a justification that clearly violated EO 12958. Aid gave a figure of 9,500 documents withdrawn, totaling 55,000 pages. (Aid, 2006) The story was quickly picked up by major media, with particular focus on some of the stranger and sillier examples of records that had been reclassified even though they had no apparent effect on current national security. (Block, 2006)

On February 22, NARA issued a press release, in which Weinstein condemned both inappropriate declassification, as putting the country in danger, and inappropriate reclassification, as disrupting the free flow of information and going against democratic principles. He announced the ISOO audit, promising it would determine the extent of

reclassification, who was responsible, whether the withdrawals were appropriate and justified, and how NARA could improve its own procedures. Both the classifying agencies, and interested members of the public, such as researchers, would be consulted, and a report issued within 60 days; further reports on any further reclassification activity that might take place would be issued annually. (NARA, 2006, February 22) At the same time, Leonard made similar promises to Aid in a response to the latter's February 17 letter.

Another press release, on March 2, announced a moratorium on further reclassifications and a "summit" meeting with agencies involved, which, it was suggested, should do all they could to restore as much information to public access as possible. Meanwhile, NARA would review its processes, and ISOO would develop new, publicly announced standards which would go into effect before any more reclassifications took place. The "summit" was actually held a few days later, and at it Weinstein stressed NARA's commitment to protecting national security while fostering public access, and to working with the agencies to get withdrawn material back on the shelves. He also emphasized the need for uniform protocols for reviews of possibly improperly released information. He proposed a "National Declassification Initiative" to supersede the agency-based system of declassification. For their part, the agencies promised to support the moratorium and the Initiative, and to cooperate with NARA as requested. (NARA, 2006, March 2)

Even Congress took notice. On March 14, Rep. Christopher Shays (R-Conn.) held hearings of the House Committee on Government Reform's Subcommittee on National Security, Emerging Threats and International Relations. Shays had held hearings in August, 2004, on the subject of overclassification, but the issue of reclassification had not come up. The 2006 hearings were titled *Drowning in a Sea of Faux Secrets: Policies on Handling of Classified and Sensitive*

Information, and featured as witnesses Weinstein, Leonard, Robert Rogalski of the Defense Department; Glenn Podonsky of the Energy Department; Thomas Blanton, Executive Director of the National Security Archive; historian Anna Nelson, and Aid.

Weinstein repeated his promises for no further secret reclassifications, that removed documents would be restored, making public "the maximum amount of information consistent with the obligation to protect truly sensitive national security information from unauthorized disclosure" (*Drowning* (Weinstein), 2006, p. 2), and that the ISOO would be directed to provide "clear and concise standardized guidance, with an appropriately high threshold, that will govern any future removal of records from open shelves for classification purposes." He reported on the March 6 "summit", what was said and promised. In response to a question from Rep. Henry Waxman, he admitted the existence of the secret MOU with a Defense Department agency, but maintained he could not speak further about it in open session. (*Drowning*, 2006)

In his testimony, William Leonard repeated the call for centralized authority over classification and a National Declassification Initiative. (*Drowning*, (Leonard), 2006) Rogalski asserted that the Defense Department rarely exercises its right to reclassify information under EO 12958. (*Drowning* (Rogalski), 2006) The DOE's Podonsky claimed that while his department had the right to go back in and reclassify under the Lott-Kyl amendments, it was not in fact doing so, but rather, maintaining the classified status of information that had never been properly declassified. Nelson described how some of the reclassified documents put the agencies in a less than flattering light, such as a 1950 CIA memo discounting the possibility of Chinese intervention in the then-young Korean War. (*Drowning*, 2006)

On April 11, NARA released a copy of the MOU with the Air Force, followed by that with the CIA on April 19. A week later, on April 26, the ISOO released its audit of

reclassification activity since 1999. The audit found that over 25,000 records had been withdrawn from public view. (It noted, however, that different agencies counted "records" differently.) By examining a sample of about 1300 of them, ISOO concluded that over a third of withdrawn documents clearly or probably did not meet the standards for continued classification. (For instance, the CIA had reclassified many documents that seemed to be too old to be of any national security interest, or that merely included the name of a CIA official on the recipients list.) Some had been reclassified even though they had been properly released, and without alerting the ISOO, as required by the controlling executive order. Some of them had been withdrawn for no reason other than to disguise the nature of other withdrawals, creating a forest to hide the trees. (On the other hand, the audit's conclusion that some of the withdrawals, by calling attention to what had been withdrawn, actually hurt more than they helped, gives some support to the argument for these "obfuscatory" reclassifications.) Some withdrawals were pointless, as the information had already been published (for instance, in *FRUS*.) (ISOO, 2006)

The audit attributed the failure of the system to lack of adequate staff at NARA to monitor agency actions, and willingness by NARA to go along with them, and to lack of clear standards for what actions were appropriate (leading to "ad hoc agreements" such as the MOUs.) It basically accepted the idea that, in cases in which documents had been released without proper authority (as by agencies other than the originating agency), they had never actually been declassified, and so, officially, had not been *re*classified. It also accepted that many documents had been inappropriately declassified, by the originating or other agencies.

The audit called for standardized procedures, both for declassifying agencies and for NARA in dealing with them; for greater transparency, better documentation, and better processes at NARA (though not for increased funding and staff.) It included as an attachment a revision to

the CFR rules governing declassification, claiming that the classifying agencies had accepted them as an "interim protocol" (Interim Guidelines, 2006). (These rules would establish a strict procedure for withdrawals, in many ways similar to those prescribed by the MOUs, but with lots of paper trail, minimization of the number of documents withdrawn, greater responsibility by NARA, and at least some acknowledgement to members of the public requesting documents under security review of why they are unavailable.) It characterized the system for referring documents back to the originating agency for classification decisions as "inadequate", calling for a National Declassification Initiative (NDI) implement Executive Branch-wide policies to enhance understanding and communication among agencies. An initial proposal for the NDI was to be released within 60 days.

In a letter accompanying the report, Leonard commented with alarm on the number of inappropriate reclassifications, both those by simple mistake and those done to hide other reclassifications. But in his list of actions to be taken, he promised he would urge heads of agencies to remember their responsibility to declassify as much as possible in accordance with the provisions of EO 12958, and call on them to support the National Declassification Initiative. (Leonard, 2006) What he seemed to be saying was that the problem was in declassification, rather than reclassification, about which he promised no particular action. In his own "remarks" accompanying the release of the audit, Weinstein announced that the acceptance of the new rules (the "interim protocol") meant that the moratorium on reclassifications could be lifted. (Weinstein, 2006)

So this is where things stand as we go to press. The various agencies are still conducting an extensive and expensive review of declassified documents, though they have agreed to certain rules for reclassification giving greater oversight and perhaps avoiding further violations of the

rules. Very possibly, they will continue to use the excuse that documents were never properly declassified, so that withdrawing them from public access does not actually represent a reclassification under EO 12958. Despite the public statements of National Archives officials, without greater resources, there is relatively little they can do to control the activities of the agencies and insure greater transparency. The best efforts of the mild-mannered, professorial Weinstein, of other scholars, and even of the sometimes truculent National Security Archive, probably cannot make much headway against the defense and intelligence establishments, and the National Archives does not hold huge importance in the public mind (especially when it has other things to occupy it, like high gas prices, not to mention phone tapping and collection of call information by the National Security Agency.) Reclassification does not violate any statute, so no legal action can be taken, and, despite his apparent anger during his hearings, Rep. Shays has not proposed any legislation.

Uniform standards under the National Declassification Initiative may help resolve some interagency battles, but there still seems to be a basic conflict between bodies such as the State Department and NARA, which stand for greater openness, and the CIA and the Air Force, which want to classify as much as possible, whether out of genuine concern for national security, or in order to conceal their own past mistakes. Meanwhile, the major effect of reclassification has been on researchers. Aid describes how history is being whitewashed, with historians lacking the documents they need to write accurately about the recent past. Luckily, some material has already been published, or copied by scholars, which is how we know about the document removals in the first place; what is scarier is the number of documents that have been removed without a trace, about which researchers, and hence the public, may never know anything.

Meanwhile, the government has at least shown no signs of trying to recover documents that have been reclassified from who obtained them when they were declassified. As Blanton dramatically pointed out in his Congressional testimony, under the Espionage Act, it is a crime simply to possess classified information if one is not authorized to, and that, for instance, the government is currently prosecuting two individuals associated with the American Israel Public Affairs Committee (AIPAC) for just such a crime. (*Drowning*, 2006) There has been talk of using the law against journalists who receive leaks from government sources, and the FBI recently attempted to search the files of the late columnist Jack Anderson for what it claims are classified documents which he has no right to hold. There has not yet been a call for scholars to return documents voluntarily, but perhaps this was just to avoid drawing attention to the existence of the reclassification program; now that the cat is out of the bag, agencies might no longer see any reason not to use their powers to the fullest.

As to who was actually responsible for reclassification : it does not appear to represent a coherent, administration-wide policy to take back information from the public domain, but rather, the actions of a limited number of agencies particularly concerned with keeping secrets. After all, the reviews began even before the current administration and its revision of policy under EO 13292, with the DOE's extensive searches of documents under the authority of Lott-Kyl. And the reclassifiers do have some legitimate arguments. In the post-Cold War euphoria, there process of declassification may have gone a little too quickly. Certainly the post 9/11 atmosphere has made it harder to press for declassification and against reclassification, even though it is hard to see how fifty-year-old documents could be of much use to terrorists, but under new conditions, old documents may take on new significance. Even if a document has been properly released, if it genuinely contains information of national security significance, it

should not be out there for anyone, including potential enemies, to see. The question is, once a document has been placed on public shelves, can the information in it be made secret again?

Thus, reclassification is as much a practical issue as a moral one. The Archives may assert its responsibility to make information available to Americans, and security agencies, their responsibility to protect us, especially in a post-9/11 world, but perhaps a bigger question is, as several editorialists have phrased it, can the toothpaste be put back in the tube? Although, at least under EO 12958, previous release is not a justification for continued open access, agencies who want to reclassify must ask, can the information "reasonably be recovered", or is it a waste of effort even to try? In a world of single copies of paper records, a document could actually be taken out of public view simply by physically removing it. But in an age when pieces of paper can easily be copied and reprinted, or digitized and posted on the Web, once information has become public, it is almost impossible to depublicize it. Aware of this, agencies will probably become ever more careful about which documents they declassify in the first place, slowing down the process begun by EO 12958 considerably. This slowdown appears to be the desire of many of the affected agencies, and have the support of the Bush Administration. In the end, the overall effect of the revelations about document reviews and reclassifications will probably be greater restrictions on the flow of information in the first place.

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