

UNCLASSIFIED (of course)

Memo To: Interested Parties and Concerned Citizens
From: William Inboden
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Re: The Classification Crisis, from Tooth to Tail

Amidst our nation's many other challenges, some quite severe, the United States has a classification problem. The corollary is also true: the United States has a *declassification* problem. From the front end of the document and program creation process, to the middle leg of information sharing, to the back end of declassification – or from tooth to tail, to borrow a phrase – the United States government's national security departments and agencies are too quick to overclassify and too slow to declassify.

This tangle of classification pathologies brings many harmful consequences. Overclassification stifles information sharing, limits coordination across departments and agencies, restricts collaboration with allied governments and outside experts, and hinders oversight and accountability. The nebulous realm of studies conducted by outside consultants stuck in “classification limbo” (neither determined to be unclassified or classified, with no timeline for resolution, and thus subject to absurd restrictions on use and dissemination) chokes independent expertise and partnerships. The declassification backlog undermines transparency and accountability, fuels conspiracism, hinders problem-solving, erodes public trust in government, and threatens our national security.

The good news is that reforms to these areas, including a credible and efficient program of declassification, would bring many benefits. To take one example, the documentary declassification successes of the past few decades bear witness to this. In the words of Bill Burr of the National Security Archive, “declassification is vital to a thriving democracy. Not only does it help the public hold leaders accountable; it also allows for a more accurate and comprehensive accounting of the past.”¹ Senator Ben Sasse highlighted another advantage in his September 6, 2019 letter to the NDAA Conferees: “National security scholars and professionals rely heavily on declassified policy documents of past successes and failures to inform their work and analysis. Research informed by primary documents organically leads to more accurate and effective policy advice to current policymakers.”

An effective declassification regime should follow these criteria: (1) preserving classification where needed, (2) specified timelines that align with the goals of access and accountability to the public, and (3) resources (people, funding, technology) that can sustain it.

These problems span generations and will not be solved by a three-page memo. But this memo does suggest some specific Congressional initiatives that, taken in part or in whole, would help begin to mitigate the declassification “tail” of the problem in particular. These suggestions fall under the rubric of the **“Three R’s”: Requirements, Resources, and Reporting.**

¹ William Burr, “Trapped in the Archives,” *Foreign Affairs*, November 29 2019.

A) Requirements

This refers to the thicket of laws, executive orders, department standards, and other mandates governing the classification and declassification process. Effective information sharing and efficient declassification starts with requiring that it be done. *Suggested legislative measures:*

- 1) Mandate that all studies contracted by the Department of Defense and/or Intelligence Community to be conducted by outside consultants (such as RAND) be declared “unclassified,” unless determined within 90 days of study completion to take place at the classified level, or affirmatively found to contain classified information.
- 2) Amend Public Law 102-138 to specify that documents selected by the State Department Office of the Historian for declassification review and FRUS inclusion (which are currently required to undergo interagency review within 120 days) *shall automatically become declassified after a period of three years*, absent affirmative reclassification by the originating department or agency and notification of Congress.
- 3) Require the Central Intelligence Agency and Department of Defense to institute 25-year mandatory declassification review of all documents, thus codifying in law the requirements of E.O. 13526
- 4) Provide a congressional charter for the Interagency Security Classification Appeals Panel (ISCAP) and mandate that all ISCAP decisions become precedents, binding on future document declassification reviews.

B) Resources

The mountain of documents awaiting declassification review, already daunting, is about to erupt into a cascade of digital information overload as the US Government’s transition to electronic documents that began in the 1990s begins to bump up against declassification mandates. Working through the growing backlog and looming deluge of documents in need of declassification review takes money, people, and – especially – technology. *Suggested legislative measures:*

- 1) Mandate and fund the development of Artificial Intelligence programs to expedite declassification (CIA has launched a promising pilot project but seems stalled for lack of support). Suggest requiring DoD to do this through NDAA and DNI to do it through IAA to incentivize competing approaches. Studies should include exploration of legal community’s use of AI to review large volumes of information during discovery processes
- 2) Increase NARA’s annual budget by \$50 million and increase number of FTEs designated for declassification review
- 3) Mandate and fund training for USG staff engaged in declassification efforts; training curriculum to be developed and overseen by National Declassification Center

C) Reporting

While the executive branch already groans under burdensome reporting requirements, the mantra “that which does not get measured does not get done” remains true. The following measures take a broad view of “reporting” to include oversight and advising; the reporting requirements are designed to be succinct and targeted. The Department of Defense gets singled out because it is singularly negligent. *Suggested legislative measures:*

- 1) Charter the DNI as “Executive Agent” with authority to review declassification progress across the interagency (as per PIDB’s recommendation)
- 2) Increase the authority of the Public Interest Declassification Board (PIDB) to play a more active role in reviewing classification standards and processes, and resolving declassification disputes and backlogs
- 3) Create and (re) charter the CIA Historical Review Panel and a Department of Defense Historical Review Panel (both modeled on the State HAC)
- 4) Require the Department of Defense to submit a report to Congress every year detailing its progress on meeting its FRUS declassification obligations, and its plans to remedy any deficiencies
- 5) Create a “Declassification Coordination” office in the Department of Defense headed by an SES reporting directly to the Under Secretary of Defense for Policy, with a statutory mandate to create a declassification coordination team in order to meet its declassification requirements and FRUS obligations

A final suggestion for Congress: each of the national security committees ought to create/designate a PSM position whose responsibilities include declassification oversight. This includes the Senate and House Armed Services Committees, Senate and House Intelligence Committees, Senate Foreign Relations and House Foreign Affairs Committees, House Oversight and Government Reform Committee; Senate Homeland Security and Government Reform Committee, and Senate and House Appropriations Committees (or appropriate subcommittees)