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FOR THEIR EYES ONLY

**How Presidential Appointees
Treat Public Documents
as Personal Property**

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Steve Weinberg

THE CENTER FOR PUBLIC INTEGRITY

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"Liberty cannot be preserved without a general knowledge among the people, who have a right and a desire to know. But, besides this, they have a right, an indisputable, **unalienable**, indefeasible, divine right to that most dreaded and envied kind of knowledge - I mean of the characters and conduct of their **rulers**."

John Adams (1735-1826), second president of the United States

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TABLE OF CONTENTS

I	Executive Summary	1
II	Unpublic Public Papers	5
III	Control of History by Former Presidents and Their Appointees: The Underpinnings	9
IV	"Public" Papers and Private Gain: The Weinberger, Shultz and Kissinger Cases	11
V	Historians Favored, Historians Denied	22
VI	More Unequal Treatment: Shackling History Through Prepublication Review	29
VII	Classification, Overclassification , Declassification : A Short Version of How It Got This Way	35
VIII	Destruction of Information, Classified and Otherwise	40
IV	One Small Step Forward: Watergate Spawns Reform, Sort of	42
X	Recommendations for Change	45
XI	Appendix I	49
XII	Appendix II	59
XIII	Appendix III	68

EXECUTIVE SUMMARY

Secrecy has never been popular with the American people and, indeed, it has often led Americans to assume the worst about their government. Watergate, the Pentagon Papers case, and more recently, the debate over the release of documents relating to President Kennedy's assassination, are just three instances in which attempts have been made by government insiders to withhold sensitive documents of vital interest to the public. Each time, the government's reluctance to release documents which would expose its activities has, in turn, caused the public to wonder just what its government is trying to hide.

In recent decades, there have been very few positive changes in the laws governing access to secret government files. Indeed, "national security" and other excuses continue to be consistently cited as rationales for routinely denying access to many classified and otherwise secret documents.

Today, hundreds of thousands of pages of classified and otherwise secret documents -- generated on government time and at taxpayer expense -- are held in the private hands of former government officials who have a political and personal stake in keeping the contents of these documents secret. Numerous presidents, vice **presidents**, cabinet-level appointees and other high-ranking government officials have taken classified government documents with them after leaving public service, then used the materials to write lucrative memoirs, with little or no interference from their former employers. Meanwhile, other former U.S. officials who have written books critical of the government have found themselves censored by politically-motivated government reviewers, or prosecuted after their work is published for, among other reasons, revealing information deemed "harmful to national **security**."

In addition to inequities in access to classified materials, the system for classifying government documents is out of control. In 1990 alone, 6,500 government officials stamped more than a **half-million** documents with varying degrees of classification. The number of classified documents throughout the government is unknown, but is likely to range somewhere near one billion pages.

While attempts have been made to streamline this arcane, unfair and outdated system of information control, in fact the system is in need of a major overhaul. Improved access to important government documents is a necessary tool for journalists and historians who serve as the public's advocates. In addition, the concept of keeping information secret on national security grounds is outmoded. Future classification must be reduced drastically, and **declassification** of currently secret documents must be accomplished in a timely and wholesale manner.

PUBLIC TRUST, PRIVATE GAIN

When presidents, vice presidents, cabinet-level appointees and other high-ranking government officials leave office, many go on to write lucrative memoirs about their time served at the highest levels of government. Because these articles and books are written by political insiders privy to the decision-making process as well as classified and otherwise secret documents, they often serve as an official "blueprint" for history — which subsequent authors and historians, for decades to come, will depend upon in analyzing important events and policy decisions.

But **the** government documents those memoirs are based on often remain closed off to historians and researchers who wish to check the veracity of such information.

THE CASE OF CASPAR WEINBERGER

When former Secretary of State Caspar Weinberger left office after serving two terms during the Reagan administration, he received a reported **half-million** dollars to produce his memoirs, *Fighting for Peace: Seven Critical Years in the Pentagon*. Besides the money, Weinberger got a different kind of dispensation: The Defense Department allowed Weinberger to remove more than 13,000 government documents relating to his service, depositing everything for safekeeping at the Library of Congress where a taxpayer-supported archivist spent eighteen months organizing the records. Weinberger **continues** to control access to the documents and is able to refuse requests by outside researchers to see the documents.

Weinberger appears to be legally within his rights, but his personal control over government documents raises larger issues. Who should own government documents generated at government expense -- privileged former officials or the public at large? And should privileged former officials and political insiders be the only ones to profit from such access?

Weinberger's case is, unfortunately, typical of former government officials. Many others have left office, been granted exclusive access to government documents while closing them off to others, written their versions of history, and profited from the memoirs. Among them have been former Secretaries of Defense Robert **McNamara**, Clark Clifford, Elliot Richardson, Donald Rumsfeld and Frank **Carlucci** III; former Secretaries of State Henry Kissinger, Alexander **Haig**, Jr., and George **Shultz**; former Attorneys General William French Smith and Edwin Meese III; and former Treasury Secretaries Donald Regan and James Baker **III**.

PRE-PUBLICATION CENSORSHIP, POST-PUBLICATION HARASSMENT

Inequities in a system that grants privileged access to a privileged few also manifests itself in many other areas of historical scholarship. For example, government employees must sign an agreement for "**prepublication** review" of books written about their former employers, agreeing not to disclose any classified information. While Weinberger acknowledges using

classified information, no administrative or court action has been taken against Weinberger. On the other hand, many authors and former government employees who have sought to publish similarly sensitive material have been subjected to long reviews in which much of their writing was gutted by agency censors. Others, such as former CIA employees Frank Snepp and Victor **Marchetti**, have been taken to court for allegedly violating **prepublication** agreements. Not surprisingly, their books were less than complimentary of the agency, which later admitted to "selective enforcement" of the review process.

Snepp and others may have been lucky to even get their thoughts in print. Many, many more researchers are stymied before even beginning their work.

TOO MUCH CLASSIFICATION

Hundreds of millions of pages of older classified documents are held at the National Archives, with the overall number of still secret documents throughout the government being much larger. Simply stated, the classified stamp is overused. While attempts have been made by both former presidents Nixon and Carter to streamline the system, the Reagan administration reversed positive steps with Executive Order 12356, which continues to have the force of law today. Among other things, that order allows declassified documents to be **reclassified**, and eliminates a Carter directive which required documents to be declassified after six years, except under extraordinary circumstances.

An additional problem is the destruction of classified documents before they even reach the public eye. While many believe that any document which has been classified is by its very nature of potential historical significance, an untold number are destroyed each year. There have been numerous cases where documents have been destroyed illegally. The most famous instance may have been the destruction of FBI files after the death of J. Edgar Hoover. More recently, CIA Director Richard Helms destroyed his files upon leaving office, and Oliver North and others admitted to destroying and altering documents relating to the Iran-contra investigation.

AGENDA FOR REFORM

Fundamental changes need to be made concerning the public's access to documents, the prepublication review process and the classification system itself. Among this study's recommendations:

--**Information** accumulated by federal officials while serving in office should be recognized as public, not personal property.

--**If** a former government official publicly disseminates restricted information in a book, article or interview, the Archivist must rule that the underlying records are no longer restricted.

--**No** records should be considered "personal" if created to conduct government business, on government time, or with the help of taxpayer-supported personnel; a diary created outside

of government time, without the help of taxpayer-supported personnel, can be considered personal.

--**Temporary** restrictions on particularly sensitive government documents should be enforced only when release of the information would violate national security or the privacy of an individual.

--**Such** restrictions on access should never exceed **five** years.

UNPUBLIC PUBLIC PAPERS

After Caspar Weinberger resigned as Ronald Reagan's secretary of defense, **Warner Books** paid him a reported half-million dollars to produce his memoirs, *Fighting for Peace: Seven Critical Years in the Pentagon*. The book appeared in hardcover during 1990 and in an expanded paperback version during 1991.

In the book, Weinberger wrote his rendition of many crucial defense and foreign policy decisions made during the Reagan administrations. **Unfortunately**, readers will be hard pressed to adequately judge the accuracy of Weinberger's version of events for decades, if ever. That is because Weinberger wrote *Fighting for Peace* using government documents unavailable to academic researchers, journalists and the public at large. Some of the information unavailable to the public was classified for alleged national security reasons, some was deemed by Weinberger and his Pentagon assistants to be too politically or personally sensitive for release.

The Defense Department allowed Weinberger to remove more than 13,000 classified documents for his personal use, as well as unclassified information relating to his government service, and to deposit everything for safekeeping at the Library of Congress. A taxpayer-supported archivist at the Library spent about eighteen months organizing the records for Weinberger and two aides cleared by him.

Weinberger still controls access to the documents. The Library's Manuscript Division is acting as a free, convenient storehouse for him. He is considered to own the information, although the Library expects a deed of gift to come from Weinberger eventually through which the documents would become public property under the management of the government. Meanwhile -- because of tradition and a little-known presidential executive order -- Weinberger has the right to continue to restrict access to these government documents for decades.

United States Senator David **Pryor** denounced such private control of government records with a review of sorts on **Weinberger's** book and others of its ilk: "There appears to be an inverse relationship between the level one attains in the executive branch and one's obligation to comply with the law governing access to and control of classified information. It's bad enough these former officials are afforded special privileges for the purpose of enabling them to write their memoirs. However, former Secretary Weinberger adds insult to injury by having the taxpayer foot the bill for records, both classified and unclassified, which he claims to own and which he is '**storing**' at the Library of **Congress**."

Yet the Weinberger case is no aberration. In recent years, the Defense Department has allowed privileged access for former Secretaries Robert **McNamara**, Clark Clifford, Elliot Richardson, Donald Rumsfeld and Frank **Carlucci** III, as well as former Undersecretary Fred **Ikle** and former National Security Agency director William **Odom**. The State Department has granted such access for former **Secretaries** Henry Kissinger, Alexander **Haig** Jr. and George **Shultz**. The Justice Department permitted former Attorneys General William French Smith and

Edwin **Meese** III to take home thousands of documents closed to everybody else. The Treasury Department gave privileged access to Secretaries Donald Regan and James Baker **III**. The United States Information Agency condoned it for former director Charles Wick.

There are many issues involved here, but the bottom line is clear: Former government officials - after re-entering private life -- are exercising special privileges to profit personally and distort truth through their control of what common sense says should be public information.

Banning memoirs or any profits received from them is not the primary issue. The control of information, especially when it leads to a distortion of truth, is what ought to be considered most objectionable in a democracy. The view of this study is that access to information ought to be equal. When former government officials use previously secret documents, that same information should be available to journalists, scholars and other students of contemporary history.

There is much work to be done to achieve that end. In a 1991 study examining use of government records by eight departing Cabinet secretaries during the two Reagan-Bush terms, General Accounting Office investigators concluded that the agencies often were unaware of what documents had been **removed**, and that all eight of the removed collections remained closed to the public: "For the most part, three of the eight collections were kept personally by the former officials. The other five collections were kept at the Library of Congress, National **Archives...or** a private **archive**," the study found. "Access to [those] five collections was still controlled by the former officials, and some officials restricted public access for fifteen years or more. The access restrictions were generally determined by the former officials, not the agencies from which the documents were removed or **originated**."

Five of the eight former Cabinet members did grant some access to the General Accounting Office investigators -- **Shultz**, Baker, **Carlucci**, Smith and Meese. The other three - Regan, **Haig** and Weinberger — refused to grant any access to the investigators.

Neither Congress nor the courts has done anything significant to remedy the control of taxpayer-financed documents by former presidential appointees.

Although placed in a different category, presidents and vice-presidents, too, have done as they pleased with documents concerning public policy generated on public time at taxpayer expense. Every former president starting with Harry Truman in the early 1950s has used his privileged access to write lucrative memoirs which journalists and historians could not verify because they lacked access to the underlying documents.

In 1978, Congress -- moved to rare action by Richard Nixon's egregious behavior in 1974 when he declared total control of documents and tapes from his disgraced administration - approved a law aimed at loosening presidential and vice-presidential possession of information after they have left the White House.

The Presidential Records Act clarifies the distinction between "presidential" and "personal" records, then mandates public ownership of records **classified** as presidential.

Ronald Reagan and George Bush were the first president and vice-president to fall under the law's provisions. Thus far, it appears the law might aid historians decades down the road, but will do little to inform journalism or contemporary public **policymaking**. That is because an outgoing president and vice-president can choke off access to six broad categories of information for up to twelve years. Even after that interval, much of the information can continue to be withheld on vague national security grounds.

The current system has its defenders. Premature public access to the papers of **decisionmakers** such as Weinberger, **Shultz** and Kissinger would create a chilling effect, say some government archivists and some historians, as well as what appears to be the vast majority of the decisionmakers themselves. They argue that unless decisionmakers are assured of control over information for a decade or more after leaving office, contemporary and longer-term history would suffer because much less would be committed to paper, and much of what still did get written down would be self-consciously sanitized or destroyed before release, they say.

Defenders of the status quo argue that Weinberger's papers, for instance, will eventually pass from his control to serve researchers at large. They concede that Weinberger's control for decades to come, if he chooses to restrict access that long, fails to serve daily journalism or contemporary public policymaking. But it does serve long-term history well, since it means a fuller recording of events. In the interim, the defenders say, every thinking person **understands** the need to read memoirs such as Weinberger's skeptically.

Critics of the status quo say such arguments are naive, disingenuous, and ultimately unconvincing. Some critics suggest that former government officials be banned from publishing memoirs unless the underlying documents are open to all researchers. Other critics propose half-way measures, such as limiting periods of restricted access to ten, fifteen or twenty years.

(It should be noted here that members of Congress, judges and their staffs sometimes abuse their control of restricted materials, too. But because Congress and the judiciary are generally more open than the executive branch, because most classified information resides in the executive branch, and because most **unverifiable** memoirs flow from the executive branch, it is the focus of this study.)

Despite its impact on the public's understanding of important policy decisions, the long-running debate has been confined to a small, specialized audience. David Wise and Herbert Feis were among the earliest and most knowledgeable chroniclers of the problem, and among the few to disseminate their warnings to Congress and the public at large.

Wise, a Washington newspaper correspondent and book author, began examining the situation during the mid-1960s. By 1971, he was so dismayed by his own experiences that he told a Congressional committee holding hearings on the topic:

"When it suits their purposes, presidents and other officials use classified documents, often information of the highest classification, in writing their memoirs after they leave the White House and the government. They are selling this information and sometimes profiting from it....I do think it is important to educate the public so that people come to understand that these memoirs draw upon classified information, and that former officials are profiting from the sale of classified information, which, at the time the events take place, is not shared with the press and the public. To put it simply, the classification system has been used to deprive the American people of information which is then later sold to them by the officials whom they elected or who were appointed by the people they **elected**."

Feis, a former War and State Department official turned Pulitzer Prize-winning historian, raised the controversy in Foreign Affairs during 1967, in the New York Times Book Review during 1968, and in Atlantic Monthly during 1969. Because so little has changed, his warnings carry the same resonance in the 1990s.

"One puzzling point is that while we are adjured not to insist on seeking access to the records until they have been aged in the files twenty-odd years or more, on the ground that it would discomfort governments and imperil national security, the histories written by **decisionmakers** about the same events are legitimized, presumably made safe by screening or some instinct or **self-preservation**," Feis **said**. "...**Would** it not be pleasant, even sociable, if the rest of us did not have to wait until we grow **old...before** we can study and judge the whole record for ourselves? Must we continue to be borrowers from the histories of the decisionmakers themselves, and weary pursuers of such scattered papers as may have been published?"

CONTROL OF HISTORY BY FORMER PRESIDENTS AND THEIR APPOINTEES: THE UNDERPINNINGS

The special treatment accorded former presidents and vice-presidents, as well as appointees like Weinberger, **Shultz** and Kissinger, has its **wellspring** in a series of traditions, laws, regulations, executive orders and court decisions dating back two centuries.

In 1782, George Washington received a letter requesting access to his military records. The **letterwriter** hoped to publish a history of the American revolution.

Washington replied that when Congress "shall open their registers and say it is proper for the servants of the public to do **so**, it will give me much pleasure to afford all the aid to your **labors...which** my papers can give. 'Till one of those periods arrive I do not think myself justified in suffering an inspection of and any extracts to be taken from my **records**."

Soon after, Washington shipped his papers to his home at Mount **Vernon**; he sent another shipment at the end of his presidency. When he died, the papers became the property of George's executor, Bushrod Washington, a nephew and Supreme Court justice. **Bushrod** persuaded Chief Justice John Marshall to write what became a five-volume biography of the first president. Marshall had exclusive access to the documents, and shared any profits with Bushrod.

Later, Bushrod granted another author, **Jared** Sparks, access to uncle George's papers in return for money. Sparks used his **paid-for**, privileged access to write a published **biography**, accompanied by an eleven-volume edition of George Washington's papers.

Such ethically and legally questionable activity led to the landmark 1841 court case of Folsom versus Marsh. The case arose after publication of a George Washington biography by Charles **Upham**, who relied heavily on the papers as collected and published by Sparks in the eleven-volume edition. The judge ruled that the papers were not available for indiscriminate copying without permission, and that Upham had violated the copyright held by the deceased president's heirs and their business partners.

The court ruling gave generations of presidents and their appointees confidence to claim personal ownership of documents generated on public time at taxpayer expense. Many of their documents served as the basis for skewed, **unverifiable** memoirs. Many additional documents remained **uncatalogued** in private homes; others disappeared altogether.

It was not until 1897 that the federal government began to track the whereabouts of the papers from presidential administrations, with the establishment of the Manuscript Division within the Library of Congress. Theodore Roosevelt deposited some of his papers there after leaving the presidency, as did William Howard Taft. Though held by the government, they were not necessarily available to the public at large. **Woodrow** Wilson's widow followed suit,

although she turned over nothing until fifteen years after the president's death, and even then required that any researcher wanting to consult the papers obtain her permission; that arrangement held until her death in 1961. While Calvin **Coolidge** deposited a collection of papers upon leaving office, his widow and secretary eventually admitted that many vital documents had been destroyed prior to the deposit.

In 1939, Franklin Delano Roosevelt altered the tradition for the better. Although never relinquishing his ownership claim, he proposed that a presidential library named after him be built with private funding. Roosevelt would donate the library and its contents to the federal government for day-to-day administration by the National Archives. Congress approved that concept in 1955 with passage of the Presidential Libraries Act.

During that period, Congress also approved two additional records management laws designed to cover materials generated by the entire executive branch. Still on the books, they are the Records Disposal Act of 1943 and the Federal Records Act of 1950. Those laws failed to address in any meaningful way the control of history by former high-level officials — especially because they validated the concept of "personal papers" prepared on government time at taxpayer expense.

Former presidential appointees found additional support for their private control of what should be public information with Richard Nixon's addition of Section 4.3 to a 1972 executive order governing information classified as secret on grounds of national security. It says restrictions on access to classified information "may be **waived...for persons who...previously** have occupied **policymaking** positions to which they were appointed by the president." Its vagueness and broadness have given high-ranking presidential appointees pretty much a freer hand in controlling history that ought to be in the public realm. (An executive order is an internal executive branch directive which carries the weight of law but requires no Congressional approval.)

At the time, the addition hardly caused a stir. It seems almost nobody was paying attention to that seemingly innocuous section of the executive order, or if they were, they stayed silent. One of the few to voice a protest was United States Representative William **Moorhead**, who warned that Section 4.3 would create "a special privilege for certain individuals who may wish to use their former public position for private profit through the sale of articles, books, memoirs, et cetera, to private publishing **houses.**"

Section 4.3 continues to have force today, in the most recent executive order on security classification, signed by President Reagan during 1982.

"PUBLIC" PAPERS AND PRIVATE GAIN: THE WEINBERGER, SHULTZ AND KISSINGER CASES

This study will examine three cases in detail. The Weinberger case is especially significant because his lucrative memoir has been published recently, and because of his intransigence in granting access to Defense Department records. The **Shultz** case sheds light on a lucrative memoir in progress, and illustrates **Shultz's** relative **thoughtfulness** about the conundrums of privileged access. The Kissinger case is important because it led to a United States Supreme Court decision harmful to the concept that the public ought to control information compiled on government time at government expense.

WEINBERGER

A General Accounting Office report looking specifically at the Weinberger papers questioned whether the Reagan appointee had followed government regulations when he left office and took thousands of classified documents with him. The report asked "whether the arrangements **for...Weinberger** fully comply with the executive order and the Defense Department's regulations. Defense Department officials did not provide the required written statement declaring that it had determined giving Mr. Weinberger access to classified information is consistent with the interest of national security. **Furthermore**, we are concerned about provisions in Mr. Weinberger's agreement of deposit with the Library of Congress, the terms of which allow Mr. Weinberger to control access to classified information and allow him to remove documents at his discretion."

By the time the General Accounting Office report appeared. *Fighting for Peace* was in bookstores. During Weinberger's years of preparation, he had worked out of the public eye, except for a brief interlude in January 1990, when a whiff of potential irregularity had reached public attention.

Patrick Tyler, reporting in the *Washington Post*, wrote: "Former defense secretary Caspar **Weinberger**, who oversaw one of the most vigorous efforts to apprehend leakers of classified information during the Reagan administration, has touched off alarms at the Pentagon over disclosures of national security information in his memoir, *Fighting for Peace*, according to a senior **official**." Tyler protected his source or sources through anonymity; the source or sources apparently never specified the exact nature of the alleged harm because that would have been playing into the hands of America's enemies.

When Weinberger's book reached stores, it was unclear (except perhaps to readers with high-level security clearances) what passages might be based on restricted information otherwise unavailable. The uncertainty is compounded by Weinberger's failure to include **endnotes**, a bibliography, or an author's note on sources. Nowhere in the book does Weinberger explain about his special access -- although a diligent searcher can locate clues.

For example, on page 37 Weinberger paraphrases a dinner conversation with then-Soviet Ambassador Anatoly **Dobrynin** with the help of "a classified memo I prepared for the president after that **dinner**." Discussing U.S. -China trade at page **255**, Weinberger mentions a controversy over "dual use items" (technological exports with military and civilian applications), then adds "the specific identity of those dual use items is still classified **information**." At page 371, in the midst of discussing the Iran-contra scandal, Weinberger tells of his surprise at stumbling upon relevant classified National Security Council cables being withheld from him; he reminded the NSC hierarchy that he was to see all cable traffic.

It is difficult to discern from the book itself how heavily Weinberger relied on notes and logs he kept with the help of tax-supported government employees but which he still considered to be his private property.

In the best circumstances, Weinberger's access to information denied others could have led to a memoir filled with original insights based on previously undisclosed documents. As Bruce Oudes, editor of *From: The President. Richard Nixon's Secret Files* has said, "The classified documents of the executive branch especially trace dramas of global significance as well as episodes of banality, baseness and humor. They are evidence that can be used to build a portrait of a given period, or to build a case for prosecution or **persecution**."

Instead, **Weinberger's** special access led to what many consider to be a largely **uninformative**, self-serving book. One reader taking exception was Robert **McFarlane**, the former national security advisor to Reagan, who believed Weinberger had portrayed him unfairly. Despite having an axe to grind, **McFarlane's** own access to the highest level of classified information makes his comments worth considering.

McFarlane said an excerpt from the book that had appeared in the *National Review* "is an astonishing, anti-intellectual, ad **hominem** tract, a mean-spirited assemblage of distortions and falsities, of which I am the chief though not the only target."

Reviewers other than McFarlane, also with access to restricted information, panned the book. Lawrence Korb, an assistant defense secretary under Weinberger, wrote that Weinberger's memoir "takes **Manichaeism** and hyperbole to an **extreme...Throughout** the book, he simply dismisses the problems that plagued his tenure in office and undermined support for national **defense**."

Unfortunately, only a few journalists presented the controversy to a general audience. Marie **Belson**, a reporter for the *Washington Times*, quoted an unnamed Senate subcommittee staff member who said the arrangements disclosed by the General Accounting Office report "allow former officials to make use of documents to write histories while others can't avail themselves to **them...The** process is flawed. You have conflict of interests. You have people at the top deciding what is a record. They can declare it a non-record and take it with them. It might be an **original**."

An article in the Washington Post by George **Lardner** Jr. quoted from the General Accounting Office report and Senator **Pryor's** news release. Weinberger did not return **Lardner's** calls; his staff said he was traveling abroad and would not be "readily available" after returning.

SHULTZ

The State Department's regulations implementing Section 4.3 benefited **Shultz**, who received a two-book contract from **Scribners/Macmillan** for a reported \$2 million after claiming exclusive access to documents generated during his government service. The first Shultz volume is tentatively scheduled for publication in early 1993.

For Shultz, the State Department arranged with the National Archives and Records Administration to transfer an estimated 60,000 classified documents to the Federal Records Center at San Bruno, California. It allowed Shultz to transfer unclassified so-called "personal and **nonrecord** papers" to the Hoover Institution, a private think tank on the Stanford University campus at Palo Alto, California.

General Accounting Office investigators discovered that the State Department, through no fault of **Shultz's**, had failed to conduct an inventory of the top-secret documents or assign them control numbers, as required by State's own regulations. As a result, there were about sixty "**sensitive compartmented** information or special access program documents" at San Bruno, a records center without authorization to store them.

In addition, the Hoover Institution had wrongly received classified documents mixed in with the unclassified papers. To complicate **matters**, three Shultz assistants had been granted access to the papers; a fourth clearance was in the pipeline at the time of the General Accounting Office study.

After everything got sorted out, the General Accounting Office noted that "the arrangements **for....Shultz** were not initially but are now in general compliance with Executive Order 12356 [including Section 4.3] and State Department **regulations**."

Shultz's papers at the Hoover Institution are closed to independent researchers for now. Shultz aide Charlie Hill, a career foreign service officer, said in an interview for this study that the arrangement is unsatisfactory, but the best they could devise short of opening the papers to everybody, an option that could have been exercised but was not.

"The system as it now exists is not good, and deserves criticism," Hill said. "Secretary Shultz and I started thinking about this long before he left office. We wanted to do it right."

In 1985, Hill said, he and Shultz convened government officials from a variety of agencies to plan for access to the State Department papers. After about a year of meetings, the lawyers in the group told Shultz and Hill to **recuse** themselves, because any arrangement that

included restricted access might be considered to have been contaminated by self-interest. After the **recusal**, Hill said, the remaining members of the group got caught up in competing agendas - based in part on their desire to protect their own agencies from embarrassment -- thus canceling out any good suggestions that arose. Finally, a **less-than-ideal** compromise emerged. "Ultimately, we **failed**," Hill said.

Speaking strictly for himself, Hill said he would have liked to grant access to almost all the **Shultz** papers to any requester, subject to the federal Freedom of Information Act, while the former secretary was still writing his memoirs. "Only a very narrow band of classified material would need to be off-limits," Hill said. "...I went through this before with Ambassador [Ellsworth] Bunker in Vietnam. We had lots of sensitive papers, but once Saigon fell, why continue to block access when it makes no difference? Those papers weren't declassified and published until two years ago. That's a tremendous loss to history because nobody cares now. The big books got written without those documents to consult, and nobody's going to write another one of those books **today**."

KISSINGER

Before the **Weinberger/Shultz** inquiry by the General Accounting Office, questionable privileged use of restricted materials by a former presidential appointee had arisen most publicly in the case of Henry Kissinger. He served as national security adviser and secretary of state during the administrations of Richard Nixon and Gerald Ford.

Kissinger's memoirs, which reportedly earned him several million dollars, appeared in two volumes of more than one thousand pages each. Volume one was published in 1979. It covers Kissinger's activities from January 1969 to January 1973 as Nixon's assistant for national security affairs.

Soon after Kissinger signed his lucrative book contract, the New York Times editorialized that his access to sensitive information established "a personal monopoly over documents with both historical interest and commercial **value**."

For his part, Kissinger was unapologetic, merely acknowledging in the book his heavy use of the written record closed to others: "In writing this account I have tried to keep reliance on memory to a minimum; I have been able to refer to much documentary evidence and, for part of this period, to a diary I **kept**."

Perhaps without meaning to, Kissinger also showed why privileged access to classified documents can be inimical to truth: "Official files of our period would not necessarily disclose what decisions were taken by '**backchannels**' bypassing formal procedures or what was settled orally without ever becoming part of the formal **record**. A **participant**'s account of conversations can easily be ex post facto self-justification. (Dean **Acheson** once said that he never read a report of a conversation in which the author came out second **best**.) By a selective presentation of the documents one can prove almost **anything**."

Defending privileged access, Kissinger said the advantage of memoirs like his is that the author "will know which of the myriad of possible considerations in fact influenced the decisions in which he was involved; he will be aware of which documents reflect the reality as he perceived it...."

Kissinger unintentionally opened the door to inquiry about his handling of restricted information by noting that "treatment of classified materials in this book has been worked out with the office of [President Carter's] national security adviser, Dr. Zbigniew **Brzezinski**."

The acknowledgement of **Brzezinski's** role piqued the curiosity of New York Times columnist Anthony Lewis and Random House books president Robert L. Bernstein. In a letter, Bernstein asked Brzezinski in what manner he had cleared Kissinger's book. Bernstein received a reply from National Security Council staff secretary Christine Dodson, saying:

"Prior to the publication of his book Dr. Kissinger forwarded to Dr. Brzezinski's office a very small part of the manuscript then prepared, in the form of disconnected brief excerpts. These excerpts were reviewed for possible classification problems; they were edited to indicate what we would require to clear the publication of those excerpts. The edited manuscript was returned and further oral comments were made to a member of Dr. Kissinger's staff to the effect that after the required changes, we were clearing what we saw and that NSC clearance of the book would have to await a review of the total manuscript. Dr. Kissinger never submitted any further materials for review. It is our judgment, therefore, that the passage you quote from the book's foreword vastly overstates, at least by implication, the degree of classification review to which the book was subjected by Dr. Brzezinski's **office**."

Armed with this telling response, Lewis commented in his column: "The interesting point in the episode is what it shows about the disparate treatment of former government officials who write books about their experience. Robert Bernstein was curious about the handling of the classified material in the Kissinger book because of what had happened to one of his authors, [former CIA agent] Frank Snepp [who was sued by the government because of what he wanted to write in a book, even though he excluded **classified information**]. The contrast was staggering.

"Kissinger, who had been privy to the highest secrets in the American system, made wholesale use of classified documents in the book. Some experts say that it discloses more current or recent national security material than any ever published. As Miss **Dodson's** letter indicates, the government was given a chance to make only a partial judgment on small portions of the manuscript. What was used was largely Kissinger's unilateral decision. Yet he has not been denounced by any official for allegedly compromising national security. He has not been sued [unlike **Snepp**]. No court has lectured him. And he is expected to make more than \$5 million on the **book**."

Given such findings, Lewis wondered why the Justice Department had failed to sue Kissinger, then answered his own question: "I think we shall wait a long time until either the

Department or the Supreme Court justices treat Henry Kissinger as they do the powerless Frank Snepps of this **world**."

Lewis' column cited independent scholar Theodore Draper, who had reviewed the Kissinger memoir in the magazine Dissent. **Draper's** review alternated between wonderment and despair at Kissinger's version of his government service. It was in a postscript that Draper described the uneven playing field created by Kissinger's privileged access:

"I wish to call attention to an aspect of Kissinger's book that concerns the use of classified documents and is nothing less than scandalous. The book contains literally scores of direct references to and textual quotations from documents obviously of the highest **classification**. Some are only a sentence or two, some much longer. I wondered how Kissinger could make use of classified documents on such a large scale and of such recent vintage. If they had been declassified for him, could I or any other scholar have access to them? Could one check up on how he used these documentary sources?

"So I wrote a letter of enquiry to the assistant secretary for public affairs of the State Department. I received a reply dated January 16, 1980, from deputy assistant secretary for classification and **declassification** Clayton E. **McManaway**. The essential paragraph in his reply reads '**With** regard to quotations from any classified Department of State documents in the book, the quotations themselves are declassified, but not the remainder of the documents from which the quotes were taken. References to or paraphrases of Department of State documents appearing in the book do not reflect a decision to declassify these documents, nor do references to DOS views, opinions or policy positions reflect a decision to declassify any classified documents underlying or setting forth those views, opinions or policy **positions**.'

"In effect," Draper said, "only quotations were declassified, documents were not. By means of this dodge, no one else can gain access to these documents to determine how faithfully Kissinger made use of them. Most of Kissinger's quotations come from the White House and National Security Council documents. Only the State Department so far has replied to my inquiries, but no doubt the system in all is identical.

"This system is a political and intellectual outrage. It is or should be particularly abhorrent to historians and other scholars. It enables political figures to control the history of their own deeds or misdeeds. No partial quotation can be properly understood without its context. Selective quotation is a frequent source of distortion and even falsification. The only remedy is to declassify any document of which a part has been declassified. What is declassified for one should be declassified for **all**."

Volume two of Kissinger's memoirs appeared in 1982. It covers Nixon's second term, during which Kissinger became secretary of state. Again, he was generous with his acknowledgements: "I am grateful to the secretary of state, the director of the Central Intelligence Agency, the under secretary of defense for policy and the assistant to the president for national security affairs and their staffs for their cooperation in reviewing and clearing

classified materials, including quotations. Changes they requested were made. President Nixon has kindly given his permission to cite some materials in his presidential **papers.**"

Again, the book revealed numerous incidents and insights based on documents unavailable to independent historians desiring to check Kissinger's version.

For example, in his second volume, Kissinger is critical of the book *Sideshow: Kissinger, Nixon and the Destruction of Cambodia*, by British journalist William **Shawcross**. **Shawcross** accused Kissinger of killing countless thousands of civilians as well as combatants by bombing a nation that was mainly an innocent bystander in the Vietnam conflict.

In response to **Shawcross'** charges, Kissinger reprints a memo by Emory C. Swank and Thomas O. Enders, U.S. diplomats in Cambodia from 1970 to 1973. As part of their attempt to refute a section of **Shawcross'** book, they cite one State Department cable "classified **Secret/NODIS**" and therefore unavailable to anybody trying to mediate the **Kissinger-Shawcross** match for truth. Kissinger also reprints a letter from retired Air Force Gen. John W. Vogt, in an attempt to show that Shawcross was misguided about a particular military mission. But Vogt asks readers to accept part of the refutation on faith, saying, "There is ample documentary evidence of the 1972 Cambodian air operations. My own oral report to the Air Force Historical Research Center at Air University at Maxwell AFB, Alabama, for example, contains a full statement of the **10-village** incident I mentioned above. Unfortunately the report is classified secret but parts of it I am sure could be declassified if the effort were **made.**"

Kissinger also had used his access to restricted information to revise the manuscript of his first volume in the brief time between the release of **Shawcross'** book and the memoir's publication.

Shawcross found that as part of that rewriting, "Kissinger produces long lists of specific Communist attacks to show Hanoi's aggressive intent. What is interesting is that many of these incidents have never been mentioned before — neither in **Nixon's** announcement of the invasion, nor anywhere else. This is not to say that they did not happen. But it does suggest that they were not considered very significant at the time. Kissinger has searched the files for the slightest incident that he can use to support his current assertion that the Communists were intent in April 1970 on capturing all of Cambodia and would have done so but for the United States invasion. He has also exaggerated many such incidents."

In an exchange between Kissinger (written with his aide Peter Rodman) and Shawcross, Kissinger invoked his access to restricted information, saying of Shawcross, "He had no White House documents, since they are exempt from the Freedom of Information Act, yet he presumes to pass judgment above all on White House **decisions.**"

Seymour Hersh, one of this generation's most accomplished **journalist/historians**, ran up against Kissinger's reliance on restricted material while researching the book *The Price of Power: Kissinger in the Nixon White House*, which appeared four years after the **Shawcross'**

volume. In one footnote, Hersh comments that Kissinger's two volumes show "the constant use of highly classified government documents that have not been made available to the **public.**"

In his book Hersh describes with apparent longing Kissinger's off-limits diary, "transcribed and edited nearly every night. On some **days...Kissinger's** entries filled fifteen pages, not with high-level diplomatic strategy but with low-level **gossip.**" The material was so sensitive that it was "stored in an electronically wired safe in Kissinger's **office.**" Hersh comments about Kissinger's "private fear" that "an outsider would somehow get access to the confidential files of the Nixon presidency and produce a documented memoir before he was ready to write his **own.**"

Hersh's book is filled with superb contemporary history. That said, time after time he is reduced to quoting Kissinger's memoirs verbatim without being able to say definitively if Kissinger is telling the truth. Hersh uses Kissinger's memoirs as effectively as possible, comparing specific passages to those in the memoirs of Nixon and other insiders. By doing so, Hersh demonstrates frequently that somebody (maybe Kissinger, maybe not) is lying, or that somebody has a faulty memory. But **Hersh's** technique is ultimately less convincing than comparing a dubious passage in Kissinger's memoir with a telling primary source document.

One of Kissinger's most recent biographers, history professor Robert D. **Schulzinger**, would have liked to see more files, too. After noting new sources consulted by him, Schulzinger says "...Kissinger's own papers at the Library of Congress and some of his more significant files as national security adviser or secretary of state are still beyond the reach of those who explore the issues which we associate with the **man....**"

So, like Hersh, Schulzinger had to rely at times on insider memoirs, including Kissinger's two volumes. He called those volumes "far longer and more detailed than those of other national security advisers or secretaries of state. They are also more personal, selective, and sometimes **defensive....**I have treated them for what they are, reminiscences. As such, they are most useful for summoning the participants' later recollection of how they felt or thought, rather than what they did or **said.**"

Kissinger's memoirs, however hard to check, are at least blessed with dollops of insight and literary merit. Reviewing volume two in the New York Times. Christopher **Lehmann-Haupt** said, "In the hands of the usual memoirist, this would all be too **much....****But** this is not remotely the case with Years of **Upheaval**. Here is towering drama and amusing detail. Here are trivia that make the tragedy of the Nixon years seem all the more imposing. Here is breathtaking spectacle that makes the trivia seem all the more funny and **intimate...any** fair observer must concede that Years of **Upheaval**, along with White House **Years**. is brilliantly argued, skillfully paced, sensitively proportioned, consistently charming, altogether masterly and by far the most consequential memoir to come out of the Nixon **administration.**"

Despite their virtues, Kissinger's memoirs often sound condescending -- perhaps because of his knowledge that certain assertions were beyond checking. Exclusive access to information

can lead to smugness and insularity in the making of public policy, as one-time Kissinger aide Daniel Ellsberg has noted about his boss.

When Kissinger entered government from academia, Ellsberg said he warned his boss of the phenomenon: "**You** have written articles and rubbed shoulders for a decade with people who had these clearances and access to information that you didn't know existed, and you will feel like a fool because you didn't know it. You will feel like a fool for having written all that without having this special information on which to judge. You will realize that the people [who] you talked to had it and you didn't.

"But that feeling will only last for a week or two, because after a week or so of having four-star **generals...bring** you in special briefcases, special pouches, books that are available only to you and your boss and a few other **people...that** are not available to senators or James Reston or Arthur **Krock...and** certainly not to members of the public, you will forget that you were once a fool and remember only that everyone else is a fool who does not have this information. Moreover, in signing agreements to have this information, you will come to understand that the only way of keeping secrets this well is to **lie....** You have the information, they don't; they don't even have the wisdom to know what they don't **know.**"

Kissinger has the power to grant special access when he wants to do so. Currently, he is cooperating to some extent with Walter Isaacson, a Time magazine editor, who is under contract to Simon and Schuster for a Kissinger biography. Kissinger has sat for about thirty interviews and given Isaacson access to some office files, but has refused to open the complete papers at the Library of Congress, the National Security Council or the State **Department.** As a result, Isaacson said, he has had to walk many extra miles.

The documents in government and private archives concerning Kissinger's service can be confusing, Isaacson says. "There is more than one version of many **memos**, sometimes written to obscure what was said or done. You have to triangulate the memos with the memo writers and recipients to figure out why it was said the way it was said."

Isaacson's efforts, however thorough, will still leave gaps in the public's knowledge of whether Kissinger fudged or outright lied at certain points in his memoirs.

THE ISSUE OF OWNERSHIP

Underlying the controversy surrounding **Kissinger's** memoirs, but not mentioned in them, is an important legal tussle concerning his "ownership" of sensitive information. The controversy brought to the fore, as never before, the difficult distinction between personal and public documents.

It began in 1977 when the Reporters Committee for Freedom of the Press, Military Audit Project, American Historical Association and American Political Science Association, among

others, sued the State Department concerning denial of access to Kissinger's official telephone conversations during his government service.

Throughout Kissinger's years in the Nixon and Ford administrations, his secretaries at the National Security Council and at the State Department monitored his telephone conversations, taking shorthand notes, then transcribing the notes. The transcriptions remained in Kissinger's office, apart from official agency files. In an affidavit, Kissinger said his "purpose in causing the notes to be made was to create a rough record of those of my daily telephone conversations to which I or my immediate staff might wish to refer in order to follow up on matters discussed orally." In other words, Kissinger was saying, the notes were for personal use while conducting government business, a seeming anomaly.

Before leaving office, Kissinger decided to donate his "personal" papers and copies of official documents to the United States -- including the telephone logs. In November 1976, the Library of Congress received custody. But Kissinger maintained his ability to restrict public access to all the information -- classified or otherwise -- for twenty-five years or five years after his death, whichever came later. Thereafter, the notes would be available for public inspection only with the consent of, or after the death of, the other party to the conversation.

James **Rhoads**, the national archivist, asked to inspect the notes of telephone conversations to determine their historical value. Kissinger said no, arguing that the Freedom of Information Act and other access statutes were inapplicable — because the notes were no longer at the State Department, because White House materials were not agency records under the law, and because the notes were personal working papers.

As the details seeped out, the few parties paying attention seemed incredulous that such information could be considered private property. M.B. Schnapper, a former government information officer who later founded Public Affairs Press, believed Kissinger's motives were transparent. He said Kissinger's treatment of the papers as private property "freezes out successive presidents as well as journalists and scholars, facilitates manipulation of public opinion and increases the profits derived from **memoirs**."

The trial judge agreed. He ruled against Kissinger, saying that "although personal in some respects, Dr. Kissinger's secretarial notes **were...produced...on** government time and with the aid of department employees, equipment, materials and other public resources. Having been prepared and transcribed '**in the discharge of his official duties,**' the notes are property of the United States. The court further finds that the records were wrongfully removed and should be returned to the State **Department,**" where, theoretically, the agency would decide requests for access, rather than leaving the decisions in Kissinger's domain.

A three-judge appeals panel affirmed the U.S. District Court's decision, but a split Supreme Court ruled for Kissinger. Justice William Rehnquist based his lead opinion partly on a technicality in the Federal Records Act, which established "only one remedy for the improper removal of a '**record**' from the agency. The head of the agency is **required...to** notify the

attorney general if he **determines...that** records have been improperly **removed....The** archivist did request return of the telephone notes from Kissinger on the basis of his belief that the documents may have been wrongfully removed under the Act. Despite Kissinger's refusal to comply with the archivist's request, no suit has been instituted against **Kissinger...."**

In dissent, Justice John Paul Stevens countered, "I cannot accept Dr. Kissinger's argument that the summaries are private **papers....Under** these circumstances, I find it difficult to believe that none of the summaries was '**appropriate for preservation**' by the **agency.**"

The Stevens dissent provided a bit of balm to independent researchers, but also contained a troubling footnote: "It is not clear how many of the summaries, even if subject to **FOIA**, would be exempt from production because they contain either classified or purely personal **information.**"

Writing in a Nation magazine column before the decision, Robert **Sherrill** had foreseen the result. After reviewing the ways justices themselves treat taxpayer-financed records as personal property, **Sherrill** asked "what chance does somebody have to secure a favorable decision when he presents the court with a case challenging the practices of a Nixon, a Kissinger, or an agent of the Supreme Court? What chance is there that the court will order officials -- or order themselves -- to stop appropriating or destroying valuable public documents?"

In the wake of the Kissinger ruling, courts have closed off other documents from public scrutiny, created on government time and at government expense, despite the common-sense argument that they are public papers. In the case of The Bureau of National Affairs vs. the Justice Department, a federal appeals court said appointment materials, such as desk calendars and telephone logs, "that are created solely for an individual's convenience, that contain a mix of personal and business entries, and that may be disposed of at the individual's discretion are not agency records under the Freedom of Information Act."

HISTORIANS FAVORED, HISTORIANS DENIED

The control of information by former White House occupants and their high-level appointees is serious in itself. It is aggravated, however, by other factors, including the all-too-common practice of granting some outside historians preferential access, while others are frozen out.

The same Section **4.3** of the executive order which allows privileged access to classified documents by former presidential appointees also allows government agencies discretion in granting or denying access to "persons who are engaged in historical research **projects.**" However, the executive order contains no guidelines for determining who should be considered a legitimate historical researcher, thus giving government officials wide latitude to turn away scholars who might cause embarrassment by revealing information previously closed to the public.

The ability of agencies to discriminate among legitimate researchers was formalized in Executive Order 10816, signed by President Dwight Eisenhower during May 1959. Although the stated purpose of the section was to give serious researchers access to classified information, it never worked that way. From the start, the wording was turned on its head by protective bureaucrats in administration after administration to deny access to some, while granting it to others.

An executive order stays in force unless specifically overridden by a later executive order. Portions of Eisenhower's executive order have been revised since his presidency, but the section governing access by historians has never been changed to ensure fairness.

During a closed **1981** drafting session to help determine what the newly elected President Reagan should do about revising the executive order, the Department of Justice conceded in an internal document that the section allowing access by certain historical researchers "in essence provides for selective disclosures by the government. This fact, in turn, could lead to difficulties with respect **to...other** requesters who might contend that by selective disclosures to certain historians the government has waived its right to withhold the same information from **them.**" That admission, however, failed to result in wording leading to increased fairness.

The Defense Department's regulations implementing Section 4.3 illustrate the problem, stating "Persons outside the executive branch who are engaged in historical research projects may be authorized access to classified information provided that an authorized official within the DoD component with classification jurisdiction over the information" takes **five** steps, including determining "such access is clearly consistent with the interests of national security in view of the intended use of the **material...by** certifying that the requester has been found to be **trustworthy.**"

Such wording allows discrimination against researchers believed to be troublesome, especially those with views that contradict the government's version of events, and it can be implemented by relatively low-level bureaucrats. Because there is no central tracking authority, and almost nobody inside government agencies with the power to deny access likes to discuss the matter, the extent of such discrimination is difficult to measure. In addition, it is difficult to know which researchers -- after fighting lengthy battles to gain access -- abandon their projects in disgust before receiving a formal denial.

The perception that favored historians receive special access to sensitive government documents took hold decades ago among a small group of people knowledgeable about the intricacies of the regulations. Testifying to the Brownell commission, historian Diane Clemens from the University of California at Berkeley said, "Without naming particular historians whom I have in **mind...there** have been chosen scholars selected on the part of the government who have been given access twenty-five years in advance of other **historians...they have...interjected** their own political opinions which have been published, accepted by the public, because no other information is available; they have received positions in major universities; they have made a fortune in terms of selling their **books.**"

James **Rhoads**, then archivist of the United States, had this exchange with Representative Gilbert Gude about who is considered to be a historical researcher:

Gude: "How does that definition work? Is it on the basis of certain academic credentials from definitely defined categories of universities or institutions?"

Rhoads: "I think that it is fair to say that normally the persons who would apply for access under this provision would be persons who had certain academic credentials. I **don't** think there is any particular class of universities that would be accepted or rejected. I don't believe that is the criteria that the departments **use.**"

Gude: "Well, then, the criteria of defining a historian are not set forth specifically?"

Rhoads: "I don't believe they are set forth in the present executive order, no, sir."

Gude: "Does this leave it to the discretion of the archivist as to who would be designated as a historian that would have access?"

Rhoads: "The way this would normally work is that a person who wished to undertake a research project that would require the use of classified materials would come to us and say '**What** do I have to do to get **in?**' We would advise him. In some cases we are able to supply the appropriate application forms which are sent to the agency originating the classified material that he wished to use. The agency would have a security check conducted and the determination would be based on both the topic that the person wishes to pursue and the results of the security check. The agencies make the decision. We have nothing to do with making the decisions as to which scholars are granted access to classified materials in our **custody.**"

Gude: "Then is it possible for an agency to, in a sense, be very subjective as to which scholars would gain access to certain material? There is no overall guideline? If the agency was sympathetic to a certain philosophy or a certain aspect of a phase of **history**, it would have the authority to make its files available to scholars who it feels would be sympathetic to their **philosophy, and**, on the other **hand**, those scholars who would not be sympathetic to their view could be excluded from access to the material?"

The answer about whether exclusion occurs is an emphatic yes. One of the best-documented cases involves independent scholar Theodore Draper, among the few historians to publicly expose selective access. While writing *The Dominican Revolt: A Case Study in American Policy*, Draper requested access to the State Department files. The answer was no. Two years later, a professor named Jerome Slater published *Intervention and Negotiation: The United States and the Dominican Revolution*.

"When I read the **book**," Draper said, "I was astonished to find that about half of it was largely devoted to a running polemic against my own work in which I had been highly critical of United States policy during the Dominican revolt of **1965**. I was also astounded to learn from Professor Slater's preface that he had been given access 'to a great number of papers, memoirs and documents which are not now in the public **domain**' -- in other words, classified documents.

"In return for this favor, Professor Slater had promised to use the material on a 'not-for-attribution' or 'no-direct-citation' basis. He was not required to submit his manuscript for clearance or **approval**....**The** more I thought about it, the stranger the whole thing became. Here was a book, written by an academician, put out by a reputable publisher, attacking a book of mine on the basis of material which I could not consult or check. There was no way to know whether he had used the material fairly. Even if he had invented it, no one could be the wiser, though that was not a possibility I seriously **entertained**."

Draper had company among similarly disgruntled authors. Writing about the historiography of the Truman **administration**, Charles **Tull** praised the **two-volume** biography by Robert Donovan, a former newspaper reporter. There was good reason for the insights of Donovan's book, Tull wrote: privileged access.

Donovan himself makes a bow to his privileged position in volume two, *Tumultuous Years: The Presidency of Harry S Truman*. He thanks Truman aide Roger W. Tubby for "access to his unpublished personal journal, a rich new source of material. I am also indebted to W. **Averell Harriman** and W. Stuart Symington for access to their personal and still-closed papers. Dr. John R. **Steelman**, the assistant to Mr. Truman, and former secretary of the treasury John W. Snyder **kindly** gave me access to their still-closed oral history transcripts at the Truman **Library**."

Donovan originally made his name as a book author after being granted special access to classified information during the Eisenhower administration. According to David Wise, author of *The Politics of Lying: Government Deception. Secrecy and Power. Eisenhower White*

House aide Sherman Adams wanted a campaign biography to coincide with the president's 1956 re-election bid.

Donovan, then working for the New York Herald **Tribune**, received the offer. Donovan told Wise one of his conditions was that "No one could see anything I wrote until it was in book form, except for classified information, which would be submitted for security check. Adams insisted I have a **Q clearance**." Donovan worked in a White House office set aside for him, where, he said, "They brought in documents in wheelbarrows and on dollies. I was inundated with documents. A great many were **classified....**"

One top-secret document Donovan saw summarized the administration's then-undisclosed military philosophy, upon which its weapons procurement and deployment would presumably be based. He found it so compelling that he paraphrased it closely in Chapter Four of his manuscript; as a result, the National Security Council tried to stop the book altogether, but Adams overcame the resistance.

An independent scholar publishing that same information might have been prosecuted. But when Donovan's book, **Eisenhower**, the Inside **Story**, appeared in 1956, he was not prosecuted, or even reviled, for revealing national security secrets. The book rose to the top of best-seller lists.

In another incident, **Athan Theoharis**, a **Marquette** University history professor who specializes in researching the Federal Bureau of **Investigation**, testified before a Congressional hearing on freedom of information that "federal agencies willingly searched their files to release documents to favored citizens based on the understanding that these recipients would publish accounts favorable to the **agency....**In the **mid-1950s**, FBI officials released carefully selected documents to Don **Whitehead** which **Whitehead** used to write The FBI **Story**."

Whitehead concedes in his preface that when bureau director J. Edgar Hoover "agreed to permit a look behind the scenes, a tremendous amount of unpublished material was made available to **me**."

At the same hearing, historian Lloyd Gardner fielded a question about the "favored scholar" situation. "In the past it wasn't that critical scholars were excluded within the general rules that were set **down**," Gardner said. "It was that favored scholars often had privileged access [to classified **information**]. There is no question but what [William] **Langer** and [S. Everett] Gleason in their books on World War II had privileged access. Then Charles C. **Tansill**, who was very critical of [recent] American foreign policy, raised such a fuss that he was allowed to use many documents although he later said that he didn't use by any means as many as Langer and Gleason in the preparation of his book. But this meant that the rest of the scholarly world had to depend upon either a very favorable view or very critical view of what was happening instead of allowing people to go in and do research, reach their own conclusion and present for the nation a memory which would be full and complete instead of a savage dialogue which left many questions **unanswered**."

The **Langer/Gleason** episode is mentioned regularly in discussions about privileged access. They published *The Challenge to Isolation* in 1952 and *The Undeclared War* in 1953. **Langer** has recalled that they "were given full run of the State Department archives, the papers of the Office of Strategic Services and even, to a limited extent, of the records of the Joint Chiefs of Staff. In addition, we had access to the Roosevelt papers at Hyde Park, the [Treasury Secretary] Morgenthau diaries and other records.

"There were various reasons for these exceedingly generous arrangements. Our study was sponsored by the Council on Foreign Relations. Both Mr. Gleason and I had served in Washington during the war. We were personally known to many high officials of the government as professional historians with more than a casual knowledge of international problems and the way in which policy decisions are reached.

"Without the availability of the official records I could not have been induced to embark upon the formidable assignment suggested to me -- to write history so soon after the event merely on the basis of public materials would have been little more than a waste of time. Only one condition was attached to our use of the materials and this seemed altogether reasonable: The manuscript was to be submitted to the State Department, but only for a security check."

Historian James MacGregor Burns praised the results of the Langer/Gleason collaboration, but wondered "how will we feel when **Nixon's...State** Department allows its historians special access to files in order to put out an '**authoritative**' history of how Kennedy and Johnson got us bogged down in Vietnam and Nixon got us out?"

Carol Barker and Matthew Fox, in their study *Classified Files: The Yellowing Pages*, say, "Langer claims that all classified records cited in his books were declassified in connection with publication; however, other scholars have complained of being denied access to records at Hyde Park used by Langer and **Gleason**."

Barker and Fox discovered that the United States Navy had granted similar special access to Samuel Eliot **Morison** for his book *The History of United States Naval Operations in World War II* and to James Field for *History of United States Naval Operations: Korea*. Barker and Fox also relate how during the 1952 controversy over United States policy toward China, Secretary of State Dean Acheson authorized historian Herbert Feis to use closed files to write *The China Tangle: The American Effort in China From Pearl Harbor to the Marshall Mission*.

Feis himself later felt the sting of being a historian on the other end of the special privilege racket, when he tried to gain access to secret documents at the Atomic Energy Commission. "My aim was to scan the notes and memos made by former assistant secretary of war John J. McCloy and Harvey Bundy, former special assistant to secretary of war Henry L. **Stimson**, on discussions about the introduction into international life of the atom bomb. These papers had been thoroughly and well used in the official history of the production of the weapon, written under the auspices of the Atomic Energy Commission.

"Nevertheless, permission to look through selected components of this file was granted only after several months of pleading and ponderous correspondence, perhaps only because, as I found out, every significant item of information was already known. Yet that fact did not shorten the subsequent trials of securing clearance of my twenty pages of notes.

"In pursuit of that clearance I felt like a character of Kafka's. Word reached me that my notes were being read by this or that official, this or that committee of officials of the Atomic Energy Commission, State Department, Defense Department. I conferred with desk sergeants, majors, colonels and generals, legal counsels and assistant secretaries of state. About two months later I was informed that the last of the needed initials had been placed upon the release. By then proofs of my book, long overdue, had been returned to the publishers, unblessed by the **'secret'** knowledge I had been allowed to **secure**."

Richard Smith, a researcher at Johns Hopkins University, told of trying to work under the government's historical research program. "Any historian who researches in military documents eventually develops a catalog of experiences relative to **'classified'** documents and **'security clearance'** which could provide material for a book that might be titled **'Adventures in Absurdity,'**" he said.

Smith had requested documents relating to the Spanish Civil War of **1936-1939**, three decades after the events. What he wanted was, to his **surprise**, still secret. Smith applied for a security clearance, a process which included being fingerprinted and detailing everywhere he had lived for the past thirty years. The Army granted the clearance after about four months. "But it was not as simple as this. When my research was finished I was obliged to submit my notes to the Army for its **'review'**; and if my researches produced an article or a book, the manuscript also had to be **'reviewed.'**" Other historians, meanwhile, wrote on Smith's topic without interference. Outside observers could only presume that the government was trying to censor accounts critical of its actions while sanctioning sympathetic versions.

Kenneth Werrell, a history professor at Radford (Virginia) University, ran into walls during the late 1980s and early 1990s while trying to write about the air war against North Vietnam. In a letter to United States Senator John Warner, a Virginia Republican, pleading for help in defanging the censors, Werrell wrote, "To facilitate research, I have obtained limited access clearances from the services which permits a researcher to study and take notes from documents more than ten years old that are classified **'secret'** or **'confidential.'** The researcher must then submit these notes and this final product to the services for security review. This is not a very satisfactory process, but is the only way, short of the Freedom of Information Act, to get at this **material**."

In the letter, Werrell said the Air Force had "made numerous deletions to my notes, many of which were, in my judgment, **unnecessary....The** Navy has been far worse. After obtaining a limited access clearance from them, I spent over two weeks collecting about 180 pages of notes. The Navy sent these through the process, but did not declassify a single **word....This** situation is **intolerable**."

As a result, **Werrell** said in an interview for this study, "The only documentary and detailed research of the Vietnam War may be done by official historians, and even their work must remain classified and thus is limited to a very small **readership**."

There are many more disturbing recent examples besides **Werrell's** of favored researchers being granted special access. In his Kissinger biography, Seymour Hersh tells of Kissinger granting favored treatment to journalist John Newhouse as he researched his book *Cold Dawn* about the Strategic Arms Limitation Talks. Newhouse received specially scheduled briefings from National Security Council staff members and obtained access to selected classified information closed to other journalists. Hersh also relates the special access given by Kissinger to London Sunday Times Washington correspondent Henry Brandon, whose book on Nixon-Kissinger foreign policy was submitted to the National Security Council in manuscript form for approval, "a price [Brandon] presumably thought was fair since Kissinger had generously given him access to classified information."

Paul **Nitze**, who served as the government's nuclear arms negotiator, granted special access to Strobe **Talbott** for the book *Deadly Gambits: The Reagan Administration and the Stalemate in Nuclear Arms Control*.

Among all the Nixon biographers, it appears that Herbert **S. Parmet** was the only one to receive special access. In *Richard Nixon and His America*, Parmet says Nixon "consented to sit for this portrait. He granted four interviews, eased my access to his family and associates, made available documents that have remained within his private **control**...." Former Nixon aides John **Ehrlichman** and Leonard Garment made their normally restricted documents available, too.

When Bob Woodward wrote about the Central Intelligence Agency in his book *Veil: The Secret Wars of the CIA 1981-1987*, he received extraordinary special access to the agency's director, William Casey, as well as to Casey aides. Casey had never granted such wide access to any other author delving into the CIA. A more recent example also involves Woodward. During 1990 and **1991**, General Colin Powell and other military and civilian Pentagon officials granted special access to Woodward for the book *The Commanders*, some of that access even coming during the Persian Gulf War.

MORE UNEQUAL TREATMENT: SHACKLING HISTORY THROUGH PREPUBLICATION REVIEW

Government agencies, which allow former high-level appointees to write **unverifiable** history and favor some outside historical researchers over others, employ another disturbing tactic: the selective enforcement of **pre-publication** restrictions placed on current and former government officials with security clearances to view classified information while on the job.

Some officials who have held sensitive positions inside government, and, after leaving government, have written critical accounts of their former employers, have been harassed when their superiors thought such disclosures would be embarrassing. But other officials, disclosing equally sensitive information in government-approved **ways**, are left alone.

Nondisclosure agreements, signed by government employees with access the classified information, are the basis for such discriminatory treatment. Intended to protect against unauthorized leakage of classified national security information, they have existed for decades, and been most widely used at the Central Intelligence Agency and National Security Agency. Their use became **government-wide** policy in 1983, when Ronald Reagan issued National Security Decision Directive 84.

Both before and after **1983**, the nondisclosure agreements have served as a tool to control the public accounting of contemporary history.

In a 1991 study, the General Accounting Office noted "classified information nondisclosure agreements have long been a source of controversy. Their use has raised complex questions about such issues as the president's ability to protect national security information, the **Congress'** ability to obtain the information it needs to oversee federal agencies, and an individual's right to free **speech**."

The discriminatory way in which the agreements are enforced can be seen by contrasting such privileged persons as Kissinger and Weinberger with Victor **Marchetti**, John Marks, Frank Snepp, Ralph **McGehee** and Kenneth Rush, to name a few.

The first major case of selective enforcement involved Marchetti and Marks' *The CIA and the Cult of Intelligence* published in 1974. Marchetti had worked fourteen years at the CIA; Marks had spent **five** years in State Department intelligence. Because of employment contracts they had signed, they submitted the manuscript to the Central Intelligence Agency, which ordered 339 deletions of varying length; after litigation, the CIA stood its ground on 168. At the time of publication, 142 passages were still subject to court rulings, and thus omitted from the book.

Melvin **Wulf** of the American Civil Liberties **Union**, one of **Marchetti's** lawyers, wrote in the introduction to the hole-filled book that some potential witnesses he called when preparing for trial agreed with the government's suppression, even though they "had themselves revealed classified information in their published **memoirs....Every** high government official who writes his memoirs after leaving office reveals '**secrets**' he learned while in government service, and most had signed secrecy agreements, too. Secrets are regularly leaked to the press by government officers, sometimes to serve official policy, sometimes only to serve a man's own ambitions. In fact, disclosure of so-called secrets -- even CIA secrets — has a long and honorable history in our country, and the practice has proved to be valuable because it provides the public with important information that it must have to pass judgment on its elected **officials.**"

Despite Wulf's protestations, the **Marchetti** case failed to change anything for the better. The Carter administration solidified the precedent of selective prosecution by going after Frank Snepp over his book *Decent Interval: An Insider's Account of Saigon's Indecent End Told by the CIA's Chief Strategy Analyst in Vietnam*.

When Snepp had first mentioned he would like to write a book about Vietnam, he set off alarms: "Not long afterward I was summoned to the office of the CIA's chief legal counsel and put through a classic interrogation, one interviewer playing the sympathetic listener, the other the accuser. My motives and my integrity were impugned. I was ordered to submit to a lie detector test to '**ensure**' I had leaked no classified information to the press, and to turn over any personal notes or diaries I might have kept while in Vietnam.

"That evening, three weeks after the CIA had given me one of its highest awards, I announced to my immediate superior that I was resigning in protest. Once I had severed my ties, CIA officials tried to discredit me with former **colleagues....Because** of its continued assaults on my integrity, and its reluctance to deal candidly with the Vietnam issue, I eventually stopped meeting with the case officer the agency had assigned to me. I also resolved not to submit my manuscript to the agency for clearance and **censorship....In** my view, if the CIA could officially leak to the press to whitewash its role in Vietnam, it had forfeited the right to censor me in the name of security or national **interest.**"

Snepp had signed six nondisclosure agreements while working for the Central Intelligence Agency; the last one required him to submit only writings containing government secrets. But the first one Snepp had signed stated he must submit all written material for **review**, whether or not it contained classified **information**. The Supreme Court had declared the first contract valid in 1980 after the government filed suit, even though the government conceded that *Decent Interval* revealed no classified information.

Judging the case as a **cut-and-dried** matter of contract law, the Supreme Court forced Snepp to give up all royalties from sales of his book, and to submit all future writings to a **prepublication** review board at the Central Intelligence Agency.

As the Snepp case played out, the CIA admitted selective prosecution. George **Lardner** Jr. of the Washington Post **reported**, "The CIA acknowledged at a secret House **briefing...that** it has allowed the writings and speeches of a number of former CIA officials to go **uncensored** while pressing court action against others more critical of the agency. CIA officials admitted that they are worried about the '**impression**' of unfairness arising from their review system, but maintained that some ex-officials can be trusted more readily than **others.**"

Like Snepp, Ralph **McGehee** was a former CIA agent bound by his contract, signed in 1952. McGehee was especially incensed at the censorship of his writings when compared with the **hands-off** policy on other memoirs, including those by CIA officials Allen Dulles, William Colby and Ray **Cline**. McGehee eventually sued in federal court to halt CIA censorship of his writings. The courts ruled against him.

McGehee's memoir, *Deadly Deceits: My Twenty-Five Years in the CIA*, notes in the text each place where the agency ordered deletions. In relating how he managed to publish anything at all, McGehee recalled one key day in the drawn-out review process: "I objected to the deletion of my very negative assessment of the **agency's** long-term operations against mainland China. I produced a book, *Sub Rosa*, in which a former Hong Kong station chief, Peer de **Silva**, set forth his own lengthy, negative evaluation of those operations. I said Peer's book had been approved [by the **agency**]...therefore, I should be given the same privilege. Bob [the reviewing officer] agreed and my critical comments, in modified version, were reinstated. From that point on I searched through books written by former agency officials and cleared by the CIA to locate items similar to deletions made in my book. By this tactic I was successful in reinstating numerous **deletions.**"

Despite his victories, McGehee was disenchanted at the finish: "It is virtually impossible to write in an atmosphere where everything is secret until it is deemed otherwise. The **[agency]...labels** just about everything secret until an author who is critical of the agency can prove this not to be the case. But the situation for ex-employees who are advocates of the CIA is the opposite. They are given almost carte blanche to discuss operations and techniques, and in some instances they are assisted in the research and writing of their **works....It** is sad to say, but the truth is that the primary purpose of the secrecy agreement is to suppress information that the American people are legitimately entitled **to....**"

Kenneth Rush, a former United States ambassador to Germany, felt compelled to sue the State Department and the National Security Council over access to classified documents. What really bothered Rush was Henry Kissinger's use of those documents in his own memoir. The documents involved the 1971 quadripartite talks on the status of Berlin, including Rush's secret negotiations with the Soviet Union, whose officials then communicated with Kissinger in secret through a back channel.

In March 1977, as he was retiring from government service, Rush turned over his correspondence to the State Department for inclusion in the Berlin negotiation files. In 1986, Rush sought **declassification** of the documents. The State Department refused, as did the

National Security Council, to which part of the Rush request had been referred. Rush argued that the documents were improperly classified, would not harm national security if released, and contained material of historical value. Besides, Rush said, **Kissinger's** published memoirs confirmed the existence of the secret negotiations. However, the courts refused to second-guess the government's national security classification decisions, no matter how ludicrous they appeared on their face according to the author of the very documents at issue.

Journalist Angus MacKenzie brought home the full impact of uneven enforcement in his writings. MacKenzie found that former United Nations ambassador **Jeane J. Kirkpatrick** refused to submit her writings for **prepublication** review; she had not even signed the government contract requiring her to do so. MacKenzie quotes her as saying that the form "went way beyond promising not to reveal classified information. It means you can't write anything about government. I'm interested in writing about foreign affairs. I said **no**." The State Department's **reaction?**: "Nothing was made of me not signing **it**."

MacKenzie also pointed to a survey by United States Representatives Patricia **Schroeder** and Don Edwards, who said the answers of government officials-turned-authors "suggest that enforcement of prepublication review is selective." Robert **McNamara**, General Maxwell Taylor, Peter Bradford and Paul **Warnke** said they never submitted their writing for such review. Richard **Allen** did not either, but had conducted reviews for others "if only because individuals find it difficult to recall whether that which is contained in their **manuscripts...is** in fact **classified**." Allen said the process involved too much "**nitpicking**."

Even **Stansfield** Turner, who directed the Central Intelligence Agency during the Carter administration, suffered unequal treatment. His memoir *Secrecy and Democracy* underwent review by the Reagan administration - an awkward matter since the book criticized the Reagan administration in spots.

Turner believed in the review process; he had pushed for prosecution of Snepp. But when Turner was on the other side, he saw how the process can subvert attempts at accurate history, and realized that cleared books might be less reliable than those uncleared. Turner blamed the arbitrariness on the Reagan administration's "drawing the line of secrecy on the overcautious side. Though that may seem to be the safest course for the country, it actually endangers secrets by making a mockery of the secret label. Having been responsible for protecting the nation's intelligence secrets for four years, I am well aware what the release of some kinds of information could mean to our national **security**. In the review of my book, more than one hundred deletions were made by the CIA. These ranged from borderline issues to the ridiculous. I appealed many of these questionable deletions to the higher levels of the CIA and obtained only three minor concessions.

"The extreme arbitrariness of the review process was vividly illustrated in the last appeal I made. I had given in on most of the deletions demanded by the CIA, but two requests were particularly egregious and unnecessary. [Lawyer] Anthony **Lapham**, on my behalf, sent the CIA a letter stating that unless they either (1) provided me with a convincing reason for their

position, or (2) obtained a court injunction against my publishing the information, I would proceed to do so. The CIA, after consulting with the White House and the Department of Justice, chose to do neither. Instead, they replied that I should do whatever I deemed to be 'appropriate,' but that the CIA reserved **'the** right to take whatever action it deemed appropriate.'

"This was the most irresponsible position they could possibly have taken. The supposed **'secrets'** were clearly of no importance to them, since they left it to my discretion whether or not to publish them. The threat to take me to court after the fact could not have retrieved the secrets. It could only have exacted retribution, if the government **won....They** resorted to this tactic because they were upset with the book's highly critical view of the Reagan administration's mishandling of our intelligence **activities...."**

Reagan's issuance of National Security Decision Directive 84 only made a bad situation worse. As First Amendment lawyer Floyd **Abrams** said, "The directive stated that all government employees with access to highly classified information must sign a form requiring them for the rest of their lives to submit any books or articles they write to a government censor before publishing them.

"Prior to the directive, only the CIA and the National Security Agency had insisted that their employees agree to **prepublication review....Reagan**, as an elected official, would not have to sign; all **nonelected** high-level officials dealing with national security and foreign policy matters would. Lower-level employees at the State and Defense departments would make up the bulk of those **signing.**" In short, the directive discouraged knowledgeable people within government from engaging in open discussion that could have counteracted histories written by former presidential appointees and approved scholars under Section 4.3 of Executive Order 12356.

One of those stifled under NSDD 84 was A. Ernest Fitzgerald, a veteran **whistleblower** inside the Air Force who had access to restricted information. In 1986, Lieutenant Colonel Jim Wolfe asked Fitzgerald to sign a copy of Standard Form **189**:

"What was his authority for **this?**, I asked. Jim had a couple of letters from a captain and a major in Air Force security, which said that Air Force members should be **'encouraged'** to sign the secrecy oath. Now, **'members'** is a term of art for uniformed members of the Air Force; civilians are **'employees.'** So the terms didn't apply to me, and in any case, I hardly felt encouraged to surrender my rights. I heard no more about this matter until several **months....Then**, on May 13, 1987, Captain David **Price...came** to my office with a copy of SF 189 and an ultimatum -- **'Sign this or your security clearance will be taken away.'** Price also brought a pamphlet that made the same threat and, worse, went on to say, **'Reluctance to sign...will be considered a lack of personal commitment to protect classified information.'**

"I've already lost, I **thought....When** I read the rest of the truly daft regulations, I knew I was in even more trouble. It said that the government could decide, retroactively, to classify

information that was already public. Furthermore, the hapless signer of the oath might be held accountable for **'indirect'** leaks. That is, if I gave a congressman an unclassified government document and a security officer discovered that the document contained something he considered sensitive information (or that he just wanted to cover up), he could declare that the paper was now classified **secret....I** was in a box. If I didn't sign, I'd lose my security clearance and be fired. If I did sign, my official ill-wishers could frame me and send me to **prison.**"

Standard Form 189, as instituted by the Reagan administration, said in part: "I have been **advised...that** any unauthorized disclosure of classified information by me may constitute a **violation...of** United States criminal **laws...I** hereby assign to the United States government all royalties, remunerations and emoluments that have resulted, will result or may result from any disclosure, publication or revelation not consistent with the terms of this **agreement....I** understand that all information to which I may obtain access by signing this agreement is now and will forever remain the property of the United States government. I do not now, nor will I ever, possess any right, interest, title or claim whatsoever to such information. I agree that I shall return all materials which have, or may have, come into my possession or for which I am responsible because of such **access...."**

It was a situation filled with irony: The federal government was stating an ownership right to information at the same time the president, vice-president and Cabinet-level appointees were treating information as their own.

Congress challenged the **president's** unilateral directive by approving legislation to restrict its application. Some members of Congress joined government employees' unions in a court challenge. The court sustained the ability of government agencies and the president to require nondisclosure agreements from employees handling classified information. The court added, however, that nondisclosure forms with overly broad provisions were unconstitutional.

When the General Accounting Office released its report "Federal Agency Use of Nondisclosure Agreements," it said hundreds of thousands of employees and contractors had signed. In a six-month study period, October 1989 to April 1990, the restrictive agreements led to **prepublication** reviews of 163 book and 2915 article manuscripts.

CLASSIFICATION, OVERCLASSIFICATION, DECLASSIFICATION: A SHORT VERSION OF HOW IT GOT THIS WAY

White House occupants and their appointees would have a more difficult time sabotaging accurate contemporary history if fewer documents were classified in the first place. But the system is out of control. During 1990, about 6500 government officials with what is called "original classification authority" made nearly half a million decisions to restrict public access to documents.

More than six million additional decisions which further restricted access, termed "derivative classification **actions**," stemmed from the newly minted secret documents. Just a few agencies accounted for ninety-nine percent of the secrecy -- the Defense Department, Central Intelligence Agency, State Department and Justice Department (especially the Federal Bureau of Investigation). The number of classified documents is anybody's guess, but the magnitude is huge: In 1982, the National Archives estimated it held about 621 million pages of older classified documents transferred from agencies, with the overall number of still secret documents throughout the government being much larger.

President Franklin Roosevelt issued the first executive order on security classification policy during March 1940. He relied on a 1938 law concerned with protecting armed forces installations and equipment. President Truman superseded Roosevelt's plan in February 1950 with Executive Order 10104, adding "top secret" as a fourth designation to outrank secret, confidential and restricted. Truman signed a new order, Number 10290, in September 1951. Eisenhower signed Executive Order 10501 in November 1953. Although these executive orders were attempts to systematize the process, classification continued to be arbitrary.

James **Hagerty**, Eisenhower's trusted press advisor, said after retiring from government that the system "was often subjected to abuse and used with widespread regularity as a matter of rote, or imagined protection from **error**....All too often, classification also seemed to depend either on the whim or the play-it-safe attitude of government personnel who were merely following the old Washington adage, '**If in doubt, classify it**'....**As** a matter of fact, more than a few times when I was press secretary I would receive reports or papers from government sources that I was scheduled to release publicly at my next press conference that were literally covered with classified stamps, including the highest ratings. I would then actually have to take these papers to the president and have him declassify them on the spot. And, believe me, the only thing that was '**Top Secret**' about that was what he would say when he was talking to me and had to go through such **nonsense**."

In 1961, Francis Rourke wrote about the seemingly endless examples of ridiculous classification decisions in Secrecy and Publicity. Rourke said, "In addition to the rather ludicrous examples that can always be uncovered of bureaucratic timidity in the classification

of documents, the quantity of information withheld under any classification system is vast in scope. In 1957 former assistant secretary of defense Charles A. **Coolidge** testified before a Congressional subcommittee that official records were currently being classified at a higher rate than during World War II, when six billion documents were given the secrecy label. And in the same Congressional subcommittee estimated that the Pentagon was wielding secrecy stamps at a rate which created each week a stack of classified documents higher than the Empire State **Building....The** fact that the classification system can be used to cover up administrative blunders is not its only disadvantageous **aspect...for** it may also operate as a serious barrier to public appraisal of current trends in official **policy."**

Study commissions and individual observers have fretted regularly about **overclassification**, but their well-documented arguments have accomplished little. Scholars Carol Barker and Matthew Fox commented that "the security classification **system...permit[s]** government officials to control the flow of information to the public. The executive departments, particularly the presidency, can dominate the headlines with official pronouncements, new; releases, press conferences and publication of documents. An administration can ever '**blow the lid**' on its own secrecy, as shown by President Nixon's... disclosure of the **secret** negotiations with the North **Vietnamese....Off-the-record** briefings and leaks to the press permit officials to discuss policy and events — often without taking responsibility for what they reveal. Former officials publish memoirs of their years in office; government departments issue their own histories of significant events; favored scholars and journalists are sometimes given access to official records that remain off limits to others.

"In each case, officials or former officials exercise discretion in choosing what to reveal and what to conceal. As a consequence, the public must rely on sources that have some vested interest in the information that is given out. What the public has not received -- or has waited decades for -- are accounts of government operations based on firsthand records and commentaries by detached **observers."**

In March 1972, Nixon signed Executive Order **11652** which promised to loosen some restrictions, proclaiming that "classification has frequently served to conceal bureaucratic mistakes or prevent embarrassment to officials and **administrations."** But lacking the will to comply within the bureaucracy, Nixon's order did nothing to remedy the mess. William Florence, who had just retired after forty-three years in the Pentagon and other government agencies as a classification specialist, said at the time that more than ninety-nine percent of all classified documents failed to qualify legally for any sort of secret designation.

President Carter followed in June 1978 with Executive Order **12065**. It held promise, saying classification should be allowed only when there would be identifiable damage to national security; it included a balancing test of the public interest for classifiers to ponder. Under Eisenhower, 59,316 officials had original classification authority. Under Nixon, it was 17,626. By Carter's administration, it had dropped to 7229. But Carter left office before his executive order could make a difference for independent scholars.

Executive Order 12356, signed by Reagan during 1982, reversed the positive steps of the Carter administration. It continues to have the force of law today. One especially damaging section of the Reagan order is that information can be classified or **reclassified** after it is requested under the Freedom of Information Act, Privacy Act, or the executive order itself. Another damaging portion is the elimination of Carter's six-year **declassification** schedule.

A House of Representatives committee report on Reagan's executive order said, "There is no doubt whatsoever that classification authority is used to protect information that does not require protection in the interest of national defense or foreign policy. This has been a consistent finding of presidents, congressional committees, commissions and other **observers....Not** only does the **overclassification** of information interfere with the public right to know about the operations of government, but it interferes with the security that classification system is designed to protect."

The report quoted Justice Potter Stewart from the Pentagon Papers case: "When everything is classified, then nothing is classified, and the system becomes one to be disregarded by the cynical or the careless, and to be manipulated by those intent on self-protection or self-promotion. I should suppose, in short, that the hallmark of a truly effective internal security system would be the maximum possible disclosure, recognizing that secrecy can best be preserved only when credibility is truly **maintained**."

In theory, the Freedom of Information Act is supposed to be a tool to accomplish Justice Stewart's "maximum possible disclosure." The Freedom of Information Act, approved by Congress in 1966, has helped some journalists and historians some of the time. But it has been no palliative for the harmful consequences of insider privilege. The law has never covered presidential papers or those of the Executive Office of the President personnel whose function is to advise the chief executive. Congress exempted itself and the judiciary from the Freedom of Information Act as well.

Many agencies subject to the Freedom of Information Act have abused Exemption One, which covers national security information. Researcher after researcher is made to wait for months or years, then receives little or nothing because the information is arbitrarily deemed to harm national security, an exceedingly vague concept in itself. Congress and the courts have been reluctant to overturn agency national security determinations, however self-serving. To complicate the writing of accurate history, Exemption Three of the Freedom of Information Act allows withholding of information designated as secret or otherwise private by other laws.

Once information is classified, declassification becomes difficult, often impossible. One reason is that historians cannot request documents with specificity when they are by definition uncertain about what exists.

Most documents eventually sent by the originating agency to the National Archives are supposedly considered for declassification after thirty years. The National Archives' quarterly magazine Prologue is one of the few sources to consult about declassification decisions. A

recent issue mentioned **declassification** of records from the secretary of defense, including Munitions Board material from the Office of Petroleum Programs, 1943-1951. Such waits are far too long, many researchers believe.

Anna Kasten Nelson, a staff member from the Brownell Commission who now teaches at American University, says "historical researchers should mount a concerted effort for a new executive order, or even an act of Congress, mandating the transfer of all records thirty or more years old to the National Archives, so that the regular procedures for releasing files can take effect. We simply can no longer afford the current system of agency guidelines and line-by-line review. The number of pages involved is staggering. The State Department's 1950-1954 files, which are in the process of being declassified, are estimated to contain more than six million **pages....With** a few obvious **exceptions...documents** from thirty or more years ago pose no threat to our national security and can be reviewed and released according to the same procedures routinely used for other federal **records....Historians** could then once again write from a broad range of documents, so that students of foreign relations, the policymakers of the future, could gain a more complete and balanced understanding of the recent **past."**

Nelson's plea for reform has been validated by one of her targets, the archivist of the United States, Don W. Wilson. In a speech, he said "There are four significant reasons why the system is not functioning properly. First, there is absolute overload; far too many classified documents are being created for the present system to work effectively. Second, agencies of origin declassify too few records before transferring them to the National Archives. Third, agency guidance sometimes fails to provide the Archives with much-needed declassification authority. Fourth, the Archives does not have sufficient staff for prompt handling of its reference service, and this includes the declassification **workload."**

Presidential libraries, part of the National Archives system, are filled with countless restricted documents paid for with taxpayer dollars. At the Lyndon **Baines** Johnson Library, a recently published list of closed records included certain of Clark Clifford's secretary of defense files, 1968-1969. Meanwhile, **Clifford's** insider memoir appeared in 1991, partially **uncheckable** by independent researchers because they have been denied access to those files. A recent list of materials acquired by the Gerald Ford Library mentions almost nothing that is open to researchers. A typical entry reads: "The papers of Philip Buchen, 1973-1990, two cubic feet. The collection includes correspondence, clippings, a speech file, photographs and miscellanea relating to Mr. Buchen's activities as counsel to the president from 1974 to 1977....**These** materials are not open for **research."**

Despite the odds, there is an occasional ray of disclosure. At the Gerald Ford library, there was positive news for researchers recently: "A staff archivist has recently completed systematic re-review of classified materials removed from the White House Central Files during their initial processing over the past decade. Due to the passage of time and the availability of White House declassification guidelines, more than 7000 pages have been opened for research, approximately fifty-six percent of the total originally closed. Almost all the newly opened

material was originally classified at the confidential level and deals with low-level foreign relations **issues.**"

The series of books published by the federal government, *Foreign Relations of the United **States***, exemplifies many of the problems with classification and **declassification**. Former presidents, vice-presidents and secretaries of state have used closed information in their writings decades before some of it finally appeared in *Foreign Relations of the United States*. When a volume finally is available, it may contain significant omissions unknown to anybody but the compilers of the book and a few outside experts. For example, recently published volumes on Iran for 1952-1954 contain no reference to the Central Intelligence Agency's involvement in the overthrow of the Mossadeq administration.

The CIA role in the 1954 Guatemala coup also seemed to have been intentionally hidden. Warren Cohen, a Michigan State University historian serving as head of the Secretary of State's Advisory Committee on Historical Diplomatic **Documentation**, resigned in 1990 because the government refused to let the committee review the withheld material, even though committee members held security clearances and met in closed session.

Bruce Kuniholm, a Duke University professor, said that information contained in galley proofs he had read a decade earlier had disappeared from the foreign relations series due to a mysterious government fiat. Kuniholm found the omissions especially distressing in light of similar information already published in three **memoirs**, by Central Intelligence Agency officials **Kermit** Roosevelt and Donald Wilber, as well as British intelligence agent **Christopher Woodhouse**.

With United States Senator **Claiborne** Pell in the lead, the Senate approved legislation to remedy the gaps and slant of the foreign relations series in 1990. But the bill never received House consideration. In May **1991**, the House approved a watered- down version of the previous year's Senate legislation. The Senate then strengthened the bill. Finally, in late 1991, both chambers of Congress agreed on a version. President Bush signed it in October. It will be many years, maybe decades, however, before historians are able to determine whether the legislation will lead to a more timely and honest official history.

DESTRUCTION OF INFORMATION, CLASSIFIED AND OTHERWISE

Sometimes **declassification** requests come too late, because the desired information already has been destroyed.

The National Archives and Records Administration publishes notices at least monthly in the Federal Register under the heading "Records Schedules; Availability and Request for **Comments.**" It turns out that about ninety-five percent of all government records are eventually destroyed because they are judged to lack permanent historical value. The Federal Register notices cover records schedules "that propose the destruction of records not previously authorized for disposal" or "reduce the retention period for records already authorized for disposal." The notices explain: "Each year U.S. government agencies create billions of records on paper, **film**, magnetic tape and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this **period....**"

United States Senator Edmund Muskie, later secretary of state, was dismayed to learn that often even classified information is destroyed before historians can see it. During a colloquy with the archivist of the United States, Muskie said, "I guess what troubles me is that I assumed, at the moment of asking this question, that anything that is classified, if it is properly classified, is of historic value. If it was classified for reasons that bore upon the nation's security interests, or in other vital ways, important ways, it seems to me by definition that a classified **document...is** of historic **value.**"

Some government employees have illegally destroyed restricted information. Catching them is difficult. The Federal Bureau of Investigation has been accused of such practices more than once. When long-time bureau director J. Edgar Hoover died in 1972, rumors abounded that the most sensitive of his files had been destroyed or hidden. The rumor turned out to be fact, to the detriment of accurate history.

When Richard Helms left his position as Central Intelligence Agency director in 1973, he destroyed his own files and ordered destruction of the **agency's** drug-testing program files. As a result, only insiders would be able to write accounts of certain CIA activities, leaving outside journalists and historians out in the cold.

A dramatic example of records destruction surfaced during Congressional hearings on Iran-contra. As a joint United States Senate-House investigating committee report noted, "Oliver North, John Poindexter, Fawn Hall and others admitted to having altered and destroyed key documents relating to their activities. Such actions constitute violations of the Presidential Records Act, which was intended to ensure the preservation of documents of historical **value....**"

Scott Armstrong and the National Security Archive that he founded have been fighting in court to retain National Security Council computer records from the end of the second Reagan term. So far, the courts have resisted government attempts to halt the litigation, noting in one ruling that the Federal Records Act and the Presidential Records Act "mandated the creation and preservation of federal and presidential records" to "ensure that private researchers and historians would have access to the documentary history of the federal **government.**"

Those are nice-sounding words. Maybe someday they will have some meaning.

ONE SMALL STEP FORWARD: WATERGATE SPAWNS REFORM, SORT OF

From administration to **administration**, there has been talk about equal access in the name of more accurate history. But without **Watergate**, probably not even the most minimal changes would have received serious consideration in Congress.

When Nixon resigned in 1974, he instructed that about 42 million pages of documents and over 800 tape recordings be shipped to him in California. "Not since Mrs. Harding destroyed the papers of her **husband's** troubled presidency shortly after his death had there been such a threat to the historical record of our government," according to a United States District Court ruling.

A Congressional inquiry later **capsulized** the aftermath: "In 1974, shortly after his resignation, President Nixon reached an agreement with Arthur F. Sampson, administrator of General Services, regarding the disposition of the materials of his presidency. Partly because the agreement provided for eventual destruction of the tape recordings made by President **Nixon**, Congress objected to the agreement and abrogated it by passing the Presidential Recordings and Materials Preservation Act of 1974.

"The [law] required the archivist to take control of all the records of the Nixon presidency and, within ninety days after enactment, promulgate regulations providing for public access to the records while taking into account the rights of individuals to privacy, to a fair trial, and to protect any other rights or privileges individuals might have. The '**ninety** days for promulgation of regulations' has extended to almost twelve years as former President Nixon, members of his White House staff and Cabinet, the National Archives, the courts and the Congress have battled over **access**."

The Supreme Court upheld the law aimed at Nixon in a 1977 ruling, noting "this represents the first instance of the Congress requiring government custody of presidential **materials**." The Supreme Court refused to turn the status quo on its head, though, maybe in part because it involved the justices' own prerogatives to control the papers they had compiled while on the government payroll. The court upheld government custody of the Nixon records but refrained from touching the ownership issue - although the law stated that determination of '**title**' and '**ownership**' was in the judicial domain.

Meanwhile, the **Congressionally** appointed Brownell Commission had finished its report recommending all federal officials' papers be recognized as the property of the United States. Released just before the Supreme Court ruled, the report led Representative Richardson **Preyer** to introduce the Presidential Records Act.

Thanks to Nixon's egregious misconduct, Preyer's initiative became law. The Presidential Records Act of 1978 establishes government ownership of materials accumulated by presidents and their staffs in the course of discharging their official duties, ending private ownership of presidential papers. It creates three categories -- presidential records, personal records and agency records.

Presidential records mean "any documentary material connected with the execution of the constitutional, statutory or other official and ceremonial duties of the president, either created or received by the president, his immediate personal staff, or units or individuals within the Executive Office whose function is to advise and assist the **president.**"

Personal records consist of "documentary materials which do not relate to the performance of the president's duties. Specifically included in this term are diaries, journals (or their functional equivalents), materials related to private political associations and materials relating exclusively to the president's own or some other individual's **election.**"

Closing off researchers from access to presidential and first lady diaries weakened the impact of the law on accurate history. A president hoping for a seven-figure book advance can still retain the sensitive, sensational information in his private journals. Even after a profitable post-presidential memoir is published, researchers possess no legal right to check the book's accuracy or completeness by reading what might be the most revelatory document of all.

Another shortcoming - under the law, a sitting president may decide to dispose of records that supposedly lack administrative, historical, informational or evidentiary value. He is supposed to obtain the written views of the archivist of the United States, but there is no effective way to step records destruction by a president. If the archivist dissents, Congress is supposed to be notified, but can do no more than exercise moral suasion if opposed to the destruction plan -- unless it takes the difficult course of approving legislation specifically aimed at halting the destruction.

The law failed to address the agendas of journalists and contemporary historians. It allows the president and vice-president to restrict access to White House records from six broad categories for up to twelve years after they leave office.

Those categories are classified national defense or foreign policy information; federal appointments; trade secrets and other commercial information; confidential communications involving the president and his advisors; information that would violate personal privacy if released; plus exemptions in place under other laws.

Reagan and Bush, the first White House occupants under the jurisdiction of the new law, chose the maximum restriction periods. So, until the year **2001**, former president Reagan can exercise nearly absolute control over huge batches of documents that would help journalists, historians and policymakers understand what really happened during his two terms.

Reagan and Bush have the discretion to release restricted information sooner than the year 2001. Thus far, Reagan has given permission to lift restrictions on certain categories of non-sensitive records. He seems to have been motivated partly by a true desire for openness, partly by a desire to display certain documents in the California museum/library devoted to his presidency. Meanwhile, Reagan had already benefited by using the restricted documents for his lucrative, skewed memoirs.

In what could help a grim situation, the Presidential Records Act grants the archivist authority to rule for disclosure of documents if he determines that information "**has** been placed in the public domain through publication by the former president or his agents."

Preyer explained the provision for legal posterity. "Here is how the section would work — a president or his agent publishes a memoir or gives an extensive television interview. A researcher requests a document from the presidential collection which has been either quoted from or described with some precision in the mass publication. The archivist determines that the document, or a specific portion of it, though under a **presidentially** imposed restriction, has been made public by the president or his agent.

"Having decided that, the archivist would then apply the Freedom of Information Act to the record. If it falls within one of the exemptions, the archivist exercises discretion to determine whether to release the **document**." That provision is far from perfect, but it could be a small step forward in the quest for accessible, accurate contemporary history.

RECOMMENDATIONS FOR CHANGE

Almost everybody who has studied the question of "who controls history" has concluded that the inequities are beyond resolution, and frown on attempts at reform. The author of this study believes otherwise.

Granted, it will be a formidable task to reconcile the conflicting interests, identified so well by historian Arthur Schlesinger Jr. as:

"...The citizen's interest in honest and timely disclosure; the government's interest in protection of both national security information against premature release and of confidential counsel against partisan exploitation; the reporter's interest in instant news; the historian's interest in a rich and revealing record; the individual's interest in his right to privacy. Each claimant is inclined to exaggerate his **predicament**."

Almost every former government official interviewed for this study had thought about the problem of privileged access, for example, but discouraged attempts at change.

George Reedy, a Johnson administration insider, memoirist and now university professor, believes presidents must be treated uniquely. In a letter to the author of this study, Reedy said "I suggest that you distinguish between presidential and scholarly use of government documents. The distinction is quite valid in that presidential writing is important not so much for what it reveals about what actually happened, but for what it reveals about the president's reactions to what happened. The legitimate interest in presidential memoirs lies in something that cannot be controlled or classified - what is in the president's mind. The bottom line is that anyone seeking remedies for the situation you outline is going to be **frustrated**."

Reedy finds the dilemma a bit less hopeless concerning the memoirs of former presidential appointees: "Like the president, these officials possess inside knowledge that is over and above the arena of classified documents. When I read something by Dean **Acheson** or Henry Kissinger, the facts presented are to me secondary. Both were men who are worth reading because of their mental processes. However, where they do use documents, the nature of their past positions is such that they can be held accountable for what they do with papers. The presidency is the ultimate office in our society. But the people who advised him are not in that **category**."

Roger **Hilsman**, a Kennedy administration official and memoirist, told the author of this study that changing the system would be "taking on a hopeless task. I am reminded about what FDR said about the bureaucracy -- that it is like punching a feather bed. You hit it here, it bounces out there, until you are exhausted. There is another trouble, too. The people who have held office have memories. They have their own cryptic notes in diaries, et cetera. And the problem gets worse when you come to the new technique practiced by Bob Woodward. He

interviews people, but not for attribution. He writes whole books purporting to give the exact **conversations...and** not one footnote can be checked."

The two current Congressional committee staff members who have studied the problem - Robert **Gellman** on the House side and Ed **Gleiman** on the Senate side -- are pessimistic about accomplishing major change.

Despite skepticism, the author of this study believes change ought to be attempted. Any effort would have to be grounded in some fundamental premises:

First, improved access to information is not a partisan political issue; rather, it is a necessary tool for journalists and historians trying to serve as the public's advocates. Second, in this republic the citizenry is supposed to be the master, with government officials in the role of servants. Somehow, the equation has gotten reversed.

Third, the concept of keeping information secret on national security grounds is outmoded; future classification must be reduced drastically, and **declassification** of currently secret documents must be accomplished in a wholesale manner.

Fourth, the Freedom of Information Act is designed to be a disclosure statute; Congress must narrow the reasons for withholding documents, reduce time delays, plus provide civil and criminal penalties for individual bureaucrats and their parent agencies.

Many of the reforms to be suggested here are variations on the Brownell Commission report from the mid-1970s. In the wake of Nixon's attempt to control history, Congress created the group, officially called the National Study Commission on Records and Documents of Federal Officials.

It was hardly a radical gathering. Herbert Brownell, U.S. attorney general under President Eisenhower, served as chair. The remainder of the commission included two United States senators, three United States representatives, a federal judge, a White House counsel, a business executive, three history professors, two archivists, a librarian, plus officials from the State, Defense and Justice departments.

That seemingly Establishment bunch, however, called for a radical break with tradition, saying:

"All records and documents accumulated by all federal officials in the discharge of their official duties should be recognized by Congress to be the property of the United States. The documents of a nation preserve its memory, the record of its errors and triumphs, and offer the citizens of a republic the means to understanding and judgment. While the current laws, customs and practices have led to the preservation and availability of much significant documentary material, the system has relied too heavily on chance and the historical instincts of elected officials and members of the judiciary.

"The commission has concluded, therefore, that it is time to bring to an end the tradition that papers generated or received in the conduct of public business belong as a species of private property to presidents and other public officials. We are satisfied that the tradition of private ownership of public papers became established by reason of the failure of the government to provide an alternative. It is time to remedy the **situation**."

Congress, the executive branch and the judiciary had no business ignoring the commission's reform agenda then. It is not too late to rectify the oversight.

The author of this study suggests these specific alterations in law, regulation and custom:

1. All tangible information accumulated by federal officials in the discharge of their official duties will be recognized as the property of the United States government, held in trust for the citizenry.
2. There shall be no records considered "personal" if created to conduct government business, if created on government time, or if created with the help of taxpayer-supported personnel.
3. A diary created outside of government time without the help of taxpayer-supported personnel can be considered personal.
4. Immediate public access to all government records on a particular topic might be unwise in certain narrowly defined circumstances. Former presidents, vice-presidents, White House appointees, members of Congress and their personnel, plus federal judges and their personnel, upon leaving government, may impose temporary restrictions on records for one of two reasons: Release of the information would clearly compromise the security of the United States, or would illegally violate the privacy of a named individual other than a current or former government employee acting in an official capacity.
5. The restrictions referred to in point four must be explained in writing on the public record, with the explanation providing as much detail as practical. The restrictions may be for varying lengths of time, but never to exceed **five** years. The former government official designating the restrictions may withdraw the restrictions in a blanket manner at any time.
6. If only a portion of a record falls under one of the two restricted categories, the remainder of the record must be made public.
7. The restrictions will be subject to judicial review if challenged. The government will bear the costs of the defense until a final decision is rendered. If the restrictions are found to be invalid, the former government official will bear all legal costs. If the restrictions are found to be **valid**, the plaintiff will bear all legal costs.

8. If the former government official publicly disseminates restricted information in a book, article or interview, the Archivist of the United States must rule, upon written request, that the underlying records are no longer restricted.

APPENDIX I

"FOR THEIR EYES ONLY" AN ADMINISTRATION BY ADMINISTRATION GUIDE

HARRY TRUMAN

In 1949, Harry Truman said "The truth behind a president's action can be found only in his official papers, and every presidential paper is official."

Truman, an individual admired for his plain speaking, looked as if he might reverse precedent by making his White House files more accessible. In January 1947 the New York Times reported that Treasury Secretary John Snyder had demanded that his predecessor Henry **Morgenthau** return the diary he kept on government time. "An official White House source said that the president felt strongly on the matter of departing officials taking their papers and memorabilia with them. Some sources have reported that Mr. Truman is considering having a bill prepared, requiring officials to transfer such papers to the National Archives, where they would be properly sorted and, if desired, published for the public benefit." Morgenthau eventually offered to return any papers that were not personal in nature. But no legislation resulted from the tempest.

It soon became clear that Truman would fail to practice privately what he was preaching publicly. Political scientist Larry **Berman** has noted how Truman "excluded his most important papers [from his presidential library] until the completion of his memoirs. The president's daughter, Margaret Truman, utilized such hitherto unavailable records while writing her own memoirs of life with father." Harry and Margaret Truman received handsome payments for those memoirs written with exclusive access to taxpayer-funded records.

Secretary of State Dean Acheson had privileged access to information while writing his memoir *Present at the Creation*. While most reviewers agreed that Acheson had created a classic of the genre, many of the people who praised him felt frustration at their inability to use the materials upon which he relied. According to Eisenhower aide Malcolm Moos, shortly before leaving office, Acheson "is said to have asked his staff to divide his papers into three categories: clearly official, clearly personal, and gray -- all papers that were not easy to classify as '**official**' or '**personal**.' When the exhaustive chore was **completed**, Dean Acheson was shown the results. Nodding quizzically toward a huge pile, he waited for an explanation. '**Gray**,' said his staff. Without batting an eye, Acheson snapped, '**They're all official.**'"

Acheson justified his privileged access in his own mind: "As for former officials as memoir writers, they have something special to **offer....The** why of many events, the decisive why, is apt to survive only in their memory. The use of documents to me was most important more as a corrective to memory than as a supplement. My memory, I **find**, is often very clear

and at the same time mixed up, sometimes putting people at places and meetings at which they were not present or as taking positions taken by others. The memoranda taken at the time straighten out a sometimes involved **sequence....If** it isn't in the record, the memoir writer should doubt **it.**"

A later State Department summary on the disposition of secretaries' papers says, "When Mr. Acheson retired from office, we understand that he took with him extra copies of correspondence and memoranda prepared while he was secretary of state. These included extra copies of some classified papers which were then presumably stored in his office or his **home.**"

DWIGHT D. EISENHOWER

With one year to go in office, Dwight Eisenhower already had given his papers to the government for deposit — on his own restrictive terms — in his **still-to-be-built** library, according to Stephen Ambrose's biography *Eisenhower: The President*. But the extensive files of Eisenhower secretary Ann Whitman, filling twenty-four **safes**, were **excluded**. They were being readied for Gettysburg, Pennsylvania, where Eisenhower would go to write his memoirs. Whitman's files contained "most of the private correspondence, summaries of telephone calls, minutes of Cabinet meetings, and so **forth.**" Classified material was also withheld and stored in safes at Fort Ritchie, an Army base one-half hour's drive from Gettysburg, so the files would be available to Eisenhower if he needed them.

Otherwise secret information, **unverifiable** by independent scholars, showed up in both volumes of Eisenhower's memoirs. For example, in *Mandate for Change, 1953-1956*, he revealed what had never been said publicly during his term: That he had considered using nuclear weapons to end the Korean War. Morris Schnapper found that Eisenhower's *Waging Peace*, published in 1965, "quotes at length from a confidential letter regarding the responsibilities of **Vice-President** Nixon in the event Eisenhower became disabled, discusses conversations with Nixon concerning the factors that forced Sherman Adams to resign as White House chief of staff and...contains officially unreleased information about Russia's 1960 capture of CIA pilot Francis Gary Powers and the U-2 plane in which he gathered photographic intelligence about **Soviet** strategic **missiles.**"

Controversy over Eisenhower's own memoirs was matched by the controversy over *The Ordeal of Power: A Political Memoir of the Eisenhower Years*, by White House aide Emmet John Hughes. Its detail, its often critical tone and overall candor helped it stand out from most insider memoirs. In one way, though, it was typical - Hughes treated otherwise inaccessible government information as his own for his private gain.

John Foster Dulles, Eisenhower's secretary of state, devised his own method of ownership, which in retrospect served distant history well, but met with mixed reaction among contemporary historians. After deciding to deposit his papers at Princeton University, he and his aides divided the documents into four categories — those from years previous to his appointment, non-sensitive papers from his service as secretary, public documents surrounding his career

(most of them classified), and papers falling into a gray area. From the papers in category three, a historian appointed by Dulles culled those reflecting on major issues involving the secretary of state, sending the key documents to Princeton. Most of the gray area documents wound up at the Eisenhower Library, some containing long-lasting restrictions.

JOHN F. KENNEDY

Insider memoirists raised benefits from restricted information "to a new art form" after the brief administration of John F. Kennedy, according to historian Barton J. Bernstein.

In the mid-1960s, memoirists such as Arthur Schlesinger **Jr.**, Theodore Sorenson and Roger **Hilsman** used then-secret documents that remained unavailable to others. Historian Anna Kasten Nelson commented that "It took some years before historians were able to evaluate the conclusions of the memoirists. Documents were locked in vaults with no procedure for access until after 1972. Even then, their availability was spotty, so that the memoirs of Schlesinger, **Sorenson**, Hilsman and other participants in the administration remained unchallenged as primary sources for national security policy. It has been thirty years since Kennedy's election, yet many public documents remain locked in vaults and many private papers are either closed or selectively opened to carefully chosen individuals."

A National Archives study noted "there was no real consistency in the assignment of White House staff files to be included in the papers of President Kennedy. In some cases, such as the files of Air Force aide General McHugh and the political appointments clearinghouse operation under Dorothy Davies, the files are complete and were automatically included as a part of the president's papers. Other files are fragmentary, such as those of Kenneth **O'Donnell** (President Kennedy's appointments secretary) and those of Tazewell **Shepard** (the Naval aide). Still other staff members, such as Arthur Schlesinger **Jr.**, Theodore Sorenson, Walter Heller and Jerome Wiesner, took their files with them when they left the White House.

"Some of the material falling into this last category has come to the Kennedy Library as personal papers under separate deeds from the individuals who created the files, often along with materials relating to other aspects of the aides' careers." Despite appeals for disclosure by independent scholars, some of the items remained unavailable for decades, as Kennedy biographers John H. Davis and the team of Peter Collier and David Horowitz have noted in frustration.

The most notable case of exploiting the **administration's** closed materials may have been Robert Kennedy's use of substantial quotations from the otherwise secret John F. Kennedy-**Nikita** Khrushchev Cuban missile crisis correspondence in writing *Thirteen Days*. The book was a gripping account of recent history. Schlesinger said one meeting between Robert Kennedy and Anatoly **Dobrynin** was so secret that "the American people certainly did not know until Robert Kennedy himself described the meeting in *Thirteen Days*, a half-dozen years **later**." In his **uncheckable** account, the former attorney general appears to have misdated some of the

telegrams and deleted some segments of the correspondence to polish the reputation of his brother's administration.

(In 1992, part of the Kennedy-Khrushchev correspondence was still closed. American University Professor Philip Brenner sued the State Department to release the nearly thirty-year-old documents. Despite support for Brenner from numerous high-ranking Kennedy administration officials, the Bush administration resisted on national security grounds.)

The passel of Kennedy administration memoirs took on special significance during the Pentagon Papers case as the Nixon administration tried to suppress publication by newspapers and magazines. Numerous Kennedy administration memoirs had already been published which revealed much of the information contained in the Pentagon Papers - the same information which the Justice Department was now trying to hide. New York Times Washington bureau chief Max **Frankel** pointed out the hypocrisy when he testified that Sorenson's memoir Kennedy "reveals dozens upon dozens of actions, meetings, reports and documents, all still treated as classified by the government and unavailable for more objective journalistic analysis."

Sorenson tried to make amends by calling for a halt to the Pentagon Papers prosecutions, and testified at the time that upon leaving the White House in 1964 "I removed 67 cartons of papers, documents and files of all kinds, seven cartons of which were classified, from my office in the White **House....I** drew upon this **material...in** writing the book Kennedy. The classified material included copies of the Kennedy-Khrushchev correspondence, the transcript of their summit meeting at Vienna, secret memoranda and directives relating to the Cuban missile crisis, Berlin, Laos and Congo crises, and the Bay of **Pigs....I** generally did not use quotation marks when extracting classified **material....I** did not seek or obtain any formal clearance or approval from the government and was at no time questioned or reprimanded in this **regard."**

As part of their defense, besides studying Sorenson's revelations, two New York Times editors read more than forty other insider memoirs to discover whether they had revealed any of the information found in the Pentagon Papers. In his book, *The Papers and the Papers*, **Sanford J. Ungar** quotes one of those editors about the breach of secrets in other memoirs: "We discovered that if there had been any confidentiality among them and the way they dealt with each other, it had been very well moved over and walked over and revealed."

Schlesinger's *A Thousand Days* became a big seller in 1965; the author, former assistant to President Kennedy and a professional historian, tried to partially solve the unequal access conundrum by telling readers "a fully footnoted manuscript will be deposited under seal in the Kennedy Library along with my own White House papers. At an appropriate interval these will be open to scholars." Schlesinger kept his promise, and many of those files are now open to the public.

The Kennedy administration insider memoir that probably caused the most comment about selective access was *To Move A Nation: The Politics of Foreign Policy in the Administration of John F. Kennedy*, by former official Roger **Hilsman**. While serving in the

State Department, **Hilsman** talked into a tape recorder daily, often right after attending secret meetings and reading classified documents. The next day, his secretary, paid with tax dollars, would type the tape-recorded recollections and file the transcript. In writing his memoir, Hilsman drew upon those transcripts — which were unavailable to independent researchers.

To Move a Nation is a serious book by a thoughtful scholar. Hilsman was aware of the responsibilities his special access carried as he discussed the underpinning of his book: "Because of my own participation in these decisions, this book is also somewhat of a personal memoir. As it turns out, this is not without utility. For one thing, it helps to make the decisions of government real and understandable. But there are more important utilities. Foreign policy is made by human beings, with human hopes and fears, human greatness and human failings. The interaction of personality is often the decisive factor in shaping decisions, and the anecdotes of personal memoirs are sometimes the only source of information about incidents that may have changed the history of a **decision**."

Hilsman wrote as a privileged participant, and he knew it: "Although documents cannot be trusted to give the whole **story...they** do have their utilities. Accordingly, I have also made provisions to answer any questions that future scholars may have about sources of various quotations and statements which have been omitted for reasons either of security or of protecting individuals by seeing to it that copies of all documents, memoranda for the record, notes of meetings, telephone conversations and so on that were used in the preparation of this book were included in my personal papers, which have been deposited in the Kennedy Library. To the best of my **knowledge...there** is no significant statement in the book that does not have some grounding in a contemporary **document....**"

The problem for independent contemporary historians is that such honorable intentions still force reliance on the integrity of insiders in the short run, rather than on verifiable evidence. In a New York Times Magazine article several years later, John Roche made that conundrum clear. Roche, an advisor to Kennedy and Lyndon Johnson, also had privileged access, which he used to point out problems in **Hilsman's** account.

"In the course of writing his **volume**, Hilsman declassified a large number of his own secret and top-secret **memorandums**," Roche said. "I am taking the liberty now of declassifying one that he somehow overlooked." That document, dated August 30, 1963, cast doubt on **Hilsman's** account of his desire to avoid military action in Vietnam.

LYNDON B. JOHNSON

The Johnson administration was more of the same - insiders used privileged access to write **unverifiable** contemporary history. Shortly after Johnson left the White House, he made a request to retired Army General Robert L. Schulz, named by the newly elected Richard Nixon as special assistant for liaison with former presidents. Johnson was writing his memoir, eventually published as The Vantage Point. Perspectives of the Presidency **1963-1969**, for which he received an advance believed to be \$1.5 million. Johnson wanted Nixon to "declassify as

many as possible of the thousands of secret documents in his possession. At the time most of these papers were in the federal building in **Austin**, Texas, in a vault which had been specifically constructed to house the classified documents until the **LBJ** library could be **completed**," according to journalist and author David Wise.

Johnson obtained permission for **declassification** of some documents - for himself, not for other researchers. The book appeared in November 1971, a date Wise found filled with irony: "Daniel Ellsberg was under indictment for unauthorized possession of the Pentagon Papers. A federal grand jury in Boston was questioning witnesses about Neil **Sheehan**, the New York Times reporter who obtained the Pentagon Papers and wrote the articles based upon them. The government had sought to suppress the articles, and did for a time, but was overruled by the Supreme Court of the United States. Yet **Johnson's** book, priced at \$15 a copy, contained numerous quotes from many of the same classified documents contained in the Pentagon Papers."

Researchers were understandably irritated. One told New York magazine writer Edwin Diamond, "It took a convoy, a whole convoy of trucks, to transport those government files from Washington to Austin. I'll have to pay to read about them in Life **[magazine]**."

Like the vast majority of authors writing books based in part on restricted information, Johnson found it irresistible to shade the truth. Wise pointed out one such incident, involving what the president had claimed were 1,500 beheadings in the Dominican Republic revolt in the **mid-60s**. Partly as a result of that claim, Johnson sent thousands of U.S. troops to that Caribbean nation. Relating the controversy over his obviously exaggerated contention in *The Vantage Point*, Johnson came out looking blameless by relying on documents that independent researchers could not see.

Doris Kearns, a Harvard University historian who helped Johnson with his memoirs at the Texas ranch, was crestfallen at the dishonesty of the book. Discussing Johnson's process of recollection and writing, Kearns said "The **standard...was** not the truth, but what Johnson wanted to believe and what he thought he could persuade others to believe. It had little to do with **history**."

In his memoir, Johnson provided no revelation of how he had taken advantage of his privileged access, except to note, "I have drawn heavily on the printed record -- public papers, memoranda, notes from meetings and from phone calls, diaries, letters, Secret Service logs, and so on. I emphasize this, first, because I know that memory is an unreliable source for any writer and, second, because there are instances when my memory failed me **entirely....Recognizing** this, I have tried to document every statement made in this book. Only in a few cases have I had to rely entirely on memory. In most instances, I have cut what I could not **document**." As usual, the president's reliance on restricted information set an unhealthy precedent for top aides, no matter how well-intentioned in their attempts to inform the public about recent history. For example, George Christian, one of Johnson's press secretaries,

provided details of then-secret Vietnam War peace negotiations in his 1970 book *The President Steps Down: A Personal Memoir of the Transfer of Power*.

Frankel of the New York Times testified in the Pentagon Papers case that Christian "**had** free admission to all foreign and domestic discussions involving the president, at any level and in any **forum**." Frankel said Christian's book contained "a great deal of detailed information, all still highly classified, about the secret negotiations with North Vietnam in Paris. The **book...actually** covers a period more recent than that discussed in the Pentagon Papers, and at a much higher level of government and **secrecy**." Yet nobody was prosecuting Christian.

Another book disclosing controversial information about Vietnam on the basis of insider knowledge was *The Limits of Intervention: An Inside Account of How the Johnson Policy of Escalation in Vietnam Was Reversed*, by Townsend **Hoopes**, a Pentagon official. Johnson administration insider John Roche said **Hoopes'** book was wrong on several points, but he felt constrained about rebutting it because "any serious reply had to be based on highly classified **materials**."

Arthur Goldberg, the former Supreme Court justice who became Johnson's United Nations ambassador, said **Hoopes'** book disclosed a top-secret memorandum that Goldberg had written. "Some of those with access to it have described it publicly, but the congressman and the citizen, the scholar and the critic, the journalist and the student — all who wish to know what their government has done, and rightly so - are presumably still denied the right to see the **document**."

That was unfair, Goldberg said, especially in light of his experience that "seventy-five percent of these documents should never have been classified in the first place; another fifteen percent quickly outlived the need for secrecy."

Johnson aide W.W. Rostow's memoir, *The Diffusion of Power*, shows a modicum of sensitivity to the dilemma of unequal access. After citing his personal experience and personal files as sources, Rostow says "I had no access, of course, to the classified papers in the Eisenhower or Kennedy **libraries**....In the case of the Johnson Library, work I did in helping **organize** the foreign policy papers of the Johnson administration provided valuable background. But, as the reader will perceive, this book makes no direct use of such materials. I neither asked for nor was I offered special privileges by the Johnson Library."

Then some slippage occurs, as Rostow notes "I have occasionally introduced into the text passages from memoranda I wrote as a public servant to President Kennedy, President Johnson and Secretary Rusk. I have also used a very few passages from other documents in my files. Some of these were classified at the time. I took pains to assure that the extracts used would not complicate American relations with foreign governments or inhibit the conduct of government business in other **ways**."

RICHARD M. NIXON

It was inevitable that Richard Nixon's **five** stormy, secrecy-filled years in the White House, climaxed by his resignation, would lead to stormy, secret-filled insider accounts, with memoirists blaming criminal behavior on other memoirists. That is exactly what happened as H.R. **Haldeman**, John **Ehrlichman**, John Dean **III**, Jeb Stuart **Magruder**, Gordon Liddy, Maurice **Stans**, Charles Colson, William **Safire**, Raymond Price, Herbert Klein, James **Keogh** and other insiders signed book contracts, sometimes for substantial sums of money.

Nixon, in his own memoir, mentions relying on more than 20,000 pages of notes, mostly kept on yellow legal pads, from 1946-1974, ranging "from offhand observations to extremely detailed passages of dialogue." He also mentions "diary-type dictations" while vice president from 1954-1957 of 112 meetings or other events; an almost-daily dictated diary from November 1971 to April 1973 and June to July 1974; and memorandums of conversations with foreign leaders, which he used "to confirm and supplement my notes and **recollections**."

When Nixon biographers tried to gain access, they were stymied by continuing legal battles between Nixon and the National Archives over what documents belonged to him and what documents belonged to the public through the government. Nixon biographer Stephen Ambrose said in 1989 that "the basic documentary record of the internal workings of the Nixon administration with regard to Watergate remains **sealed....For** the scholar, who never wants to commit himself to a conclusion until he has seen all the record, this is a frustrating **situation**."

Before the Nixon archives maintained by the federal government could open the most recent set of processed files in August 1991, it had to contact the former president, who had the legal right to object to the release of anything in that batch. According to the regulations of the National Archives and Records Administration, Nixon's claim of secrecy "should detail the alleged rights and privileges of Mr. Nixon which would be violated by the release of the materials. The archivist [of the United States] will refrain from releasing any of the materials to the requester during this period, and while any claim of right or privilege is pending before him, will refrain from releasing the materials subject to the **claim**." Today, some information has been opened to the public, but much of **Nixon's** files still remain closed.

GERALD R. FORD

The Gerald Ford interregnum produced no insider memoirs worthy of extended analysis, including **Ford's** own. But the pattern was the same - those that appeared contained passages virtually impossible to check due to reliance on restricted information. When The Nation magazine used excerpts from Ford's memoir about the pardon of Nixon before the book was available, publisher Harper and Row brought suit.

In a case going all the way to the United States Supreme Court, Harper and Row prevailed on copyright grounds. Years later, Nation editor Victor **Navasky** was still steaming, noting that publication should be allowed "when dealing with the works of former high

government officials, who -- for reasons of greed, autobiographical protectionism and spin control - prefer to withhold news until it suits their financial and political interests to release it."

JAMES E. CARTER

Jimmy Carter's presidential memoir, **Keeping Faith**, was based heavily on about 5000 pages of notes dictated daily and transcribed by his government-paid secretary. Carter termed the material "highly personal papers," a description seemingly at odds with common sense, considering their preparation on public time at taxpayer expense.

Shortly after leaving the Carter White House, Zbigniew **Brzezinski** began working vigorously on his **memoir**, published as **Power and Principle: Memoirs of the National Security Adviser. 1977-1981**. Brzezinski, expressing no concerns about unequal access to information in a democracy, explained how his book had benefited from restricted data:

"I have made every attempt, in writing this book, not to simply reconstruct the past from hindsight. To this end, I have carefully reviewed the record of my various memoranda to the president, the minutes of various meetings in which I participated or which I chaired, contemporary news clippings, as well as my own notes on the more important events, which I dictated fresh, usually late the same **night....President** Carter generously -- and without any restrictions -- opened to me his presidential archives and permitted quotations from his papers and instructions to **me...and** from my memoranda to him." Brzezinski thanked his successor as national security advisor, Richard **Allen**, for "**facilitating** access to my official papers and in arranging some of the necessary clearances for my **staff**."

Charles William Maynes, who served in Carter's State Department, wondered about the fairness of it all. "Brzezinski reveals in his memoirs the contents of highly sensitive conversations so soon after the fact that relations with several allies are bound to be strained by the appearance of his **book**."

Maynes said the insider memoirs pouring out of recent administrations were "Olympian attempts to preordain history's judgment of the authors' political achievements. To accomplish their task, the authors declassify at will to color history's judgment of their deeds and **coincidentally** to influence current political **debate**."

The mindset of presidents and their top aides about keeping public information private was stated unambiguously in writing as Carter prepared to leave office. The White House staff received a memorandum dated December 15, 1980, from counsels Jack Watson and Lloyd Cutler. It **said**, in part, that Carter "respects the right of every staff member to speak and write freely about his experiences as a member of the White House staff or the Executive Office of the President. But he also expects those who have had the privilege of **serving...to** respect the president's rights of ownership and control over the presidential papers generated during his term, and the principle that White House advisers do not disclose their own non-public advice

or that of other advisers, or the president's non-public response, without the president's **consent....**

"A staff member owns his personal papers. Originals and all copies of presidential papers are owned by the president. The president intends to grant staff members access to presidential papers relating to actions in which they participated when such papers have been deposited in the presidential library.

"Consistent with the practice of previous presidents and President **Carter's** deed of gift, members of the general public will not be granted access to the presidential papers placed in the Carter Library until President Carter authorizes such access."

RONALD R. REAGAN

Ronald Reagan's memoirs are considered by most to be little more than fluff, much of it dealing with his life prior to becoming president. Nevertheless, because there are no citations or footnotes, it is impossible to know where the information in chapters detailing his White House years comes from. It is known that **Reagan's** ghostwriter, a New York Times reporter, did have access to classified documents, access which is denied to the rest of the public.

Of the more than twenty Reagan-era memoirs already in print, one of the few even acknowledging privileged access in passing is Inside the National Security Council by **Constantine** Menges. He says "**I** understand full well that I am describing the events as I lived and perceived them; other participants may well have different perceptions of events. This book represents my honest recollections and judgments based upon my firsthand experiences and reinforced by my practice of maintaining daily records of key events, conversations and actions I was required to **do....If** I had a conversation personally or on the telephone with a member of the Cabinet or **subcabinet**, for example, I would tend to note down the **comments....**"

There have been numerous other Reagan administration memoirists thus far, including Alexander **Haig**, Donald Regan, Oliver North, Larry **Speakes**, Michael Deaver, Martin Anderson and David Stockman. In keeping with the greed and **insensitivity** characterizing the two Reagan terms, those memoirists mentioned nothing about their special access and how they profited from it.

APPENDIX II

"FOR THEIR EYES ONLY" A BIBLIOGRAPHIC ESSAY

INTRODUCTION

This study began with the author's chance reading of the General Accounting Office report, "Disposition and Use of Classified Documents by Presidential Appointees," **NSIAD-90-195**, September 1990. Other General Accounting Office reports turned out to be helpful, partly because so little else has been written in the past decade about the problem. Those reports include "Controls Over Unofficial Access to Classified **Information**," **NSIAD 89-145**, June 1989; and "Document Removal by Agency Heads Needs Independent Oversight," **GGD-91-117**, August 1991. Senator David **Pryor's** response to the September 1990 report comes from a news release dated November 14, 1990, supplied by Pryor's press secretary.

A pamphlet from the National Archives and Records Administration, "For the Record: Guidelines for Federal Records and Personal Papers," 1988, helped provide early guidance, as did companion internal studies (one dated 1987, the other dated 1988) from the National Archives and Records Administration Task Force on Responsibilities for Federal Records and Related Documentation.

Also providing early guidance were two publications from the Library of Congress Manuscript Division -- "Private Papers: A Plea for Their Preservation and an **Explanation** of Their Importance to the National Collections," July 1985, plus "Questions and Answers About Personal Papers," no date.

By far the most informative file from the not-so-distant past is the "Final Report of the National Study Commission on Records and Documents of Federal **Officials**," issued to Congress on March 31, 1977; I also studied the underlying documents in the Commission files at the National Archives. An excellent book based on the Commission's work is Anna Kasten Nelson, editor, *The Records of Federal Officials*. Garland, 1978.

Useful supplements to and commentary on the Commission report include Alonzo L. **Hamby** and Edward Weldon, editors, "Access to the Papers of Recent Public Figures: The New Harmony Conference," issued in 1977 by the Organization of American Historians; various references in Congressional hearings and in the Congressional **Record**, including May 25, 1976, page S15290, and June 13, 1977, page S18639; Herbert Brownell, "**Who** Really Owns the Papers of Departing Federal **Officials?**," New York State Bar Journal. April 1978; Committee on Federal Legislation, "Papers of Federal Officials: Public Ownership and Access," Record of Association of the Bar of the City of New York. 1979; Anna Kasten Nelson, "The Public Documents Commission: Politics and Presidential Records," Government Publications Review. 1982; William **Delaney's** coverage in the Washington Star. April 1, 1977; Jeffrey Lincoln's

article, "How Ex-Officials Profit From the Not-So-Public **Record**," Wall Street Journal. March 21, 1985.

Presidential and vice-presidential disposition of records generally is treated separately from dispositions by White House appointees in the literature. An excellent starting point is Frank L. Schick, Renee Schick and Mark S. Carroll, *Records of the Presidency: Presidential Papers and Libraries*. Oryx Press, 1989.

The overview presented in the Introduction is based on judicial rulings, Congressional hearings and studies, executive branch executive orders and other official pronouncements, internal memoranda from various parts of government, books, articles in scholarly journals, as well as general-circulation magazine and newspaper stories. The key readings are presented throughout in this Bibliographic Essay.

David Wise's quotation comes from his testimony to the House of Representatives Government Operations Committee, "U.S. Government Information Policies and Practices — The Pentagon Papers," part two, hearings, 1971; also see Wise's book, *The Politics of Lying: Government Deception. Secrecy and Power*. Random House, 1973.

Herbert Feis' quotation comes from his article in the *Atlantic Monthly*. September 1969. Also see **Feis'** article "The Shackled Historians," *Foreign Affairs*. January 1967; and his essay in the *New York Times Book Review*. November 8, 1970.

After completing the readings, the author benefited tremendously by interviewing current and former government officials, archivists, librarians, historians and journalists. Those sources who deserve special thanks include, in alphabetical order:

Uldis Adamsons, General Accounting Office investigator

Scott Armstrong, former Washington Post reporter, founder of the National Security Archive, author

Irv Boker, General Accounting Office investigator

John Fawcett, Presidential libraries chief at the National Archives

Steven **Garfinkel**, head of the federal Information Security Oversight Office, former counsel to the National Archives

Robert **Gellman**, House of Representatives subcommittee counsel

Ed **Gleiman**, Senate subcommittee counsel

Patti Goldman, attorney at Public Citizen

Harry Hammitt, editor of Access Reports newsletter, former federal agency Freedom of Information Act counsel

John Haynes, archivist in the Manuscript Division at the Library of Congress

Seymour Hersh, author, New York Times reporter

Charlie Hill, former State Department official, assistant to

George **Shultz**

Roger **Hilsman**, former Kennedy administration official

Walter Isaacson, Time magazine editor, author

Clarence Lyons, archivist in charge of the Nixon presidential papers at the National Archives

Angus MacKenzie, author

Page Putnam Miller, director of the National Coordinating Committee for the Promotion of History, American Historical Association

Warren **Nagel**, General Accounting Office investigator

Anna Kasten Nelson, staff member for the Brownell Commission, historian, American University professor

Jack Pfeiffer, former in-house historian at the Central Intelligence Agency

George Reedy, former Johnson administration official, **Marquette** University professor

Harold Relyea, Congressional Research Service staff member

Morris Schnapper, author

Damon Thompson, press secretary to Senator David **Pryor**

CONTROL OF HISTORY: THE UNDERPINNINGS

Morris B. Schnapper's "Presidential Papers as Private Property," an unpublished manuscript finished in 1982, helped in writing about the presidential treatment of information. One of many accessible articles recounting such history is Richard L. **Strout**, "Presidential Papers: To Whom Do They **Belong?**," Christian Science Monitor. February 5, 1982.

The court case concerning George Washington's papers is reported at 9 F.Cas. 342.

The 1943 and 1950 records laws are part of the United States Code, Section 44, especially Chapters 29, 31 and 33.

Section 4.3 of the presidential executive order on security classification is published and briefly explained in Report 97-731 of the House of Representatives Government Operations Committee, "Security Classification Policy and Executive Order 12356," August 12, 1982.

The **Moorhead** quotation is from the House of Representatives, Government Operations Committee, "U.S. Government Information Policies and Practices — Security Classification Problems Involving Subsection (b)(1) of the Freedom of Information Act," hearings, May 1972. Related commentary can be found in Arthur Schlesinger Jr., "The Secrecy Dilemma," New York Times Magazine. February 6, 1972; Arthur Schlesinger Jr., *The Imperial Presidency*. Houghton Mifflin, 1982; Steve **Weinberg**, "Creeping Secrecy," Columbia Journalism Review. November-December 1983.

For the Weinberger case, the author relied on his memoir; General Accounting Office reports; interviews with some of the sources acknowledged earlier; Patrick E. Tyler, "Weinberger: Too Loose With **Secrets?**," Washington Post. January 22, 1990; Robert C. **MacFarlane's** National Review commentary, June 11, 1990; Lawrence J. **Korb's** Psychology Today review, September 1990; Marie Belson's Washington Times story, November 2, 1989; George **Lardner Jr.'s** Washington Post story, November 14, 1989. The Bruce Oudes' quotation is found in *From: The President. Richard Nixon's Secret Files*. Harper and Row, 1989. The author requested an interview with Weinberger, but he turned down the request in a communication from Kay D. **Leisz**, his executive assistant.

For the **Shultz** case, the author relied on General Accounting Office reports; interviews with some of the sources acknowledged earlier; David Streitfeld's book column, Washington Post. July 12, 1989; Edwin McDowell's book column, New York Times. October 25, 1989. Shultz delegated his assistant, Charlie Hill, to answer questions, which Hill did at length.

For the Kissinger case, the author read both volumes of his memoirs, *White House Years*. Little, Brown, 1979, and *Years of Upheaval*. Little, Brown, 1982, as well as commissioning an analysis by researcher Jimmy Montague. The New York Times editorial quoted is from February 20, 1977; the Anthony Lewis column appeared in the New York Times. June 9, 1980. Theodore Draper's review appeared in the Spring 1980 *Dissent*. William

Shawcross' Sideshow: Kissinger. Nixon and the Destruction of **Cambodia**. was originally published by Simon and Schuster, 1979. A later edition, published by Touchstone/Simon and Schuster in 1987, contains the give and take appearing in American Spectator. March and July 1981 issues. Concerning changes made by Kissinger in the galley proofs of the first volume, also see the New York Times. October 31, 1979. Seymour Hersh's The Price of Power: Kissinger in the Nixon White **House**. was published by Summit Books, 1983. Robert D. **Schulzinger's** Henry Kissinger: Doctor of Diplomacy, was published by Columbia University Press, 1989.

Christopher **Lehmann-Haupt's** review appeared in the New York **Times**, March 24, 1982; Daniel **Ellsberg's** testimony is found in Senate Government Operations and Judiciary committees, "Executive Privilege, Secrecy in Government, Freedom of Information," hearings, April and May 1973. The author interviewed Walter Isaacson, September 3, 1991.

Information bearing on the court battle over Kissinger's ownership claims can be found in William **Safire's** column, New York Times. April 12, 1976, and a follow-up news story, April 13, 1976, as well as Robert **Sherill's** article "Burger's Court Feathers Its Nest," The Nation. June 24, 1978, and M.B. Schnapper's article "Public Papers and Private Gain," The Nation. November 24, 1979. Numerous law reviews examined the case, including Harvard Law Review. November 1980; and Houston Law Review. March 1981. Some **Rhoads-Kissinger** correspondence appears in the House of Representatives Government Operations Committee, "Presidential Records Act of 1978," hearings, February-March 1978. The U.S. District Court decision in the Kissinger case is found at 3 Media Law Reporter 1525; the appeals court decision is at 4 Media Law Reporter 1823; the Supreme Court ruling is at 6 Media Law Reporter 1001. The Bureau of National Affairs case is found at 742 F2d 1484.

Kissinger never acknowledged requests for an interview.

HISTORIANS FAVORED, HISTORIANS DENIED

A study by Carol **M. Barker** and Matthew **H. Fox**, Classified Files: The Yellowing Pages — A Report on Scholars' Access to Government Documents. Twentieth Century Fund, 1972, helped get the author started on this section.

The Justice Department memorandum, dated August 10, 1981, was part of documents obtained under the Freedom of Information Act, with help from Steven **Garfinkel** at the federal Information Security Oversight Office.

The Defense Department regulations can be found in the Federal Register of June 27, 1989.

The **Gude-Rhoads** exchange can be found in the House of Representatives Government Operations Committee, "U.S. Government Information Policies and Practices -- Security

Classification Problems Involving Subsection **(b)(1)** of the Freedom of Information **Act**," part 7, hearings, May 1972.

Theodore Draper presents his case in "The Dominican Intervention **Reconsidered**," Political Science **Quarterly**, March 1971.

Charles J. Tull's chapter "The State of the Art in Truman **Research**," appears in William F. Levantrosser, editor, Harry S. Truman: The Man From Independence. Greenwood Press, 1986. Robert Donovan's book, Tumultuous Years: The Presidency of Harry S **Truman**. was published by Norton, 1982.

Concerning Eisenhower scholarship, see Blanche Wiesen Cook, The Declassified Eisenhower: A Startling Reappraisal of the Eisenhower Presidency. Doubleday, 1981.

Athan Theoharis and Lloyd Gardner's testimony appears in the Senate Government Operations Committee, "The Freedom of Information Reform **Act**," hearings, **May-August** 1984.

William **Langer's** words come from his letter to the editor, New York Times Book Review. December 20, 1970.

James MacGregor Burns wrote in the New York Times Book Review. November 8, 1970.

The Feis quotation is from the previously cited article by him in Foreign Affairs.

Richard Smith testified before the House Government Operations Committee, "U.S. Government Information Policies and Practices - Security Classification Problems Involving Subsection **(b)(1)** of the Freedom of Information **Act**," May 1972.

The author read a letter from **Werrell** to United States Senator John Warner dated May 25, 1988, and also interviewed Werrell.

PREPUBLICATION REVIEW

The author has copies of Forms 189; 312; 4355; 1847-1; G170 and G170B. A General Accounting Office report, "Federal Agency Use of Nondisclosure Agreements," **NSIAD-91-106FS**, January 1991, helped immensely.

Other works mentioned or used include:

Victor **Marchetti** and John D. Marks, The CIA and the Cult of Intelligence. Knopf, 1974. The court case is at 1 Media Law Reporter **105**.

Frank Snepp, *Decent Interval: An Insider's Account of Saigon's Indecent End* Told by the **CIA's** Chief Strategy Analyst in Vietnam. Random House, 1977; Frank Snepp, "Protect Rights of All Privy to U.S. Secrets, *New York Times*. February 22, 1984. The court decisions are at 444 U.S. 507 and 897 F2d 138.

George **Lardner Jr.**, "CIA Defends Its Selective Censorship of **Ex-Agents'** Writings," *Washington Post*. April 6, 1980, and A.O. Sulzberger Jr. article in *New York Times*. December 4, 1980.

Ralph W. McGehee, *Deadly Deceits: My Twenty-Five Years in the CIA*. Sheridan Square Press, 1983; the court case is reported at 718 F2d 1137.

The Rush court case is reported at 748 FSupp 1548.

Angus MacKenzie, "Fit to Be Tied," *The Quill*. July-August 1985.

Stansfield Turner, *Secrecy and Democracy: The CIA in Transition*. Houghton **Mifflin**, 1985; correspondence and conversations with Jack Pfeiffer, former CIA historian, July and August 1991.

Floyd **Abrams**, "The New Effort to Control Information," *New York Times Magazine*. September 25, 1983, and *Harper's*. May 1983.

A. Ernest **Fitzgerald**, *The Pentagonists: An Insider's View of Waste. Mismanagement and Fraud in Defense Spending*. Houghton Mifflin, 1989; Michael L. Warden, "**Prepublication** Review of Government Employee Speech: A Case Study of the Department of Defense and **U.S. Air Force Security/Policy Review Programs**," paper presented to Association for Education in Journalism and Mass Communication, 1988.

House of Representatives Government Operations Committee, "Review of the President's National Security Decision Directive 84 and the Proposed Department of Defense Directive on Polygraph Use," hearing, October 1983.

CLASSIFICATION, DECLASSIFICATION DESTRUCTION OF INFORMATION

Unlike the sparse literature on the uses and abuses of information by former high government officials, the literature on classification, **declassification** and destruction is voluminous. The treatment of the situation in the text, as well as these bibliographic notes, barely scratch the surface. Two especially valuable resources are the reports and files of the Freedom of Information Center, housed at the School of Journalism, University of Missouri-Columbia; and the annual reports of the federal Information Security Oversight Office. The

citations that follow, plus several mentioned earlier, barely scratch the surface, but are among the best sources for the uninitiated:

Francis E. Rourke, *Secrecy and Publicity: Dilemmas of Democracy*. Johns Hopkins University Press, 1961.

Senate Government Operations and Judiciary committees, "Executive Privilege, Secrecy in Government, Freedom of **Information**," hearings, April-May 1973.

General Accounting Office, "Update of Data on Employees Affected by Federal Security Programs," NSIAD-89-56FS, March 1989.

Theodore Draper, "The Classifiers of Classified Documents Are Breaking Their Own Classification **Rules**," *New York Times Magazine*. February 4, 1973.

House of Representatives Government Operations Committee, "U.S. Government Information Policies and Practices — Administration and Operation of the Freedom of Information Act," part 4, March 1972.

House of Representatives Government Operations Committee, "U.S. Government Policies and Practices — Security Classification Problems Involving Subsection **(b)(1)** of the Freedom of Information Act," part 7, hearings, May 1972.

House of Representatives Government Operations Committee, "Security Classification Reform," hearings, **July-August** 1974.

Frederick M. Kaiser, "The Impact of **Overclassification** on Personnel and Information Security," *Government Information Quarterly*, issue 3, 1986; Frederick M. Kaiser, "The Amount of Classified Information: Causes, Consequences, and Correctives of a Growing Concern," *Government Information Quarterly*, issue 3, 1989.

Among the numerous guides to the Freedom of Information Act, one of the most recent is from the House of Representatives Government Operations Committee, "A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 to Request Government Records," Report 102-146, July 10, **1991**. Also see the Congressional hearing record, including the Senate Judiciary Committee, "Freedom of Information **Act**," hearings, July-December **1981**.

Anna **Kasten** Nelson, "Irrational Policies on Access to Government Records Are Undercutting Our Ability to Understand History," *Chronicle of Higher Education*. September 28, 1988.

Don W. Wilson, speech to the Society for Historians of American Foreign Relations, August 2, 1990.

House of Representatives Government Operations Committee, "Inquiry Into the Destruction of Former FBI Director J. Edgar Hoover's Files and FBI **Recordkeeping**," hearing, December 1, 1975; also see a court case involving the FBI, reported at 720 F2d 29.

Prologue, the quarterly publication of the National Archives, Spring 1991, for an account of destruction of records during the Vietnam War.

The Armstrong-Bush case, still in progress as this is written, is reported in part at 942 F2d 282.

APPENDIX III

TRUMAN ADMINISTRATION

Harry S. Truman, Year of Decisions. **Doubleday**, 1955.

Sidney **Shalett**, "Return Diary to Treasury, Snyder Asks **Morgenthau**," New York Times. January 28, 1947, and follow-up articles January 29 and February 14, 1947.

U.S. News and World Report. "Raiding the White House Files," February 27, 1953.

Larry Berman, "The Evolution and Value of Presidential Libraries," in Harold C. Relyea, editor, The Presidency and Information Policy. Center for the Study of the Presidency, 1981.

Francis H. Heller, "The Writing of the Truman Memoirs," Presidential Studies Quarterly, Winter 1983.

Dean **Acheson**, Present at the Creation. Norton, 1969; **Acheson's** letter of September 1, 1971, in Carol M. Barker and Matthew H. Fox, Classified Files.

Herbert Feis, "**Unpublic Public Papers**," New York Times Book Review. April 21, 1968.

EISENHOWER ADMINISTRATION

Dwight D. Eisenhower, Mandate for Change. 1953-1956. Doubleday, 1963, and Waging Peace. **1956-1961**. Doubleday, 1965. His son, John S.D. Eisenhower, discussed the dilemmas of presidential papers in Strictly Personal. Doubleday, 1974, as well as in testimony to the House of Representatives Administration Committee, "The Public Documents Act," hearings, September-October 1974.

Stephen E. Ambrose, Eisenhower: The President. Simon and Schuster, 1984.

Emmet John Hughes, The Ordeal of Power: A Political Memoir of the Eisenhower Years. **Atheneum**, 1963; Adolf A. **Berle** and Malcolm Moos, commentary on the Hughes book, Political Science Quarterly. June 1964.

Richard H. **Immerman**, editor, John Foster Dulles and the Diplomacy of the Cold War. Princeton University Press, 1990.

KENNEDY ADMINISTRATION

Barton J. Bernstein, Inquiry. May 1, 1978.

Anna Kasten Nelson, "President **Kennedy's** National Security Policy: A **Reconsideration**," Reviews in American History. March 1991.

National Archives and Records Service, "The Treatment of Presidential Papers in the Presidential Library **Era**," study for the National Study Commission on Records and Documents of Federal Officials, June 4, 1976, located in the National Archives.

Scott Jaschik, Chronicle of Higher Education. September 12, 1990, and letter to the editor from William Johnson, September 26, 1990.

John H. Davis, The Kennedys: Dynasty and Disaster. 1848-1983. McGraw-Hill, 1984; Peter Collier and David Horowitz, The Kennedys: An American Drama. Summit Books, 1984.

Arthur Schlesinger Jr., Robert Kennedy and His Times. Houghton **Mifflin**, 1978.

Philip Shenon, "Kennedy Aides Want '62 Crisis Papers Freed," New York Times. October 14, 1990; author interview with Philip Brenner, July 26, 1991.

Theodore Sorenson, Kennedy. Harper and Row, 1965; Spencer Rich, "**Sorenson** Nomination in Trouble," Washington Post. January 16, 1977; Anthony Lewis, "Who Really Owns the Papers of Departing Federal **Officials?**," New York Times. February 6, 1977; Michael R. Beschloss, Washington Post. July 28, 1991.

Arthur Schlesinger Jr., A Thousand Days: John F. Kennedy in the White House. Houghton Mifflin, 1965.

Roger **Hilsman**, To Move a **Nation**: The Politics of Foreign Policy in the Administration of John F. Kennedy. Doubleday, 1967.

John P. Roche, "The Jigsaw Puzzle of History," New York Times Magazine. January 24, 1971.

JOHNSON ADMINISTRATION

Lyndon B. Johnson, The Vantage Point. Perspectives of the Presidency 1963-1969. Holt, **Rinehart** and Winston, 1971.

Edwin Diamond, "The Johnson Version," New Yorker. September 28, 1970.

Doris **Kearns**, Lyndon Johnson and the American Dream. Harper and Row, 1976.

George **Christian**, The President Steps Down: A Personal Memoir of the Transfer of Power. **Macmillan**, 1970; Columbia Journalism Review. September-October 1971.

Townsend **Hoopes**, The Limits of Intervention: An Inside Account of How the Johnson Policy of Escalation in Vietnam Was Reversed. McKay, 1969; also see **Hoopes'** testimony in the House of Representatives Government Operations Committee, "Review of the President's National Security Decision Directive 84 and the Proposed Department of Defense Directive on Polygraph Use," hearing, October 1983.

House of Representatives Government Operations Committee, "U.S. Government Information Policies and Practices -- the Pentagon Papers," part 1, hearings, June 1971.

W.W. Rostow, The Diffusion of Power: An Essay in Recent History. Macmillan, 1972.

NIXON ADMINISTRATION

Richard Nixon, **RN**: The Memoirs of Richard Nixon. Grosset and Dunlap, 1978.

The Pentagon Papers case is reported at 403 U.S. 713; House of Representatives Government Operations Committee, "U.S. Government Information Policies and Practices -- the Pentagon Papers," parts 1 and 2, hearings, June 1971.

Sanford J. Ungar, The Papers and the Papers: An Account of the Legal and Political Battle Over the Pentagon Papers. Dutton, 1972.

Stephen E. Ambrose, Nixon: The Triumph of a Politician 1962-1972. Simon and Schuster, 1989.

Federal Register. July **5, 1991**, page 30774; interview with Clarence Lyons at the Nixon archives, July 12, 1991.

House of Representatives Government Operations Committee, "Access to the Nixon Presidential Materials Should Be Governed by NARA Regulations, Not OMB or Department of Justice Actions," Report 99-961 (1986).

The Nixon ownership case is reported at 433 U.S. 425. In another phase of the case, a federal judge issued a decision December 13, 1991, reported at U.S. District LEXIS 17753.

FORD ADMINISTRATION

Gerald Ford, *A Time to Heal: The Autobiography of Gerald Ford*. Harper and Row, 1979; the court case is reported at 471 U.S. 539.

Victor **Navasky**, letter to the editor, *Publishers Weekly*. July 5, 1991.

CARTER ADMINISTRATION

Jimmy Carter, *Keeping Faith*. **Bantam**, 1982; *New York Times*. October 26, 1982; *Washington Post*. December 19, 1982.

Zbigniew Brzezinski, *Power and Principle: Memoirs of the National Security Adviser, 1977-1981*. **Farrar**, Straus, **Giroux**, 1983.

The Carter administration document on disposition of papers is reprinted in the National Archives and Records Administration report of the Task Force on **NARA** Responsibilities for Federal Records and Related Documentation, March 1988; *New York Times*. December 18, 1980, and January 15, 1981.

REAGAN ADMINISTRATION AND PRESIDENTIAL RECORDS ACT

Constantine C. Menges, *Inside the National Security Council: The True Story of the Making and Unmaking of Reagan's Foreign Policy*. Simon and Schuster, 1988. The author has read the majority of the Reagan administration insider memoirs published so far, and written about some of them. The best review essay the author has seen is by Frances **FitzGerald**, *New Yorker*. January 16, 1989.

Steven Emerson, "The Secrets of North's Notebooks," *New York Times*. June 17, 1988.

House of Representatives Government Operations Committee, "Presidential Records Act of 1978," hearings, February-March 1978; Richardson Preyer in **Congressional Record**. October 10, 1978, **page H1 1927**.

Federal Register. January 23, 1989; Morris B. Schnapper, *Manhattan Lawyer*. July 25, 1989; interviews with John W. Fawcett of the National Archives, July 12, September 3, 1991, and January 3, 1992.

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