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EXPLORING THE RELATIONSHIP BETWEEN U.S. GOVERNMENTAL SECRECY AND DEMOCRACY: CLASSIFICATION, CULTURES OF SECRECY, AND THE PUBLIC SPHERE

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A Dissertation APPROVED FOR THE
DEPARTMENT OF COMMUNICATION

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Abstract

For the past 60 years government secrecy in the form of officially classified documents has increased dramatically. According to the Information Security Oversight Office there were slightly fewer than 16 million classification decisions in 2004 alone. In what way does classification impact representative democracy as it is practiced in the United States? This dissertation employed hermeneutic analysis to investigate the phenomenon of government secrecy and its effects on democracy. Through the analysis of executive orders, legislation, and official documents, the nature and scope of government secrecy was explored. The internal effects of secrecy on the information flow between governmental agencies were investigated, as well as the external effects of secrecy between the government and its constituents. Findings suggest that overclassification not only negatively impacts the internal communication networks of the government, but also, negatively impacts the public sphere, as citizens are denied access to information vital to informed decision making. The effect of secrecy on civil liberties is also examined. What emerges from this comprehensive hermeneutic analysis is a simple pattern consisting of a threat, followed by increased secrecy and legislation, which finally results in the infringement on individual and group civil liberty. Historically, this pattern frequently repeats itself.

Chapter 1

Introduction

For the past eighty years, U.S. government secrecy has proliferated at an alarming rate. In 2003, the Information Security Oversight Office[1] documented just over fourteen million original and derivative classification decisions for that year (ISOO, 2003)—the number of existing classified documents is invariably much larger. In 1997, the Commission on Protecting and Reducing Government Secrecy, alarmed by the 5.7 million classified documents in 1996, concluded its three and a half year study by announcing that the governmental secrecy system had reached the point where it was threatening to undermine the democratic system of the United States. The severity of this issue cannot be found in the simple recitation of ever inflating numbers; however, the breadth of this issue is fully realized by a closer examination of events, such as September 11, 2001, where the veracity of warnings by previous secrecy committees and researchers decrying the threat of overclassification to national security was tragically realized. According to the Commission on Protecting and Reducing Government Secrecy, the effects of government secrecy are numerous, and all have serious implications for democracy. Lack of government accountability, a cornerstone of a representative democracy, combined with increasing infringement on the civil liberties of the populace, are just two of the more critical symptoms of governmental secrecy. These products of the secrecy system, along with decreased national security, do, in fact, provide clear and present dangers to democracy.

[1] The Information Security Oversight Office was established by Executive Order 12958. The ISOO is a component of NARA—the National Archives and Records Administration. The mission of the ISOO is to oversee security classification programs and report the activities of those programs to the President of the United States of America.

The impetus of this dissertation is the fundamental need for the citizens of a democracy to have access to information. What happens to a representative democracy when the classification system and the ensuing culture[2] of secrecy systematically control the flow of information? Using concrete examples of bureaucratic secrecy and concrete examples of how secrecy threatens security, accountability, and civil liberties, this dissertation seeks to define and understand the impact of governmental secrecy on a political system predicated on transparency and the free flow of information among all participants.

Government secrecy is not a new topic. Others have discussed aspects of the issue—focusing on specific components, such as the intelligence community (Odom, 2003; Powers, 2002; Shulsky & Schmitt, 2002; Steele, 2001; Berkowitz & Goodman, 2000, 1989) or the dangers of secrecy for democracy (Rozell, 2002; Theoharis, 1998; Moynihan, 1997; Katz, 1987; Hoffman, 1981; Orman, 1980; Cox, 1975; Rourke, 1961). This dissertation seeks to reify certain elements of previous research, investigate secrecy through a communicative lens, and expand the discussion to clearly identify and describe cultures of secrecy, while examining the broader effects of government secrecy on democracy. Additionally, a recommendation will be made for the creation of a statutory basis for the classification system, as well as the formation of a coalition of concerned citizens to work with the government to assist in the declassification of information.

According to Article 1, Section 5 of the United States Constitution, “each house shall keep a Journal of its Proceedings, and from time to time publish the same, excepting

[2] The word culture in the singular is used here to refer to all government individuals and groups with the authority to classify or access classified information. However, as will be demonstrated in chapter four within the larger culture there exists many subcultures collaborating and competing with one another.

such Parts as may in their Judgment require Secrecy" (Hamilton, Madison, & Jay, 1961, p. 511). According to the Bill of Rights,

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of people peaceably to assemble, and to petition the Government for a redress of grievances. (Hamilton, Madison, & Jay, 1961, p. 522)

These two quotations from the U.S. Constitution and the Bill of Rights provide the central question for the current study. The second citation establishes the fundamental rights of citizens of the United States. The ability to speak freely and to petition the government is an essential aspect of a democratic system of governance. Yet, the quotation from the Constitution acknowledges that, on certain occasions, governmental secrecy may be a necessity. How can an individual participate in a democratic government if he or she is denied access to records of governmental proceedings? What is the relationship among governmental secrecy, governmental accountability, national security, citizens' participation, and civil liberties? This research seeks to illuminate the secrecy system by examining it from multiple angles.

Over the course of this research the following questions will be addressed; what is the current manifestation of the U.S. classification system and how did it develop? How does a governmental department with classification authority establish policies and procedures, and how does it articulate and create a classification philosophy? How does overclassification affect national security? How does classification impact government accountability? How does the control of information through secrecy affect the ability of citizens to engage in rational public discourse? Are civil liberties affected by government secrecy?

This dissertation examines the impact of governmental secrecy by focusing on the highly sophisticated document classification system. This study also examines the legislation, executive orders, and governmental commissions over the years which have reified or critiqued government secrecy. Additionally, this dissertation discusses how during times of crisis, secrecy proliferates, and how this, in turn, has serious implications for the civil liberties outlined in the Bill of Rights.

Upon review, it is apparent that while the number of classified documents has been steadily increasing for the previous eighty years, rapid increases in classification follow a prescribed pattern. Firstly, there is a threat, either real or perceived. Examples of threats include World War II, the Cold War, Vietnam, and the current war on terror. Secondly, in order to increase national security, legislation is passed and agencies are created or organized. The Espionage Act, the Atomic Energy Act, the National Security Act, the Department of Homeland Security, and the Patriot Act are all examples of this second step in the process. Thirdly, governmental secrecy increases. New agencies with new powers of classification, and old agencies with new methods of surveillance (to be used both nationally and internationally) begin to add to the growing number of extant classified documents. Oftentimes, steps two and three occur concomitantly.

Communication Studies

Although aspects of this dissertation touch on a wide range of academic disciplines such as political science and sociology, there are fundamental reasons why this is a communication issue and can best be studied as such. This dissertation is about the free flow of information, the systematic control of information, and the communicative links not only between the government and the governed, but within the government itself. Issues of information flow, and the relationship among information flow and power and control are traditionally the domain of communication researchers—particularly in organizational settings. In addition to Habermas (1991; 1987; 1984;), whose critical, rhetorical approach is synchronous with communication, the works of organizational communication theorists such as Mumby (1988), Deetz (1992), and Putnam, Phillips, and Chapman (2001) on issues of information flow, information distortion, and the metaphor of voice, contribute to this discussion. Though Weber is one of the founders of sociology, his works are imminently connected with organizational communication.

There are other linkages between this topic and communication research that need to be delineated. Firstly, a democracy is founded on the belief of representation of the people, by the people, and for the people. Citizens have a responsibility to engage as active participants in their own governance. Free and open debate is a necessary condition for democracy. How citizens participate in democracy, what messages they construct, and what channels they use to distribute those messages are all elements of communication; yet, government secrecy seeks to limit democratic debate by denying public access to information. It is the systematic control of information, which manifests itself in information distortion or in the concealing of information that establishes this issue as a communication issue. Who better than a communication scholar to understand and address the issue of information control and its implications on rational debate? The communication scholar, while cognizant of the structures and institutions that permeate phenomena, in much the same way that sociologists and political scientists are cognizant of those structures, can focus on ways in which communication produces and reinforces the conditions of governmental secrecy in a democratic society.

Secrecy and Democracy

Secrecy has long been a tool of manipulation and information control used by "insiders," or those in possession of knowledge, over those on the outside. Accounts of religious organizations, dictators, or ancient and modern governments, detailing attempts at control through information distortion or information hoarding are readily available. Examples include the works of Machiavelli (1998) and Sun Tzu (2002). At first glance, a common dichotomy holds that information control is an essential characteristic of totalitarianism, while openness is a characteristic of democratic comportment. However, closer examination may reveal that the opposite is true. A dictatorial regime, in which force is the primary means of control, may not need rigid control of information; while a democracy, whose idealized form envisions the free flow of information and rational decision making among all participants, may actually, in its realized form, require information control, distortion, and manipulation in order to control constituents. According to Chomsky (1989), "the general public must be reduced to its traditional apathy and obedience, and driven from the arena of political debate and action, if democracy is to survive" (p. 3). This is not Chomsky's thought on democracy, however, but rather his interpretation of a 1975 study by the Trilateral Commission, which proclaimed a "crisis of democracy" resulting from marginalized social groups organizing and expressing concerns through media (Chomsky, 1989). However, regarding government secrecy, Chomsky (2002) does say, "government secrecy is not for security reasons, overwhelmingly—it's just to prevent the population here from knowing what's going on" (p. 10). A central component of Chomsky's idea of mind control in democratic societies involves the complicity of the mass media apparatus in reducing the range of possible talking points until the only choices are those which reflect elite opinion. The interrelationship of the media, democratic ideology, the public sphere, and civil liberties will be discussed in chapters five and six.

Secrecy Then, Secrecy Now

Are information control and secrecy compatible with democratic ideology? At the most basic level, increased secrecy limits the ability of citizens to participate in the democratic system. "Democracy requires an informed citizenry, a free press, the public's right to know, and institutional checks and balances. These ideas cannot be achieved without a free flow of information" (Melanson, 2001, p. 1). "The risks of giving some useful information to our adversaries do not compare with the risks to our democracy from secret government" (Cox, 1975, p. 61). While secrecy seems irreconcilable with democracy, secrecy and classification have existed throughout the history of the United States republic. Thus, another important question, addressed concomitantly in this dissertation with the question of secrecy's role in, and implications for, democracy, is the question of how secrecy has existed and evolved in the United States historically?

How different are the attitudes and actions of recent presidents concerning democratic participation compared with those of early founders and presidents, such as Thomas Jefferson? "In 1983 President Reagan issued Executive Order 12333, arguably the most restrictive pro-secrecy directive in the last three decades" (Melanson, 2001, p.

3). According to Milbank and Allen (2003), President G. W. Bush referred to the role of secrecy in government by stating,

> Our nation's progress depends on the free flow of information. Nevertheless, throughout our history, the national defense has required that certain information be maintained in confidence in order to protect our citizens, our democratic institutions, our homeland security, and our interactions with foreign nations. (p. A15)

In contrast to Bush, Jefferson (as cited in Melanson, 2001) states, “I know of no safe depository of the ultimate powers of society but the people themselves, and if we think them not enlightened enough to exercise their control within a wholesome direction, the remedy is not to take it from them but to inform their discretion” (p. 1). On the one hand, President G. W. Bush acknowledges the important balance between free flow of information and the need to protect the citizenry. However, it is important to note that there is a great difference between acknowledging this balance and enacting legislation to support it. The legislation offered in the last few years has leaned toward greater secrecy, rather than increased transparency. Chapter two will include a detailed analysis of Executive Order 13292, G. W. Bush’s executive order on the classification system, and the ways in which EO 13292 contribute to secrecy will be explored.

In 2002 and 2003, three new federal departments were granted the opportunity to classify documents—three recent designations, under Executive Order 12958, provide for the Administrator of the Environmental Protection Agency to classify information as “Secret;” the Secretary of Agriculture to classify information as “Secret;” and the

Secretary of Health and Human Services to classify information as "Secret."[3] While giving three governmental employees original classification authority may appear innocuous, it is important to realize that once an individual has classification authority, they, in turn, may grant classification ability to anyone who works in that department or agency. Also, decisions to overrule the mandatory declassification of documents twenty five years or older has been challenged. Executive decisions such as these effectively undermine the legitimacy of any statements made by the current administration emphasizing their belief in the free flow of information.

What happens when the government of a country founded on the principles of freedom and openness becomes reliant on systems and cultures of secrecy? Certainly threats to a government can come from both external and *internal* sources, but what happens to a democracy when tremendous resources are expended in the effort to monitor its own citizenry—unbeknownst to the citizens? What happens when information is gathered on citizens and then classified and made inaccessible to the public? The concern over government secrecy and domestic spying is not a futuristic, worst case scenario, proposition. On November 15, 2003, members of the National Lawyer's Guild conducted a meeting at Drake University in Des Moines, Iowa. The following day, during an anti-Iraq war protest titled "Stop the Occupation! Bring the Iowa Guard Home!," twelve participants were arrested. In January of 2004, the U.S. Justice Department, via a federal judge in Des Moines, Iowa, issued five subpoenas in the case. Four subpoenas were issued to four of the peace activists attending the demonstration wherein the arrests were made. The fifth subpoena was issued to Drake University and asked "for information

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[3] The three tiered levels of classification—"Top Secret," "Secret," and "Confidential," as well as the distinct "Restricted" category of classified information, will be discussed in more detail in chapters two and three.

about the anti-war conference and records of the National Lawyers Guild local chapter" (Eckhoff & Siebert, 2004, ¶ 5). The full details of the FBI's efforts to investigate the members of the National Lawyer's Guild chapter at Drake University will be discussed in chapter six. The Drake University subpoenas are being cited as a natural extension of the broad surveillance powers established via the passage of the Patriot Act, and as such, the surrounding events will be examined as an inevitable extension of the government secrecy system.

The tenuous nature of the habitual conflict between civil liberties and protection should foster and reify democracy as active constituents discuss the appropriate level of balance between the two. Public debate concerning what Americans are willing to give up in return for security should be an ongoing discussion among the populace. Instead, recent United States' history repeats itself, as those in power rush to enact laws (i.e., Patriot Act I) and form agencies and departments (the Department of Homeland Security) that further impinge upon personal freedoms in exchange for a perceived increase in personal and national security. Are we really safer with an extra roll of duct-tape and plastic sheeting in our garage?

While the decision to organize several important governmental agencies such as the Coast Guard, the Transportation Security Administration, and the Federal Emergency Management Agency, under one umbrella will hopefully led to increased coordination and information sharing, there is no evidence that this will be the result. Additionally, the Department of Defense intelligence agencies, the Central Intelligence Agency, and the Federal Bureau of Investigation, to name a few, all operate outside the umbrella of the

Department of Homeland Security. What evidence exists to indicate increased information sharing within and among these various organizations?

In regards to twentieth and twenty first century American history, increased threat, both real and perceived, has always superceded increased governmental secrecy and increased investigation of its own citizenry. The Espionage Act of 1917 followed World War I; the Atomic Energy Act of 1946, which declared some information as being "born secret," followed World War II, as did the Administrative Procedure Act of 1946; and the formation of the Department of Homeland Security followed the terrorist attacks of September 11, 2001. Instead of public debate, it is left to select media members, special organizations like the ACLU, and intellectuals, parties already dismissed and marginalized by many in control of the government, to raise awareness and support against the infringement of personal liberties.

Fortunately, at the same time that government members were responding to real and perceived threats by increasing governmental regulation and investigation of its constituents, other groups, even within the government, were organizing to investigate the effects of increased secrecy, infringement of civil liberties, and governmental regulation. In 1955, the Commission on Government Secrecy formed to examine the increases in governmental classification procedures. In 1966 and 1974, groups within and without government worked to get the Freedom of Information Act passed (Theoharis, 1998; Melanson, 2001). Following the 1974 amendments to the Freedom of Information Act, the release of formerly classified documents was critical in revealing to the public "how presidents had relied on the intelligence agencies to further their policy interests and how they had authorized programs and procedures of questionable legality and morality” (Theoharis, 1998, p. 6). From 1994-1997, the Commission on Protecting and Reducing Government Secrecy convened (Moynihan, 1998). While these select Commissions and Acts are encouraging signs that governmental secrecy is an important topic of discussion, the findings and suggestions from these groups, and more importantly, the dismissal or lack of interest in these findings and suggestions, are less than encouraging. For example, the 1955 Commission, while agreeing that classified information was proliferating dangerously and that the unnecessary classification of documents that did not merit classification was a problem to be stringently avoided and which should possibly carry penalties, only produced two legislative proposals—one which focused on penalties for individuals both within and outside of government who disclose classified information, and the second which proposed that evidence discovered through wiretapping should be admissible in court (Moynihan, 1998). Over the past thirty years Frank Church, David Boren, and John Warner have all introduced legislation urging reforms or studies of the ways in which information is classified and controlled. Neither Church nor Boren saw his legislation pass. Warner’s legislation passed and led to the formation of the Moynihan Commission on Protecting and Reducing Government Secrecy. Unfortunately, despite comprehensive studies and recommendations, no serious legislative reform of the Intelligence Community or Secrecy system has taken place. “After three decades of such episodes, no fundamental reform has occurred” (Odom, 2003, p. 2). Thus, the willingness to “play it safe” and overclassify documents not only continues, but continues to increase. Also, in just half a decade following the 1997 Commission’s proposal to streamline and improve the classification system in order to both increase protection of classified documents and reduce the number of documents being classified, the number of documents being classified and the number of agencies with the power to classify documents has reached an all time high—14,228,020 documents (ISOO, 2003).

On a certain level, it seems likely that secrecy and classification would increase following major calamitous events such as a World War or a devastating act of terrorism. However, on another level, it is important to realize that humankind and human societies have always been threatened by other groups through methods such as warfare and political revolutions. Clearly, the United States is no stranger to the possibility of dramatic political upheaval. From battling for its own independence, to surviving and thriving following a brutal civil war, to acting as major participants in two World Wars, the people of the United States should be well aware of the perpetual challenges a society faces. According to Moynihan (1998), Theoharis (1998), Quist[4] (2002), Cox (1975), and others, United States democracy maintained a high degree of openness during its first one hundred and forty years, only to experience an ever-escalating level of governmental secrecy in the last eighty-five years. "When Woodrow Wilson was inaugurated as president in 1913, he inherited a system of government that valued openness over secrecy" (Moynihan, 1998, p. 81). If external and internal threats have always existed as a known possibility, then what makes the last eight decades so different from the previous fourteen?

One possible explanation for escalating secrecy in governmental behavior stems from the invention and proliferation of weapons of mass destruction. Many will point to

[4] A. S. Quist is one of the authorities on the history and uses of classification in the United States. Quist was commissioned by the Department of Energy to chronicle the development of the U.S. classification system. Volumes 1 and 2 of his *Security classification of information* were invaluable to the present discussion.

inventions such as the A-bomb and the H-bomb and to the need of keeping these weapons out of the wrong hands as clear justifications for secrecy and a system of classification. It is also true that for the duration of the Cold War, the United States was the focus of a sustained infiltration program by members of the Soviet Union (Shils, 1996), and that these infiltration attempts were designed to collect sensitive information on the United States. On the surface, the argument that the existence of nuclear weapons makes the world of the twentieth and twenty-first centuries much more dangerous than previous centuries simply does not survive scrutiny. Can nuclear weapons kill more people, more quickly? Certainly. However, the end result of thousands dead is no different than the aftermath of the American Revolutionary War, the Civil War, or the two World Wars. I am sure that Native Americans would agree that despite the temporal and technological differences between historical warfare and modern warfare, the end results are very nearly the same. Can these two concerns, nuclear weapons and espionage, be addressed in a way that actually supports less secrecy rather than more? Over the course of this dissertation, this is one of the questions which will be addressed.

A passage by Quist (2002), author of perhaps the most essential guide to the history of classification in the United States, provides another explanation, assisted by logical deduction, for the increase in secrecy.

> This right of a government to keep certain information concerning national security (secrets) from most of the nation's citizens is nearly universally accepted. Since antiquity, governments have protected information that gave them an advantage over adversaries. In wartime, when a nation's survival is at stake, the reasons for secrecy are most apparent, the secrecy restrictions imposed by the

> government are the most widespread, and acceptance of those restrictions by the citizens is broadest. In peacetime, there are fewer reasons for secrecy in government, generally the government classifies less information, and citizens are willing to accept security restrictions on information. (p. 1)

Thus, according to Quist's statement regarding the increase in secrecy during times of war, the combination of World Wars I and II, the 44 year Cold War (1945-1989), the 18 year Vietnam War (1955-1973), and the current war on terror (2001-?), helps explain why secrecy has continued to proliferate over the past century. However, this logical derivation also reveals the central problem of the secrecy system in a democracy.

Engaging in warfare is clearly one of the most critical decisions a country can experience. Rational debate and discussion are necessary components of critical decision making. Accurate information is necessary for rational debate and discussion. The secrecy system prevents access to information. One of the assumed benefits of democracy is a government which is accountable to the people for its actions. In the absence of access to information and the absence of access to the decision making process, the populace is unable to hold the government accountable. Public participation and government accountability are two of the focal points to be addressed in chapter five**.**

The very importance of this dissertation stems from the examination of the founding principles of our democracy and the progressive increases in governmental secrecy. It is simply too easy to dismiss burgeoning levels of secrecy as natural results of an increasingly dangerous and violent world. Whenever there is an event of not inconsiderable consequences, it is apparent that a government could exploit the situation under the rubric of protection and use the situation to constrict personal freedoms or to spy on its citizenry. Once a threat can be established, then fear mongering and the rhetoric of justification become the primary tools for convincing people to give up their freedoms—some even do so willingly. One might say, “I don’t care if they monitor my e-mail or study my credit card purchases, I don’t have anything to hide.” Although the world has clearly always held dangers and threats, there have been many times, particularly through the 19th century, that our democracy was surprisingly transparent and open for review and discussion by politicians and non-politicians. This discussion is focused on degree of openness in terms of policies and procedures. Certainly the government was not “open” to women and many minorities, but what is relevant to this discussion is that regular citizens and members of the press could gain access to governmental proceedings and even military documents with minor delay. As classified documents continue to mount and people become dissociated or disenfranchised from democratic decision making, it is important to ask the following questions:

> What impact does increased classification and governmental secrecy have on our democracy?
>
> What factors are involved in governmental secrecy and how do these factors intersect to affect the public sphere?
>
> Who decides which documents are to be classified? What are the procedures for classification?
>
> What are cultures of secrecy, and what role do they play in the classification process?
>
> Will the current trends in classification actually result in decreased security and protection as previous commissions have suggested?

How does government secrecy impact civil liberties?

How can government institutions be held accountable when millions of documents are classified each year?

If reform is needed in the classification system, what solutions are available to implement?

These are just a few of the issues to be investigated over the course of this dissertation. The founding fathers were courageous in their devotion, though not always in their practice, to human rights and were fearful of a non-transparent government like the one they had just abandoned. The foundation for this study is the fundamental discussion between fear and courage, in much the same way as our country's birth was founded in the self-same discussion. The question hinges between the courage to uphold the Constitution through the protection of civil liberties and governmental transparency, and the fear of internal and external threats, resulting in domestic spying increases and decreases in personal freedoms and informed public discussion. Simply put, it is the fear of perceived threat versus the courage to maintain those aspects of our society that make us unique.

This dissertation is not intended to denounce those agencies and institutions, such as the Federal Bureau of Investigation or the Department of Defense, or to undermine the efforts of the individuals in those institutions who work hard to protect everyday citizens and the security of this nation—rather it is an explication of the current state of the classification system and an investigation into the effects of secrecy on democracy. As such, this dissertation informs individuals seeking to understand secrecy and democratic participation and decision making.

What is Secrecy?

Secrecy is the imploding of the perspectival—the fear that trust must give way to terror and paranoia. This is a dangerous condition in which a democracy actually breaks down. A situation is created where those in power no longer trust or believe that those who elected them to power have the rational ability to participate in the process of democratic decision-making. According to President Clinton (as cited in Siebert, 1997), “It is a fundamental principle that an informed citizenry is essential to the democratic process and that the more the American people know about their government, the better they will be governed” (¶ 2). Not necessarily faith in the established politicians or members of the bureaucracy, but more faith in our own ability to recognize that continually undermining our Constitution and our personal freedoms is a more likely threat to our society than the occasional, or even frequent, terrorist. And while the stakes and consequences of terrorism on our own soil have risen to frightening levels, it is through the upholding and perpetuation of government accountability and civil liberties that we increase the likelihood of spreading peace worldwide, not through secrecy, warfare, and manipulation.

According to Shils (1996),

> Secrecy is privacy made compulsory. With more severe sanctions for the disclosure of information, more emphatic demands for its withholding from persons authorized to receive it, secrecy appears to be an extension of privacy. It

> is privacy with higher, more impassable barriers. Yet secrecy is the enemy of privacy. In order for secrets to be safeguarded, privacy must be invaded. (p. 201)

Moynihan (1998) and the other members of the Commission for Protecting and Reducing government secrecy built on the ideas of Weber and Shils and defined secrecy as "a form of regulation" (p. 59). "In the United States, secrecy is an institution of the administrative state that developed during the great conflicts of the twentieth century" (Moynihan, 1998, p. 59). Of course, Moynihan knew that forms of secrecy had always existed; however, he was making a distinction specifically between earlier forms of secrecy and the institutionalized, bureaucratic, regulated secrecy of the modern industrial state. It is this conceptualization of secrecy as a modern instrument of bureaucracy that is under investigation here. Senator Moynihan described secrecy as a kind of bureaucratic regulation. If secrecy is regulation, then the non-transparent democracy it births is actually a kind of darkness. It is a darkness that threatens to envelop its democratic constituents in a fog of secrecy and misinformation. A non-transparent government no longer shares pertinent information with its constituents. A non-transparent government distorts or hides information from its constituents.

In America, secrecy takes several forms. The most obvious manifestation of the secrecy system is the 14 million documents classified per year and the untold billions of pages of already classified documents. Secrecy occurs anytime that government decisions are hidden from the public and the press, as well as from other government departments or agencies. Although there are many different types of secrecy, secrecy which results from the United States governmental classification system is the primary focal point of this research--secrecy primarily established and regulated via executive orders and through the Atomic Energy Acts of 1946 and 1954. *Secrecy*, as well as *classification* and *security*, will be further examined and defined in chapter two.

Why Secrecy is a Problem

Secrecy poses numerous problems for the citizenry of a free and open society. Firstly, as previously mentioned, governmental secrecy denies access to information which may be necessary in order to have rational and thoughtful decision making. Quist (2002) identified one of the negative consequences of classification as “a citizenry not fully informed on governmental activities” (p. x). According to Cox (1975), “the bloated secrecy system has eroded our democratic society by providing for corruption, conspiracy, disastrous decision making, and incredible economic waste and inflation” (p. 61). The free flow of information is a necessary condition for government accountability. According to Thompson (1997), during a Congressional hearing on government secrecy,

> A democracy depends on public officials being accountable to the people. The current culture of secrecy developed and managed without Congressional involvement has continued without anyone being truly accountable for its failures and excesses as well as its success. (p. 3)

Simply put, governmental secrecy reduces the ability of the constituents to effectively hold the government accountable. It would be hard to dispute the claim that some secrets need to exist in order to preserve our safety. However, there must exist a *balance* between the public’s right to know and our national security. And, while this *balance* is touted and idealized, it is a goal of this dissertation to demonstrate that the*balance* has been lost.

According to Lyndon Johnson, “A democracy works best when the people have all the information that the security of the nation permits. No one should be able to put up curtains of secrecy around decisions that can be revealed without injury to public interest” (Melanson, 2001, p. 246). The amount of information withheld from the American people has reached staggering proportions. As of 2001, there were nearly 8.6 million documents being classified per year (ISOO, 2003). By 2002, that number had grown to 11.2 million classification decisions (ISOO, 2003). By 2003, with original classification increases manifested in nearly every classifying department, such as the Department of Defense reporting a 27 percent increase in classification and the Department of Justice reporting an increase for the seventh year in a row, the total number of classified documents grew to 14.2 million classification decisions (ISOO, 2003). Smaller departments, such as NASA (reporting a 224 percent increase in classification) and the Department of Health and Human Services (reporting a 150 percent increase in classification), further demonstrate the overall upswing in classification activity (ISOO, 2003). These increases seem to indicate that we have most assuredly lost the balance between secrecy and openness. In fact, the pendulum has swung so completely to the side of greater governmental secrecy that it is reasonable to wonder if a balance will ever again be achieved.

Events of the past 10 years perhaps elucidate best how imbalanced the situation has become. The Information Security Oversight Office, formed during President Clinton’s first term in response to concerns over the proliferation of governmental secrecy, has kept records of the number of classified documents, both originals and renewals, since 1993. According to the ISOO, there were 6.4 million classified documents in 1993; 6.5 million in 1997; and 14 million in 2003.[5] Prior to these years, no official record keeping government entity existed to compile data on classification, thus exact numbers from previous years are unavailable. While six million documents alone should be alarming, and, in fact, was to Senator Moynihan and the rest of the members of the Commission for Protecting and Reducing Government Secrecy, the more recent number of 14 million should draw a collective gasp from the population. As the ISOO[6] points out, much of the increase is related to the proliferation of electronic mail, but that does not change the fact that classified documents have reached unmanageable and, as will be discussed later, dangerous levels. While electronic exchanges within and between agencies have contributed to the classification proliferation trend, there is a growing concern that the general pattern regarding classification is towards greater secrecy. While the total declassification of all documents would restore openness, total declassification is unlikely and, in many ways, impractical. In fact, it is worth speculating whether or not complete and total declassification could restore the faith of citizens in government, improve the efficiency of government, and improve the ability of those agencies tasked with protecting the populace and ensuring national security.

If according to Bacon (1963), "[h]uman knowledge and human power meet in one" then it stands to reason that the systematic control of knowledge is one of the primary methods of both maintaining and exercising power, as well as limiting the power of those without access. Throughout his works, the Essays, the Advancement of

[5] The ISOO reports on 2001 and 2002 reflected calculation errors due to an inability to adequately count classification decisions related to electronic (computer) communication. Therefore, the original numbers for those years, 33 million in 2001 and 24 million in 2002, were inaccurate. In 2003, the ISOO recalculated the figures for those years.

[6] Table 1 in the appendix documents the yearly classification decisions from 1993 through 2003, as well as listing percentages of specific agencies and departments contributions to the overall classification decisions for the year.

Learning, and the New Organum (1963; 1996), Bacon frequently explored the relationship between power and knowledge, believing that access and control of knowledge is in itself a form of power. However, the emergence of democracy, while not decreasing the accuracy of the knowledge/power link, ideally fostered the opening up and transference of knowledge, thereby increasing the power of the constituents to participate in self-governance. As a political ideology predicated on equality, freedom, and open government, democracy ideally raises public knowledge and power rather than diminishing it. Chomsky (2002) sees a different development concerning democracy, power, and secrecy.

> That's the standard way you cloak and protect power: you make it look mysterious and secret, above the ordinary person—otherwise why should anybody accept it? Well, they're willing to accept it out of fear that some great enemies are about to destroy them, and because of that they'll cede their authority to the Lord, or the King, or the President or something, just to protect themselves. That's the way governments work—that's the way *any* system of power works—and the secrecy system is part of it. (p. 11)

While more people than ever before have the right to actively participate in US democracy, classification and government secrecy effectively place limits on the amount of information accessible to citizens regarding the activities of their country. This decreases the ability of the citizenry to hold the government accountable. Although the media's role is only one small portion of this dissertation, it seems exceedingly ironic that, at a time when the United States is technologically capable of reaching nearly every citizen through mass media channels, and thereby informing them of important discussions and decisions, secrecy is at an all time high, and rational public discussion has seemingly been replaced by distracting stories about celebrities and personalities rather than politically relevant information. Even on 24 hour news channels, many shows dedicated to politics, such as *Hardball*, *Crossfire*, *Hannity & Colmes*, and *the O'Reilly Factor*, are populated by hosts and guests who seemingly encourage yelling, ad hominem attacks, and either-or logic.

Chapter Outline

Topic areas for this dissertation include the history of the modern classification system, analysis of various executive orders relating to secrecy, a case study of the Department of Energy's policies, procedures, and philosophy concerning classification, secrecy as information control and information distortion, cultures of secrecy, and secrecy and civil rights. No single theory characterizes this study. Rather, there are multiple theories guiding this analysis. However, the primary theories and concepts to be discussed include Habermas' public sphere, Bok's secrecy, Chomsky's media critique and mind control in democracy, Weber's analysis of bureaucracy, and the organizational metaphor of voice. All of these theories are either directly or indirectly related to the systematic control of information through classification and government secrecy and its affects on the democratic republic of the United States. The methodology is a hermeneutic analysis of various texts. A specific chapter by chapter description of the dissertation follows, including a brief description of hermeneutics.

Chapter Two

This chapter provides an historical analysis of the origins of the modern U.S. classification system and will provide a chronicle of the system's growth over the past 80 years. After a brief account of secrecy throughout history, the emphasis will shift to the specifics of the U.S. classification system. There will be four primary areas covered in this chapter. Firstly, the early evolution of the system will be examined. This will be followed by a brief examination of the executive orders establishing and governing classification. These executive orders are the primary foundation of government secrecy, and as such they need to be discussed in detail. Accompanying the discussion of the evolution of the secrecy system will be a brief description of key U.S. and world events inextricably linked to the growth of the system. The Atomic Energy Act is the only other significant component of the secrecy system and the only one with a legislative basis. Details on the AEA will be presented in chapter three with an in-depth discussion of the Department of Energy. Thirdly, a detailed discussion of the methodology, hermeneutic analysis, utilized in this dissertation will be presented. Finally, this chapter will conclude with an analysis of the two most recent executive orders concerning secrecy, Executive Order 12958 and Executive Order 13292. Analysis of these executive orders will be used to determine how linguistic differences affect the classification system and to gain insight into the objectives and ideology of the individuals who created the executive orders. The Freedom of Information Act of 1966 and the revised FOIA of 1974, although important to this discussion, are not the primary subjects of this dissertation. The Freedom of Information Act is relevant in that it establishes procedures for citizens to gather information about their government, although that information must still be non-classified or, if classified, must then go through judicial review in order to be declassified. This dissertation focuses on the governmental rules and regulations which establish or operationalize the Executive Orders, legislative acts, and special congressional committees which make up the classification system.

Chapter Three

The classification policies, procedures, and guidelines of the Department of Energy are the objects of investigation in this chapter. Of the government agencies and departments with the authority to classify information contacted for this dissertation, the Department of Energy was the only one to respond and provide documents detailing classification. Even though the DOE decided that “no interviews would be granted” (R. Lyons, personal communication, June 25, 2003), the DOE did consent to provide me with limited distribution public information produced by the Department concerning classification created between 1993 and 2002. These reports amounted to over 1,800 pages of documentation concerning DOE classification, including the Openness Press Conferences of January and December, 1997; the Secretary of Energy’s Press Conferences of 1993 and 1996; declassification decisions from 1946 to the Present (2001); the DOE Openness Imperative; and volumes one and two of the Security Classification of Information reports written by Quist (2002). This chapter will examine how the DOE’s classification policies, shaped in part by the Atomic Energy Act of 1946 and the Atomic Energy Act of 1954, have evolved over the past 50 years. By focusing on the DOE’s procedures and policies, including the one aspect of their classification policy guided by legislation, this researcher will be able to develop insight into the ideology of those agencies and departments with the power to classify information. However, this focus will also show that while a statutory basis for governmental classification, as opposed to Executive decree, may be an improvement, it is no guarantee of transparency.

The primary methodology to be employed in this chapter, like the previous chapter, is a hermeneutic analysis of official DOE documents regarding secrecy. This chapter will also include a discussion of the relationship between secrecy and science. This was an area of concern for scientists during World War II, and it is still a salient issue today as scientists in areas like microbiology and nuclear physics seek to balance the scientific standard of openness with national security considerations.

Chapter Four

After providing a detailed history of classification via executive order (chapter two) and an examination of classification concerning nuclear energy (chapter three), this chapter will focus on a specific analysis of the cultures of secrecy within the government. Chapter four will continue to examine the classification system and will address issues ranging from the philosophy behind classifying documents, to the number of documents being classified, to the methods for training classifiers. While it is increasingly obvious that each agency with the ability to classify has slightly different training and procedures, there does exist some uniformity in the process. For example, most follow the tri-level distinction of “confidential,” “secret,” or “top-secret,” but complexity increases with the levels of security clearance which arise. An additional focal point of this chapter concerns the pertinent questions an original classifier should ask when choosing whether or not to classify a document. Other questions to be addressed in this chapter include whether or not the philosophy behind classification decisions differs from one agency to the next, how individuals are selected to participate in the classification system, how classified information is shared among different agencies, and what the dangers are of overclassification. The latter portion of this chapter will narrow the focus in order to examine the cultures of secrecy that exist within the various governmental agencies. In fact, Weber's (1958) analysis of bureaucratic culture will serve as the primary theoretical basis for the information in this chapter. In a bureaucracy, agencies compete for resources with one another. Resource competition creates situations where access to information and demonstrable worth are critical components of the process. Over the years, as various intelligence agencies have competed for resources, cultures of secrecy have arisen.

Additionally, this chapter will focus on how the flow of information between and within those agencies and departments with classification authority affects the system. How has the formation of the Department of Homeland Security impacted governmental secrecy? Why does the government believe that the formation of the Department of Homeland Security will cause the Central Intelligence Agency, the Federal Bureau of Investigation, the Department of Defense, and other organizations to suddenly become transparent with one another and increase their levels of information sharing? It is in this chapter where organizational communication theorists and their characterization of communication phenomena, such as voice and organizational control, will provide understanding. This chapter will also draw on organizational communication theories of networks and information flow to examine cultures of secrecy.

Chapter four will continue with a discussion of the cultures of secrecy and will examine how secrecy leads to a decrease in government accountability. By examining the writings of scholars and the findings of government committees, this chapter will explore various warnings and admonitions regarding the secrecy system. This chapter will use government documents, including the*Joint Inquiry into Intelligence Commun ity Activities Before and After the Terrorist Attacks of September 2001* (2002), to determine the impact of government secrecy, bureaucracy, and cultures of secrecy, on issues of national safety and government accountability. In this chapter, Weber's analysis of bureaucratic culture, as well as organizational theories concerning culture, power, and information flow, will serve as its theoretical foundation. The formation of cultures of secrecy is quite possibly the most significant aspect concerning classification and its role in national security. While other chapters will discuss the importance of openness and restrained secrecy in terms of democratic discussion, chapter four will discuss how and why cultures form. It will identify the ramifications that cultures of secrecy have on intergovernmental information flow and will document their subsequent relationship to public discourse, democracy, and national security.

Chapter Five

Secrecy, by its very nature, is a form of information control or information distortion. The question then must be asked—is governmental secrecy inherently dangerous to democracy? This chapter will examine the effects of secrecy on democracy. How does secrecy shape our public debate and policy decision making? The relationship between secrecy and democracy will serve as the theoretical foundation for this chapter. Habermas' (1999; 1997; 1991; 1987; 1984) theory of the public sphere and its deterioration in modern society will provide one component of the theoretical basis. Bok's (1982; 1978) conception of administrative, military, and state secrecy, Foucault's (2000) views on power and knowledge, as well as Chomsky's (2002; 1992; 1989; 1973) investigation of power and control in democratic society, will also contribute to the theoretical foundation. Finally, a closer examination of the principles of democracy, as established by the founders of the United States through the Constitution, the Bill of

Rights, the Federalist Papers, and other documents, will serve to illuminate the relationship between secrecy and democracy. Additional analysis will be provided through interview results with individuals currently involved with or knowledgeable of the U.S. classification system.

In essence, this chapter will describe the role of secrecy/openness in an ideal democracy, the role of secrecy/openness in the current U.S. system, and the communicative impact of information control on our Republic. Both a Republic and a Democracy are predicated on openness. Even in a system such as ours, the elected officials are supposed to make decisions which represent their constituents views and beliefs. Thus, a republic and a democracy are not completely differentiated in the strictest political scientific dichotomy but rather are characterized and sometimes used interchangeably as representative of two sides of the same coin. Additionally, this chapter will discuss the implications of governmental secrecy on a participatory democracy and a rational populace. In addition to Habermas, Bok, and Chomsky, this chapter will draw on enlightenment philosophers and statesmen, such as Jefferson, Madison, Bentham, Mill, and others. The importance of transparency for a democratic system will be discussed. Transparency is in direct contrast to the growing level of secrecy found in our current system.

Chapter Six

Using published accounts, both from within the government and from public sources, the relationship between secrecy and civil rights will be discussed in this chapter. At the macro level, the primary question revolves around whether or not citizens of the United States have a basic, inalienable right to access government information. At the most fundamental level, do U.S. citizens have a right to be informed of the actions of their government? Is freedom of information and free access to information a civil right? This is the large scale question to be addressed in this chapter. However, on another, and perhaps more alarming, level, is the question of how governmental secrecy impacts other civil liberties. Does the current secrecy system increase the possibility of domestic surveillance? In what ways does the Patriot Act expand the powers of governmental departments with classification authority? This chapter will discuss historical government decisions which directly relate to secrecy and civil liberties. The Alien and Sedition Acts of 1798 and the more recent Homeland Security Act and USA Patriot Act will be examined to determine their roles in the secrecy system and to see how they impact issues of civil liberty. This discussion, naturally, brings us back to the original question of the role of secrecy in democracy and whether or not there is an inherent contradiction between the two. How free and democratic is a society where the government keeps databases on its constituents? In addition to the works and words of our founding fathers, such as Jefferson and Madison, materials from others who have written on democracy, the public sphere, rational debate, and the right of democratic participation will be examined in this chapter. Two specific exemplars will be discussed in this chapter. One exemplar involves the federally issued subpoenas against anti-Iraq war protestors at Drake University in 2004, and the other exemplar involves the ongoing federal detainment of suspected al Qaeda operative Jose Padilla. These two cases demonstrate the relationship between secrecy and civil liberties.

Conclusion

Distinguishing between legitimate intelligence and unnecessary secrecy will be the subject of this final chapter. Its goal will be to take into account the information presented in the previous chapters and establish a vision of necessary and practical secrecy that is capable of coexisting with democracy. Building on the findings of previous government committees and commissions on secrecy, as well as combining relevant interview and textual data concerned with balancing secrecy and openness, this chapter will recommend courses of action which will encourage information sharing and public debate, rather than secrecy and the marginalization of public discourse. Other implications for the future of this topic will also be discussed, as will the limitations which have arisen from this present study.

Theoretical Foundations

Although the ideas and theories of numerous philosophers and scholars will be used throughout this paper, there are six theorists or concepts which will serve as the defining theoretical constructs for this dissertation. Beginning with Habermas' *The Structural Transformation of the Public Sphere* (1991), a central focus of this examination involves determining the impact of governmental secrecy on a participatory democracy. First published in Germany in 1962, this work outlines the essential characteristics of the public sphere and the consequences of its deterioration. Habermas' ideas will be employed when discussing the interface between secrecy and the public sphere. Weber's conceptualization of bureaucracy will be utilized to provide insight into the reification and perpetuation of governmental secrecy. Weber's work on bureaucracy has been used previously to analyze the secrecy system, most notably by Moynihan (1999) and Shils (1956). The specific focus of secrecy as a bureaucratic element is central to this discussion, and excepting the work of Moynihan (1999) and Shils (1956), has received little discussion. However, the effects of bureaucratic cultures of secrecy on *communication* within the classification community and between the classification community and other government officials and citizens, is the primary rationale for this present analysis. Democracy requires authentic reciprocity among its constituents. Unfortunately, the large amount of information controlled and distorted by the secrecy bureaucracy severely impacts the natural democratic development of habitus and community. Additionally, the work of several organizational theorists, including Mumby (1988), Deetz (1992), and Putnam, Phillips, and Chapman (2001), on information flow, organizational control, and the metaphor of organizational voice, will prove beneficial in further defining secrecy and clarifying how it operates. Furthermore, Foucault's (2000) analysis of power will help explain some of the organizational aspects of the classification system and the relationship among power, knowledge, and democracy. Chomsky's theories on media and democracy are central to this dissertation. Brief discussions of each of these ideas will follow in order to justify their inclusion as tools for understanding the present research. Utilitarianism, as conceptualized by Bentham (1931; 1969), explains many of the operational elements of the secrecy system and will therefore be discussed in the present study. Finally, Bok's (1982) analysis of secrecy and the ways in which secrecy operates and impacts organizations and relationships will also provide theoretical significance to the present discussion.

Habermas and the Public Sphere

According to Habermas (1991), "the bourgeois public sphere may be conceived above all as the sphere of private people come together as a public" (p. 27). These private people “soon claimed the public sphere regulated from above against the public authorities themselves, to engage them in a debate over the general rules governing relations in the basically privatized but publicly relevant sphere of commodity exchange and social labor” (p. 27). Prior to the public sphere, only a representative public existed. A representative public involved the king, lord, or noble presenting himself before a gathering—only the personality presenting himself was public, all others were merely spectators. Habermas discusses how the emergence of capitalism stimulates the creation of the public sphere. A key idea of this sphere is that of rational and critical discussion among the constituents of the sphere. Prior to the emergence of the public sphere, citizens were conditioned to comply with public authority; however, the new “public” cast “itself loose as a forum in which the private people, come together to form a public” and ready “themselves to compel public authority to legitimate itself before public opinion” (Habermas, 1991, pp. 25-26). In this way citizens were able to voice concerns and address differences between themselves and the ruling bodies.

Also central to the present discussion will be Habermas’ concern that the demarcation of private, public, and state spheres have blurred, and that rational debate, one of the cornerstones of the public sphere, has been replaced by consumerism, a drive for leisure, and mass consensus. Habermas envisions reason, rationality, and debate as necessary conditions for a democratic society. Thus, the central question regarding this dissertation becomes how can reason, rationality, and debate exist if the government is not transparent? How can rational debate occur when one set of participants does not have access to information? Habermas (1989) discusses how the destruction of the public sphere leads to concealment or distortion of information. The social participants who relate to one another individually and characterize the public sphere have been replaced by organized private individuals who work “to facilitate the dealings of organizations with the state” (p. 142). According to Habermas (1991),

> The idea of the public sphere, preserved in the social welfare state mass democracy, an idea which calls for a rationalization of power through the medium of public discussion among private individuals, threatens to disintegrate with the structural transformation of the public sphere itself. (p. 142)

Under highly secretive governmental systems, even those pockets of resistance—those pockets of rational-critical public discussion which attempt to exist are severely limited due to the inability to access information about the government. Critical discussion and debate can turn on the introduction of a single fact—what impact could the introduction of 14 million pieces of information classified in 2003 have on rational public debate? An additional benefit of using Habermas’ public sphere to illuminate this discussion, will be the presence of the numerous critiques of his public sphere which exist, as well as many additions and clarifications by Habermas himself. Taken together these writings will contribute greatly to an understanding of governmental secrecy, a rational populace, and the public sphere.

Weber’s Sociology of Bureaucracy

Weber’s lucid discussions of organizational bureaucracy are extremely relevant to any general study of our governmental system, and are particularly useful in understanding secrecy as a form of governmental regulation and in understanding the rise of individual cultures of secrecy within the government. Weber identifies uniformity as a defining organizational goal. One way of achieving uniformity is through regulation.

According to Weber (1958), one form of regulation is secrecy. Within the bureaucracy, intelligence organizations, whose information is the principle commodity, covet and hoard information because their very existence is reliant on information.

> Every bureaucracy seeks to increase the superiority of the professionally informed by keeping their knowledge and intentions secret. Bureaucratic administration always tends to be an administration of "secret sessions" in so far as it can, it hides knowledge and action from criticism . . . The pure interest of the bureaucracy is power . . . The concept of the 'official secret' is the specific invention of bureaucracy, and nothing is so fanatically defended by the bureaucracy as this attitude, which cannot be substantially justified beyond these specifically qualified areas. (pp. 233-234)

Events leading up to and surrounding the 9-11 Commission's investigation into administration and intelligence community activities prior to September 11, 2001, will serve as a legitimate example of a bureaucracy attempting to maintain power through secrecy. Understanding that secrecy is a form of bureaucratic regulation and recognizing that cultures of secrecy, each fighting for relevance and resources, do exist, are important elements in the evaluation of the success of U.S. governmental institutions, such as the Department of Homeland Security, the FBI, the CIA, or the DOD. As calls for massive reorganization and direction in the intelligence community are increasing, and as hundreds of governmental departments and agencies realign and reorganize as a result of the Homeland Security Act, examination of these efforts via Weber's sociology of bureaucracy is both sound and relevant. Clearly, Weber's ideas will prove useful in exploring the systems of secrecy present in the government.

Chomsky's Thought Control in Democracy

Over the last quarter of the 20th century, Chomsky departed from his discussion of linguistics to examine politically laden issues. One of those issues particularly relevant for this dissertation is his propaganda model of information control in democratic societies. While Habermas described the ways in which the media both facilitated the rise of the public sphere and later contributed to its degradation, Chomsky and Herman (2002) and Chomsky (1989) focus on the ways in which modern media serve as vehicles to distribute messages, beliefs, and ideas of the social, political, and economic elites. Chomsky proposes his propaganda model to explain the ways in which media serve as tools for elites, and how consent in a democracy must be "manufactured." For this dissertation, the ideas on thought manipulation in a democracy are not only relevant, but also serve as a continuation of some of the ideas established in Habermas' conception of role of media in the public sphere. Additionally, Chomsky's analysis of media and democracy will contribute greatly to an understanding of the pattern of threat, secrecy/legislation, and civil liberty infringement, all of which are central to this dissertation. "Operations of domestic thought control are commonly undertaken in the wake of wars and other crises" (Chomsky, 1989, p. 32). During times of crisis, when independent, objective journalism is needed the most, the media serve the interests of powerful decision makers, rather than the interests of the people.

Bok's Secrets

Bok's (1982) work *Secrets: On the Ethics of Concealment and Revelation* examines secrecy in a myriad of contexts. In addition to providing an overview of secrecy and secrecy behaviors in general, Bok comments on administrative, military, and state secrecy—all pertinent to this discussion. According to Bok (1982), “I believe that a guarantee of public access to government information is indispensable in the long run for any democratic society” (p. 179). Bok begins her discussion of state secrecy by identifying government secrecy as the natural evolution of sacred religion and religious secrecy. “This esoteric rationale for control over government secrecy found its most articulate expression in the principle of *arcana imperii:* ‘secrets of rule’ or ‘mysteries of state’” (p. 172). Bok’s analysis of secrecy shares much of importance, and in fact, draws on Weber’s notions of bureaucratic secrecy. Their ideas, working in concert, provide an in depth vehicle for illuminating the behavior and implications of secretive government.

Bentham’s Utilitarianism

When discussing the balance between civil liberties and national security in chapter six, Bentham’s utilitarianism will factor greatly in the discussion. Bentham’s political and ethical philosophy was predicated on a pragmatic premise—which actions will provide the most benefit for the most individuals. Bentham sought to ensure the substance of the law by applying “his universal test of institutions; aptitude to produce the greatest happiness for the greatest number” (Montague, 1931, p. 32). Bentham exalted in the formal logic of his assertion—that the actions of the government could be evaluated on the basis of achieving more good for greater numbers of its citizens. The simple efficiency present in this axiom of governmental behavior is clearly relevant to the discussion of security and liberty. The defenders of the secrecy system and the proponents of increased secrecy exhibit a utilitarian logic. In the Benthamite sense, denying habeas corpus to a single individual in the war on terrorism is really of very little consequence—the greater good is served if the detainment results in the assumed protection of the other 295 million citizens. The implications for this approach to evaluating governmental actions will be discussed in chapter six.

Power, Information Flow, and Organizational Voice

The discussion of power is not new to philosophy, politics, or social science. In fact, the relationship between knowledge and power is an oft investigated relationship. Perhaps, nowhere has this relationship achieved such in-depth examination as in the writings of and interviews with Michel Foucault (2000). As such, his interpretations of power, its relationship to knowledge, and its role in the relationship between the government and the governed, yield insight into the power dimension of secrecy. If governmental secrecy creates bureaucracy which withholds and distorts information, thereby preventing public discussion of governmental procedures and policies, as well as denying the public the knowledge necessary to participate in the democratic process, then the ways in which power is distributed and reified within this system need to be investigated. One of the traits of power important to Foucault is that “the apparent neutrality and political invisibility of techniques of power is what makes them so dangerous” (Gordon, 2000, p. xv). What then would Foucault make of the classification system, where, not only the techniques of power are invisible in the normal ways in which power is invisible, but which are also invisible due to classification and secrecy? It would seem that the power exhibited by departments with classification authority is doubly dangerous when the decisions are being made in secret, are classified, and remain far beyond public access. This dissertation is an examination of the structures of classification and the ways in which those structures withhold information and have power over, not only government agencies and participants, but citizens as well.

Methodology

A Hermeneutic of Secrecy

Multiple extant documents and published accounts concerning government secrecy and the classification system will provide the textual basis for examination. Though overly simplistic, one way of defining hermeneutics is the interpretation of "texts." Originally developed as a method for biblical scholars to interpret the bible, hermeneutics has expanded to include, not only written texts, but any communicative interaction. It is through this broadened conceptualization that hermeneutics will present itself as an important and necessary methodological construct for this dissertation. As mentioned previously, government documents will serve as a component of the present research. The data from these documents will be treated as "texts" and interpreted thusly. These government documents include congressional documents, legislation, executive orders, and classification procedure documentation. Hermeneutics is a powerful tool for developing understanding.

Hermeneutics as a methodological approach operates on two distinct levels of representational metaphysics. On one level, texts to be analyzed are evaluated at face value to determine what the text itself says. For example, the executive orders discussed in chapter two reveal the specific rules and guidelines for the secrecy system at certain points in time. On another level, hermeneutic textual analysis also asks what these direct expressions reveal to the hermeneuticist about the authors of the documents themselves. Hermeneutics enables a researcher to enter into conversation with the creators of the documents under analysis and make judgments concerning what the documents tell us about the ideology and motivation of the authors of particular texts. In the case of government secrecy, analysis of this sort reveals the ideology of the classifiers and informs us of their views of time and its relationship to security. Over time, conditions and circumstances change, which may or may not result in shifting interpretation of documents. However, hermeneutics provides a method for understanding the original assumptions of the authors of selected texts, as well as a means of analyzing the texts via a historical lens.

Hermeneutics enables researchers to interpret events in the social world by recognizing the interactivity of texts, the authors who create the text, and the historical situation surrounding the text, as well as the researchers' role in these interpretations. According to Dilthey (1976), hermeneutics is best conceptualized as a method which enables a researcher to understand the world objectively. However, for scholars such as Heidegger and Gadamer, hermeneutics was much more than just a method; it was a philosophical approach to the lived experience. Heidegger believed that hermeneutics was a way of understanding, and he considered understanding foundational to human experience. Perhaps the most significant contributor to the development of hermeneutics and its extension beyond methodology was Gadamer. Gadamer's *Truth and Method* (1975) and *Philosophical Hermeneutics* (1976) will serve as the lenses through which the government documents will be analyzed. Together, hermeneutic analysis will provide the methodological underpinnings to address the central questions of this dissertation.

One of the particular qualities of hermeneutics which is of paramount importance to this dissertation is the connection of time to the study of government secrecy. In hermeneutics, distance exists between the researcher and the text, document, or conversation under study. It is up to the researcher, while experiencing the text anew, to understand the historical circumstances of the document in question. In the case of government secrecy, time is an essential quality. In the case of classification, automatic declassification reveals the relationship between time and sensitive information distribution. For example, information is classified because it is too sensitive at a particular point in time; however, the same information may be deemed suitable for declassification in 10 years or 25 years. Additionally, the historical circumstances surrounding classification decisions, government legislation, and executive orders must be considered in order to create a hermeneutic of government secrecy. For example, there are reasons why Executive Order 12958 which followed the end of the Cold War, might be different from both previous and future executive orders.

Interviewing

Initially, this study was conceived as utilizing two methodologies—hermeneutic analysis of existing documents relating to secrecy and hermeneutic analysis of interviews with members of the government secrecy system. Interviews have been well established as a valid tool for conducting social scientific research (Holstein & Gubrium, 1995). Executive Order 12958 designates 28 authorities with the power to classify information; that number rises to 31 if the three recent recipients of classification ability are included. Of course, each of these 31 authorities can, in turn, imbue any number of individuals under their command with the designation of being an original classifier. My initial goal was to interview specific organizational members from within the classification system, but my attempts were, in every case, either met with an outright declination or were completely ignored. Between December 2003 and April 2004, extensive attempts were made to interview individuals involved in the classification system. While there is no doubt that information obtained via interviews with individuals knowledgeable of the secrecy system would have benefited and informed the present discussion, this author experienced resistance to participation. Phone calls and letters to every member of the Senate and House Intelligence Committees elicited only two responses. One Senator officially declined the offer, while another Senator forwarded the request to my local Senator who did provide me with Congressional reports on the subject of government secrecy. Additionally, letters and phone calls to the Central Intelligence Agency, the Federal Bureau of Investigation, the National Security Agency, and the Department of Energy resulted in similar responses. All declined to have representatives participate in any kind of interview.

Chapter 2

The Development of the U.S. Government Classification System via Executive Order

Although the United States Government established provisions in the U.S. Constitution which would enable its governing body to regulate and control information deemed sensitive or hazardous to national security, it was not until the eve of World War II that the United States formalized classification and classification procedures through the issuance of Executive Order 8381. However, in the decades prior to World War II, there existed an active and formalized classification program in the Army and the Navy. The history of military classification and governmental secrecy are necessary elements to understanding and critiquing the system which exists today. In fact, one of the critical arguments of the most recent Congressional investigation into government classification practices is the assertion that, in the absence of statutory and congressional controls and legal repercussions to individuals and organizations prone to classify, government secrecy will proliferate. This proliferation drastically reduces the ability of the populace to monitor and evaluate the actions of their ruling bodies.

In the introductory chapter, it was mentioned that whenever a real or perceived threat appears in America or the world, one of the initial reactions of the government is to pass legislation (Alien and Sedition Acts of 1798, The Espionage Act of 1917, the National Security Act of 1947, the Atomic Energy Acts of 1946 and 1954, the Homeland Security Act of 2002) or to issue Executive Orders (EO 8381, EO 10104, 10290, etc.) and, in general, to conduct activities in a more secretive manner. In many cases, these acts or executive orders have led to an infringement on individual civil liberties. Chapter six will provide a more in-depth examination on the impact of secrecy and legislation/executive orders on civil liberties. However, this chapter will begin the discussion of this pattern by focusing on executive orders relating to classification, as well as the significant events surrounding them. Additionally, hermeneutics will be discussed in order to provide the methodological foundation for this dissertation. This chapter will conclude with an in-depth comparison of the two most recent executive orders governing the classification system.

This chapter will discuss the history of the classification system in the United States, with particular attention being paid to the executive orders which serve as the foundation of classification today. The previously mentioned pattern of threat, legislation, and civil rights infringement began to truly emerge during World War I. The national and international threats which provided the impetus for this escalation of secrecy will also be briefly discussed. This chapter will be divided into chronological time periods up until the discussion of hermeneutics and the hermeneutic analysis of EO 12958 and EO 13292. Within each time period, threats and legislation or executive orders will be discussed. The chapter will begin by presenting some of the major threats which have occurred in the United States, as well as the legislation spawned by these threats, followed by an introduction to classification in the United States prior to World War II, when executive orders first began to focus on classification. The purpose of this chapter is to provide both an historical overview of U.S. governmental secrecy in order to better understand and draw conclusions about the system today and to establish and define hermeneutics—the central methodology of this dissertation. An additional goal of this chapter, arising from the hermeneutic analysis of President Clinton’s and President Bush’s Executive Orders, is to reveal how the wording of executive orders facilitates the institutionalization of secrecy.

Article I, Section 5 of the U.S. Constitution introduces the possibility of government secrecy, and, in fact, authorizes the use of government secrecy, stating, “each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as in their Judgment require secrecy” (Hamilton, Madison, & Jay, 1999, p. 511). This one sentence provides the Constitutional foundation for government secrecy, but it is hard to imagine that the writers of this sentence would have envisioned a scenario necessitating the massive amounts of documents deemed “to require secrecy” today. Arguably, the phrase, “each House” refers only to the House of Representatives and the Senate, the two legislative bodies of the U.S. Government. In 2003, in addition to Congress withholding journal parts deemed to “require secrecy”, nine parties within the executive office of the president, 20 governmental departments and agencies, including most recently the Secretary of Health and Human Services (2001), the Secretary of Agriculture (2002), and the Administrator of the Environmental Protection Agency (2002), as well as the President of the Export-Import Bank of the United States and the President of the Overseas Private Investment Corporation, all had the power to classify information at certain levels. How has the system evolved from one which allowed “each House” to keep certain aspects of their proceedings secret to one in which over 4,000 individuals across 31 departments, agencies, and offices have the ability to classify information? What combinations of threat and legislation defined the system prior to executive order involvement in 1940?

What is the U.S. Classification System?

Before beginning a chronological assessment of the periods of threat, legislation/executive orders, and increased secrecy, it is necessary to briefly outline the classification system. Currently, the governmental entities with classification authority have the capacity to limit the dissemination of information deemed to require secrecy. However, there is no statutory basis for the classification system, other than the Atomic Energy Act which concerns the control of information pertaining to nuclear issues. All aspects of governmental classification since 1940 have been defined and regulated through a series of executive orders, beginning with F. D. Roosevelt's Executive Order 8381. Executive orders are essentially Presidential regulations and privileges imposed on the government. The following statement is an example of a President employing this procedure.

> In 1973 President Nixon reaffirmed a claimed absolute presidential right of "executive privilege" to deny Congress access to the testimony and the records of all executive branch employees, while presidents since Truman have issued executive orders classifying "national security" information and thereby limiting public and congressional awareness of major policy decisions and programs. (Theoharis, 1998, p. 2)

One of the most current executive orders is EO 13292, which was signed by President Bush on March 28, 2003. EO 13292 defined the central tenets of the classification system. Basically, there are three levels to the classification system, "confidential", "secret", and "top secret". A fourth level, "restricted data", does exist, and this was outlined in the previous chapter which dilated on the specific classification policies of the Department of Energy. These three levels of classification are based on the classification system of the British. It is an old system, with the first documented use of classification in the United States dating back to the War of 1812 (Irving, as cited in Quist, 2002). The three basic levels in existence today are defined as follows,

> 1) "Top Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause exceptionally grave damage to the national security that the original classification authority is able to identify or describe.
>
> (2) "Secret" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause serious damage to the national security that the original classification authority is able to identify or describe.
>
> (3) "Confidential" shall be applied to information, the unauthorized disclosure of which reasonably could be expected to cause damage to the national security that the original classification authority is able to identify or describe. (EO 13292, Section 1.2, 2003)

The entire classification system is predicated on the need to maintain "national security." Two additional definitional claims regarding classification are also important to the overall understanding of this topic: objective and subjective information. Any information which is "arbitrary and reflective of human decisions and intentions . . . is unique in that it cannot be generated independently by an adversary . . . can be compromised by espionage and unauthorized disclosure" is considered subjective information (Narath, 1997, p. 12). Objective information, on the other hand, refers to any discoveries resulting from examination of the natural and physical world, i.e. the discovery of nuclear fission (Narath, 1997, p. 12). According to Quist (2002), "certain governmental information must be classified for national-security reasons. The costs to our nation of not classifying information that should be classified for national security reasons can be enormous" (p. x).

At the common sense level, one can certainly apprehend the logic inherent in Quist's assertion; however, it is important to note that, as of 2004, there has been no known example where grievous harm was caused to national security because of non-classified information, which should have been classified, falling into the wrong hands. Quist (2002) noted that, while there are real dangers to not classifying information that should be classified, there are also costs to classification. Quist (2002) identified these costs as "citizenry not fully informed on governmental activities, the extra costs of operating classified programs, and procuring classified materials" (p. x). Moynihan (1998) added other costs to this list, which included the inability of the people to hold the government accountable, the inability to accurately assess threats and threat levels, the infringement of personal freedoms, and the cost of lessened national security. Moynihan's assertion that classification can lead to decreased national security is particularly ironic considering that the foundational purpose of the system is to increase national security. Although there are many executive orders pertaining to classification, national security, or official information, the executive orders discussed in this chapter are the ones most significant to government secrecy.

Not only is it important to understand the various levels of classification via executive order, but it is also important to understand the considerations classifiers face when classifying information. According to Quist (1993), the classification of national security information requires three major decisions: the first decision concerns whether or not the information should be classified; the second decision concerns whether the information should be classified as “confidential,” “secret,” or “top secret;” the third decision concerns how long the information should remain classified. These decisions may be discerned from reading Executive Order 13292, which was enacted in 2003 and currently governs the secrecy system. Sections 1.2 and 1.4 relate to the types of information requiring classification and the levels of classification available, while section 1.5 concerns classification duration. Additionally, there are several important considerations to be made when initially deciding whether or not information should be classified.

The first of these additional classification decisions involves “*precisely defining* the information to be classified (optional but recommended)” (Quist, 1993, Chapter 3, ¶ 15). The importance of defining the information cannot be overstated. Definitional clarity increases the chance of future classification reviewers understanding the reasons behind the original classification. Considerations two through four are stated in Executive Order 13292. Classifiers should determine if information falls within a specified protected information category, if information is under the control of the government, and if the disclosure of the information will have a detrimental impact on national security. According to Quist (1993), the final consideration involves “*precisely specifying* why the information is classified (optional but recommended)” (¶ 23). In his second volume on the classification of information, Quist (1993) articulated the many problems that may arise from underestimating the importance of Considerations one and five. Failure to precisely define information often leads to mistakes in interpretation, and more significantly, to a failure of the classifier to clearly articulate the specific rationale for classification. Failure to define or articulate the reasons for classification avoids the important front end considerations which should be involved in the classification process. Having defined the levels of classification and provided the questions classifiers should consider when making decisions, this chapter's focus will shift to the historical precedents and executive orders establishing the framework for classification.

The Pattern of Secrecy and the Growth of the U.S. Classification System

The Pattern of Secrecy: 1776 – 1916

Continental Congress.

The founders of the United States, deliberating the possibility of freeing themselves of British rule, found it necessary to convene in secret on many occasions, and formally swore not to disclose information concerning the content matter of their meetings. In fact, as early as the first week of its existence, the Continental Congress passed a resolution containing the following, "Resolved, that the doors be kept shut during the time of business, and that the members consider themselves under the strongest obligations of honour, to keep the proceedings, until the majority shall direct them to be made public" (*Journals of the Continental Congress, 1774-1789*, 1904, p. 26). At the conclusion of the first Continental Congress, records were made available to the public (Quist, 2002). One year later, during the proceedings of the Second Continental Congress, a nearly identical resolution was passed, albeit one much more detailed.

> On motion made, Resolved, That every member of this Congress considers himself under the ties of virtue, honor and love of his country not to divulge directly or indirectly any matter or thing agitated or debated in Congress before the same shall have been determined, without leave of the Congress; nor any

> matter or thing determined in Congress which a majority of the Congress shall order to be kept secret and that if any member shall violate this agreement he shall be expelled this Congress and deemed an enemy to the liberties of America and liable to be treated as such and that every member signify his consent to this agreement by signing the same. (*Journals of the Continental Congress, 1774-1789*, 1904, pp. 342-343)

Clearly, the framers of the U.S. Constitution were well aware of the importance of secrecy. The secrecy of the Continental Congress as it deliberated the formation of an American government free from British control was necessitated by the threat and likelihood of impending war. Current acts of secrecy, such as Vice President Dick Cheney's decision to withhold information concerning an Energy Task Force held in 2001, seem wholly unmerited in comparison. This in no way implies that all modern secrecy is invalid and unwarranted, but that the need for secrecy by the Continental Congress was a much more legitimate use of government secrecy. This comparison draws attention to the broad disparities between what was considered necessary government secrecy 200 years ago and what is considered government secrecy today.

In addition to the secrecy resolutions, the Continental Congress formed two secret committees during 1775 (Quist, 2002). Interestingly, the two committees were formed to meet the same needs that have historically been used by the U.S. government to justify secrecy. One committee was convened to oversee the gathering of weaponry and other tools needed to prepare "national defense." The other committee was organized to maintain positive relationships with countries willing to support the U.S. in its fight for independence. "National defense" and "Foreign relations" served and continue to serve as the fundaments of Executive secrecy. Also in 1775, the Articles of War "prohibited any unauthorized correspondence by soldiers with an enemy" (Cox, 1975, p. 32). The subsequent Continental Congresses of 1777, 1784, and 1787 all had provisions for withholding information about their proceedings. "The delegates to the Constitutional Convention assumed that secrecy was necessary for certain military and diplomatic information" (Quist, 2002, p. 12). As previously mentioned, the only section of the Constitution which specifically mentions the keeping of secrets is Article I, Section 5. However, Article II, Section 2 designates that the President has the authority to restrict and control the flow of information concerning national security and foreign policy. It is from this Section of Article II that the Executive branch has continued to substantiate its decisions concerning classification. "The Federalists interpreted the Constitution as providing for executive secrecy in diplomatic negotiations" (Cox, 1975, p. 33). However, Cox (1975) also acknowledges that "despite the recognition that certain secrecy was necessary, there was strong support for disclosure of information" (p. 33). Clearly, threats abounded for the Continental Congress and the emerging nation. The reality of war necessitated government secrecy. In 1798, the United States, struggling to establish itself as a nation, and with its fledgling Navy intermittingly involved in altercations with Napolean's France, passed legislation which noticeably curtailed the individual freedoms so preciously granted by the Bill of Rights. This legislation took the form of the Alien Act of 1798 and the Sedition Act of 1798. The following section will focus specifically on executive orders related to classification, with additional information describing the national and international climate at the time of the executive orders. Chapter six will examine the Alien and Sedition Acts in more detail while discussing legislation relating to the impact of secrecy on civil liberty.

The U.S. Civil War.

According to Cox (1975), no significant system of secrecy emerged during the entire 19th century. During the Civil War, it was apparent that President Lincoln understood the tenuous nature of secrecy and of controlling information in a Republic. According to Randall (1963), Lincoln advised a Union Army general of the guidelines for controlling information,

> You will only arrest individuals and suppress assemblies or newspapers when they may be working palpable injury to the military in your charge, and in no other case will you interfere with the expression of opinion in any form or allow it to be interfered with violently by others. (p. 508)

Arguably the Civil War was the most dangerous threat the United States government has ever encountered, yet Cox (1975) remarked, “even during the Civil War, the gravest crisis in our history, there was no system of official secrecy, no Sedition Act, and no Espionage Act” (p. 34). Thus, between 1861 and 1865, at a time when more United States citizens died than were killed in all other United States wars put together, the country avoided a formal secrecy system and also avoided legislation contradictory to the tenets of the Constitution and the Bill of Rights. Although the immense bloodshed and horror of the Civil War may seem to be diminished by pointing out that nothing similar to the Sedition Act surfaced, it is imminently notable that, during that time of tangible threat which was unlike any other time in U.S. history, the Union government resisted passing laws which curtailed the free expression of the press or the public.

It is, however, important to recognize that the conduct of modern warfare differs from conduct during the U.S. Civil War. For example, new and faster communication and warfare technologies have altered battlefield plans and operations. As war planning and operations have grown in size and scope, the arrangement of war has become more centrally planned and guided. Immense operations, such as D-day, necessitate a greater control of information simply because the consequences of successful espionage on the part of enemies are much greater. The importance of information, as a result of such large scale operations, has changed. As the importance of the information has increased, so to has the value of the information and the need to safeguard it.

The Pattern of Secrecy: 1917 – 1939

U.S. classification system prior to World War II.

Prior to the formal development of a system of classification, which was introduced by President Franklin D. Roosevelt with Executive Order 8381, both the Department of the Army and the Department of the Navy had procedures for designating information as classified and for handling and disseminating sensitive information. However, the scope of classification proceeding World War II seems very specific, and therefore limited. “Throughout most of our country’s early history until WWII, the government’s concern with protecting information closely related to military and diplomatic matters,’ (Quist, 2002, p. 9). While specific aspects of the Espionage Act will be discussed in chapter six, the Espionage Act will be mentioned briefly here as it informs components of the executive orders relating to classification.

The Espionage Act.

Several events occurring concomitantly with World War I helped provide the spark for the current secrecy system. The first was the War Department's 1917 official approbation of an information classification system patterned after the information classification systems of the British and the French. Also in 1917, the Espionage Act was signed into law. "Indeed much of the structure of secrecy now in place in the U.S. government took shape in just under eleven weeks in the Spring of 1917, while the Espionage Act was debated and signed into law' (Moynihan, 1998, p. 84). Several of the provisions of the Espionage Act focused on secrecy and classification, although it made no reference to the military classification system, nor did it mention the three levels of secrecy adopted by the War department that year (Cox, 1975). However, what the Espionage Act did state was that providing information to any foreign government with the intent to injure the United States was punishable by death. At this time, the primary concern of both the Espionage Act and the War Department's information classification system was to prevent potentially damaging information about U.S. military installations from getting into the hands of governments adversarial towards the United States. According to Quist (2002), the primary goal of the Espionage Act was to punish spies.

Army and Navy classification regulations.

From 1917 to 1940, the Army and Navy operated under a formalized system of protecting information. In fact, a 1918 General Order of the Navy Department (cited in Quist, 2002), provides insight into the early philosophy behind document classification,

> Extreme care and constant thought should be applied to maintain secrecy as extensively and thoroughly as humanly possible. The importance and vital

> necessity of keeping the enemy in ignorance of plans and operations is too generally blindly and thoughtlessly disregarded. (p. 26)

Throughout the 23 years which separate the Espionage Act and Executive Order 8381, the Army and the Navy have continued to refine their procedures for classifying information. One of the earliest examples of classified information involved what was known as the Norden bombsight. The Norden bombsight is an example of objective information. Following the conclusion of World War I, American Carl L. Norden invented a device which made precision aiming by high altitude bombs a possibility (Moynihan, 1998). In an example which marries secrecy and legislation, “the Norden bombsight became the army’s most important secret in the original understanding of the Espionage Act of 1917, which was primarily directed to military equipment, deployment, and installations” (Moynihan, 1998, p. 125). Unfortunately, as a result of successful German intelligence efforts, these plans were stolen in the 1930s (Moynihan, 1998).

The classification regulations outlined by the American Expeditionary Force in 1917 are thought to be the first truly formal classification system in the U.S. government (Brown, 1975; Quist, 2002). The AEF’s classification guidelines were quickly adopted by the War department and applied to the Army. In 1921, the Army expanded on the definitions of “Secret,” “Confidential,” and “For official use only.” As a possible precursor to the “restricted” classification applied to nuclear technology by the Atomic Energy Act, in 1935, the Army began applying “restricted” to “technical information that needed to be classified” (Quist, 2002, p. 31). Not to be outdone, the information classification system in the Navy went through several stages leading up to Executive Order 8381. In 1918, 1920, 1932, 1938, and 1940, the Navy revised its procedures for handling sensitive information and formally defined levels of sensitive information, as well. In 1918, the Navy identified and defined the three classification levels as “Secret,” “Confidential,” and “Nonconfidential.” The 1920 regulations broadened the number of individuals able to handle secret material, as well as identified the protocol for marking classified documents. The 1932 Navy regulations concerning secrecy added the level of “Service” to identify information concerning the Navy which should not be made available to the general public. “Restricted” was added as an official distinction by the Navy in 1938. While the 1938 and 1940 regulations are virtually identical, it is important to note that these regulations began to convey responsibility for classifying upon specific individuals. Once it became apparent that the Army and the Navy were operating under different definitions of levels of secrecy, specifically concerning the definition of “restricted” information, the War department sought to more closely align the classification systems of these military branches. This resulted in the Army classification regulations of 1936, which improved consistency between Army and Navy regulations. The classification system has evolved considerably since World War I through frequent revisions of Army and Navy regulations. As one of the functions of the President is to serve as Commander in Chief, it seems completely natural that in 1940, at the dawn of World War II, the President wanted to formally assume control of the information classification system via Executive Order 8381.

The Pattern of Secrecy: 1940 – 1960

World War II.

As U.S. involvement in World War II became increasingly inevitable, new methods of protecting sensitive information and improving national security became necessary. The regulations which the Army and Navy operated from increased in importance. According to Thompson (1997), “elaborate systems were put into place to guard against espionage, and other means by which Axis powers could uncover military plans, industrial production schedules, scientific experiments, and any other information that could help the enemy” (Report of the Commission on Protecting and Reducing Government Secrecy, 1997, p. 2). Obviously, during an event of such magnitude as World War II, few objections were made to combat the argument that the United States needed to protect itself from German intelligence infiltration. The government censorship during World War II was typically aimed at the press and postal correspondence, “but Americans did not grumble about the security measures because they understood and trusted their leaders’ explanation of the necessity of secrecy” (Cox, 1975, p. 38). The problems with secrecy began to materialize following the conclusion of World War II. According to Thompson (Report of the Commission on Protecting and Reducing Government Secrecy, 1997,), “the national security apparatus designed to keep information secret only expanded after the war, rather than being reduced” (p. 2). “Widespread use of secrecy to control the dissemination of information emerged for the first time in U.S. history in World War II” (Cox, 1975, pp. 36-37). Although the bureaucratization of the secrecy system in the United States will be further discussed in the following chapters, according to Moynihan (1998), by World War II bureaucracy had become the standard of the federal government for dealing with subversion. Perhaps as a precursor to involvement in World War II, 1940 was the year in which the classification system was formalized in the United States.

Executive Order 8381.

As stated previously, classification regulation has almost no statutory basis. Rather it has been established through a serious of orders issued by the Executive branch of the United States government. Article II, Section 2 of the United States Constitution is often cited as the primary justification for the Executive branch of government controlling and issuing regulations concerning classification because it recognizes the "President as Commander and Chief of the Army and Navy" and grants the President the power to make treaties (Hamilton, Madison, & Jay, 1999, pp. 510-511). This interpretation of Presidential power has been "upheld by the Supreme Court in a number of cases" and by Congress in the statutes, "the Freedom of Information Act and the Internal Security Act of 1950" (Quist, 2002, p. 5). Quist (2002), Moynihan (1998), and Cox (1975) each separately acknowledged that it was during World War II that the U.S. system of classification became at first widespread, and subsequently pervasive. "The breadth and depth of security classification of information in the United States significantly expanded during and after WWII. For example, not until WWII was secrecy widely imposed by the government on scientific and technical information," (Quist, 2002, p. 9).

The first executive order concerning the classification of information is E.O. 8381 issued by President Roosevelt in 1940. On the eve of World War II, Roosevelt found it necessary to protect the flow of information within the United States. Executive Order 8381 called for the control of "all official military or naval books, pamphlets, documents, reports, maps, charts, plans, designs, models, drawings, photographs" (Cox, 1975, p. 37; Quist, 2002, p. 45). Although the army and navy were already controlling the dissemination and protecting of this information, E.O. 8381 provided executive authority for the classification system. According to Cox (1975), “this classification system for the first time in our history went beyond military and defense information. Soon most of the government was using the classification system” (p. 37). This executive order not only established presidential approval of Army and Navy classification efforts, but also “gave governmental civilian employees the authority to classify information” (Quist, 2002, p. 45). Previously, civilian employees could only receive classified information; they could not create it. Thus, Executive Order 8381 set the precedent for classification policy as the express domain of the Executive branch of government—a situation which still basically exists today. In 1942, Roosevelt issued an executive order which established the Office of War Information. “Although the OWI’s functions were mostly concerned with gathering and disseminating public information on the war effort, its responsibilities also encompassed security information policies” (Quist, 2002, p. 42). Also in 1942, the newly formed OWI issued Regulation Number Four which addressed the classification of information. This regulation pertained to the handling of sensitive information across all government branches, not just in the Army and the Navy. The OWI regulation was significant because on one hand it expanded the classification of information beyond the scope of the Army and the Navy, and on the other hand it displayed a bias towards less restriction and thereby more discriminating choices in classifying. OWI regulation 4 (cited in Quist, 2002) states,

> documents or materials requiring classification shall be assigned the least restrictive classification consistent with the proper safeguarding of the information or material. Care should be taken to avoid overclassification,

> particularly in cases where undue restriction may prevent dissemination of information which should properly be disclosed to the public or Congress. (p. 47)

The OWI and all of its regulations were abolished at the conclusion of World War II and very few, if any, of the OWI tenets concerning secrecy appeared in President Truman's Executive Order 10104. However, near the conclusion of World War II, the United States revealed one of the most closely guarded secrets in world history. Scientists working at the behest of the Department of the Army and dedicated to defeating Hitler and the Axis powers developed the atomic bomb which was subsequently dropped on the Japanese towns of Hiroshima and Nagasaki in an effort to facilitate the end of the war.

The National Security Act.

The National Security Act of 1947 created the Central Intelligence Agency and established the position of Director of Central Intelligence upon whose shoulders the responsibility of protecting intelligence rested. According to Shulsky and Schmitt (2002), a byproduct of the broad privileges granted to the Director of Central Intelligence, particularly regarding the ability to determine what information should have restricted access, inevitably creates "a proliferation of these special classifications (or 'compartments') as various entities within and outside the intelligence community try to protect information they see as particularly sensitive" (p. 100). The broad provisions of the NSA of 1947 provided a legal basis for the gathering of information by the CIA. According to the National Security Act, it is up to the discretion of the President of the National Security Council to determine when covert actions are necessary (Berkowitz & Goodman, 2000). Covert actions are, by definition, secret. While the National Security Act created the CIA and established a Director of Central Intelligence in an attempt to streamline and reorganize intelligence efforts, the FBI, the Army, and the Navy departments (now subsumed under the Department of Defense) all still existed. They all had intelligence gathering techniques, as well as, information to which they sought to restrict access. According to Odom (2003),

> Reorganization opened the way to all kinds of new turf wars and bureaucratic struggles by creating a veritable thicket of new intelligence organizations. And it left counterintelligence even more fragmented, with the FBI retaining the dominant but entirely separate domestic counterintelligence role. Thus many of today's problems can be traced back to the reforms under the 1947 National Security Act.

The bureaucratic problems stemming from the National Security Act will be discussed in greater detail in chapter four. In general, the National Security Act reorganized the military and foreign policy departments in the government, and also formed the Central Intelligence Agency and the National Security Council—all of whom were given the capability of restricting the flow of information.

The developing Cold War and McCarthyism.

Evidence indicates that during a time of war (examples include the war with France at the end of the 18th century, World War I, and World War II), secrecy is more widely accepted as a necessity and legislation scaling back civil liberties is more likely to result (examples include the Alien and Sedition Acts of 1798, the Espionage Act of 1917, and the Sedition Act of 1918). The Cold War, unlike previous wars, created a situation of perpetual threat—a war which in 1950 must have seemed never ending. The Cold War lasted for 40 years and was primarily an ideological war. There were, of course, physical manifestations such as Vietnam, but for 40 years, the Cold War provided a justification for government secrecy. The Cold War was an ideological battle between the United States and the post World War II Soviet Union. Secrecy played a significant role in the Cold War, not only in the intelligence and counterintelligence measures taken by both sides, but also in other areas, such as research. Evidence indicates that the seemingly endless nature of the Cold War, much like the War on Terror today, creates a nexus where secrecy and loyalty commingle: where government demonstrates its bureaucratic propensity to keep secrets, protect itself, and define and question loyalty.

One of the earliest examples of the dangers and flaws of the secrecy system came in the form of Joseph McCarthy. Spearheading the “red scare” of the late 1940’s and into the early 1950s, Senator McCarthy sought to identify Communist agents within the United States, both in the government and in the public. Although McCarthy’s tactics (which were eventually denounced by many) became the figurehead of the anti-communist movement, secrecy played a somewhat ironic role during this period. According to Moynihan (1998), Powers (1998), and others, based on information from the Federal Bureau of Investigators, much tangible evidence of Communist activity within the government existed. “Secrecy had kept Americans from understanding the real (but limited) extent of Soviet espionage in America and had therefore left them [Americans] at the mercy of charlatans like McCarthy, for whom ignorance was no impediment to passionate intensity” (Powers, 1998, p. 16). McCarthy accused the FBI of intentionally concealing information concerning Communist infiltration. McCarthy used government secrecy, which certainly existed, in an attempt to verify Soviet presence in our government. According to Powers (1998), every time declassified information, which invalidated many of his claims, was provided to McCarthy, he simply continued with his accusations, asserting that even the selective declassifications were an attempt to cover up the depth of the Soviet infiltration. Due to the already huge numbers of classified documents, McCarthy's claims of conspiracy had an air of truth and continued to fuel his accusations. With so many classified documents. McCathy's claims might have continued indefinitely. Moynihan (1998) argued that McCarthyism might have been altogether avoided had the security departments disclosed all information to the President, and if the President, in turn, had shared that information with the American people. The idea that McCarthyism gained much of its strength from secrecy seems reason enough to thoroughly investigate the secrecy system with an intent to reevaluate and reorganize it. Later in this dissertation, as attention turns to more recent events, such as the War on Terror and the Patriot Act, the relevance of the McCarthy era and the role of secrecy during that period will be re-examined.

Executive Order 10104.

In 1950, President Truman introduced Executive Order 10104 as a replacement for Executive Order 8381. "The Truman order kept the earlier three categories of classification and formalized the additional designation of 'Top Secret'" (Cox, 1975, p. 47). For all intents and purposes, this executive order retained many of the specifications outlined in the previous executive order. One notable difference pertained to the expansion of classification authorities. Whereas the previous EO identified the Secretary of War or the Secretary of Navy as classification authorities, EO 10104 granted authority to five entities—the President of the United States and the Secretaries of Defense, the Army, the Navy, and the Air Force. While World War II was the primary impetus for

Roosevelt's EO, the combination of the Cold War, nuclear weapons, and the start of the Korean War provided the stimuli for Truman's first EO.

Executive Order 10290.

Executive Order 10290 , which was issued by President Truman only a year after his signing of Executive Order 10104, is perhaps most significant because it "extended the security classification system within nonmilitary agencies as well as the defense agencies" (Cox, 1975, p. 47). In many ways, EO 10290 is often looked upon as the executive order which fathered the current secrecy system. Truman "cancelled all prior orders including his own and extended classification well beyond traditional defense matters to agencies throughout the federal government" (Katz, 1987, p. 15). Whereas previous executive orders, OWI provisions, and Army and Navy regulations concerning classification dealt exclusively with the protection of defense information, and even then often only in times of war, EO 10290 granted classification authority to nonmilitary agencies during times of peace. This EO greatly increased the abilities of executive departments to uniformly classify information (Cox, 1975). "Executive Order 10290 made major changes in the government's classification system. Probably the most striking change was the extension, in peacetime, of the classification system to nonmilitary federal agencies" (Quist, 2002, p. 50). According to some accounts, this EO was criticized by "members of Congress and the press for its vagueness and potential abuses," primarily because "it permitted secrecy to be used in hundreds of domestic departments and agencies with no clear limits or controls and no definition of 'appropriate classifying authority'" (Cox, 1975, p. 47). "This expansion of classification authority in peacetime to nonmilitary agencies and departments caused much concern because of the potential restriction of the flow of information from these agencies to the public" (Quist, 2002, p. 51). Despite these concerns, Congress offered no serious opposition to Truman's newest executive order. Perhaps during a year that saw continued struggles with Russia, the Korean War, and the testing of the hydrogen bomb, the public and Congress were willing "to grant almost any kind of authority demanded by the executive branch in the name of national security" (Cox, 1975, pp. 47-48). In chapter one the cycle of threat, legislation/Executive decree, and increased secrecy was mentioned. The events surrounding EO 10290 illuminate an attribute of this cycle that, in the face of real or perceived threats, there is often an absence of critical discussion regarding the potential harm of legislation, like the Espionage Act of 1917 or of Executive Orders, such as EO 10290. However, this EO did include guidelines for the downgrading, constant review, and declassification of information. With EO 10290, we begin to see how individuals are selected and granted authority to classify by agency leaders following established regulations. According to Quist (2002), "each agency head was responsible for implementing these regulations in his agency. An agency head could establish higher standards than those in 10290 for identifying and protecting information" (p. 51). In addition to adding definitional and procedural clarity to some aspects of classification, EO 10290 is primarily remembered for expanding classification authority beyond military or espionage departments.

Executive Order 10501.

Truman's successor, President Eisenhower, replaced EO 10290 with EO 10501 in 1953. This order was more popularly received because it "narrowed the sweeping term 'national security' to 'national defense,' reduced the number of agencies authorized to classify information, eliminated the ‘Restricted’ classification, and refined the definitions of the other three categories” (Cox, 1975, p. 48). However, Cox (1975) acknowledged that this EO retained its ambiguousness and “granted wide discretion to those given classification powers within the bureaucracy” (p. 49). Executive Order 10501 was significant in that it defined each of the three levels of classification, while also providing specific examples of how to interpret these terminologies. For example, “Top Secret” classification was to “be applied only to information or material the defense aspect of which is paramount, and the unauthorized disclosure of which could result in exceptionally grave damage to the nation” (EO 10501, 1953). The EO goes on to describe how to interpret the phrase “exceptionally grave damage.” Damage includes information

> leading to a definite break in diplomatic relations affecting the defense of the United States, an armed attack against the United States or its allies, a war, or the compromise of military or defense plans, intelligence operations, or scientific or technological developments vital to national defense. (EO 10501, 1953)

Executive Order 10501 also defined “serious damage” governing the “Secret” classification. While one could argue that vagueness still existed in this particular EO, it was noticeably more specific than previous executive orders had been.

Yet another attribute which distinguished EO 10501 from its predecessors, was the deliberate reduction in classification authorities. According to Quist (2002), “original classification authority was withdrawn from 28 entities, and in 17 others it was limited to the agency head,” and “original classification authority was limited to those agencies having direct responsibility for national defense” (p. 52). While the number of classification authorities was indeed reduced by this Executive Order, the classification system by that time was firmly established, and the proliferation of classified documents that would eventually result in 14 million new and derivative classifications in 2003 was well underway. Although it was not until Nixon's Executive Order 11652 that Executive Order 10501 was completely replaced, it was amended by President Kennedy's Executive Order 10964 in 1961. This amendment was noticeable for its focus on declassification procedures and because it established a subsequent trend, which was reinforced by the Executive Orders of President Carter and President Clinton, of emphasizing declassification.

The Pattern of Secrecy: 1961 – 1994

The Vietnam War.

The Vietnam War was fought between the Democratic Republic of Vietnam, which was backed primarily by the Soviet Union, and the Republic of Vietnam, which was supported by the United States and other allies. Initially, South Vietnam, which was the Republic of Vietnam, was controlled by France, and although U.S. advisors were present in Vietnam in the 1950s, it was not until the 1960s that the United States agreed to large numbers of troops. Although animus to the war by many American citizens was present in the late 1960s and early 1970s, the publication of the Pentagon Papers, a study of U.S. involvement in Vietnam commissioned by Robert McNamara (Moynihan, 1998), revealed to many Americans the secret government decisions which served to perpetuate and sustain the war in Vietnam. The U.S. involvement in Vietnam stretched over two decades and affected Executive Order 11652, which was signed by Nixon in 1972. Nixon's executive order, discussed in the following section, sought to limit the length of classified information. However, the Vietnam War and Nixon's administration demonstrated the need for maintaining perpetual vigilance over the secrecy and classification system. Had the debate surrounding the escalation of the war been conducted in a more public manner, there is reason to believe that important decisions might have been publicly vetted and strengthened through public debate. Unfortunately, as the Pentagon Papers showed, many of the decisions regarding Vietnam were hidden from the public. Two events in the 1970s did much to raise alarm about secretive government behaviors; the publication of the Pentagon Papers by Daniel Ellsberg and the events surrounding the Watergate break-in and cover up. According to Berkowitz and Goodman (1989), “the most important test of the prerogative of the media to publish restricted information was the Pentagon Papers case, in which the Supreme Court affirmed the right of the *New York Times* to publish excerpts from a classified history of the Vietnam war prepared by the Department of Defense” (p. 23).

The Freedom of Information Act.

The roots of the Freedom of Information Act of 1966 are grounded in several legislative attempts to consider the effects of secrecy on democracy. Beginning with the Administrative Procedure Act of 1946, public attention began to turn to the need for government agencies to keep the public informed of their activities. In fact, the Freedom of Information Act is an addition to the Administrative Procedure Act of 1946, and the FOIA itself experienced additions in 1974, 1986, and 1996. Working separately, yet ideologically in concert, with the Administrative Procedure Act of 1946, was the Moss Special Government Information Subcommittee, which was charged with monitoring executive secrecy. In 1955, the Moss subcommittee began studying the administration and operation of the classification system (Moynihan, 1998). “This would lead in 1966, after eleven long years, to enactment of the Freedom of Information Act which established any person's statutory right of access to all federal records except" certain protected categories (Moynihan, 1998, p. 173).

Additionally, in 1974, in the aftermath of Vietnam, the Pentagon Papers, and Watergate, it was easier in 1974 to amend the Freedom of Information Act into a document which would better serve the needs and the rights of the public to access government information. The FOIA of 1966 had proven to be relatively ineffectual up to that point (Melanson, 2001). The FOIA, as amended in 1974, sought to provide individuals seeking information from the government with a legal process through which information could be requested.[7] The FOIA represented a legal tool through which citizens could request information from the government. However, if information was deemed to be in the interest of either foreign policy or national defense, then that information was outside of the purvey of the FOIA (Cox, 1975). Because of this limitation of the FOIA, it was necessary to re-focus on the specific executive orders which governed government secrecy, and to the ways in which said executive orders defined terms such as "foreign policy" and "national defense."

Executive Order 11652.

In 1972, nearly 20 years after the establishment of EO 10501, President Nixon replaced EO 10501 by signing EO 11652 into law. According to a statement issued by Nixon (Cox, 1975), the following were the most important aspects of his Executive Order:

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[7] The evolution of the Freedom of Information Act, as well as the struggles surrounding the Act, deserves lengthy examination. However, detailed examination of the FOIA's history is outside the scope of this dissertation.

> The rules for classifying documents are more restrictive. The number of departments and people who can originally classify information has been substantially reduced. Timetables ranging from 6 to 10 years have been set for automatic declassification of documents. Any document exempted from automatic declassification will be subject to mandatory review after a 10-year period. If information is still classified 30 years after origination it will then be automatically declassified unless the head of the originating department determines in writing that its continued protection is still necessary and he sets a time for declassification. Sanctions may be imposed on those who abuse the system. (p. 59)

Nixon’s executive order established a shorter time table for declassification. Perhaps the most interesting aspect of EO 11652 was its imposing sanctions on those who abuse the system. Whereas previous and subsequent executive orders described penalties for abusing the system through underclassification or through the unauthorized disclosure of information, EO 11652 was unique in that it considered overclassification to also be an abuse of the system.

> 5. Sanctions Against Over-Classification.
>
> Unlike the current system, in which officials find it in their own best interest to classify all materials of a questionable nature, I am hopeful that the new Executive order will encourage them to exercise their authority with restraint. The order explicitly states that information shall never be classified "in order to conceal inefficiency or administrative error . . . or to prevent for any other reason the release of information which does not require protection in the interest of

> national security." More than that, each agency is to provide a means of identifying the classifying authority for each document and each official is to be held personally responsible for the propriety of the classifications attributed to him. Repeated abuse of the process through excessive classification shall be grounds for administrative action. (EO 11652, 1972)

The previous statement did not appear within the specific text of the document, but rather in the closing list of changes presented in EO 11652. Although the caution regarding excessive classification did not appear within the specific text of the executive order, it is interesting to note that the Nixon administration, known for its secrecy and deception in the wake of the Watergate investigation and denial, created the first executive order pertaining to secrecy which advocated sanctions for overclassification. President Carter would take this recommendation of President Nixon one step farther by embedding sanctions for overclassification within his own EO—12065.

Executive Order 12065.

Characteristics of the Executive Order 12065, issued by President Carter in 1978, were that it operated from the "presumption of nonclassification" and that "any doubt over whether to classify was to be resolved in favor of openness" (Theoharis, 1998, p. 191). In essence, the Carter executive order supported a balancing test for classification decisions, with close call decisions always being resolved in the direction of openness. Executive Order 12065 also specifically named the unnecessary classification of materials as a violation of the spirit of classification. "Officers and employees of the United States government shall be subject to appropriate administrative sanctions if they: (a) knowingly and willfully classify, or continue the classification of information in violation of this Order or any implementing directives" (EO 12065, Section 5-502, 1978). Not only did Carter formalize concern for overclassification, but he seemed to emphasize concern over unnecessary classification more than he emphasized concern over unauthorized disclosure. Sanctions for unauthorized disclosure are mentioned in Section 5-502(b), while sanctions for overclassification are mentioned in Section 5-502(a). Executive Order 12065 used language designed to shift the emphasis away from classification and secrecy and towards a culture of openness.

The Pattern of Secrecy: 1981 – 2001

Executive Order 12356.

Executive Order 12356, issued by President Reagan in 1982, replaced EO 12065. "Unlike President Carter's order, which it replaced, Reagan's order provided no timetable for declassification and, moreover, encouraged stricter standards for withholding material" (Theoharis, 1998, p. 191). Theoharis (1998), in contrast to his position concerning the relative openness of EO 12065, believed that "Reagan's order made a presumption in favor of classification" (p. 191). According to Katz (1987), the 1980s would see a rapid increase in government secrecy, unlike that found in any preceding decade. The Cold War was still in progress, and Reagan was determined to win the stand off with the Soviet Union. After acknowledging trends made by Presidents Ford and Carter, Katz (1987) stated that "the Reagan policy is widely viewed as reversing a desirable trend away from overclassification. It has marked a return to a classification policy of indefinite scope, unreviewable authority, and decreased accountability in the executive branch" (p. 16). Not only did EO 12356 broaden the scope of what was acceptable to be classified and eliminate timetables for classification to take place, it also marked the first Executive Order in history concerning classification that provided for the reclassification of items which had been declassified (Katz, 1987). Many, such as Katz, Theoharis, and Moynihan, viewed Executive Order 12356 as excessively opaque and Reagan's overall policies towards government secrecy as excessively accommodating to classifiers.

Executive Order 12958 and Executive Order 13292.

Following the fall of the Soviet Union, many members of the government saw the opportunity to usher in a less secretive and more open government. These secrecy reforms are best demonstrated in the Department of Energy's Openness Initiative to be presented in the following chapter, the formation and report of the Commission on Protecting and Reducing Government Secrecy, and Executive Order 12958. Although the reforms urged by the Commission on Protecting and Reducing Secrecy, and the practical effects of EO 12958, were never fully realized (in fact, some might say that they were not even partially realized), it was apparent that at least some within the system sought to move the government secrecy system back towards a state of openness. Unlike Clinton's executive order, which came at a time of relative U.S. peace and prosperity, Bush's Executive Order 13292 was written just a year and a half after the bombing of the two towers of the World Trade Center. In the presence of a terrorist threat, in this case from the al-Qaeda terrorist group, the decision to produce an executive order which encouraged classification and information protection was not surprising. However, just because it was not surprising does not mean that it was not unfortunate. During times of crisis, decision makers and policy supporters need access to information in order to make competent decisions; the following two chapters of this dissertation will rely on organizational communication theories to illustrate this point. While the attacks on September 11, 2001 may help to explain the rationale behind President Bush's EO 13292, the history of U.S. classification indicates that this executive order will invariably lead to more government secrecy. The increase of classified documents in both 2002 and 2003 supports the contention that EO 13292 contributed to an upswing in classification activity. The remainder of this chapter will be spent defining the methodological foundation of this dissertation, hermeneutics, and analyzing EO 13292 and EO 12958.

Methodology

Hermeneutics, Government Documents, and Secrecy

The methodology employed in this dissertation is a hermeneutic analysis of multiple documents and texts associated with government secrecy. In essence, this project is a hermeneutic of secrecy—an explicit attempt to gain a comprehensive understanding of the procedures, motivations, and effects of the classification system. This particular chapter involves a hermeneutic analysis of Executive Order 12958 and Executive Order 13292, while the following chapter will analyze the Atomic Energy Act of 1946 and the Atomic Energy Act of 1954, as well as additional analysis of Department of Energy documents. Hermeneutics is perhaps best understood as a dual process. Depending on the standpoint of the scholar, hermeneutics can be a methodology, an ontology, or in some cases both. For this dissertation, hermeneutics will be employed as a specific methodology for coming to understand the phenomenon of government secrecy. Implicit throughout this dissertation, however, is the recognition that interpretation is inherent in our experience of the world. Therefore, at a macro level, hermeneutics is also recognized as a guiding ontology. Hermeneutics refers to the nature and means of interpreting a text. In order for an individual to gain an understanding of a text, one must be able to interpret, not only the text in its entirety, but also to interpret its constituent parts, as well as the historical condition in which the text occurred and the current conditions at the time of the interpretation. In hermeneutics, when a text is selected, a context is created, and it is the relationship among the text, context, and researcher that creates the meaning of the text.

It is necessary to understand the context created when a researcher selects a text because this context is central to hermeneutic analysis. Hermeneutics, and specifically the hermeneutic circle, is a systematic means for an individual or researcher to come to know the whole text and its interdependent parts. Investigating a phenomenon such as government secrecy, wherein access to classified information and classifying agencies is not available, necessitates adopting a macroscopic approach in order to understand how various aspects of the system fit together. The hermeneutic process is achieved through the constant tacking back and forth between the perspective manifested by the document[8] being analyzed and the perspective of the researcher. In this sense, hermeneutics and the hermeneutic circle are methods by which we come to understand selected "texts."

In the case of the government secrecy system, whose historical foundations rest in the military classification system, the Atomic Energy Act, and various executive orders, hermeneutic analysis is particularly appropriate as a means of interpreting and understanding the phenomenon. Time is an important component of classification, as well as of hermeneutics. For example, in the case of governmental classification,

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[8] Documents selected for hermeneutic analysis are cases or exemplars. The document is a case to the whole of its time. It is an expression of its time—a perspective. The dialogue between the document and the researcher creates another perspective. This layering of perspectives continues to broaden the understanding of the phenomenon under investigation.

materials and documents are classified at a specific point in time, because the information contained within the materials or documents is deemed too sensitive for public dissemination. However, in all cases, with the one exception of information related to nuclear weaponry, a future date is designated as a time for declassification—when the information is no longer considered classified. One must recognize that justifications for classification change. Information necessitating classification at one point in time may not need to be classified at a later point in time. Technological innovations may be initially classified, but once strategic advantages are achieved or the information enters the public domain from another source, that information no longer needs to retain its classification status. The analysis in this chapter of the Clinton and Bush executive orders concerning the classification system demonstrates the significance of time to interpreting and understanding documents. Clinton's Executive Order 12958 is best understood in the context of the post Cold War environment, while Bush's Executive Order 13292 is best understood in the context of the post September 11 environment. Thus, time enables us to place documents within a historical perspective as a new context is created between the researcher and the text under analysis. Additionally, hermeneutic analysis reveals the specific motivations guiding the creators of the documents under analysis. Taken thusly, Executive Order 12958 reveals the classification ideology of the Bill Clinton administration, while Executive Order 13292 reveals the classification ideology of the George W. Bush administration

The historical perspective present as a component of hermeneutic analysis reveals history as an aspect of consciousness. Through the creation of historical context, trends which reflect larger tendencies in attitude are revealed. A researcher in 1940 analyzing the first Executive Order related to government classification would have a specific historical perspective on E.O. 8381. The researcher would likely have been conscious of the single Executive Order, the classification procedures existing prior to the Executive Order, and the events necessitating the Executive Order—in this case World War II. However, a researcher examining E.O. 8381 in 2004 is capable of placing that document in a historical context that includes the subsequent Executive Orders relating to classification, the world events impacting classification, and the billions of pages of classified documents tracing their lineage back to E.O. 8381. Therefore, a hermeneutician today creates a new and unique perspective with the documents he or she is analyzing. Facts themselves are not finite and unchanging. The meaning of the fact changes with new information. Researchers at different times create new contexts with which to investigate a historical event. For example, a document may mean one thing at a particular point in time, or a historical figure may appear one way during a particular moment in time; however, when examined at a different historical moment, the document or figure may take on a different meaning or appearance.

In order for a researcher to select a manageable unit of analysis, he or she often must select one specific moment in time—one specific case study. When researching a topic as broad as government secrecy, it would be possible to analyze one specific document, for example a single executive order; however, the deeper understanding of the history of government secrecy and the patterns present in this phenomenon would be lost on the researcher. At best, the researcher would be able to comment on specific elements of the executive order and its impact on U.S. citizens and visitors. Additionally, it is only through examination of a much larger set of documents that an individual is able to grasp the complexities of the system, as well as draw conclusions concerning the impact of secrecy on democratic discourse and decision making and the effects of secrecy on civil liberties.

Focusing on only one specific document relating to classification and secrecy would cause the meta-pattern of government secrecy to be overlooked. Specifically, this dissertation uses hermeneutics as a methodology to interpret the various texts examined herein. While later chapters will include analysis of documents such as Department of Energy documents, the government report on September 11, 2001, and the Alien and Sedition Acts of 1798, the Espionage Act of 1918, the Homeland Security Act of 2002, and the Patriot Act of 2001, this chapter will focus on President Clinton's EO 12958 and President Bush's EO 13292. On a chapter by chapter basis, each document will be analyzed and explored historically and in relation to similar documents in order to see the sedimentation of what it means to be secure, to be secretive, and to discover a pattern of change if any exists. Many societal changes have occurred over the past half century which have impacted the secrecy system. For example, computers have drastically altered information collection, analysis, and distribution. Another example can be found by examining political and ideological shifts over the decades. These ideological shifts are evinced by the change in classification patterns trending toward increased classification. However, taken collectively, the hermeneutic analysis of each document will contribute to a holistic understanding of the government secrecy system.

This dissertation is a hermeneutic analysis of government secrecy. By coming to understand the parts—the executive orders, the legislation, their impact—an understanding of the entire phenomenon occurs. The past is made sense of via the system and vice versa. Through this understanding, recommendations and predictions can be made, and a theoretical model can be developed to explain the machinations of the system. Any investigation of government secrecy, whether by an insider or an outsider, suffers the limitation of inaccessible information—this is the nature of the system. Yet, the documents selected for analysis in this dissertation are more than adequate and representative of the phenomenon to enable the researcher to explain, assess, and evaluate government secrecy. Evidence of this will be demonstrated beginning with the present chapter. After describing characteristics of hermeneutics as a methodology and exploring multiple interpretations of hermeneutics itself, hermeneutic analysis will be applied to the two most recent executive orders regulating secrecy.

Defining Hermeneutics

Numerous historians, philosophers, and philologists contributed to the development of hermeneutics as an endeavor of the life sciences. The primary contributors to hermeneutics to be discussed in this chapter include Schleiermacher (1985), Dilthey (1985), Heidegger (1962), Gadamer (2003; 1985; 1976), and Ricouer (1981). Their contributions to hermeneutics will be explicated in the following sections in order to establish the theoretical and methodological foundations for the analysis to be conducted for this dissertation. Perspectivism, revealed by Bacon's Four Idols, will be examined prior to discussing the contributions of the previously mentioned scholars so that the importance of investigator perspective, and its significance to establishing context between the researcher and the text, is clearly understood.

Bacon's four idols

In 1620, Francis Bacon articulated his concern for the various impediments to objectively understanding a phenomenon. Cognizant of humankind's limited perception, Bacon (1963) described the limitations to human understanding. He called these limitations the Idols of the Tribe, the Idols of the Cave, the Idols of the Marketplace, and the Idols of the Theatre. Though he did not refer to his method of overcoming the Idols as "hermeneutics", his focus on human interpretation and understanding provided a basis from which to build a systematic process for understanding a text.

According to Bacon (1963), "the Idols of the Tribe have their foundation in human nature itself, and in the tribe or race of men" (p. 193). With the Idols of the Tribe, Bacon acknowledges the imperfections of human nature itself. "All perceptions as well of the sense as of the mind are according to the measure of the individual and not according to the measure of the universe" (Bacon, 1963, p. 193). Thus, Bacon explicitly recognized the limitation of human perception. The Idols of the Cave are closely related to the Idols of the Tribe. The Idols of the Cave refer directly to individual perceptions. Every human

> has a cave or den of his own, which refracts and discolours the light of nature; owing either to his own proper and peculiar nature; or to his education and conversation with others; or to the reading of books, and the authority of those whom he esteems and admires; or to the differences of impressions, accordingly as they take place in a mind preoccupied and predisposed or in a mind indifferent and settled; or the like. (Bacon, 1963, p. 194)

However, rather than yield to acute and inaccurate perspectivism Bacon believed that sustained, systematic analysis might enable an individual to avoid the limitations inherent in empirical encounters with the life-world. Bacon recognized that our own background, training, and education colors and shapes the ways we experience the world.

The world views arising from social interaction also impede our ability to understand a phenomenon. Bacon was concerned that the linguistic limitations of discourse obstruct our ability to reach understanding. “Words plainly force and overrule the understanding, and throw all into confusion, and lead men away into numberless empty controversies and idle fancies” (Bacon, 1963, p. 194). Bacon (1963) referred to these as the Idols of the Market-place, and he considered them “the most troublesome of all” (p. 201). Here Bacon concerned himself with the manner in which words themselves often confuse and distort our understanding of a phenomenon. The Idols of the Theatre centered on the false philosophies and ideas perpetuated by learned individuals. Bacon was suspicious of theoretical or methodological structures that might have been erected on false foundations but were still accepted simply by virtue of their being fashionable at a certain point in time. “All the received systems are but so many stage-plays, representing worlds of their own creation after an unreal and scenic fashion” (Bacon, 1963, p. 195). These four Idols represented ways in which human perception may be obstructed, either through human nature, individual perspectivism, language, or philosophical tradition. Yet, it is through recognizing these Idols that we are able to acknowledge perceptual limitations and attempt to develop a system by which to overcome them.

Bacon believed that a combination of deductive and inductive methods was the solution to overcoming the four Idols. Unfortunately for Bacon, after calling into question the foundations for understanding through the four Idols, he was unable to overcome the inherent solipsism of his epistemology. It was here that later formulations of hermeneutics presented themselves as potential answers to the perspectivism of the four Idols. Dialogue, fundamental to hermeneutics, was the means for addressing individual perspective. Through dialogue, we are able to reach understanding beyond our own limited perspective. Dialogue involves a perpetual broadening of our historical horizon through communication. Examining specific elements of government secrecy allows the researcher to understand the broader context of government secrecy—to participate in a dialogue about secrecy. Rather than approaching the secrecy system with pre-formulated ideologies, theories, and conclusions, the researcher creates a context for understanding, examines the relationship created between himself and numerous related cases, and then draws conclusions to the whole—conclusions based on careful analysis and historic perspective. It is through this perspectivism, as articulated by Bacon and demonstrated by his four Idols, that hermeneutics recognizes, addresses, and achieves its method for gaining understanding. It is important to realize that any methodology yields a particular perspective, most notably the perspective of the researcher. Hermeneutics provides a way of acknowledging the limitations of perspectivism by recognizing the subjective relationship between a researcher and a text. It is through analysis of the context created between the researcher and the text that an understanding is achieved.

Schleiermacher and Dilthey

Hermeneutics, as espoused by Schleiermacher, extended from his recognition that “interpretation varies with the diversity of the texts” (Ricoeur, 1981, p. 45). Schleiermacher “was one of the first to argue for the general significance of hermeneutics” (Bernstein, 1983, p. 112). He realized that some texts required study and translation—philological purposes. While other texts, such as books of the bible or other sacred texts required exegesis, a more critical interpretation of the text. According to Schleiermacher (1985), there is a distinction between understanding the actual words of a text (the linguistic sense) and the life experience of the speaker or author. "Understanding takes place only in the coherence of these two moments" (Schleiermacher, 1985, p. 75). Schleiermacher believed that philology and exegesis were the "two great branches of hermeneutics" and that "hermeneutics was born with the attempt to raise exegesis and philology to the level of a *Kunstlehre*, that is, a 'technology' which is not restricted to a mere collection of unconnected operations" (Ricoeur, 1981, p. 45). He continued to struggle with the equivalent and dual nature of hermeneutics—the philological or grammatical component and the exegesis or technical component. In later works, Schleiermacher elevated the technical component of hermeneutics, thereby privileging interpretation as the more meaningful, in fact foundational, component of hermeneutics (Ricoeur, 1981).

According to Gadamer (1976), through Schleiermacher "hermeneutics became the universal organ of the historical method" because "psychological-historical understanding took the place of immediate insight into the subject matter and became the only genuinely methodical, scientific attitude" (p. 47). Thus, Schleiermacher provided the foundation for the multifaceted interpretations of hermeneutics which followed. It is interesting to note that the application of hermeneutics at this time revolved around the interpretation of religious texts, particularly the bible, and legal documents. In this sense, my application of hermeneutics, on the surface, shares this historical lineage as the documents analyzed herein are legal documents establishing rules and procedures for information control. An example of hermeneutics, as conceptualized by Schleiermacher, can be seen in the practices of the United States Supreme Court. In practicing hermeneutics, the Supreme Court is involved with interpreting laws in relation to the United States Constitution. Members must consider both the presumed intent of the Constitution and the current historical standpoint in order to reach an understanding concerning a law.

Dilthey drew on Schleiermacher's hermeneutics "to bring out what he took to be both the distinctive subject matter and the method of the *Geisteswissenschaften*, especially 'historical reason' (Bernstein, 1983, p. 30). Dilthey (1976) extended the work of Schleiermacher by elaborating on the utility of hermeneutics for the human sciences. In *The Rise of Hermeneutics* (1976), Dilthey viewed hermeneutics as a method which would enable the study of human behavior to approach the objectivity of natural science. Although Dilthey, like Schleiermacher before him, sought objectivity, he acknowledged that the understanding of an object is made available through the perspective of the researcher who is historically situated. "Understanding and interpretation is the method used throughout the human sciences. It unites all their functions and contains all their truths. At each instance understanding opens up a world" (Dilthey, 1985, p. 152). Dilthey (1985) displayed a concern for what he called "life expressions" (p. 153). According to Dilthey (1985), "individuals do not usually apprehend life-expressions in isolation but against a background of knowledge about common features and a relation to some mental content" (p. 155).

Hermeneutics for Dilthey had the goal of identifying the distinctive aspects of "humanistic and historical knowledge and revealing its characteristic subject matter, aims, and methods in a manner that would meet and challenge the belief that only the natural sciences can provide us with 'objective knowledge'" (Bernstein, 1983, p. 113). According to Mueller-Vollmer (1985), "for Dilthey, it was the task of the hermeneutician to make understanding and interpretation, as it has evolved in the disciplines of the sciences of man, the object of cognitive analysis" (p. 28). Hermeneutics is a way in which researchers can appropriately and systematically analyze texts or human behavior in the hope of transcending subjectivity, and ultimately attaining objective understanding of a "text." As we will see, Heidegger, and Gadamer more fully, evolved hermeneutics from epistemology, a way of experiencing or coming to an understanding of the world, to ontology, the fundamental human characteristic for experiencing the world.

Heidegger and Gadamer

Heidegger (1985; 1962) and Gadamer (2003; 1985; 1976) were responsible for expanding the scope of hermeneutics.

> Implicit in Heidegger, and explicit in Gadamer, are two interrelated fundamental claims: the claim for the *ontological* significance of hermeneutics, and the claim for its *universality*. *Hermeneutics* is no longer conceived of as a subdiscipline of humanistic studies or even as a characteristic method of the *Geisteswissenschaften*, but rather as pertaining to questions concerning what human beings are. (Bernstein, 1983, p. 113)

Heidegger's *Being and Time* (1962), and Gadamer's *Truth and Method* (2003) and *Philosophical Hermeneutics* (1976), explicate the transition of hermeneutics from epistemology to ontology. Beyond a systematic method of interpreting "texts," hermeneutics is not only a way of interpreting experience, but it is *the* way we live in the world, which is to say that we are interpreters of experiences. Understanding, via interpretation is the only method for experiencing the world. Interpreting is what we do; we are interpreting creatures. To Heidegger, hermeneutics was the "*meaning* of being" (Ricoeur, 1981, p. 54). To Heidegger and Gadamer, knowledge and understanding was only possible through hermeneutics, the process of interpretation. In the most basic sense, hermeneutics is not just a method; it is simultaneously all methods and *the* method, because all methods are ways of coming to understanding of the world through interpretation. Our basic experience of the world is interpretation. Heideggar's claims for the universality of hermeneutics as the human way for experiencing the world are evidenced in his identification of the inextricability of being and meaning. "Understanding always pertains to the whole basic state of Being-in-the-world" (Heidegger, 1962, p. 184). Though not the same, being and meaning are only possible through each other.

Gadamer built on the assertions of Heidegger, his teacher, by denying the effectiveness of natural scientific methods in the study of human behavior, and denying the possibility of transcending subjectivity (Gadamer, 2003). Gadamer acknowledged that the researcher experiencing a text is distanced, not only from the text, but also from the original writer of the text. According to Dilthey and others, this distancing from the original connection to the text and its source aided objectivity; however, to Gadamer, this distancing, which he called alienating distanciation, falsely separated the researcher from the historical sense of belonging which was a fundament of subject/object interaction. Gadamer divided the hermeneutic experience into three spheres, the aesthetic sphere, the historical sphere, and the sphere of language. It is the third sphere, the sphere of language, which Gadamer argued that "any scientific treatment of language as an instrument and every claim to dominate the structure of the texts of our culture by objective techniques are preceded and rendered possible by our co-belonging to the things which the great voices of mankind have said" (Ricoeur, 1981, p. 60). Gadamer focused on the nature of hermeneutics as a linguistic event. According to him, dialogue was central to understanding. The process of an investigator moving back and forth between the object and reflection on the object created the dialogue.

Whereas earlier conceptions of hermeneutics, exemplified by the narrow focus of scholars interpreting ancient texts, were concerned with overcoming the obstacle of the historical distance between the present day scholar and his or her ancient text, Heidegger and Gadamer viewed historicality as productive rather than detrimental. It is important for a researcher to comprehend his or her own situatedness when encountering a text. Rather than being something to overcome, the historical consciousness of the investigator is an important and necessary part of understanding. "The historical object and the hermeneutic operation of the interpreter are both part of an overriding historical and cultural tradition or continuum which Gadamer calls 'effective history'" (Mueller-Vollmer, 1985, pp. 38-39). Concepts such as effective history, horizon, and prejudice are central to understanding Gadamer's hermeneutics. "Horizon is the range of vision that includes everything that can be seen from a particular vantage point" (Gadamer, 2003, p. 302). To Gadamer, hermeneutics involved the fusing of the investigator's horizon with the historical horizon. The horizon was not finite, but rather constantly emerging. It is through dialogue with persons, texts, or objects that we are able to engage the horizons of others. It is through the hermeneutic dialogue that we are able to recognize our own prejudices, expand our horizon, and develop an understanding— one of many potential understandings.

Ricoeur

Ricoeur interpreted Gadamer as putting the subject in the position of choosing between hermeneutics as epistemology or hermeneutics as ontology. He rejected this dichotomy and attempted to overcome it by more completely establishing hermeneutics through the defining of text, distanciation, and the theory of appropriation. To Ricoeur (1981), the act of interpreting a text displayed “a fundamental characteristic of the very historicity of human experience, namely that it is communication in and through distance” (p. 131). He was partially successful in overcoming the previously stated dichotomy. He did so in a way which moved hermeneutics towards a more methodologically significant enterprise—not in the Dilthenian sense, but in a manner highly cognizant of all previous forms of hermeneutics; a manner appreciative of the ontological dimensions of the hermeneutics of Heidegger and Gadamer, yet focused on providing the *Geisteswissenschaften* with a means to gain textual understanding in a systematic and thoroughly explicated manner. The emphasis centered on how texts become meaningful for a specific social group. “Interpretation concerns essentially the power of the work to disclose a world, then the relation of the reader to the text is essentially his relation to the kind of world which the text presents” (Ricoeur, 1981, p. 182). Ricoeur worked to establish how it was that we could come to know a text via a new theory of subjectivity. “To understand is not to project oneself into the text; it is to receive an enlarged self from the apprehension of proposed worlds which are the genuine object of interpretation” (Ricoeur, 1981, pp. 182-183). A clarification of the ways in which an interpreter would come to experience a text was achieved through his theory of appropriation.

> According to the intention of the word, the aim of all hermeneutics is to struggle against cultural distance and historical alienation. Interpretation brings together, equalizes, renders contemporary and similar. This goal is attained only insofar as interpretation actualises the meaning of the text for the present reader. Appropriation is the concept which is suitable for the actualisation of meaning as addressed to someone. The interpretation is complete when the reading releases something like an event, an event of discourse, an event in the present time. As appropriation, the interpretation becomes an event. Appropriation is thus a dialectical concept: the counterpart of the timeless distanciation implied by any literary or textual criticism of an anti-historicist character. (Ricoeur, 1981, p. 185)

Ricoeur believed that researchers in the human sciences were capable of, through the hermeneutic circle, an appropriation of experiencing a true understanding of a phenomenon. In fact, one of Ricoeur's primary contributions was his ability to synthesize phenomenology and hermeneutics into a cohesive system for interpreting experience. This history of the development of hermeneutics, however truncated, provided the theoretical basis for understanding the hermeneutic circle and its role as the methodology for the study of government secrecy.

The hermeneutic circle

Having delineated the growth of both hermeneutics as a methodology and hermeneutics as the way in which humans come to experience and understand the world, it is time to focus on how, specifically, hermeneutics informs and guides this dissertation.

What conditions are present in a hermeneutic investigation of a phenomenon? Obviously, both the researcher and the text to be analyzed are present. What is the relationship between the researcher and the text? In the human sciences "the subject and object are mutually implicated" (Ricoeur, 1981, p. 57). An object only comes to be known as it is experienced through the subject. "The subject itself enters into the knowledge of the object; and in turn, the former is determined, in its most subjective character, by the hold which the object has upon it, even before the subject comes to know the object" (Ricoeur, 1981, p. 57). However, through the use of the hermeneutic circle, a researcher can move beyond the initial subjective experience of the object and begin to reveal the true nature of the object.

Gadamer (2003) believed that an understanding of an object could be achieved through the art of dialectic—"the art of questioning and seeking truth" (p. 367). This dialectical process involves moving back and forth between an examination of the object and a reflection on what the researcher knows about the object. An individual encounters an object and immediately the object impresses on her in some way. As the researcher analyzes the object more information concerning the object becomes known. The gathering information informs and guides the researcher to revise her original understanding of the object. The researcher returns to analyze the object and thus the circle continues. It is in this sense that the hermeneutic circle contributes to this dissertation. At the macroscopic level, the researcher encounters the phenomenon of government secrecy with limited understanding of it. Reflecting on the phenomenon involves analyzing various legislation, executive orders, policies and procedures, and other writings concerning classification and secrecy. At the microscopic level, individual acts and executive orders are analyzed. For example, understanding the Atomic Energy Acts presented in chapter three is a building process, a layering so to speak. The texts of the acts themselves are interpreted, followed by a revision of thoughts on the texts, which is in turn followed by more analysis. Next, an examination of the historical conditions surrounding the texts provides information as to the motives of the original sources behind the text. Working in this manner, the researcher is able to combine analysis of all the individual texts to create a better understanding of the phenomenon as a whole. The subject object relationship and dialogue is clearly articulated by Palmer (1969).

> It is not the interpreter who grasps the meaning of the text; the meaning of the text seizes him. When we watch a play or a game or read a novel, we do not stand above it as subject contemplating an object; we are caught up in the inner movement of the thing that is unfolding. (p. 248)

Is the hermeneutic examination of an object merely a vicious circle preventing an examiner of ever truly knowing an object? While Dilthey, Gadamer, and Ricoeur acknowledged the infinite nature of hermeneutic analysis, they did so in a limited sense. It is possible to reach an understanding of the phenomenon that is extended well beyond the initial subjective understanding occurring upon first contact. According to Palmer (1969), “the whole receives its definition from the parts, and reciprocally, the parts can only be understood in reference to the whole” (p. 118). However, in the sense that information, as well as the standpoint of the examiner, changes and grows, researchers are always capable of generating new understanding of a phenomenon—this is achieved via the hermeneutic circle. According to Gallagher (1992), the elements of the hermeneutic circle include tradition or prior knowledge of the researcher of the object, the knowledge which arises from interpreting the object anew, the object itself, and the evolving nature of the interpretation.

> Since we understand always from within our own horizon, which is part of the hermeneutical circle, there can be no nonpositional understanding of anything. We understand by constant reference to our experience. The methodological task of the interpreter, then, is not that of immersing himself totally in his object (which would be impossible anyway) but rather that of finding viable modes of interaction of his own horizon with that of the text. (Palmer, 1969, p. 121)

Using hermeneutics as the guiding methodology, legislation, executive orders, government documents, and public statements will be analyzed to gain understanding of the phenomenon of government secrecy. The hermeneutic analysis which will conclude this present chapter involves a comparison between the two most recent executive orders and will serve to focus the discussion on the core of the secrecy system as established via the executive branch of U.S. government. Hermeneutics enables the researcher to analyze the executive orders and reveals the ideology of the creators of the executive orders. This analysis reveals how creators of classification policy view the relationship among time, secrecy, and security.

Comparative Analysis of EO 12958 and EO 13292

The methodological focus employed here centers upon a comparative analysis of the two most recent executive orders concerning classification. On March 28, 2003, President George Bush signed Executive Order 13292, effectively replacing Executive Order 12958 which was established by President Bill Clinton on April 17, 1995. Previous information in this chapter has provided the historical background for classification via executive order; this segment will now investigate the key differences between Clinton's executive order and Bush's executive order. Evidence within the Clinton executive order suggests that it attempted to err on the side of openness. Yet, despite such specific language within this executive order which encouraged openness and declassification, the number of classified documents at the end of Clinton's eight year term still was higher than when he took office. However, during his Presidency, there were occasions when the number of classified documents was reduced from the previous year, and the Information Security Oversight Office, the agency tasked with collecting and reporting information related to classification amounts, reported that data from 2000 was suspect because of an incorrect method of counting classified documents, primarily as a result of the unique challenge which electronic mail placed on the classification system. According to the ISOO (2000),

> Fiscal year 2000 data on derivative classification activity within the executive branch showed a dramatic increase from fiscal year 1999. This increase was so high, ISOO questioned the value of reporting the data because it seemed so enormous and hardly comparable to the data reported in prior years. The data showed a 186 percent increase in derivative classification -- from almost 8 million actions in FY 1999 to almost 23 million actions in FY 2000. Two of the largest classifying agencies account for the increases: Department of Defense and Central Intelligence Agency. ISOO firmly believes that the increase is not a result of new programs. We recognize the primary factor responsible for this dramatic increase in derivative classification activity is the burgeoning electronic environment. (¶ 49)

Regardless of the explanation for this dramatic increase in classification numbers, neither the fiscal year 2001, nor the fiscal year 2002 reports established new calculation methods. It was not until the ISOO Report to the President for 2003 that the classification calculation system was altered to accurately account for electronic media classification decisions. Although evidence existed in the mid 1990s that classification was decreasing (1995 in particular), by the end of the decade, classification was once again on the rise.

Rationale for Comparative Analysis

Over the course of investigation into government secrecy it has become increasingly obvious that Executive Orders delineating the guidelines for classification establish the tone and tenor of classification decisions. Additionally, as established in chapter two when discussing hermeneutics, there is a distinct time relationship to the concept of classification. In this case, world events in the early to mid 1990s likely impacted the construction and content of 1995s EO 12958. Likewise, the destruction of the World Trade Centers as a result of international terrorism facilitated the construction, and impacted the content, of EO 13292, which was signed by President Bush in 2003. In the absence of access to currently classified documents, it was necessary to examine the guidelines dictating current classification policy. Executive Order 12958 and EO 13292 represent the two most current classification specifications. If, as evidence supports in the case of EO 12958, classification decisions increased under an executive order emphasizing openness, then it is highly likely that an executive order emphasizing secrecy would result in a promulgation of classification. For this reason, as well as that executive orders are the foundation for classification practices, it is necessary to examine EO 12958 and EO 13292 in order to create a hermeneutic of secrecy. Six areas of comparison between Executive Order 12958 and Executive Order 13292 will be analyzed in this section, all of which will be designed to examine classification trends over the past ten years.

Trending Towards Secrecy

Specific language was included in EO 12958 to encourage individuals to apply front end analysis to classification decisions. For example, Section 1.2(b) stated "if there is significant doubt about the need to classify information, it shall not be classified" (EO 12958, 1995). In unambiguous language, this declaration urged classifiers to err on the side of openness. If there was uncertainty, then they were not to classify the document. Consistent with this particular theme, Section 1.3 (c) stated, "if there is significant doubt about the appropriate level of classification, it shall be classified at the lower level" (EO 12958, 1995). In both of the cases mentioned here, the executive order explicitly called on classification authorities to be certain in their decisions to classify. Implicit in these statements was the concern that too often information was being classified because it was easy for the classifier to convince him or herself that they could classify the information now and review their decision later. The error inherent in this line of reasoning was that once a document became classified, the classifier might not have any further contact with the information and classifiers would be unwilling to declassify an already classified document. Once a document is classified, the tendency to give the original classifier the benefit of the doubt regarding his or her decision prevails. In this way, classification proliferates. By urging classifiers to trend towards openness, EO 12958 sought to avoid unnecessary classification. In contrast to EO 12958, EO 13292 completely removed Section 1.2(b) and Section 1.3(c). By eliminating the two sections which encouraged both openness and lower levels of classification, EO 13292 effectively shifted the pendulum away from openness. In a system which operates as a bureaucracy (bureaucratic characteristics will be discussed in more detail in chapter four), every effort should be made to balance the tension between secrecy and openness. Executive Order 13292 did not effectively balance this tension.

Section 1.8 (c) of the Clinton executive order made it impossible to reclassify information “after it has been declassified and released to the public under proper authority” (EO 12958, 1995). In contrast to EO 12958, EO 13292 allowed for the reclassification of declassified information. To its credit, EO 13292 limited reclassification by describing the conditions under which reclassification would be allowable; however, the idea of reclassifying officially declassified information was reflective of a trend towards secrecy rather than openness. Section 3.8 of EO 12958 established a declassification database available to the public. “Except as otherwise authorized and warranted by law, all declassified information contained within the database established under paragraph (a), above, shall be available to the public” (EO 12958, Section 3.8(c), 1995). Executive Order 13292 eliminated the above statement and inserted the following: “(a) the Director of the Information Security Oversight Office, in conjunction with those agencies that originate classified information, shall coordinate the linkage and effective utilization of existing agency databases of records that have been declassified and publicly released” (EO 13292, Section 3.7(a), 2003). Unlike the wording in the Clinton executive order where all declassified information present in the databases would be made available to the public, the Bush executive order stated that declassified information had to be officially “publicly released” before it could be made available to the public. In addition to the officially classified information which is the primary focus of this dissertation, there exists a voluminous amount of unclassified, protected information. The wording of EO 13292 seems to contribute to the growth of both classification and unclassified, but protected, information.

Definitional Clarity

Since the issuance of the first executive order related to the classification system by President Roosevelt in 1940, key terms have been operationally defined within the document to ensure clarity of understanding. Terms such as information, national security, classification, agency, declassification, access, need to know, etc., have been listed and defined. Obviously, the purpose behind the operational definitions was to provide the reader with the definitional parameters for each of the terms. Over time, the number of operationally defined terms included in the executive orders has grown. Executive Order 12958 contained 36 definitions. The first section of each of the five parts of EO 12958 included the definitions for the terms used within that section. Thus, Section 3 on declassification began by outlining the eight definitions pertinent to Section 3. In contrast to EO 12958, EO 13292 moved all definitions to a sixth section called “General Provisions.” It was in this section that the key terms of the executive order were defined. For EO 13292, six new terms were defined: document, integral file block, records, records having permanent historical value, records management, and weapons of mass destruction. While the adding of definitions is not inherently of interest, definitional omissions are indeed so. It is worth noting that in the document introduction and on three occasions in Section 1, the term “transnational terrorism” was used. One would expect a term such as transnational terrorism to be defined by Executive Order 13292. The opening sentence of the introduction reads, “this order prescribes a uniform system for classifying, safeguarding, and declassifying national security information, including information relating to defense against transnational terrorism” (EO 13292, 2003). Classification, safeguarding, declassification, national security, and information were all terms defined in the current and the preceding executive order. Transnational terrorism, however, was not defined. Possible explanations for choosing not to define the term “transnational terrorism” range from simple omission to deliberate exclusion. Whatever the reason, the absence of a clearly articulated definition for a concept as broad and ambiguous as “transnational terrorism” further supports the shift towards secrecy. The range of information potentially falling under the rubric of “transnational terrorism” exacerbates the problem of classification abuse. One cannot help but wonder if the decision to move the definitions to the end of the document was a conscious and purposeful one enacted to reduce the glaring omission of an operational definition for “transnational terrorism.” It is worth noting, however, that President Reagan’s Executive Order 12356 included pertinent definitions at the conclusion of its document, also. Perhaps it is simply a stylistic difference between Republicans and Democrats in their executive orders pertaining to classification.

Classification Time Frame

Yet another point of divergence between EO 12958 and EO 13292 stems from differing interpretations of acceptable classification time frames. It is perhaps this area alone which illustrates the need for a legislative basis for the classification system. Over the past four executive orders related to secrecy, Carter’s EO 12065, Reagan’s EO 12356, Clinton’s 12958, and Bush’s 13292, the time limits for classification have been left completely to the ideological whims of the respective parties. Whereas Carter and Clinton decreased the acceptable number of years that a document could remain classified and established regulations for those classifiers who wished for a longer classification period, Reagan and Bush increased the classification limits. According to EO 12958, "if the original classification authority cannot determine an earlier specific date or event for declassification, information shall be marked for declassification 10 years from the date of the original decision" (EO 12958, 1995). In addition to establishing a 10 year time limit, EO 12958 defined the eight acceptable circumstances under which a document could be classified beyond those ten years. Examples of acceptable classified extensions included information which could be reasonably expected to:

> (1) reveal an intelligence source, method, or activity, or a cryptologic system or activity; (2) reveal information that would assist in the development or use of weapons of mass destruction; (3) reveal information that would impair the development or use of technology within a United States weapon system; (4) reveal United States military plans, or national security preparedness plans; (5) reveal foreign government information; (6) damage relations between the United States and a foreign government, reveal a confidential source, or seriously undermine diplomatic activities that are reasonably expected to be ongoing for a period greater than that provided in paragraph (b), above; (7) impair the ability of responsible United States Government officials to protect the President, the Vice President, and other individuals for whom protection services, in the interest of

> national security, are authorized; or (8) violate a statute, treaty, or international agreement. (EO 12958, 1995)

The eight definitions mentioned above were very broad and open to a wide array of interpretation; however, they did attempt to establish acceptable definitional parameters for classification beyond the ten year time period. Executive Order 13292 eliminated all of the special circumstances for classifying information beyond ten years and replaced them with the following statement, “information shall be marked for declassification 10 years from the date of the original decision, unless the original classification authority otherwise determines that the sensitivity of the information requires that it shall be marked for declassification for up to 25 years from the date of the original decision” (EO 13292, 2003). This ruling made it easier to classify information for longer periods of time which perpetuated government secrecy. Thus far it has been demonstrated how EO 13292 eliminated key statements which might have fostered openness, omitted key definitions, and prolonged the duration of classification.

Automatic Declassification

As mentioned in the previous section EO 13292 differed from EO 12958 in that the acceptable duration for classification was prolonged. Topically related to classification duration is the automatic declassification timetable. An example of the shift towards secrecy can be found in Section 3.3(b1) of EO 13292. This section illustrated appropriate times for an agency to request declassification exemption. In the previous executive order, information could be exempt from automatic declassification if an agency demonstrated that revealing “the identity of a human intelligence source when the unauthorized disclosure of that source would clearly and demonstrably damage the national security interests of the United States" (EO 12958, 1995). However, in EO 13292, the statement "when the unauthorized disclosure of that source would clearly and demonstrably damage the national security interests of the United States" was completely eliminated. Excising this phrase effectively removed the burden of proof, the burden of demonstrating damage to the national security, from the agency requesting automatic declassification exemption, and thereby created a situation where prolonged classification and secrecy were determined by the classifying agency. Under these guidelines, the likelihood of an organization declassifying information which portrayed that agency in a negative light was improbable. Additionally, EO 12958 established specific guidelines for automatically declassifying information, particularly information already over the 25 year limit (even though progress was being made, no organization was likely to meet the Clinton declassification deadline). The Bush executive order made it possible for classification authorities to request declassification extensions, and thus made possible the continued classification of documents 30, 40, 50, or 60 plus years old.

On a final note pertaining to the declassification of documents, Section 1.6 of EO 13292 included the following, "prior to public release, all declassified records shall be appropriately marked to reflect their declassification" (EO 13292, 2003). On the surface this appears to be a legitimate attempt to ensure that only those documents properly declassified were available for public consumption. However, in practice, this statement actually established another impediment to the timely declassification of information. Rather than a document being allowed to reach its declassification date and then automatically being made available to the public, this additional bureaucratic step, officially marking a document "declassified," created a barrier to declassification. If only those documents officially marked as “declassified” were actually declassified, then the free flow of information is once again beholden to the bureaucracy of the secrecy system.

Emphasis on Consequences

The act of revealing classified information should be taken seriously and with a tremendous consideration of the balance between necessary secrecy and democratically mandated openness. Executive Order 13292 drew explicit attention to the consequences of unauthorized disclosure. Inserted at the close of Section 1.1 was the phrase, “the unauthorized disclosure of foreign government information is presumed to cause damage to the national security” (EO 13292, Section 1.1(c), 2003). Taken on its own, this statement seems innocuous. However, taken in conjunction with the following additions to the executive order, it becomes fairly obvious that the government wanted to emphasize the dire consequences of unauthorized disclosure. Section 1.4(d) of Clinton’s executive order described that individuals must receive training in original classification. EO 13292 moved this line to Section 1.3 (d) and added, “such training must include instruction on the proper safeguarding of classified information and of the criminal, civil, and administrative sanctions that may be brought against an individual who fails to protect classified information from unauthorized disclosure” (EO 13292, Section 1.3(d), 2003). Section 4 of both EO 12958 and EO 13292 referred to the appropriate safeguarding of information. Executive Order 13292 made the following addition to Section 4,

> Every person who has met the standards for access to classified information in paragraph (a) of this section shall receive contemporaneous training on the proper safeguarding of classified information and of the criminal, civil, and

> administrative sanctions that may be imposed on an individual who fails to protect classified information from unauthorized disclosure. (EO 13292, Section 4.1(b), 2003)

Finally, in the section covering “program direction,” EO 13292 included the phrase, “safeguarding classified information, which shall pertain to the handling, storage, distribution, transmittal, and destruction of and accounting for classified information” (EO 13292, Section 5.1(2), 2003). By consistently drawing attention to the consequences of unauthorized disclosure of information, EO 13292 reduced the openness/secrecy tension which ought to have been inherent in the handling and marking of sensitive information. This institutionalized preemption of openness/secrecy consideration ensured that the system would perpetually tilt towards secrecy. The elimination of the phrases which addressed openness, such as were discussed previously, and the attention placed on the “criminal, civil, and administrative” penalties governing the system, reified secrecy in a system which needed very little help in that process.

Expansion of Vice Presidential powers

Since President Roosevelt’s Executive Order 8381 in 1940, the President has always been the sole executive official capable of conferring classification authority to an agency or department. The central reason for this is due to the fact that constitutionally, the President is the only individual granted the power to restrict the flow of information concerning issues of national security or foreign policy. Over the years, this constitutionally established, executive branch authority, has served as the foundation for government secrecy and classification oversight via executive order. In light of the constitutionally bestowed authority of the President to designate which departments and agencies have classification authority, it is interesting to note that EO 13292, signed in 2003, expanded this power to include the Vice President of the United States. The executive order guided classification system worked via the President granting certain agency heads and other government officials the authority to classify information. Those agency heads and government officials could then designate which individuals within their organization were allowed to classify documents. Classification authority designation worked in a trickle down fashion. Conferring only the President with the power to designate which agencies and departments had classification authority, not only adhered to the Constitution, which proclaimed that only the President could restrict the flow of national security and foreign policy information, but also demonstrated the profound significance of such a decision. Executive Order 13292 broadens that authority by granting it to the Vice President. The phrase, "in the performance of executive duties, the Vice President" was included in EO 13292 three times in Section 1.3 pertaining to "Classification Authority" (EO 13292, 2003). While the effects of such an inclusion are unknown at this point, any expansion of classification authority opens up the possibility of increased secrecy. This inclusion of the Vice President, coupled with the recent decision to confer classification authority to the Secretary of Health and Human Services (2001), the Secretary of Agriculture (2002), and the Administrator of the Environmental Protection Agency (2002), seems symptomatic of a growing classification system.

Conclusion

Taken holistically, the changes between Executive Order 12958 and Executive Order 13292 generate concerns for open government. Hermeneutic analysis reveals substantial differences in the two documents. The creators of EO 12958 emphasize and value open government, while the creators of EO 13292 believe that security necessitates emphasis on secrecy. The classification parameters established in the current executive order virtually ensured the continuance of prolific classification. While this stringent control of information may limit enemy access to our most precious secrets, it also limits citizen access to information critical to the self-governance upon which the U.S. Constitution is predicated. Any discussion of systematic information control falls within the purvey of the communication discipline, regardless of whether that control is at the interpersonal, small-group, organizational, or societal level. By examining these issues through a communicative lens, the researcher has been able to focus on those specific aspects which relate to the transmission and control of information. Understanding the ways in which information is created, transmitted, and controlled via classification, has provided the researcher with the necessary understanding to then evaluate the effectiveness of the system. While this chapter focused on the broader issues of classification and the historical development of secrecy, chapter three will narrow the focus to one governmental department with classification authority—the Department of Energy.

Chapter 3

Government secrecy, the Atomic Energy Act, and the Department of Energy

On July 16, 1945, the world's first atomic bomb was exploded by the United States in the desert of New Mexico (DOE, 1994). Few events in history have impacted U.S. and world affairs as greatly as the development of nuclear weapons. Proponents of the bomb argue that its development and subsequent detonation in Hiroshima and Nagasaki accelerated the conclusion of World War II. Unfortunately, the development of the Atomic bomb led to 40 plus years of nuclear weapons proliferation as the United States and Russia squared off during the Cold War. Fifty eight years after the detonation of the first atomic bomb, war between the United States and Iraq began over whether Iraq possessed or was building weapons of mass destruction. The impact which the development of atomic energy has had on U.S. foreign policy and world events is considerable. As scientists working in secret and under the auspices of the Department of Defense created the first atomic bomb, the roots of secret nuclear energy development clearly rest in the U.S. classification system. Although the Department of Energy was not formed until 1977, its predecessor, the Atomic Energy Commission arose from the efforts of the Manhattan Project. The Manhattan Project was the name for the scientists, engineers, technicians, and army personnel who developed the means to split the atom and initiated the nuclear age, and its policies are guided in part by the Atomic Energy Act.

Of the 28 official government departments and agencies with classification authority, the Department of Energy classifies considerably less information than the Department of Defense, the Federal Bureau of Investigators, and the Central Intelligence

Agency, but typically more information than the rest of the classifying entities. However, there are several legitimate reasons for examining this department in order to provide an understanding of the classification system as a whole. One of these reasons stems from the fact that the Department of Energy is almost always included with the previously identified trio during discussions of classification policies. For example, during the Moynihan Commission Hearings, these four entities were called to testify together about classification and government secrecy. The second reason, to be discussed more fully in the subsequent section, is the higher level of access provided by the Department of Energy to researchers. After establishing the rational for using the DOE as an exemplar, this chapter will explore three specific areas relating to government secrecy—the Atomic Energy Acts of 1946 and 1954, scientific and technical secrecy, and the Department of Energy Openness Initiative. Taken together, these areas will provide insight into the operational procedures of one of the numerous government departments with classification authority. By outlining the behaviors of one department which has the ability to officially protect sensitive information, this dissertation seeks to use that information as a template for understanding the operational behaviors and tendencies of the government secrecy system as a whole.

The Department of Energy

Access

There are several significant reasons for using the DOE as an exemplar for understanding classification policies and procedures. Any researcher faced with the task of accurately describing the United States system for generating and protecting secret information invariably encounters the problem of access. How does an individual outside of the system gather accurate information about the policies and procedures which govern that system? Information that is currently being classified will not become declassified until many years from now, if, in fact, it ever is declassified. However, one goal of this dissertation is to understand what factors and policies govern the information classification system. Documents which provide direction and guidance regarding classification are themselves not classified. When contacting those departments and agencies with classification authority, the Department of Energy was the only one willing to provide information regarding its policies and procedures. Although not willing to participate in interviews, the DOE issued to this researcher 1,800 plus pages of documents describing its history, policies, procedures, declassification decisions, and overriding philosophies behind gathering and protecting sensitive information. These documents, along with *Security Classification of Information* volumes 1 and 2 (Quist, 2002), present a picture of how one government department creates and manages classified information. Additionally, the Atomic Energy Act of 1946 and the Atomic Energy Act of 1954 are public documents and are therefore available for study. Analysis of the two acts, as well as the events and subsequent discussion surrounding the two acts, yields understanding of the guidelines and procedures governing classification pertaining to nuclear energy.

Statutory Basis

A second reason for selecting the Department of Energy to facilitate an understanding of government secrecy is due to the fact that classification decisions within the Department of Energy, whose classification procedures and regulations regarding information designated as “Restricted” are governed by the Atomic Energy Act, are the only types of classified information regulated in any way by Congressional legislation. One of the conclusions of the Commission on Protecting and Reducing Government Secrecy was that classification should have a legislative, rather than executive basis. Arguing that the executive order foundation of nearly all classification, the lone exception being secrets overseen by the Atomic Energy Act, is not an effective oversight system, the Moynihan Commission recommended a statutory basis for classification, with penalties for overclassifying information. Whether or not classification would decrease with a legislative basis is hard to ascertain, but the willingness of the DOE to share information for this research and the precise language of the Atomic Energy Acts seems to validate, at least superficially, this conclusion. According to Maus (1996),

> Legislation passed by Congress, a statute, has greater applicability than an Executive order. A statute is the law of the land and applies to all citizens. The provisions of the Atomic Energy Act were enacted as legislation rather than an EO because Congress and the President felt that this sensitive information about nuclear weapons needed the strict regulation and enforcement afforded by statute. (¶ 11)

By exploring this member of the classification system with a legally agreed upon foundation for some aspects of document classification, this dissertation will seek to determine the possible benefits of basing all classification on legislative, rather than executive, orders. In many ways, the selection of the Department of Energy as an exemplar is significant in two ways—firstly, it provides insight into classification policies and behaviors that is consistent with other departments and agencies; and secondly, because an element of DOE classification policy, “Restricted data” is shaped by legislation, it is possible that DOE policies might point the way towards increased openness for other classification authorities.

Openness Initiative

During information gathering hearings conducted by the Commission on Protecting and Reducing Government Secrecy, four agencies were represented in the transcripts—the Department of Defense, the Department of Energy, the Central Intelligence Agency, and the Federal Bureau of Investigation. When responding to questions by the Commission members, the responses from the Department of Energy representative differed somewhat from the responses of the other three representatives. For example, during a discussion over front end (prior to the information being classified) or back end (after the information has already been labeled classified) classification oversight, the DOD, CIA, and FBI all emphasized the need to classify first, and to examine that decision later. The Department of Energy representative, on the other hand, endorsed front end oversight in order to ensure that non-sensitive information was not accidentally or incorrectly classified (Hearing before the Commission on Protecting and Reducing Government Secrecy, GPO, 1997). There are perhaps multiple explanations for the attitudinal difference between the DOE and the other departments and agencies at the hearing. One such explanation stems from an emphasis towards openness launched by the DOE in 1994, a shift which caused much controversy over the second half of the 1990s, as accusations of espionage by China surfaced. As this dissertation will investigate how information is controlled by agencies and departments within the government and then often withheld from U.S. citizens, focusing on the department which has publicly shifted its emphasis from secrecy to openness is appropriate. Additionally, if the Department of

Energy advocates a shift towards openness, while simultaneously handling some of the most sensitive information available—nuclear weapons and energy—then perhaps theirs is a model suitable for mass emulation.

The issues of access, statutory foundation, and openness represent the most salient motivations behind this chapter's exploration of the Department of Energy's classification policies. Describing and examining the superficially most open of the classification authorities establishes a solid and logical foundation for the discussion of more secretive classification cultures, such as the FBI and the CIA, in the following chapters. The present discussion does not make the claim that the Department of Energy's classification procedures and policies are without flaw. The present discussion does assert, however, that the best way to begin an understanding of the secrecy system in its totality is to examine, in depth, one particular group of classifiers. However, a central consideration and question naturally arising from this discussion is, "If one of the classification authorities with a legislative basis and an apparent commitment to openness and information sharing can fall prey to mistakes and bureaucratic tendencies, how much more likely is it that the larger classifiers will fall victim to the same tendencies?" This question will begin to be answered in this chapter, and the discussion will be extended in chapter four.

The Atomic Bomb and the First and Second Atomic Energy Acts

The introduction of Atomic weaponry into the world created the perception, whether real or imagined, of the need for several protective and secretive measures to prevent the acquisition of atomic weapons by other countries. The details surrounding the development of the atomic bomb were shrouded in secrecy. Nearly every aspect of the

Manhattan Project, the name given to the development of the atomic bomb, was kept secret from those outside of the project. The Manhattan Project was managed by the Department of the Army, however, the Atomic Energy Act, passed in 1946, “transferred control of all aspects of atomic (nuclear) energy from the Army . . . to a five member civilian Atomic Energy Commission (AEC)” (Quist, 2002, p. 78). The Atomic Energy Act of 1946 is important because, as stated previously, it is the first statutorily based attempt to control the spread of sensitive information. The second Atomic Energy Act, the AEA of 1954, made the disclosure of nuclear data with the “intent to injure the United States” or the belief that such data “will be utilized to injure the United States or to secure an advantage to any foreign nation” (AEA, as cited in Moynihan, 1998, p. 98), a crime based on the legal precedent established by the Espionage Act of 1917. The Atomic Energy Act of 1954, like its predecessor, provided a statutory basis for the control of information. The AEA of 1954 (as cited in Shulsky & Schmitt, 2002), defines restricted data as “all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy” (p. 103). In 1949 and 1950, two articles appeared in *Life* magazine, and these articles are, in many ways, ideological precursors to this dissertation. The articles, in addition to explaining the science behind the atomic bomb, expressed caution about the burgeoning levels of governmental secrecy occurring in the United States. *Life*’s editors (1950), raised caution about secrecy, by stating,

> For the past five years the operations and results of the U.S. atomic weapons program have been almost completely unknown to the public. The critical facts about this greatest of all publicly owned enterprises have been withheld partly

> because of essential security restriction. But a larger factor behind the present state of public ignorance is the extension of secrecy far beyond the limits of true security. This growing disparity between required security and officially imposed secrecy has recently come in for sharp criticism by many of the country's best-informed observers. (p. 91)

Additionally, the editors of *Life* (1950) stated,

> the restriction of public knowledge . . . is being brought about. So stifling are the effects of all-encompassing security that conscientious publications are unwilling to take responsibility for presenting conclusions which they themselves could draw from the available, non-secret literature. The government can and should take responsibility—now, before it is too late. (p. 100)

Of course, this was not the first occasion that a member of the press, public or government had voiced concern about the secrecy system, and it certainly was not the last; however, like all previous and future voices on the subject, it shares the characteristics of seemingly having little effect on public attitudes towards secrecy or in changing government attitudes or policies towards secrecy.

Atomic Energy Act of 1946

At the conclusion of World War II, many of the scientists involved in the creation of the Atomic Bomb, a creation process necessarily shrouded in secrecy, sought to shift back towards a less restrictive policy of scientific openness. In fact, "there was considerable pressure from the academic and industrial sectors of the country to declassify and release information developed during the Manhattan Project" (Department of Energy, 1994, part I, p. i). The Manhattan Project, the codename for the individuals tasked with developing the first Atomic bomb, was overseen by the Department of the Army and every effort was made to insure the utmost secrecy during the course of the project. Although the Manhattan Project marked the beginning, in many ways, of the scientific community which evolved into the Department of Energy, the unique aspects of scientific secrecy surrounding the project more appropriately belong in the discussion on secrecy and science later in this chapter. However, the introduction and passage of the Atomic Energy Act in 1946 provided the statutory basis for the system of classification which still guides all aspects of secrecy relating to nuclear energy.

The Atomic Energy Act passed in August 1946, sought to firmly establish a legal basis for activities related to the creation and use of nuclear power. The AEA of 1946 created the five member Atomic Energy Commission (AEC). Members of the commission

> shall be appointed by the President, by and with the advice and consent of the Senate, and shall serve at the pleasure of the President. . . the commission shall hold such meetings, conduct such hearings, and receive such reports as will enable it to meet its responsibilities for carrying out the purpose of this act. (AEA, 1946)

As the Manhattan Project was overseen by the Department of Defense, the AEA recognized the importance of continuing the relationship with the DOD. In fact, the classification and declassification procedures guiding the AEC and, more recently, Department of Energy classification decisions, are those employed by the Department of Defense—with one exception; information relating to nuclear energy, i.e. all of the information produced by the AEC and its departments, is “born classified.” Although the term, “born classified” is not used in the wording of the AEA of 1946 or the AEA of 1954, the implicit assumption is that all data generated by the AEC is restricted until someone proactively declassifies the information. According to the DOE’s “Openness Press Conference Report” (1994),

> The Act (AEA of 1946) also recognized the need to emphasize that atomic energy information is a special and unique type, identified it as Restricted Data, and defined it as all data concerning the manufacture or utilization of atomic weapons, the production of fissionable materials, or the use of fissionable material in the production of power. It is important to note that this Act is the basis for classification of atomic energy information and that all information falling under the definition of Restricted Data is classified from its inception. By this Act, Congress decreed that Restricted Data is different; it is “born classified,” and it remains classified until a positive action is taken to declassify it. (p. ii)

Coming on the heels of the ultra secretive Manhattan Project, perhaps it was assumed that all information relating to nuclear energy was automatically sensitive and classified. The AEA of 1946 clearly pointed out the devastating power of nuclear weapons, and clearly defined “restricted data”. The broadness of the “restricted data” definition created a situation where all information was inherently classified because nearly every aspect of nuclear research fit within the parameters of the “restricted data” definition. A final note of interest regarding the AEA of 1946 and “restricted data”; at no point in the Act was “restricted data” referred to as classified. According to Quist (2002),

> although RD is said to be born classified, the Atomic Energy Act does not specifically designate it as “classified” information. The Act defines RD and

> prescribes very strict methods for its control without stating that it is "classified" information. However, the Act does describe declassification of RD; therefore, by implication, RD is "classified." (p. 88)

In the aftermath of World War II, and specifically, the detonation of atomic bombs in Hiroshima and Nagasaki, the implicitness of "born classified", in relation to nuclear energy, is imminently understandable.

A criticism of classification via executive mandate is that it does not provide for sufficient oversight—several commissions and committees, as well as individual reports, concerning government classification have emphasized this point. If a system operates outside of the parameters of the legislative or judicial branches of government, abuses and accountability are harder to effectively uncover and examine. From its inception, the AEA sought to address this very issue. While the President, through Congress, appoints the members of the AEC, the AEC reports to both the President and to Congress. Provisions within the Act specifically refer to reporting to the President and Congress. "The Commission shall, on the first days of January, April, July, and October, submit reports to the President, to the Senate and to the House of Representatives" (Atomic Energy Act, 1946). Initially, efforts were made to maintain the balance of appropriate secrecy and openness by distinguishing between two types of nuclear energy information. One type was to continue to be protected in the highest possible manner. The other type was to be open and available. The debate over the wording of the AEA is discussed in the following paragraph.

"The first 'declassification' of atomic-energy information occurred when a uranium atomic bomb was dropped on Hiroshima" (Quist, 2002, p. 104). At the time of the detonation, it became immediately known to scientists and others around the world that nuclear fission was not only a possibility, but also a reality. In many cases, knowing something is possible is often as important as knowing how to construct something. Up until the point of detonation in Hiroshima, it was not known whether or not an atomic bomb could be successfully created, delivered and detonated. With the success of the atomic bomb, the world became aware of the question which participants in the Manhattan Project had pondered for several years, "how do we safeguard this devastating force?" Within months following the detonation of the two bombs and the resolution of World War II, government officials began deliberating on legislation capable of controlling nuclear energy information. One of the first bills, which later became the Atomic Energy Act of 1946, was proposed in December, 1945 by Senator McMahon. This proposal was a call for the "development and control of atomic energy" (McMahon Bill, 1945). Understandably, both sides of the nuclear secrecy issue began vocalizing their opinions. The central question became whether or not to continue with the high level of secrecy which had surrounded the Manhattan Project or, as others advocated, return to the scientific openness which predated the Manhattan Project. Individuals involved with the creation of the AEA of 1946 and the AEA of 1954 experienced problems agreeing on an appropriate definition for nuclear energy related information. For example, Section 9 of the McMahon Bill, the near verbatim precursor of the AEA, attempted to draw a distinction between "Basic scientific information" and "Related technical information." In the original incarnation, basic scientific information could be "freely disseminated" and included "theoretical knowledge of nuclear and other physics, chemistry, biology, and therapy, all results capable of accomplishment, as distinguished from the processes or techniques of accomplishing them" (McMahon Bill, 1945). Unlike "Basic scientific information, "Related technical information" would be protected.

Unfortunately, those involved with the proposal were unable to reach a clear distinction between those two types of nuclear energy information. The result of this impasse was that the final version of the Atomic Energy Act of 1946 considered all data to be restricted. In essence, nuclear energy information was "born secret". "Restricted data", which is declassified at a later date, was creatively labeled, "formerly restricted data". As was evidenced in the discussion of Executive Order 13292 in the previous chapter, the inability to clearly define the parameters of classification contributes to the proliferation of government secrets. However, in the case of the AEA, efforts were made in the AEA of 1954 to address these shortcomings. Thus, analysis of the Atomic Energy Act of 1946 revealed an organizational culture or mindset very much in accordance with the ideology and mindset that permeated the Manhattan Project and prevailed throughout World War II. The creators of the McMahon Bill and the Atomic Energy Act of 1946 believed, even though World War II was concluded and the United States and its allies had prevailed, that all aspects of information pertaining to nuclear development must be protected as stringently as possible.

Atomic Energy Act of 1954

By 1954, the Soviet Union was in possession of nuclear weapons, and thusly, the Cold War was more than formally underway. However, rather than rewriting the Atomic Energy Act in order to make it more secretive, analysis of the 1954 Act reveals that efforts were made to elaborate on the more ambiguous aspects of the Act and to create situations where the sharing of information could actually be expanded. While the AEA of 1954 is over 10 times longer than the AEA of 1946, only a few specific sections will be emphasized in this dissertation: sections concerning the control of information, definitional sections, and sections related to the transmission of information. Historically situated after the Manhattan Project and the Atomic Energy Act of the 1940s, the authors of the AEA of 1954 recognized both the sensitivity of nuclear information and the importance of scientific openness. Scientists, with their previously established tradition of openness, influenced the development of the AEA of 1954.

One of the primary reasons for the clarification and expansion of the AEA was to allow members of private industry to work in the area of nuclear energy production. According to Quist (2002), the changes in the 1954 Act were designed to make atomic energy information "accessible to U.S. industry and to the world" (p. 90). While never subsumed into the government, these private organizations followed the same classification guidelines as any government agency with classification authority. Although these organizations were private, rather than governmental organizations, any sensitive material, or information falling under the definitions provided in the AEA of 1954, produced by these organizations, not only became classified, but also became the property of the government. Whereas the AEA of 1946 declared "the dissemination of scientific and technical information relating to atomic energy should be permitted and encouraged so as to provide that free interchange of ideas and criticisms which is essential to scientific progress" (AEA, 1946), the AEA of 1954 added the phrase, "and public understanding and to enlarge the fund of technical information," to the sentence (AEA, 1954, p. 1-74). From its inception, the AEA of 1954 broadened the number of individuals potentially granted access to sensitive information.

The AEA of 1954 also established provisions and guidelines for the systematic classification of information. For example, Section 142 created parameters for the classification and declassification of restricted data. From time to time, members of the nuclear energy classification community were expected to examine restricted data and to decide whether or not the information could be redesignated as “formerly restricted data”. Provision “b” of Section 142 called for the “continuous review of Restricted Data . . . to determine which information may be declassified and removed from the category of Restricted Data without undue risk to the common defense and security” (AEA, 1954, p. 1-74). However, Section 142 also provided the Department of Defense with joint ownership over classification and declassification decisions with regard to weapon applications for nuclear energy, even noting that if the AEC and the DOD did not agree concerning classification then the President would make the final determination.

Quist (2002) also noted other examples of how the AEA of 1954 sought to move towards the declassification of more information. The phrase “without adversely affecting” replaced the words “undue risk” in the sentence regarding the declassification of information. Information not “adversely affecting the common defense and security” provided for “more judgment in a declassification decision and was intended to allow declassification of more atomic-energy information” (Quist, 2002, p. 92). It is also interesting to note that information pertaining to the nuclear energy or weapon development programs of foreign countries also falls into the category of “restricted data”.

An examination of the sections of the Atomic Energy Act of 1954, specifically those related to the foundations of the act, relevant definitions, and the control of information reveals a system that, while still containing information “born classified,” begins to establish basic guidelines for consistent classified information oversight and basic guidelines for the systematic declassification of information. In fact, from the beginning of the document the balance between openness and general welfare and secrecy and national security was acknowledged.

> Sec. 1. Declaration
>
> Atomic energy is capable of application for peaceful as well as military purposes. It is therefore declared to be the policy of the United States that—
>
> a. the development, use, and control of atomic energy shall be directed so as to make the maximum contribution to the general welfare, subject at all time to the paramount objective of making the maximum contribution to the common defense and security; and
>
> b. the development, use, and control of atomic energy shall be directed so as to promote world peace, improve the general welfare, increase the standard of living, and strengthen free competition in private enterprise. (AEA, 1954, p. 1)

While the AEA of 1954 evolved through the years, it is important to recognize that in the beginning of the document it acknowledged the important balance between general welfare and national security, drew attention to the seriousness of atomic energy, of which those involved are likely already aware, and emphasized the seriousness of maintaining a balance between public access to information and necessary government secrecy. While there have been some changes over the years, the classification guidelines today look very similar to the guidelines from previous years, particularly those areas which deal with restricted data and the handling of nuclear energy information. In 1977, the Atomic Energy Commission was disbanded and evolved into the Department of Energy. Today, the Department of Energy continues in its original goal of monitoring and developing nuclear energy, as well as overseeing the control of nuclear energy materials and information pertaining to nuclear energy.

In the 1990s, the Department of Energy launched the Openness Initiative. While the Openness Initiative is very clearly a public affairs campaign to reclaim the faith of the public in the Department of Energy, there are many important results from the Openness Initiative which other agencies and departments with classification authority might seek to imitate in order to demonstrate to the public a sincere desire to practice openness, to foster accountability, and to reclaim public trust. The next section will explore aspects of the Openness Initiative, as well as the policies and procedures behind the initiative.

The Department of Energy Openness Initiative

The move toward openness by the Department of Energy was in reaction to the dissolution of the Soviet Union at the end of the Cold War. Energy Secretary Hazel O'Leary introduced the Openness Initiative to the public in December of 1993. The *Fact Sheets Released at the Secretary of Energy's Press Conference, December 7, 1993* clearly articulated the goal of the DOE Openness Initiative,

> The Department of Energy is firmly committed to the President's goal of openness in Government. We are now on an aggressive course that will ultimately make fundamental changes to our classification policies and operations. We believe that with the end of the Cold War, it makes little sense to continue to spend taxpayer dollars to classify and protect information of significant value to the public the release of which would have little or no national security

> consequences . . . the Secretary intends to move the Department of Energy from the secrecy of the past to an era where the watchword for the Department will be openness. (DOE fact sheets, 1996)

The DOE Openness Initiative was characterized by several key attributes: identification of relevant stakeholders, frequent “openness press conferences,” and the publication of declassified information. At each press conference the DOE published a manuscript containing declassified information; such information ranged from the total number of U.S. nuclear tests (1,051) to the mercury quantities for the Oak Ridge, TN Y-12 plant (DOE, Fact Sheets released at Secretary of Energy’s 1993 Press Conference, 1996). In each section of the manuscript, the declassified information was accompanied by a list of relevant stakeholders who benefited from the release of the information. For example, the declassification of nuclear test information was beneficial to historians, researchers, and health researchers.

More important to this dissertation than the listing of formerly classified information is an understanding of the factors which initiated the move towards openness and the impact this move had on the philosophy of classification within the Department of Energy. While the actual documents produced over the course of the implementation of the Openness Initiative may reveal information about classification policies and procedures in the DOE, launching a public campaign called the Openness Initiative acknowledges a situation of not-openness. The title itself reveals at least one of two potential motives—the recognition of excessive secrecy and the subsequent desire to move to a system of openness or the recognition of the need to manipulate public sentiment by giving the appearance of increased Openness. Either motivation on the part of the creators and implementers of the Openness Initiative tacitly endorses a present state of assumed secrecy. The difference in the two motives stems from who assumes that the state of secrecy is excessive—the public, those within the Department of Energy, or both. The DOE chose to "shift its classification philosophy from one in which classification is assumed and declassification must be justified to one in which openness is assumed and classification must be justified" (p. 2). Openness Press Conferences were conducted in June of 1994, February 1996, and January and December of 1997. The press conferences were worthwhile attempts by the Department of Energy to emphasize openness and to summarize important declassified information for the public.

According to Aftergood[9] (2000), the Openness Initiative "was not simply a rejection of the usual bureaucratic impulse towards secrecy; rather, it arose from a reevaluation of the agency's own self-interest, which required an improved relationship with the public, which in turn was perceived to depend upon greater openness" (¶ 7). Yet another quality of the Department of Energy Openness Initiative was its sheer uniqueness. "No other government agency has undertaken a comparable review of its classification policies and practices" (Aftergood, 2000, ¶ 8).

Perhaps the most significant symptom of the effects of secrecy on public discourse can be revealed by a brief examination of the early opposition to the DOE Openness Initiative. "Washington Times columnist Frank Gaffney wrote that O'Leary 'chose Pearl Harbor Day to launch what was, arguably, the most devastating single attack on the underpinnings of the U.S. national security structure since Japan's lightning strike

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[9] S. Aftergood is the director of the Project on Government Secrecy sponsored by the Federation of American Scientists. The Federation of American Scientists, previously known as the Federation of Atomic Scientists, was created by members of the Manhattan Project in 1945 who were deeply concerned about the effect of atomic weapons on humankind.

on the 7th Fleet 52 years ago'" (Aftergood, 2000, ¶15). This quote demonstrates how acceptance of secrecy as the natural state of affairs was a pervasive attitude. This quote was not a lone dissenting voice. In fact, according to Aftergood (2000), this quote accurately represented "the views of significant portions of the Republican leadership" (¶ 16).

Another example of resistance to declassification can be found in a statement by Representative Dana Rohrabacher before the House on June 8, 1999, "Hazel O'Leary, President Clinton's Secretary of Energy from 1993 to 1997, was the grand poobah of nuclear openness," and "she massively declassified secrets and put them on the Energy Department's website" (Aftergood, 2000, ¶ 36). As cited in Aftergood (2000), Rohrabacher described the DOE Openness Initiative and Secretary O'Leary as "worse than the Rosenbergs. This is looney tunes. This is someone who has a fanatical anti-American attitude in a position to hand over to our worst enemies secrets that put our young people and our country in jeopardy" (¶ 36). It is this type of extremism that prompts a dissertation of this nature. When the secrecy system has become so large and all encompassing that government officials vilify any move towards openness as being on par with espionage or insanity, it is time to examine and critique that system.

Arguing for the important effects of openness, Weeks and Holdron (2000) asserted that "openness yields important security benefits" (¶ 26). According to the DOE review of classification policy and practice, the "DOE should seek to maintain stringent security around sharply defined and narrowly circumscribed areas, but to reduce or eliminate classification around areas of less sensitivity" (National Research Council, 1995, p. 3). This is in keeping with the stated emphasis by the DOE to "construct high fences around narrow areas" (National Research Council, 1995, p. 40). Continuing with the benefits of openness to national security, Weeks and Holdron (2000) stated that "openness increases public and international confidence in U. S. policies and makes possible informed outside commentary and critiques" (¶ 27). Although President Clinton's EO 12958 was discussed in detail in chapter two, one element of his executive order applies directly to the current discussion. Section 3.4 of EO 12958 called for the automatic declassification of documents twenty-five years or older (EO 12958, 1995). The idea of "automatic declassification" was so anathematic to many members of Congress that special legislation, the Kyle Amendment of 1998, was passed to prohibit automatic declassification of the estimated one billion plus pages of 25 year old documents still classified. Even when attempts, such as the DOE Openness Initiative and EO 12958 have been made, to shift towards governmental openness, opposition has always surfaced.

What does the Openness Initiative tell us about the government classification system as a whole? Firstly, it demonstrates one culture's attempt to foster openness, and it suggests an operational template for other departments and agencies interested in doing the same thing. Secondly, launching an Openness Initiative suggests that the previous practices and behaviors had not been open to the public. Thus, the DOE sought to dispel the presumption of secrecy and initiate procedures to make the decisions of the DOE more accessible to the public. Unfortunately, the DOE was the only department or agency with classification authority to mount a public campaign of openness and accountability. The Openness Initiative shows that the government entities with the ability to classify operate from presumed secrecy. The bureaucratic desire to maintain secrecy and control information will be discussed in great detail in chapter four. Thirdly, the Openness Initiative demonstrates that, at least for those within the DOE, a culture of openness is more important to the preservation of the democratic ideals of the United States than a culture of secrecy. The most salient point to be adduced from an examination of the Openness Initiative undertaken by the DOE, is that when faced with a history of secrecy and of purposeful misleading of the public regarding matters ranging from nuclear detonations to public health concerns, the DOE sought to recognize the public as important stakeholders, to declassify historic information, to eliminate the classification of matters impacting the public health, and to reinvigorate public trust in the Department of Energy.

> As the Energy Department and Congress continue to wrestle with classification and openness issues, they should remember that the Openness Initiative was launched to restore public confidence in the department. The practice of using secrecy to hide safety, health, and environmental problems from the public had almost entirely eliminated Energy credibility with the public. (Albright, 2000, ¶ 45)

Early in the Openness Initiative Campaign, individuals who supported the reform efforts recognized the difficulties inherent in shifting a cultural perspective. Accordingly, “all government programs have a certain measure of ‘momentum,’ by which we mean that changes in actual behavior occur slowly and only with the application of significant public, political, or other force” (National Research Council, 1995, p. 20). Significant behavioral changes in the secrecy and classification system will only result from the sustained efforts of individuals motivated to change within and outside of the secrecy culture. However, the hope is that efforts like the Openness Initiative, along with efforts such as those made by the Moynihan Commission, will gain traction and contribute to the a growing emphasis on openness, reduced classification, and declassification. Unfortunately, as presented in chapter two, efforts which reify the system of secrecy are also occurring, and these efforts result in increased classification rather than increased openness.

When will the entire Intelligence Community take steps similar to those taken by the Department of Energy? In the wake of growing intelligence lapses, such as the failure to thwart the attacks of September, 11, 2001 and the pre-war intelligence on Iraq's nuclear capabilities, it is obvious that the Intelligence Community needs to initiate measures to both improve information sharing within and among agencies and to increase openness efforts to educate the public about *real* threats. However, as will be presented in chapter four, the bureaucratic structure of the Intelligence Community renders any cohesive effort at reform nearly impossible.

Secrecy and Science: Current and Past Issues and Considerations

Openness, Censorship, or Self Censorship

The question concerning the relationship between science and secrecy essentially refers to the attempt to balance the traditions of scientific openness and the need for secrecy involving research and experiments related to issues of national security, such as the development of weapons, energy, or hazardous materials. It is a significant element of the present discussion because, over the course of researching this dissertation, it has become obvious that the secrecy system could benefit from adopting standards of openness like those employed by the scientific community. Although the full implications of this recommendation will not be presented until the concluding chapter of this dissertation, this section will initiate the examination of secrecy and science. According to Teller (1987), the father of the hydrogen bomb, science and secrecy are not compatible with each other.

Today's scientists and researchers must strike a balance between the tradition of openness and concerns for national security. Over 60 years ago, researchers aligned with the Allied forces, involved in the study of nuclear fission, made the decision to self censor out of fear of providing the enemy with critical information regarding nuclear processes. However, following the destruction of Hiroshima and Nagasaki and at the conclusion of World War II, many researchers urged a return to the prewar tradition of scientific openness. The ensuing debates led to the formation of the Atomic Energy Acts of 1946 and 1954, as mentioned previously. In the 21st century, this debate continues, as researchers in the area of biomedicine and microbiology attempt to balance the concern between public good and national security. For example, they must consider what information is beneficial and should be part of an open discussion about scientific advances and what information might be used in a manner that is detrimental to the public good? While the free exchange of information helps to aid in technological and scientific development, another important issue arises. Should we do something is a more important question than can we build something? Just because technology and science enable us to build an atomic bomb—should we do so? While the moral discussion surrounding scientific achievement is beyond the scope of this dissertation, it is important to acknowledge that lack of openness preempts informed discussion concerning ethics. According to Husserl (1970), the impact of logical positivism on the sciences resulted in the removal of subjectivity from scientific discussion—the "how" of science replaced the "why" of science. The world view of humankind allowed itself to be "determined by the positivist sciences and be blinded by the 'prosperity' they produced," which "meant an indifferent turning-away from the questions which are decisive for a genuine humanity" (Husserl, 1970, p. 5). Lack of openness in scientific endeavors limits the discussion of the decisive "should we" questions. An atomic bomb, developed in secrecy, avoids the important moral discussion concerning the uses and goals of the research. While individuals involved in this debate view the scientific tradition of openness as essential in measuring and testing the validity of a scientific assertion or creation, the question takes on a moral significance as individuals find themselves attempting to balance the positive uses of a product with the potentially negative uses of a product.

In the case of the Atomic Bomb, many of the prominent scientists, such as Szilard, Teller, and Einstein, those either directly or indirectly related with the construction of the bomb, expressed regret at the actual use of the bomb for military purposes. In fact, Szilard was responsible for creating and sponsoring a petition to urge President Truman not to use the Atomic Bomb on the Japanese. Thus, scientists were faced with the bigger question of weighing the benefits and consequences of scientific information. Since, the Atomic Energy Acts and the Department of Energy have their roots and classification guidelines in scientific discovery, a discussion of this debate, both historically and in modern times, is accurately situated in this chapter. The secrecy of the Manhattan Project was discussed earlier in this chapter. Scientists involved in the development of nuclear energy were understandably concerned with the possibility of their research efforts and findings falling into the hands of those whose purposes were aligned against the Allied forces. Scientists understandably self-censored and requested journals to withhold publications of certain information. Over the years, scientists have struggled to achieve a balance between the issue of scientific openness and national security secrecy.

"National security controls on the scientific, technological, and academic communities have had a long history in the United States because of the use of atomic and nuclear technology for weapons" (Katz, 1987, p. 35). Government restrictions on scientific freedoms have ranged across scientific advancements from nuclear energy, to superconductors, to computer technology, to microbiology. Katz (1987) offered that "government restrictions on scientific, academic, and intellectual freedom pose some of the most serious problems for the future of our nation" and that "the free exchange of ideas serves as a practical requirement for scientific and technological advancement" (p. 45). The advantage of the scientific practice of revealing and publishing findings is so that other members within or outside of the community can discuss and debate the merit of the findings. By limiting publication or access to important information, members of the scientific community circumvent historical scientific practice.

On one hand, secrecy in science limits, and typically preempts, public discussion of scientific issues. On the other hand, secrecy in science limits the ability of scientists to openly discuss their findings and theories with one another. The growth of science is predicated on the ability of researchers to test and evaluate the findings of previous researchers. It is in this way that scientific knowledge grows. While the technical issues regarding "how" scientists are capable of creating something new are important, the questions of "why" and "should we" are even more salient. Secrecy prevents this discussion from occurring. Husserl (1970) articulated his concern that the very "objectivity" of the scientific method of inquiry results in a focus on the methods or techné of science, rather than on the phronesis, the practical reason, for doing something. In the case of the government secrecy system, the public is excluded, not only from participating in important policy discussion, but also from the more important debate over the ethical questions which arise from a new scientific possibility or development. The parallel between secrecy and the scientific community and secrecy and the public at large is relevant and of great concern for rational debate in the United States.

Just as members of the Manhattan Project requested that journals withhold publication of sensitive information, modern "authors asked the American Society for Microbiology (ASM) for permission to withhold critical information from articles submitted to journals published by the ASM because of concern that data could be misappropriated or that scientific findings could be misused" (Atlas, 2003, 15). However, who is it that determines what constitutes misuse? In the statement by the ASM it would seem to imply that scientists are the experts responsible for gauging potential misuse, but they are not the only elite decision makers involved in this equation. In addition to scientists and publishers seeking to protect sensitive scientific discoveries, "the U.S. Office of Management and Budget, working with the Office of Science and Technology Policy . . . alerted the science community of impending policy for regulating" information relating to national security (Atlas, 2003, p. 15). According to Lyotard (2002), these elite decision makers follow a logic that is predicated on both power and efficiency. Lyotard (2002) described information as a commodity. According to him, knowledge is another resource competed for and controlled. In Lyotardian terms, institutions, in this case the institutions of science and government, establish the parameters of knowledge—determining its usages and defining its morality. Thus, the issue of scientific censorship once again became the subject of debate. According to Vest (2003), "the rapid progress of science and technology, and the advanced education of scientists and engineers, in turn, depend critically on openness of process, openness of publication, and openness of participation within our institutions and across national boundaries" (p. 21). Vest (2003), expressing concern about the potential limitations and dangers of scientific secrecy, summarized the 2002 findings of the MIT Ad Hoc Committee on Access to and Disclosure of Scientific Information. The committee

> voiced deep concerns about the path down which we may be starting, noting that the U.S. secretary of health and human services has the statutory power to expand the list of select agents. The ad hoc committee expressed the view that we could soon arrive at a level at which access to materials by our students, faculty, or staff would be based on, for example, their citizenship—something that would be incompatible with our principles of openness and would cause us to withdraw from the corresponding research topics on our campus. (p. 23)

While these are just a few of the issues and voices attempting to raise awareness regarding secrecy and science, the implications for the secrecy system at large and the lack of access to information for the public are of great importance, and these implications will be discussed in greater detail in chapter five.

Compartmentalization

While secrecy and science provide insight into the relationship between the secrecy community and the public, analysis of the practice of compartmentalization provides insight into the interorganizational practices which lead to information control and information distortion. One of the practices of the Manhattan Project imposed by General Groves, the Army General overseeing the project, was compartmentalization. Compartmentalization involved setting the research parameters in such a way that researchers and groups of researchers were only knowledgeable of their particular area of work. One of the stated purposes of compartmentalization was to limit “the amount of classified information available to individuals or groups” (Quist, 2002, p. 83). According to Jones (1985), it was not uncommon for product assembly instructions to be broken down in such a way as to greatly limit the amount of information any one individual might acquire. The idea of compartmentalization drew on Groves’ experience in the military and made all information pertaining to nuclear energy or weapons essentially on a “need to know” basis. A person was allowed to access information if it was necessary to carry out his or her job but was denied information if it fell outside of that individual’s task parameters. According to General Groves, another reason for compartmentalization was to keep the scientists focused on their assigned tasks (Quist, 2002). He believed that scientists had the tendency to become distracted by the work of others, and that, quite possibly, they would fall behind in their own research agendas. While compartmentalization is often cited as being the procedure which prevented Klaus Fuchs from providing the Soviet Union with secrets beyond his own work and work group, it is also credited with creating other problems. According to Szilard (Hearings Before the Special Committee on Atomic Energy, 1946, as cited in Quist, 2002),

> Compartmentalization of information is a special technique which is used in the services for keeping secret military operations, and applied in its proper sphere is

> an effective method for keeping secrets. Both its meaning and its effectiveness undergo a profound change when it is attempted to apply this special technique to research and development work . . . compartmentalization of information was the cause of our failure to realize that light uranium might be produced in quantities sufficient to make atomic bombs. We should have known that in the fall of 1940. We might have failed to realize this altogether, just as the Germans failed to realize it, if we hadn't the good fortune the British scientists were not compartmentalized. They were able to put two and two together and communicated their conclusions to the United States Government in the middle of 1941. Had we in the United States reached those conclusions in the fall of 1940, we most likely would have had bombs ready before the invasion of Europe. (p. 84)

This assessment of compartmentalization, by one of the leading scientists involved in the Manhattan Project, is as applicable to the modern secrecy system as it was to nuclear energy secrecy 60 years ago. According to Wallerstein (2003), compartmentalization is still a governmentally encouraged activity.

Compartmentalization is nothing more than the systematic control of information or the distribution of limited amounts of information so as to keep the entire picture opaque. During the discussion of cultures of secrecy beginning in chapter three and continuing through chapter four, it will be shown how modern classifying entities, such as the CIA, FBI, and DOD, can be viewed as compartmentalized, thus keeping information from individuals both inside and outside of these organizations. As this is a communicative approach to the secrecy system, it is important to recognize the communication problems arising from compartmentalization and classification. According to Westwick (2000), communication limited as a result of compartmentalization and classification had two primary effects: “questionable research programs could escape peer review, such as the human radiation experiments that subjected patients to injection with radioactive materials,” and “promising programs could suffer for lack of the stimulating interchange of new ideas among researchers” (¶ 33). As will be shown in chapter four, the Intelligence Community is highly compartmentalized, not only between organizations, but in some cases within organizations. As a result of elaborate secrecy and compartmentalization, communication within the Intelligence Community suffers greatly. Although the extent to which compartmentalization is still practiced within one organization or department with classification authority is not completely known to an outsider, dilating on the entire secrecy system enables the researcher to apprehend the totality of the system as being made up of compartmentalized, and compartmentalizing, compartments.

The Department of Energy protects information just as any other classification authority does. Analysis of the evolution of classification policy in the DOE revealed an organization susceptible to many of the shortcomings associated with other departments and agencies with similar classification authority. These institutionalized problems include the tendency to overclassify (thus, the need to launch a formal Openness Initiative), information sharing liabilities, and a surfeit of previously classified pages of information all needing to be processed and declassified. However, some characteristics of the DOE also pose, if not outright solutions, at least semi-effective counterbalances to excessive secrecy. These solutions are partially explained by the legislative basis of classification policy, the Openness Initiative, and the scientific tradition so prevalent in the DOE. Thus, the Department of Energy is both an exemplar of secrecy trends and an exemplar for potentially effective counterbalances to overwhelming secrecy.

It is fitting for the present discussion to end with an examination of the process of compartmentalization. The attributes and processes of compartmentalization provide an explanation for current behaviors regarding other components of the classification system. While this chapter focused on classification and secrecy events and legislation relating to nuclear energy and the Department of Energy, the following chapter will build on the information presented in this chapter, as well as the information presented in chapter two, to analyze the culture of secrecy prevalent in the United States government and the cultures of secrecy which operate within the larger culture. However, in the case of these other departments and agencies, there exists no statutory basis for the classification system. In these cases, classification is administrated, regulated, and overseen via executive order. This chapter sought to explicate the growth and development of one specific classification entity. In addition to that aim, this chapter sought to provide an understanding of the regulatory and information control guidelines of first, the Atomic Energy Commission and secondly the Department of Energy. Discussing the efforts of the Department of Energy's Openness Initiative was intended to demonstrate one culture's attempt to transition away from secrecy and towards a culture of openness. The comparative analysis between science and secrecy in the late 1930s and 1940s and current debates concerning science and secrecy was designed to punctuate the modern relevance of this discussion. Finally, the closing discussion of the practice of compartmentalization was included to segue into the following chapters and their continuing examination of the government secrecy system.

Chapter 4

Bureaucracy, Secrecy, and Cultures of Secrecy

According to a CIA counterterrorist center supervisor quoted in the *Report of the Joint Inquiry into the Terrorist Attacks of September 11, 2001*(hereafter referred to as JITA) regarding the inability of the CIA and FBI to adequately share or accurately assess information related to the return to the United States of 9/11 hijacker Khalid al-Mihdhar, “every place that something could have gone wrong in this over a year and a half, it went wrong. All the processes that had been put in place, all the safeguards, everything else, they failed at every possible opportunity. Nothing went right” (JITA, 2002, p. 151). While it is beyond the abilities of this dissertation to determine whether or not the attacks of 9/11 could have been prevented, this dissertation will demonstrate that anyone familiar with Weber’s theory and characteristics of bureaucracy, organizational theories of information control, resource competition, power, voice, and the reports of previous governmental commissions and committees investigating government secrecy, could have predicted the existence of substantial communicative obstacles, as well as the dangers these obstacles might pose to information sharing and processing. This chapter will also examine one of the most recent Congressional reports related to communication within the government. The report, from which the above citation was taken, systematically analyzed information sharing among the various intelligence gathering agencies prior to and following the attacks of September 11, 2001. While the *National Commission on Terrorist Attacks Upon the United States* (hereafter referred to as the 911 Commission Report) is a congressionally established probe into the events of September 11th, 2001, its findings were published later in the development of this dissertation, and therefore serves as a secondary article of investigation rather than a primary one. The JITA, which reached many of the same conclusions as the 911 Commission, is the primary document to be explored in this chapter because it has been available for examination for a longer period of time. The purpose of chapters two and three was to describe the rules and regulations through which classification occurs and by which classification authority is conferred. This chapter will investigate specifically how the departments and agencies of the system communicate within and between one another.

Neither the 911 Commission Report nor the JITA include a “smoking gun”-like statement clearing articulating that the terrorist acts of September, 11th, 2001 succeeded due to the FBI and the CIA refusing to share information with one another. However, as will be discussed in this chapter, numerous references are made to intelligence failures due to institutionalized bureaucratic communication lapses. However, these lapses, due to departmentalized cultures of secrecy, in addition to being predicted by the Moynihan Commission of the mid-1990s, are also predicted and explained by Max Weber’s theory of bureaucracy, specifically, those elements of his bureaucratic theory which focused on secrecy. As discussed in previous chapters, the secrecy system was built on the AEA of 1954 and Executive Order 13292, which established the rules and regulations for classification within the U.S. government. Various agencies and departments within the government have the ability to classify and otherwise restrict the flow of information between agencies and departments and between the government and the public. Because these agencies and departments are bureaucracies, and behave as bureaucracies, their natural bureaucratic tendencies are to compete for resources, restrict the flow of information, protect secrets, and seek power. Since the practice of information control has been institutionalized and made routine within these agencies and departments, secretive behavior is perpetuated and more information is restricted. This dissertation is preceded by Shils (1996) and Moynihan (1998) in using Weber's theory of bureaucracy to explain the United States secrecy system; however, the inclusion of specific organizational concepts such as information flow and control, resource competition, and the metaphor of voice significantly augment the analysis of the system available in this chapter. Combining these related theories and topics will explain how and why these cultures of secrecy behave in natural bureaucratic ways and the implications of said behavior. Additionally, the final section of this chapter will demonstrate how the bureaucracy has forfeited the ability to adequately regulate itself through an analysis of prior committees and commissions and their unrequited suggestions for correcting the secrecy system. This chapter will investigate behavior and characteristics within and between the agencies and departments with classification authority. Although important in and of itself, the information in this chapter will set the stage for chapter five's exploration of the relationship between the secrecy system and the general public.

Bureaucracy, Information Flow, and the Intelligence Community

Behavior of the intelligence community and the government secrecy system as a whole are best explained through the application of Weber's bureaucracy and organizational communication theories of information control, resource competition, and decision making. Using the JITA report and other public statements and investigations into the intelligence community, this section will apply the previously stated theoretical concepts to the government secrecy system. Shulsky and Schmitt (2002) described one of the problems associated with modern bureaucracy and the secrecy system,

> In a modern government, with its many thousands of employees arranged in complicated bureaucratic structures, the problem of controlling the myriad activities and ensuring that they are in accordance with the law and the policies of their superiors is bound to be difficult. With respect to intelligence agencies, this basic problem is compounded by secrecy, however legitimate the need to keep knowledge of certain intelligence sources, methods, and activities secret from the public and restricted to the smallest possible number of officials within the government. (p. 129)

This section will begin with an explanation of Weber's bureaucratic characteristics and will then apply those characteristics to an analysis of the system. From there, the focus will shift to information control and to specific organizational communication theories which will help explain the behaviors of the intelligence community. Finally, resource competition and organizational decision making will be examined both theoretically and by applying these concepts to specific organizational behaviors. As Weber's bureaucracy is the central theoretical ideal of the present discussion, components of bureaucracy and, specifically, the role of secrecy in bureaucracy will be presented in detail in the following section.

Weber

Max Weber offered his principles of bureaucracy as a means of understanding the way that organizations work. His bureaucratic characteristics focused specifically on advanced institutions of capitalism such as large organizations or on modern governments such as parliaments, and are particularly applicable today, perhaps even more so than they were in the early 20th century. Weber focused on the ways in which bureaucracy established formal organizational rules and guidelines, established principles of office hierarchy and authority, and retained written records on the organization's proceedings. "Bureaucracy, thus understood, is fully developed in political and ecclesiastical communities only in the modern state, and, in the private economy, only in the most advanced institutions of capitalism" (Weber, 1958, p. 196). Following in the footsteps of Shils (1996) and Moynihan (1998), this dissertation will employ Weber's bureaucracy to help explain the behaviors of the governmental departments with classification authority. The fact that government is a fully functioning bureaucracy is widely accepted. In discussing the early developments of secrecy, Moynihan (1998) acknowledged that it was during the early stages of the Cold War that the classification system began to demonstrate the "bureaucratic desire for uniformity and predictability . . . but also and equally a concern for civil liberties, a fear of too much government with too few restraints" (p. 165). Shulsky and Schmitt (2002) stated that the modern classification system, including executive and congressional involvement, along with all of the departments possessed with classification authority, was firmly under "bureaucratic control" (p. 132). After an in-depth explanation of Weber's bureaucracy, attention will shift to Weber's understanding of the role of secrecy in bureaucracy. After establishing this theoretical foundation, cultures of secrecy will be examined, followed by specific examples which will demonstrate the problems inherent in the bureaucracy of classification and secrecy.

Bureaucracy

In the grandest sense, Weber viewed bureaucracy as the natural institutional response to unfettered rationalization (Moynihan, 1996). Indeed what could be more rational than establishing formal rules and regulations for every possible organizational behavior? "Bureaucracy is the most typical organizational form of legal-rational domination" (Craib, 1997, p. 139). One of the first characteristics of bureaucracy is that it is an ongoing organization governed by rules. "There is the principle of fixed and official jurisdictional areas, which are generally ordered by rules, that is, by laws or administrative regulations" (Weber, 1958, p. 196). In the case of the U.S. government, and the departments with classification authority such as the Department of Defense (DOD), the Central Intelligence Agency (CIA), the Federal Bureau of Investigators (FBI), and the Department of Energy (DOE), to name just a few, clearly all of these organizations are regulated and governed by rules of behavior and operation. The formal rules established by executive order (as discussed in chapter two) and the AEA of 1954 (as discussed in chapter three) guide and dictate the behaviors of the agencies and departments with classification authority. Weber's second characteristic of bureaucracy detailed how organizations functioned through "official duties" and consisted of only members "who have the generally regulated qualifications to serve" (Weber, 1958, p. 196). What is important to realize is that Weber's first characteristic of bureaucracy described an organization that functioned, not at the discretion of a principal leader or central authority—no single figure in a bureaucracy has that power—but as a system permeated and governed by formal rules. For example, the head of the FBI can't just say, "Today, we are going to start classifying things this way!" The rules have already been firmly established, and, in fact, exist and set structure, irrespective of the whims of individual employees. Viewed in this manner, secrecy itself is a form of rule—a form of regulation. In describing the evolution of the increasingly bureaucratic classification system, Moynihan (1996) stated “Secrecy became routinized, as Weber would have it. It became the realm of officials, and those to whom officials assigned duties. A vast regulatory bureaucracy gradually took shape, for the most part not bothering anyone, simply perpetuating itself” (pp. xx-xxi).

The defining attributes of Weber’s third bureaucratic characteristic included office hierarchy and power allocation within the organization.

> The principles of office hierarchy and of levels of graded authority mean a firmly ordered system of super- and subordination in which there is a supervision of the lower offices by the higher ones. Such a system offers the governed the possibility of appealing the decision of a lower office to its higher authority, in a definitely regulated manner . . . the principle of hierarchical office authority is found in all bureaucratic structures . . . once established and having fulfilled its task, an office tends to continue in existence and be held by another incumbent. (Weber, 1958, p. 197)

Multiple forms of hierarchy exist in the case of classification. In addition to the structural hierarchies one has come to expect in these organizations, there also exist two other forms of hierarchy that are uniquely important to classification. The secrets themselves are organized hierarchically. The levels of classification of “confidential,” “secret,” “top-secret,” and “restricted,” as presented in chapters two and three, detail this hierarchy. Additionally, there exists the hierarchy of access. In the world of classification, there exists not only the hierarchy of positions and rankings within the bureaucracy but also the hierarchy of clearance. Which individuals are granted access to information and at what levels is that access granted? “The more sensitive the information, the more carefully it is to be protected and the fewer the people who are ‘cleared’ for it (authorized to have access to it)” (Shulsky & Schmitt, 2002, p. 100). As if the hierarchy of clearance were not complicated enough,

> People seeking access also must establish a “need to know” such information in order to perform their official responsibilities. This aspect of the information-control system is much less formal than that dealing with clearances; in general, anyone controlling classified information is responsible for ascertaining a requester’s need to know before providing the information. (p. 100)

Thus, in the case of the classification system, at least three levels of hierarchy exist—the traditional hierarchy associated with organizational positions and rank, the hierarchy associated with the three levels of classification, and the hierarchy associated with security clearances, which is distinct from the hierarchy associated with positions and rank. Before turning to additional principles of bureaucracy, it is important to recognize that Weber’s bureaucratic attributes of rules, regulations, role specialization, and hierarchy are clearly present in the governmental secrecy system.

Weber’s fourth characteristic of bureaucracy concerns the technical training which an individual must undergo before becoming a member of the administration. The specialized training mentioned in chapter three pertaining to the Department of Energy is endemic of the type of training that members of other departments experience, not only relating to classification, but to all aspects of their job. Although it is difficult to fully ascertain specifics regarding the training that takes place for classification authorities, it is clear from the various documents that are available—whether detailing how one should mark documents or how one achieves security clearance—that the process is complicated and fully regulated via formalized rules. Regardless of the current level of training which is being practiced, it is apparent from examining the recommendations of previous commissions that classification training is of paramount importance for the proper classifying of documents, as well as, reason for concern if it is not conducted properly or if classifiers are encouraged to overclassify. For example, the Wright Commission of 1957 recommended, "improvement of classification training for those with such authority" (Report of the Commission on Protecting and Reducing Government Secrecy, 1997, p. G-1). Similarly, the Moynihan Commission of 1997 recommended, "improving training and enhancing incentives so that classifying officials will consider more carefully the costs of secrecy and recognize that they will be accountable for their decisions" (Report of the Commission on Protecting and Reducing Government Secrecy, 1997, p. xxvi). Individuals who become members of the government secrecy community participate in a multitude of classification training classes. An additional point related to the training of classifiers was offered by Steele (2001),

> Employees have not been trained to exercise discrimination in classification. It has been my experience that employees of the various intelligence community organizations routinely classify *everything* they collect, everything they write. This is in part because there are severe penalties for under-classifying information, and *there are no penalties at all for over- classification, even if the over-classification is erroneous or against the public interest*. (p. 64)

This fact alone fulfills one of Weber's characteristics and demonstrates the bureaucratic nature of the community. It is important to note that more training, as advocated by the previously mentioned commissions, will contribute to an increase in bureaucratic attributes, but may also, if they accomplish the stated goals of the recommending commissions, reduce the number of classification decisions. However, as discussed in chapter two, Executive Order 13292, which recommended training designed to emphasize the legal and criminal consequences of the unauthorized disclosure of classified information, will likely contribute to both increased bureaucracy and increased secrecy.

A final characteristic of bureaucracy relevant to the current discussion is the manner in which officials are selected within the bureaucracy. Bureaucratic officials are appointed by a superior. "The pure type of bureaucratic official is *appointed* by a superior authority" (Weber, 2001, p. 76). This is the precise manner in which members of the government secrecy community are selected. Via executive order, such as the amendments to EO 12958 by President Bush which *appointed* the Secretary of Health and Human Services, the Secretary of Agriculture, and the Administrator of the Environmental Protection Agency, classification authorities are appointed by superior officers. The President grants those in charge of various departments and agencies classification authority, and these agency and department leaders appoint additional individuals the power to classify. Weber also acknowledged other unique privileges of those appointed by bureaucratic superiors. "The modern official always strives and usually enjoys a distinct *social esteem* as compared with the governed" (Weber, 2001, p. 75). The rigid hierarchy is further imposed within agencies with classification authority through the levels of security clearance or the various levels of classification. Weber noted an additional and special privilege of those appointed within the bureaucratic structure. The modern official's "social position is guaranteed by the prescriptive rules of rank order and, for the political official, by special definitions of the criminal code against ‘insults of officials’ and ‘contempt’ of state and church authorities” (Weber, 2001, p. 75). The prescriptive rules of the classification system only establish the hierarchical nature of officials within the system, and the secretive nature of the system as a whole ensures that the governed will rarely have access to the type of information which may in turn be used to hold the official accountable. Having identified some of the critical characteristics of Weber’s bureaucracy, it is time to focus on Weber’s thoughts on the role of secrecy in bureaucracy.

Secrecy and Bureaucracy

Weber acknowledged that secrecy is a natural product of bureaucracy. In the following passage , he made this point abundantly clear.

> The pure interest of the bureaucracy in power, however, is efficacious beyond those areas where purely functional interests make for secrecy. The concept of the ‘official secret’ is the specific invention of bureaucracy, and nothing is so fanatically defended by the bureaucracy as this attitude, which cannot be substantially justified beyond these specifically qualified areas. (Weber, 1958, pp. 233-234)

As Merton (2001) pointed out, “bureaucracy is administration which almost completely avoids public discussion of its techniques” (p. 104). In keeping with its role in bureaucracy, secrecy has become routinized. With routinization comes the sort of problems endemic in systems where cultures are more competitive than collaborative. This section seeks to analyze the intelligence community as bureaucratic entities and to describe inherent characteristics of such bureaucratic structures. Steele (2001), describing a conversation between himself and Alvin Toffler, solidified this link between intelligence and secrecy, and the intelligence community and bureaucracy. “The nature of bureaucracy—the pigeon-hole nature of bureaucracy—had swamped whatever concept of ‘national intelligence’ might have existed over the history of the IC”(Intelligence Community), and it “was time to begin articulating a new vision of national intelligence” (pp. 279-280). Senator Thompson in a 1997 Hearing before the Committee on Governmental Affairs described the secretive bureaucratic nature which arose during and after the second World War, “bureaucracies, being what they are, the national security apparatus designed to keep information secret only expanded after the war, rather than being reduced” (p. 2). Ramsey (2000) identified bureaucracy as one of the primary causes of government deception. “Governments are able to deceive because of various aspects of bureaucratic functioning” and “the operating procedures of bureaucratic agencies and the relations between them generate government secrecy and deception” (Ramsey, 2000, p. 44).

The Commission on Protecting and Reducing Government Secrecy explicated the relationship between bureaucracy and secrecy. Many of the direct findings of the commission were reprinted and published in Moynihan’s *Secrecy*, published the year (1998) after the commission completed its work. Moynihan (1998), discussing the development of secrecy in the first half of the twentieth century, stated, “secrecy had become the norm. As Weber had shown, a culture of bureaucracy will always tend to foster a culture of secrecy” (p. 153). Discussing the Cold War’s impact on governmental secrecy, Moynihan (1998) illustrated the critical transition from transparency to secrecy,

> The awful dilemma was that in order to preserve an open society, the U.S. government took measures that in significant ways closed it down. The culture of secrecy that evolved was intended as a defense against two antagonists, by now familiar ones: the enemy abroad and the enemy within. (p. 154)

Moynihan (1998) discussed the transition from a time when government information holders often shared information with journalists to a time where government information holders, not only failed to share information with journalists, but also failed to share information with other information holding agencies and departments *within* the bureaucracy.

> It was turning out that secrets were an asset not to be centralized and shared. Organizations with the morale, incentives, and structures enabling them to hold information closely were increasingly disinclined to cooperate with organizations that were not. This is perhaps too generous. A less charitable view is that secrets had become assets; organizations hoarded them, revealing them sparingly and only in return for some consideration. (Moynihan, 1998, p. 169)

Aspects of information hoarding and competition for resources will be discussed later in this chapter. What is important at this point is a recognition of the propensity of agencies and departments to exhibit bureaucratically and culturally prescribed behaviors.

Others have acknowledged the bureaucratic nature of the secrecy system and its effects on the practice of democracy. According to Katz (1987), “the bureaucracy of secrecy has made citizens the lowest priority of those who ‘need to know’ (p. vii), and he also acknowledged that most Americans are “unaware that a bureaucracy of secrecy exists, wields enormous power and produces decisions without democracy” (p. 2).

What does it mean to state that a bureaucracy of secrecy exists? What implications are discovered from the Moynihan Commission (1998), Cox (1975), and Katz's (1987) labeling of those government entities who deal with classification as operating from a bureaucracy of secrecy? Bureaucracy is a natural (de)evolution of organization. Characteristics of bureaucracy, mentioned earlier in this chapter, detail how bureaucracy attempts to preserve itself and reify its positions of power. In fact, bureaucracy will employ any means necessary to ensure its preservation. In the case of many of the classification authorities existing in the modern government, secrecy has become institutionalized. In a bureaucratic culture of this nature, secrecy becomes the status quo rather than an exception to the rule.

Cultures of Secrecy

In order to fully comprehend the ways in which members of the government secrecy community exhibit cultural attributes and engage in culturally specific behaviors, it is necessary to appropriately define culture. "Culture is constituted of the values, beliefs, expectations, motivations, and behavior patterns of a people who recognize themselves as a group (Kramer, 2003, p. 235). Group expectations and motives are often the most salient determinants of cultural differences or even cultural clashes. The expectations and motives in a democratic culture are diametrically opposed to the motives and expectations of a culture of secrecy.

In what ways do members of the secrecy system share expectations, motives, patterns, values, and attitudes? Traditionally, cultural identification operates through the defining of values, motives, and beliefs of both the in-group and the out-group. In addition to cultural differences between a democratic ethos and a bureaucratic culture of secrecy, there have also been differences among those within the secrecy system. In the case of the government secrecy system there are multiple levels of in-groups and multiple levels of out-groups. Prima facie, groups operating within the secrecy system share cultures, and, in fact, compared with the greater ethos of democracy, these groups are more alike than dissimilar. However, within the culture, these groups break into sectarian groupings. Morris (1996), in his discussion of the emergence of humankind as a super-tribe, explained how this fragmentation occurs. Whereas pre-super-tribe humans found collaboration and teamwork necessary in both a hostile environment and an environment where individuals knew most, if not all, of the members of the tribe, the supertribe humans "no longer knew personally each member of his community" (Morris, 1996, p. 18). According to Morris (1996), once a tribe attains super-tribe status, such as the United States has with its massive intelligence and classification apparatus, the tribe then begins to splinter. "Because the modern super-tribes are in so many ways socially unmanageable, there has been a tendency for them to fragment" (Morris, 1996, p. 35). When groups, such as the FBI, CIA, NSA, and others, break into sects, they alter the overall effectiveness of the super-tribe. From the outside looking in, these groups may not be remarkably different, however, "one sub-group may not look strange or unfamiliar to another sub-group, but it does look *different*, and that is often enough" (Morris, 1996, p. 132).

For example, within a single organization, such as the Department of Defense, there exist intelligence operatives in the Army, Navy, Air Force, and Marines. While each of these sects process intelligence information for the DOD, they are also each members of distinct military cultures. Therefore, within the DOD, multiple intelligence cultures are present. Perhaps, even more specifically, within a single organization such as the CIA, cultural divisions may arise from factors ranging from administrative assignment to levels of clearance. Much more cognitively apprehendable is the realization that the CIA, though sharing the larger value of protection of U.S. national security interests with the FBI, possesses cultural beliefs and values distinct from the beliefs and values of the FBI. Findings seven and nine of the JITA, presented later in this chapter, demonstrate the existence of separate cultures by the various departments and agencies within the intelligence community. The third and fourth levels of cultural differentiation are apparent in the value and belief differences between those government entities with classification authority and those government organizations without classification authority, and the value and belief differences between those government organizations with classification authority and the general public. “Culture is a property of a group. It is a group’s shared collective meaning system through which the group’s collective values, attitudes, beliefs, customs, and thoughts are understood” (Barnett & Lee, 2002, p. 277). When it comes to government secrecy, there are many levels of in-groups and out-groups to be considered. While the following chapter explores the differentiation between the classification authority in-group and the public citizen out-group, this chapter continues to explore the cultural differences among the various classification authorities.

According to Armstrong (1998), in the absence of specific challenges to the secrecy system from the public or the press, the system continues to operate in the highly bureaucratic ways outlined by Weber—secretive, hierarchical, and loyal to the compartmentalized in-group. Odom (2003) believes that many of the bureaucratic problems resulting in distinct secretive cultures within the U.S. intelligence system stem from the passage of the National Security Act in 1947. Like Odom, Theoharis (1998) points to the founding of the National Security Agency in secrecy, through a secret presidential directive in 1952, as the beginnings of a national culture of secrecy. If the foundation for cultural differences within the intelligence community and among the intelligence community and other government agencies and departments rests in an act of legislation over fifty years old, then the cultural variables fostering community divergence present in 1947 have likely only further separated the members of the community.

According to Ramsey (2000), secrecy is a natural byproduct of bureaucracy, and the tendency of bureaucracies to keep secrets from those outside the bureaucracy, as well as others operating in different departments or sects, is equally natural. One of the interesting characteristics of bureaucracy and secrecy is that withholding information "is irrational in that it is not informed by either national or personal interest motivations, but is simply the result of adherence to bureaucratic practices" (Ramsey, 2000, p. 49). Ramsey's assertion is similar to the conclusion drawn by the Commission on Protecting and Reducing Secrecy that is that secrecy is in and of itself a type of regulation. The norms and rules of the bureaucracy reify secrecy. Weber clearly states the relationship between bureaucracy and secrecy.

> Every bureaucracy seeks to increase the superiority of the professionally informed by keeping their knowledge and intentions secret. Bureaucratic administration always tends to be an administration of 'secret sessions': in so far as it can, it hides its knowledge and action from criticism . . . the tendency toward secrecy in

> certain administrative fields follows their material nature: everywhere that the power interests of the domination structure toward *the outside* are at stake, whether it is an economic competitor of a private enterprise, or a foreign, potentially hostile polity, we find secrecy. (Weber, 1958, p. 233)

Fortunately, the modern classification system is designed to keep sensitive materials away from those on *the outside*—those foreign governments or terrorist organizations. Unfortunately, the modern classification system, with its multiple bureaucratic cultures fostering secrets, all too often ends up treating those on *the inside*, be they the DOD, the FBI, the CIA, the DOE, or Congressional Intelligence Committees, as competitors—rival cultures hoarding information. These cultures, along with specific examples detailing the negative effects of secrecy will be the focus of this section and the next. Weber's (1958) first sentence from the above quotation, "every bureaucracy seeks to increase the superiority of the professionally informed by keeping their knowledge and intentions secret" (p. 233), illuminates the tendencies of classification authorities to maintain their elite status by withholding information. However, this sentence also illuminates how the "professionally informed" elites keep "their knowledge and intentions secret" from one another. "It seems to be generally accepted that bureaucracies have an interest in secrecy because individual bureaucracies are motivated by the desire to increase their influence and power in relation to each other" (Ramsey, 2000. p. 50). As the DOD, the FBI, the CIA, etc., are all bureaucracies, the tendency to the keep secrets from one another is an intrinsic quality. According to Ramsey (2000), secrecy insulates government agencies

> from control and enables them to pursue their interests without restraint from other government agencies and organizations. Government secrecy is explained

> with reference to the motivations of officials to increase their influence, and in terms of competition between, and even within, various bureaucratic agencies, sub-agencies, and personalities. The prime target of secrecy is not foreign rivals, enemies or the unenlightened general public, but other competing government officials, agencies or departments. These explanations suggest that officials conceal information for reasons only accidentally related to national or public interest objectives. (p. 50)

Although Ramsey (2000) distinctly portrays the possibility of rival government cultures competing with one another, she also believes that other factors, such as an institutionalized secrecy and a classification framework, legitimize and enable greater secrecy.

Berkowitz and Goodman (2000) investigate the effects of culture on the secrecy system from a slightly different perspective. Whereas the previously mentioned authors have focused on the ways in which different agencies and departments have kept information from one another or from the public, Berkowitz and Goodman examined the ways in which the intra-agency social norms promulgate and institutionalize poor decision making processes. As an example, the authors describe the institutionalized problems of secrecy which likely enabled CIA employee and Soviet Union spy Aldrich Ames to evade detection for several years. “That force was culture. Intelligence officers are trained (or to put it more precisely, socialized) not to ask too many questions about their colleagues” (Berkowitz & Goodman, 2000, p. 153). Thus, the social norms of secrecy create a culture where members are discouraged from investigating their own. Asking questions about colleagues “runs counter to the formal rules of ‘need to know’ and compartmentation. More important, it runs counter to the social norms that accompany these instincts" (Berkowitz & Goodman, 2000, p. 153). Although the problems associated with information sharing will not be discussed until the next section, it is significant to note that, in the case of Aldrich Ames, the Office of Security (OS) had raised questions about Ames finances which were never revealed to the individuals who administered a polygraph test to Ames in 1991. Consequently, a lack of information sharing, unintentionally, enabled Ames to continue spying for three more years before he was finally caught and arrested.

Another explanation for government secrecy revealed through examination of cultures of secrecy is the belief by Nincic (1992) that government secrecy can also be explained by cultures wishing to establish a specific course of action with little or no opposition—either from other political entities (the Senate, the House of Representatives, the DOD, etc.) or from the public at large. Secrecy allows one group to further its agenda with little or no public scrutiny, and this scenario becomes particularly likely if it is believed that the group's agenda runs contrary to the opinions of the public or to other government departments and organizations. Nincic (1992) stated,

> Insulating policy makers from the judgments of the public and Congress when actual policy collides with official pronouncements or with the nation's expressed preferences or tacit values seems to have been the basis for much of the deception that has come to light in recent decades. Its frequent purpose is simply to avoid democratic accountability for acts that democratic consensus would punish. (p. 148)

"The current culture of secrecy developed and managed without Congressional involvement has continued without anyone without anyone being truly accountable for its failures and excesses as well as its successes" (Thompson, 1997, p. 3). Thus, the members of the secrecy system fully demonstrate bureaucratic tendencies and manifest culture differences which contribute to inherent tension among the members of the community, as well as among the members of the culture and those on the outside.

One of the byproducts of a culture of secrecy is the willingness of the culture to protect itself. In the case of the Iran-Contra affair, it became common practice for individuals not to keep comprehensive records of their activities. These "Non-logs," as they were called, ensured that especially sensitive information was kept out of the records of the National Security Council's minutes. The "Non-logs" were "not indexed in the NSC's central records system and could be safely destroyed" (Theoharis, 1998, p. 10). "When the Iran-Contra affair was publicly compromised in November 1986, Oliver North proceeded to destroy these records" (Theoharis, 1998, p. 10). A culture where secrecy is pervasive creates an environment where information concerning governmental decisions is intentionally withheld, or when discovered, willfully and illegally destroyed. Not only do members of this kind of culture acquiesce to participate in these types of decisions, but in many cases, because of the culture, they become convinced that their behavior is correct and justified. Other examples of the willful destruction of government records exist, and Theoharis (1998) acknowledges that "classification restrictions and records destruction constitute one legacy of the culture of secrecy that first emerged and became legitimated by the crisis of the cold war" (p. 13). A detailed analysis of the Iran-Contra investigation would likely have supported the argument that the secrecy system is a bureaucracy rife with behavioral and cultural problems; instead, however, the results of a more recent congressional investigation, that of the JITA, will be discussed later in this chapter.

Having established that the U.S. government, specifically those departments with classification authority, exhibits the primary bureaucratic characteristics outlined by Weber, as well as cultural characteristics which serve to demarcate those who are within the community and those who are outside of the community, the focus of this chapter will now shift to other significant organizational characteristics, such as information control, resource competition and hoarding, power struggles, and poor decision making. Recognizing that the members of the secrecy system engage in bureaucratically and culturally distinct behaviors increases the accessibility of the arguments presented in the following section. Using the congressional report on the events of September 11 as the primary data, the conceptually linked organizational constructs of information flow, decision-making, and power will be defined and applied.

Information Flow and Decision Making

The ability of an organization to receive messages from the environment, process those messages, and, if necessary, tailor a response to those messages, is central to the success or failure of an organization. According to Sutcliffe (2001), “environmental information flows—the gathering and interpretation of environmental information—are crucial inputs to many organizational decisions” (p. 198). The ability of an organization to adequately process environmental information has been the subject of much organizational research, such as Weick’s (1979) examination of organizational sensemaking and Huber’s (1991) study of internal information distribution.

"Organizations acquire, interpret, and control flows of environmental information in order not to be blindsided by threats, unprepared for opportunities, or ineffective in managing interdependencies with resource controllers and other important stakeholders" (Sutcliffe, 2001, p. 197). Environmental information is made up of information from both the external organizational environment, as well as the internal organizational environment. In many cases, secrecy, particularly excessive secrecy, severely impacts the organizational ecology of the intelligence community. Secrecy can not only contaminate the free flow information pool through distortion and misinformation, but it can also dam the free flow of information, thereby preventing individuals from accessing information. While it is obvious that access to environmental information is critical to the effectiveness of the intelligence community, it should also be apparent that, for many within the community, the environment consists of other members of that community. Therefore, information sharing is a necessary component of job accomplishment. Simply put, members of the intelligence community rely on one another to accurately process and to share information in a timely manner. According to Shulman (2001), "'sharing' is a key to good work group performance" and sharing is also "a means of facilitating the coordination of actions" (p. 360). Information flow is linked to the concept of decision-making. That organizations must have access to information in order to make informed decisions is taken for granted. Decision-making is linked to the exercise of organizational power and is a burgeoning area of organizational study. Miller, Hickson, and Wilson (2001) examine the relationship between decision making and power.

> The issues of who is involved in the making of decisions; who is left out or kept in; who is in a position to exercise influence; who is able to introduce items on the

> decision-making agenda or keep them off; are all central to an understanding of the politics of organizational behavior. (Miller, Hickson, & Wilson, 2001, pp. 293-294)

Information control, decision-making, and power, and their relationship to the members of the government secrecy system, will be discussed in the following sections.

Information Sharing

In the "Systematic Findings" summary section of the JITA, several important findings delineate the communicative problems within the intelligence community. Of the 20 findings listed by the Joint task force, three are particularly relevant to the current discussion. The first relevant finding, presented here, refers to information sharing between and within agencies. This finding reveals the inability of members of the intelligence community to effectively communicate with one another.

> 9. Finding: The U.S. Government does not presently bring together in one place all terrorism-related information from all sources. While the CIA's Counterterrorist Center does manage overseas operations and has access to most Intelligence Community information, it does not collect terrorism-related information from all sources, domestic and foreign. Within the Intelligence Community, agencies did not adequately share relevant counterterrorism information, prior to September 11. This breakdown in communications was the result of a number of factors, including differences in the agencies' missions, legal authorities and cultures. Information was not sufficiently shared, not only between different Intelligence Community agencies, but also within individual

> agencies, and between the intelligence and law enforcement agencies. (JITA, 2002, p. xvii)

Although the report does not specifically acknowledge that levels of classification or security clearance are the primary obstacles to effective communication, the term “legal authorities” is often used and certainly seems to imply that issues of information sharing may result in legal problems based on one’s security clearance. What happens if the CIA classifies information at a level above the security clearance level of the FBI operative investigating the same individual or suspect? The final sentence in the above citation acknowledges that, not only is information sharing an issue between organizations, but “also within individual agencies.” The implications of members within one agency restricting the flow of information to other agencies, either intentionally or institutionally via classification policies and procedures, are truly alarming. It is in this statement that we first truly begin to see the first layer in the strata of systematic information control. Information control is an issue between members of the same agency. It is also an issue between agencies. Information control is an issue between the government and the public. Within and between each level of this stratification, significant problems can be found.

Even though the three levels of government secrecy and classification stratification are examined in this and the following chapter, there is another level which deserves mention within the present discussion and which arises from the findings of the JITA. What about those agencies outside of the intelligence community? Those who are responsible for the safety and well being of U.S. citizens? Police officers, fire-fighters, and even elected officials all play a role in the protection and well being of this country. Finding 10 of the JITA extends the information flow’s shortcomings beyond the intelligence community to include those agencies and individuals without classification authority or security clearance but who are also important contributors in the maintenance of public safety.

> 10. Finding: Serious problems in information sharing also persisted, prior to September 11, between the Intelligence Community and relevant non-Intelligence Community agencies. This included other federal agencies as well as state and local authorities. This lack of communication and collaboration deprived those other entities, as well as the Intelligence Community, of access to potentially valuable information in the "war" against Bin Ladin. The Inquiry's focus on the Intelligence Community limited the extent to which it explored these issues, and this is an area that should be reviewed further. (JITA, 2002, p. xvii)

What this statement acknowledges is that information sharing with agencies and individuals outside of the intelligence community might have contributed to the accessing of valuable information. Berkowitz and Goodman (2000) elaborate on this very point; "security clearances, classification systems, and compartmentation separate members of the community from what intelligence specialists themselves often call the 'outside world'" (p. 151). The significance of this stark assessment of the communicative realities shaping the intelligence community should not be ignored.

The members of the Moynihan Commission pointed out that if more information regarding Soviet Union espionage and infiltration attempts hadbeen available to the public between 1945 and 1955, two things would have been accomplished. Firstly, more people would have realized that Soviet espionage was taking place, and that some U.S. citizens were actively supporting Communism. Secondly, as stated in chapter two, public access to this information would have stolen much of McCarthy's red scare artillery. As it was, the presence of so much classified information in the state department and elsewhere provided McCarthy with enough ammunition and camouflage to appear to justify his wild, unfounded accusations concerning the number and extent of Soviet Espionage. Does the current classification system give rise to similar issues? It was well known by 2001, and even 2000, that Bin Laden and al-Qaeda were a threat to the United States and to U.S. interests. In addition to the CIA and FBI being aware of the threat, former Senators Hart and Rudman completed their *U.S. Commission on National Security/21st Century* (2000) in which they outlined the threats facing the United States, and these included the potential for terrorist attacks on U.S. soil within 25 years. It is possible, but unprovable, that sharing information regarding terrorist activities with the general public might have contributed to a heightened awareness of the severity of the problem. Thus, the argument that better sharing of information within the intelligence community might have led to a better outcome on September 11, 2001, does not go far enough because one can also plausibly make the argument that more openness in the system might have increased public awareness, certainly it would have among the state governments and law enforcers, and this, in turn, might have led to a better outcome on that tragic day in U.S. history. What if it were public knowledge that attacks on U.S. soil might occur, and that domestic airplanes might be hijacked for suicide attacks? While the goal of this discussion is not to speculate on what might have been, there is clear evidence from available documents (the Pentagon Papers, the Report of the Commission on Protecting and Reducing Government Secrecy) that poor decisions (McCarthy era espionage, CIA overestimation of Soviet Union economic infrastructure, the Vietnam

War, Iran-contra, etc.) have historically been made when information has been controlled by a select few.

In addition to the JITA findings, others both within and outside of government have discussed the information flow issues problematized by the classification and secrecy system. James Woolsey, former CIA director under President Clinton, describing the relationship among and within the various intelligence organizations, states, “I learned pretty quickly that there are often cross-purposes and the subcultures of each agency don’t mesh that well together” (as cited in Posner, 2003, p. 67). During the Intelligence committee meetings discussing intelligence oversight and lapses in the intelligence community, particularly stemming from the Aldrich Ames case, Senator DeConcini, head of the Senate Intelligence Committee, “charged that Woolsey had just illustrated why the FBI and CIA could not get along; each was more concerned about protecting its own bureaucratic turf than in doing the right thing for the country” (Posner, 2003, p. 69). Anyone familiar with Weber’s bureaucratic characteristics would have been able to predict the Senator’s accusations, because the FBI and the CIA were behaving as bureaucracies naturally behave; guarding secrets, protecting and competing for resources, and defending their own policies and procedures. In Deputy Director for Intelligence Miscik’s State of Analysis Speech, given on February 11, 2004, when discussing the biggest lesson she had learned regarding questionable information concerning Iraq’s nuclear and WMD capabilities, Miscik identified the importance of information sharing. “Barriers to sharing information must be removed” (Miscik, February 11, 2004, p. 7). If information sharing within the various compartments of the CIA is a tremendous obstacle, then, from Weber’s bureaucracy, we can conclude that this problem is only heightened when the sharing of information with other organizational entities outside of the CIA is considered. As long as each department and agency is compartmentalized, and continues to have even greater compartmentalization within itself, then any efforts to share information will be consistently undermined, regardless of sensitivity, urgency, or sincerity. Not only does an issue exist regarding who can say what and who has access to what information, but an issue also exists concerning who shares what information and with whom do they share it.

Further examples of information sharing difficulties are readily available from the JITA report. In December of 1998, Director of Central Intelligence George Tenet declared that the U.S. was at war with Bin Ladin. “We must now enter a new phase in our effort against Bin Ladin . . . We are at war . . . I want no resources or people spared in this effort, either inside [the} CIA or the community” (JITA, 2002, p. 231). Unfortunately, providing additional evidence of information flow and transmission impediments, the JITA (2002) found that “knowledge of the DCI’s declaration appears to have been limited” (p. 232). One would imagine that a declaration of war by the most visible member of the intelligence community would be transmitted and shared with all members, particularly when the declaration is accompanied by a statement of resource commitment applicable to all members of the community. The JITA found that members of both the FBI and the Department of Defense were unaware that Bin Ladin and al-Qaeda had been elevated to this status. “The Joint Inquiry also learned that, even after the DCI’s declaration of war, there was considerable variation in the degree to which FBI-organized Joint Terrorism Task Forces prioritized and coordinated efforts targeting Bin Ladin and al Qa’ida in the United States” (JITA, 2002, p. 233). The severity of the al-

Qaeda threat was not imposed on FBI offices around the country. In fact, the JITA reports that National Coordinator for Counterterrorism Richard Clark described the FBI offices outside of New York as being "'clueless' about counterterrorism and al-Qa'ida" and stated that they "did not make them priorities" (p. 233). This is not an attempt to pillory the members of the intelligence community regarding the events of September, 11, 2001. If anything, this chapter makes obvious that the bureaucratic structure of the intelligence community is such that communicative obstacles, such as information control and distortion, are inevitable.

Resource Competition

An additional area of organizational concern related to the discussion of information control is the issue of resource competition. According to Berkowitz and Goodman (1989), "because national intelligence resources are limited, someone has to determine how they will be allocated" (p. 38). Although not all of the agencies and departments with classification authority share a common budget, they do share a common interest in the overall budget process of the federal government. They are all governmental organizations and want their financial requests filled. Some classification authorities fall under the Department of Homeland Security, while others fall under the state or the defense department. However, since the federal budget is finite, and since organizations must provide evidence of effectiveness and demonstrate logical justification for resource allocation, agencies and departments within the intelligence community compete for resources, not only among each other, but among all government agencies and departments. Scholars have examined the role of resource competition in regard to organizational effectiveness (Winter, 1990; McPherson, 1983). There are inherent problems in an environment in which the agencies and departments responsible for the national security are competitors rather than collaborators. Berkowitz and Goodman (2000) describe the “cartel-like” atmosphere of the intelligence community. “When a competitor emerges, the typical official will complain that the competing agency is ‘acting outside its assigned mission,’ that ‘it lacks the expertise and experience’ to carry out the activity, or that its activities ‘represent needless and wasteful duplication’” (Berkowitz & Goodman, 2000, p. 54). Berkowitz and Goodman (2000) actually argue in support of increased agency competition because they believe that the intelligence community, behaving much as the free market does, would generate healthy competitive practices leading to innovative breakthroughs in intelligence. However, based on the current history of the system, it seems apparent that competition, particularly competition for resources, will continue to be the defining characteristic of the secrecy culture. In fact, Berkowitz and Goodman catalog examples where agencies have attempted to “eliminate a competitor” (p. 54). This seems illustrative of the argument that resource competition is a source of alienation rather than a source of elevation.

An example which demonstrates both the secrecy system at work and the importance of financial resource acquisition is the CIA’s frequent refusals to disclose its operating budget. Keeping such information classified not only demonstrates the hubristic nature of a system not willing to provide the public with the means for analyzing the CIA from a costs-benefits approach, but also demonstrates the importance placed on resource control in the secrecy system. The CIA’s reluctance to provide information useful to the general public includes a recent debate to withhold the organization’s operational budget for 2002. A lawsuit spearheaded by the Federation of American Scientists seeking this information was dismissed by U.S. District Judge Ricardo Urbina (“Indefensible Secrecy,” 2004). In an editorial in the Washington Post, Director of Central Intelligence George Tenet is quoted as saying that revealing the intelligence budget “could be expected to provide foreign intelligence services with a valuable benchmark for identifying and frustrating U. S. intelligence programs” and “could be expected to cause serious damage to the national security” (¶ 2). Steven Aftergood, who filed the lawsuit against the CIA to reveal the information, notes that lawsuits against the agency to reveal budgets have been mostly unsuccessful with a few exceptions; while the budgets of 1997 and 1998 were revealed, budgets from 1947 and 1948 have been withheld, with the CIA stating that they did not even have figures for that year (“Indefensible Secrecy,” 2004). The editorial described the withholding of intelligence budgets as one more example of “a classification system out of control” (¶ 4). However, viewed through Weber’s bureaucratic lens and connected to a discussion of resource competition and information control, the decision by the CIA to withhold budget information seems like a natural response. While Tenet stated that the budget information would provide other countries with benchmarking capabilities, one cannot help but wonder if there was also a concern about internal benchmarking—benchmarking between the various agencies and departments in the intelligence community.

Turf Battles and Power Struggles

Several works (Odom, 2003; Shulsky & Schmitt, 2002; Steele, 2001) have explored the territorial battles between various government agencies, particularly agencies within the classification and intelligence community. For example, the relationship between the DOD and the Atomic Energy Commission, and its successor the DOE, was briefly explored in chapter three where decisions over classification of nuclear energy and compartmentalization of information and workers led to disagreement. One of the relevant findings of the JITA to this discussion is the following:

> 7. Finding: [Prior to September 11, the Intelligence Community's ability to produce significant and timely signals intelligence on counterterrorism was limited by NSA's failure to address modern communications technology aggressively, *continuing conflict between Intelligence Community agencies* (emphasis added), NSA's cautious approach to any collection of intelligence relating to activities in the United States, and *insufficient collaboration between NSA and the FBI* (emphasis added) regarding the potential for terrorist attacks within the United States]. (JITA, 2002, pp. xvi-xvii)

The elements of the Finding 7 which are italicized demonstrate the communicative difficulties which exist within the classification community. In addition to the problem of information sharing, detailed in the previous section, actual conflict between agencies and insufficient collaboration are serious impediments to a fully operational and effective system.

Odom (2003) described one example of the bureaucratic struggle which frequently occurs in the intelligence community. "The lack of common doctrinal understanding in the CIA has kept it in counterproductive struggles with virtually all other components of the Intelligence Community" (p. 49). Though he did not specifically identify it as such, Odom clearly referenced the fragmentation and sectarian groupings identified by Morris (1996). Odom (2003) suggested that a lack of common doctrinal understanding among the members of the intelligence community was one of the major deficiencies of the community. After describing attempts made by the CIA to take over all intelligence community information collection, Odom noted that it was a move not without its precedents. “The Defense Intelligence Agency has had similar turf fights with the National Security Agency with regard to the joint intelligence staffs . . . they are wholly unacceptable among the senior ranks of the Intelligence Community leadership” (Odom, 2003, pp. 49-50). The awareness of issues of information control and territorial disagreements should provide the impetus to address these organizational shortcomings.

> Until these failings are overcome, they will continue to obstruct meaningful dialogue and cooperation within the top circles of the Intelligence Community. A common doctrinal language has to be mastered by all senior Intelligence Community officials, and it has to be updated continually in light of new technology and new operational concepts based on practical experience. (Odom, 2003, p. 50)

A final note on the cumulative effects of bureaucratic territory disputes as offered by lifetime intelligence community member Steele (2001),

> I am certain, and others more senior than I, including members of the National Security Council, have spoken publicly on this point, that no less than 75% and perhaps as much as 90% of our classification is motivated by a desire to protect bureaucratic turf, not by any genuine need to protect national security. Erroneous classification also results from tens of thousands of poorly trained employees who routinely classify information by rote, adopting the most conservative route because the bureaucratic penalties for underclassification are severe, while there

> are no penalties for all those—thousands of people every year—guilty of excessive classification. (p. 58)

Inadequate information sharing, resource competition, and territorial disagreements are all manifestations of the bureaucratization of the government secrecy system. These bureaucratic cultures of secrecy create significant obstacles in a system whose stated goal, of ensuring national security, is too important to be derailed by intra- and inter-organizational squabbling. The next section of this chapter will explore the work of previous commissions and committees investigating the government secrecy system and the implications of their findings. This chapter will conclude by applying the organizational metaphor of voice to the phenomenon of government secrecy. The metaphor of voice accurately describes the bureaucratic characteristics of government agencies and departments and also provides conceptual linkage to the following chapter's analysis of secrecy, democracy, and the public sphere.

A History of Repeated Recommendations and of Unmitigated Growth

There is one final way in which Weber's theory of bureaucracy contributes to the arguments constructed in this chapter. Critics of bureaucracy, such as Dewey's reference to bureaucracy as "occupational psychosis," have attempted to illustrate negative aspects of the system (Merton, 2001). "If the bureaucracy is to operate successfully, it must attain a high degree of reliability of behavior, an unusual degree of conformity with prescribed patterns of action" (Merton, 2001, p. 105). If bureaucratic success is measured by the practice of reliable behavior, then the continued overclassification and hoarding of information by the members and agencies of the secrecy system, then the U.S. governmental secrecy system represents a successful bureaucracy. Unfortunately, the success of this community is measured by its ability to protect the citizens and the interests of the United States. Overclassification is the antithesis of this goal. Yet, the inflexibility of bureaucracy is perhaps most noticeable in an examination of the various commissions and committees which have studied the classification system specifically and government secrecy as a whole.

Beginning with the Coolidge Committee in 1956, classification policies provided the principle impetus for several reviews. While some reviews originated in Congress, such as the Wright Commission of 1957 and the Moynihan Commission of 1997, others originated with the Secretary of Defense, such as the previously mentioned Coolidge Committee, the Seitz Task Force of 1970, the Stilwell Commission of 1985, and the Joint Security Commission of 1994, which partnered the DOD with the CIA. While there have been other committees, commissions, and reports which tangentially examined secrecy—by focusing on federal information policies for example—the ones listed above focused exclusively on the classification of information. While the majority of this chapter has employed Weber's conception of bureaucratic behavior and organizational theories of information control, power, and voice to explain why cultures of secrecy arise and behave as they do, this final section will demonstrate that problems in the classification system do not exist unnoticed or unexamined. In fact, for over 50 years, individuals within and outside of the government have examined and reported concerns about the system. The problem seems to stem from the near universal decision to maintain the status quo rather than to change or adopt the suggestions of previous commissions and committees. This section will briefly present the findings of various investigatory bodies, particularly those suggestions which have appeared repeatedly. Whereas the first half of this chapter explicated why and how cultures of secrecy exist and the problems within and between them, this final section will seek to demonstrate that problems have been and continue to be repeatedly identified, and yet the system remains essentially the same and is thus susceptible to the mistakes of the past. A folk definition of insanity is doing something repeatedly but expecting different results. In the case of the classification system and the groups which investigate it, the same suggestions continue to be repeated, the same suggestions continue to be ignored or superficially patched, and the same results of ever-escalating classification and poor overall communication, continue to occur.

In 1997, the Commission on Protecting and Reducing Government Secrecy published its findings. One of these stated that overclassification was a threat to national security. Berkowitz and Goodman (2000) also pointed out that “a culture of secrecy can, oddly enough, make it harder to protect those things that really do need to be kept secret” (p. 152). The irony of a system established exclusively for protecting information relating to national security and foreign policy actually contributing to a decrease in national security is self-evident. Few, if any, of the recommendations stemming from three years of work by the commission were ever implemented; no congressional statute governing classification was ever passed; no factors, suggested as counterbalances to national security, such as cost of protection, value of the information, or public benefit from release of the information were ever implemented; no National Declassification Center was ever established. These and 13 other recommendations designed to improve and streamline the classification system were put forth and were meet with some positive endorsement, but that endorsement did not translate into pragmatic innovations and changes in the system. After three years of serious commission work, it was still business as usual in the government secrecy sector. In 2002, the JITA found that agencies, particularly the FBI and the CIA, had trouble sharing and processing information related to the terrorist attacks. Continuing to ignore needed reform and recommendations perpetuates the system and exemplifies the ability of bureaucracy to reify itself. The failures of the government secrecy system are systematic, bureaucratic, and institutionalized. Awareness of the problem exists, it is actual reform which is non-existent.

The Organizational Metaphor of Voice

The applicability of the organizational metaphor of voice to the present discussion can be seen at nearly every level of the classification or government secrecy system. Before applying the metaphor, it is important to describe not only the strength of metaphor as a conceptual tool, but also the specific ways in which metaphors have been applied in the field of organization studies. Lakoff and Johnson (1980) re-established the primacy of metaphor as a cognitive and linguistic tool for making sense of our experiences. Metaphors allow us to understand one thing in terms of something else. Metaphors provide templates for understanding experiences and phenomena. Organizational theorists have not shied away from using metaphor to help conceptualize organizational realities. Voice has been used as a guiding metaphor in many organization studies. According to Putnam, Phillips, and Chapman (2001), understanding the metaphor of voice entails focusing on communication as the "*expression* or *suppression* of the voices of organizational members" (p. 389). In the case of the government secrecy system, some voices are suppressed within the intelligence community, while all voices are suppressed outside of the community. There is simply no way for members outside of the community to participate in the rational discussion of national security issues in the absence of information access.

The organizational metaphor of voice arises from the critical tradition of philosophical investigation. Organizational voice, as defined by Deetz (1992a) and Mumby (1988), refers to an organizational norm where some opinions and statements are privileged while others are either marginalized or silenced. Voice is applicable to the present study in three primary ways. The process of designating certain departments and agencies as “classification authorities” establishes the first iteration of voice applicability. Via executive order and legislative acts certain groups are privileged by having access to information that other groups and agencies are denied. Elaborating on the situation by using the voice metaphor demonstrates that some departments and agencies have control of information and vocal outlets with which to reveal, conceal, or misdirect information. Moreover, the voice metaphor works on an additional level. Within each of these departments and agencies granted classification authority, select individuals are given differing levels of security clearance, thus creating a situation of informational inequity, that privileges the knowledge and voices of some members, while stifling and delimiting the voices of others. Finally, the third level of voice metaphor applicability involves the disparity between all those within the government secrecy system and all of those on the outside. The larger population is not privileged to comment on, or even know about, the decisions and proceedings of classification authorities. This chapter has focused on the application of the voice metaphor to the first two types of information control or suppression, while the following chapter concerning the relationship between government secrecy and democracy will apply the voice metaphor to the discussion of government secrecy and the public. At present, the citizens of the United States have very little voice in the secrecy system.

Chapter 5

Government Secrecy and the Public Sphere

Having delineated the history of the secrecy system, demonstrated the macro level operation of the secrecy system as an overarching organization with highly bureaucratic tendencies, and shown how individual cultures of secrecy exist in the system, it is time to focus on the ways in which government secrecy impacts the public sphere. The previous chapter ended with an introduction to the metaphor of voice. The present chapter will use the work of Habermas and Chomsky to explore the phenomenon of government secrecy and its relationship to U.S. democracy. The applicability of the metaphor of voice to the discussion of this chapter is of critical importance. According to the U.S. Constitution and the writings of those who founded this country, America was conceived as a place where all citizens would have an opportunity to participate in their own governance—all would have a voice in the democratic process. Although it took some time for the actual practice of the inalienable rights of all U.S. citizens to catch up to the theory espoused in the Constitution, progress was being made. However, by the time that the civil rights movement of the 1960s culminated in the Civil Rights Act of 1964, the secrecy system was firmly entrenched in U.S. government. The government secrecy system does not discriminate based on race or gender; however, the government secrecy system ensures that citizens have the least voice in their own governance. The systematic denial of access to information is the antithesis of representative government and democracy.

According to Habermas (1991), the public sphere is a place where private individuals, usually of middle or upper class, government, and other private organizations, come together to discuss social, economic, and political issues of the day.

In the introduction to Habermas' *The structural transformation of the public sphere: An inquiry into a category of bourgeois society,* McCarthy (1991) stated that the public sphere is "a sphere between civil society and the state, in which critical public discussion of matters of general interest was institutionally guaranteed" (p. xi). Many of the authors discussed throughout this dissertation have mentioned the ways in which secrecy lessens government accountability or lessens security; however, the question of secrecy's role in a democracy or a republic is often left unexamined. How can constituents participate in the decision making of this country if they are denied access to information? Chapter four denoted how the secrecy system operates as a bureaucracy—a bureaucracy which restricts and controls the flow of information. It creates and disseminates information for some within the culture, while excluding access to that information from those outside the culture. This chapter will examine the potential consequences of such a system on public discourse. After explaining and using Habermas' public sphere to aid in conceptualizing the problem, the focus will turn to an investigation of the deleterious ramifications of such a problem. However, discussion of the public sphere requires investigation into the role of the media in the public sphere. For that reason, Chomsky's theory on the role of the media in democracy will also be investigated. I will begin this chapter by defining the public sphere, and discussing its transformation. This will be followed by an examination of Chomsky's media control in democracy, and an exploration of the relationship among the public sphere, the media, and government secrecy. Next, I will identify the ramifications of the transformation of the public sphere, delineate the impact of secrecy on democracy, and finally, investigate pertinent accounts of unauthorized information control.

Defining the Public Sphere

"We call events and occasions 'public' when they are open to all, in contrast to closed or exclusive affairs—as when we speak of public places or public houses" (Habermas, 1991, p. 1). Habermas' conception of a public sphere focused on the idea of individuals coming together for rational debate and discussion, for opinion forming, and for influencing the political process. His work *The structural transformation of the public sphere* delineated the rise of the democratic public sphere in the 18th century and its gradual transformation from the more participatory socio-political process during the age of liberal democracy to the government and media elite control of the modern welfare state. Using specific historical accounts, Habermas described the creation and evolution of the public sphere. Individual free speech, supported by a free press, were critical early characteristics of the developing public sphere. As capitalism and cultural industries developed, control of the public sphere slipped from the hands of the populace into those of the government, large corporations, and the media. As humans became increasingly interested, and, in fact, captivated, by the consumption of goods and entertainment, the public sphere, as an entity for the expression of the public will, rationally derived, became co-opted by the elites. The age of the public sphere of liberal democracy, characterized by an involved and informed public creating and sharing opinion with government, was transformed into the age of the public sphere of elite control. Rather than citizens setting the agenda for governmental policies in the court of public opinion, decisions were made by individuals and corporations in positions of power and then manipulated in order to foster supportive public opinion. In the case of the government classification system, facts and information were and are withheld or manipulated in the name of national security or of foreign policy or of diplomacy. Yet, as illustrated in previous chapters, there is no shortage of examples where classification was used in order to garner public opinion supportive of the needs and desires of the administration or merely to limit the accountability of those in power. Basically, the government classification system provides another way in which those in power can control and manipulate the flow of information, which hastens the structural transformation of the public sphere. After clearly identifying and defining Habermas' public sphere in this section, evidence will be presented to advance and strengthen the argument that government secrecy has profound effects on democracy and the public sphere as envisaged by Habermas.

Growth of the Public Sphere

In *The structural transformation of the public sphere* Habermas examined social developments in England, France, and Germany. He focused on those countries' citizens—those who were not necessarily aligned with the monarchy, aristocracy, or church—as they began to gather to discuss art and literature and eventually politics. Over time, these gatherings began to impact public opinion, which in turn impacted political decision making. The growing market economy, combined with the weakened absolutism of ruling elites, created greater opportunities for rational civil discourse among the populace and thereby fostered the formation of a public sphere where private individuals converged and shared ideas. It is important to note that Habermas acknowledged that regardless of the type of government or the degree to which citizens were allowed to participate, a public sphere always existed. The difference hinged on whether it was a public sphere controlled by powerful elites in government or other dominate social institutions like the church, or if it was a more democratic public sphere in which individuals, albeit learned individuals, could come together and influence the affairs of state. Thus, at all times, a public sphere exists—the degree of actual democratic or representative influence on public policy and decision making is the subject at hand. However, the developing market economy and growing merchant class together were not enough to birth the rational public sphere. In fact, towns were themselves controlled by guilds and corporations.

> In the hands of the guilds and the corporations, however, these (the public markets) remained strictly regulated, serving more as instruments for the domination of the surrounding areas than for free commodity exchange between town and country . . . the merchants were satisfied with a system that limited information to insiders; the urban and court chanceries preferred one that served only the needs of the administration. Neither had a stake in information that was public. (Habermas, 1991, pp. 15-16).

State authority control over information began to change with the introduction and popularization of the published word. “Civil society came into existence as the corollary of a depersonalized state authority: (Habermas, 1991, p. 19). As the merchant class began to grow in both size and power, as literature became more widespread, and as individuals became more educated and literate, state control over information began to loosen and the public sphere began to shift from the elites to the citizens. These events converged to create a situation where the public authority of elites had to “legitimate itself before public opinion” (Habermas, 1991, p. 25).

The structure of the public sphere

According to Habermas (1991),

> The bourgeois public sphere may be conceived above all as the sphere of private people come together as a public; they soon claimed the public sphere regulated from above against the public authorities themselves, to engage them in debate over the general rules governing relations in the basically privatized but publicly relevant sphere of commodity exchange and social labor. (p. 27)

Thus, the public sphere was a way for individuals to balance the economic and social concerns of the family with the need to actively participate in the important decisions of society. The idea of individuals influencing the decisions of the state was a rare development at the time. Society was more accustomed to executive or religious decree rather than active participation. Additionally, the opportunity to speak out without fear of repercussion, while not completely non-existent, was lessened considerably. During this time, the dawn of the 18th century, the "town" became the center of civil society. The "town" served as

> an early public sphere in the world of letters whose institutions were the coffee houses, the *salons*, and the table societies . . . the heirs of the humanistic-aristocratic society, in their encounter with the bourgeois intellectuals, built a bridge between the remains of a collapsing form of publicity (the courtly one) and the precursor of a new one: the bourgeois public sphere. (Habermas, 1991, p. 30)

Public opinion formulated and expressed by the members of the coffee houses, salons, and lodges, provided the means for the state to understand and react to the needs of society. These meeting places, though initially occupied with discussion and criticism of literature and art, evolved into forums for critiquing government. So influential were these public spaces that Habermas (1991) noted, “there was scarcely a great writer of the eighteenth century who would not have first submitted his essential ideas for discussion” in these environments (p. 34). These public spaces provided individuals with the means to discuss, not only shared common concerns, but also state policies, oppression, and power.

Three principle characteristics of the early structure of the public sphere were introduced by Habermas. According to Habermas (1991), the groups congregating at the coffee houses and salons were not concerned with class status. Rather than continuing and perpetuating the societal stratifications so apparent in monarchical or aristocratic life, the lodge gatherings “preserved a kind of social intercourse that, far from presupposing the equality of status, disregarded status altogether” (Habermas, 1991, p. 36). By acknowledging the equality of participants, a situation was created where the best argument, rather than the higher ranking lineage, won the day. The second distinct factor of the public sphere involved the broadening of appropriate discussion topics. Rather than limiting themselves with topic areas and allowing church and state authorities to monopolize discourse, early public sphere participants discussed the economic, social, political, and cultural issues and products of their time. By broadening the range of acceptable discussion topics, including the discussion of culture and cultural products, the public sphere became inherently inclusive. According to Habermas (1991),

> however exclusive the public might be in any given instance, it could never close itself off entirely and become consolidated as a clique; for it always understood and found itself immersed with a more inclusive public of all private people, persons who—insofar as they were propertied and educated—as readers, listeners,

> and spectators could avail themselves via the market of the objects that were subject to discussion. (p. 37)

In addition to these three characteristics of the public sphere, yet another development in civil society fostered the public sphere's emergence—the establishment of constitutional law. For the first time since the 16th century, when Machiavelli's *The Prince* reaffirmed the monarchical inclination towards sovereignty over the people and public discourse, an alternative reality emerged as people reclaimed some of the power from the ruling elites. It is important to recognize that for Habermas, while the establishment of law was crucial, the discursive practices which led to the formulation of the law were equally important. "Discursively healthy processes, from the most diffuse and informal to the most structured and formal, are what maintain a sense of validity and solidarity among" the public (White, 1999, p. 12). In England, constitutional law, in conjunction with the emergence of the press, weakened the government monopoly of secretive or sensitive information. In fact, as the enforcement of censorship waned, "it made the influx of rational-critical arguments into the press possible and allowed the latter to evolve into an instrument with whose aid political decisions could be brought before the new forum of the public" (Habermas, 1991, p. 58). Even attempts by the English parliament to keep proceedings secret were short-lived (Habermas, 1991). Constitutional law and freedom of the press proved to be powerful stimulants fertilizing the soil of Western Europe in the late eighteenth century and leading to the blossoming of public opinion rife with ideas and possibilities and no longer stunted by the ideological and social sovereignty of monarchs and clergy.

The Structural Transformation of the Public Sphere

Unfortunately, the public sphere was not destined to endure. In fact, it is evident from reading Habermas (1991) that the public sphere was never able to fully emerge. Democracy became increasingly entangled by capitalism. According to Habermas (1991), “social power became concentrated in private hands” (p. 144). Through the vehicle of laissez-faire capitalism, individuals or tightly knit groups began to increase and secure massive amounts of wealth, and that wealth was used, and is still being used, to manipulate public opinion. Today, these elites, whether in media, politics, or corporations, buy the time to make claims which represent their interests. In this manner, the public sphere transformed from a system which encouraged, and, in fact, depended upon, openness and rational public debate, into a system where public opinion is managed and used as a form of control over the populace. What emerged was the reassertion of manufactured public opinion and control by elites who represented the government, corporations, and the media. Bentham, one of the developers, along with Mill, of political liberalism, would have referred to these individuals as “‘sinister interests’ . . . closet powers operating behind the façade of seemingly respectable institutions” (McClelland, 2000, p. 453). It is evident that Habermas conceived of a public sphere where public opinion, and in fact, public policy arose and was made legitimate through public debate and consensus gathering. Thus, you had a public sphere of private individuals gathering publicly to rationally discuss the issues of the day. Central to the discussion of the transformation of the public sphere is the ability of the elites to use their resources to construct persuasive messages which move public opinion in a direction suitable to their concerns via the media. Explication of Chomsky’s conceptualization of the media's role in shaping public thought in a democracy is essential to facilitating an understanding of the public sphere's transformation.

Chomsky's Thought Control in Democracy

Habermas described the role of the media in the degradation of the public sphere. While Habermas' findings sufficiently engaged us in an initial exploration of the relationship among democracy, government secrecy, public opinion, and media, the work of Chomsky, in the final quarter of the twentieth century, further articulated this tenuous relationship. Much like Habermas, Chomsky believed that the media serves as an instrument of government elites. In fact, government, media, and corporate elites use the media to ensure that the interests and messages of those in power are not only presented to the masses, but are constructed in such a way that the masses will embrace the messages and perhaps even come to believe that the messages are ones which express the interests of the people. The similarities with Marx's societal power structures are obvious. We no longer recognize the structures which guide our actions, just as we no longer recognize the agenda setting or shaping process of the media as it sets our agenda and shapes our thoughts. Chomsky's propaganda model acknowledges our inability to recognize propaganda as propaganda. It is this inability that gives the propaganda model much of its strength. Chomsky, like Habermas, Foucault, Nietzsche, and Marx before him, recognizes the subtle, and sometimes not so subtle, ways in which the powerful shape the experiences of the masses. Chomsky and Habermas recognized the ways in which consensus forming and public opinion are manufactured in a highly industrialized, mass-mediated, democratic society.

The importance examining and scrutinizing the media and the media's role in government secrecy is, at first blush, not immediately obvious. However, as was presented in the historical treatment of classification in chapters two and three, during times of extreme crisis—World War II, the Cold War, the Vietnam War, and the current war on terrorism—government secrecy is most likely to proliferate. It is at these pivotal moments that the populace needs a strong, independent press to bring the more opaque decisions and actions of the government into the light, so that the decisions can be rationally discussed in the public forum. Many discuss the role of the media in helping to facilitate the conclusion of the Vietnam War; however, the media's influence and hand in generating support and hype for the war in the late 1950s and early to middle 1960s is typically not intimated or examined. In *Necessary Illusions: Thought control in democratic societies*, Chomsky began his presentation of the propaganda model by examining the conclusions of "governability of democracies" by the Trilateral Commission in 1975. That commission convened on the heels of the Vietnam War and the Watergate scandal and was no doubt interested in the power of the media to stir and shape public opinion. According to Chomsky (1989), the Trilateral Commission concluded that a crisis of democracy existed because "the efforts of previously marginalized sectors of the population to organize and press their demands, thereby creating an overload that prevents the democratic process from functioning properly" (p. 2). Chomsky (1989) summarized the findings of the Trilateral Commission by stating, "the general public must be reduced to its traditional apathy and obedience, and driven from the arena of political debate and action, if democracy is to survive" (p. 3).

The Propaganda Model

According to Ramsey (2000), there are four stated reasons for government secrecy—reasons of state (the constitutionally implied reason for secrecy as discussed in chapter two), the intrinsic nature of power and authority (discussed in chapter four and later in this chapter), bureaucratic explanations (discussed in chapter four), and the need to thwart dissent. The need to thwart dissent is tied to the mind control functioning of the media to regulate and monopolize public discussion. Chomsky's propaganda model of the media stated that through the media, government controls and manipulates public opinion. The propaganda model "explains how in a democratic society with an independent privately owned media, those in power set the agenda for what information is offered, emphasized or suppressed and how it is viewed, as well as offering an explanation of why in liberal democracies systematic deception occurs" (Ramsey, 2000, p. 51). The propaganda model examined how mainstream concerns and ideas are marginalized and ignored by the media outlets, while the messages of controlling government and corporate elites, many of whom own the very media outlets under discussion, have little problem reaching the public via the media conduits. According to Chomsky (1989),

> the major media—particularly, the elite media that set the agenda that others generally follow—are corporations 'selling' privileged audiences to other businesses. It would hardly come as a surprise if the picture of the world they present were to reflect the perspectives and interests of the sellers, the buyers, and the product (p. 8).

The media "take a set of assumptions which express the basic ideas of the propaganda system" (Chomsky, 2002, p. 13). The debate or discussion about an issue is then presented in a framework that fits predetermined parameters. According to Chomsky (2002), state propaganda is “implicit, it’s presupposed, it provides the framework for debate among the people who are admitted into the mainstream discussion” (p. 13). Understanding Chomsky’s characterization of the complicity of the media in presenting only that information which falls within acceptable parameters, as determined by the powerful elites, aids understanding of the transformation of the public sphere.

While Habermas viewed the free and independent press as critical components to the rise of the public sphere, he also saw the problems caused by the media, which in the 1950s and 1960s, was serving the needs of the elite rather than of the populace. He predicted the media’s role in the declining public sphere. Chomsky’s work, in many ways, serves as a natural extension of the ideas posited by Habermas. “The media serve the interests of state and corporate power, which are closely interlinked, framing their reporting and analysis in a manner supportive of established privilege and limiting debate and discussion accordingly” (Chomsky, 1989, p. 10). Chomsky identified the first wide scale use of the propaganda model in the U.S. prior to and during World War I. According to Chomsky (1989), the purpose of President Wilson’s Creel Commission was to create “war fever among the generally pacifist population” (p. 29). This was accomplished primarily by pushing the agenda in the newspapers around the country. The reasons these examples are so critical to a discussion concerning the government secrecy system is that in the absence of access to information, if the public is kept uninformed, whether intentionally or unintentionally, it is simply impossible for the citizens in the United States to make rational political decisions and to accurately evaluate the actions of the government. Chapter four described the ways in which the agencies and departments which participate in the government secrecy system experience difficulties and breakdowns within the system. Due to these miscommunications and failures within the system, which are shrouded in secrecy, the public is virtually helpless to respond and is thus unable to participate in any real examination of the system.

Transformation Explained

Applying Habermas's public sphere and Chomsky's propaganda model in concert to the government secrecy system creates an explanatory theoretical framework. Central to Habermas's transformation of the public sphere is the invasion of the private sphere of the family by the mass media. This invasion resulted in a "sphere of culture consumption" (Habermas, 1991, p. 162). According to Habermas (1991), "the deprivatized province of interiority was hollowed out by the mass media; a pseudo-public sphere of a no longer literary public was patched together to create a sort of superfamilial zone of familiarity" (p. 162). Habermas was intimating that the newspapers, and later the radio and television, entered the home with pre-selected and pre-packaged messages which essentially limited the range of possible interpretations and responses to these messages. In essence, these artificially manufactured messages replaced public debate. Habermas's ideas are firmly grounded in the critical consumption ideas of his mentors, Adorno and Horkheimer, who were concerned with the sublimation of individual will and consciousness to economic elites via pre-packaged, and monolithic, cultural products. According to Horkheimer and Adorno (1972),

> On the one hand the growth of economic productivity furnishes the conditions for a world of greater justice; on the other hand it allows the technical apparatus and the social groups which administer it a disproportionate superiority to the rest of

> the population. The individual is wholly devalued in relation to the economic powers, which at the same time press the control of society over nature to hitherto unsuspected heights. Even though the individual disappears before the apparatus which he serves, that apparatus provides for him as never before. (p. xiv)

As these cultural products became the primary vehicles of information, those in control of these products, the corporations and the government, were able to steer discourse and manipulate topics of discussion. In one brilliantly summative passage, Habermas (1991) described how, at one time, commercialization was actually a precursor for rational debate. Individuals had to purchase novels to read or buy tickets to attend a show. However, having paid and followed through, either with their time or attendance, the subsequent public discussion concerning the novel or the show was both free and open in terms of participation and interpretation. “Today the conversation itself is administered” (Habermas, 1991, p. 164). Now individuals have to buy tickets to listen to “professional dialogues from the podium, panel discussions, and round table shows” (p. 164). Information consumption in this manner has a tranquilizing effect on the participants. Thus, the public sphere that emerges in a mass mediated society is one in which the media chooses which statements and phrases are acceptable for public dissemination, and it makes this selection in such a way that it deprives members of the public “of the opportunity to say something and to disagree” (Habermas, 1991, p. 171). In fact, “the world fashioned by the mass media is a public sphere in appearance only” (Habermas, 1991, p. 171). Habermas referred to the infringement of the mass media on the public sphere as a colonization of the lifeworld. “The lifeworld is the locus of moral-practical knowledge or relations of meaning shared in families and workplaces (private) and in political actions and opinions (public)" (Love, 1999, p. 50). As the elite members of society manufacture the discourse which takes place in the public and private spheres, rational public debate suffers. The unfortunate consequence of this discourse hijacking is that the elite driven dialogue then supersedes and supplants active democratic participation. Passive entertainment and passive information consumption becomes the norm.

In U.S. society, as documented throughout this dissertation, information concerning issues of national security and foreign policy are identified as being special types of information and are protected through the classification process. This specialized information is thereby controlled by individuals within the intelligence community—the Department of Energy, the Department of State, etc.—which elevates those members into positions of power. From these privileged positions, members of the secrecy system can choose to withhold information completely from the public, or they may provide only carefully selected pieces of information to the masses through official statements released to the press. In this manner, the public is reduced to being a passive recipient of the disseminated information or it is denied access to the information completely. One might argue that once the information has been provided, public debate could then result over the best way to handle that information. While hypothetically true, Chomsky (1989) would argue that the public discussion of an issue in which the debaters have only partial possession of the full breadth of the information and knowledge concerning that issue, and especially if limited awareness has been provided by those within the system, can never be rational.

According to McCarthy (1991), “the public sphere of social-welfare-state democracies is rather a field of competition among conflicting interests, in which organizations representing diverse constituencies negotiate and compromise among themselves and with government officials, while excluding the public from their proceedings” (p. xii). This situation is very much in evidence in the United States today. As the previous chapters and sections of this chapter have demonstrated, the government has an effective system of information control and distortion. By controlling and/or manipulating information, elites within the government, those with classification authority, are privileged and allowed to choose what information becomes available to the public for consumption. Thus, the classification system, combined with the agenda setting power of the media as it works in tandem with the government, virtually ensures that rational public discourse is absent. The resulting situation comes, in many ways, back full circle to the time prior to the development of the coffee houses and salons where the public sphere, as Habermas conceived it, initially appeared. Powerful elites in the form of government, media, and giant corporations make policy and dictate behavior and do so under a veil of secrecy which excludes public participation. Prior to the blossoming of the public sphere, political, economic, and social decisions were made and dictated to the masses by the monarchy, church, or aristocracy. The public sphere established a place where the middle and upper middle class, usually merchants, farmers, etc., could come together to discuss, first art and literature, and later, political, economic, and social issues.

The similarities between the societal environment which existed before and during the initial emergence of the public sphere and the current societal environment are important considerations when examining the effects of the secrecy system. As documented previously in this dissertation, a variety of factors coalesced to create the current diminished public sphere. After discussing other potential ramifications of the transformation of the public sphere, an exemplar will be presented which demonstrates the decision making methods of the powerful elites, the complicity of the media, and the impact these have on the public sphere.

As the principle focus of this dissertation, it is interesting to note that secrecy, which in modern times facilitates the deterioration of the public sphere, was initially vital to its construction. Habermas (1991) described how the initial meetings of uninfluential nobles, academics, and merchants were, out of necessity, conducted in secret. “The coming together of private people into a public was therefore anticipated in secret, as a public sphere still existing largely behind closed doors” (Habermas, 1991, p. 35). Monarchs and churches, who were in control of information at this time, were concerned chiefly that the acquisition and application of reason would inevitably push public thought and discourse in a direction which would enable a more public decision making process, rather than continuing in the tradition of the one firmly controlled and dictated by the monarchy and church.

> Reason, which through public use of the rational faculty was to be realized in the rational communication of a public consistig of cultivated human beings, itself needed to be protected from becoming public because it was a threat to any and all relations of domination. As long as publicity had its seat in the secret chanceries of the prince, reason could not reveal itself directly. (Habermas, 1991, p. 35).

Habermas (1991) illustrated that the “bourgeois public sphere . . . won out against state-governed publicity” (p. 35). Powerful elites, attempting to control the spread of information and the use of reason, employed secrecy. Members of the public sphere gathered secretly to avoid discovery and used reason to discuss issues ranging from art and literature to politics and economics. Thus, the public sphere gained strength and was fully born. However, once a non-state governed public sphere became accepted, it was then open to many, and the information discussed within the various lodges became public domain, free to any literate citizen—a small but growing subset of the population at the time. Yet, one characteristic of the public sphere remains inherently true—it is impossible to use reason or rationally discuss an issue if one is given inaccurate or faulty information regarding the issue or if one is excluded from access to that information. Such is the case with the public sphere today.

A valid criticism of the public sphere is that it never fully materialized because it was always made up of individuals who were part of the upper strata of society. Though not the highest royalty or the most powerful religious leaders, they were themselves elites. While there is truth to this, it is important to note that the discussion occurring in lodges and coffee houses, was more public and open than the royal decrees or church imposed decisions and discussions which were being made prior to and during the development of the public sphere. However, the argument that a true public sphere never fully emerged does not invalidate its inclusion here as an important metanarrative concerning government secrecy. One of the true strengths of the public sphere is its idea of openness and the hope that rational public debate and discussion can ultimately be open to all citizens who are interested in participating.

The primacy of the public sphere as an explanatory theoretical framework stems from its applicability to the issue of government secrecy. *The structural transformation of the public sphere* described how mass media, intentionally or otherwise, regulates the flow of information to the public and supplants or manipulates public debate. Perhaps the public sphere, as conceived by Habermas, is idealistic and unattainable. Yet, it is within democracy, whether in its pure democratic form or in the representative form practiced in the United States today, that the possibility of a true public sphere may eventually be realized. As Habermas (1991) explained, the mass mediated, modern welfare state creates conditions conducive to information control by elite decision makers, and thus limits the flow of information to the public. While this condition is clearly inconsistent with democracy, and is, in fact, dangerous in the limitations it places on rational debate, it is even more inconsistent and dangerous when considered in relation to the government secrecy system. Classifiers control one hundred percent of the information flow. Citizens do not even know what it is that they do not know. In this manner, many decisions of the secrecy culture are opaque, and the information that is available must be cleared or modified by those within the system.

The Public Sphere, Thought Control and Government Secrecy

While later portions of this chapter will provide specific opinions on the relationship between secrecy and democracy, it is necessary to continue describing the ways in which the public sphere, thought control, and government secrecy intersect. “Secrecy has the potential to undermine well-informed judgment by limiting the opportunity for input, review, and criticism, thus allowing individuals and groups to avoid the type of scrutiny that might challenge long-accepted beliefs and ways of thinking" (Report of the Commission on Protecting and Reducing Government Secrecy, GPO, 1997, pp. 7 -8). As demonstrated in chapter four, this is very much the case with the current system of classification. Bureaucracies and cultures of secrecy continue to make decisions which are beyond the keen of other members of government or the public. When a tragedy, like the bombings of September 11, 2001, occurs, the behaviors and decisions made by members within the secrecy bureaucracy may become exposed and may lead to congressional hearings, such as those conducted by the joint intelligence committees in 2002 and the current independent 9-11 hearings. Even when governmental hearings take place, information may be withheld from the public on the grounds that the information is sensitive or classified. The decision to black out twenty-eight pages from the *Joint Inquiry into Intelligence Community Activities Before and After the Terrorist Attacks of September 2001* is an example of this behavior. Lest one become fixated only on the omitted twenty-eight pages, it is important to note that, throughout the document, other paragraphs, sentences, and words remain classified. This is just another convenient method by which the secrecy community, even though its behaviors have resulted in serious negative consequences for U.S. citizens, restricts and controls the dissemination of information. Although it is during such crises as the attacks on September 11th, 2001 that the media serves its most useful function of bringing information to the people, in most cases, when a more interesting, or perhaps, more cynically, a more distracting story surfaces, coverage, of the classified twenty-eight pages or of any other important pieces of information, abruptly ends.

Habermas' (1991) discussion of the development of constitutional law as a challenge to the control of kings and queens, clearly identified secrecy as one of the methods of systematic domination. Constitutional law was governed by the rational decision making of the populace.

> Historically, the polemical claim of this kind of rationality was developed, in conjunction with the critical public debate among private people, against the reliance of princely authority on secrets of state. Just as secrecy was supposed to serve the maintenance of sovereignty based on *voluntas*, so publicity was supposed to serve the promotion of legislation based on *ratio*. (Habermas, 1991, p. 53)

Secrecy was one of the means utilized by the monarchy and the religious elites to control the citizens. By weakening the power of official secrecy, citizens were able to play a more active role in important social, economic, and political decisions. However, in the U.S. government today, secrecy is actually protected by official rules, such as the AEA of 1946 and 1954, the NSA of 1947, and by various executive orders. Although there is some legislation, such as the Freedom of Information Act of 1974, which seeks to provide citizens with access to government information, it is often inconsistently applied or withheld, and more importantly, citizens must know, in advance, what information they wish to uncover or educate themselves about.

Ramifications of the Transformation of the Public Sphere

Classification is the manifestation of western rational thought. Classification is the development of an official system for regulating and controlling information. According to Armstrong (1998), from the perspective of the bureaucrats, “secrecy’s most compelling benefit is to control the argument” and the subsequent restricting of “direct access to raw information ensures that one side in the internal policy debate dominates”

(p. 161). How rational is it to create a system where information is quantified on a continuum ranging from “sensitive” to “confidential” to “secret” to “top secret”? The test of a piece of information’s degree of secrecy has become, “how could my enemies use this information to threaten national security or foreign policy”? A more appropriate alternative question would be, “how can U.S. citizens use this information to better understand national security and foreign policy issues and decisions”? or “how can U.S. citizens use this information to become more involved and invested in the government decision making process”? Unfortunately, the classification system preempts rational debate of the worth of a piece of information by leaving the decision to classify up to the individual classifier. On the one hand, only individuals within the system may be capable of truly discerning the inherent threat or danger contained within a piece of information. On the other hand, an individual who is so deeply enmeshed in the culture of secrecy, may view all information as being potentially dangerous. Over the years, the intelligence system has spawned a culture of secrecy. It is a culture legitimated and reified by Executive Order 13292. This current executive order ensures that important information will continue to be out of reach of any interested or concerned citizen. Massive classification is one of, admittedly, many forms of information control. Through the control of information, government secrecy has continued the deprecation of the public sphere. Individuals no longer have access to information. It is unfortunate enough when public citizens have access information but are unable to have any voice in the debate or decision making process regarding that information. It is considerably more unfortunate, when public citizens are denied access to information and when the discussion or processing of information occurs behind a wall of secrecy.

In addition to protecting national security, another ground for government secrecy is the case of foreign policy decisions. Chomsky addressed, head-on, the decision to restrict public access to foreign policy deliberations and debate. The foreign policy decisions of the United States remain shrouded in secrecy because those decisions simply would not stand up to rigorous scrutiny. Many foreign policy decisions, under examination, would be seen for what they actually are—decisions which support and reify the positions of the elite in American society. According to Ramsey (2000),

> Chomsky sees secrecy and lies as the product of the basic contradiction not between power itself, but the concentration of power and decision making in private hands and the democratic ideal that people rule in principle; between the reality of social and economic inequality at the core of capitalist society and the notion of political equality at the heart of democracy. Chomsky argues that in existing democracies the tension between private interests and public interests is resolved in favour of the former, through propaganda, secrecy and lies which function to eliminate public interference, and to deflect public challenges to private interests, power and authority. (p. 54)

While Habermas sought to explain the conditions under which a public sphere might emerge and the conditions under which a public sphere transforms and disintegrates, Chomsky extended Habermas' discussion of the media's role in the transformation and disintegration and offered insight into the relationship among power, secrecy, and control within the system. Taken together, Habermas and Chomsky have provided the foundations for a discussion of the role of secrecy in a representative democracy and the relationship between secrecy and democracy.

Secrecy and Democracy

Having examined the effects of the transformation of the public sphere, the role played by government secrecy in that transformation, the complicity of the media in that transformation, and Chomsky's and Habermas's explanations for the transformation, attention now turns to an examination of the role of secrecy in democracy. This section will chart a course through key documents related to the founding of this nation and through various writings and statements made by individuals who are in position to comment on the importance of openness for the continued propagation of the U.S. representative democracy. Beginning with a discussion of critical documents in the founding of the United States of America, attempts will be made to understand how the founders envisioned openness and secrecy.

Early Concerns Regarding Secrecy and Democracy

During the founding of the United States of American, those involved with the Constitutional Congress sought to establish a country different from, not only England, but also from all countries who refused to recognize individual sovereignty and freedom from government control. To describe the deliberations of the founding fathers as being wholeheartedly in favor of openness and democracy would be inaccurate. In fact, for nearly thirty years following the Declaration of Independence, debate continued concerning government and the appropriate amount of freedom for the populace. These discussions were manifest in the transition from the Federalist Papers to the Constitution, in the Bill of Rights, and in the Alien and Sedition Acts. The conventional, and simplistic, dichotomy situates Jefferson and Madison on one side of the discussion and Hamilton on the other side. Principally, Hamilton was suspicious of the people's ability to properly govern themselves. “Hamilton, with his abiding distrust of the people, was inclined toward a greater degree of restraint, toward tipping the scales on the side of a secure and orderly society” (Jefferson, 1976, p. 11). While the relationship between security and freedom will be further discussed in chapter six, it is mentioned here to demonstrate that this is not an idealized discussion regarding the opinions of select founders regarding secrecy. It is clear from the U.S. Constitution that those involved with the constitutional congress sought to create an open government. As previously stated, Article 1, Section 5 contains the only line in the U.S. Constitution referring to secrecy. Though the constitution established open government, there was disagreement concerning the degree to which the government should be open. The following description of Jefferson’s and Hamilton’s respective positions not only summarizes their approaches to the issue, but also demonstrates the relevance of their views to the current discussion. Jefferson “acknowledged that government by all the people would probably make mistakes. But he insisted that a broad-based democracy was the only sure safeguard against tyranny” (Jefferson, 1976, p. 12). Hamilton, on the other hand, preferred an “orderly society controlled by ‘the rich, the wise, and the good’” (Jefferson, 1976, p. 12). Habermas and Chomsky might say that, in our current society, Hamilton’s ideal has developed and taken control but retains only the characteristic of being managed by the rich, not by the wise or good, and that this has led to the destruction of the public sphere.

According to Washington (as cited in Narath, 1997), “in proportion as the structure of government gives force to public opinion, it is essential that public opinion should be enlightened” (p. 5). This quote demonstrates that Washington, as well as Jefferson and Madison, desired an open government, with a well informed public.

Simmel (1906) argued that publicly shared information was a necessary condition for a fully functioning democracy.

> Democracies are bound to regard publicity as the condition desirable in itself. This follows from the fundamental idea that each should be informed about all the relationships and occurrences with which he is concerned, since this is a condition of his doing his part with reference to them. (Simmel, 1906, p. 469)

In Jefferson's first inaugural address in 1801, he further emphasized the necessity of having free flowing information among the constituents. During a litany of characteristics vital to a thriving republic, Jefferson included, "the diffusion of information and the arraignment of abuses at the bar of public reason; freedom of religion; freedom of the press;" and "freedom of person under the protection of *habeas corpus*" (Jefferson, 1976, p. 23). Jefferson (1939) asked whether peace was "best preserved by giving energy to the government, or information to the people. This last is the most certain, and the most legitimate engine of government. Educate and inform the whole mass of the people" (p. 37). In a statement which speaks directly to the concerns providing the impetus for this dissertation, Jefferson (1939) addressed the future of democracy should constituents be denied information.

> If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be. The functionaries of every government have propensities to command at will the liberty and property of their constituents. There is no safe deposit for these but with the people themselves; nor can they be safe with them without information. Where the press is free, and every man able to read, all is safe. I know no safe depository of the ultimate powers of the society

> but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education. (Jefferson, 1939, pp. 137-138)

A democracy works only if the people have ready access to information, and if the press accurately reports information for the sake of the people rather than for the perpetuation of particular elite ideologies. Madison expressed similar foundational concerns for the propagation of democracy.

> A popular government without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or perhaps both. Knowledge will forever govern ignorance: And a people who mean to be their own Governors, must arm themselves with the power that knowledge gives" (Madison, 1822, as cited in Katz, 1987, p. 2).

Certainly, there existed voices other than Washington, Madison, and Jefferson which asserted the importance of a free press and of ready access to information. However, their views, together with the denial of secrecy present in the U.S. Constitution, as well as the freedom of speech and the freedom of the press mandated by the Bill of Rights, overwhelmingly portrays a political model aligned against government secrecy and information restriction. In the years between this country's founding and the present day, many others have spoken out against the inappropriateness of secrecy in our representative democracy.

Commission on Protecting and Reducing Government Secrecy

The most recent official examination of government secrecy, the Commission on Protecting and Reducing Government Secrecy, informally known as the Moynihan Commission, was replete with concerns over the role of secrecy in democracy. Throughout its final report, and the individual hearings leading up to the final report, members of the government expressed grave concern over the troubling amounts of overclassification and outright secrecy in the government. Commission participant Combest, describing the justification for the Commission, stated, “the citizen is right to be concerned about a government that fosters a dark, closed, and oppressive culture of secrecy” (Combest, as cited in the final report of the Commission on protecting and reducing government secrecy, 1997, p. XLIX). Several individuals who participated in some aspect of the Commission’s investigation shared their thoughts on the problem of secrecy. A few of their specific statements will now be presented.

> For most Americans, in fact, this system is entirely opaque. In a free and open society founded upon freedom of expression and grounded in the accountability of government to the will of the governed, however, the existence of a silent infrastructure of government secrecy raises some very real concerns. (Collins, as cited in the final report of the Commission on protecting and reducing government secrecy, 1997, p. 4)

The opacity of the secrecy system has been referred to throughout this dissertation. In fact, a system of secrecy would not be a system of secrecy if it were not opaque. Describing the secrecy system as opaque seems self-evident. However, when one realizes the massive amounts of information which fall under the classification of secret or sensitive information, one then realizes that what is actually opaque is a considerable portion of the decision making, particularly concerning foreign policy and national security, by the government. Statements by others involved in the Commission perfectly capture the tension between fundamental rights of the citizenry and secrecy.

> For centuries governments have been preoccupied with keeping secrets. Information is power, and those who have access to it are powerful. Our democratic Nation, however, is founded on the principle that the people are sovereign, and must be trusted with the power of information if they are to make informed choices (Thompson, as cited in the final report of the Commission on protecting and reducing government secrecy, 1997, p. 1)

Thompson's is not a lone statement, but one of many reinforcing the importance of open and accountable government for democracy. "The free flow of ideas is vital to a democratic society . . . you just can't keep things secret" (Glenn, as cited in the final report of the Commission on protecting and reducing government secrecy, 1997, p. 4). The relationship between foreign policy and secrecy was also emphasized. Kennan, (as cited in the final report of the Commission on protecting and reducing government secrecy, 1997) in a letter to the Commission on Protecting and Reducing Government Secrecy, stated,

> It is my conviction, based on some 70 years of experience, first as a government official, then in the past 45 years as an historian, that the need of our government for secret intelligence about affairs elsewhere in the world has been vastly overrated. I would say that something upwards of 95 percent of what we need to know about foreign countries could be very well obtained by the careful and

> competent study of perfectly legitimate sources of information, open and available to us in the rich library and archival holdings of this country. (p. 6)

This letter alone greatly undermines the argument that foreign policy decisions necessitate secrecy in order to function fully. A large majority of the report of the Commission on Protecting and Reducing Government Secrecy is exceedingly critical of the excessive secrecy operating within the U.S. government.

The fact that the Commission started with the presumption that excessive classification and government secrecy were problems meriting special examination by a congressional commission, is, in itself, telling. This was not merely an exploratory investigation into whether or not government secrecy existed. It was already known that government secrecy existed and that, in fact, excessive government secrecy existed. The Commission sought to explain the rationale behind such overclassification and to make recommendations which would lead to a decrease in government secrecy and to an increase in the ability of U.S. citizens to ensure that truly secretive information was properly protected. The goal of the commission was to develop a set of recommendations for reducing the amount of secrecy present in government. Convinced, much like Jefferson, that a population without access to information could not maintain the best interests of the people and preserve democracy, the Commission on Protecting and Reducing Government Secrecy sought realistic recommendations for streamlining the classification and secrecy system. “Reasonable access to information is a prerequisite for maintaining an informed citizenry, and for maintaining public confidence in the institutions of government” (Combest, as cited in the final report of the Commission on protecting and reducing government secrecy, 1997, p. XLVII). Restriction of information invariably results in the will of those with access, those in power, to manipulate the public opinion of the people. The members of the Commission recognized government secrecy as a grave threat to democracy, and they were not alone in their recognition of this threat.

Other Voices

Throughout this dissertation, the statements of many who are opposed to unnecessary or excessive government secrecy have been mentioned (Quist, 2002; Melanson, 2001; Aftergood, 2000a; Moynihan, 1998; Theoharis, 1998; Katz, 1987; Cox, 1975). The conundrum created by the role of secrecy in the U.S. representative democracy is best revealed by Aftergood (2000a) in his statement:

> it is true that the United States has the most open government in the world . . . but the U.S. government is also the most secretive in the world. With its huge military budget and vast intelligence bureaucracy, the United States produces more new secrets more quickly than any other country. (¶s 17-18)

According to Katz (1987), “government secrecy in the United States requires the special attention of all Americans. It is a subject we have come to know best in moments of national crisis: official secrecy too often displaces important constitutional protections and democratic values” (p. 1). “Democracy requires an informed citizenry, a free press, the public’s right to know, and institutional checks and balances. These ideals cannot be achieved without the free flow of information” (Melanson, 2001, p. 1). Unfortunately, as demonstrated in chapter four, even within the secrecy system, information does not flow freely among its members. How can we expect the free flow of information to occur between those within the secrecy system and those outside of the system? The preservation of U.S. democracy as a system reliant on the rational and informed debate of many voices can only occur through the identification of those systems which undermine, obscure, or limit public discussion. The secrecy system is one such system, and that is why this dissertation is so important—only through the critical examination of the forces which limit or reduce the public sphere can those forces be overcome and reclamation of informed discourse occur. We are, right now, as members of the U.S. public, experiencing a dearth of information; this information is critical to informed debate and rational decision making. Individuals from Jefferson to Moynihan have warned against the threat to democracy posed by a denial of information. Knowledge is power, and the denial of access to information, to knowledge, in a democratic system of governance, is a direct contradiction of the rights of U.S. citizens.

> When secrecy is used to bypass the consensus of Congress and citizens, then our constitutional system is also bypassed. When information is not disclosed to the public, the government has failed to exercise the best means of maintaining the public trust and dispelling distrust. (Katz, 1987, p. 73)

As discussed in chapter three, a distrust of government was the stimulus behind the DOE's Openness Initiative. Katz (1987) also further alleged, "it is incumbent upon a democratic government to maintain policies permitting citizens to have broad access to information, and wide dissemination of information. The public also has a responsibility to demand that government fulfill these democratic ideals" (p. 73). Others, such as Florini (2000), joined the chorus of voices decrying the presence of excessive secrecy in democracy:

> with the spread of democratic norms, it seems right that powerful entities such as states and corporations should be held accountable for their behavior. A fundamental norm of democracy is, after all, the consent of the governed, and consent is meaningless unless it is informed. (pp. 16-17)

Collectively, these voices have called for the abolishment of excessive government secrecy and a reaffirmation of openness in government decision making.

Although the partisan nature of the individuals seeking the democratic nomination for the presidency in 2004 must be acknowledged, two contenders, Joe Lieberman and Wesley Clark, were outspoken regarding government secrecy and executive secrecy specifically. Having served in the U.S. Senate since 1988, Lieberman certainly was and is in a position to comment on the current problems associated with government secrecy. In addition to providing a litany of his own recommendations for fostering open government, Lieberman directly assessed government secrecy and the Bush administration's secretive practices.

> The federal government—which is supposed to be 'of, by, and for the people'—is doing more and more of its business in the shadows. The Bush Administration's penchant for secrecy, ranging from concealment of energy task force records and 28 key pages of the Intelligence Committee's report on September 11th to its whitewashing of air quality information at Ground Zero, is legion. That is further eroding the public's confidence in their leadership and making it harder for independent watchdogs to hold our government accountable. (Lieberman, 2004, ¶ 3)

While Lieberman's opinion regarding government secrecy is supported and made credible by his lengthy government service, the democratic candidate in 2004 who was in the best position to comment on government secrecy was clearly four star general, and former NATO commander, Wesley Clark. While Clark (2004) expressed concerns similar to those of Lieberman, he also pledged to "sign an Executive Order reversing George Bush's FOIA rollbacks" and to restore "the public's right to know" (¶ 17). Furthermore, Clark (2004) committed to replacing current "rules classifying documents with new ones that balance national security and the public's right to know" (¶ 18), as well as establishing "a National Declassification Center to centralize and streamline the declassification process across the government" (¶ 23). Clark's inclusion of a National Declassification Center is consistent with a recommendation of the Commission on Protecting and Reducing Government Secrecy.

Scientific and Intelligence Community Voices

There is no shortage of current and former members of the intelligence community who have, at various times, pointed out the problems within the community (Odom, 2003; Shulsky & Schmitt, 2002; Steele, 2001; Berkowitz & Goodman, 2000; 1989). Many of these individuals acknowledge in their works the unseemly relationship between secrecy and democracy, as well as the difficulties for balancing intelligence gathering in a democracy. According to Theoharis (1998),

> nations use intelligence to defend their interests, and some secrecy is necessary to conduct intelligence affairs. But a central lesson of the cold war era is that secrecy can endanger a democratic system by denying the people information about the functioning of their own government. Secrecy has a corrosive effect on the

> popular trust necessary for democracy to function. Paradoxically, while necessary for intelligence, secrecy can harm the effective conduct of intelligence, by allowing errors, foolhardiness, and criminal conduct to develop and remain uncorrected" (pp. 37-38).

A common theme found in a discussion of intelligence community reform, and one that is supportive of the general conclusions of this dissertation, is that secrecy prevents the citizenry from holding individuals or agencies accountable when errors are made. "Secrecy is the bane of democracy because it is the enemy of accountability" (Schlesinger, 1987, p. i). Buchanan (1987) echoed this belief when he stated, "the American people are being denied the information we need to participate in our political system and to hold our elected officials accountable for their actions" (Buchanan, 1987, p. iii). Large scale classification and secrecy prevents the citizenry from holding government accountable for its actions. During 2002, 2003, and 2004 lengthy investigations into the events leading up to, during, and following the terrorist attacks of September 11th, 2001, have been conducted. The ultimate goal appears twofold: to determine who was accountable and to prevent future attacks. While the intention of this dissertation is not to belittle the efforts of the congressional committees' attempts to achieve these goals, it is alarmingly apparent that while a more open government may not have been able to prevent the September 11th attacks, government transparency would have eliminated much of the need for investigatory committees and a three plus year fact-finding mission.

Since the early beginnings of the Manhattan project, there have always been concerns in the scientific community over, not only the role of secrecy within science, but also, the role of secrecy within a democracy. Historically, one of the biggest critics of government secrecy was physicist Edward Teller. According to Teller (1987), the father of the hydrogen bomb, "secrecy is not compatible with science, but it is even less compatible with democratic procedure" (p. 4B). In fact, as demonstrated in chapter three, the DOE Openness Initiative members, who were from both government and scientific communities, expressed reservations and concerns about the presence of excessive secrecy in democracy. According to Morland (2000),

> in a democracy, public understanding of government activity is essential, especially when the survival of civilization is at stake. In principle, all government secrecy is a disenfranchisement of the electorate. It provides cover for bad decisions and abuses of power and it promotes passivity and ignorance on the part of citizens. (¶3)

This chorus of voices inside and outside of government have called for an end to or a limiting of secrecy in U.S. government. Founding fathers and current senators, scientists and members of the intelligence community, politicians and newspaper editors have habitually condemned the presence of secrecy in democratic government. Unfortunately, classified information continues to proliferate, increasing amounts of information are kept from the public, thus denying rational public debate, and public opinion and government decisions continue to be based on faulty or incomplete information.

The Role of Power

While the majority of this chapter has, thus far, been focused on the theoretical explanations for the decrease in rational public debate and participation in the U.S. representative democracy, as well as the steady erosion of democratic fundaments as a result of excessive secrecy, the latter portion of this chapter will seek to explore two distinct, yet related, topics. Having established that the free flow of information is essential to effective democracy, the relationship between knowledge and power will now be presented. The theories of Foucault and Bok delineate the practical consequences of knowledge denial or distortion, thus their works will be discussed and examined. Restriction of information creates, not only an imbalance of power, but a situation where that imbalance is reified and perpetuated, thereby ensuring the continuation of this distortion. It is this asymmetry in information acquisition and use that severely threatens the institution of democracy. Finally, this chapter will conclude with an examination of a recent example of excessive secrecy. Using the justification of executive privilege, those involved in this exemplar demonstrated a striking and dangerously cavalier attitude towards open government. They were disdainful, rather than supportive of democracy. Although the full history of the Vice Presidential Energy Task Force of 2001 has yet to be revealed, and is, in fact, being deliberated presently in the judiciary, the facts that are known demonstrate a clear cut example of unnecessary and unjustified government secrecy. After examining the theories of Foucault and Bok concerning power and the relationship between knowledge and power, I will apply these theories to an examination of the events and information surrounding the Vice Presidential Energy Task Force of 2001.

The Knowledge Power Relationship

According to the Report of the Commission on Protecting and Reducing Government Secrecy (1997), “information is power, and it is no mystery to government officials that power can be increased through controls on the flow of information” (p. 8).

Although the impact of power was briefly discussed in chapter four regarding bureaucracy and cultures of secrecy, power in this chapter builds on the metaphor of voice discussed in the previous chapter and demonstrates that without access to truthful and undistorted information, the efforts of the American public to acquire power and assert rational voice often go unrewarded.

Foucault

Foucault’s principle expositions on power related primarily to the ways in which power structures are hidden from those whom the structures affect. According to Foucault (2000), he sought to understand how all types of power, not only official state power, was “exercised throughout the social body, through extremely different channels, forms, and institutions” such as the media (p. 283). Foucault discussed how these institutions began “to function on behalf of reason and normality,” and “brought their power to bear on groups of individuals, in terms of behaviors, ways of being, acting, or speaking that were constituted as abnormality, madness, illness, and so on” (p. 283). How is it that these social institutions exert power and control over society? In fact, it is the invisibility of the power structures which make them so dangerous, particularly to democracy. One might argue that the populace knows that information and decisions in the CIA and FBI are purposefully secretive. Yet, the question becomes, how are these secrets used to selectively steer policy or manipulate pubic opinion? These threats are exponentially more dangerous when combined with a government system where the power and decisions are made in secret, classified, and then hidden far beyond public access. The relationship among knowledge, power, and control was one that Foucault continually addressed. “I have been trying to make visible the constant articulation I think there is of power on knowledge and of knowledge on power" (Foucault, 2000, p. xv). In the government secrecy system, those in power control the flow of information to the public and the media; therefore, they retain both the knowledge and the power, and consequently much of the control. On the other side of the equation, the public relies on the government and the media to provide it with information that is complete and undistorted. In the absence of said information, the public is alienated from the system. "The exercise of power perpetually creates knowledge and, conversely, knowledge constantly induces effects of power" (Foucault, 2000, p. xvi). Foucault advanced his analysis of power an additional step and began to investigate the ways in which power and control often led to discipline and surveillance. These topics will be addressed in chapter six which will examine government secrecy and civil liberty.

Bok

Bok (1982; 1978) applied and examined secrecy across a wide variety of contexts. Her (1982) work analyzed a broad array of secrecy contexts, from interpersonal secrecy to administrative secrecy. Continuing the line of reasoning established by Foucault concerning the ways in which knowledge and power impact and reinforce one another, Bok (1982) stated, "just as secrecy protects . . . abuses of power, so it also gives those who employ it successfully more power, thus increasing their susceptibility to corruption, and in turn a still greater need for secrecy" (p. 106). Bok (1982) further explained, "in the absence of accountability and safeguards, the presumption against secrecy when it is linked to power is therefore strong" (p. 106). Bok believed that secrecy, in addition to providing the necessary conditions for information control and public opinion manipulation, fostered a culture where the need to maintain secrecy, and thereby maintain power, was institutionalized. The institutionalization of secrecy, as we have seen in the intelligence community and in other aspects of government, ensures that public debate, purposefully uninformed, is, in essence, irrational. Bok (1982) elaborated on the reifying nature of secrecy when she stated, “the risks of secrecy multiply because of its tendency to spread. Aware of the importance of exercising control over secrecy and openness, people seek more control whenever they can, and rarely give up portions of it voluntarily” (p. 25). Furthermore, “in imitation and in self-protection, others then seek more as well” (Bok, 1982, p. 25). This bureaucratic tendency of secrecy to protect and perpetuate itself was examined in chapter four.

With no shortage of examples of secret government to choose from regarding the events of the Vietnam War, Bok chose several to delineate the destructive nature of government secrecy. Bok (1978) provided an example of how administrative secrecy and distortion could have serious repercussions for the country. She described an exchange, in the 1960s, where rational public debate was stifled due to assertions by President Lyndon Johnson that he was against the escalation of troop involvement in Vietnam. As Bok (1978) pointed out, in the election of 1964, President Lyndon Johnson portrayed himself as a candidate for peace and portrayed his opponent, Barry Goldwater, as an advocate for war, even though Johnson himself supported the escalation of the war. In this way, public discussion of Vietnam was avoided. “In suppressing genuine debate about these plans during the election campaign and masquerading as the party of peace, government members privy to the maneuver believed that they knew what was best for the country and that history would vindicate them” (Bok, 1978, pp. 171-172). The following quotation illustrates how Bok further articulated the conflict arising from the practice of governmental secrecy and deception in a democratic republic.

> President Johnson thus denied the electorate any chance to give or to refuse consent to the escalation of the war in Vietnam. Believing they had voted for the candidate of peace, American citizens were, within months, deeply embroiled in one of the cruelest wars in their history. Deception of this kind strikes at the very essence of democratic government. It allows those in power to override or nullify the right vested in the people to vast an informed vote in critical elections. Deceiving the people for the sake of the people is a self-contradictory notion in a democracy, unless it can be shown that there has been genuine consent to deceit. The actions of President Johnson were therefore inconsistent with the most basic principle of our political system. (Bok, 1978, pp. 172-173)

This is but one example which demonstrates how government control of information limits or circumvents rational public debate. The ideas of Bok and Foucault, like Habermas and Chomsky earlier in this chapter, provide conceptual understanding of the behaviors of the government secrecy system and the consequences of secrecy on democracy. When a country founded and relying on the power of the people to make rational decisions classifies 14 million documents per year, and provides other methods for controlling information, the power of the people diminishes, and, in fact, becomes subservient to the power of the elites.

Now, more than ever, the public is being told that there is an unprecedented amount of information available for public consumption. On the surface, the Internet and twenty-four hour news networks on television provides a wealth of information at the fingertips of inquiring individuals. However, a greater amount of information does not necessarily translate into more accurate information. Despite the presence of numerous pamphlets, writings, and books positioning the earth at the center of the universe, one lone writing, in the 16th century, positioned the sun as the center of the universe, and that was the correct one. This allusion to Copernicus is neither supercilious nor ephemeral. Religious suppression or withholding of information throughout history is very similar to the withholding of information today. Just as knowledge of a heliocentric solar system might cast doubt on the belief that man is God's universal nexus and therefore jeopardize salvation, knowledge of national security and foreign policy deliberations and decisions might cast doubt on the effectiveness of government and government decisions and therefore jeopardize the smooth functioning of government. The tangibility of the comparison between government secrecy and religious secrecy of the past is particular manifest in the realization that both systems deny or restrict the flow of information. As Habermas demonstrated, without the free flow of information, there is no public sphere. As Foucault demonstrated, without knowledge there is little power, and the power that does exist seeks to limit information flow. This is not to portray the public as hapless non-participating victims in their own democracy. Citizens do have agency to raise awareness and to petition Congress to address the issue of government secrecy, or any other issue for that matter. Unfortunately, the current classification system, exercises of executive privilege, and a mostly unquestioning press have combined to disadvantage the public. Even when a group within the government, such as the Moynihan Commission, seeks to redress this imbalance, their report and conclusions go largely uncovered by the media and seldom lead to substantial system reform.

The Strange Case of the Energy Task Force

One might argue that the 2001 Energy Task force convened by Vice President Dick Cheney to help formulate the energy policy of the Bush administration is outside the domain of this dissertation, primarily because none of the documents at issue have actually been classified. However, the overarching topic of this dissertation is government secrecy, and as such, the Energy Task force becomes a valid case study of a culture of secrecy—a culture secure in its own privileges and entitlements. Under the rubric of executive secrecy, the current administration (2001-2008) has sought to withhold the information gathered, deliberated, and composed by the energy task force from the public. Examination of this task force is both appropriate and necessary based on three conditions. Firstly, although most of the information up to this point has dealt with official government secrecy as determined through the legal classification of information consistent with either EO 13292 (or the relevant executive order at the time of the classification) or the AEA of 1954, the participants, procedures, and national energy policy recommendations stemming from the energy task force are being withheld and concealed from the public. The information surrounding the Energy task force is not classified information; however, the Vice President relies on the term "executive privilege" for his justification of secrecy. Secondly, consistent with Habermas, there is evidence to indicate that the national energy policy was being determined by controlling elites. Rather than a government task force situating the interests of the citizens in the forefront, there is evidence to indicate that large corporate interests were served by the current administration's energy policy. Thirdly, the Vice Presidential Energy Task Force is as clear a case of unnecessary and illegitimate secrecy as one is likely to uncover, because it is unrelated to national security and foreign policy. In argue to maintain the secrecy of the task force, administration officials have asserted the need of the executive branch of the government to confer privately, rather than arguing the relationship of energy policy to national security or foreign policy. Additionally, the task force information has not been classified, just intentionally withheld from the public. Although the media disclosure that maps of Iraqi oil pipelines and resources were presented, exchanged, and discussed during the Energy Task Force meetings indicates a relationship to foreign policy, it remains unclear why the individuals involved with creating and shaping the U.S. national energy policy should remain a secret.

While there has been public discussion surrounding the Energy Task Force, it has not been the rational, informed debate of an open and fully functioning democracy. Ideally, public policies, hence their name, which impact the energy outcomes for the citizens of the United States would be discussed openly, with constituents notifying their congressional representatives as to their feelings on the issue. Instead, the public discussion has centered on what executive grounds, if any, the administration claims to use to justify the secrecy of the deliberation and formulation process. People aren’t discussing the important policies; they are discussing the legal and executive arguments for withholding such information from the public. Yet, enough is known about the task force to construct a rudimentary timeline of events. During the early months of 2001, Vice President Dick Cheney met with individuals involved in energy decisions both within the government, such as the Department of Energy, and in the private sector. According to a Government Accounting Office report (2003), there were ten energy task force meetings between January and May 2001.

> In developing the *National Energy Policy* report, the Principals, Support Group, and participating agency staff also met with, solicited input from, or received information and advice from nonfederal energy stakeholders, principally petroleum, coal, nuclear, natural gas, and electricity industry representatives and lobbyists. (GAO, 2003, p. 5)

The GAO, as well as democratic representatives Dingell of Michigan and Waxman of California, was concerned about the level of involvement of private firms in the drafting of U.S. energy policy. The GAO, behind office head Walker, sued the executive branch for the attendees and notes from the task force meetings. The suit was thrown out of federal court by Judge Bates on December 9, 2002. Judge Bates noted that the GAO, even though it is the investigatory arm of Congress, did not have the authority to bring a law suit of this nature. The GAO report also notes that "to a more limited degree, they (the energy task force) also obtained information from academic experts, policy organizations, environmental advocacy groups, and private citizens" (p. 5), and that "the extent to which submissions from any of these stakeholders were solicited, influenced policy deliberations, or were incorporated into the final report is not something that we can determine based on the limited information at our disposal" (p. 5). In this case of government secrecy, it is not only the public which has been denied information, but other departments and agencies within the government have also been excluded.

In addition to the GAO lawsuit, The Sierra Club and Judicial Watch sued Vice President Cheney for the names of task force participants and notes from the task force meetings. Their joint lawsuit named many individuals inside and outside of government other than Cheney—including former Enron CEO Kenneth Lay, Republican National

Committee Chairperson Marc Racicot, and Secretary of State Powell, to name a few. This case will be deliberated in front of the Supreme Court in the coming months. Many have criticized the attendees of the Energy Task Force and their wall of secrecy surrounding the meetings. According to an editorial in the Austin American Statesman ("Energy task force shouldn't be an issue," 2003) the Bush/Cheney administration has made "a federal case out of an energy policy task force that otherwise would be a footnote in the history of the Bush administration" (¶ 11).

The concerns over the task force are understandable when one considers that one of the attendees was Enron chief executive Ken Lay, a substantial contributor to the Bush campaign, and who has been indicted for fraud. A New York Times editorial (2002) summarized the problems associated with secretive policy making by the government—"from the beginning, the most troubling part of this case has been the administration's lack of appreciation of open government" (¶ 5). According to the editorial, the public has a right to know who attended the task force meetings. Indeed, if national energy policy does not fall within the range of acceptable public discourse in a democratic republic, what topics do?

The argument of the defendants in this case is thatdisclosing private discussions would upset and weaken the ability of individuals and organizations to give quality counsel if they are concerned about their confidential recommendations being accessible to the public. Mark Corallo, who has represented the administration over the course of the energy task force legal proceedings, argued that free and open counsel from advisors and policy makers is absolutely essential to a fully functioning executive branch of government. Therefore, it is necessary to protect the names of those individuals and organizations involved in policy deliberation. According to Cheney's remarks, which he made to the American Society of News Editors (Remarks by Vice President, 2003), the energy task force, and especially the decision by a federal judge to deny the GAO request, "I think it restored some of the legitimate authority of the Executive Branch, the President and the Vice President, to be able to conduct their business" (¶ 5). Cheney ("A win for secrecy", 2002), also asserted that "every president must have the latitude to receive 'unvarnished' advice about policy matter. Otherwise . . . that advice might be tailored and tempered in anticipation of public disclosure" (¶ 4). Having spent considerable time examining the classification and government secrecy system through historical and current documents and statements, it is abundantly clear that there is legitimate cause for concern when government decision makers avoid disclosing information in this manner. These statements are actually illustrative of the depth of the problem. Advice should be formulated in anticipation of public disclosure. The branches of government have demonstrated a willingness to protect information relating to national security and foreign policy, but they have not demonstrated that public interest policies, such as the national energy policy, should be protected and shrouded in secrecy. Once one begins to see the actual nexus of secrecy, of elite decision making, and of governmental policy, one begins to understand how prophetic the concerns of Jefferson, Madison, Habermas, Weber, Chomsky and others were. The energy task force is a definitive example of a government entity, in this case Vice President Dick Cheney, illegitimately claiming the protection and privilege of secrecy. Secrecy of this nature is damaging to rational public discourse. It is clearly an abuse of governmental powers. According to Lieberman (2004), "Dick Cheney set a new benchmark for unwarranted government secrecy when he refused to even disclose the names of the energy companies his energy taskforce met with in shaping critical national policy” (¶ 27). While criticism of the secret energy task force has fallen, unsurprisingly, along partisan lines, anyone with knowledge of government secrecy and even the institution of executive privilege would be logically compelled to conclude that this is not a constitutionally legitimate use of government secrecy.

Conclusion

Over the course of the chapter the need for secrecy’s limited role in democracy has been made apparent. Problems arise when decisions are made in secret, and citizens are unable to access information, thereby preventing their rational discussion or debate on those topics. Such secrecy prevents the American people from holding the government accountable for its decisions. The U.S. was founded on the notion that a government which enables its citizens to express disagreement, to hold government accountable for its decisions, and make changes when changes are deemed necessary, is the best type of government for ensuring freedom, liberty, and justice. In contrast, the government secrecy system, primarily operating under the blanket of national security or foreign policy exemptions, denies the public information important to decision making. Ideally, the media should challenge the secrecy of the governmental system and provide citizens with access to critical facts and details necessary for informed decision making. The media should recognize government secrecy as a threat to democracy and should work to provide information to the public. Unfortunately, as the writings of Habermas and Chomsky demonstrate, the media all too often serves the interests of the elites.

In later works, Habermas (1989; 1992) acknowledged the idealism present in his conception of the public sphere. He conceded the presence of multiple public spheres operating concomitantly and with varying degrees of success. With his theory of communicative action (1984; 1987) he shifted to a linguistic focus for his public sphere, though it was always conceived as a place of discursive action. Nevertheless, what the public sphere gives us is a template for understanding how information is controlled by those in power. Regardless of the criticisms and revisions of Habermas' theory, his public sphere shows us how he conceives a true democracy operating. His ideal public sphere is a forum of rational debate open to all. Other public spheres, such as spheres of femininity or race are included in his ideal public sphere. The fact that Habermas' exemplars for the public sphere primarily consisted of property owners or financially well situated white males, alters, but does not diminish the relevance of the public sphere as a template for democratic decision making. The sphere was envisioned as having both a diversity of opinion and a diversity of participants. While the absence of diversity in public spheres historically is significant, it does not deny the potential or the importance of a rational, debating public sphere, nor does it preclude the eventual rise of the public sphere. Unfortunately, the government secrecy system ensures that significant portions of information and governmental decisions are denied to the public. According to Miscik (February 11, 2004), intelligence is "like trying to do a 1,000 piece jigsaw puzzle with only 200 pieces," and "you don't get to see the lid of the box to tell you what it is supposed to look like" (p. 4). Unfortunately for the public, if the CIA is only getting 200 of the 1,000 pieces, then the citizens of the country are only getting the 10 to 15 pieces that the CIA wants to share and are being told by the CIA that the number of pieces in the puzzle is classified. Such is the nature of the U.S. government secrecy system.

Chomsky's propaganda model also demonstrated the role of the media in restricting the flow of information to the citizens. Fortunately, our representative democracy provides us with the means for expressing grievances or disagreements with the government through demonstrations, petitions, and elections. How much more severely would our democracy be damaged if people were not allowed to exercise these constitutional rights? Chapter six explores past events which have restricted the rights of the populace and explores events happening now which impact civil rights. The final layer in this examination of government secrecy involves investigating the impact which secrecy has on the civil liberties of the populace. The basic assumptions concerning the liberties and freedoms of the citizens of democratic society were presented earlier in this chapter within the context of discussing the role of secrecy in democracy. Chapter six will build on that discussion by analyzing five congressional acts deeply related to secrecy and civil liberty. Two of the five acts, the Patriot Act, and the Homeland Security Act, were passed recently—in the 21st century. The relationship between secrecy and civil liberties, and the real threats which result from restricting information flow, will be discussed in the following chapter. In doing so, the pattern of threat, secrecy/legislation, and civil rights infringement will be concluded.

Chapter 6

Secrecy and Civil Rights

While the previous chapters have overtly characterized the attributes of the secrecy system and the effects of the secrecy system on the public sphere, this chapter will seek to delineate the relationship between government secrecy and civil liberties. On the surface, any expansion of power by the members of the secrecy community invariably results in a decrease of power by members outside of the community. Non-intelligence community members are excluded from the discussion. Increases in surveillance, suspension of habeas corpus, limited access to library records, etc., are all expansions of government power which result in a decrease of power for citizens. That these investigations and requests are often conducted covertly is the most obvious connection to the secrecy described thus far in this dissertation. However, as presented in chapter five, discussion is a fundamental principle of democracy—therefore, exclusion from essential, democratic discussion via the apparatuses of the secrecy system also contributes to this chapter's relevance. Limiting public discussion through secrecy is itself an infringement on the rights of the populace. In the years since the attacks of September, 11th 2001, the formation of the Department of Homeland Security and the passage of the Patriot Act have contributed greatly to the expanding surveillance and information gathering powers of our government. While there is no evidence to indicate that these expansions have resulted in increases in intelligence gathering regarding external threats to U.S. citizens, there is evidence to indicate that these expansions accelerated domestic data-gathering—often at the expense of constitutionally granted freedoms.

This chapter will begin with a historical analysis of previous legislation closely allied with secrecy. The Alien and Sedition Acts and the Espionage Act will be discussed in detail by examining specific provisions of the acts, as well as by examining historical and current analyses of these two acts. Additionally, the suspension of habeas corpus during the U.S. civil war will be briefly discussed. The purpose for including these three events is to demonstrate that the struggle over balancing security and freedom has been an ongoing discussion, and knowledge of previous instances enables the situating of current secrecy, security, and freedom issues within an historical context. After presenting details relating to these events, the provisions and concerns surrounding the Patriot Act will be analyzed. Examination of the Patriot Act will include recent examples of the extension of government powers and the impact of that extension on individual liberty. Finally, the link between secrecy and civil liberties will be further identified by examining two select cases involving the limiting of civil liberties due to secrecy and secrecy related legislation and applying Bentham's utilitarianism to the two cases. The particular cases included in this chapter are: the case of the anti-Iraq war protesters at Drake University in November, 2003 and the case of U.S. citizen Jose Padilla.

Anti-freedom Legislation

The Alien and Sedition Acts of 1798

The state of semi-perpetual threat which the United States found itself in during its first thirty years led to the passage of both the Alien Act and the Sedition Act in 1798. The Alien and Sedition Acts dealt with the pattern of threat, secrecy/legislation, and civil rights infringement previously mentioned. In times of crisis, particularly times of war, one of the historically obvious reactions of the United States has been to increase the level of secrecy around government proceedings and decisions in order to prevent our enemies from using information against us. Evidence for this begins with the current discussion of these two Acts but will continue to be developed and supported over the course of this chapter by analyzing the Espionage Act of 1917 and the Patriot Act of 2001.

With the passage of the Bill of Rights, the United States provided a template for recognizing the responsibilities and rights of individuals in a free and open society. However, just a few years later, the passage of the Alien and Sedition Acts, which were themselves enacted as a response to a dangerous world, threatened to curtail many of these civil rights. The Alien Act made it legal for the government to apprehend any individual who was living in the United States but who was a citizen of a nation currently involved in war with the United States. No palpable example of ill will towards the United States was necessary to lead to the detainment of these individuals. Individuals who did not demonstrate ill will towards the United States were given the opportunity to return to their country of origin. All individuals apprehended in this manner were eventually presented in a court of law where their cases were deliberated. Even in 1798, aliens were afforded the opportunity to present their case before a court of law. The Alien Act is of lesser importance to this discussion than the Sedition Act, the Espionage Act, or the Patriot Act because of its focus on immigrants or other foreigners. However, it is important to recognize a specific parallel between the Alien Act of 1798 and the power of executive authority wielded by the President which allows him to designate any person, whether a U.S. citizen or a foreigner, as an “enemy combatant.” Under the “enemy combatant” label, most notably applied to U.S. citizen Jose Padilla in 2002, individuals can be held by the United States and never officially charged, tried, or even provided access to an attorney for an indefinite period of time. The parallels between the provisions of the Alien Act and the 21st century detainment of citizens and non-citizens suspected of terrorist ties should be readily apparent.

The Sedition Act appeared in the same year as the Alien Act, but whereas the Alien Act clearly focused on non-citizens, the Sedition Act focused on the expected behavior of citizens and the penalties of non-conformance. The Sedition Act provided for the restriction of dissent—one thing which many of the founding fathers, including Jefferson (2003) and Madison (1991), opposed. Writing in 1799, Jefferson positioned himself "against all violations of the Constitution to silence by force and not by reason the complaints or criticisms, just or unjust, of our citizens against the conduct of their agents" (Jefferson, 1934, p. 328). Despite criticism of the Alien Act and the Sedition Act, there were enough Congressmen in support of the legislation to ensure their passage.

The Sedition Act provided a legislative means for accomplishing precisely what Jefferson was most afraid of, the legal silencing and punishing of dissenting opinions. Section 2 of the Act states,

> And be it farther enacted, That if any person shall write, print, utter or publish, or shall cause or procure to be written, printed, uttered or published, or shall knowingly or willingly assist or aid in writing, printing, uttering or publishing any false, scandalous and malicious writing or writings against the government of the United States, or either house of Congress of the United States, or the President of the United States, with intent to defame the said government . . . shall be punished

> by a fine not exceeding two thousand dollars, and by imprisonment not exceeding two years. (The Sedition Act, 2004)

In print, the Sedition Act refers to “false, scandalous and malicious writing or writings;” however, in application, the Sedition Act was broadly applied to include any criticism of the government or of government decisions (Hoffman, 1981).

Although the underlying motivation of the Federalist party’s pushing of the Sedition Act was to undermine attempts by Jefferson’s Republican party to criticize the behaviors of President John Adams and the Federalist party, the real effects of the Sedition Act were to make “it a crime to oppose any measure of the government or to publish utterances tending to question official motives or to bring the government into disrepute” (Hoffman, 1981, p. 205). Upon seeing the Sedition Act bill proposed by the Senate, even Federalist party leader Hamilton stated, “let us not establish a tyranny” (Hamilton, as cited in Hoffman, 1981, p. 205). On July 10, 1798 the Sedition Law was passed “by a vote of forty-four to forty-one” and “inaugurated a period of extraordinary ‘law enforcement’” (Hoffman, 1981, p. 204). The Sedition Act led to the arrests of newspaper editors and publishers, such as Benjamin Franklin Bache and William Duane. Coming nine years after the passage of the Bill of Rights, which cemented both freedom of the press and freedom of speech as guaranteed rights, the Sedition Act underscored the political turmoil of the times. All of the tension inherent with founding a country, avoiding war with Napoleon’s France, and navigating continued difficulties with Great Britain, played out against a backdrop of political struggles between Hamilton’s Federalists and Jefferson’s Republicans. Any Congressman or newspaper editor who expressed disagreement with the handling of domestic or international affairs was subject to the penalties established by the Sedition Act. This is one of the earliest examples of a crucial point, which has been repeatedly expressed by individuals referenced in this dissertation—and that is that during times of extreme threat or political upheaval, government decisions need to be most transparent. In order to ensure rational debate and sound decision-making, government must remain open during times of crisis. Unfortunately, as has also been demonstrated throughout this dissertation, it is at these precise times that government secrecy proliferates. The stifling of information sharing, rational debate, and openness, coupled with increases in classification or secretive decisions, creates a dual threat to democracy which often goes unnoticed due to its immeasurability. “To the federalist way of thinking security now seemed to require the assertion of total control over political communications, both inside and outside of government” (Hoffman, 1981, p. 204).

Although the Sedition Act also delineated penalties for individuals guilty of actively conspiring with an enemy country, the above declarations attempting to stifle public dissent and discussion were understandably alarming. Both Jefferson and Madison drafted or supported legislation, in the forms of the Virginia and the Kentucky resolutions, to overturn the Alien and Sedition Acts. The notion of a press or public not free to openly question or criticize the decisions of the government is antithetical to the ideas put forth in the Constitution and the Bill of Rights. Eventually, all of the provisions of the two Acts either expired or were repealed, with the exception of the first provision of the Alien Act, which was later amended. These Acts were some of the earliest examples of legislation following a felt threat which then resulted in the infringement of civil liberties of United States citizens. Clearly, in the case of the Sedition Act, the civil rights of U.S. citizens, as established in the Bill of Rights, were circumvented in favor of the rigid control of information. By preventing the expression of dissent or the publication of political deliberations and decisions, the government, in essence, made its decisions in secrecy. While information was not classified, filed away, and protected by the Federal Bureau of Investigators or the Central Intelligence Agency, the results were effectively the same—decisions were made and shielded from public scrutiny and debate. This was a deliberate weakening of the public sphere in the United States at precisely the time that Habermas described it as emerging in England, Germany, and France.

The Civil War and Suspension of Habeas Corpus

Although there have been many cases of extreme threat which have faced the United States in its two and a quarter centuries of existence, few can argue for a threat more serious than the southern succession from the Union following the election of Abraham Lincoln in 1860. During the Civil War, it was apparent that President Lincoln understood the tenuous nature of secrecy and information control in a republic. "Lincoln did suspend habeas corpus, and did authorize the censorship of mail and the suppression of some newspapers, because their was a widespread fear of spies" (Cox, 1975, p. 34). Habeas corpus provides an individual with the personal liberty of appearing before a court before being imprisoned or detained by law enforcement officials. The decision by Lincoln to suspend habeas corpus was a blow to civil liberties during the Civil War. However, as quoted in chapter two, Randall (1963) provided Lincoln's guidelines to his generals for controlling information only when the assemblies or newspapers were "working palpable injury to the military in your charge" (p. 508). Cox (1975) referred to the Civil War as the gravest threat in the history of the United States, and yet he remarked that there was no passage of either a Sedition Act or an Espionage Act. As previously pointed out, more United States citizens died during the Civil War than all other U.S. wars combined. So, by at least one quantifiable measure, the Civil War was a period of extreme duress and grave threat. Also, as the Civil War exclusively involved U.S. combatants on both sides of the issue, it seems remarkable that the Union government was able to resist the passage of legislation, beyond the suspension of habeas corpus already mentioned, which would have curtailed individual freedoms. Lincoln and Congress, for the most part, chose to uphold the high standards of liberty established by the Bill of Rights and the Constitution. Hoffman (1981) acknowledged that the Civil War was the only time, pre World War I, other than the 1790s, which "put comparable pressure on established decisionmaking procedures, the flow of information, and civil liberties" (p. 258). Yet, as Cox (1975), Moynihan (1998), and Randall (1963) all demonstrated, efforts were made to balance secrecy and openness. Over the course of my researching this dissertation, it became clear that if the U.S. government was able to resist excessive secrecy and the suspension of the first Amendment rights of speech, press, and assembly during the Civil War, then there should be no conceivable crisis now which would result in the massive suspension of both freedom and liberty. The current detainment of suspected terrorists and the subsequent denial of habeas corpus seems especially egregious when compared with the tragedy and bloodshed of the U.S. Civil War. This is not to imply that the civil liberties of enemy combatants or of soldiers on either side during the Civil War were upheld, but rather it is a statement that if there is enough information to justify detainment of an individual, there should be enough information to also make that case in a court of law.

Moynihan (1998), following the work of The Commission on Protecting and Reducing Government Secrecy, had interesting comments concerning secrecy and the Civil War. Moynihan (1998) acknowledged Lincoln's decision to publish 410 pages of government dispatches regarding efforts by the Confederate States to "obtain recognition from foreign powers, notably Spain, France, and Great Britain" (p. 82). Elaborating on the dispatches, Moynihan stated,

> It was a fateful enterprise in which assertive openness was considered the most effective policy, and there is reason to judge that this proved to be the case. Openness communicated our threats as well as our entreaties, and it did so, in the case of Britain, not only to Whitehall but also to an increasingly literate and volatile public . . . one outcome of this policy was that the Department of State began publishing annual compilations of correspondence and similar material . . . openness in foreign relations had clearly become an American theme. (pp. 82-84)

This newfound openness was to face its greatest challenge with the involvement of the United States in World War I.

World War I and the Espionage Act of 1917

In 1917, with World War I well underway, the United States abandoned its outward position of neutrality (prior to 1917, the U.S. was actively engaged in supplying the allies in the war) and became officially involved with the first World War of the 20th century. During the time of professed U.S. neutrality, imperial Germany "set up a campaign of espionage aimed at curtailing the American supply of armaments for the Allies, enlisting American ethnic elements for the purpose" (Moynihan, 1998, p. 88). Thus, during a time of international war, the United States was the victim of sustained espionage efforts by Germany. In the face of these espionage efforts, President Wilson, during his State of the Union address to Congress, raised the concern of an enemy presence in America and thereby birthed the legislative and ideological progeny of the Alien and Sedition Acts. Wilson (as cited in Moynihan, 1998) stated,

> There are citizens of the United States, I blush to admit, born under other flags but welcomed under our generous naturalization laws to the full freedom and opportunity of America, who have poured the poison of disloyalty into the very arteries of our national life; who have sought to bring the authority and good name of our Government into contempt, to destroy our industries wherever they thought it effective for their vindictive purposes to strike at them, and to debase our politics to the uses of foreign intrigue . . . we are without adequate federal laws to deal with it. I urge you to enact such laws at the earliest possible moment and feel that in doing so I am urging you to do nothing less than save the honor and self-respect of the nation. Such creatures of passion, disloyalty, and anarchy must be crushed out. (p. 89)

At the urging of the President, Congress went to work and produced the Espionage Act of 1917. Prior to becoming President of the United States, Wilson had advocated for openness in U.S. government.

The Espionage Act was designed to specifically outline actions considered threatening to the security of the United States. In addition to specifically identifying prohibitions to gathering information, such as information about military bases or equipment, with the intent to injure the United States, the Espionage Act of 1917 made it unlawful to distribute information about these topics. According to Quist (2002), “the

Espionage Act presumed the existence of national defense information but only loosely identified that information" and was primarily designed to "punish spies" (p. 27). Thompson (1997) added, "the Espionage Act was used to target domestic groups feared to be subversive . . . the domestic national security apparatus sprang up . . . we all know that once a bureaucracy is created, it's awfully hard to kill it off" (p. 1). The definitions of espionage and treason established in this Act have been, according to Powers (2002), guiding secrecy system decisions since 1917. The Espionage Act of 1917 also provided for "imprisonment or the death penalty" (Cox, 1975, p. 35) for violators. The Espionage Act was clearly focused on individuals who were demonstrably hostile to the United States and who gathered restricted information or distributed said information to enemy countries. An earlier portion of the Espionage Act, approved in the House of Representatives 1917, actually provided for the censoring of information about national defense during a time of war (Moynihan, 1998). The vagueness of this section of the bill was much debated, and although it was finally removed after a vote in the Senate of thirty nine for removal and thirty eight for retention (Moynihan, 1998), the idea of press censorship continues to be a topic of discussion. The Espionage Act remains in effect today.

In 1918, new provisions were added to the Espionage Act. Thus, the Sedition Act of 1918 was born. President Wilson and Attorney General Gregory, unsatisfied with the Espionage Act's perceived limitations for protecting national security, were two of the primary forces behind the Sedition Act of 1918 (Moynihan, 1998). Essentially, the Sedition Act established broad governmental powers to censor the flow of information. This sort of information control, characteristic of secrecy and in opposition to many interpretations of the U.S. Constitution, greatly infringed on the civil liberties of U.S. citizens with regards to their freedoms of press and speech. Specifically, the Sedition Act of 1918 made it illegal to “utter, print, write, or publish any disloyal, profane, scurrilous, or abusive language about the form of government of the United States...or any language intended to...encourage resistance to the United States” (Section 3). The Russia revolution and the growing concern of a Communist presence within the United States was a primary impetus for the passage of the Sedition Act. However, in the face of growing concerns about the censorship powers granted by this amendment to the Espionage Act, Congress repealed the Sedition Act in 1921.

Civil Liberties and World War II

One of the most obvious affronts to democratic, constitutional, and civil liberty sensibilities in United States history involves the internment of Japanese Americans during World War II. In 1942, President Roosevelt issued Executive Order 9066, which authorized the Secretary of War to Prescribe Military Areas. While the executive order was designed to protect against espionage and sabotage, the actual result was that over 120,000 “Japanese aliens” and “American citizens of Japanese descent . . . were prohibited from living, working, or traveling on the West Coast” (Moynihan, 1998, p. 130). The internment of Japanese Americans is yet another example of the way in which the secrecy system operates and contributes to an environment of fear; one which oftentimes results in the infringement of civil liberties. Specifically, during times of extreme crisis, if rational debate and public deliberation are circumvented, the likelihood of individuals within the government making poor decisions—decisions affecting the liberty of U.S. citizens—is greatly increased. The Japanese were interned out of fear of espionage or sabotage, even though, as was acknowledged in the Civil Liberties Act of 1988, which formally apologized to Japanese Americans for wrongful internment, there were not “any acts of espionage or sabotage documented” (Moynihan, 1998, p. 132). This example underscores the fragility of the Constitution during times of extreme crisis. If the bombing of Pearl Harbor resulted in the internment of 120,000 Japanese and Japanese Americans, it is not surprising that the attacks of September 11, 2001 have resulted in the detainment of Arab Americans. Anytime that habeas corpus is suspended and U.S. citizens are denied due process of the law, civil liberty abuses exist. The secrecy system is one of the means by which these anti-American events occur, and, since the decisions are, by nature, made in secret or without the accompaniment of rational public debate, it is not, typically, until many years later that the mistakes in judgment are revealed and available for public scrutiny.

Upholding the U.S. Constitution is the only way to suppress the historic, and perhaps natural, tendency governments bureaucracies have to respond to threats through the passing of legislation, the restricting of information flow, and the abridging of citizens’ civil liberties. Even though other legislative examples of civil liberty abuses exist, such as the Alien Registration Act, the examples mentioned thus far are particularly relevant to recently passed legislation—the Patriot Act of 2001 and the Homeland Security Act of 2002. After discussing the Patriot Act and the Homeland Security Act, the balance between security and freedom, a natural extension of the balance between secrecy and democracy, will be discussed. Although the various provisions, applications, and concerns of the Patriot Act and the Homeland Security Act, are, in and of themselves, sufficiently broad to merit a dissertation length treatise on the subjects, multiple examples will be presented here to dilate on the relation of the two acts to the present discussion on secrecy and democracy. Following analysis of the Patriot Act and the Homeland Security Act, two specific cases will be presented which support the argument that there is a relationship among secrecy, legislation, and civil rights infringement. Prior to World War II, attempts to protect secrets by the U.S. government often led to legislative decisions which impacted or curtailed civil liberties. Unfortunately, in the 60 years since World War II, the same types of liberty curtailing decisions are being made.

The U. S. A. Patriot Act and the Homeland Security Act

The Patriot Act

Coming almost directly on the heels of the terrorist attacks of September, 11, 2001, the USA Patriot Act was passed by Congress and signed into law by President George Bush on October 26, 2001. Although its hasty adoption following September 11, 2001, appeared to demonstrate a lack of sufficient discussion surrounding the legislation, it is important to realize that the earlier form of the bill, what was then known as the Anti-Terrorism Act of 2001, was debated previously and serious civil liberty concerns regarding the legislation were raised by members of Congress. Unfortunately, the original reservations regarding the legislation were all but forgotten in the wake of the attacks by al-Qaeda. Since its passage, a steady amount of criticism has been directed at this piece of legislation. The act's official title, the not sufficiently Orwellian Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, was unofficially shortened to the USA Patriot Act. In its own words, the Act was designed to "deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes” (USAPA, 2001). According to Doyle (2002), author of the Congressional Research Service’s report on the USA Patriot Act, the act was designed to give “federal officials greater authority to intercept communications, both for law enforcement and foreign intelligence gathering purposes” (p. 1). Additionally, the USA Patriot Act sought “to further close our borders to foreign terrorists and to detain and remove those within our borders” (Doyle, 2002, p. 1). Although it has many defenders, the Patriot Act has also been criticized for providing the foundation for intrusive surveillance and investigatory practices—a few of which will be examined here.

One of the biggest criticisms by opponents of the Patriot Act concerns the broadening of surveillance options open to the government. In addition to expanding surveillance options, the USA Patriot Act reduced the requirements for surveillance authorization. Secret wiretapping has become more available than ever before. Previously, the Foreign Intelligence Authorization Act (FISA) established the guidelines for what constituted justified surveillance. However, the USA Patriot Act supercedes the FISA and has made it easier for spying activities, such as website monitoring, call tracing, and wiretapping, to occur. According to Levy (2002), “this is not a trivial change. It means easier government access to personal and business records” (¶ 5). One of the Act’s sections which has drawn a considerable amount of the criticism is Section 215, which updated sections 501 through 503 of the FISA. Section 215 states that

> the Director of the Federal Bureau of Investigation or a designee of the Director (whose rank shall be no lower than Assistant Special Agent in Charge) may make an application for an order requiring the production of any tangible things (including books, records, papers, documents, and other items) for an

> investigation to protect against international terrorism or clandestine intelligence activities, provided that such investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution. (USA Patriot Act, 2001, Section 215)

The opening up of "any tangible" artifact for investigation by federal investigators, has raised considerable concern by many individuals both within and outside of government. According to Schulhofer (2004),

> FISA does not require that the person targeted be a foreign spy or an international terrorist. Foreign nationals and US citizens qualify as "foreign agents" subject to clandestine searches and broad FISA surveillance when they are merely suspected of having ties to foreign organizations or governments, and even when they are merely employed by various *legitimate* foreign organizations. (p. 94)

Although other aspects of the act have drawn criticism, several entities, including the ACLU, have focused on Section 215. For example, in a March 9, 2003 letter to then Attorney General John Ashcroft, six U.S. senators expressed their concerns about Section 215 and acknowledged various other voices of criticism, including members of Congress, booksellers, and many Americans (Feingold, Durbin, Corzine, Bingaman, Wyden, & Akaka, 2003). Like the Sedition Act of 1798 before it, which infringed on 1st Amendment rights of speech and press freedom, Section 215 of the Patriot Act infringed on the 4th Amendment rights of protection against unreasonable searches and seizures.

As previously stated, one of the primary concerns over the Patriot Act stemmed from potential violations of 4th Amendment rights. According to former Vice President Al Gore (2003),

> starting two years ago, federal agents were given broad new statutory authority by the Patriot Act to 'sneak and peek' in non-terrorism cases. They can secretly enter your home with no warning—whether you are there or not—and they can wait for months before telling you they were there. (¶15)

By lessening the necessary steps required by the federal government to gain permission to engage in domestic surveillance, the Patriot Act has increased the possibility of abuse. Section 213 allows federal investigators to conduct a search of an individual's home without notifying the individual of the search—stating only that notice of the search should be given within a "reasonable period" following the search and possible seizure of information from the home. Former Chief of Staff to President Clinton John Podesta (2002) acknowledged that September 11, 2001 provided many government officials with the impetus to request new tools to fight terrorism, but he also stated that, "many aspects of the bill increase the opportunity for law enforcement and the intelligence community to return to an era where they monitored and sometimes harassed individuals who were merely exercising their First Amendment rights" (¶ 14). Others, such as Senator Russ Feingold (2002), described an even more ominous threat of the Patriot Act—one that raised the specter of Japanese internment during World War II.

> Now here is where my caution in the aftermath of the terrorist attacks and my concerns over the reach of the anti-terrorism bill come together. To the extent that the expansive new immigration powers that the bill grants to the Attorney General are subject to abuse, who do you think that is most likely to bear the brunt of the abuse? It won't be immigrants from Ireland. It won't be immigrants from El Salvador or Nicaragua. It won't even be immigrants from Haiti or Africa. It will

> be immigrants from Arab, Muslim, and South Asian countries. In the wake of these terrible events our government has been given vast new powers and they may fall most heavily on a minority of our population who already feel particularly acutely the pain of this disaster. (Feingold, 2002, ¶ 63)

Simply put, elements of the Patriot Act ensure the perpetuation of secretive decisions and increased surveillance. Just as executive orders which made it easier to classify information contributed to increases in classification, legislation, such as the Patriot Act, which makes it easier to infringe on civil liberties, will likely contribute to an increase in abuses in domestic spying.

However, not everyone agrees that the Patriot Act violates the civil rights of United States citizens. Dinh (2004), the primary author of the Patriot Act, stated that the Patriot Act balances the concerns of liberty and security, and, in fact, argued that the entire security versus freedom dichotomy is a false one. “For security and freedom are not rivals in the universe of possible goods; rather, they are interrelated, mutually reinforcing goods. Security is the very precondition of freedom” (Dinh, 2004, p. 106). However, one can accept that security reinforces the ability to exercise freedom, and still disagree with governmental methods for supposedly maintaining security. In fact, a dictatorial government may ensure that its citizens are secure from criminal acts or external threats, while consistently undermining or reducing the practice of freedom. The words of Supreme Court Justice Louis Brandeis in his ruling on the first wiretapping case in United States history, serve as a counterpoint to the logical extrapolation of Dinh’s belief that there is no reason for concern regarding the Patriot Act or the Homeland Security Act.

> Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent. Men born to freedom are naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well meaning but without understanding. (Brandeis, as cited in Parenti, 2004, p. 115)

Thus, according to Brandeis, it is the subtle encroachment on individual rights by federal government under the guise of beneficence that is a greater threat to domestic well being. After a brief discussion of the Homeland Security Act, the relation of these two pieces of 21st century legislation to previous domestic spying abuses will be explored.

The Homeland Security Act

The Homeland Security Act was passed by Congress and signed into law by President Bush on November 19, 2002. Like the Patriot Act which preceded this newest legislation, the Homeland Security Act also raised significant questions concerning its impact on the civil liberties of United States citizens. Although there are several sections of the Act which created cause for concern regarding civil liberties, two areas will be broadly examined for this dissertation: the collection and dissemination of database information and the provisions regarding the protection of critical infrastructure information. The motivation for the selection and inclusion of these two topics in particular stems from their relationship to the secrecy system in general. The collection and dissemination of database information pertains to actions and behaviors intelligence or information gathering entities may undertake in an investigation of U.S. citizens. The critical infrastructure information allows both government and private entities to submit information to the Department of Homeland Security for protection.

Section 201 of the HSA established a Directorate for Information Analysis. It revealed the responsibilities of the Directorate as including the right “to access, receive, and analyze law enforcement information, intelligence information, and other information from agencies of the Federal Government, State, and local government agencies (including law enforcement agencies), and private sector entities” (Section 201, d1), as well as “to establish and utilize, in conjunction with the chief information officer of the Department, a secure communications and information technology infrastructure, including data mining and other advanced analytical tools, in order to access, receive, and analyze data and information” (Section, 201, d14). Section 201, created with the seemingly good intention of establishing an information clearinghouse and database for information analysis, allows for the collection of data from “private sector entities.” While the idea of a national database for the collecting and sharing of information on U.S. citizens is in itself alarming, the inclusion of the right of the government to gather data concerning what an individual is buying or habits or travel plans without probable cause or a warrant to do so, is even more disturbing. At the end of the 18th century the Sedition Act was used to arrest Congressmen and editors who dissented with government decisions. If civil rights abuses could happen under the Sedition Act, then concern that the provisions of the HSA could be similarly abused is justified.

The Homeland Security Act of 2002 reified the secrecy system in two very fundamental ways. On one hand, the HSA allows the federal government to collect all manners of financial information on its citizens—from email and phone records, to on-line purchases and travel. On the other hand, the HSA makes it possible for the President, the Director of Homeland Security, or other official designees, to identify information as being important infrastructure information and thereby limits or prevents its dissemination to the public. This two-pronged attack on civil liberties prevents U.S. citizens from accessing information and prevents—as did the Patriot Act—citizens from being properly notified when information is gathered on them or when their belongings are searched. While one hopes that the best intentions are at work regarding this investigatory behavior of the federal government, it seems that a history of systematic and secretive abuse always is the more likely outcome of legislation of this manner.

Analysis of the Alien and Sedition Acts, the Espionage Act, the Patriot Act, and the Homeland Security Act provided insight into the motivations of the creators of each of the acts. As predicted and discussed in chapter one, each of these acts was created during a time of real or perceived threat. Whether the threat was war with France, World War I, or a terrorist attack, all of the previously mentioned legislation was created during a time of significant concern for national security. However, viewed through a historical lens, the Alien and Sedition Acts and the Espionage Act represented legalistic overreaching by the federal government. Although each of the acts, including the Patriot Act and the Homeland Security Act, had critics at the time of their passage, historical analysis revealed that, in practice, the legislative acts did more to increase violations in constitutionally established civil liberties than they did to increase national security. Today, most examiners of the Alien and Sedition Acts and the Espionage Acts, such as the Moynihan Commission, recognize problems inherent in the hasty adoption and shortsightedness of the acts. Based on past events and on analysis of modern cases, such as the two discussed in this chapter, the is reason to include that in the future the Patriot

Act and the Homeland Security Act will be viewed in much the same light as their predecessors.

Increased Surveillance: Spying on Each Other

With the expansion of the surveillance capabilities of intelligence and law enforcement agencies via the Patriot Act and the Homeland Security Act, new possibilities for government abuse have arisen. The true manifestation of the relationship between secrecy and civil liberties materialized when federal organizations, such as the FBI and CIA, begin to operate in secret and to collect and analyze information relating to the behaviors and practices of citizens of the United States. Programs like the Counterintelligence Program (COINTELPRO) demonstrate the excessive surveillance of U.S. citizens by various intelligence organizations. The Counter Intelligence Program operated in the 50s, 60s, and 70s, and was a primary tool of the government in the stifling of political dissent. One must reflect back on the discussion of chapter four regarding bureaucracy and the cultures of secrecy to truly grasp the significance and potential for abuse inherent here. Are we to simply rely on the good will and self-regulation of the intelligence community to ensure that provisions of these two Acts are not abused? This dissertation only briefly discusses the subject, yet there are multiple examples herein which demonstrate the dangers of relying on the good intentions of the federal bureaucracy. In fact, bureaucracy, by its very nature, fosters potential for abuse. Above all, bureaucracies and cultures of secrecy seek self-preservation; thus, even in the event of wrongdoing, there is little reason to believe that apologies or the redressing of grievances will occur. Theoharis (1998) described good intentions and past abuses when he noted,

> Presidents also sought to anticipate and contain the Soviet internal security threat. To do so, they and their attorneys general secretly authorized Federal Bureau of Investigation (FBI) monitoring of American Communists and other radical, conservative, and liberal activists who might unwittingly promote Soviet interests or undermine national unity. In time, FBI operations moved beyond collecting 'intelligence' (including by recognizably illegal investigative techniques such as wire taps and break-ins) to implementing secret programs to contain targeted organizations and their leaders, whether the Communist Party, the Black Panthers, the New Left, or the Ku Klux Klan. These programs and FBI investigations in general were never confined to suspected spies and included 'writers, lecturers, newsmen, entertainers, and others in the mass media field' who 'might influence others against the national interest or are likely to furnish financial aid to subversive elements (p. 3).

FBI wiretapping and bugging were not legal until 1968 and "instead were based on secret executive directives of 1940 and 1954" (Theoharis, 1998, p. 4). Because of an institutionalized system of secrecy, domestic spying, for even the most frivolous of reasons, was allowed to occur.

The historical examples of civil liberty curtailment are numerous, yet so many more likely occurred outside the purvey of the public and in many cases even of Congress, that citizens were generally unaware of the extent of their civil liberty losses. For example in 1950, Congress enacted the Internal Security Act (McCarran Act) "imposing stringent restrictions on radical political associations and publications and authorizing the preventative detention of Communists and Communist sympathizers"

(Theoharis, 1998, p. 5). Outwardly, President Truman vetoed the McCarran Act citing the need to balance security and civil liberties; unbeknownst to Congress and the public, "dating from 1948, however, the Truman administration had secretly instituted a preventive detention program, one that restricted civil liberties more than the McCarran Act" (p. 5). When decisions are made in secret, not only outside the scope of the public and the press, but even outside the scope of Congress, the potential for governmental abuse is self-evident. Unfortunately, the FBI's preventive detention program did not become public knowledge until 20 years later, as events surrounding Vietnam, Watergate, and the publication of the Pentagon Papers brought attention to power abuses by presidents and intelligence agencies. The Watergate hearings, as well as the Church and Pike committees conducted in the mid 70s, provided much insight into the operations of the culture of secrecy. Many formerly secret documents were released during this time. These secret documents "disclosed how presidents had relied on the intelligence agencies to further their policy interests and how they had authorized programs and procedures of questionable legality and morality" (Theoharis, 1998, p. 6).

Operation MINARET is another example of domestic spying targeted at individuals not necessarily suspected of trafficking information with hostile foreign governments. This operation, instigated and conducted by the National Security Agency, was a formal "watch list" operation. "Under this program, instituted in 1967 and refined in 1969, the NSA intercepted the messages of American citizens targeted because of their militant civil rights and anti-Vietnam War activities" (Theoharis, 1998, p. 7). In a perfect illustration of secretive domestic spying and secret information control, the NSA "instructed its personnel to 'restrict the knowledge' that NSA was collecting such information and to keep its name off the disseminated 'product'" (Report of the U.S. Senate Select Committee to study governmental operations with respect to intelligence activities, 1976, ¶ 19). Unfortunately, in a bureaucracy where secrecy is the norm and information is routinely withheld from public scrutiny, poor decisions and civil rights abuses occur all too frequently. While only a few examples of historical abuse have been mentioned in this chapter, it should be obvious that domestic spying abuses and civil liberty violations can and have occurred, and that the secrecy system is one way in which they have been perpetuated—with little or no public knowledge or input regarding their existence or effect. The following section will specifically examine two cases of civil liberty abuse since the passage of the Homeland Security Act and the Patriot Act. The first case, regarding the Drake University subpoenas, is directly related to current legislation. The second case, regarding "enemy combatants," is related, more broadly, to the overall discussion concerning government secrecy.

The Homeland Security Act and the Patriot Act in Action

The Drake University Subpoenas

Perhaps the greatest communicative threat towards increased secrecy and legislative acts such as the Patriot Act is the potential restriction on freedom of speech and freedom of assembly. The right to peacefully protest the decisions of the government is a foundational right for citizens of the United States. Great concern and alarm should be generated and raised when efforts, either through legislation such as the Patriot Act or Executive and Judicial decree, to decrease our civil liberties arise. According to Gore (2003),

> throughout American history, what we now call Civil Liberties have often been abused and limited during times of war and perceived threats to security. The best known instances include the Alien and Sedition Acts of 1798-1800, the brief suspension of habeas corpus during the Civil War, the extreme abuses during World War I and the notorious Red Scare and Palmer Raids immediately after the war, the shameful internment of Japanese-Americans during World War II, and the excesses of the FBI and CIA during the Vietnam War and the social turmoil of the late 1960s and early 1970s. (¶ 72)

The discussion on the Homeland Security Act revealed potential abuses of the information gathering system and of the national database's collection of the purchasing information of U.S. citizens. Other concerns of the Patriot Act and the Homeland Security Act included the government's ability to collect information on students from public and private universities without having to notify the students of this data collection and the acquisition of the library records of U.S. citizens. This section will focus on a similar and recent overstepping of bounds by the U.S. government, where judicial law enforcement organizations exerted expanded Homeland Security powers. In Des Moines, Iowa, on November 15, 2003, members of the National Lawyer's Guild conducted a meeting at Drake University. On November 16, an anti-war protest was held in front of a National Guard armory in Johnston, Iowa. This protest called for the return of the Iowa National Guard back to America and resulted in the arrest of several participants on trespassing charges. Two months later, in January of 2004, the U.S. Justice Department, via a federal judge in Des Moines, Iowa, issued five subpoenas in the armory demonstration case. Four subpoenas were issued to specific peace activists who had attended the demonstration. The fifth subpoena was issued to Drake University, and it made a demand “for information about the anti-war conference and records of the National Lawyers Guild local chapter” (Eckhoff & Siebert, 2004, ¶ 5). The National Lawyer’s Guild is a legal activist organization and, according to Foley (2004), was “once similarly targeted for alleged ties to communism in the 1950s” (¶ 5). Of interest in the subpoena issued to the Drake University Administration was a gag order preventing “the university from disclosing what was in the subpoena or commenting on it” (Walsh, 2004, ¶ 2). The government cited student privacy concerns as the reason for the gag order and denied that the subpoenas were anti terrorism related by stating, “the purpose and scope of the inquiry has been narrowed to determine whether there were any violations of federal law, or prior agreements to violate federal law, regarding unlawful entry onto federal property” (Post, 2004, p. 4).

According to Walsh (2004), the subpoena “ordered the university to turn over to a federal grand jury information relating to the November 15 meeting, including the identities of those who participated and any campus-security records that would describe what was discussed at the conference” (¶ 3). Although Drake University was unable to comment on the subpoenas due to the gag order, the National Lawyers Guild, the American Civil Liberties Union, and some media outlets expressed outrage and concern over the subpoenas. The backlash from these groups resulted in the withdrawal of the subpoenas. According to Davey (2004); “facing growing public pressure from civil liberties advocates, federal prosecutors on Tuesday dropped subpoenas that they issued last week ordering antiwar protesters to appear before a grand jury and ordering a university to turn over information about the protesters” (p. A18). The subpoena issued to

Drake asked for "leadership lists, annual reports and location" of National Lawyer Guild meetings (Davey, 2004, p. A18). Although all of the subpoenas in the case were withdrawn, it is likely that a lawsuit and a request by the National Lawyer Guild for a Congressional investigation will be pursued.

Although the events at Drake University received only minor media attention, those media outlets which did run stories on the event expressed near unanimous concern and outrage about the unconstitutionality of the subpoenas. According to an editorial in the Omaha World-Herald ("Big Brother," 2004), "the federal government looked distressingly like Big Bad Brother this month when it began raining subpoenas and a gag order on Iowa's Drake University and anti-war protestors whose only offense was holding a meeting and, the next day, a protest" (p. B10). "Some legal experts said they had not heard of such a case involving a university in recent years, and said it took them back to FBI surveillance of protests during the Vietnam War" (Walsh, 2004, ¶ 17). Professor Frank, a lawyer and faculty advisor for the Drake National Lawyer's Guild said, "this was aimed at the peace movement, but they were using the university to get at it. It makes you wonder what's happening at other universities" (cited in Walsh, 2004, ¶ 10). Perhaps most troubled by the subpoenas was an individual directly involved in the proceedings, Drake President David Maxwell. Davey (2004) stated that President Maxwell was concerned by the subpoenas "because they threatened essential values of the university like the right to free assembly and the sense of the university as a 'safe haven' for ideas, even unpopular ones" (p. A18). According to an editorial in the San Francisco Chronicle ("Tactics or intimidation," 2004),

> History supports their concern (the concerns of civil rights activists). In the late 1960s and early 1970s, the FBI frequently used such grand juries to intimidate anti-war and civil rights activists who had committed no crimes. The practice was ultimately condemned in 1975 by Sen. Frank Church's committee that investigated abuses of the intelligence agency. Civil libertarians also denounced the intimidation tactics as a violation of the right of assembly and to free speech. (p. A22)

The editorial went on to say that using federal grand juries to curtail dissent was unconstitutional and would "also end up weakening public support for legitimate investigations of terrorist activities" (p. A22). A Buffalo News ("Vietnam throwback," 2004) editorial called the subpoenas "an egregious abuse of government power, clearly meant to frighten Americans who might contemplate similarly exercising their constitutional rights of free speech and free association" (p. B6). Although the number of newspapers which actually covered the Drake subpoenas was relatively marginal, the newspapers that did cover the story had no shortage of criticism for the event. An editorial in the St. Louis Post-Dispatch ("Stepping on," 2004) stated, "under a vigorous First Amendment in a free country, peaceful protesters don't end up in front of grand juries" (p. C12). Using resources to investigate public meetings designed to protest government decisions is an illegitimate use of governmental power. Investigations of this nature are expensive and divert necessary resources from legitimate investigations. They also undermine public confidence in the very institutions, such as the Joint Terrorism Task Force, that are designed to safeguard U.S. citizens.

The Drake University subpoenas were cited as being a natural extension of the broad surveillance powers established via the passage of the Patriot Act, and, as such, the events surrounding their issuance will be examined as an inevitable extension of the government secrecy system. The relationship between government secrecy, manifest in the intelligence community and supported by the Patriot Act and the Homeland Security Act, and civil liberties is not always readily apparent. Yet, it is clear that the secretive, investigatory powers of agencies poses potential concerns for civil libertarians and other citizens concerned with the government's increasing powers of investigation and surveillance. Additionally, federal grand jury subpoenas are themselves secret. Grand jury secrecy creates another obstacle to information access and gathering.

Jose Padilla and Other "Enemy Combatants"

Jose Padilla, an American citizen from New York, was accused of plotting to detonate a "dirty bomb" within a U.S. city. On a return flight from Pakistan, Padilla was arrested by the FBI on May 8, 2002. After a month in custody, during which time Padilla met with his court ordered attorney, President Bush designated Padilla an "enemy combatant." "Jose Padilla, who is under the control of the Department of Justice and who is a U.S. citizen, is, and at the time he entered the United States in 2002 was, an enemy combatant" (Letter on Padilla, 2002, p. 1). An enemy combatant is the designation for any individual who is accused of actively planning to harm the United States. The designation "enemy combatant" is based on the designation "enemy belligerent" which was established in the 1942 Supreme Court case "Ex Parte Quirin, 317, U.S. 1." The Quirin Supreme Court case identified "enemy belligerents" as those "acting under the direction of the armed forces of the enemy, for the purpose of destroying property used or useful in prosecuting the war, is a hostile and war-like act" (Ex Parte Quirin, 1942, ¶ 41). The Quirin decisions provided the precedent by which the Bush administration, during the war on terror, designated individuals as "enemy combatants" and allowed their fate to be decided by military tribunals rather than by a court of law. In the December 18, 2003 initial decision of the Padilla case, the Second Circuit Court of Appeals summarized the executive position as follows,

> The government contends that the President has the inherent authority to detain those who take up arms against this country pursuant to Article II, Section 2, of the Constitution, which makes him the Commander in Chief, and that the exercise of these powers domestically does not require congressional authorization. Moreover, the argument goes, it was settled by *Quirin* that the military's authority to detain enemy combatants in wartime applies to American citizens as well as to foreign combatants. (Second Circuit Court of Appeals, 2004, p. 271)

While the Second Circuit Court of Appeals ruled against the arguments of the federal government, the subsequent appeal to the Supreme Court resulted in a decision to avoid ruling on the case because Jose Padilla should have filed his case in South Carolina rather than New York. In the time since the application of the term to Jose Padilla, another U.S. citizen, Yaser Esam Hamdi, who was captured as a member of the Taliban during the war with Afghanistan, has been designated an "enemy combatant."

Information on the charges against Padilla are readily available. According to the Department of Justice (Statement of Attorney, 2002), Padilla "was closely associated with Al Qaeda and trained and worked under their direction" (¶ 2). During his time with Al Qaeda, Padilla was said to have "conducted research on construction of a uraniumenhanced explosive device" and "discussed with senior al Qaeda operatives his involvement and participation in terrorist operations targeting the United States, including a plan to detonate a 'radiological dispersal device' (or 'dirty bomb') within the United States" (Statement of Attorney, 2002, ¶ 2). Based on the information revealed thus far, Padilla certainly seems to have had some rather suspicious connections to enemies of the United States. However, as a United States citizen, he is guaranteed by the 5th Amendment to due process of law—the right to legal counsel and a public trial. Two hundred years ago, under the Alien Act, accused enemy aliens were provided the opportunity to argue their cases in a court of law prior to deportation. Today, individuals may be designated as "enemy combatants," held indefinitely, and allowed no legal counsel or access to their friends and family members. Despite a federal appeals court decision which deemed the unilateral use of the term "enemy combatant" as unconstitutional in 2003, the Supreme Court, in the spring of 2004, avoided ruling definitively on the case Padilla v. Rumsfeld, by voting 5-4 that the case should have been filed in a different federal jurisdiction (Radack, 2004, ¶ 3). Unfortunately, delaying a ruling due to a technical issue only ensures that arrests and detainments of this sort will continue to exist in those gray areas outside of the official judicial system.

There are many cases related to civil rights infringement and government secrecy available for investigation. Since the official declaration of a "War on Terror" by the United States, there are many potential cases to investigate regarding government secrecy, for example the detainment of 1,200 Arab Americans after the attacks of September 11, 2001; the deportation of "enemy combatants" and suspected terrorists to countries who employ aggressive interrogation techniques not openly used in the United

States; and the treatment of those captured and designated as enemies. Unfortunately, like many elements of this dissertation, much of the information about these various cases are secret. Even when attempts have been made to bring a case to light, such as in the case of M.K.B. v Warden, which involved an Arab immigrant who was detained after September 11, 2001, the Supreme Court has ruled that the government can "conduct certain federal court cases in total secrecy" (Richey, 2004, ¶ 1). With no constitutional or legislative foundation to clearly articulate the rules and procedures for handling or trying incarcerated enemies, whether the accused are U.S. citizens or foreigners, uncertainty and potential abuses, are certain to be attributes of the system. Even a suit calling for the federal government to release the names of those detained by the United States following the attacks of September 11, 2001, was denied by the Supreme Court—which further upheld the secrecy system. The two cases examined here—that of the Drake subpoenas and of the "enemy combatants"—are brief exemplars of the ways in which the government secrecy system impacts civil liberty.

Bentham's utilitarianism and the Drake University and Jose Padilla cases

Writing in the late 18th and early 19th century, Jeremy Bentham advocated a specific approach for evaluating the actions of governments. Bentham argued that governmental actions should be evaluated by the principle of the greatest good for the greatest number of citizens (Bentham, 1931). "It is the greatest happiness of the greatest number that is the measure of right and wrong" (Bentham, 1969, p. 45). In fact, Bentham considered this "happiness principle" as the fundamental principle. Bentham was very concerned with establishing, defining, and upholding the rule of law. He believed that legal foundations for governmental decisions were much preferable to monarchical or religious foundations. A majority of Bentham's writings continued to develop the themes of utilitarianism explicated by his *A fragment on government* (1931). Reducing the means of evaluating governmental actions to a simple equation, such as the "happiness principle" does, was very efficient. Later formulations of this principle sought to apply the idea of general utility to the penal system. It is in this vein that the utility principle justifies a criminal or illegal act if it produces a greater benefit or prevents a more grievous evil. The efficiency inherent in Bentham's utilitarianism and his acceptance of potentially negative acts if they produce a greater beneficial consequence are applicable to the secrecy system as it operates today.

As chapter four demonstrated in its discussion of bureaucratic cultures of secrecy, the competing agencies and departments are not efficient in their overarching goal of ensuring the well-being of U.S. citizens due to information hoarding and turf battles; however, while being inefficient at the micro-level, in terms of the broader intelligence community and secrecy proponents, efficiency, in the utilitarianism sense, is a macro-level principle used to justify questionable behaviors. Analysis of both the Jose Padilla case and the Drake University subpoenas revealed a fully functioning utility principle directly evolved from the arguments of Bentham 200 years ago. Simply put, it is okay to suspend or abridged the fundamental rights of Jose Padilla or abuse federal authority in the case of the National Lawyers Guild participants subpoenaed for their involvement in a protest at a National Guard armory if it can be demonstrated that a greater number of citizens benefited from the actions. If declaring one individual an "enemy combatant" and detaining him indefinitely prevents the detonation of a nuclear device within the borders of the United States most people would accept the decision because it appears that the good of more citizens is being protected. However, the Constitution provides a legal means for resolving this issue without resorting to declaring a U.S. citizen an "enemy combatant" and abridging his or her constitutional rights to due process. If, as previously stated, there is enough evidence for the government to detain an individual indefinitely, than there should exist enough evidence to convict that individual in a court of law. The greater good could still be accomplished through officially legal means.

What enables us to overcome the efficiency and simplicity of Bentham's equation? Arguments based on principle enable us to overcome utilitarian arguments. Historically, one can see where the application of the happiness principle, though it violated the civil rights of some, seemingly protected the happiness and well being of a greater number. The detainment of Japanese Americans during World War II, while inconveniencing many thousand, was justified because the security of a far greater number was ensured—or so the argument goes. However, the U.S. Constitution establishes the fundamental right of all Americans to due process of law and habeas corpus. In the case of Jose Padilla, neither of these fundamental rights is being upheld. However, arguing from principle via the United States Bill of Rights it is accurate to state that the suspension of one individual's legal rights is, and also will be, wrong in a nation governed by the rule of law and the rights of its citizens. According to utilitarianism, as long as the greater good is being served then suspension of due process is justified. Unfortunately, with utilitarianism as a foundation, it is not necessary to stop at just one—if one person can be detained illegally, than 500 people can be detained illegally. It is only through an argument based on principle—in this case the legal and constitutional principles which govern the United States—that the efficiency of Utilitarianism is defeated.

Access to Information as Civil Liberty

Democracy is predicated on the idea of many voices participating in, and consenting to, self government. It is in this respect that the U.S. secrecy system undermines the foundations of democracy by limiting informed participation and infringing on the civil liberties of its citizenry. While the previous half of this chapter focused on the ways in which secrecy contributed to violations of civil liberties through issues of domestic surveillance or suppression of speech, this section will demonstrate how secrecy undermines the democratic principles of access to information and political participation. Access to information is a civil liberty—a basic right in a democracy. According to Foner (1998), Madison, at the Constitutional Convention of 1787, stated that the free flow of opinions was, in itself, a liberty. From the earliest days in the history of the United States, "political freedom—the right to self-government—would mean not only, as in the past, a people's right to be ruled by their chosen representatives, but an individual's right to political participation" (Foner, 1998, p. 19). While access to information is not a necessary condition of political participation, access to information is a necessary condition for informed public debate and reasoned decision-making. Absent relevant information, conversation is dominated by political and cultural elites. As Lyotard (2002) described,

> access to data is, and will continue to be, the prerogative of experts of all stripes. The ruling class is, and will continue to be, the class of decision makers. Even now it is no longer composed of the traditional political class, but of a composite

> layer of corporate leaders, high-level administrators, and the heads of the major professional, labor, political, and religious organizations. (p. 14)

The “experts” mentioned by Lyotard in the preceding paragraph are the “elites” described by Habermas that were examined in chapter five. According to Lyotard (2002), the central question of the postmodern condition concerns “who will have access to the information” (p. 14). Here again, the inextricable link between access to information and the free exercise of expression is revealed. The flow of information is itself, vital to the health of democracy (Rourke, 1961).

Any discussion of freedom of expression is often accompanied by discussion of freedom of the press, as the two appear together in the Bill of Rights. Both are defended as “protections against governmental intrusion on individual expression and as essential elements in democratic governance, since without the free flow of ideas and information, voters and legislators cannot reach decisions intelligently” (Foner, 1998, p. 25). Jefferson (1939) believed that the combination of access to information and informed discussion were essential conditions for democracy. “Where man is free to think and to speak, differences of opinion will arise from difference of perception, and the imperfection of reason,” and when these differences are permitted, it will lead to a “more bright and serene future” (Jefferson, 1939, p. 58). In fact, according to Jefferson (1939), the only way to ensure that the government did not restrict the rights of the individual was to “give them full information,” since public will was the basis for the U.S. democracy, and he believed the citizens should keep that right (p. 142). Jefferson was not alone in his espousal of the free exchange of ideas and information.

> When a right of every citizen to a share in the government of society is acknowledged, everyone must be presumed to be able to choose between the various opinions of his contemporaries and to appreciate the different facts from which inferences may be drawn. (de Tocqueville, 1990, p. 183)

Jefferson also believed that man should be governed by both reason and truth, and, because of this, the first object of government is to “leave open to him all avenues of truth” (Jefferson, 1939, pp. 252-253). Although there is no specific passage in the U.S. Constitution which explicitly designates access to information as a basic freedom, the 1st Amendment implicitly states just that. When access to information is denied, when rational, public debate is stifled, and when political participation is diminished, important aspects of democracy are eroded. The complex system of institutionalized secrecy is one of the components which has contributed to this erosion.

Chapter 7

Conclusion

The question which links all of these chapters conceptually is essentially one of security and freedom. The most frequent justification for classification and secrecy by defenders of secrecy is the justification which habitually arises in legislation such as the Atomic Energy Acts and Executive Orders—national security. The argument is that certain information must remain secret to ensure the security of our country. Unfortunately, as demonstrated during this examination of secrecy and democracy, security and freedom are often incompatible. In this concluding chapter, the relationship between security and freedom will be discussed. This chapter will also include recommendations for improving the public discourse which has been severely impacted by the government secrecy system. Finally, suggestions for future research investigating this phenomenon and limitations of the present study will be discussed.

Security and Freedom

While terms such as freedom and liberty are not wholly synonymous with democracy, it is indubitable that freedom and liberty are necessary conditions for the propagation and success of democracy. Freedom and liberty are essential democratic ideals. Additionally, open discussion is a critical component of both freedom and liberty, and thus, democracy. Therefore, there are significant similarities among the words freedom, liberty, communication, and democracy. On the other hand, a word like secrecy is not synonymous with security. In fact, secrecy is not a necessary condition for security. Throughout history, there exist examples when the maintaining of a secret has led to increased security. The Greeks not revealing their plan to hide in the Trojan horse, or the

Allies not revealing the specific time and location of Operation Overlord to the Germans in World War II are two legitimate examples for secrecy. The Trojan horse and Operation Overlord are examples of secrecy preserving the security of one group of participants. So, while secrecy may lead to security in specific cases, it is not a guarantee of security, nor is it a necessary condition of security. In fact, as the present discussion has shown, secrecy can, oftentimes, decrease security. This conclusion is supported by the numerous authors and citations included in this study. However, government officials always justify secrecy and U.S. citizens tolerate the same on the grounds of increased security for all. In order to fully understand and overcome the problems inherent in the practices of government secrecy in the United States of America, an analysis of the struggle between security and freedom is essential.

The underlying question of this dissertation centers on whether we are more secure when we have fewer freedoms. Benjamin Franklin cautioned that giving up liberty in order to increase security would only result in the loss of both (Franklin, 1945). In fact, when viewed through the Chomskian lens of the propaganda model, it is obvious that the range of acceptable choices in the freedom and security debate have already been reduced. The standard assumption, which is revealed during discussions regarding the Patriot Act or the Homeland Security Act, is that in order to be more secure, U.S. citizens must, and should, be willing to tolerate increased investigatory powers and intrusive techniques to the public by government authorities such as the FBI or CIA. The option presented seems to be one of either letting the government have access to personal library, medical, or purchasing records or choosing to risk the security of the United States by keeping those privacy rights intact; thus increasing the likelihood of another terrorist attack. As citizens, we have been led to believe that the restriction of freedom will result in increased security and protection. It is in this manner that the security and freedom discussion conforms to the propaganda model. Rather than discussing whether or not *any* civil liberty loss can actually result in a safer environment within the United States, the discussion has been reduced to one in which increased spying is already accepted, and attention is brought to focus on the degree of civil liberty loss that will strike the right balance with increased security, rather than on questioning whether such losses are proper, constitutional, or effective.

It is within the freedom and security discussion that many of the theoretical concepts previously presented in this dissertation coalesce to critique the present state of representative democracy in the United States. As the propaganda model predicted, the debate over security and freedom has been limited to a discussion concerning the right balance between the two, rather than whether or not a real relationship exists or whether or not increased domestic surveillance has ever led to a more secure nation. As very little is actually known or even available concerning the internal operations of the secrecy system and the investigatory methods actually employed to increase security, public discussion of the topic is uninformed or non-existent. The legislation and practices discussed in this and preceding chapters seems to indicate that, both historically and currently, the federal government believes that secrets protect democracy, rather than imperil it. Yet, the problems which arise from secretive government, secretive intelligence agencies, and secretive decision making practices reveal a dangerous situation where secrecy may actually, as the Moynihan Commission pointed out, undermine security.

In the case of the cultures of secrecy examined in chapter four, the natural bureaucratic tendencies of the intelligence community are manifest in information hoarding, turf battles, and power struggles; all of these behaviors operate to the detriment of national security. The bureaucratic intelligence cultures, whose reliance on secrecy has permeated many, traditionally non-secretive, branches of the government, such as the Department of Health and the Department of Agriculture to name a few, are naturally inclined to withhold information from the public because the bureaucracies view this behavior as protection against those who are not members of the in-group. Thus, Americans must be protected, and the only way to protect them involves implementing increases in foreign and domestic surveillance, operating in secrecy, and shielding citizens from information. Secrecy ensures that the information will be kept from the public, and that the activities of the government will be unavailable for public examination. While there are surely successes of the secrecy community that are also unknown to the public, there are enough examples of information distortion, information manipulation, and outright abuse, to substantiate the claim that the democratic ideal of full and open government is not practiced today as the framers of the U.S. Constitution intended. In order to ensure that security is maximized, organizational measures must be taken to improve the communication among members of the secrecy in-group; in order to ensure that freedom is maximized, the government must be fully accountable to the will of the people—this necessitates a transparent government and a fully functioning public sphere.

Chapter five focused on the relationship between secrecy and democracy in regards to the public sphere, while the first half of chapter six adduced how some legislation encouraged and fostered secrecy, often results in civil rights infringement. The secrecy system is antithetical to democracy, and rather than preserving ideals of openness, self-governance, and participation, secrecy hastens their demise. The public sphere cannot arise when secrecy is so pervasive. Fortunately, in a political system where the government is mandated with responding and answering to the will of the people, there is opportunity to address problems with the system and to identify changes which can help foster the free exchange of information which is vital to democratic decision making.

In its present state, the U.S. government relies far too heavily on classifying, hoarding, and manipulating information. As illuminated throughout this dissertation, historically, when conditions such as these have existed, the government has often made poor policy decisions or egregious violations of civil liberties. Institutionalized problems permeate the secrecy system, and, in turn, dramatically undermine political participation by U.S. citizens. Secretive bureaucracies, information control, and civil liberty loss are all realities of the current state of government secrecy. The following section presents a few recommendations for addressing the problems inherent in classification and secretive decision making.

Recommendations

The evidence clearly indicates that there are numerous institutional problems with the government secrecy system in its current state. Several of those problems have been identified in this dissertation, such as the competitive cultures which inhibit information sharing, the natural bureaucratic penchant for secrecy, and the diminishment of the public sphere. As such, there are several recommendations for individuals who are members of the secrecy system, as well as for citizens who are excluded from the system but who want to be active participants in the representative democracy of the United States. Unfortunately, the work and recommendations by previous committees and commissions who have investigated government secrecy, such as the one led by Moynihan in the 1990s, have been largely ignored by the intelligence community. Therefore, it is reasonable to deduce that any conclusions and recommendations presented in this dissertation may potentially suffer the same fate. However, that does not mean that the effort to clearly delineate the causes, effects, and parameters of the government secrecy system are diminished. In fact, the target audience of this dissertation is different from the internal government audience of the official committees and commissions. On the one hand, this dissertation is directed to the community of communication and other social scientific scholars who, through research, are capable of drawing attention to the important discussion of government secrecy and its effect on our public discourse. On the other hand, this dissertation is directed to the everyday citizen who likely does not realize the extent of the information control and distortion which exists today. Real intelligence system reform will stem from appealing to these two groups. This section will present recommendations in two of the three primary areas—recommendations for the government and recommendations for citizens. A third area regards recommendations for communication and other social scientific scholars and will be discussed in the "future studies" section of this chapter.

Recommendations for Government

The aforementioned committees and commissions, such as the Moynihan Commission and, most recently, the 9-11 Commission, as well as numerous current and former members of the secrecy system, such as Steele, Ramsey, Berkowitz, etc., have all offered various suggestions for overhauling, improving, or updating the intelligence community and all of the entities directly, or tangentially, involved in the protection, analysis, and dissemination of information. This author does not pretend to know more about the specific inner workings of the system than those individuals or groups. However, despite not having been a member of the secrecy in-group, three years of research into this topic, as well as research into organizational, cultural, and political communication, has provided knowledge and perspective on this subject, and therefore enables this author to make informed recommendations to the members of government and the secrecy community. In many cases the ideas expressed here are restatements of previous recommendations. The difference is that, in addition to identifying the problems with the secrecy system, the purpose of this dissertation is to improve the state of public discourse—expanding the public sphere rather than being content with its constriction. These recommendations are predicated on the belief that the U.S. government must become more open in its practices. Information must be shared in order for citizens to make decisions and to ensure that the government is responding to the will of the people.

The first, and most important, recommendation concerning the current state of institutionalized secrecy is to abandon executive orders as the foundation for classification and adopt a legislative approach to regulating and monitoring the intelligence community. "The system of classifying official information was established by Executive Order, not by act of Congress. One of the important failings in the control of government secrets is that the system has not been established by law" (Cox, 1975, p. 138). "Another balance to be struck is the sharing of responsibility for government secrecy between Congress and the President. Congress has every right to provide guidance" (Glenn, GPO Hearing, 1997, p. 4). The Commission on Protecting and Reducing Government Secrecy recommended, in their concluding report, that there should be a legislative basis for classification. During hearings held by the Moynihan Commission, Senator Thompson acknowledged that "the national security information system, unlike most operations of government, has not had a legislative foundation" (Thompson--GPO s712, 1998, p. 2), and that "Congress needs to be a party to the weighing of benefits and costs of the secrecy system rather than relying solely on the Executive Branch to handle this decision-making process" (Thompson, GPO Hearing, 1997, p. 3). As discussed in chapter two, classification policy is, with the minor exception of the Atomic Energy Act, wholly established by the executive branch of U.S. government. The primary importance of a legislative foundation for classification policy is that classification procedures, declassification timelines, and the identification of classifying agencies and individuals would no longer be subject to the whims of the political ideology of the President and his or her closest advisors. Katz (1987) also urged Congress to follow the recommendation of the House Committee on Government Operations in 1973 which encouraged the establishment of a statutory basis for the classification system.

Of course, Congress should always have the opportunity to modify classification legislation, but with Congressional legislation, unlike executive orders, the expectation is that within the Senate and House of Representatives there would be open debate before voting on legislation. The presence of open debate is sorely missing from the current classification system. According to Dempsey (1998), Congress missed an opportunity to provide leadership on classification and secrecy policy in 1994.

> Congress again passed up another chance to respond, when it directly addressed the question of classification management and concluded that President Reagan's classification order needed to be updated. Instead of setting its own standards, Congress merely directed the president to issue a new order on classification and declassification of information. (p. 45)

Classification policy is the basis for the system of government secrecy currently operating in the United States. Giving the classification system a statutory foundation would be a positive first step towards a culture of transparency, rather than maintaining a culture defined by opacity. Several of the following recommendations stem from the concept of open government and providing Congress with input into the secrecy system is seen as a positive first step in that direction.

The U.S. government should actively work to reify the democratic foundation of transparency. It is the belief of this author that a legislative based classification system would, in addition to fostering more debate regarding the secrecy system and policies, establish a framework of Congressional oversight, which is not presently a characteristic of the system. The Intelligence Community should adopt an openness initiative of its own and treat intelligence information in much the same way that the scientific community treats scientific information. The government should operate on the principles that access to information is important for the populace to participate in their own governance and that openness in policies and threats provides a public system of checks and balances on the intelligence community. While both houses of Congress have Intelligence committees, there is a great deal of information that is not available to the committee members. Executive Order 13292 placed considerable emphasis on penalties for *not* classifying information or for disclosing classified information. Rules such as these institutionalize the belief that it is better to classify information initially and then assess at a later date whether or not the information should actually be classified. In order to effectively shift towards a culture of openness, the emphasis in future executive orders or legislation must be placed on openness and reduced classification, rather than on maintaining an attitude of classify first, discuss later. Individuals with classification authority should be supported for not classifying too much information rather than encouraged to classify whenever possible—as the current culture implicitly supports. This recommendation echoes the policies of the Energy Department, as discussed in chapter three, in which the important discussion and debate over whether or not to classify a document occurs before classification rather than after it. Government officials should always evaluate the benefits and drawbacks of classifying a document before the decision to classify is ever actually made. The fact that, for a brief period in the 1990s, the number of documents classified actually decreased from previous years, lends support to the conclusion that an executive order which emphasizes openness over secrecy can have a positive impact on the system. Unfortunately, the years in the late 1990s, when classification started increasing again, also demonstrates that unless meaningful changes are made in the bureaucracy of the secrecy system, decreases in classification are not likely to be sustainable.

The 21st century saw the expansion of government departments with classification authority with the inclusion of the Department of Agriculture, the Department of Health, and the Environmental Protection Agency into the secrecy system, as well as the recently formed Department of Homeland Security. Increasing the numbers of individuals with the power to classify information only increases the likelihood of more classified information. Therefore, in conjunction with a complete examination of the way the intelligence system operates, the number of departments, agencies, and individuals with classification authority must be reduced. Reducing the number of classifiers will lead to a decrease in the amount of information classified each year and will also facilitate a philosophical shift towards open government. Giving classification a legislative basis, requiring debate prior to classification, and reducing the number of classifiers, are three specific recommendations which, enacted and working concomitantly, could greatly reduce the amount of classified information.

Yet another recommendation involves establishing a mandatory declassification deadline. Over the past 60 years, the required disclosure date on declassification has shifted with each subsequent executive order. Automatic declassification has been required as early as 10 years after classification and as late as 30 years after classification. Congress, working with both the intelligence community and the public, should enact legislation specifically establishing a maximum declassification date. Based on previous executive orders and other sources, 15 years seems to be a reasonable time period for information to remain classified. While there may be some information, such as data related to nuclear development or the specific names of counterintelligence operatives, which may need protection after 15 years, the vast majority of information should reenter the public domain after the time frame has passed. Additionally, all information which was classified prior to 1990 should be made available to researchers or other citizens who are interested in the history of the United States. Theoharis (1998) described the problems associated with long term classification when he stated that executive secrecy and the

> culture of secrecy did not merely foreclose contemporary awareness of the most important presidential decisions and intelligence agency programs of the cold war era. Historical research was thereafter adversely affected. Classification restrictions in effect ensured a distorted understanding of presidential decisions and priorities. The selective release of formerly classified documents and the release of sentences or isolated paragraphs of other documents pose a further research dilemma: how to interpret and knowingly incomplete record? Researchers are thereby denied an understanding of context, and thus the general purpose, of the disclosed program or decision. (p. 4).

A mandatory declassification date for new and current classification decisions, as well as the full disclosure of past classification decisions, are two recommendations which would help promote a culture of openness. As mentioned previously, several government commissions or committees have recommended that an independent classification review panel be established to facilitate the declassification of documents—this also should occur immediately. The time is right for a government commission to be specifically charged, not with determining whether or not there is a problem with classification, as previous committees and the present dissertation have already conclusively demonstrated, but with the actual declassification of billions of archived documents. All of these actions would be emblematic of a government determined to create and encourage a new era of open, civil discourse. Proactively alleviating the present strains on the secrecy system, rather than reactively responding to new threats or criticism, would help instill trust in the government and support the shift towards transparency.

Finally, the government must recognize and uphold requests made under the Freedom of Information Act. Citizens have a right to know what the government is doing. The government typically complains that the processing of FOIA requests is costly, both in terms of labor and financial expense. If the previous recommendations are implemented, and the government becomes more open about its decisions and deliberations, than there will not need to be as many FOIA requests filed, simply because the amount of information protected from public scrutiny will be reduced. A culture of openness will foster informed public debate because public sphere participants will have more accurate information than ever before. Increases in information flow and greater opportunities for discussion should improve the quality of public and government decision making. Jefferson considered it an imperative of government to educate and inform its citizens. In discussing how best to preserve a peaceful country, Jefferson (1939) remarked,

> whether peace is best preserved by giving energy to the government or information to the people. This last is the most certain, and the most legitimate engine of government. Educate and inform the whole mass of the people . . . they are the only sure reliance for the preservation of liberty. (p. 37)

In order for U.S. citizens to truly protect both their national security and their freedom, information must be made available and in the public domain. The open sharing of information is a solution to the problems within the intelligence community, as well as the problems impacting the denigration of the public sphere.

> No longer is simple information the key to political and economic dominance. Today, dominance depends on the ability to analyze information, to pull out what's important from what is not. And improved analysis comes not from suppressing information, but from making it widely available and subject to wide scrutiny. (Thompson, Hearing GPO—1997, p. 2)

Taking every conceivable measure to truly create a culture of openness is a proactive first step towards reaffirming the centrality of political participation so vital to a democratic system. However, while many of the responsibilities for creating a culture of openness rest with the government, U.S. citizens also have a role to play in the institutionalization of openness and the reemergence of the public sphere. Specific recommendations for U.S. citizens will be discussed in the following section.

Recommendations for Citizens

Citizens must participate in their own governance. It is vital to the success of a democracy that constituents are actively engaged in the political process. It is recommended that citizens become involved in public discussion. In a democracy, the expectation is on participation rather on than detachment. In fact, it is only through non-participation by the citizens or the manipulation of information by the government that a democratic government can control debate in the country. The U.S. government derives its power from the citizens themselves. Active involvement in public deliberation is essential. American citizens should consistently challenge the government to reveal information and to ensure that the government is operating in a manner consistent with their will. It is through informed engagement that the full potential for democratic governance is reached. According to Ramsey (2000), "secrecy and deception occur when politicians' use or abuse of state power is insufficiently checked and controlled" (p. 47). An unengaged public has no recourse for checking and controlling governmental power. Therefore, if citizens in the United States desire the power to hold government accountable for its actions, then they must participate in the political process. It is recommended that individuals strive to realize the potential of the public sphere through interaction with other citizens and interaction with government decision makers. In order to ensure that the important decisions are not left in the hands of government elites, economic elites, or media elites, citizens must seek out information and become actively engaged in the political process.

Greater efforts need to be made to educate children on civic responsibility in the United States. Encouraging and informing youth of the benefits and dangers of democracy may help prepare students for their democratic responsibilities. While citizens may always exercise their freedom by opting out of the political decision making process, the expectation is for just the opposite—for informed, public engagement. By emphasizing civic and democratic obligations throughout elementary and secondary education, students will then be inculcated into a culture that recognizes the preeminence of many voices. It is unlikely that the recommendations for government mentioned previously could even be enacted without a more engaged populace. As long as the constituents of the U.S. government fail to actively question and pursue the disclosure of information, secrecy will continue to be the first and worst case of action employed by their leaders. It will only be through an expression of the public's will for a less secretive government that a more transparent government will emerge. In fact, as Parenti (2003) explained,

> Only sustained protest will compel regulators to tell corporations, police, schools, hospitals, and other institutions that there are limits. As a society, we want to say: Here you may not go. Here you may not record. Here you may not track and identify people. Here you may not trade and analyze information and build dossiers. There are risks in social anonymity, but the risks of omniscient and omnipotent state and corporate power are far worse. (p. 129)

Citizens must take responsibility for both educating themselves on the issues of freedom, security, and government secrecy, and for speaking out against those behaviors and laws which circumvent or challenge the civil liberties of U.S. citizens.

Limitations of the Current Study

The primary limitation of this study stemmed from the inaccessibility of the documents, individuals, and cultures under investigation. Despite attempts, in the winter and spring of 2004 to interview those within the culture of secrecy, no interviews were initiated. During phone conversations with representatives of the CIA, FBI, Department of Energy, the NSA, and to the offices of each member of both the Senate and House Intelligence Committees, this researcher was instructed to issue a formal request in the form of a letter. In total, 48 letters were sent out, including requests for information from Iowa Senators Grassley and Harken. Only two responses were received (see Appendix C), and neither of those respondents agreed to grant an interview nor chose to answer the brief questionnaire presented in the letter. Those interviews would have provided the researcher with a greater degree of access to information regarding the operations of the culture of secrecy. Due to the absence of interviews, hermeneutic analysis of existing documentation became the primary source of data for this research. In terms of previous legislation, executive orders, Department of Energy documents, committee and commission reports, congressional research reports, and other public documents, there was no shortage of information to analyze in creating a hermeneutic of secrecy. Unlike phenomena in the public dmain, which may be examined openly and about which a full analysis of a communicative process may be observed and documented, when dealing with classified information and current behavioral actions within the culture of secrecy, direct observation is not a viable option. Thus, access was the primary limitation of the current research. Unfortunately, this lack of access to information and to the political leaders themselves is clearly a long-standing attribute of the system and will assuredly remain so, thus providing an obstacle to any future studies of this nature.

The absence of research, particularly from a communication perspective which specifically analyzes government secrecy, created a situation where the present study was directionally limited in exploring this topic. The phenomenon of government secrecy is certainly not a new phenomenon, however, approaching it from a communicative perspective is an original approach. While others have used Weber's bureaucracy to analyze problems inherent within the secrecy system, this researcher's approach, which combined Weber's theory of bureaucracy, Habermas' theory of the public sphere, and Chomsky's propaganda model, as well as other theories and theorists, specifically sought to utilize all of these theoretical options in the service of understanding government secrecy from a communicative perspective. In many ways, this study has served as a beginning analysis of the conditions which promote secrecy and the effects secrecy has on representative democracy.

Yet another potential limitation of the present study stems from the use of the Department of Energy as an exemplar for the entire secrecy system. While it is true, as stated previously, that the DOE exhibits many of the characteristics and qualities of the other organizations within the secrecy system, there also exist differences that may make the Department of Energy an inexact exemplar. For example, since the Department of Energy is not designed to gather information from external sources, such as the Central Intelligence Agency spying on a foreign governments or foreign citizens or the Federal Bureau of Investigators engaging in surveillance of individuals within the United States, it likely possess characteristics and behaviors that are not assuredly consistent with the behaviors of organizations such as the DOD, CIA, or FBI. However, because the Department of Energy is responsible for classifying and protecting information, in much the same way as all departments and agencies with classification authority, it shares enough similarities that its use as an exemplar is justified. Two of the potential differences of the DOE from other agencies were actually beneficial to this study—its legislative foundation for some classified information and its Openness Initiative. As one of the conclusions for this dissertation concerned establishing a legislative, rather than an executive, foundation for secrecy and intelligence gathering and protection, the fact that the Department of Energy has a legislative foundation likely explains why the DOE is typically more open, and more willing to share information, than many of the other agencies and departments concerning classification. Perhaps if all classification authorities had a legislative foundation similar to the Atomic Energy Act, the 1990s might have seen the introduction of 25 Openness Initiatives.

Finally, due to the sheer size of the secrecy system—from the Department of Defense, to the intelligence community, to the Department of Energy, to the Congress, and to the Executive branch of government—it was impossible to explore every relevant facet of the phenomenon. In fact, each specific aspect of the secrecy community would be worthy of an individual and full scale analysis. The complexity associated with the secrecy culture presented numerous challenges to this researcher and will undoubtedly challenge other scholars wishing to examine it. This dissertation has established a communicative foundation on which to build those future studies.

Suggestions forFuture Studies

As noted in the previous section, due to the breadth of the government secrecy phenomenon, there is no shortage of potential areas of investigation for future researchers. Now that a basic understanding of the complexity and size of the phenomenon has been provided, future researchers might choose to analyze specific departments or to observe whether structural changes, such as the creation of a National Intelligence Director, result in real and meaningful changes in the bureaucratic nature of the system. Additionally, much of the information, such as cultures of secrecy versus cultures of openness, bureaucracy, and the public sphere, are applicable to a wide range of communication experiences in areas such as organizational or political communication. Although the present study does not provide an easily replicable template for future studies, it is highly heuristic. Questions answered and topics explored in this dissertation invite further investigation. Secrecy is a current reality for the United States government and not one that demonstrates any sign of receding; as such, the topic must continue to be researched, and solutions to the problems which remain within the system and the problems which exist because of the system must be discovered. The following sections will explore a few suggestions for future scholarly inquiry.

Sensitive, but not Classified, Information

While this dissertation has focused on forms of official secrecy, such as classified documents regulated via Executive Orders or the Atomic Energy Act, it is important to realize that there exists a growing number of documents and document categories containing information which, although not classified, is effectively shielded and withheld from public exposure. According to Aftergood (2004), these categories and barriers to unclassified information include: Critical Infrastructure Information (CII), Critical Energy Infrastructure Information (CEII), Sensitive Homeland Security Information (SHSI), and Sensitive But Classified (SBU). In addition to official categories of protected information such as these, there is other information, such as the previously discussed Vice Presidential Energy Task Force of 2001, which is intentionally withheld from the public with no legislative foundation for doing so. It is important that governmental committees and decision making are brought into the open for public deliberation. Through the Freedom of Information Act, a scholar could serve the public interest well by systematically examining and exposing information that is not classified, but that is deliberately withheld from the public. Understanding the nature and parameters of sensitive, but not classified, information would serve to augment the present analysis and provide a more comprehensive picture of the amount of information controlled by the government.

Examining In-group Structures and Philosophies

Chapter four focused on the problems inherent within the complicated bureaucracy of the intelligence community. Future researchers are encouraged to attempt to gain access into intelligence organizations to further examine the bureaucratic properties of the intelligence community. The primary goal of the intelligence community, as nearly all concerned parties would agree, is to protect the security of the United States. As this report and others have undeniably shown, the current bureaucratic structure naturally fosters conditions where turf battles and information hoarding are all too common. If a future researcher or researchers were granted access to study the ways in which the intelligence organizations operate, it is possible that tendencies which reify negative behaviors could be identified and addressed. The goal of such an approach would be to bring theoretical expertise and explanations and apply them to the problems inherent within the secrecy community. In this way, real and lasting change might be accomplished within the system, with the long term effect of increasing the chances of the intelligence community to succeed in its endeavors, as well as highlighting the advantages of information sharing and of active collaboration. Also, scholarly access to the in-group would allow for clear identification of the classification philosophies which exist among the various cultures within the intelligence bureaucracy. Thus, permission to conduct an emic analysis of the cultures of secrecy would likely provide much useful analysis.

Effects of Classification and Declassification on other Countries

The United States is clearly not the only country who closely protects operational information; therefore, an examination of the ways in which other countries protect, withhold, and manipulate information would be beneficial for several reasons. By examining the mechanizations of other countries' intelligence apparatuses, a researcher might identify behaviors that would help improve the United States' system and could also possibly identify behaviors which would likely have negative ramifications if implemented in the United States. Although access would likely still be an issue, the goal of such research would be to understand how similar practices are conducted in different countries. In fact, a researcher would be able to create an international chart of government openness. In this way, researchers would be able to investigate the specific conditions which contribute to open government. Developing a template of this sort would enable researchers to compare the relative openness of certain governments and the specific relationship between open government and secrecy. The goal of such research would be to identify the factors which foster or enable openness in government. The production of an international matrix of this sort would have much application and utility.

Effects of Declassification

Much of the information contained within the present report centers on the effects that classification has on the public sphere. One area, clearly under-explored herein, concerns the effects of declassification of information. One of the recommendations presented earlier in this chapter was for the full declassification of information over 15 years old (with a few exceptions). It would be worthwhile to explore the impact of such massive declassification on the populace. One way to begin investigating this subject would be to examine how other countries have dealt with the issue. How does the declassification of information affect the collective will of the people? What effect does it have on an individual to know that he or she was the subject of a sustained investigation by his or her own government? This is an important question which has been raised across Eastern Europe since the fragmentation of the Soviet Union. It is understandable that former constituents of the Union of Soviet Socialist Republics might not want to know the full extent of the procedures of entities such as the KGB. What effect would discovering that a friend or family member spied on you at the behest of the government have on an individual? A potential future study would attempt to address these questions.

Applications to Corporations and Other Organizations

The effects of secrecy and bureaucracy regarding the government could also be examined within the context of large scale corporations or other organizations. Do the bureaucratic tendencies of secrecy and information hoarding exist in non-government organizations, and, if so, do they result in the similar consequences? A future study might involve the comparison of a traditionally secretive, organization with an organization considered to foster a more open communication environment. Are corporations which share more information, both internally and externally, more successful than those organizations who do not? Might it be possible to develop a testable theoretical model of organizational openness? Does transparent decision making lead to better organizational decisions? These are the types of questions which could be answered by researchers apply the findings of this dissertation to non-governmental organizations.

A Final Conclusion

A majority of scholars in the communication discipline, like other social scientific disciplines, values quantification and the ability to predict and control behavior as the preeminent teleology of research. In contrast to that approach, this dissertation was a systematic attempt to understand the phenomenon of government secrecy. By investigating government secrecy and classification as a form of information control, as well as by investigating many of the system’s contingent parts, analyzing the departments and agencies who create and handle secrets, and examining the government documents which regulate the system, this dissertation has provided a detailed understanding of the interdependence of these components. Therefore, to satisfy the popular demands of modern social science, this dissertation will conclude with substantive predictions stemming from the hermeneutic examination and subsequent in-depth understanding of government secrecy and its role in the U.S. democratic republic. Based on analysis of the Atomic Energy Act of 1954, Executive Order 13292, and the curtailing of the Department of Energy Openness Initiative, as well as on other factors, government secrecy will continue to proliferate. The number of classified documents will continue to increase, the amount of information to analyze will increase, the number of individuals with the power to control information will increase, and the amount of information needing to be declassified will increase. Stemming from these increases, other predictions can be made. The likelihood of sensitive information being accessed by unauthorized individuals will also increase. Additionally, the likelihood of critical information being overlooked by those with the need to analyze such information will increase. The current highly secretive and bureaucratic state will likely lead to the inability of those within the system—those charged with protecting national security—to access information in an efficient and timely manner, and this may, in turn, lead to successful future terrorist attacks. Future terrorist attacks will result in additional secrecy and in legislation which affects the civil liberties of U.S. citizens. Yet another prediction is that more decisions will be made in secret, by individuals within the system who are beyond the purvey or critical analysis of those outside the system. Like the escalation of Vietnam or the backroom dealings of the Iran contra foreign policy, some of these decisions will be poor ones. Thus, with each iteration of increased secrecy, U.S. government will grow further and further away from the ideals on which it was established. These predictions and conclusions are based on a detailed analysis of the government secrecy system both historically, and in its present form, and are therefore valid. Perhaps most distressing about the current state of government secrecy is that, when dealing with global terrorists such as al-Qaeda, even with a focused and fully cooperative intelligence community, a highly informed government and public, and a heightened level of awareness and alertness, terror attacks may still occur. Yet, a fundamental conclusion of this dissertation is that an open system, one which actively shares information with its agencies and government departments, as well as with the public, increases the likelihood of thwarting a terrorist attack. A closed system is severely limited in its ability to respond to threats and information from the environment. An open system, on the other hand, while no guarantee of success, increases the government and the people’s ability to effectively respond to information and threats in the external environment.

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Appendix A:

Growth of classified documents 1993 – 2003

Agencies with Classification Authority

Growth of classified documents 1993 – 2004

	# of classification authorities	Total # of classification decisions	Percentage of highest classifying department	Total number of classified pages declassified (in millions)
1993	5,661	6,408,688	58% DOD	6.5
1994	5,461	4,773,897	57% DOD	11.2
1995	5,379	3,579,505	47% DOD	23.5
1996	4,420	5,789,625	52% CIA	196
1997	4,010	6,520,154	65% DOD	204
1998	3,903	7,294,768	40% CIA	193.1
1999	3,846	8,038,592	44% CIA	126.8
2000	4,130	23,000,000*	50% State	74.6
2001	4,132	33,020,887*	42% State	100
2002	4,006	23,745,329*	63% DOD	44
2003	3,978	12,228,020	**	43
2004	4,007	15,645,237		28.4

* The 2003 Information Security Oversight Office adjusted the 2000, 2001, and 2002 classification figures—those numbers are 11,150,869 for 2000, 8,650,735 for 2001, and 11,271, 618 for 2002.
** The 2003 Information Security Oversight Office Report to the President only showed percentage of increases or decreases over the previous year rather than a breakdown of percentage of total classification decisions by Department.

Departments and Agencies with Classification Authority

Top Secret

Executive Office of the President

The Vice President
The Chief of Staff to the President
The Director, Office of Management and Budget
The Assistant to the President for National Security Affairs
The Director, Office of National Drug Control Policy
The Chairman, President's Foreign Intelligence Advisory Board

Departments and Agencies

The Secretary of State
The Secretary of the Treasury
The Secretary of Defense
The Secretary of the Army
The Secretary of the Navy
The Secretary of the Air Force
The Attorney General
The Secretary of Energy
The Chairman, Nuclear Regulatory Commission
The Director, United States Arms Control and Disarmament Agency
The Director of Central Intelligence
The Administrator, National Aeronautics and Space Administration
The Director, Federal Emergency Management Agency

Secret

Executive Office of the President

The United States Trade Representative
The Chairman, Council of Economic Advisers
The Director, Office of Science and Technology Policy

Departments and Agencies

The Secretary of Commerce
The Secretary of Transportation
The Administrator, Agency for International Development
The Director, United States Information Agency
The Secretary of Health and Human Services
The Administrator, Environmental Protection Agency
The Secretary of Agriculture

Confidential

The President, Export-Import Bank of the United States
The President, Overseas Private Investment Corporation

Appendix B:

Sample letter to Intelligence Committee member—Senator Roberts

Projected interview script

Face to face interview

Phone interview

Dear Senator Roberts,

My name is Tom Hall, and I am an instructor at the University of Northern Iowa. I am in the process of completing my dissertation from the University of Oklahoma and would like to request your assistance in my research. My dissertation examines the relationship between government secrecy and democracy. As a communication scholar, I am examining the classification process and how the control of information in this manner affects government accountability, national security, and civil liberties. Much of my research has involved a textual analysis of available government documents such as 9/11 investigation reports and findings, transcripts from hearings involving the Commission on Protecting and Reducing Government secrecy, and proceedings of other similar government committees and commissions on secrecy. I've analyzed policies and procedures of key classifiers such as the DOD, FBI, and CIA, various Executive Orders establishing the classification system, and DOE manuals on the rules and guidelines for classification. I am not interested in learning about or exposing national secrets. I am interested in the philosophy and procedures of classification, and, in turn, what impact these have on our ability to make rational decisions in society. My goal is to augment my research by interviewing individuals who are in a position to adequately and accurately comment on the effects of government secrecy. Your position as member and Chairman of the Senate Select Committee on Intelligence establishes you as an authority on the subject.

I realize that you are extremely busy and thatthe business of running this country may not provide you with the time to respond to every individual who contacts you, particularly someone who is not one of your state constituents. I believe strongly, however, that my study is a valuable one. I am not asking for funding, nor am I attempting to write a partisan exposé. Government secrecy and classification have been proliferating over the past sixty years. As you know, there were nearly 24 million classification decisions in 2002 alone. This number clearly raises questions as to what rights citizens have to information concerning government proceedings and decision making. There is no shortage of individuals with a critical view of government secrecy, and who can cite all of the problems between secrecy and democracy. However, it is my desire to portray a more complete picture of the system, by hearing from those both outside and within government. Government secrets are often criticized because of a lack of oversight—that is why your committee on Intelligence, as well as the House of Representatives' committee on Intelligence, is so important to my research.

I am writing with one request—that you will provide me with information concerning this topic. I am even offering three levels of involvement in the hope that I might increase your willingness to participate. Would you be willing to engage in a thirty minute phone interview in February or March? The time and date of the interview is completely up to you and I will even provide the entire list of questions prior to the interview (many are included with this letter). I will make myself available at any time that you choose. If you do not wish to be interviewed, then please consider completing the questionnaire that I have included with this letter. Feel free to answer as few or as many questions as you would like. Finally, if you do not have the time available to participate yourself, perhaps there is a knowledgeable individual on your staff who is in a position to comment on these subjects. He or she could then respond to the survey questions included with this letter.

I respectfully urge you to please take time and participate in this study. This topic is one of importance to the tradition of government of, by, and for the people. If you have any questions about the content or purpose of this study please contact me at your earliest possible convenience.

Sincerely,

Tom Hall 319-273-7159—office
University of Northern Iowa 319-266-1701—home
Cedar Falls, IA 50614 tom.hall@uni.edu

As this is research conducted through the University of Oklahoma, I am bound to the requirements of a researcher using human participants to generate information. In compliance with the Institutional Review Board of the University of Oklahoma, I must ask you to sign an informed consent form to participate in this study. The form is for your protection, and notifies you of my intentions for the information collected. I have included two informed consent forms both signed by me—one is for you to keep, the other is to be returned via the self-addressed stamped envelope I have included. There is, of course, a fourth option not mentioned in the letter of introduction—that option concerns a decision to not participate at any level. If this is your choice, please state that and return it in the envelope provided.

Here is a sample of the questions I am interested in researching:

What is the purpose of government secrecy?

What procedures are in place to ensure that the purpose (or purposes) stated in question one is supported and regulated?

What impact does classification and governmental secrecy have on democracy? What inherent tensions exist between secrecy and democracy?

What factors are involved in governmental classification and secrecy and how do these factors interact?

The next several questions refer to the findings of the Commission on Protecting and Reducing Government Secrecy:

The Moynihan Commission identified cultures of secrecy existing within government—cultures governed by Weber's principles and characteristics of bureaucracy—what efforts have been made to ensure that these cultures are more open, not only with the public but with one another?

How does secrecy and classification affect government accountability?

Will the current trends in classification actually result in decreased security and protection as previous commissions have suggested? Why or why not? September 11, 2001 seems to fulfill the Moynihan Commission example of an overloaded secrecy system resulting in less security rather than increased security because individuals in intelligence were unable to get access to information nor were they able to sort through all of the information because of the sheer volume of classified information—is this a valid conclusion? Why or why not?

The US Constitution does not specifically label access to information as a civil liberty—what roles, rights, and responsibilities should citizens take in foreign policy and national security discussions?

How does government secrecy impact civil liberties?

What are the dangers of overclassification? What are the dangers of underclassification?

How do the Congressional committees on Intelligence view their role in the process of overseeing intelligence and secrecy?

Should there be a statutory basis for all classification (like the AEA concerning nuclear material) rather than executive mandate? If so, why hasn't this been implemented yet? If not, why is the current system the best tool for overseeing classification and secrecy?

How much of the increase in classification is the result of technology and email and how much is due to greater threats to national security and the need to keep more secrets?

From a quantitative perspective it is clear that government classification and secrecy is larger and more substantial than at any other time in history—is this also the case qualitatively? Is there a greater need than ever to have so many secrets?

If you were the President of the United States and had total control over the regulation of the classification system—what actions would you take?

Can you think of a non-classified, public knowledge example of government secrecy abuse?

Face to Face interview script:

As a doctoral student in the University of Oklahoma Department of Communication, I am conducting dissertation research in an area in which I understand you have considerable knowledge: the impact of the U.S. government classification system on our democracy and, more generally, the impact of government secrecy on public discourse and civil liberties. Would you be willing to answer eight to ten questions on this topic? I anticipate this taking 30 minutes to an hour of your time. If so, I would like to record our conversation as data for my research.

If you are willing to participate in this study, please read and sign the following informed consent form.

Phone interview script:

As a doctoral student in the University of Oklahoma Department of Communication, I am conducting dissertation research in an area in which I understand you have considerable knowledge: the impact of the U.S. government classification system on our democracy and, more generally, the impact of government secrecy on public discourse and civil liberties. Would you be willing to answer eight to ten questions on this topic? I anticipate this taking 30 minutes to an hour of your time. If so, I would like to record our conversation as data for my research.

Before I am able to proceed with the interview, I need you to read and sign an informed consent form. I will be mailing you the form along with an addressed and stamped envelope—please complete the form and return it to me in the envelope provided. As soon as I receive the signed form, I will call and establish a time for the interview.