

FOR IMMEDIATE RELEASE

AUGUST 12, 1971

OFFICE OF THE WHITE HOUSE PRESS SECRETARY

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THE WHITE HOUSE

PRESS CONFERENCE

OF

HON. JOHN D. EHRLICHMAN

ASSISTANT TO THE PRESIDENT FOR DOMESTIC AFFAIRS,

AND JOHN DEAN, COUNSEL TO THE PRESIDENT

THE BRIEFING ROOM

12:03 P.M. EDT

MR. ZIEGLER: Jerry has covered the basic information we have for you today.

As you know, a short time ago we sent a request to the Hill for dollars to assist in the process of declassifying World War II documents. Going back to January of this year, as we have told you before, the President directed that a study be made of the classification procedure within the Government.

John Ehrlichman has been in charge of the overall White House efforts on this, together with John Dean, who has been working with Mr. Ehrlichman. John Ehrlichman and John Dean and others have had a number of meetings with the President on this subject.

We were meeting this morning with the President and talking about this matter. The President asked that John Ehrlichman come out and give you gentlemen a progress report as to how we are proceeding on the matter of declassifying documents. With that, John, you may give your progress report.

Q Before John gets into this, specifically, how much money did the President ask for?

MR. ZIEGLER: We have asked for \$630,000 as a first request.

Q The overall cost is \$6 million?

MR. ZIEGLER: Right.

Q Was that just for the beginning of World War II documents?

MR. ZIEGLER: Yes.

MR. EHRLICHMAN: As Ron said, what I am going to give you now is just a progress report, and is by no means a description of the finished product.

There have been some questions, apparently, about the progress of this work. As you know, it has been in progress since January under William French, who is chair-

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His committee's work continues, and they have not yet given final recommendations to the President. Their recommendations, as I understand it from him, when they are rendered, will cover both the subject of declassification procedures and the subject of systems of classification, which should be either inaugurated or changed, looking to the future.

We are working here in the promulgation of this new approach with the basic principle that we are going to be classifying fewer documents in the future, but classifying them better. In that direction, we will be focusing on the question of distribution.

As it is now in the Government, as you know, a number of people have security clearances, and as a basic proposition, within a given security clearance there is a technical right to see a document bearing a classification for which the individual is cleared. So you get into the question of distribution, who can see a document; if he has a clearance, can he see all documents for which he is cleared, or only those for which he has a need to know?

So they will be working with the principle that there should be limits on distribution within a given security clearance classification on a strict need-to-know basis.

Secondly, the direction in which the study is going indicates that there will be new limits on the right to duplicate documents and the right to disseminate or distribute documents.

The problem of de-briefing or sharing with others, either inside or outside the Government, the contents of documents obviously is receiving attention.

And then the question of what to do with the enormous number of pages of classified documents that now reside in various archives or storage places of the Federal Government is a subject which will be covered.

The President has decided that he will expand his request for appropriations to speed the process of declassification. He has asked for a study to be done of how significant historical events might be treated in this declassification process; that is to say, he has identified not only the World War II documents, but also the documents relating to the Korean War, the Lebanon action during the Eisenhower Administration, and the Cuban incident in the Kennedy years, as events of such historical interest that, rather than wait for the normal chronological clearance process, he has asked the Archivists and those involved in this study to propose to him a method by which they can accelerate and give priority to the declassification of these historical events first.

We do not have an estimate of the dollar amount involved, and it may be that this rearrangement of priority from the purely chronological to those of historical interest may involve some additional cost. That is one thing that w will have to take a look at.

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I am told that we are talking about 160 million pages of World War II documents, and some 300 million pages of documents spanning the years 1946 to 1954. Now, of that number, some are not classified. They are simply stored. But the problem here is in reviewing all of those pages which are now, as I understand it, stored roughly in chronological order to determine which can immediately be moved out as non-classified and which are classified and must be reviewed to see which will be declassified and released.

The criteria for declassification is basically to be that the release of the documents will not jeopardize current intelligence sources; and secondly, that the release would not either imperil our current relations with other governments, or seriously and needlessly embarrass individuals who are foreign citizens.

We have here, obviously, the situation where someone might be subjected to needless embarrassment by the release of a document which otherwise had no public purpose in its release. I cannot expand on that particular criteria very much more, because, frankly, we have not seen it developed in specific language or specific criteria.

I just want to indicate to you generally in going by that that is a consideration that may be embodied in the final recommendations to be submitted to the President.

Now, I will take your questions in just a minute. I would like to run through this in a series.

The President believes that past practice has resulted in the classification of a number of documents which need not have been classified from any standpoint of national security or national interest. The system has been one in which too many people have had the legal capacity to impose classification on documents, and there has not been any workable system for a review of decisions by these individuals that a document should be classified. The burden of proof has, up until now, always been on the one proposing declassification.

The recommendations of the committee will undoubtedly be in the direction of a system which will impose a presumption, after passage of a certain period of time, that a document should be declassified, which presumption could be rebutted by a showing that it would be contrary to the national interest to declassify it at that time.

The presumption now runs in the other direction; that a document will remain classified unless someone can come forward and sustain the burden that it should be declassified. This, the President feels, is contrary to his general approach, which is that the Government has not only an obligation or that the Government has a duty to make disclosure of what is going on in the Government except in those cases where disclosure would be inimical to the national security or the conduct of foreign policy.

That is a very broad generalization, and it is subject to some specific exceptions in the area of Executive privilege, and so on, but basically that is the philosophical or policy thrust to this whole effort.

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As the President has said many times, he seeks an era of negotiation rather than confrontation. Essential to successful negotiation is confidentiality. Parties, whether as between governments or in private life, simply cannot successfully conduct important negotiations where concessions are sought on either side except under circumstances where there is an attitude of mutual confidence in which each party can rely on the discretion of the other not to disclose the conduct of the negotiations.

That being so, and confidentiality being a cornerstone of an era of negotiation, the President strongly believes that the Government must adopt a system of classification of those kinds of documents important to the conduct of foreign policy which will insure their confidentiality to the maximum extent possible. Therefore, the study is going forward both by the Rehnquist committee and others as to how we can better insure the confidentiality of classified documents.

The President draws on a number of years of experience in meeting with heads of government, chiefs of state, in a one-on-one meeting. He draws on a set of principles which he has personally followed in the conduct of his negotiations, which he has imposed or set down for the National Security staff here in the White House.

Very simply, these are that the content of negotiations of that kind are shared with principals, and only on a need-to-know basis; that de-briefing to staff is on an extremely limited basis; and that documents, aide memoire and other documents involved in such meetings, are circulated on a highly restricted basis.

I think that, demonstrably, those principles which have been applied in the President's experience and in the conduct of the business of the National Security staff have resulted in very few incidents, if any, of any breach of confidence. The President has, likewise, followed the practice of extremely limited sharing of information, even in a domestic context, where he has met, for instance, with the steel negotiators, or meetings of that kind where it is important that the parties be able to speak in confidence and in candor without the probability of reading their remarks or having them displayed the next day.

So I am trying to describe here for you a setting in which classification and secrecy is important, and the reason for its importance, as distinguished from situations where classification has rather arbitrarily and unnecessarily been imposed on documents.

In the case of The Times and Washington Post disclosures, the action of the Administration, through the Department of Justice, in seeking injunctions in that case has a relation to this policy that I have been describing to you.

I don't think there is any question in the minds of those in the Administration who are knowledgeable on the subject that some of the documents involved there, probably the large majority of them, were needlessly classified at this time; that is to say, the time of publication; that the classification could have very well been removed consistent with the principles that I have mentioned.

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At the same time, a massive compromise of a classification system such as occurred in this instance demonstrably has raised questions in the minds of those with whom this Government will be negotiating or with whom we have negotiated in the past as to whether or not the classification system which we employ in this country is, in fact, effective to maintain their confidence.

The national security study memorandum of last January which led to the formation of the Rehnquist committee and a review of our whole classification procedure was undertaken, as you know, a number of months before The New York Times-Washington Post incident, on a foresight basis, recognizing that the Government had an obligation in two directions: One, in the direction of disseminating information; and, on the second hand, in the direction of maintaining a system of classification which would reassure those with whom we hope to negotiate that their confidences not only would, but could be kept, in an encouragement of free and open negotiation.

Now, there are a number of contrasts in the role of the Government and the role of the press. You people do, and should, dig for every bit of information you can get, and there is no sense of criticism involved in anything that I say here with regard to that role of the press.

At the same time, that is to be contrasted with the obligation of the Government and its people to establish a system, and maintain it in such a way that it can successfully conduct foreign policy and maintain the national security of the country. Those are not adversary relationships in a real sense.

The press have a real problem when they come up with a classified document. It doesn't happen very often, but when somebody in journalism comes up with a classified document, it is very difficult for him to know, in fact, the total context of what is really going on at the time, to know whether or not it is inimical to the national interest to publish that document.

I don't mean by saying that, or by recognizing that fact, to shift the burden to the press. What I mean to say is that we have to recognize the dilemma and to recognize the likelihood that, in good faith and with the best of intentions, the journalist may go forward with the publication of that document quite innocently and it may very well directly affect negotiations in progress or it may create a climate of doubt among present or future negotiators as to whether or not the Government has the capacity to respect the confidence of the negotiation.

So it is the duty of the Government to go forward in the adoption of a system that will minimize the risk, either to present or potential negotiations. That is what this process is all about.

Now, I have not been terribly specific about the system to be adopted. As I explained, the reason I have not is that the system is not yet in place, but I have tried to indicate to you the direction in which the study is going on some of the principles on which we are working. At some not too distant date, a specific set of recommendations will be prepared, presumably will be approved, and then will be put into place.

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We would expect that you will be completely informed as to what that final result will be at the time that it occurs.

Q John, you mentioned that journalists may innocently publish something that the Government is disturbed about seeing published. I am wondering if, in that context, you have determined yet whether innocence has been established in the case of The Times and Post, and the other newspapers, in the Pentagon papers.

MR. BERLICHMAN: Obviously, I would not comment on matters in litigation. I think deep in the questioner's heart must lie the answer to that question. (Laughter)

Q Sir, I would like to know what is the basis of law for classifying. Is this in the Constitution? Perhaps Mr. Dean can help us.

Is this in the Constitution, and if so, whereabouts and what are the laws that govern this? Does the Administration plan to put this in the realm of law, or put it in an Executive Order?

MR. BERLICHMAN: I think you have an excellent suggestion. We will call on the lawyer.

MR. DEAN: It is twofold. There are a number of statutes on the books right now.

Q Let's begin with the Constitution.

MR. DEAN: The Constitution permits the Congress to enact those laws which they feel are necessary and proper. They have set up some laws which say that certain documents must be held in confidence.

Q Who has?

MR. DEAN: The Congress. That is part of the authority. There is also the President's inherent authority to issue an Executive Order to devise his own method to maintain a security system.

Q Are you going to do it by the laws which you say exist, and I don't know which ones they are, or are you going to do it by Executive Order?

MR. DEAN: I imagine they will be a little of both. As John said, the specifics of the system are still in development.

Q John, which nations with whom we will negotiate or have negotiated have indicated that they were upset by the revelations?

MR. BERLICHMAN: Well, I think there have been some that I have read in the newspapers. Beyond that, I would not be prepared to go.

Q John, you said the criteria for declassification, one of them, was that it would not needlessly embarrass foreign citizens. Would this criteria be applied to citizens of the United States?

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MR. EHRLICHMAN: I am not prepared to say whether it would or not. I think the policy thrust -- and this is very vague; and let me underline that it is very vague. I was just trying to give you a flavor of one of the considerations that has to be raised and disposed of here, either pro or con, is that the Archives of the Government may very well have a document derogatory of some individual, as to which there is no valid public purpose in its publication, and there is a judgmental question that is going to be raised as to that document.

Do you put that out? Do you impugn an individual needlessly without any public purpose being involved, or do you set up some kind of a review system that takes that question into account? I am not prepared to say right now that the system will, in fact, take that into account, but it is one of the things that now is being looked at.

Q It seems to me that this is central to the whole controversy over classification, because the chief objection that I think most journalists have to classified documents is that they are used quite frequently to save embarrassment of public officials. That is the reason I am asking.

MR. EHRLICHMAN: I understand that. It is certainly not a legitimate function of the classification simply to save someone from embarrassment because he made a mistake.

Q But it is with foreign people?

MR. EHRLICHMAN: Here, again, if that is all that is involved, I would think that the way this is all going to come out in the long run is going to be that there will be a rather clear mandate to declassify material of that kind.

At the same time, there will be special cases in which that is not the effect, simply to disclose a mistake or something of that kind, and we have to recognize that we have some obligation in the conduct of foreign policy, and I am putting it in the foreign policy context. You raised it domestically. I brought it up first in the foreign policy context.

We have some obligation in the conduct of our foreign policy with regard to whether or not matters of that kind, in the foreign context, are released. It is one of the things that is by no means settled, but one of the things we have to weigh as a possible element. Where we end up on that, as I say, it may be that we will err on one side or the other, or maybe we can find a balance on this thing that will achieve all the ends.

Q Can the President now, under whatever laws exist on this, classify conversations he has with steel leaders if they don't affect the national security?

MR. EHRLICHMAN: Classify them?

Q Yes. You mentioned this as an example of the type of classification.

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MR. EHRLICHMAN: No, I did not. I mentioned this as a mode of conduct. I mentioned the way the President conducted his business in head-to-head conversations. He follows the practice of very limited dissemination.

Now, certainly it is within his capacity to determine to whom he will disseminate information personal to him. That doesn't amount to classification. But I was trying to indicate to you the importance of a climate of confidentiality in certain kinds of meetings, both foreign and domestic, and I cited his personal conduct in those contexts.

Let me take somebody else. Bob Pierpoint?

Q You said at one point, "From now on, the presumption will be that after a certain period, documents will be declassified." Can you give us an idea of that period?

MR. EHRLICHMAN: I didn't say "from now on" -- let me emphasize that what I am giving you is a progress report on a set of recommendations that have not yet been rendered, so this is not in effect.

Q I didn't mean to hang you on that.

MR. EHRLICHMAN: Let me give you a hypothetical example. Let's suppose you have a document in the national security area that describes the inner workings of the Gatling gun, and it has been stamped "Top Secret" since 1861. I don't know that there is such a thing in the Archives, but I would not be terribly surprised. That has resided there classified because nobody has ever raised the question.

The process that is in contemplation would be one in which, about 1868, that would have come up for declassification automatically on some kind of a diary system. Then, unless someone could come forward and show why it was inimical to the national interest to release those plans, they would have been declassified as a matter of course, so the presumption would have made for declassification at a time interval.

Q Does that time interval vary depending on the nature of classification?

MR. EHRLICHMAN: My hunch is that it would. You would probably have shorter periods for the less intensive and longer for the more intensive.

Q You said some of the papers to be declassified are those involving Cuba, the Bay of Pigs, and the missile crisis.

MR. EHRLICHMAN: Yes.

Q Do I notice a pretty definite split in modus operandi from the period up to '54 and then after '54?

MR. EHRLICHMAN: No. I happened to have some statistics covering that period, but you should not read anything into what I have said that brings along some time frame at all. I just got that number from the Archivists, and that is the reason I used that time frame with you.

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Q You mentioned Korea, Lebanon and Cuba. Is there any chance that would be extended to include any Vietnam documents?

MR. EHRLICHMAN: I don't know. This is all I have as of right now.

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Q Realizing that this is still more or less in the philosophical or theological stage of the study, you mentioned a study on restricting the sharing of classified documents with people outside the Government. Are you moving toward the thought that such outfits as Rand and the think tanks will have less access under this system when it is evolved?

MR. EHRLICHMAN: That is the context in which I made that remark, that there are a number of non-governmental organizations or individuals who are cleared for access to certain documents, but in the process, in the usage, that clearance has not been very precise in terms of its scope and the whole question of the scope of a clearance, that is the range of documents within a classification that would be accessible to such an individual, is one of the things that is under study.

Q You mentioned in connection with the Pentagon papers that the massive compromise involved there, from your point of view, "has demonstrably raised questions in the minds of those with whom the government will be negotiating or have been negotiating in the past."

The clear implication of that could be that among those possible negotiating partners would be China. The President has been quoted by those who have spoken to him recently as indicating to them, as they have interpreted it, that the Chinese were disturbed at our newspapers' publication of the Pentagon papers.

Others who are familiar with the situation have said that the Chinese were not disturbed at this, that the United States was worried that the Chinese would be disturbed at this. Can you shed any light as to what the facts are?

MR. EHRLICHMAN: No, I can't. That is a good question. (Laughter)

Q Under the present system, what is the provision for the President or a former President to declassify documents?

MR. EHRLICHMAN: Under the existing present system?

Q Yes.

MR. EHRLICHMAN: I would have to defer to counsel on that one.

MR. DEAN: The person who does the classification has the authority to declassify. We have not really had the question come up in an acute way as to whether a former President can, on his own, declassify something that he classified.

I think if you argued theoretically that could be done. Of course, a sitting President always has the power to declassify.

Q Mr. Ehrlichman, a follow-up question: Bureaucrats, for years, have been classifying a whole variety of documents like documents involving correspondence about wheat shipments. The Office of Emergency Planning is full of stuff that bears no visible connection with national security, but have been classified in the name of national security over the years.

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Now, beyond the position of turning the assumption about classification around the other way, what is there really that you have in sight to keep people in Government from going right on doing the same thing?

MR. EHRLICHMAN: Without commenting on the Office of Emergency Preparedness, because I don't have any personal knowledge of that situation and I would not want my answer to be read in the context of that part of your question, I think one of the things you have to look at is who can classify. As you say, there are a great many people in the government now with the capacity to impose a classification. Like so many things in life, it is easier to get into one of these things than to get out. So, I think we have to look at how a classification is imposed. That will have a direct impact on the kinds of things that get classified.

Also, there is not a clear understanding of the legitimate use of classification, that is, what this government's policy is with regard to the kinds of things that ought to be classified and not classified. There is a lot of work to be done in this area that can get results.

Q Have any spokesmen of any foreign nations communicated their concern or worry about a breach of confidentiality or have American policy makers simply communicated their concern that foreign governments may be worried.

MR. EHRLICHMAN: To my certain knowledge, the former is the case, that representatives of foreign governments have communicated the concerns of their governments.

Q To your personal knowledge that is the case?

MR. EHRLICHMAN: Yes. As a matter of fact, some of them have been identified in the press by responsible Department of State people.

Q John, what affect do you think that the whole business of the Administration seeking and not getting injunctions against the Times and Post, what affect has that had now that you can look back?

MR. EHRLICHMAN: I think the whole judicial process in retrospect, has created the additional necessity for a more discriminating imposition of classification, number one, and, number two, the institution of a more effective security system as to those documents that legitimately should not be published. Because it is evident that the Government's burden in litigation of that kind is so great that the injunctive process will actually afford relief only in the rarest of cases and only under the heaviest burden of proof on the part of the Government.

Now, that being so, and it being a situation where the horse can very easily be stolen before the barn door is locked, in any event, it is incumbent upon an Administration to do the things that we are doing and have been doing since January, and that is to re-examine what it is that we have in place and figure out how it can be made more effective in two directions: one, in the direction of a freer disclosure of those things that need not be classified, and in a more effective way of holding those things that must be classified in the conduct of foreign policy or the national security area.

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Q Do you have a ballpark figure on how long this new process might take, when would we know about 1945, for example?

MR. EHRLICHMAN: Do you have any feel for that?

MR. DEAN: Mechanically, we are talking about, as John just alluded to, to the World War II documents, a great volume of pages. Some of these can be bulk declassified and others can't. Once we get into the documents we will have a feel for how long it will take.

Q It is a five-year program?

MR. DEAN: It will be more than five years, but the focus is new now. Understand now, we are going to look at specific historical incidents first, rather than go to normal chronology.

Q You are going to try to speed up the release of historical matters regarding Korea, Lebanon, and Cuba. Would that speed-up result in those being made public within a year or to put it another way, before the next elections?

MR. EHRLICHMAN: We don't know and the reason we don't is that we don't know how many people will be devoted to this particular effort. We have asked for an analysis of how many people will be necessary to do this job, and by what time.

Now, in the instance of the appropriation that we have asked for on World War II, the timeframe that was estimated there was five years for a given number of people on the job. If you had lessened the number of people, it would have taken longer, obviously. So, you have some variables in this to work with and we are not in a position to know yet which variables will be selected. So, it is impossible to speculate on when it might be available.

Q John, can you tell us as specifically as possible what the criteria is now for classifying documents and how the President proposes that this be changed?

MR. EHRLICHMAN: I can't tell you because, as somebody back there very correctly said, classification is imposed by any number of people. I know that there are in being a set of regulations as to how documents should be classified and what criteria should be applied, but I think that it is a self-evident proposition that there have been so many, such loose application of those regulations, that one simply cannot say how it is done all across the government.

What I have tried to indicate to you here is how we think it ought to be done in general. Now, when you get down to the specifics of regulations to affectuate this kind of a policy, we are going to get into an area that we will be covering at some future briefing on specific regulations.

Q On the same question, John, the Departments that do most of the classification, have they got any kind of advisory during this interim period to use discretion?

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MR. EHRLICHMAN: Not formally, no. It happens that the Departments principally involved in classification problems are all represented on Rehnquist's committee and have been participants and in most cases they have been the people in the Departments who bear the primary responsibility for the classification process.

They had a long meeting with the President several months ago. It was quite a long meeting over in the EOB. There was quite a free exchange of discussion of the problem areas. The President indicated his general feeling about how he saw some of the solutions to these problems. They brought up either technical or legal or practical problems and laid them out on the table. There were about 40 pages of notes.

As a result, no decisions were taken, but the committee then went back and undoubtedly that conversation and other deliberations of that committee have had an inferential influence on the conduct of the processes within the respective departments.

I am speculating on that, but I will be willing to bet a lot of money on that.

MR. ZIEGLER We have time for six more questions.  
(Laughter)

Q Is the committee going to get into the matter of prior restraint of newspapers and any attempt to set the guidelines?

MR. EHRLICHMAN: No.

Q I have two questions on Cuba. Is there a round figure of how many pages of classified material there is?

MR. EHRLICHMAN: No.

Q My second question on Cuba: Is there a possibility of declassifying the papers about the rise of Castro and fall of Batista?

MR. EHRLICHMAN: I don't know. I just have that generic description of a historical event and beyond that nothing specific in mind and knowledge.

Q But the specific events apply; Korea, Lebanon and the Cuban missile crisis?

MR. EHRLICHMAN: There are two events relating to Cuba: the missile crisis and the Bay of Pigs.

Q And World War II?

MR. EHRLICHMAN: That is already in being.

Q Those are the areas you intend to accelerate. Why those? Why war and why not the Marshall Plan and John Foster Dulles' era?

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MR. EHRLICHMAN: I should have said that when I mentioned the other. This is not an exclusive list. This is a progress report to you, and as of this time, it is a list. It is an open-ended list as of now, within practical limits. To the extent that there is very strong interest in a historical event that is not on the list, I don't intend to rule it out.

Q As you move to review papers of recent events, Cuba, for example, and they involve principals who are still alive, and in some cases still active in government, although they may not be in this Administration, will there be consultation in the declassification process with those people or will this Administration act on its own authority and judgment to declassify?

MR. EHRLICHMAN: I have not heard any suggestions that there would be any such consultation. I don't mean by this answer to necessarily rule it out, but it is not in contemplation so far as I know at this time.

Q John, may I ask as a point of clarification, drawing on remarks you made earlier in this briefing, was the attempt to secure injunctive relief in the Pentagon papers case in any sense regarded by the White House as a demonstration of good faith on the part of the Government?

MR. EHRLICHMAN: Yes.

Q Sir, I would like to know, in all fairness, who is going to represent the non-government, the public interest, in this thing? Shouldn't there be something like hearings or shouldn't there be something like maybe a court set up to decide some of these matters of declassification rather than let them all be arbitrary within this Administration or any future Administration?

MR. EHRLICHMAN: That is one of the things that this committee is talking about right now, what kind of process should be set up to determine declassification. Bear in mind what I said: There will be a presumption in favor of declassification. Then somebody comes forward and says, "Wait a minute, I don't think the presumption should apply in this case because of these reasons."

The question is: Who decides that. Does he take evidence on both sides? What is the forum? Those are open questions right now, but they are questions that are being asked in this process and they will be the subject of recommendations, eventually. Those are the kinds of questions that are being coped with right now.

THE PRESS: Thank you, gentlemen.

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(AT 12:42 P.M. EDT)