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The Development and Issuance of E. O. 11652

1. The purpose of this memorandum is to record some of the steps, to the extent that we know them, by which E. O. 11652 and the implementing National Security Council Directive came into existence. In particular, some of the minutiae is not well-known and is likely to be lost or forgotten with the passage of time. This background should be useful to an understanding of the depth of the commitment of the Nixon Administration to the Executive Order and the NSC Directive, particularly the latter.

2. E. O. 11652, approved in March 1972 and effective June 1, 1972, succeeded E. O. 10501 as the law for classifying and protecting national security information. E. O. 10501, which had replaced an Executive order developed from World War II experience, was issued in 1953 and was amended only a few times in the succeeding years. Its provisions for protecting, classifying, and using national security information were not essentially different from those now embodied in E. O. 11652. As amended, it also had requirements for declassifying information. I believe it is generally accepted that under E. O. 10501 the government classified too many documents and did much too little toward accomplishing declassification. It was these defects in the operation of E. O. 10501 which brought on the movement for and ultimate issuance of E. O. 11652.

3. In January 1971 Dr. Kissinger, as National Security Advisor, issued a directive to the appropriate agencies, CIA included, calling for an interdepartmental study and appropriate revision of E. O. 10501. It was clear from his directive that there was no thought that the protective features of E. O. 10501 were inadequate--the objective was to get rid of the overclassification and permanent classification practices.

4. William Rehnquist, then an Assistant Attorney General, chaired an interdepartmental committee. CIA was represented by David Young of the White House, who was not however

on the National Security Council staff, was a member and, at the end, was chairman. The committee proceeded with its work through the ensuing months. In June the Pentagon Papers issue erupted. It was directly as a result of that matter that the President attended a meeting of the committee in June or July of that year (1971). He directed that there be strict limits on the numbers of government employees authorized to classify information and the new Executive Order duly incorporated that feature.¹ (This restriction continues to receive attention. The Interagency Classification Review Committee consistently presses the point and congressional committees have shown interest in it.) Towards the end of 1971, the committee's work lagged, I think because of Rehnquist's imminent and then actual nomination to the Supreme Court. When Rehnquist was nominated, David Young took over as Chairman in December 1971. The significance of all this was that the Kissinger instruction was now a year old, the crisis of the Pentagon Papers continued, but no new order had been prepared or issued. Moreover, as I remember, on the occasion of the Pentagon Papers issue, the Administration made known that revision of the E. O. 10501 had been under study for some months and the press had indicated some doubts on this. There was, accordingly, some pressure on the Young group to finalize an Executive order promptly, which was done, and E. O. 11652 was approved on March 8, 1972.

5. I am sure this delay in preparing an Executive order is the reason the E. O. 11652 omits the essentials for the protection and use of information² but provides in Section 6 that the "President acting through the National Security Council shall issue" implementing directives in the areas specified in Section 6.

1/ That the President's requirements came about because Ellsberg leaked the Pentagon Papers is somewhat ironic. Ellsberg was able to leak the papers because he had access to them, not because he had authority to classify.

2/ The Executive Order does not provide for access, use, physical protection, transmittal and storage protection, need-to-know, third agency rule, or security clearances. These provisions are in the NSC Directive and Appendix A to the Directive.

6. The NSC Directive issued on May 17, 1972, over the signature of Dr. Kissinger, is much broader in scope than is the Executive Order. (Incidentally, at a White House conference of Erhlichman, Helms, and Houston in March, the forthcoming Executive Order was "accepted" by Mr. Helms. The NSC Directive, on the other hand, was never accepted by this Agency, and in fact various of our comments and suggestions during the drafting stage were not accepted.) It is interesting also that although the Order provides that the President, "acting through the National Security Council", will issue the implementing directives, it was Kissinger, not the President, who signed the Directive and Kissinger did so in his capacity as Assistant to the President for National Security Affairs, which is not a statutory NSC office. Indeed we have not been able to locate any document designating Dr. Kissinger as an official of the National Security Council, but it may be that one exists. It may be significant also that the Directive is dated May 17, 1972, just five days before Kissinger accompanied the President to Moscow. It is hard to believe this subject and the draft directive could command much of Kissinger's time and attention at that time.

7. These features of the approval of the Directive are mentioned not to argue that CIA, or any agency, is in a position to challenge the legality of the NSC Directive, although a private person might be able to do so. The point is that aside from Kissinger's signature, which may or may not have been affixed by him, we have no indication of White House approval or commitment to the Directive at that time by anyone other than David Young.


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