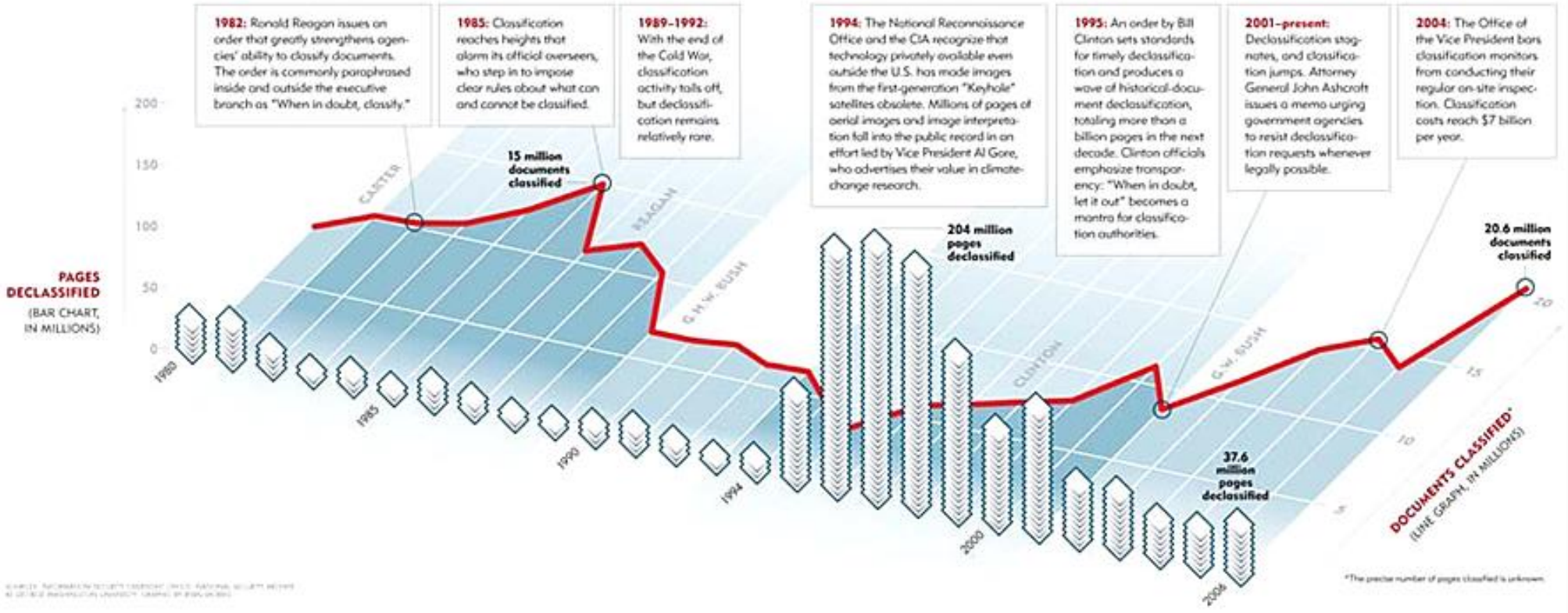


Secrecy in Government



SOURCE: NATIONAL SECURITY ESTIMATION (N.S.E.) NATIONAL SECURITY REVIEW (NSR) AND SECURITY INFORMATION (S.I.) NATIONAL SECURITY AGENCY (NSA)

“Whistleblower”

A person who informs about a person or organization doing illegal things.

In the United States, legal protections vary according to the subject matter of the whistleblowing, and sometimes the state in which the case arises.

- ↪ Lloyd-La Follette Act (1912)
 - ↪ First US law adopted specifically to protect whistleblowers.
- ↪ Laws protect whistleblowers from employer retaliation.
 - ↪ Problem: there are a patchwork of many laws (as opposed to one single one), many of which have a narrow window from when a person learns of misdoings to when they actually report it if they want protection.

Revealing of Classified Information

- ↪ A government official who reveals classified information to the public for their own political or ideological reasons, not to reveal to the nation a particular crime. This is illegal.

Why are things restricted from the public?

- ↪ The information may reveal methods of intelligence gathering (identity of spies, informants, etc)
- ↪ The information may reveal troop location, movements or even negotiating strategy
- ↪ The information may reveal illegal or embarrassing acts, or may lead to unwanted public discussion of policies.

State Secrets Privilege

United States v. Reynolds (1953)

The Supreme Court established the "state secrets" privilege, allowing the government to argue that certain military or national security documents must be protected from disclosure in litigation.

↳ The case began when three widows sued the government for negligence after a B-29 bomber exploded over Georgia during a 1948 flight to test secret electronic equipment.

The widows of three civilian observers on board sought the 51-page accident report and statements made by surviving crew.

The Air Force refused. After losing arguments that the documents should be shielded, the government appealed to the Supreme Court, where it argued that a judicial tradition existed for a privilege based on "state secrets."

↳ By a 6-3 vote, the court accepted the government's claim.

↳ Chief Justice Fred Vinson wrote for the majority, "Judicial experience with the privilege which protects military and state secrets has been limited in this country. ... Nevertheless, the principles which control the application of the privilege emerge quite clearly from the available precedents."

↳ Vinson cautioned, "The court itself must determine whether the circumstances are appropriate for the claim of privilege, and yet do so without forcing a disclosure of the very thing the privilege is designed to protect."

↳ In fact, in the Reynolds case, the court did not review the accident investigation documents to determine whether they should be kept secret. (The now-declassified report contains no secrets, and instead recounts how the engine failure was preventable, point toward negligence by the Air Force.)

State Secrets Privilege

State Secrets Privilege allows the government to shut down litigation simply by invoking national security.

Criticism of the state secrets privilege

Since 2001, there has been mounting criticism of the state secrets privilege. Such criticism generally falls into four categories:

1. Weak external validation of executive assertion of privilege
2. Executive abuse of the privilege to conceal embarrassing facts.
3. Expansion of judicial doctrine
 - ↳ Some academics have criticized the expansion of the state secrets privilege from an evidentiary privilege (designed to exclude certain pieces of evidence) to a justiciability doctrine (designed to exclude entire lawsuits).
4. Elimination of judicial check on executive power
5. Use of the privilege prevents transparency in government, the therefore accountability of government officials to the electorate.
6. Federal trial judges often fail to make the government justify its use of the privilege.
7. Due to little information, the public cannot distinguish between legitimate and self-serving uses of the claims.
8. Can we really trust the government to do that is right?

President Obama by executive order and Presidential Memorandum to agency heads stressed that “no information may remain classified indefinitely”

↳ He signaled that the government should try harder to make information public, if possible, including by requiring agencies to regularly review what kinds of information they classify and to eliminate any obsolete secrecy requirements.