

TO: Senate of the Academic Council
FROM: Committee on Research Policy
SUBJECT: New Research Policy Guidelines on Secrecy in Research

Part I

Pursuant to the charge received by the Committee on April 15 from the Senate, the Committee recommends that the Senate, at its regularly scheduled meeting of April 24, consider the resolution which appears on pages 2-7 of this report. The Committee is of the opinion that this resolution successfully implements the objectives of the Senate as articulated at its meeting on April 15.

The Committee particularly invites the attention of the Senate to paragraphs 2 and 4 of the resolution. Paragraph 2 contains three subparts, only the second of which was contained in the definition of secrecy which the Senate approved last week; it may wish to strike the first and third subparts which have been added by the Committee.

In paragraph 4 the Committee has set forth a number of exceptions to the absolute rule against secrecy that would otherwise be created by earlier paragraphs. The Committee is divided as to which, if any, of those exceptions should be adopted; but it was agreed that the issues posed by each possible exception should be brought to the attention of the Senate and that carefully drafted language be provided that would suffice to create each exception the Senate might favor.

Following the resolution the Committee has listed a series of fact situations which would pose the issues to which these exceptions are addressed.

Part II

Resolved:

1. That the principle of openness in research -- the principle of freedom of access by all interested persons to the underlying data, to the processes, and to the final results of research -- is one of overriding importance. Accordingly it is the sentiment of the Senate that that principle be implemented to the fullest extent practicable, and that no program of research that requires secrecy (as hereafter defined) shall be conducted at Stanford University, subject to the exceptions set forth in Paragraph 4 of this Resolution.

2. That a research program shall be regarded as requiring secrecy (a) if any part of the sponsoring or granting documents that establish the project are not freely publishable, or (b) if any documents to be generated in the course of the research project will be subjected by an outside sponsor to restrictions on publication for a period in excess of that reasonably required for the sponsor to ascertain whether information he is entitled to have treated as confidential would be disclosed by publication, or (c) if access is required in the project to confidential data so centrally related to the research that a member of the research

group who was not privy to the confidential data would be unable to participate fully in all of the intellectually significant portions of the project.

3. That the rules adopted by the Academic Council on September 25, 1967, are hereby amended and, as amended are reaffirmed:

a) No research on a thesis or dissertation should be undertaken if, at the time the topic is set, there is any substantial possibility that it will lead to a [-classified-][secret] thesis or dissertation.

b) No [-classified-][secret] thesis or dissertation should be accepted as the basis for a degree unless, in the judgment of the Committee on the Graduate Division, the imposition of [-classification][secrecy] could not reasonably have been foreseen until the work was so far advanced that modification of the thesis topic would have resulted in substantial inequity to the student.

c) Scholarly activities not accessible for scrutiny by the entire Advisory Board should not be considered in connection with appointments, reappointments or promotions.

d) The University should enter no contract and accept no grant that involves the collection of social or behavioral data in a foreign country and requires the security clearance of any person involved in the project.

e) The University should enter no contract and accept no

grant to carry out research under circumstances that restrain the freedom of the University to disclose (1) the existence of the contract or grant or (2) the general nature of the inquiry to be conducted or (3) the identity of the outside contracting or granting entity[, or (4) any possible applications of the research results]; Provided, that clause (3) shall not apply either (a) to anonymous gifts or grants that do not call for the performance of specified lines of inquiry, or (b) to research grants or contracts from individuals or non-governmental entities who request anonymity out of a justifiable motivation to protect individual privacy.

4. A program of research, appropriate to the University on other grounds, shall not be regarded as unacceptable by reason of secrecy merely because one or more of the following circumstances exist:

a) In a program of research involving the examination, through interview techniques or otherwise, of a living human being, reasonable provision may be made to protect the rights of that individual to privacy.

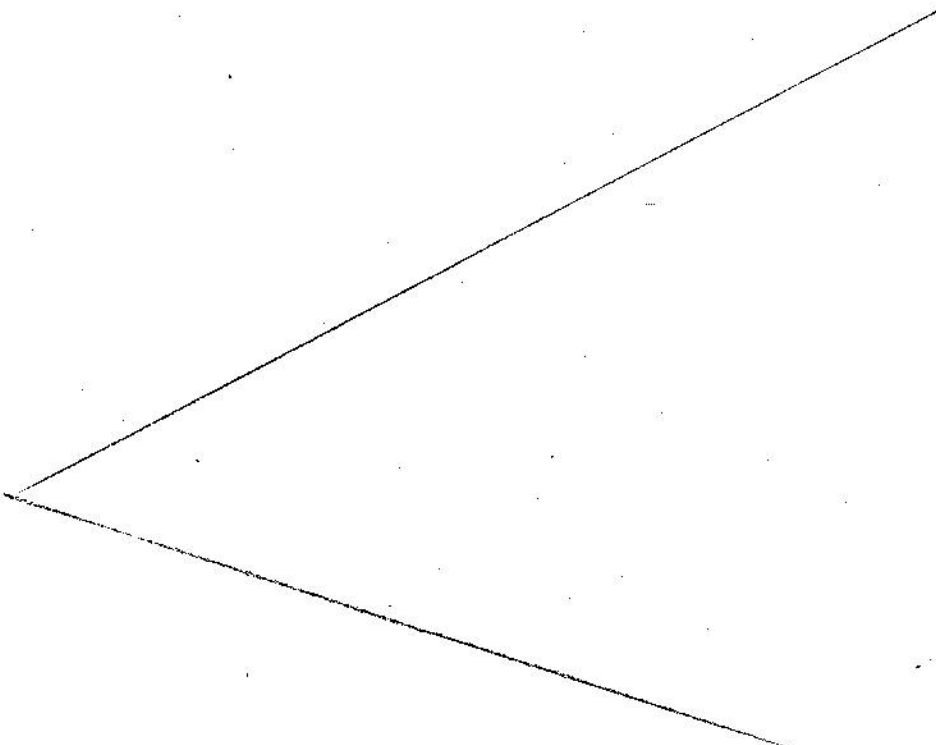
b) In a program of research the purposes of which would be significantly advanced by access to information generated elsewhere which has been subjected to security classification, provision may be made for security clearance and for access to that information on the part of one or several of the participating investigators

provided that the classified information is peripheral to the research program in the following sense: the relationship between the classified data and the overall research endeavor must be sufficiently remote so that (1) a member of the research group who did not hold a security clearance would nevertheless be able to participate fully in all of the intellectually significant portions of the project; and (2) there is no substantial basis for an expectation that any part of the final results of the research, or any but a trivial part of the research processes, will be subject to restriction on publication more enduring than those described in paragraph (2).

c) In a program of research sponsored by an outside entity, provision may be made for a short delay in the publication of research results, the period of delay never to exceed one year, if (1) the sponsor has a bona fide intention to apply for a patent covering applications of the research in a country whose laws establish either (a) a "race-to-file" patent system, or (b) that patentability would be destroyed by publication earlier than as provided in the sponsorship arrangement; and (2) the delay provided for does not exceed that reasonably required to accomplish the sponsor's patenting objective in that country.

d) If, in a program of research, an outside person or entity has made available to the investigator confidential information,

provision may be made to preserve confidentiality and for a short delay in the publication of research results during which time the information source may examine the proposed publication in order to assure that the investigator has not disclosed, intentionally or unintentionally, any portion of the confidential information supplied; provided that any such provision for delay must contain assurances from the information source that he will conduct his review as expeditiously as possible, that he will not attempt to thwart publication for any reason except to protect confidential information previously supplied, and that he will indicate with specificity any sentence or sentences which he contends constitute



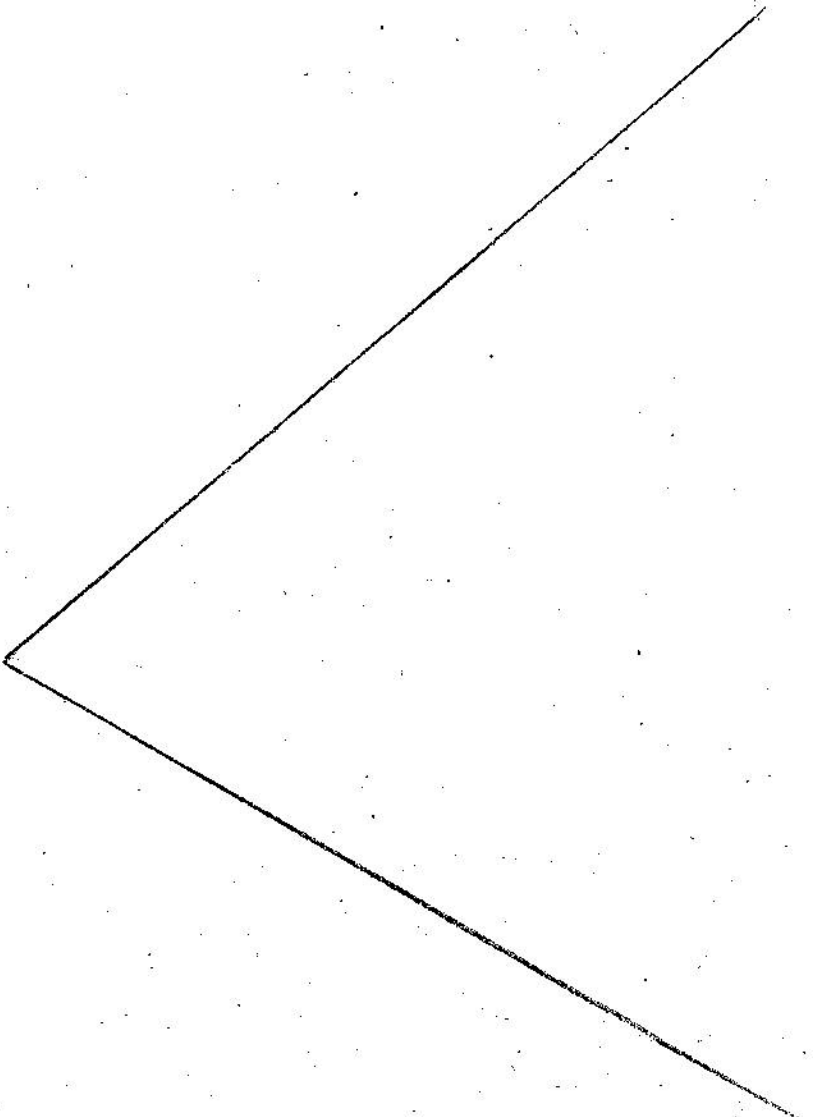
such a disclosure.

e) If, in a program of research, private papers, documents, diaries or analogous materials have been provided to the investigator, provision may be made to preserve the confidentiality of those materials for the purpose of protecting the individual privacy of the author, or of the addressee, or of the immediate family of either the author or the addressee; provided that in no instance shall prohibition on publication extend more than ? years beyond the death of the last survivor among specifically named persons each of whom has a reasonable claim to personal privacy.

5. The Senate is painfully aware that the implementation of these new rules will have a traumatic impact on the professional lives of some number of men who are both honorable, outstanding scientists and, of equal importance, our colleagues. Most, we hope, will be able to redirect the focus of their scholarship and remain at Stanford. Others, if only because of the diminished quantity of research that will occur in their field, may not. Rule changes that thus affect the lives of honorable men must be introduced at a pace that exhibits a solicitous regard for those consequences.

The Senate requests that the President, mindful of these consequences as well as of the importance of the principle these new rules reflect, after consultation with the Deans and Directors

of affected Schools and Projects, and with appropriate regard for the legal obligations of the University under existing contracts, establish a schedule for the termination of existing research not compatible with these rules; provided, however, that all such research shall have been terminated not later than the date, _____



Part III

Comment on Paragraph Four of the Resolution and the Exceptions It Provides.

a) Subparagraph (a) is necessary in view of the clinical work that occurs in the Schools of Medicine, Law, the Social Sciences, and perhaps elsewhere in the University. It is intended to allow secrecy at least to the degree that secrecy is legally required of doctors by the doctor-patient privilege, and of lawyers by the attorney-client privilege. More generally it is intended to allow the protection traditionally afforded to individual subjects of research.

b) Subparagraph (b) is intended to accommodate those instances of government supported research which, while they may be "classified" in legal terminology with the consequence that sponsor review prior to publication is legally required, do not, when viewed prospectively, create a basis for expectation that classified reports will be generated or that access to any significant part of the research endeavor will be restricted to those holding security clearances. The Committee understands that the Senate regards projects of this type as different in principle from projects requiring more extensive use of classified information, and that it does not wish to prohibit them. The problem created by the classified launch date is the classic archetype.

c) Subparagraph (c) is intended to permit continuation of the present practice of delaying publication for limited time periods to permit sponsoring entities to protect their patent positions. In the United States, the first person who makes a "discovery" is entitled to a patent; and his entitlement to the patent is not destroyed by a publication of the discovery unless he fails to file for more than a year after publication. In many foreign countries, however, the first person to file an application is entitled to the patent; moreover, any publication prior to filing destroys patentability. Thus publication delay is essential to the sponsor's position in such countries. Finally, since the work done at the University usually stops at a fairly basic level, and since only specific applications of knowledge are patentable, it is generally necessary for the sponsor to conduct more applied research in its own laboratories for some time after the University project is completed prior to filing. Hence publication delays of three months to a year are often essential to this purpose.

d) Subparagraph (d) is intended to afford to institutions -- perhaps city councils, or business entities, or hospitals, or prisons -- protection analogous to that afforded by subparagraph (a) to individual privacy. Investigation of a social or economic problem often involves gathering from each of a class of such institutions data each regards

as highly confidential but is willing to supply if the researcher is interested only in aggregates or is able to avoid association of particular data with a particular entity. The availability of such data would be impaired if no such assurances could be given.

3) Subparagraph (e) is addressed to a recurrent problem in the conduct of historical or biographical research. While it is analogous in some respects to the privacy problem covered by subparagraphs (a) and (d), it differs in two respects: first, eventual publication is contemplated in this context. And second, the appropriate period of secrecy is far longer than that required for pre-publication review.