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SECRECY & GOVERNMENT BULLETIN

To Challenge Excessive Government Secrecy and
To Promote Public Oversight and Free Exchange
In Science, Technology, Defense, and Intelligence

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Statement of Purpose

The Secrecy & Government Bulletin is an occasional publication of the Project on Secrecy & Government of the Federation of American Scientists Fund. Its primary objective is to promote reform of government practices involving secrecy.

In the Cold War era, secrecy, driven by fear and the politics of superpower rivalry, became deeply embedded in national affairs and led to serious political, moral, financial and environmental abuses.

The end of the Cold War provides an unsurpassed opportunity to rectify this problem, if a suitable effort is made. S&GB will aim to catalyze such an effort by:

*exploring the extent of secrecy in government, its uses and abuses;

*generating proposals to reform and rollback government secrecy and discussing the proposals of others;

*monitoring pertinent legislative activity;

*reporting on the release of relevant, newly declassified documentation;

*working to minimize classification in science and scientific exchange;

*highlighting unreported or underreported news events in this field; and, in general,

*serving as a node in the network of scholars, legislators, journalists, and activists concerned about secrecy and government here and abroad.

This newsletter is being sent primarily to those who we believe have not only a "need to know," but also an "ability to do," i.e. those who in one way or another are in a position to help reform the practice of secrecy.

The information presented here is necessarily in somewhat abbreviated form. Contact us for further details, supporting documentation, or other information as the need arises. And please notify us of stories, documents, or events of related interest for use in future issues of S&GB-- we consider this Bulletin part of a collective effort of which you are a critical part.

We would welcome any initial response, indicating your interest, or lack of interest, in receiving future issues of this complimentary Bulletin, as well as your comments and suggestions.

--Steven Aftergood

Timberwind Unwound

One of the mysteries surrounding the highly classified S.D.I. Timberwind program to develop a nuclear rocket engine is the question of why S.D.I. would need a nuclear rocket in the first place.

The answer, according to multiple sources, is that Timberwind is intended for potential use in a ground-based anti-ballistic missile (ABM). In this concept, a nuclear engine would serve as the second stage of such an ABM interceptor missile.

The Timberwind technology is distinguished by its potentially high thrust-to-weight ratio. (Indeed, the abbreviation "T/W," signifying "thrust to weight ratio," may have inspired the codename "Timberwind.")

Newly obtained project documents indicate that an ABM interceptor with a nuclear engine could travel 3000 kilometers or more within 5 to 6 minutes.

According to one highly placed source, Timberwind may offer the only way to develop a ballistic missile defense for the continental United States that is ABM Treaty-compliant, i.e. using up to 100 ground-based missiles at a single site. This dubious claim is impossible to evaluate as long as the program remains highly classified.

Other potential Timberwind applications identified include anti-satellite (ASAT) and defensive satellite (DSAT) systems, and reusable orbital transfer vehicles.

Special Access vs. National Security

The Special Access classification system "is now adversely affecting the national security," according to the House Armed Services Committee in its Report on the Fiscal Year 1992 Defense Authorization Bill.

Special Access programs are those highly classified projects that utilize security meaures more stringent than those of other (e.g. Top Secret) classified programs, including tight restrictions on access to information. In many cases, the very existence of a Special Access program is itself classified. Hence the commonly used, unofficial term "black" program.

The House Armed Services Committee notes that "during the late 1980s... the committee grew increasingly concerned with the growing number of Special Access programs, the security procedures used in these programs, and the continued application of Special Access controls to certain very large programs, such as the B-2...."

"In particular, the committee believes that the Special Access classification system has progressed beyond its original intent, and that it is now adversely affecting the national security it is intended to support," the Committee stated.

While speaking loudly, however, the Committee proposes to carry a very small stick. Section 124 of the Defense Authorization Bill would require removal of Special Access restrictions only from total program cost and schedule milestones, and only for "major defense

acquisition programs," which are defined as programs involving $200 million in research and development and $1 billion in procurement (both figures in FY 1980 dollars), a rather high threshold.

[The recent partial disclosure of one such program to develop a stealth cruise missile, known as the Tri-Service Standoff Attack Missile, reveals the hollowness of the classification criteria that kept the program so highly classified. Besides, Soviet officials were already aware of the program's existence.]

An earlier version of the new House legislation, H.R. 348 introduced by Rep. John Kasich, would have set the threshold at $50 million.

Furthermore, the new Section 124 would allow the Secretary of Defense to determine that a Special Access program could be exempted from even the minimal disclosures proposed. In short, the loopholes are larger than the limitations.

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Section 214 of the House bill would prohibit the Secretary of Defense from classifying as special access information the total costs and schedule information for development of the new Navy advanced tactical aircraft, the A(X), which is the successor to the ill-fated A-12.

The Committee observed that "special access restrictions on the A-12 program and the lack of appropriately cleared auditors... prevented the program from receiving adequate management control and oversight..." leading to its ultimate cancellation.

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Section 218 of the Authorization bill would prohibit the obligation of any funds for "a special access program identified in the classified annex... until the program is brought out of special access status in an orderly, deliberate manner."

According to one source, this refers to Timberwind, the special access Star Wars program on nuclear rocket propulsion.

Who Controls the Classified Budget?

In the 1991 Defense Appropriations conference report, Congress specified that the classified annex to the defense budget "shall have the force and effect of law as if enacted into law."

This action was taken because, Congress complained, the Executive Branch had treated the classified annex as "simply a report like any other report issued by... Congress" and "consequently, a number of very important decisions incorporated in the classified annex... were either ignored or challenged by both the Secretary of Defense and the Director of Central Intelligence on the grounds that they were not legally bound to comply with them."

Despite the Congressional action, President Bush later asserted that the provisions of the classified annex "are not law." In a disingenuous reading of the Congressional text, the President inferred from the phrase "as if enacted into law" that the annex had not in fact been enacted into law.

Senators Byrd, Inouye, and Nunn, and Representatives Aspin and Murtha, wrote to the President last February in an attempt to clarify the status of the classified annex, i.e. to reiterate its binding character. (As if that will make a difference.)

The correspondence is presented in the Congressional Record of May 14, 1991, pages S5717-5719.

Notification of Covert Action

The President's pocket veto of S.2834 on November 30, 1990, marked the first time that an intelligence authorization bill was not enacted.

The President objected to a provision in that bill, the FY 1991 Intelligence Authorization Act, that would have required a Presidential finding and Congressional notification of a U.S. "request" to a foreign government or private citizen to conduct a covert action on behalf of the U.S. This provision, which arose out of the Iran-Contra affair, was intended to prevent future attempts to evade U.S. law through the use of surrogates in covert activities.

The President claimed that the meaning of the word "request" was unclear and "could have a chilling effect on the ability of our diplomats to conduct highly sensitive discussions..." (See Memorandum of Disapproval, Congressional Record page H75, January 3, 1991.)

The President also objected to a requirement to notify Congress of covert actions "in a timely fashion," interpreted to mean within a few days. (The Presidential finding concerning Iran-Contra was not released until a year after President Reagan signed it.)

"Efforts to resolve the President's concern with the definition of covert actions in S.2834, and related issues concerning the notification to Congress of covert actions, in a manner satisfactory to the Committee, were unsuccessful" (see House Report 102-37). The vetoed bill was reissued without the offending provisions as H.R. 1455 in April 1991 and adopted by the House on May 1.

Meanwhile, intelligence activities have been conducted without a specific authorization, in apparent violation of section 502(a) of the National Security Act of 1947.

Who's Classifying?

In 1990, the Department of Defense accounted for 51% of all classification decisions; CIA 33%; Justice 12%; State 3%; all other agencies 1%.

According to the 1990 Annual Report of the Information Security Oversight Office (ISOO), the number of "original classification authorities," i.e. individuals authorized to classify information, increased slightly to a total of 6,492. In an upbeat marginal gloss, the ISOO notes that there are "still fewer than 6,500 original classification authorities"!

The Black Budget vs. the Constitution

The very first instance of classified U.S. expenditures was a $40,000 allocation provided to the President in 1790 "for the support of such persons as he shall commission to serve the United States in foreign parts." The President was authorized not to disclose "such expenditures as he may think it advisable not to specify."

It has frequently been pointed out that this practice is a clear-cut violation of the Constitution, which requires that "a regular statement and account of the receipts and expenditures of all public money shall be published from time to time" (Article I, sec. 9).

The Courts have repeatedly turned away lawsuits seeking to resolve this contradiction on grounds that the plaintiffs, mere citizens, lacked "standing." It has been up to Congress to control the black budget monster that it created. But the Legislative Branch has consistently been intimidated by the issue, and is only now beginning to come to terms with excessive secrecy.

Resources

A new Pentagon "Plan for Restructuring Defense Intelligence," dated 15 March 1991, outlines major organizational changes intended "to improve intelligence support for the Unified and Specified Commands, streamline the organization of the intelligence structures of the Services, and improve the quality of the Defense Intelligence Agency."

The Plan was released under the Freedom of Information Act.