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SECRECY & GOVERNMENT BULLETIN

To Challenge Excessive Government Secrecy and
To Promote Public Oversight and Free Exchange
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Iraqgate and Government Secrecy

On the surface, the brewing "Iraqgate" scandal is about whether and to what extent the Bush Administration improperly aided the Government of Iraq prior to the Gulf War and manipulated U.S. legal and financial institutions in the process.

Just a shade below the surface, however, the Iraqgate controversy is about the corruption of government information policy and how the classification system may be abused to prevent accountability and frustrate Congressional and public oversight.

The battle over the meaning of the classification system is manifest, for example, in a May 15 exchange of letters between Attorney General William P. Barr and crusading Congressman Henry B. Gonzalez, who has placed classified documents in the Congressional Record, a serious breach of etiquette.

Barr asserts, without evidence or elaboration, that "Public disclosure of classified information harms the national security." Further, "your recent disclosures of classified information on the floor of the House of Representatives and in the Congressional Record have raised serious concerns."

Gonzalez, in response, takes umbrage at the implicit accusation of sedition. "None of the statements and none of the documents [released by Gonzalez] compromise, in any fashion whatsoever, the national security or intelligence sources and methods." He challenges Barr to provide specifics to back up his charges. (*Congressional Record*, 18 May 1992, p. H3372).

One question that so far has not been asked is, if Gonzalez is correct that the documents in question do not pose any national security risk, why were they classified and permitted to remain so?

The answer is that today's classification system as a whole bears little relation to any identifiable national security threat. There are of course some types of information that could genuinely damage national security if disclosed. But the official classification system is no longer capable of effectively discerning such information. Instead, as in this case, secrecy has become a weapon in the political arsenal of the Executive Branch. Similarly, "national security" has increasingly become a ritual incantation by which public inquiry may be deflected.

If bureaucracies were susceptible to shame, the Bush Administration would be profoundly humiliated by Rep. Gonzalez' disclosure that in the course of his investigations, the Italian government had been more honest and open than the U.S. government. Gonzalez noted a "wonderful relationship with the Italian Senate investigating committee. As a matter of fact, they were the source of some information that was denied to us by our federal departments and agencies." (*Congressional Record*, 4 May 1992, p. H2891).

A 1991 National Security Council memorandum outlines Bush Administration strategies for eluding Congressional investigation of U.S. aid to Iraq. (*Congressional Record*, 2 April 1992, P. H2285). Among other measures, the memo recommends that "alternatives to providing documents should be explored (e.g. briefings)," access to documents should be provided to members only (not staff), "no document may be retained; notes may be taken but should be marked for classification by the department or agency in question."

Radio Free Moscow

One hopes that the Air Force practice of secrecy surrounding the launch of some classified payloads really is as wasteful and unnecessary as it appears to be--because it's not working very well.

Last April 25, the Air Force conducted a classified launch out of Vandenberg Air Force Base in California. As is often their way, they issued no comment before or after the launch, except for a brief press statement after the fact acknowledging that a launch had taken place.

Incredibly, however, the launch was announced two days *in advance* by Tass Radio in Moscow, which disclosed the launch date, launch site, launch vehicle and purported mission. (FBIS-SOV-92-079, 23 April 92, page 4).

Like a pirate radio station beaming suppressed truth to a captive nation, Tass thoughtfully broadcast the announcement in English.

Invention Secrecy Skyrockets

Secrecy orders are used by the government to block patent applications on new inventions that are deemed to be "detrimental" to national security. As noted in the last issue of S&GB, there were about 3,500 invention secrecy orders in effect in 1980, with an average of 300 new orders being imposed each year.

But new data obtained from the Department of Commerce's Patent and Trademark Office indicate an extraordinary growth in this realm of government secrecy. Specifically, the number of invention secrecy orders in effect at the end of FY 1991 reached a whopping 5,893.

Even more striking, the majority of new secrecy orders are now being imposed on private businesses and individuals for inventions in which the government has no property interest. Out of a total of 774 new secrecy orders issued in 1991, 506 were assigned to private sector inventors, known in the business as "John Does." This seems to be an all-time record high.

How does this work? When private inventors file patent applications with the Patent and Trademark Office (PTO), the PTO screens the applications against "Category Guide Lists" provided by government defense agencies.

These lists set out the categories of inventions that a defense agency wishes to review prior to a patent being granted. For example, all atomic energy-related inventions are automatically forwarded to the Department of Energy. If the agency determines that approval of a patent would be "detrimental" (not defined) to the national security (also not defined), the PTO will withhold the patent and impose a secrecy order. The invention then may not be disclosed. The secrecy order remains in effect even if the inventor decides to withdraw the patent application. Violation of a secrecy order is subject to criminal penalties, according to the Invention Secrecy Act of 1951.

Secrecy orders are to be reviewed annually, and either renewed or rescinded. There were 381 orders rescinded in 1991. The oldest secrecy orders still in effect include about 50 that date back to the 1940s.

Who is doing this? In 1991, 6,542 patent applications were forwarded to defense agencies for consideration, yielding 774 new secrecy orders. The Air Force led the pack with most new secrecy orders imposed (262), followed by the Navy (218), the Army (84), the Energy Department (15), and NASA (1). Foreign-origin patent applications accounted for the remaining new orders. The Invention Secrecy Act designates the Justice Department as a "defense agency" for purposes of invention secrecy, but Justice has evidently not sponsored any secrecy orders for over a decade, if ever.

So what? Of all things, details of sensitive new military technologies would seem to have the most legitimate claim to government protection against disclosure. Could it be that all is well, and that the recent flood of invention secrecy orders is justified? Could be. Unfortunately, the capricious character of government secrecy policy generally and the absence of substantive oversight at the Patent Office leave little room for confidence.

Further documentation on invention secrecy is available from our office.

Topaz Space Reactor Scam?

In the recent purchase of a Russian Topaz 2 space nuclear reactor by the Strategic Defense Initiative Organization (SDIO), not all is as it appears. In particular, the Topaz 2 system acquired by SDIO is not really a "Topaz" reactor at all, but a reputedly inferior design.

The Topaz space reactors flight-tested by the Soviet Union in 1987 and 1988 were designed, tested, and built by the Institute of Physics and Power Engineering in Obninsk, together with Red Star in Moscow, and Luch in Podolsk. These organizations also developed all the other 33 space reactors flown by the Soviet Union over the last two decades.

In contrast, the system purchased by SDIO was developed by the Central Machine Design Bureau in St. Petersburg, the Kurchatov Institute in Moscow, and the Physical Technical Institute in Sukhuni. Its real name is *not* Topaz 2, but "Enesey" (phonetic). It is considered by some experts to be an inferior design and has never been flight-tested.

Since the term "Enesey" was classified in the Soviet Union, the space reactor needed a new name. At the suggestion of an American promoter of the SDIO purchase, the system was re-designated "Topaz 2" for purposes of selling it to the U.S. The idea was that the new name implies an improved design and, besides, "Americans like things that are numbered 1, 2, and so on."

SDIO officials are aware of the charade, but say they don't mind. Technically, it seems that both designs have some advantages and disadvantages. The so-called Topaz 2 has a potentially longer operational lifetime, while the original Topaz would be easier to scale up to higher power levels.

The two unfueled Topaz 2 reactors purchased by the U.S. were finally delivered to Albuquerque in May, where they will be ground-tested. For planning purposes, SDIO and the Air Force have projected a flight-test date of September 1995, when a Topaz 2 reactor would be launched aboard an Atlas rocket from Cape Canaveral. Formalities like funding, mission, launch approval, and safety analysis, have yet to be addressed.

CIA FOIA Facts

In his February 21 speech on "CIA and Openness," Robert Gates noted that "last year CIA received over 4,500 new requests for document declassification and completed action on some 4,000. Some 5,700 pages of CIA documents were declassified."

But a closer look at CIA Freedom of Information Act (FOIA) practices is instructive. Excluding Privacy Act and mandatory review requests, the workload of FOIA requests in 1991 was 3,730. Of these, a full 50% (1872) were carried over into 1992 still awaiting action, according to the 1991 CIA Annual Report on FOIA activities.

Of the 1858 FOIA requests on which some action was taken, more than half were denied, in full (577) or in part (396). Only 399 were granted in full. (In the remainder of cases, no records were found, or the requests were withdrawn or redirected.) No doubt some of the denials are justified on national security grounds, though experience makes it plain that this is all too often not the case. (See D. Corn, "Freedom of Information? Not From the CIA," *Washington Post*, 5/7/92, p. A25)

The FOI Act mandates that agencies respond to requests within ten working days, a requirement that hardly any agency complies with. As the CIA Report notes, "in almost all instances the deadlines for responding to requests and appeals expired prior to our actually working on them." But this is rather an understatement, considering that the "oldest currently open case was received in 1985."

Perhaps most disturbing of all, the delay in CIA's FOIA response time has nearly *doubled* in the last year alone. There was "an increase in the median response time to complete a FOIA case from 2.8 in 1990 to 5.2 months in 1991." Thus, as often as not, you have to wait nearly six months just to get a denial.

A copy of the 1991 CIA Annual Report on the FOIA may be obtained from our office.

MISTY ZEPHYR Elucidated

One of the lacunae in the Timberwind nuclear rocket story was the occasional reference to an unexplained event at the Nevada Test Site known as MISTY ZEPHYR. The terms MISTY and ZEPHYR have each appeared separately in code names of announced nuclear explosive tests, but not together. Government sources affirm that there was never a nuclear test called MISTY ZEPHYR.

Rather, that term was used as an internal security measure at the Department of Energy. The Timberwind program was so hyper-classified that when DOE officials from Sandia National Lab and elsewhere would go out to Nevada to assess the Saddle Mountain Test Station as a potential nuclear rocket ground-test site, the pretense of a nuclear test called MISTY ZEPHYR was used to conceal their true purpose. It seems that while a nuclear explosion is no big deal, the existence of a nuclear rocket program had to be disguised by exceptional secrecy measures. This particular type of measure is supposedly known among secrecy fetishists as ICAD, for Intelligence Cover and Deception.

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