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SECRECY & GOVERNMENT BULLETIN

To Challenge Excessive Government Secrecy and
To Promote Public Oversight and Free Exchange
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Secrecy Reform: The Game is Afoot

The tempo and urgency of secrecy reform efforts increased significantly in the last month with the firestorm of controversy over human radiation experiments, the disclosure of a draft executive order on secrecy, and the impending release of a new draft order as well as the report of the CIA-DOD Joint Security Commission.

Secret Radiation Experiments on Humans

The radiation experiments conducted on unwitting human subjects in the decades following World War II were first of all a personal tragedy for the individual victims and their families. But the experiments hold a larger message about the cost of secrecy and its debilitating effect on American political institutions.

Radiation testing *per se* is not the problem here. Many such experiments were published in the open medical literature at the time, many involved some form of consent, and many were apparently benign or even, in some cases, beneficial. And the field of nuclear medicine, which is founded in part on Atomic Energy Commission research, has saved or extended many thousands of lives since the 1950s.

The problem rather is that many tests were secret and did not allow for anything that could be considered consent. Government accountability was nonexistent.

The belated, continuing revelations of the experiments are a timely reminder of the profound corruption of the government secrecy system. Secrecy was the enabling condition for these and other crimes, and the dismantlement of the Cold War secrecy system is now widely seen to be imperative if similar abuses are to be avoided in the future.

The conduct of the experiments-- and their concealment for decades-- tend to confirm some of the most outrageous public suspicions about secret government activities:

- Secrecy was used to conceal radical evil. The reduction of human beings into mere instruments without their consent is the essence of such evil.
- The secrecy system abused and betrayed the idea of national security. The enduring secrecy of vast quantities of documentation of the radiation experiments over several decades had nothing whatsoever to do with any threat from a foreign enemy-- it was obviously directed solely at the American people.
- Congress failed to protect the public from the experiments or the coverup. With the exception of a few bold Members like Rep. Edward Markey, Congress proved incapable of effectively overseeing or even investigating the government's actions. The investigative hearings now in progress ought to have been held decades ago.

When it comes to secret government activities in

defense and intelligence, the public must now recognize that there are no reliable "checks and balances." Instead, against an entrenched secrecy system, the public is precariously dependent on the good faith of individuals like Hazel O'Leary, on a handful of intrepid investigative reporters, and not least on its own resources.

Because the Energy Department was so exceptionally responsive to the latest reports of human experimentation, it has drawn virtually all of the public attention that has been devoted to the subject. The Central Intelligence Agency initially escaped scrutiny and was mysteriously absent from the White House "summit meeting" on January 3. That morning, the FAS Secrecy Project released documentation of the CIA's extensive track record in the area of secret human experimentation, and by the end of the day the CIA had been ordered to search its files as well. (*New York Times*, 1/5/94, A11).

Cold War experimentation on humans was not limited to radiation exposures. In the transient period in the 1970s when U.S. intelligence agencies were subjected to serious investigation, it was disclosed that the CIA had performed secret experiments in a wide range of behavior modification techniques, including drug testing (as well as "radiation effects") on unsuspecting subjects. According to the June 1975 *Report to the President* by the Commission on CIA Activities within the United States, chaired by Nelson Rockefeller, the CIA's human experimentation program was carried out from 1953 to 1967. (pp. 226-8). At least one person in a CIA program died directly after having been administered LSD without his knowledge, an action the Commission termed "clearly illegal."

But the full scope of the CIA's behavior modification experiments on unwitting members of the public will probably never be known. The Rockefeller Commission reported that "All the records concerning the program were ordered destroyed in 1973."

Draft Executive Order

Last November 10, an interagency working group completed a draft executive order that would establish a new government-wide national security classification system, in fulfillment of last April's Presidential Review Directive 29. The new executive order, when it is ultimately approved, will replace President Reagan's executive order 12356, which is still in effect.

The November 10 draft was forwarded to the National Security Council. A copy was obtained by the FAS Secrecy Project from U.S. government sources.

After the draft was released into the public domain, government officials all but disavowed it. Encouragingly, a senior official told the *Washington Post* (1/13/94, A25) that the draft did not adequately reflect the Clinton Administration's commitment to openness and that the order was being redrafted to "see if we can do

better."

Steven Garfinkel, director of the Information Security Oversight Office and chair of the interagency working group that prepared the draft, seemed to suggest that the draft may have already gone too far in the direction of openness.

In his transmittal memo to the White House, Garfinkel wrote that "Many of the agency representatives on the task force do not share my enthusiasm for this draft and do not endorse it. They have serious reservations about many of its provisions, especially those that pertain to automatic declassification."

The peculiar fact is, however, that the automatic declassification provisions in the draft order do not even match those that were mandated twenty years ago (though never effectively implemented) by Presidents Nixon and Carter.

The November 10 draft contains few notable changes from the preliminary draft dated August 31 (see *S&GB* 27). On the favorable side, the draft introduces for the first time a form of "balancing test" into the classification process, which explicitly allows for the public interest in disclosure to be weighed against national security considerations. (A balancing test had been incorporated in the 1978 Carter executive order 12065, but only in the declassification process.)

A second noteworthy change from the August 31 draft is that the latest draft reverts to a three-tier classification system, restoring the Confidential classification level that had been deleted in the earlier draft. This does not have great significance either way, though it does indicate the resistance of the classification system to fundamental structural change.

As in the earlier draft, a maximum classification lifetime would be set at 40 years, with certain narrow exceptions. In comparison, President Nixon set a maximum duration of 30 years for most classified documents, and Carter set the maximum at 20 years.

Among public interest groups, concerned citizens, and others, there seems to be a consensus that, with rare exceptions, the maximum classification lifetime should not exceed 20 years, and that to strengthen government accountability the majority of classified documents should become available within 5 to 10 years. At any rate, the unwarranted classification of human radiation experiments from 20 and 30 years ago now compels many to reject any multi-decade government secrecy.

[In a December 1 letter to Vice President Gore, Acting Archivist Trudy Peterson wrote that "In our experience, there is virtually no information over 30 years old that requires continuing classification. Most documents of this age are so irrelevant to current security concerns that continued withholding seems inappropriate if not laughable."]

The aversion of classification officials to automatic declassification of the vast inventory of secret government files is not totally without foundation. Without a detailed classification review, it is not possible to guarantee that no single item of sensitive information will be inadvertently released. What these officials generally do not appreciate is that the review process has failed to ensure the public interest while the cost of open-ended secrecy has escalated. The real damage of continued secrecy today far outweighs the hypothetical risk of inadvertent disclosures.

A substantially new revision of the draft executive order is expected from the National Security Council in late January or early February.

National Industrial Security Program

The National Industrial Security Program (NISP) has been laboring for years to devise a "single, integrated, cohesive" set of security standards for protecting classified information in industry. Under the provisions of President Bush's executive order 12829, the NISP was to culminate in early January 1994 with the issuance of the NISP Operating Manual (NISPOM), which is intended to

replace the multitude of overlapping and conflicting security standards that industry must comply with.

That January deadline has now been extended so that the NISPOM can accommodate the standards of the new classification system and the recommendations of the DCI-DOD Joint Security Commission. According to executive order 12885 of December 14, 1993, the NISPOM is now due "no later than June 30, 1994."

The third draft of the NISPOM, dated October 1993, is circulating for comment within industry (but not the public). The voluminous draft is quite boring, and any attempt by unauthorized personnel to read the document typically induces a trance state in the reader. A copy of the draft, obtained from industry sources, is available at the office of the FAS Secrecy Project.

Joint Security Commission

Not least important, the DCI-DOD Joint Security Commission has promised sweeping policy changes in its report, to be issued by February 1. The Commission, established last spring, was assigned to recommend reforms in a vast array of security policy areas including classification, physical and technical security, special access programs, personnel security (clearances), and a lot more.

Because of the seniority of the Commission's membership and its direct access to the DCI and the Deputy Secretary of Defense, many members of the national security bureaucracy are looking to the Commission to resolve the secrecy reform conflicts that have afflicted the nation for years. The Commission's work is widely viewed as the last opportunity for the government to restructure its internal security policies in an orderly, deliberate manner.

Also

- Following President Clinton's December 27 refusal to publicly disclose the aggregate intelligence budget, the Senate Select Committee on Intelligence announced that it will hold a hearing on February 10 on the "advisability" of publishing the budget total. But this is a question that was asked and answered a long time ago. In 1976, the Senate's Church Committee found that disclosure "would not harm the national security" and that publication of even "more detailed [budget] information" should be considered. And in 1991, 1992, and 1993, the full Senate passed resolutions favoring disclosure of the budget total. There is no truth to the rumor that the Intelligence Committee will hold hearings next on the advisability of Hawaiian statehood and on the pros and cons of the Louisiana purchase.

- Call it democro-terrorism. A disgruntled citizen armed with explosives seized a Navy construction site and threatened to blow it up unless... the General Accounting Office conducted an independent audit of the Navy project. The GAO said OK. The man was arrested. (*Washington Post*, 1/14/94, A4). Separately, the GAO is boldly going where wise men fear to tread: At the request of Rep. Steven Schiff (R-NM), the GAO will investigate whether the government covered up the crash of a flying saucer in New Mexico in 1947. (*Wash Post*, 1/14/94, A21).

- Consonant with the Energy Secretary O'Leary's openness initiative, the DOE Office of Classification has been renamed the Office of Declassification.

- Borrowing from an old cigarette advertising slogan, Energy Department spokesman Sam Grizzle said that the DOE intends to "classify less and enjoy it more." (*Science*, 12/17/93, 1811).

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