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SECRECY & GOVERNMENT BULLETIN

To Challenge Excessive Government Secrecy and
To Promote Public Oversight and Free Exchange
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New Security Policy Board to be Established

Acting in response to a recommendation of the Joint Security Commission, the White House has drafted a Presidential Decision Directive that will establish a new interagency Security Policy Board. The Board is supposed to coordinate the development and implementation of national security policies, although the Presidential directive provides little direction as to what such policies should be. A copy of the draft PDD was obtained by S&GB from U.S. Government sources.

"There is wide recognition that the security policies, practices, and procedures developed during the Cold War must be reexamined and changed. A new security process that can adjust our policies, practices and procedures to achieve affordable security is required," the July 18 draft states unexceptionably.

The new security process will be embodied in the Security Policy Board, which "will consider, coordinate and recommend... policy directives for U.S. security policies, procedures, and practices." The new Board will consist of representatives of the major national security agencies including CIA, DOD, State, Energy, Justice, and OMB.

Evidently, however, the Board will not have any new authority to define policy, and existing bodies will not lose any of their authority. "Nothing in this directive amends or changes the authorities and responsibilities of the DCI, Secretary of Defense, Secretary of State, Secretary of Energy, Attorney General, Director of the FBI, or Director of ISOO."

In lieu of anything that could be called a policy decision, the directive cites four guiding principles identified by the Joint Security Commission in its year-long study (S&GB 33):

- our security policies must realistically match the threats we face and must be sufficiently flexible to facilitate change as the threats evolve.
- our security policies must be consistent and enable us to allocate scarce resources effectively.
- our security standards and procedures must result in the fair and equitable treatment of all Americans upon whom we rely to guard our nation's security.
- our security practices and procedures must provide the security we need at a price we can afford.

Of course, the nation did not need a Presidential directive (or a Joint Security Commission) to determine that security policies should be realistic, fair and cost-effective.

What is needed is a mechanism to achieve these common sense goals at a time when there is no official consensus about the nature or magnitude of the threats we face, or about who will set the standard with which security policies will be made consistent.

It is unclear whether the new Board will be able to provide such a mechanism, or whether it will simply constitute a new forum for the old debates. The draft directive does not establish any criteria for resolving disputes over security policies nor does it empower anyone to overrule a recalcitrant agency.

The diversity of official opinion about security policy is evident from executive branch agency comments on the recommendations of the Joint Security Commission. The comments, which are all over the map, do not add up to a coherent policy and they seem to agree only that the authority of each commenter's agency should not be curtailed. Thus, for example, there is unanimity among the agencies that an "ombudsman" to oversee the propriety of classification activity should *not* be established.

In the best case, the Security Policy Board will accelerate the glacial progress of policy reform by bringing broad, high-level attention to a fragmented system. In the worst case, it will produce a lowest common denominator policy, much like we have today.

A copy of the draft Presidential Decision Directive is available from S&GB. Also available is the Joint Security Commission "blueprint" intended to assist the new Security Policy Board in its early deliberations.

More Intelligence Budget Follies

Maybe the Congressional Record should come with a warning label: "what you are about to read bears no particular relation to any external reality." Certainly the House floor debate on the Intelligence Authorization bill for 1995 contained a remarkable number of falsehoods, misconceptions, and paranoid delusions. The voice of reason was voted down as a threat to national security.

Under pressure from the CIA and the Clinton Administration, the House rejected an amendment by Intelligence Committee Chairman Dan Glickman to publish the size of the total intelligence budget.

In an attempt to defend the twisted logic of budget secrecy, Rep. Larry Combest said that "a misinformed electorate is worse than an uninformed electorate. Providing the total intelligence budget alone is tantamount to misinforming the American people." (7/19/94, p. H5836). Combest also falsely asserted that "no other nation in the world that has an intelligence community releases their budget figure." In fact, total or partial intelligence budget data have been published by the United Kingdom, Israel, and Australia, among others.

Rep. Henry Hyde justified his opposition to budget disclosure with the surprising assertion that the Cold War is not over. "The bear is sleeping. The bear is not dead." (p. H5835)

Rep. Dave McCurdy, who recently declared that "what the U.S. intelligence community may need more than anything today is a little glasnost," nevertheless voted against budget disclosure. So did sometime critic of government secrecy Rep. John Dingell.

Rep. Major Owens, who supported disclosure, asserted that continued secrecy was a foregone conclusion. "We will not change anybody's mind in this House. The military-industrial complex has given its orders. We know the votes will come down a certain way as a result of that." (p. H 5834).

Rep. James Traficant simply advised the CIA to "visit a proctologist for a brain scan." (7/12/94, p. H5470).

Rep. Glickman spoke for the embattled minority of sane Congressmen when he stated that "Continuing to classify the aggregate budget figure in the absence of a justifiable reason to do so only deepens the suspicion that secrecy is necessary to protect a budget which cannot otherwise be defended." (p. H5834).

If the CIA had its own best interests clearly in view, it would seek to strengthen moderates like Glickman, who is thoughtful yet essentially conservative. But that would take imagination and strategic sense.

Trusting the CIA

DCI Woolsey made a somewhat unusual appeal for public understanding in his July 18 speech on "National Security and the Future Direction of the CIA." (*NY Times*, 7/19/94). Following a description of the major "overhaul" that he has initiated (which mostly turns out to be a series of "fundamental assessments"), Woolsey addressed the American people:

"For more than fifty years you have given us the resources to do our job. But even more importantly, you have given us your most precious asset: your trust. That trust must be protected. It must be nurtured. It must be earned.... For us to assume your continued support, or your willingness to give us the benefit of the doubt, will not do. We have the obligation to provide you with answers-- through the deliberative process with members of Congress, and through speaking directly to you."

It is hard to know what to make of this since it is so much at odds with actual CIA practice. The CIA is not in the business of "providing the public with answers" and does not do so even when required by law. For example, when Congress included a provision in last year's authorization bill instructing the DCI to prepare an unclassified annual report describing intelligence successes and failures (HR 2330, section 304), Director Woolsey ignored the legal requirement and no such report was ever submitted.

Legislating Counterintelligence

In his masterful and enlightening book *Informing Statecraft*, Angelo Codevilla writes that "the tradition that equates counterintelligence with law enforcement has increasingly made for bad counterintelligence *and* bad law enforcement" (p. 178). They are two distinct disciplines that are not reducible to one another.

But the idea that counterintelligence failures have legislative solutions has captured the imaginations of Congressional leaders, with unfortunate results.

The Counterintelligence and Security Enhancements Act of 1994 (S. 2056) is a rather knee-jerk response to the failure to identify Aldrich Ames during his eight year tenure as a high-level Russian spy at the CIA. For example, since Ames stockpiled vast quantities of classified documents at his home, the Senate Intelligence Committee reflexively reasoned that unauthorized removal and retention of classified documents should be specifically outlawed. (Currently, such an action is merely subject to administrative penalties such as loss of clearance.)

But this provision, which was proposed by Sen. Robert Kerrey, is ill-conceived. For one thing, it uncritically affirms the existing classification system. Unlike the Freedom of Information Act, for example, which only allows *properly* classified material to be withheld from disclosure, the Senate bill absurdly implies that anything the executive branch says is classified has to be protected by law. Instead of building "high walls" around a relatively small set of genuinely sensitive information-- which is what needs to be done-- the Senate would attempt to build a very low wall around the entire exploding universe of classified information. This won't work as long as the classification system remains arbitrary and indiscriminate.

The same provision would appear to criminalize unauthorized disclosures of classified information to the public, the press and even the Congress, albeit at a misdemeanor level. But L. Britt Snider, General Counsel of the Committee, said that someone providing classified documents to the Congressional intelligence committees would "probably not" be subject to criminal penalties as long as there was no intent to retain the documents. The Committee report on the bill does allow for whistleblowers to remove classified documents for disclosure to an agency's Inspector General.

Even more disturbing is the Congressional move to authorize warrantless searches of private residences in cases of suspected espionage. The executive branch asserts that it already has this right, nevermind what the Fourth Amendment says. (*Wash Post*, 7/15/94, A19). But instead of affirming Constitutional protections, including the traditional "knock, notice and inventory" provisions of a warranted search, Congress would lend a veneer of legitimacy to the warrantless searches by funneling them through the secret Foreign Intelligence Surveillance Court, which never denies an application for surveillance. The Congressional proposal is lucidly critiqued in testimony by Kate Martin of the ACLU's Center for National Security Studies. A copy of her testimony is available from S&GB.

Overcoming Non-lethal Weapons Secrecy

As the Defense Department program to develop so-called "non-lethal weapons" gathers momentum, Pentagon officials are tightening controls on public information about the program accordingly.

Late last year, Greenpeace submitted a FOIA request for a copy of one of the early policy documents in this field, a 1991 memorandum from Under Secretary of Defense (Policy) Paul Wolfowitz entitled "Do We Need a Nonlethal Defense Initiative?"

The Pentagon denied the request in its entirety on May 3, claiming that the memo was "deliberative in nature" and therefore exempt from the FOIA.

But unauthorized disclosures of government information are growing almost as fast as the secrecy system itself, and Greenpeace was able to obtain a copy of the document through unofficial channels.

Perhaps the most interesting feature of the memo are the comments handwritten in the margin apparently by then-DepSecDef Donald Atwood who noted that "non-lethality may be a misnomer." And where Wolfowitz had indicated that "Nonlethal weapons disable or destroy *without causing significant injury or damage*," Atwood wrote: "This claims too much."

A copy of the memo is available from S&GB.

Jumping on the rhetorical bandwagon, the Air Force and the Energy Department are advertising a new nuclear weapon concept as "non-lethal." The proposed High Power Radio Frequency concept is a "*non-lethal*, ICBM-delivered, and nuclear-driven device intended to damage electronics and/or electrical components." (Energy and Water Development Appropriations for 1995, Part 6, House Appropriations Comm, page 494).

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