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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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Government Secrecy Hearing

On March 18, Rep. John Conyers renewed a grand forty-year tradition of House Government Operations Committee investigations with a hard-hitting hearing on government secrecy after the Cold War.

News coverage of the hearing was dominated by Defense Department assertions that unspecified portions of an article critical of the Patriot missile by Prof. Theodore A. Postol (which appeared in the Winter 1991/1992 issue of International Security) contained classified information. By the end of the month, DOD dropped its probe of the Postol article. Coming on the heels of the attempted firing of SDI whistleblower Aldrich Saucier, the Defense Department appears to be making an increasingly ham-fisted effort to stifle dissent.

But what was more important for the long-term was the commitment made at the hearing by several leading Congressmen to introduce comprehensive legislation to reverse the tide of government secrecy. This is a crucial point, because without systematic change, there will be no end of conflict over individual scandals and abuses.

Rep. Lee Hamilton, appearing as a witness, identified seven specific reforms of the classification system, including legislation of a statutory basis, that he advocated for consideration. Rep. Hamilton noted in passing that he had recently asked the General Accounting Office to estimate the volume of classified information in the possession of the government. The GAO replied that "the amount is so vast it cannot be measured."

Senator Howard Metzenbaum, also appearing as a witness, indicated that he has prepared legislation to be introduced in the Senate "to put a halt to overclassification." Among other things, the proposed legislation would eliminate the Confidential classification level and make it a crime to knowingly and willfully classify information improperly.

Nina J. Stewart, a Deputy Assistant Secretary of Defense, and Leon J. Schachter presented some benign testimony regarding the forthcoming National Industrial Security Program (NISP). Contrary to a 1991 Defense Department report, the Executive Order authorizing the NISP will probably not replace President Reagan's E.O. 12356 on national security information after all.

Steven Garfinkel, Director of the Information Security Oversight Office, contended with evident sincerity that "over the years, the information security system has worked extremely well."

Gary E. Foster, Director of the CIA Office of Public Information, went so far as to say that "CIA's approach to dealing with the media and the public has been, at best, uneven." As evidence of the new CIA commitment to "openness," Mr. Foster pointed to the fact that Director Gates has given eleven public speeches since

becoming DCI.

The record was enhanced by probing inquiry from Chairman Conyers and public testimony from Morton Halperin and Leslie Harris of the ACLU, Frederick Kaiser of the Congressional Research Service, and representatives of the American Bar Association and FAS.

Copies of written statements by Rep. Hamilton and Senator Metzenbaum are available from our office.

Secret Presidential Directives

Classified Presidential directives are used to establish U.S. policy in many diverse areas. Some of the dozens of National Security Directives (NSDs) known to have been issued by the Bush Administration treat space policy, Soviet immigration policy, counternarcotics, Panama, sealift policy, and sundry other topics.

The remarkable thing is that the contents of these basic policy documents, and generally the fact of their existence, are consistently withheld from Congress as well as the public. And this is the case even though many of these directives commit government resources as well as defining national policies.

An important and underreported General Accounting Office study stated recently:

"We do not know how many NSDs have been issued by the Bush administration.... it is impossible to satisfactorily determine how many NSDs ... make and implement U.S. policy and what those policies are." (GAO/NSIAD-92-72, January 1992. See also Philadelphia Inquirer, 3/27/92, p.3).

A recent FOIA request to the National Security Council for a listing of merely the number, date, and title of the National Security Directives issued by the Bush Administration was denied on grounds that disclosure of such a listing "could reasonably be expected to cause serious damage to the national security."

The NSC added in a 19 March letter that disclosure of the requested list "would be a valuable instrument in the hands of unfriendly intelligence experts skilled in simple extrapolation and other analytical devices." (citing the judicial decision in Halperin v. NSC.)

More to the point, probably, any information about these U.S. policy documents would be "a valuable instrument" in the hands of citizens concerned about unchecked Executive Branch activities.

Most recently, the Administration refused to release to Congress a Presidential directive (NSD 26) which had ordered "pursuit of improved economic and political ties with Iraq" prior to Iraq's invasion of Kuwait. (see, e.g., Washington Post, 17 March 1992, p. A14).

Experts skilled in simple extrapolation and other analytical devices might conclude that the pre-war Iraq policy is a source of embarrassment to the Administration.

Backwards or Forwards, It's Out of Control

The new 1991 Information Security Oversight Office (ISOO) Annual Report to the President (p. 17) indicates that:

"In FY 1991, agencies reported combined classification activity of 7,107,017 actions, a 4.6% increase over the number reported in FY 1990. This marks the first time that the total number of reported classification decisions in a year is a palindrome."

On a less sublime level, the ISOO Annual Report fails to display any recognition that the defects of government classification policy are a contributing factor in the growing popular disdain for government, the increasing evasion of official responsibility, and the general erosion of our democratic institutions.

Moreover, 7,107,017 classification decisions in a single year is a bizarrely high level of activity, equivalent to more than 19,000 classification actions each and every day.

Compilations

One of the more annoying tricks of the classification trade is the classification of compilations of unclassified information. In other words, the government will sometimes assert that a collection or even a listing of items, each of which is individually unclassified, is nevertheless classified as a whole.

In one extreme case, the Air Force applied the compilation theory to a single pre-existing document, an outline of a nuclear rocket safety analysis report. The Air Force indicated that while "all individual portions of this outline are unclassified, compilation [as if a single original document could be a compilation] will reveal classified information which is secret/special access required." A review of the document, which was obtained anyway, reveals nothing that could have caused "serious damage" (or any damage whatsoever) to national security to warrant its secret/SAR status.

A June 1991 study by Arvin S. Quist, a classification officer at Oak Ridge National Laboratory, surveys the issue of "Classification of Compilations of Information."

A copy of the study is available from our office.

But At Least They Keep the Sabbath

In a March interview with the Associated Press (see, e.g., Washington Times, 25 March, p.E1), the General Counsel of the Central Intelligence Agency, Elizabeth Rindskopf, made the following authoritative observation regarding CIA practices:

"We do misrepresent, lie, steal on occasion."

More Classification Guides

We recently acquired another one of the estimated 800 classification guides used by the Department of Energy to determine the classification status of particular categories of information. This September 1989 document concerns classification of information pertaining to space nuclear reactor power systems for DOE, the Defense Department, and NASA. It is marked "Official Use Only" and would ordinarily be withheld under the Freedom of Information Act.

A copy of the classification guide is available from our office.

CIA Non-Disclosure Regulations Not Disclosed

In a 9 January 1992 Federal Register notice (page 876), the Central Intelligence Agency reported that it had issued new internal regulations on nondisclosure

obligations and prepublication review for current and former CIA employees.

Since the Federal Register notice said that the new regulations "are available to the public upon written request," we thought that meant that the new regulations are available to the public upon written request.

But after more than two months and three written requests, we have still been unsuccessful in obtaining a copy from the CIA.

Judging from the Federal Register, one point of the new regulations seems to be that "CIA will not provide official information to former Agency employees unless it is properly released to them through designated official channels.... In general, the Agency treats former employees like other members of the general public."

Preparation A: The Cure for Asteroids

The reports of two NASA working groups on the threat to Earth from asteroid impact are expected to be released in April. While one deals with the detection and magnitude of the threat, the second addresses methods for averting asteroid impact. (See, e.g., Science, 6 March 1992, p. 1204.)

Predictably, perhaps, the would-be threat aversion workshop focused on the use of nuclear weapons to destroy or deflect incoming asteroids. According to one participant in the workshop, it was "a nuclear orgy." Dr. Edward Teller, true to form, reportedly advocated the development, testing, and utilization of hundred megaton or gigaton nuclear blasts.

Interestingly, Dr. Teller's ebullient disciple, Dr. Lowell Wood, wrote in a 1990 study that "defense against cosmic bombardment with asteroids is technically readily feasible... *without* requiring nuclear explosives."

(See his May 1990 paper "Cosmic Bombardment II: Intercepting the Bomblets Cost-Efficiently." See also the 1990 Lawrence Livermore opus "Operation Chicken Little: A Program to Prevent the Falling of the Sky," subtitled, "The Sky is Falling, I Must Go and Tell the King.")

It is hard to believe that a new nuclear weapons program driven by "the asteroid threat" would be permitted to proceed very far. The very suggestion of such a program is likely to compromise the perfectly legitimate (and, we would say, desirable) effort to conduct surveillance and detection of Earth-crossing asteroids.

JFK Files to be Released?

Legislation introduced by Sen. David Boren and Rep. Louis Stokes March 26 (S.J. Res. 282) would require disclosure of most government files concerning the assassination of JFK, and who could object to that?

But the JFK files are not even the tip of the iceberg of improperly or unnecessarily classified government documents, an iceberg which would remain untouched by the new legislation. With secrecy in government running rampant today, it is puzzling why anyone would suppose, as Sen. Boren suggests, that release of these particular files "will help restore confidence among the public in our Government." Is public confidence that easily won and lost?

The implicit message of the Boren-Stokes bill seems to be that if you want documents declassified, you have to make a hit movie, preferably involving half-baked conspiracy theories. Mere reason has seemingly lost its power to compel government action in this area.

In fairness, however, the proposed legislation is skillfully crafted, even if it is absurdly narrow, and includes some major innovations that, if approved, could be profitably adapted to many other areas of government information policy. Indeed, Senator Boren's floor speech on the bill (Cong Rec, 3/26/92, p. S4392ff) eloquently argues the case for openness throughout government.