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SECRECY & GOVERNMENT BULLETIN

To Challenge Excessive Government Secrecy and
To Promote Public Oversight and Free Exchange
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Secret Aircraft Programs

A recent spate of "lights in the sky" has led to speculation about the existence of classified aircraft programs. A new FAS study, entitled "Mystery Aircraft," surveys the public literature on such programs, reviews the history of classified aircraft, and argues that the secrecy surrounding them has become excessive and self-defeating.

Purported sightings of high-speed, high-altitude, maneuvering vehicles have led some to conclude that the U.S. has developed a fleet of new aircraft and is either testing them or already flying several types in operational service. The public unveiling of one or more such aircraft is rumored to be imminent.

The FAS report reviews some past classified aircraft programs-- the U-2, the ill-fated Suntan, the SR-71, and the F-117A-- and provides a framework for evaluating the reports of current "black" aircraft programs.

The study argues that secrecy in military aerospace has exceeded all reasonable justifications. Such secrecy cannot, in any case, be effectively maintained beyond the early research and development phase, and has little point in the absence of a high-tech adversary. Secrecy in aerospace functions above all as a mechanism for enhancing the political fortunes of questionable programs. In short, it appears that many black aircraft programs are designed only to penetrate Congressional airspace.

A copy of "Mystery Aircraft" is available from our office.

Invention Secrecy

At a time when economic security is more at risk than military security, it seems odd that the government would classify new inventions on national security grounds. But that is exactly what it sometimes does, under the provisions of the 1951 Invention Secrecy Act.

In December 1991, for example, the Air Force imposed four secrecy orders on the manufacturer of a chemical compound known as titanate. Meanwhile, the Pentagon withheld a loan guarantee for the company on grounds that titanate has no critical military applications. As a result, the manufacturer claims to have lost about \$80 million in business to Japanese competitors. (See *Inside the Air Force*, 2/21/92, p.3).

As of 1980, when the House Government Operations Committee last conducted a thorough study of this issue, the Defense Department had imposed 41,432 secrecy orders on patent applications forwarded from the Patent and Trademark Office. Secrecy orders can also be issued by the Department of Energy, NASA, and the Department of Justice. Patents are withheld from the applicant for the duration of the secrecy order.

The original Invention Secrecy Act was a product of wartime, when it was found necessary to protect

particular technologies that could be crucial in military conflict. Secrecy orders issued under the Act were supposed to expire six months after the end of the National Emergency declared by President Truman in December 1950 around the time of the Korean War. As it turned out, however, the government never got around to terminating the 1950 National Emergency until March 1979. (As a result of this continuing "state of emergency," the Executive Branch retained hundreds of extraordinary powers through the late 1970s.)

As of 1980, about 3,500 secrecy orders were still in effect, and an average of 300 new secrecy orders were being issued per year. In the post-"national emergency" era, each order is supposed to be reviewed annually and either renewed or rescinded.

There is probably nothing unusually sinister about most of this. The majority of patent applications subject to secrecy orders are generated by DOD contractors and are already classified at the time they are submitted. Another large fraction are of foreign origin and are classified by agreement with the foreign applicant.

But a third category involves private applicants who independently develop a new unclassified technology, submit a patent application and then have it classified by the government, which also withholds the patent. About 10 to 20 percent of secrecy orders apply to cases in which the government has no property claim, according to a 1980 estimate. This practice needs to be reconsidered. Given the essentially arbitrary character of the classification system today, it is doubtful that these secrecy orders are being administered in the national interest.

Draft NSD on Unauthorized Disclosures Aborted

A secret draft National Security Directive (NSD) to crack down on unauthorized disclosures of classified information was apparently aborted in 1990 after more than a year of deliberation.

While the contents of the draft NSD are unknown, the chairman of the working group that prepared it, Michael J. Levin of the National Security Agency, is an advocate of legislation to criminalize the unauthorized disclosure of classified information.

The draft NSD was approved in mid-1990 by then-Director of Central Intelligence William Webster and sent to the National Security Council for implementation.

But, Levin indicated shortly afterward, "I regret very much to have to report that it's not likely that there will be a national security directive on unauthorized disclosures at this time. I'm not quite sure why that is, but it may have to do with the fact of political embarrassment in connection with some other cases.

"What we are recommending is that a lot of these things that were put into the [draft] NSD can be implemented by the Director of Central Intelligence who

has statutory responsibility for protection of intelligence sources and methods. And we hope that will be done." Levin recounts the tale in the Journal of the National Classification Management Society (vol. 26, p.49).

"We Classify Indiscriminately"

Craig Alderman, Jr., the Deputy Under Secretary of Defense (Security Policy), acknowledged some of the problems with government secrecy in a 1990 keynote address to the National Classification Management Society:

"We need to determine exactly what it is we want to protect. The world of classified information is far too large, and we classify indiscriminately. As a result, classification tends to lose its true import, and we are spread too thin trying to protect the classified universe. I believe we need a new approach to determining what should be protected, and we then need discipline in applying that approach."

Intelligence Spending

It is hard to say for sure how much of the money spent on intelligence is wasted or how deficient the quality of U.S. intelligence may be, because mere citizens are not permitted to know what the intelligence budget is or, in most cases, to evaluate its product. But some of the individuals who are in a position to make such a judgment have begun to speak up, as in a recent colloquy between Senator James Sasser and Senator Ernest Hollings (*Congressional Record*, 3/26/92, p. S4295ff.):

SEN. SASSER: "Is there any justification for spending in the neighborhood of \$30 billion to gather and analyze intelligence?"

SEN. HOLLINGS: "No justification whatsoever. We have far too many analysts over in the agency itself. We have over 800 people paid over \$100,000, we have over 800 senior people running around bumping into each other. And I find that particularly annoying because in the early 1950s you could get a report from the field and if it was on target, you would get that report. Now, the report you get from the field, its edges are so rounded, the content is so watered down, it is so masticated, it is mush."

SEN. SASSER: "I want to compliment the able Senator from South Carolina. He put his finger on something today that I think none of us had really fully thought through or thought about, and that is that there are significant savings that can be made out of the so-called intelligence agencies."

SEN. HOLLINGS: "We turn on CNN, we read the New York Times, Los Angeles Times, Wall Street Journal-- the free press is in there like beavers in all of these places, and we are getting way better intelligence than from [the] intelligence agencies. All of this work-- 80 percent of it now-- is going to be taken over by the free media."

While intelligence collection is apparently being superseded in many cases by the "free media," intelligence analysis also seems to suffer from serious defects. Senator Daniel P. Moynihan recently made the following observation (*Congressional Record*, 2/7/92, p. S1327):

"I fear the secrecy system is out of control because it has no means to correct itself. You know, the secrecy system got us to the point where in 1987, two years before the Berlin Wall came down, the Central Intelligence Agency was reporting that per capita income in East Germany was higher than in West Germany. If you believed that, you will believe anything, and we did."

"Openness": A New CIA Media Strategy

The senior Administration official who warned that the CIA openness initiative was little more than "media puffery" (S&GB, Feb 92) may have sounded cynical, but he was pretty close to the mark, judging from a report released in April to Rep. Lee Hamilton.

Instead of substantive changes to open up the intelligence bureaucracy, the Report of the Task Force on Greater CIA Openness calls for "a media strategy for the '90s" (p.5), and stresses that "we generally need to make the institution and the process more visible and understandable rather than strive for openness on specific substantive issues." (p.2)

The report further notes that the CIA Public Affairs Office "now has relationships with reporters from every major wire service, newspaper, news weekly and television network in the nation. This has helped us turn some 'intelligence failure' stories into 'intelligence success' stories...." (p.6, emphasis in original; see also *Washington Post*, 4/24/92, p. A1).

Earlier this year, the CIA had classified the report, claiming that release of any portion of the document could cause serious damage to national security.

But since the CIA's concept of "national security" is highly malleable, the Agency, under pressure, decided it was OK to release the report after all, minus the names of some individuals consulted in its preparation.

The Russian press, reporting on CIA "openness," claims with a disturbing element of plausibility that the Russian version of openness in intelligence and historical matters is far superior. An article in *Pravda* (24 Feb 1992, FBIS-SOV-92-040, p.20) asserts that "even in this sphere of glasnost the Americans are very far behind us."

A copy of the CIA Report on Openness is available from our office.

Nuclear Rocket Update

The Air Force has been conducting a series of scoping hearings in Nevada, Idaho, and Utah as part of an environmental impact review process for ground testing of a nuclear rocket.

With breathtaking impertinence, Lt. Col. Gary Bleeker, the new program manager of the Space Nuclear Thermal Propulsion program (formerly "Timberwind"), complained that the public participants in the scoping hearings were not very well informed. (*Military Space*, 4/20/92). His program has been classified at a Secret/Special Access level for all but four months of its nearly five year duration.

The Air Force did release a sanitized version of the 1991 Timberwind Environmental Impact Statement to Rep. Wayne Owens, though without a safety analysis the document is pretty useless. In violation of classification guidelines, the Air Force deleted all references to the Strategic Defense Initiative Organization, the initial sponsor of the program. Also deleted was all discussion of flight test planning, mission applications, and each use of the word "Timberwind," or TW.

When anyone presumes to ask why the Air Force is working on a nuclear rocket in the first place, spokesmen either evade the question, or start talking about a mission to Mars. One NASA official finally got fed up and explained that the Air Force nuclear rocket design is unsuitable for a mission to Mars, and would never be used for that purpose. (*Idaho Statesman, Associated Press*, 4/20/92). Its mission, if it had any, would be solely military.

Meanwhile, a major new report by a Committee of the National Research Council implicitly calls into question the entire basis for the Air Force nuclear rocket program. "At this time, the Committee does not consider nuclear propulsion suitable for use in Earth-to-orbit launch vehicles, even in upper stages." (*From Earth to Orbit*, National Academy Press, 1992, p. 67).

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