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SECRECY & GOVERNMENT BULLETIN

To Challenge Excessive Government Secrecy and
To Promote Public Oversight and Free Exchange
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Classified Universe Expanded in 1992

The total number of classified government documents continued to increase in 1992 as the rate of classification exceeded the rate of declassification.

The new Information Security Oversight Office (ISOO) annual report indicates that the total of all classification decisions reported in FY 1992 decreased about 11% to 6,349,532 (still an average of more than 17,000 per day). At the same time, however, the number of pages declassified under systematic review declined 33% to 9,426,011.

Because classification activity is reported in "decisions" while declassification is reported in "pages," the overall increase in the number of classified documents is obscured in the ISOO report. But once it is recognized that each classification decision typically results in the classification of multiple pages, it becomes clear that *classification exceeded declassification by a factor of at least several times*. The net growth in classified documents was confirmed by ISOO director Steven Garfinkel (see interview below).

Other ISOO findings included both positive and negative developments. Favorable trends included a reduction in the number of individuals authorized to originally classify information (down to 5,793). Unfavorable trends included a reported overuse of the Top Secret classification level and an almost total (95%) reliance on indefinite classification.

A copy of the 1992 Annual Report may be requested from the Information Security Oversight Office, 750 17th Street, NW, Suite 530, Washington, DC 20006.

New Presidential Directives Disclosed

The first two Presidential national security directives of the Clinton Administration have been released in their entirety and without even a struggle. Release of subsequent directives is under review.

In the past, such directives were regularly withheld from the public and from Congress. The General Accounting Office last year said it could not even find out how many directives the Bush Administration had issued.

The new series of directives, known as Presidential Decision Directives (PDDs), supersedes the Bush Administration's National Security Directives (NSDs).

PDD 1, dated 20 January 1993, is entitled "Establishment of Presidential Review and Decision Series/NSC." PDD 2, also dated 20 January, is entitled "Organization of the National Security Council."

There is nothing at all sensitive about the documents. In fact, they are rather dull. But that never stopped the Bush Administration, which even classified the numbers and dates of most of its directives.

PDDs 1 and 2 may be obtained from our office.

If It Wanted, the Senate Could Publish the Intel Budget

The debate over whether or not to disclose the total intelligence budget is becoming increasingly tiresome, particularly since, as Admiral Studeman put it, that budget number is "the worst kept secret in town." If the executive branch is not prepared to face this fact, the Senate Intelligence Committee should take the initiative and publish the budget this year. Under Senate Resolution 400, it already has the authority to do so.

Significantly, no one believes that official acknowledgment of the intelligence budget total would jeopardize national security in any way. Rather, opponents of disclosure are concerned about a slippery slope that would lead to further, more detailed disclosures of the intelligence community budget and activities. (Nevermind that those budget breakdowns are also more or less in the public domain.) Thus, these opponents insist on total budget secrecy mainly as a tactic to forestall public inquiry about the budgets of particular intelligence agencies and programs.

It so happens, however, that secret budgets are unconstitutional. As is regularly and fruitlessly pointed out, Article I, Section 9 of the U.S. Constitution requires that "a regular statement and account of the receipts and expenditures of all public money shall be published from time to time."

The Cold War judiciary has never allowed the statement and account clause to be enforced against the defense and intelligence "black budgets." One court, a sort of forerunner of literary deconstructionism, held that this clause "is not self-defining" and has no plenary meaning. Consequently, there is nothing to enforce! That, of course, is a dangerous line of interpretation. If words have meaning, then secret budgets are prohibited by the Constitution. Advocates of budget secrecy should seek a Constitutional amendment if that's what they want.

But Congress has already determined in a non-binding resolution that "beginning in 1993, and in each year thereafter, the aggregate amount requested and authorized for, and the amount spent on, intelligence and intelligence-related activities should be disclosed to the public in an appropriate manner."

If the executive branch fails to adhere to this "sense of the Congress," then the Senate Intelligence Committee could invoke the provisions of Senate Resolution 400 (adopted May 19, 1976), which enables them to declassify such information unilaterally.

Under section 8 of that resolution, the Committee may disclose classified information in its possession after giving the President five days advance notice. If the President objects to disclosure within that period, the full Senate must approve the action. The declassification authority contained in S.R. 400 has never been exercised. Maybe its time has finally come.

Garfinkel Talks

Steven Garfinkel is the Director of the Information Security Oversight Office (ISOO), the government agency which is responsible for overseeing the implementation of the national security classification system. Mr. Garfinkel was kind enough to meet with S&GB editor Steven Aftergood at his office on March 9 to discuss potential changes to the classification system. The interview, excerpted below, was recorded by both sides.

A New Executive Order?

S&GB: The word on the street is that a new draft executive order on classification is starting to take shape. Is there any truth to that?

Garfinkel: Well, we have an interagency group that's been looking at changes to the executive order for years. While working on the National Industrial Security Program we ultimately ended up putting the changes to 12356 [the current executive order on classification] on the back burner while we worked on the NISP order. And now we're taking it back off the shelf. We'll start with the most recent draft and work from there.

S&GB: Is this basically your initiative?

Garfinkel: Right now it is.

S&GB: So you haven't yet received any policy direction.

Garfinkel: I have alerted the National Security Council that we're doing this and invited their input and as a matter of fact encouraged their input. I'm told that we will be hearing from them but we haven't yet. But we're not stopping while we wait.

S&GB: You've been working on revisions to the executive order for years. What's the time line?

Garfinkel: I could have a draft...

S&GB: This afternoon?

Garfinkel: ...this afternoon if I wanted to. But it will probably be later this month that I will circulate at least what I would call a draft to the other members of the interagency group.

S&GB: Do you want our input on the draft?

Garfinkel: Well, I have your input in the sense that I have your newsletters. We need to get direction from the Administration in terms of who's going to be commenting and whether it's going to involve outsiders' input or not.

S&GB: Until you do get some sort of direction from the Administration, you can prepare all the drafts you want, but if they're thinking along different lines, the draft you come up could well be moot.

Garfinkel: It could be a wasted effort but I don't think it will be. Even if they say we don't want you to do it, I think the product that we come up with involves a lot of knowledge and a lot of experience and they would be wise to look at it, and I think they will.

S&GB: The product could also involve a lot of baggage. For example, are you going to be able to say, eliminate special access programs? Are you going to be able to say, declassify automatically after just a few years?

Garfinkel: Certainly the draft we've been working on intends to increase oversight of special access programs (SAPs). For example, the language in the executive order says the director of ISOO shall have non-delegable access to accounting for SAPs. Because as director of ISOO I don't have enough time to exercise that responsibility, my involvement in SAPs is usually limited to cases where controversy arises. That's not good. So one of the changes that we're definitely going to recommend is that ISOO-- all of ISOO-- have access to SAPs. Whatever is necessary in terms of getting people cleared for it, we can take care of. Our people have a zillion clearances to begin with, they can have a zillion and one.

S&GB: OK. So you'll get this draft executive order out to the other interagency group members in a month or whatever, and then what happens? Eventually you'll reach consensus and you'll provide it to NSC?

Garfinkel: Well, we don't know. Either that will happen or in the interim we will receive instructions from NSC.

They may choose a different process. I don't know what process they're going to select. It may be that reviewing the executive order will be a subset of some larger effort for all we know. We don't know.

Automatic Declassification

S&GB: Does automatic declassification figure in your current thinking?

Garfinkel: Well, there are two separate issues in terms of declassification. One issue is with regard to duration-- how long does stuff get classified for when it's initially classified. The second issue is what do we do with older stuff [that has already been classified indefinitely]. There are a number of initiatives that we're thinking of for the older material, including a very strong possibility of just recommending a drop dead date [i.e. canceling the classification of older documents].

With respect to duration [at initial classification], there are going to be a lot of different ideas. There's going to be some input to go back to something like we had under 12065 [the Carter executive order] or its predecessor.

You have suggested that we go back to something like that and enforce the rule.

S&GB: Make it work.

Garfinkel: I think that's great. I also think it's kind of naive. I look at a lot of newly classified material. And while there's a certain percentage that I would be happy to apply a declassification date or event for, if you establish a six year rule or a five year rule or perhaps even a ten year rule, you're going to run into real problems. Certainly in any of the areas dealing with intelligence, in any of the areas dealing with foreign relations, in a lot of the areas dealing with military procurement, at six years or five years you're probably not going to go beyond the period of this information's sensitivity. When you get up to a longer period of time, depending on what the information is, you will.

It will be interesting. It's one area that I've solicited as actively as I can anyone's ideas. We have some ideas but they're not real good ones.

S&GB: It would be politically and perceptually awkward if the Clinton executive order turned out to be more hardline than, say, the Nixon executive order was.

Garfinkel: What we're going to have is the first executive order in a post-cold war era, and we have to recognize at the outset that these executive orders have been essentially the same. You can attack E.O. 12356 in your newsletter, but if you look at what is classified under 12356 and if you look at what was classified under 12065 and what was classified under 11652 and then back all the way to the Truman order, the information is the same. So the system doesn't bear that strongly on what gets classified and what doesn't get classified.

S&GB: But it may bear strongly on what gets declassified.

Garfinkel: If we were to enforce the six year [automatic declassification] rule and there were no exceptions, that's true, that would bear on it. And it would have resulted, at least in the past, in chaos, and I think the President would have gone back from that. Had Jimmy Carter been reelected, I think it is fair to say that his system would have been amended with respect to the six year rule anyway. So I don't know that it would have been that much different.

The point that I'm making is that we have the first opportunity for an executive order system in a post cold war era, and that raises the question, what do we really need to classify now? Are those traditional categories of secrets still critical? That's what we need to examine.

We've been told by someone-- I wasn't there-- that Clinton said in a staff meeting that he is concerned about overclassification.

S&GB: Who isn't?

Yeah, well, you know, we're waiting.

Financial Costs

S&GB: The question comes up periodically, what is the cost of the secrecy system? And the answer always seems to be, who knows? There's no good number. The NISP report a couple years ago gave this estimate of \$13.8 billion per year for industrial security. Assuming that's valid, what's your feeling about the government side of the equation? Isn't it bound to be at least as much as the industrial security cost?

Garfinkel: Not necessarily. As a matter of fact, it might be considerably less because a lot of the greatest expense may go into industry especially, as you described, in acquisition programs. I don't know that it is less. But one of the things that is in our draft executive order would be the requirement that agencies account for cost, which they've never been required to do before.

S&GB: I see that the NISP executive order requires the same thing.

Garfinkel: The NISP executive order says it and right now we are struggling with developing a methodology of how you're going to do that. Because the \$13.8 billion is a very soft number, and it was not developed under any standard methodology.

S&GB: So basically, we don't know.

Garfinkel: I think that's fair. We don't know. Because security everywhere has in the past been an overhead item rather than a direct expenditure, it becomes very very difficult to separate it from other associated costs.

S&GB: Are you aware of any kind of estimate of total life cycle cost of classifying a single page of paper?

Garfinkel: There are some numbers bandied about for how much it costs to store a document. It depends on where you store it. It can be from about a dollar a year if you have it in an archival facility that's large and not being accessed. And it can be twenty, thirty, forty dollars a year if it's a piece of paper or a document that's being used quite a bit. I think there's a tremendous range. And most classified information is only active for a very short period of time until it becomes inactive.

S&GB: But it still takes up floor space, at a minimum, and then assuming it's ever declassified, there's the cost of review.

Garfinkel: Declassification is probably the most expensive aspect of its life cycle if it's going to be subject to declassification review. It means probably three or four levels of rather highly paid individuals, the next level being more highly paid than the one before it.

S&GB: Which ought to be a major incentive for some kind of bulk declassification effort. In next year's ISOO annual report, you could talk about all the money you saved by implementing bulk declassification!

Garfinkel: Well, even if we were able to come up with it this year, it would take a while for us to see the gains. But it's got to happen some time.

Systematic Declassification Review

I like to look at the fact that when Nixon issued his executive order, and he first introduced the concept of systematic review, the purpose of it was essentially to take care of World War II era records that were in the National Archives and in the military services and everywhere taking up huge numbers of cubic feet. With kind of a wave of the hand over the course of the next few years, most of it was declassified without ever being reviewed. And that was pretty successful in the sense that I've never heard any great horror stories about stuff that was released. In fact, most of it has never been looked at.

S&GB: That's a good way to protect classified information-- release everything! The bad guys will be totally confused.

Garfinkel: They'll never find it.

S&GB: I was looking at an old GAO report from the late 1970s and there's this amazing letter from you at the back of it defending systematic declassification review. You were arguing that one shouldn't judge systematic

review merely by its financial costs, that it serves a larger interest, and the American people depend on it, by gum!

Garfinkel: That was when the General Accounting Office, of all people, wanted to do away with systematic review. It was an interesting phenomenon.

S&GB: And you were right there defending the public interest.

Garfinkel: There you go. And ever since then, too.

S&GB: Uh-huh. Of course, a couple of years later, systematic review was pretty much history.

Garfinkel: No, I don't think so. About 1980, what happened is that we ran out of the large bulk of classified World War II records, and started to have to look at individual documents. And that's what slowed systematic review down. I do think that one of the things we're going to recommend is that agencies other than the National Archives have to get back in the systematic review business. That was in the draft that we worked with last time, and we certainly think that's...

S&GB: It's critical.

Garfinkel: There's got to be a commitment saying that an agency will do it. We say now that the National Archives will systematically review everything it has at 30 years. But it has tons and tons and tons of stuff that's more than thirty years old that doesn't get reviewed because there's nobody to review it. What the GAO said was, if nobody's asking for it, why review it?

S&GB: Of course, if you don't know it's there, how do you ask for it?

Garfinkel: That's another thing.

The 1992 ISOO Annual Report

S&GB: Your statistics here raise a lot of questions. How confident are you, for instance, that all classification decisions are being reported to you?

Garfinkel: Not very.

S&GB: That's what I thought.

Garfinkel: I think we have been very honest in our reports that what we hope to gain is a firm understanding of the trends, and not to be able to go to the bank with these numbers. Though some of these numbers we can go to the bank with.

S&GB: All of these numbers are going to be most meaningful in the context of past reports because at least there's some consistency from year to year in methodology, but they don't necessarily have an absolute correlation to what's going on in the external world.

Garfinkel: Right. These numbers also don't include what's going on in industry. But we would assume the trend is very very similar.

S&GB: I think the outstanding problem that's presented by the ISOO annual report is that more pages are being classified than declassified. And that to me is the sign of a sick system. It's the equivalent of deficit spending in classification.

Garfinkel: I think there's a bigger problem than that. We need to get a handle on the fact that each original classification decision-- first of all, it's going to result in some derivative decisions. But more than that, the classified material is going to be duplicated, it's going to be sent over computer, it's going to have a life probably in three or four hundred different places. What we lack right now is any control so that if the declassification decision is ever made, how would everybody else know? They wouldn't, and that's a major problem.

S&GB: But is it correct that more pages are being classified than declassified?

Garfinkel: Yeah, I think so. But again, the thing you have to understand is that classification decisions result in duplication. If we were to give the classification number in pages, people would immediately say, OK, the universe increased by that many pages this year. No it didn't! The universe increased by a lot more than that. It went out, it mushroomed.

S&GB: And you agree that that's problematic?

Garfinkel: I don't go to the extreme that you do, because

as long as the system permits someone to challenge that classification or request that document, the system can correct itself. So sure, it would be great if we had a decreasing universe rather than an expanding universe. But as long as our system also provides access, or at least the opportunity for access, if someone requests the information, then I think our system has in it something that's pretty unique.

S&GB: To the extent it works. I mean, the problem is, it often doesn't work. Last year, we talked about the World War I document that was still classified.

Garfinkel: I realize that that's a problem, but...

S&GB: And there are more important documents that people want that they can't get. Like in the last newsletter, we talked about the author who's trying to get POW files from the Korean War...

Garfinkel: Yeah, I was going to ask you...

S&GB: And he can't get them.

Garfinkel: Well, I would like to know why that is. Sitting where I sit, I would like to know why a 40 year old document can't be declassified when someone actively wants it. Now, that's not to say-- I've had lots of times when I've gone to an agency very cynical about the classification of an old document and discovered that there was really something to it, something very very current. It's very much the exception. But I've made a note about the Korean War-era POW files.

S&GB: Shall I send over the correspondence on that?

Garfinkel: If you do, I'll certainly look into it. I'll look into it even if you don't. That's one of the things we do.

Enforcement

When stuff shouldn't still be classified, it usually gets declassified. But it's interesting. If a request for classified material gets to the appeal level, somebody usually at a very high policy level looks at it, and that person is not afraid to make the tough decision [to declassify].

S&GB: I noticed your comment in the ISOO report about the need to encourage the lower level people to declassify in "iffy" situations. That raises the question of enforcement. At the end of the executive order, there's a section on sanctions, and it has all these incredible sanctions for violations of the executive order including unnecessary classification. Have you ever heard of anybody being terminated for overclassification?

Garfinkel: No.

S&GB: Has anybody ever lost classification authority for overclassifying a document?

Garfinkel: Not that I'm aware of. But then you and I would probably disagree about why people overclassify. I have rarely, rarely seen a document that's been overclassified because someone wanted to cover up a wrongdoing. I've seen lots of overclassified documents, but usually you can figure out a rationale why this person classified it. Once in a while you can't. And once in a while it's stupid. But malice is pretty tough to show.

Overall

S&GB: The whole classification reform process seems to be moving extremely slowly. Of course, the Administration as a whole is moving very slowly.

Garfinkel: Certainly they have other priorities than the security classification system.

S&GB: That's hard to understand!

Garfinkel: Notwithstanding you, very very few people give a tinker's damn about the security classification system.

S&GB: When you said that last year, I thought you might be right, but I keep running into more and more people that are furious about government secrecy.

Garfinkel: You're cavorting amongst the anti-secrecy underground, which is fine, and you can all help each other out by telling each other you're doing a good thing, and what have you. But I've learned over the years that once you get out of a rather small community of interest, people really couldn't care. It doesn't affect their daily

lives, at least to the extent that they know that it does, or can see that it does. Which disturbs me-- look, I make my living doing this and I would like people to be interested in what I'm doing and think I'm doing something worthwhile.

S&GB: I pick up the paper and I see two or three stories a day that have to do with information security or controversies that arise due to information security issues.

Garfinkel: Well you also are probably reading the New York Times and the Washington Post. And once you get beyond those two publications...

S&GB: There's fewer in People magazine, I guess.

Garfinkel: A lot less in there, and a lot less elsewhere. Although you were incredibly successful at getting out your horror story about the classified WW I document. I saw editorials from the Hattiesburg Times or something.

Special Access

S&GB: When special access programs adopt cover stories to conceal their existence, are you in the loop on that?

Garfinkel: If for some other reason we are looking at the special access program, they will alert us. But we're not read in to a program unless we ask to be.

S&GB: Isn't there some kind of Catch-22 there? You're not going to inquire into a program unless you're cognizant of its existence.

Garfinkel: I made clear at the beginning of our interview that one of the problems with the current system is that the accountability of special access programs is limited to me.

S&GB: Presumably you do spend one or two percent of your time on special access programs, so you have to make choices as to where you're going to spend your time.

Garfinkel: I spend my time on those that suddenly just start to smell. I mean, your Timberwind, or something else.

S&GB: To my amazement, the DoD Inspector General basically confirmed that Timberwind should not have been special access. I'm going to have to take back most of the nasty things that I thought about them.

Garfinkel: Well, you know, the one argument I have with your newsletter and with your approach-- and I'm not saying you need to change it or anything-- is that I disagree on the motive. You and conspiratorialists attach a malicious motive to things when really usually it's lack of knowledge, lack of interest, lack of resources. There's usually a motive that's so much more benign than what would sell newspapers or interest people in Mississippi.

Those contractors that you speak of so disparagingly of [in the February S&GB]-- I know a lot of them, and they're not bad people. A lot of them are doing what they are told to do, and they're doing it very well. And a lot of them question classification decisions. A lot of them don't just go out and make a buck for their company by building another vault. The whole NISP concept-- it was special access programs that were the major impetus for the NISP initiative within industry. And that's contrary to the argument that industry loves SAPs.

S&GB: OK. Anything else I should know? Any other problems with the newsletter?

Garfinkel: No. I look forward to getting it every month. I read it right away, as soon as I see it in my In box. We circulate it-- you can see we have our circulation slips on here. Everybody gets to get angry at you.

If I were you, I would stay in touch, because things may develop over the next few months. If they don't, I'd be very upset myself.

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