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SECRECY & GOVERNMENT BULLETIN

To Challenge Excessive Government Secrecy and
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New Draft Order on Secrecy: An Ambiguous Beginning

The first draft of a new executive order on classification speaks the language of public access and accountability, but it doesn't live up to its own rhetoric. In crucial respects, the new draft does not even rise to Richard Nixon's standards of openness.

The draft is an initial response to Presidential Review Directive 29 of April 26, 1993. A copy of the 150 page draft package, dated August 31, was obtained from U.S. government sources.

Many of the "major changes" described in the attachments to the draft order are not supported by a close reading of the text. For example, the attachments state that:

- the order "establishes a maximum life span for all national security protected information." But there are exceptions even to the "maximum" life span, which is set at a grossly excessive 40 years. (sec. 3.4b)
- the order "stresses... balancing the need to protect critically sensitive information with the public's need to know." But the implementing language does not require classifiers to consider the public's need to know at all. (1.3a) When exercising declassification authority, senior officials are permitted, but not obliged, to weigh the public interest in disclosure. (3.2b)
- the order "prohibits the reclassification of information after it has been declassified and released to the public under proper authority." But the implementing language says a FOIA request for a declassified document that has not yet been released may trigger reclassification.
- the order ends the Confidential classification level and "directs that information classified Confidential ... be declassified no later than six years from the effective date of the Order." But in advance of their declassification, old Confidential documents can be newly classified as Secret and withheld for another decade or more. (1.3d)

It is understandable that any rule might have an occasional exception. But in these and a dozen other instances, the exceptions in the draft order would vitiate or even nullify the rule.

On the plus side, there are a number of limited but valuable improvements in the areas of administration and enforcement, some of which were proposed by public interest groups. These include provisions to eliminate the presumption that any category of information is automatically classified; to establish a government-wide database of declassified documents; to require Inspectors General to monitor the system; and to penalize negligent, not just willful, abuse of classification.

But aside from the troubling equivocations noted above, there are several basic policy judgments that must be changed right away. A few important examples:

- The maximum life span for classified information, set for 40 years with some allowances for even longer

duration, is far too long. President Nixon, in his 1972 classification system, set the maximum life span at 30 years (E.O. 11652, sec. 5E). President Carter (E.O. 12065, sec. 1-402) placed the maximum life span at 20 years. If the Cold War is over, it is hard to understand why the Nixon or Carter standards cannot be matched and bettered. The maximum life span for all classified information should be set at no more than 20 years.

- The draft order perpetuates an unrealistic reliance on systematic review of old classified documents. Although all agencies, not just the National Archives, would be required to conduct systematic review of classified documents older than 25 years, this has never worked in the past and will not work today. It is not cost-effective, assuming it is even physically possible, to review all of the countless documents that are over 25 years old. A maximum classification lifetime of 20 years would eliminate the massive bottleneck of systematic review, and save a large amount of money.

- The proposed automatic declassification schedule is excessively lengthy. According to the draft, new Secret documents would have to be declassified no more than ten years after issuance (*except* when classification is extended for additional ten year periods). New Top Secret documents would be automatically declassified after no more than 15 years (*unless* they are granted extensions for additional decades). This may be an improvement over the Reagan standard of classification forever, but it falls short of the Carter baseline declassification schedule of 6 years for Top Secret documents, and it is timid even in comparison to Nixon's 10 year declassification schedule for Top Secret. The schedule should be accelerated.

The draft executive order is currently being circulated among executive branch agencies for comment. Public comment is not solicited. A final draft is to be prepared and presented to the National Security Council no later than November 30, 1993.

Star Wars Deception

Most government secrecy is passive in the sense that it is limited to concealing information. The most egregious form of secrecy, however, is what was known in the Soviet Union as "active measures" and involves the deliberate dissemination of false or misleading information with the intent to deceive.

In one of the most important national security stories of the year, the *New York Times* account (8/18/93) of the practice of deception in Star Wars tests in the early 1980s brought to the fore the little recognized fact that the U.S. government also employs "active measures."

Though some of the reported allegations were apparently in error, the Defense Department was compelled to confirm two essential facts: A deception program was in place for at least the first three SDI

Homing Overlay Experiment tests, and not a single member of Congress was informed. (*Washington Post*, 9/10/93, A19). In other words, the Pentagon placed Congress in the same category as the Soviet enemy. Indeed, Congressional skepticism might have posed the greater threat to the Star Wars program.

The expedited Pentagon inquiry to rebut the Times story also raised some new issues which warrant Congressional investigation:

- The Pentagon said that this particular deception program ended in September 1983. Further, Secretary Aspin declared that all special access deception programs have been reported to Congress since the passage of a 1988 law requiring notification to Congress of all special access programs. But what about the period between 1983 and 1988? How many deception programs were executed and not reported to Congress? What proportion of Pentagon information dating from that period is false?

- Secretary Aspin stated that today, all special access deception programs are being reported to Congress as a result of the 1988 law. However, Pentagon program managers have displayed great ingenuity in evading that law, creating "restricted access programs" (RAPs) and other "non-SAP SAPs" (see *S&GB* 25) that are exempt from the reporting requirement. How many deception programs outside of formally established special access programs are being carried out by the Pentagon without notification to Congress?

- When a deception program is reported to Congress, how many members are actually informed? How many members proceed to vote on defense programs on the basis of false or misleading information?

Deception, in the form of "cover stories," is part of the security repertoire for special access programs (SAPs), which is one of the factors that makes them so dangerous. Portions of a 1992 security manual for SAPs, authorizing cover stories and requiring that they be "believable," are available from the FAS Secrecy Project.

If the new executive order on classification continues to allow the establishment of SAPs (as the draft does), then it should at least prohibit the use of cover stories as a standard security option. Deception as an instrument of policy is simply poisonous to the nation's political health.

Inside the Directorate of Intelligence

From a distance, the CIA appears to be monolithic and stable to a fault. Judging from inside accounts, however, the Agency has all of the defects of any large bureaucracy, and then some.

An exceptionally grim picture of an Agency in decline is portrayed in *Lost Promise* by John A. Gentry (University Press of America, 1993). Gentry resigned from the CIA's Directorate of Intelligence in 1990 after 12 years as an analyst. His personal account of the politicization, pettiness, and ethical laxity that reign there suggests that the CIA may be approaching the end of its productive bureaucratic lifetime.

Much of Gentry's critique is an elaboration and substantiation of the criticisms voiced by many analysts at the 1991 confirmation hearing of DCI Robert M. Gates. Gentry adds a wealth of new detail about the process of producing intelligence analysis, with some notable absurdities. ("It is common, for example, for a word like 'which' to be changed to 'that' and back again several times during the review process.")

Gentry's book is not evenhanded or dispassionate. But it is an authentic representation of what seems to be a distressingly common experience of life at the CIA. A reviewer for the National Military Intelligence Association called the book "the best I have seen on the atmosphere, procedures and pressures inside the [Directorate of Intelligence]."

Many of the specific failures Gentry describes are common to all large organizations, and to many small ones. But since it is insulated by secrecy, the CIA is

immune to the corrective mechanisms that help keep other organizations healthy and competitive. It is not subjected to the "market forces" that sooner or later punish a stagnant, unresponsive business enterprise. And it likewise escapes to a large degree the kind of probing public criticism that an agency like NASA, for example, must endure on a nearly daily basis. Of course, much criticism is not constructive, and "market forces" can produce an orthodoxy of their own. But an absence of significant external feedback, as at the CIA, is the beginning of stupidity.

The work of the Congressional intelligence oversight committees remains vital, but they are hamstrung by limited resources and a fear of micro-management, with the result that "macro-management" suffers. And their continuing failure to secure the publication of the intelligence budget, for example, suggests that their sense of obligation to hardliners in the intelligence community runs deeper than any commitment to the public interest in accountability.

As in so many other areas, overclassification has become a threat to intelligence analysis. Analysts want their work to be read, critiqued, corrected, expanded upon, and used! They suffocate in an atmosphere of excessive secrecy. To liberate the analysts and to invigorate the analytical process, the following principles should be adopted:

- No intelligence analysis should be classified unless it clearly contains specific data that must be classified by law or directive.

- If the substance of an intelligence analysis can be conveyed without including specific classified information, such information should not be included.

- If the analysis would be incomplete without classified information, the primary document should be unclassified whenever possible, with classified data relegated to an appendix.

- In cases where classified data must be an integral part of the document, an unclassified, releasable version should be prepared whenever possible.

These steps (based on similar principles enunciated by Energy Secretary Hazel O'Leary in a June 25 memo on environmental, safety and health data) would allow for broad peer-review and intellectual cross-fertilization, provide some sorely needed quality control, and enhance the utility of intelligence analysis. The alternative is for the CIA to proceed further along the path to solipsism and irrelevance.

Secrecy Costs

According to a recent industry-Defense Department survey, the annual costs of secrecy are even higher than might have been suspected.

Officials estimate that it costs approximately \$75 per document per year to maintain each accountable--Secret and Top Secret--classified document in industry. (*Security Awareness Bulletin*, July 1993, 25).

This estimate does not include, the costs of classifying or declassifying information, but simply of maintaining a classified document. (Among government contractors, only Secret and Top Secret, but not Confidential documents, are "accountable," that is, subject to tracking from receipt to disposal.)

There is no reliable estimate of the number of accountable classified documents in circulation within industry but, including the multiple copies of individual documents dating back decades, it could plausibly run into the many millions.

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