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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

Issue No. 3  
October 1991

### Czar Wars

The Senate proposal to establish a "black czar" in the Pentagon with legal responsibility for management and oversight of special access ("black") programs has encountered vigorous opposition from Secretary Cheney and, for different reasons, from several leading members of the House of Representatives.

Defense Secretary Cheney wrote to the defense authorization conference committee urging rejection of the new oversight proposal, calling it "counterproductive and constitutionally questionable." (Inside the Pentagon, 9/12/91). This bizarre assertion is almost amusing, considering the flagrant violation of constitutional principles that is inherent in special access.

From a different point of view, five House Committee Chairmen expressed their opposition to the Senate proposal on the grounds that instead of improving oversight, the net result would be that their access, already strained, would be diminished, since access would be granted by statute only to the heads of the Defense Committees and selected members of their staffs.

"This provision, if enacted into law, would undermine the checks and balances so important to preserving our tripartite system of government and would deal a terrible blow to Congress' constitutionally protected right to oversee all Executive Departments, including DOD," wrote Rep. John D. Dingell.

"The harmful nature of this proposal cannot be overstated. It should be obvious in light of recent revelations about the B-2 bomber and other Pentagon scandals, that Pentagon programs and the corporate contractors that serve them need more Congressional oversight, not less. Yet this bill effectively narrows to a handful the number of Members who have access to the hard facts and figures about "black" programs," Dingell wrote.

Though well-intentioned, the most fundamental problem with the Senate proposal is that it would institutionalize and perpetuate the special access system, when that system ought to be terminated. Special access has been abused too many times.

### Intelligence Oversight

The Senate deliberations on the nomination of Robert Gates to become Director of Central Intelligence raise serious concerns that go far beyond the qualifications of Mr. Gates himself. Specifically, the Senate proceedings call into question the ability of the House and Senate Intelligence Committees to adequately oversee the functioning of the nation's intelligence apparatus.

If intelligence estimates were systematically skewed throughout the 1980s, if dissenting views were suppressed, and information was in effect invented to suit ideological convictions, where were the Intelligence Committees?

Why has it taken the nomination of Robert Gates to shake this information loose? What have the Intelligence Committees been doing while meeting behind closed doors?

These Committees should either open up their proceedings to public scrutiny or the country may need confirmation hearings on a more regular basis.

### Special Access Oversight

A recently released Congressional hearing record (House Armed Services Committee Serial No. 101-84) recounting the travails of the Navy's A-12 Aircraft Program, a paradigm of overclassification run amok, also provides some revealing statements on the dismal state of Congressional oversight of special access programs.

Congressman Ronald V. Dellums, the Chairman of the Armed Services Research and Development Subcommittee, reports that he asked the staff of the subcommittee "what percentage of all of the special access programs are actually reviewed in depth by the Congress of the United States.... The answer was maybe 5 to 10 percent." (page 67)

In other words, the practical effect of special access classification is to subvert the Constitutional system of checks and balances. Ninety percent or more of special access programs sail through the system without legislative oversight.

What about those special access programs that do get "reviewed"? Representative John R. Kasich describes the process:

"See, we go up in the Intelligence Room and we have these-- literally have a slide show, then Les [Chairman Les Aspin] is up there, and we have got like 50 programs we are trying to do, and it just doesn't work for real good review." (page 90)

### Plain Speaking

Aviation Week & Space Technology magazine (29 July 1991, p. 11) reports a widely shared perception of the purpose of special access programs:

"Approximately 80% of highly classified defense programs buried in the 'black world' are there primarily to avoid oversight, according to an aerospace industry executive. Most are 'pet projects' that would not survive if subjected to 'white world' scrutiny."

## Overclassifying is a Crime, Too

Everyone knows that the disclosure of classified information to an unauthorized person is prohibited by law. But it is less commonly recognized that it is a violation of law to deliberately classify information that does not require protection in the interest of national security. Yet this sort of violation goes on all the time.

Executive Order 12356, the foundation of the classification system, is quite straightforward on this point:

"In no case shall information be classified in order to conceal violations of law, inefficiency, or administrative error; to prevent embarrassment to a person, organization, or agency; to restrain competition; or to prevent or delay the release of information that does not require protection in the interest of national security." (Section 1.6).

Furthermore, violation of this section is punishable:

"Officers and employees of the United States Government, and its contractors, licensees, and grantees shall be subject to appropriate sanctions if they... knowingly and willfully classify or continue the classification of information in violation of this Order or any implementing directive...

"Sanctions may include reprimand, suspension without pay, removal, termination of classification authority, loss or denial of access to classified information, or other sanctions in accordance with applicable law and agency regulation." (Section 5.4)

It is questionable how often (if ever) and how effectively these provisions against overclassification have been enforced. To test the integrity of the system, the Federation of American Scientists recently submitted a formal complaint regarding overclassification of the Timberwind nuclear rocket program to the Director of the Information Security Oversight Office, which is responsible for maintaining classification standards. Timberwind, disclosed last spring, provides a textbook example of a program classified in order to shield it from public scrutiny rather than on the basis of genuine national security considerations.

## Timberwind Update

Spearheaded by an energetic and pumped-up Air Force Lieutenant Colonel, the Timberwind secret nuclear rocket program refuses to die quietly-- or argue its case publicly. Internal project budget documents indicate that \$185 million has been spent in the last few years, with \$40 million projected for FY 1992, and a hefty \$125 million for FY 1993. Equally energetic (albeit less pumped-up) opponents are working to block this funding.

The Senate Appropriations Military Construction Subcommittee recently approved an additional "\$7 million for a classified program recently transferred to the Air Force from the Strategic Defense Initiative Organization." (Senate Report 102-147, p.18) Timberwind is the only program that fits this description. The money is evidently intended for a nuclear rocket ground testing facility in Nevada. It is uncertain whether the appropriation will survive the House-Senate Conference.

## The Worst Offenders?

Defense Department sources privately acknowledge that the Timberwind program was improperly classified. But they claim that such deliberate overclassification is the exception rather than the rule, with one caveat:

"If you are really looking for abuse of classification authority," one official told S&GB, "check out 4C1000-land." 4C1000 is the office number in the Pentagon where satellite reconnaissance programs are

headquartered.

Overclassification is such a knee-jerk response in the area of satellite reconnaissance that "awesome" inefficiency, duplication of effort, and waste of money are business as usual. "They end up paying Hughes to design a system that TRW has already built."

## Another Pearl Harbor?

Excessive government secrecy doesn't only undermine democratic practice, it also degrades the internal functioning of government activities.

Admiral Stansfield Turner, Director of Central Intelligence (DCI) from 1977 to 1981 explains that the position of DCI was created in 1947 "to avoid the mistakes made just prior to the Japanese attack on Pearl Harbor, when the army, navy and State Department intelligence bureaus were not fully sharing the clues each had about Japanese intentions. Today the collection agencies are almost as autonomous, with regard to excluding other agencies from what they have learned."

"...[T]here is such excessive withholding that, in my opinion, the United States is just as vulnerable to a Pearl Harbor now as in 1941." (Foreign Affairs, Fall 1991, pp. 160-161).

## None of Your Business

Some Defense Department special access programs "had never been reported to Congress until this year and many had been severely limited in their reporting." (Senate Report 102-154, DoD Appropriation Bill, 1992; first reported in the Philadelphia Inquirer, 26 September 1991, page 1).

## Black Humor

Here is an excerpt from an editorial in Nucleonics, a nuclear industry trade publication, entitled "Nuclear Space Secrecy-- An Outdated Policy":

"If secrecy on nuclear space projects made no sense a year ago (when Nucleonics carried an editorial criticizing this policy), it makes even less sense in the world of today.... [The] argument that declassification of our nuclear space programs involves a risk of any consequence to the national security becomes increasingly difficult to support.... [Now] would be a good time to make a clean break with this tiresome and outdated policy of classification..."

The editorial is dated March 1964.

## Monsters in the Closet

Aerospace Daily (8/12/91, page 225) reports that the Navy's A-12 attack plane and the Tacit Rainbow missile, "both of which were crippled by inadequate oversight because of their Special Access Required classification-- are just two of many 'monsters in the Pentagon's closet' that will surface in the next few years.... For every black program that worked well-- like the F-117 stealth fighter-- 'there are two that are completely twisted'."

## Dishonor Roll

The TSSAM stealth missile joins the list of troubled programs whose problems are attributable in part to excessive secrecy. The General Accounting Office is investigating reports that the program is over budget by \$1 billion or more. (Inside the Pentagon, 9/26/91)