

Federation of American Scientists
307 Massachusetts Avenue, NE
Washington, D.C. 20002

for more information:
Steven Aftergood
(202)675-1012

SECRECY & GOVERNMENT BULLETIN

To Challenge Excessive Government Secrecy and
To Promote Public Oversight and Free Exchange
In Science, Technology, Defense, and Intelligence

Issue No. 33
March 1994
ISSN 1061-0340

Protecting Government Against the Public

One of the more remarkable documents to emerge from the Energy Department's openness initiative is a 1947 Atomic Energy Commission memorandum on the classification of human radiation experiments. It states:

"It is desired that no document be released which refers to experiments with humans and might have adverse effect on public opinion or result in legal suits. Documents covering such work should be classified secret."

Thus the true enemy is identified: public opinion. And the means to defeat the enemy? Classification.

The practice of classifying information in order to prevent embarrassment to an agency has long been prohibited. And yet it is commonplace. The AEC memo itself was classified Secret (meaning it supposedly "could be expected to cause serious damage to the national security"), and was only declassified last month. A copy of the document, obtained by Rep. John Dingell's subcommittee on oversight, is available from S&GB.

Joint Security Commission Report

The Joint Security Commission, established last spring to recommend reforms of secrecy and security policies in defense and intelligence, issued its report on "Redefining Security" in early March (*Washington Post*, 3/2/94, p.A21). The 157 page document ranges widely across security disciplines including classification, personnel security, physical and computer security.

The report is a serious and substantial piece of work. It provides an authoritative assessment of the dysfunction of current security policy. It proposes reasonable resolutions to several extremely contentious, if obscure, disputes over issues such as document tracking and accountability, reciprocal interagency acceptance of clearances, and retro-fitting of locks on security containers. And in some areas, at least, it clearly reflects the input provided by public interest groups, especially the National Security Archive, the ACLU, and FAS. Still, as discussed below, the report has its flaws.

The Politics of Secrecy

The Commission shows little awareness of the political imperatives and institutional self-interests that skew security policy. As a result, some of its most important conclusions will inevitably lack traction in the real world.

It is elementary that classification authority enables executive branch officials to shape public and Congressional perceptions in decisive ways. It follows that there needs to be some kind of external check on executive branch classification activity. But the Commission neglects this basic element of bureaucratic hygiene.

The Commission does recognize the fragmentation of current security policy and the need for improved oversight. Its principal recommendation in this area is the establishment of a single interagency "security executive committee," to set uniform standards and policies and oversee their implementation.

This is fine as far as it goes. But since the new committee would be embedded in the executive branch and subject to the authority of the Director of Central Intelligence and the Secretary of Defense, its ability to challenge official excesses will be limited.

Meanwhile, perversely, the Commission discourages greater Congressional oversight, particularly in the area of special access programs. After itemizing many of the failures of the special access classification system, the Commission nevertheless concludes that "We see no need to modify existing [Congressional] reporting procedures [on special access programs], and believe that the current system should continue without change" (p.21). But without more vigorous, structurally independent oversight, the prospects for fundamental reform are dim.

[Rep. Patricia Schroeder recently complained that the Pentagon still has too many special access programs and is moving too slowly to declassify them (*Aerospace Daily*, 3/7/94, p.350). And remarkably, even though she is the chairman of the House Armed Services subcommittee on research and technology, she noted that "I'm not cleared for all of them!" (Would it be too bold to suggest that she vote against funding for any program whose content she is not permitted to know?)]

In short, where external checks and balances are needed, the Commission's recommendations are limited to internal reforms.

Reforming Declassification

Observing that "the current system for declassification does not work" (p. 27), the Commission recommends that, at the time of classification, information should be separated into categories that will facilitate its ultimate declassification.

"We believe that a great deal of information can be automatically released in ten years and that most information can be released in 25 years. What is necessary, however, is to distinguish those categories of information that are good candidates for declassification after 10, 15, or 20 years from categories of information, such as human-source information, that may require protection for longer periods of time. By correctly categorizing classified information, we can reduce the number of times that the government needs to review documents and develop a strategy that will allow release of information without the need for line-by-line review."

Maybe so. But without an external constraint (e.g. legislation) stronger than the Commission's

"recommendation," it is a safe bet that classification officials would exempt 95% of classified information from declassification in 10 years, and a large majority would be exempted even from 25 year release. Furthermore, as long as they are given the option, few agencies will choose to forego detailed review, even of very old documents. It is a familiar and well-established pattern.

But all of that concerns future classification activity. What about the tremendous backlog of currently classified documents dating back to World War I? Disappointingly, the Commission dodges the issue.

"Detailed review of these [old] documents is not feasible, and arbitrary bulk or automatic declassification schemes are perceived as risking the loss of information that still requires protection" (p.27). What happened to the guiding principle of replacing absolute risk avoidance with prudent risk management? Here, the Commission adopts the absolutist stance that it rejects elsewhere.

In fact, a policy of bulk declassification is the only practical option if the nation is to reclaim its secret history. Moreover, bulk declassification can be conducted on a prudent risk management basis, taking into due consideration the age and subject matter of each document group. And though the Commission does not exactly say so, the recommended identification of categories for ten and twenty-five year automatic declassification of future documents could logically be applied retroactively to existing documents.

The Costs of Declassification

It is interesting to note that even detailed declassification review of old documents, though it is unnecessary and undesirable, would not be entirely infeasible. Based on cost estimates provided by the Commission, page-by-page review of the entire Cold War backlog of classified documents would cost but a small fraction of the annual secrecy budget.

Thus, "an experienced reviewer is able to review approximately 200 pages of classified documents per day" (p.132). Assuming that around 18 million pages of classified documents were produced per year, "it would require 375 reviewers to review a single year's product. Assuming an average [pay] grade of GS-12 (about \$43,000 per year), this review would cost in excess of \$16 million in direct salary costs." Allowing another \$2 million for administrative costs, that makes \$18 million, or about \$1 per page reviewed.

Assuming further that there are on the order of 1 billion pages of classified documents in the existing backlog (the National Archives reports 300 million pages up to 1960), that implies a cost of \$1 billion to conduct detailed review of the whole mess.

While that is a huge number, it is probably less than 5% of the total costs of secrecy in a single year, based on estimates by the NISP and the GAO.

Thus, without appropriating any additional funds, if only 1 percent of the annual secrecy and security budget were required to be allocated for declassification review, all of the classified backlog-- now protected in secure storage at taxpayer expense-- could be subjected to a detailed (although unnecessary) declassification review in as little as five years!

And if reasonable risk management procedures were adopted, the cost and schedule for completion could shrink dramatically.

Implementation

Many "reviews" of security practices have been performed in recent years. Most of them were ignored or quickly forgotten. A first-rate report was issued by the Federal Emergency Management Agency's Security Practices Board of Review in November 1992, but "None of its recommendations have been implemented," according to a participant in the preparation of the report.

In the hopes of achieving a more lasting impact,

the Commission will remain in place until June 1 to assist in the implementation of those recommendations that are approved by the DCI and the Secretary of Defense.

CIA Spy Scandal and the Secret Budget

The CIA spy scandal provides a perfect illustration of Justice Potter Stewart's famous dictum that "when everything is classified, then nothing is classified." While classifying trivia, the CIA has exhibited incredible laxity where secrecy actually mattered.

Indeed, on the very day that the arrest of alleged CIA spy Aldrich Ames was announced, DCI Woolsey was testifying before Congress that national security requires that the widely publicized intelligence budget total remain classified, Constitution or no Constitution!

Woolsey did not explain in any intelligible way what Saddam Hussein or Kim Il Sung would gain by an official acknowledgment of the size of the U.S. intelligence budget. The DCI seemed to argue that if the budget were acknowledged, the CIA would lose all self-discipline and would be unable to refrain from disclosing genuine secrets.

Nevertheless, Woolsey's opposition to budget disclosure is perfectly rational from a bureaucratic point of view. The CIA, unlike the nation as a whole, has nothing to gain from budget disclosure, or from improved oversight and accountability, or from public deliberation about the reform of intelligence policy.

Budget disclosure is the responsibility of Congress, which until now has made the mistake of merely "recommending" greater openness in intelligence. If Congressional oversight of the intelligence community continues to atrophy, maybe American citizens can arrange to acquire the information they need from the Russians.

National Industrial Security Program

After nearly five years of effort, and within a few months of its deadline for completing a new set of uniform guidelines for protecting classified information within industry, the direction of the National Industrial Security Program (NISP) is being called into question.

"We have now reached the conclusion that the draft NISP Operating Manual (NISPOM) currently under review does not meet the standards or objectives of the National Performance Review," declared John F. Donnelly, director of the Defense Investigative Service (DIS) in a February 24 letter (*available from S&GB*).

"We suggest that the NISPOM be radically revised, and that the requirements which survive this critical review be limited to those which are rational, threat-appropriate and cost-effective," Donnelly wrote.

The DIS proposal was not enthusiastically received by industry members of the NISP, who suggested that the existing draft is revolutionary enough. The consensus view was that the current draft should proceed to completion by the June 30 deadline, and that "radical" revisions should be considered only as a follow-on measure.

New Releases

- *DECA Notes*, vol. 1, no. 1. An unclassified edition of the FBI's new periodical on foreign espionage.
- H.R. 3927. Rep. Glickman's bill on classification. A hearing on the bill will be held March 16.
- S. 1885. Sen. DeConcini's bill on classification.
- "Of Moles and Molehunters." A survey of unclassified literature on counterintelligence, published by the CIA. Unintentionally timely.

* * *

The Secrecy & Government Bulletin is prepared by Steven Aftergood. Subscriptions are available from the Federation of American Scientists. The FAS Project on Secrecy & Government is supported by grants from the Rockefeller Family Fund, the J. Roderick MacArthur Foundation, the Millstream Fund and the C.S. Fund. This publication may be freely reproduced.