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SECRECY & GOVERNMENT BULLETIN

To Challenge Excessive Government Secrecy and
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New Draft Order on Secrecy

The third draft of a new executive order on classification breaks new ground in reforming government secrecy policy. If approved and implemented, it would represent an unprecedented break with Cold War secrecy policy and would herald a substantial increase in openness.

A copy of the closely held draft, dated March 17, was provided to the FAS Secrecy Project by an intelligence community source who believes excessive secrecy is damaging U.S. intelligence.

25 Year Maximum Classification Lifetime

The major innovation of the latest draft is its provision that "within four years from the date of the issuance of this Order, all classified information more than 25 years old shall be automatically declassified whether or not it has been reviewed." This requirement would finally break the impasse in the never-ending "review" of old classified documents. It also compares favorably with the 40 year maximum proposed in the last draft.

There is an allowance for exceptions, and the initial four year delay is incorporated in order to provide agencies a limited opportunity to search for documents that should properly remain classified even after 25 years. The seven permissible exceptions are reasonably narrowly drawn, including information whose release would identify a confidential human intelligence source, reveal information that would assist in the development or use of weapons of mass destruction, and so forth.

Moreover, any such exception would require a written justification from the agency head or senior agency official to an Interagency Panel, which must approve, deny, or modify the exception.

The four year delay in implementation may well be necessary to assure agency cooperation and compliance. But in order to establish the credibility of the process, it will also be important for the Administration to begin bulk declassification of selected document groups immediately. And to guarantee that the maximum classification lifetime survives into the next Administration, Congress should enact it into law.

Declassification of New Documents

The provisions concerning the duration of classification for new documents are more problematic.

The draft instructs classifiers to attempt to set a specific date for automatic declassification, not to exceed ten years for Secret and Top Secret documents [the previous draft allowed Top Secret to remain classified for fifteen years], and not to exceed six years for Confidential documents. So far so good.

The problem is that the draft also says the

opposite. At the time of original classification, classifiers may "exempt from automatic declassification" seven categories of information that closely resemble the categories of information that are subject to classification in the first place. Any classification official-- not just an agency head-- may invoke this exemption. No date for declassification need be set, and no approval from the Interagency Panel need be obtained.

Similarly, information that is marked for automatic declassification after ten years may be reclassified by any classification official, without notification or outside approval.

This whole section needs to be tightened up. Even recognizing that there is a legitimate need for exceptions, these provisions make it too easy. Minimally, exceptions and renewals should require senior agency official involvement and approval by the Interagency Panel. Otherwise, the automatic declassification process threatens to become an automatic reclassification process.

Overall

The new draft does not represent a pendulum swing from today's policy of indiscriminate secrecy to a new policy of indiscriminate openness. It is a very cautious, conservative document. But it would remedy some of the worst flaws of today's system and establish a new framework that gives significantly greater weight to the public interest.

The NSC staff and ISOO director Steven Garfinkel deserve a good deal of credit for the work they have done here. Garfinkel in particular, as the most visible representative of the secrecy system, has been subjected to a barrage of criticism, some of it unjustified, some of it wrong. (At one point, we erroneously referred to President Nixon's porous maximum classification lifetime as a "drop dead date." It wasn't.) But to his credit, he keeps coming back with drafts that get better and better.

Still, there are a dozen ways that this draft could be subverted, and its provisions nullified. Even if it is improved further, as it should be, the CIA will continue to hide behind an expansive reading of the National Security Act, other agencies will claim that documents they wish to conceal are "predecisional," and the Administration and Congress will continue to violate the Constitution by attempting to conceal the size of the intelligence budget.

Fundamentally, no executive order can mandate good judgment or good faith. The future of democracy in America will still depend on public vigilance.

Legislating a Classification System

Two new bills have been introduced in Congress

that would establish a statutory foundation for the classification system, which for the most part has been defined only by a series of executive orders.

S. 1885, the "Security Classification Act of 1994", was introduced by Senate Intelligence Committee chairman Senator Dennis DeConcini in early March.

Though it represents a welcome sign of Congressional interest in this neglected field, the Senate bill is a disappointment. It lacks the two essential "gotta have" provisions of a sane classification system: a maximum classification lifetime and an automatic declassification regime.

Instead, the bill would rely mainly on the kind of "review" procedures which have failed so miserably for the last forty years. If adopted, S.1885 would mean that most Cold War documents would not be declassified for decades to come, and many would never be declassified at all.

The Senate Intelligence Committee has been largely passive in the controversy over government secrecy during the last few years-- except for its failed attempts to declassify the intelligence budget total-- and seems unaware of the factors that led the Administration to finally propose its own comparatively open classification system. It would be better to let the current system continue to disintegrate than to ratify it in this flawed piece of legislation.

H.R. 3972, introduced by House Intelligence Committee chairman Rep. Dan Glickman, is much more clearly responsive to the failings of the existing system and has much to recommend it. It would establish a maximum classification lifetime of 25 years and some form of automatic declassification. As in the latest draft executive order, the procedures for exemption from automatic declassification are less rigorous than they should be, and the provisions for external oversight are weak. But the bill nevertheless provides a good basis for proceeding.

At a March 16 hearing on the House bill, CIA General Counsel Elizabeth Rindskopf was predictably unenthusiastic. She emphasized that disclosure of sensitive human sources-- something which no one has proposed-- "can result in ruined reputations, imprisonment, or even death."

No one was rude enough to remind Rindskopf that excessive government secrecy has caused or facilitated many more deaths than the disclosure of intelligence sources ever did. The lethal consequences of secret radiation experiments, CIA behavior modification programs, unauthorized military operations, and who knows what else have still never been fully accounted for. There are no stars on the wall of the CIA lobby to commemorate the innocent victims of these secret programs.

Cover and Deception

Even the government is starting to recognize that official deception programs are getting out of hand and need to be curtailed. The recent report of the Joint Security Commission contains one of the very few unclassified discussions of deception as a security measure for highly classified programs. (See also the NISPOM SAP supplement cited in S&GB 13 which requires that "cover stories must be believable.")

Deception, or "cover," goes beyond mere secrecy and involves the active dissemination of false information with the intent to mislead.

The Joint Security Commission reported that "There are many valid reasons for the special cover measures used by some military and intelligence organizations, such as potentially life-threatening, high-risk, covert operations and intelligence and counterintelligence investigations or operations."

However, "The Commission found that the use of cover to conceal the existence of a government facility or the fact of government research and development interest in a particular technology is broader than necessary and significantly increases costs." (pp. 19-20).

"For example, one military service routinely uses cover mechanisms for its acquisition controlled access programs without regard to individual threat or need. Another military organization uses cover to hide the existence of certain activities or facilities. Critics maintain that in many cases, cover is being used to hide what is already known and widely reported in the news media," the Commission noted.

"These cover mechanisms are expensive and the marginal security benefits gained... often are outweighed by the costs of concealment.... Special protection generally should focus on the most sensitive uses of a facility, rather than the fact of its existence."

After this fairly damning assessment, however, the Commission offers only the rather anemic recommendation that the DCI and the Pentagon should "develop new policies for cover that limits [sic] its use to those situations for which it is needed." Of course, "need" is largely in the eyes of the beholder and few program managers will voluntarily surrender the option to use cover.

Flying Saucers as a Symptom

A new cultural history of UFOs portrays the flying saucer phenomenon as a reflection of social upheaval and a barometer of diminishing public confidence in government. "The alien myth... is based on a belief that government and society are manipulated by evil forces," writes aerospace historian Curtis Peebles in *Watch the Skies: A Chronicle of the Flying Saucer Myth* (Smithsonian Institution Press, 1994).

The book documents the pathological distrust towards government that has developed due to excessive government secrecy, among other things. As one UFO enthusiast put it, "If the Pentagon tells you flying saucers are *here*, don't believe them. If they say they are a *myth*, don't believe them. Just don't believe them."

Peebles explores the emergence of successive UFO motifs, including saucer crashes, abductions, cattle mutilations, "missing time," and government cover-ups, within their historical contexts. Rivalries and schisms among the believers are recounted with muted glee. The formative influence of popular culture-- including movies such as *The Day the Earth Stood Still* and *Mars Needs Women*-- on the evolving tenets of UFO belief, and their reciprocal effect on popular culture are meticulously traced. The author even hazards an explanation for the marked decline of erotic content in reports of human-alien sexual encounters from the 1970s to the 1980s.

However, Peebles underestimates the significance of "black budget" programs and misconstrues the story of Aurora, the alleged hypersonic spy plane. It is not correct to say that "most of the 'details' about Aurora ... had their origins with people who believed in the secret [underground] bases and that black aircraft were actually 'reverse engineered' from crashed saucers." Aurora may be a hallucination, but it owes its elaboration and its currency to *Jane's Defense Weekly* and *Aviation Week & Space Technology*, not to *MUFON Journal* or any other UFO publication.

Likewise, Peebles does not recognize the existence of official deception as an instrument of government policy (see above) or its social consequences. Yet the practice of deception seems to be one of the wellsprings of the enduring UFO subculture. And in general, the excesses of the government secrecy system represent one of the few demonstrable articles of the UFO faith.

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