

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____ STEVEN AFTERGOOD)	
)	
Plaintiff,)	
)	
v.)	Case No. 01-2524 (RMU)
)	
CENTRAL INTELLIGENCE AGENCY)	
)	
Defendant.)	
_____)	

**PLAINTIFF'S REPLY TO OPPOSITION TO MOTION TO STRIKE THE
DECLARATION OF JOHN E. MCLAUGHLIN**

Plaintiff *pro se* Steven Aftergood hereby replies to Defendant's opposition to his motion to strike the Declaration of John E. McLaughlin from the record of this Freedom of Information Act proceeding.

Plaintiff filed a Motion to Strike the Declaration of former Acting Director of Central Intelligence McLaughlin on September 22, 2004 on grounds that it contains material false statements constituting an insufficient defense. Defendant filed its opposition on October 20, 2004. Plaintiff's reply follows.

Introduction

In a nutshell, it is plaintiff's contention that ADCI McLaughlin's declaration does not comport with the known facts of the pending dispute. Defendant's resulting analysis, based on false premises, leads to an erroneous conclusion.

1. The ADCI's Denial of Past Disclosures of the Aggregate Intelligence Budget is False -- Even in Context.

At one point, ADCI McLaughlin declares that “The aggregate intelligence budgets and the total CIA budgets have never been publicly identified....” McLaughlin Declaration at ¶ 13.

Defendant concedes in effect that this sentence taken by itself is not true, but that it *becomes* true if it is understood in context to mean that the aggregate intelligence budgets and the total CIA budgets have never been publicly identified by Congress. Defendant’s Opposition to Motion to Strike, at pp. 3-5.

But even under this permissive reading, the ADCI’s statement is still false.

Aggregate intelligence budgets were “publicly identified” by Congress, for example, on May 22, 2000 on the House floor when Congressman Blumenauer cited the amount of the 1997 intelligence budget, \$26.6 billion, and the amount of the 1998 intelligence budget, \$26.7 billion. Congressional Record, May 22, 2000, at page H3500, attached herewith as Exhibit 1.

The ADCI’s statement could be edited, amended and interpreted further so as to make it factually accurate, but it should not be necessary to do so.

2. The ADCI's Statement that CIA Budgets Have Never Been Identified is False.

Defendant denies the relevance of a memo describing the CIA annual budget figure for FY 1955 that was disclosed in the archives of former Sen. Styles Bridges (Barrett Declaration, Attachment 2) because it predates the FY 1955 appropriations act. Defendants Opposition, at page 6.

Significantly, defendant does not say that the cited budget figure for FY 1955 is in error.

Plaintiff believes, though he is not in a position to prove, that it is accurate. Historically, at that time, CIA appropriations were determined by the House and Senate Appropriations chairman, in this case Sen. Styles and Rep. Taber. On information and belief, the CIA budget would not have been altered by the full appropriations committees, who would not have been privy to the amounts or locations of CIA appropriations, or by the full House and Senate. The fact that they voted later to enact the appropriation is therefore irrelevant except in a technical sense.

Defendant fairly argues that the release of the 1955 memo should not be imputed to Congress itself as an official disclosure. Def.'s Opp. at p. 6.

Yet there is no question that the cited record originated in official papers as part of an archive of congressional records of Sen. Bridges that is publicly maintained (at the New Hampshire State Archive, as it happens). Barrett Declaration, ¶¶ 2-5. Nor is there any reason to suppose that this public collection was stolen or transferred without authorization.

The availability of this congressional information in the public domain – including a detailed explication of the concealed budget locations for 1955 – is a fact that is erroneously denied by the ADCI's declaration.

3. The Question of Materiality

Plaintiff will not burden the court by repeating his argument that the locations of intelligence appropriations that are concealed in the open budget cannot be deduced, inferred or otherwise gleaned from the revelation of a total spending figure.

If the court is inclined to defer to the defendant on this central point, then the matter is concluded.

But if, given the ADCI's other errors in this proceeding and the demonstrated availability of formerly withheld budget totals and locations in the public domain, the court harbors any skepticism about the credibility of this claim, then I believe it would be possible to clarify the problem.

The court could ask defendant to explain just how a hostile intelligence analyst could use a specific annual CIA budget figure to deduce how and where intelligence funds were transferred for that year.¹

Since the proposed task is impossible (in plaintiff's view), plaintiff does not believe that defendant would be able to provide a plausible response.

Plaintiff is not making a motion for such a course of action. But if the Court, on its own initiative, wished to request such an explanation from defendant on an ex parte basis, plaintiff would have no objection. And if the court ruled in favor of defendant on the basis of such an explanation, plaintiff would waive his right of appeal.

¹ Such an explanation could be requested, for example, with reference to the 1955 CIA budget, where both the total figure and the concealed locations are already in the public domain (Barrett Decl., Attachment 2). Or it could be requested with reference to the 1963 CIA budget, which defendant has now conceded is also in the public domain.

Conclusion

ADCI McLaughlin's declaration does not meet the standard of factual accuracy and fidelity that justifies the "substantial weight" to which an agency affidavit would normally be entitled.

At no point does the ADCI acknowledge the fact that intelligence budget figures have previously been disclosed. At one point, he explicitly – and, as shown above, erroneously – denies it. Finally, he then proceeds to argue, inaptly, that budget disclosure could lead to revelation of concealed budget locations – even though these are also already in the public domain in at least two cases.

The court should hold agency affidavits to a scrupulous standard of factual and logical integrity and should strike the McLaughlin declaration from the record.

Respectfully submitted,

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that we would not have much controversy over something like this and deal with more difficult, complex matters.

Mrs. WILSON. Mr. Chairman, I move to strike the last word.

Mr. Chairman, there is something that I think we are forgetting in this debate and that is that every Member of Congress can go up to the Select Committee on Intelligence room and see the entire content of the intelligence authorization bill. There is nothing that is kept from us as elected representatives, but there are things that are kept in every detail from our opponents and our potential enemies.

That puts the responsibility on a small number of shoulders, and most of them are sitting in this room here now, the members of the House Permanent Select Committee on Intelligence. It is our job to review the budgets and the sources and the methods and to provide oversight of all of the intelligence agencies, and we have to do this job in a way that is kind of uncommon for politicians. We have to do it quietly, without a lot of public hooha, in a closed room where the press is not there. Most of us are used to putting out press releases on everything and arguing about things in the media, but we do not have that privilege on this committee, and we should not, because this is a matter of national security.

Declassifying the intelligence budget, whether as an overall number, or in smaller pieces, only helps our enemies to track trends in our spending and figure out what we are doing. My colleague from Indiana talks about books that have been published or articles that have been written, and none of us on this committee ever confirm or deny or say anything about what is right and what is wrong; and he well knows that a lot of it is complete wildness. But we do not comment on it, because it is our job not to.

The problem with declassifying the whole number is that one cannot talk about the details, so it makes no sense in context with other parts of the budget. We cannot explain it, we cannot defend it, we cannot talk about the details and what it means and what we are buying; but we can refer our colleagues up to the intelligence room to look at those details, even though we cannot talk about it publicly. Even the gentleman from Virginia (Mr. MORAN) seemed to find it difficult to talk about comparisons here on the floor because this is a public forum. We would have that difficulty again and again and again if we try to justify a declassified total number without being able to talk about the specifics that make it up.

I am also concerned that there are no exceptions in this amendment for time of war or national emergencies, and we are directing the President and the CIA to declassify numbers that, frankly, they already have the authority to do without direction of this Congress; and it concerns me when, as elected rep-

resentatives, we tell the executive branch to declassify things and get proscriptive about how exactly that should be done. It is my view that that generally should be left up to the executive branch of government.

Sometimes I think that we get a little bit complacent. The Cold War is over. We are all focused on things at home, on Social Security and taxes and education, and things that our constituents are facing every day. But just because the Cold War is over does not mean that there are not people out there that would take advantage of the United States and whose interests are contrary to our own, and I am ever mindful of what Churchill once said. The truth must be protected by a body-guard of lies, and it is sometimes in the interests of the United States of America to deceive our enemies about what we are actually doing in order to protect our national security.

My colleague from Indiana talks about one ray of sunshine. I see it a little differently. I think it is one piece of a puzzle, a piece of a puzzle that our enemies would very much like to have, and which I think is the obligation of this body to deny them.

Mr. ROEMER. Mr. Chairman, will the gentleman yield?

Mrs. WILSON. I yield to the gentleman from Indiana.

Mr. ROEMER. Mr. Chairman, I thank the gentleman, who is a very valuable member of the Committee on Intelligence, and I certainly respect her opinions on a host of different issues.

However, as she started out the debate on this issue, she said, we as members of the committee have access, the 16 of us, and all 435 members, have access if they want. This amendment is not about that access of Members of Congress. Sometimes we think we are pretty smart; we think we know and have a lot of the answers. This is about providing one simple piece of information to the people that work hard every day to fund the overall budget, and then they get one ray of sunshine to know how the intelligence budget fits into the overall budget.

The CHAIRMAN. The time of the gentleman from New Mexico (Mrs. WILSON) has expired.

(By unanimous consent, Mrs. WILSON was allowed to proceed for 1 additional minute.)

Mrs. WILSON. Mr. Chairman, that really was not my point. My point was that there are times when we as elected representatives have to take on and shoulder tremendous responsibility, and that responsibility may include access to information that we cannot share with our constituents. That is the responsibility we have been given as members of this committee, and it is one that I think that we should continue, including this one piece of information.

Mr. BLUMENAUER. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, the point, as my colleague from Indiana was making, was

what the public has a right to know. The fiscal year 1997 budget was revealed to the American public as \$26.6 billion. That was not something that was probably a shock to our adversaries, who have pretty good estimates of what we are doing in this arena. There are experts that speculate on this. The Republic's foundations have not been shattered. The next year when it was revealed that it was \$26.7 billion, life went on, and if we were to give the American public what the figure is for this year and what is recommended in the aggregate for the following year, life as we know it will continue.

I think that we in this body and in the Federal Government generally tend to draw a curtain of secrecy over things that are not going to be secret from our adversaries; but they are going to keep, and this happens time and time again, information that we do not want revealed to the American public for whatever reason.

We are starting to see the history of what has happened with the FBI under J. Edgar Hoover under the guise of national security. We have seen the things that have been perpetrated by that agency under Mr. Hoover's regime.

Mr. Chairman, I think that it is time for us to take a step back and look at this amendment, which gives the American public an opportunity to evaluate some of the trending. It is not going to be a great mystery to our adversaries who have access to some information from their sources. It is speculated upon in the academic community, but it will give the American public a little more information.

I think it is appropriate for us to ask hard questions as a people about the resources that are being invested. How, given the tens of billions of dollars that were invested in our security apparatus, we could not predict the collapse of the former Soviet Union; that we somehow could not identify the Chinese embassy, which resulted in a tragic bombing, the impact of the repercussions we are still dealing with.

Mr. Chairman, I think that we ought to be honest about the public realm and stop the charade here. There is an adequate amount of information that is available for very sophisticated people to be able to allow some tracking of this. I think taking an additional step so that the American public has it makes sense. I hope that we will be more rational about what we keep secret and what we do not. I am all in favor of trying to protect things that are truly important for national security, but not to protect people from embarrassment about things years after the fact, and not to protect the American public from knowing how their tax dollars were spent.

Rumor has it that in about 1987 we had a peak of about \$36 billion that were invested in all of these intelligence activities. Yet, today, 13 years later, with a less sophisticated array of allied forces that we are contending