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SECRECY & GOVERNMENT BULLETIN

To Challenge Excessive Government Secrecy and
To Promote Public Oversight and Free Exchange
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Clinton on Openness, Intelligence Budget Disclosure

In a March 27 letter to Senator Howard Metzenbaum, President Clinton acknowledged the problems of excessive secrecy, though he stopped short of committing himself to any particular response.

"It is time to reevaluate the onerous and costly system of security which has led to the overclassification of documents," Clinton wrote. "The result of our effort should not only be to save money but also lead to better security for our most sensitive programs."

In an earlier letter to the President, Metzenbaum had specifically urged that the size of the intelligence budget should at long last be publicly disclosed, stating that "if the rhetoric of change cannot be translated into even this little bit of openness, then we shall all have failed the test that you so eloquently propounded, to 'scale the walls of the people's skepticism, not with our words but with our deeds'."

"I also believe in change," responded Clinton, who evidently places faith before works. "I take seriously your suggestion that our Administration disclose the aggregate amount spent on intelligence when we submit our Fiscal Year 94 budget to the Congress. But as Jim Woolsey and the rest of our national security team attempt to structure new intelligence priorities, my hope is that you will allow us the opportunity to evaluate both the benefits and legitimate concerns which are associated with such public disclosure."

In a speech on the Senate floor (*Congressional Record*, 4/21/93, pp. S4735-39), Metzenbaum welcomed the Clinton statement, but said "I expect the Administration to follow up these encouraging words with real action. So far, the action seems to go in one direction and the words in another."

Archives Pleads for Declassification Relief

Adding another important voice to the chorus of criticism, the head of the National Archives has urged the Clinton Administration to undertake "a fundamental revision of the Executive Branch's procedures for declassification of information."

In a March 22 letter to National Security Adviser Anthony Lake, Acting Archivist Trudy Peterson cited public impatience with the huge, and mounting, backlog of classified documents. "To name just one example, using personnel from both the State Department and the National Archives, we estimate that it will take nineteen years to review for classification the State Department records created during the period 1960-63. This is intolerable."

It is becoming increasingly clear that the only solution to this problem is some sort of bulk declassification action, in which entire categories of

documents, and documents that are more than a certain number of years old, are declassified by fiat and without painstaking, costly review.

Thus, Peterson wrote, "one revision is critical: a date certain when documents can be released. We at the National Archives hold hundreds of documents that pre-date the Second World War and that remain classified by instruction to us of the originating agencies. Just last year we declassified our oldest classified document-- an item from 1917-- but other documents from the World War I era remain classified."

"Not only does this deny the American public the information contained in these items, but it requires needless administrative expense to house the classified items in secure storage, to handle the paperwork when they are requested under the FOIA, and to make copies and return them to the agencies of origin when requested for review. In the effort to make government more efficient, this obvious inefficiency should be eliminated."

DOE Solicits Declassification Proposals

The Energy Department's Office of Classification has issued a "call for declassification proposals," inviting DOE program offices, field offices, and contractors to suggest subject areas that may be ripe for declassification.

The DOE action is an attempt to comply with what must be the most frequently violated requirement of any Presidential directive, the section of executive order 12356 which dictates that "Information shall be declassified or downgraded as soon as national security considerations permit." Similarly, the Atomic Energy Act (sec. 142b) calls for "continuous review" of Restricted Data "in order to determine which information may be declassified ... without undue risk to the common defense and security."

To its credit, and unlike most other government agencies, the DOE Office of Classification is at least making some kind of organized effort to respond to these binding instructions.

The "Second Biennial Call for Declassification Proposals," issued December 31, 1992, requests submission by DOE personnel of proposals for information to be removed both from the regular national security information category, and from the Atomic Energy Act's Restricted Data (RD)/ Formerly Restricted Data (FRD) categories. The first biennial call was issued in May 1990.

Submitters are invited to address the benefits of declassification (e.g. commercialization potential, avoiding cost of continued classification), the risks (e.g., the extent to which the information could assist in the production of nuclear material), and "any impact on the credibility of the DOE classification program by the continued classification of the material."

Since 1975, 101 RD/FRD declassifications have been approved. Last year, for example, several aspects of

nuclear material production at Hanford were declassified. On the other hand, the long promised declassification action on inertial confinement fusion never materialized. Review of declassification proposals is projected to take about a year.

In follow-up questions at her confirmation hearing, Energy Secretary Hazel O'Leary set a high standard for reform of agency classification practices, yet to be achieved. "I am committed to a Departmental culture of openness and straight talk. I will not allow the national security classification system to be used as a mechanism to prevent access to information that could affect human health or the environment or obstruct legitimate public debate on DOE policies and programs." (S. Hrng. 103-2, p. 181).

A copy of the DOE call for declassification proposals is available from our office.

Declassified Areas of Nuclear Research

Under the Atomic Energy Act, information on nuclear energy and weapons is "born classified" and remains classified until such time as the government determines otherwise. Hypothetically, a private citizen could conceive a classified thought without knowing it and be legally prohibited from communicating it to anyone. Once, however, such information is officially declassified, it cannot be reclassified. DOE has conveniently tabulated the "Declassified Areas of Nuclear Energy Research" in a classification guide, newly updated last year. It's not a bulky document.

There are at least some Energy Department records that probably should be permanently withheld. When the National Archives examined 1,500 notebooks that had been forwarded to its Great Lakes facility by Argonne National Laboratory, it found that a third of the documents were radioactive (*Washington City Paper*, 16 April 1993, p. 10). A government working group has been established to locate and remove any other radioactive materials still in the Archives' possession.

A copy of the Guide to Declassified Areas of Nuclear Energy Research is available from our office.

Salvaging the Black Budget

Having spent tens of billions of dollars on classified research and development in the last several years alone, one would think there is a high probability that the Defense Department has achieved something worthwhile, including some research that would benefit the civilian technology base. Some of this work is apparently starting to emerge. But much of it is in danger of being lost or unnecessarily duplicated due to excessive secrecy.

According to Rep. Patricia Schroeder, chair of the House Armed Services research and technology subcommittee, there has been "tremendous overclassification" of defense technology since World War II. "A lot of people don't know what's been going on, mainly because it's secret." Consequently, she said, rapid declassification is needed to help the U.S. compete in the commercial global marketplace. "We're trying to push very hard to make sure" this happens. (*Aerospace Daily*, 4/1/93, p.5).

It would be easy to overestimate the value of military R&D for commercial applications. Most of it is likely to be targeted to specific military requirements that have no civilian analog. Much of it is likely to remain sensitive and subject to continuing security safeguards. But some of it-- particularly in areas such as communications, data processing, propulsion, and materials science and engineering-- may well have commercial and other value, if habitual secrecy practices can be overcome.

One remarkable sign of the times is the disclosure on April 3 of Lockheed's "Bus 1," a hitherto classified military spacecraft bus, which is being contemplated for use by NASA on a reconfigured Space Station. [A "bus"

is a support structure that provides power, propulsion, and other services to the spacecraft payload.] Although Bus 1, which is currently in production, has already been qualified for flight on the Shuttle, NASA says it doesn't know what program the system came from. According to FAS space policy project director John Pike, it was developed for a classified photoreconnaissance satellite known as the Advanced Keyhole.

NASA's disclosure of Bus 1 was accompanied by a surprising degree of technical detail, including design parameters that allow one to deduce its propellant loading and, hence, the duration of its multi-year lifetime. For an intelligence satellite system, this would ordinarily be considered properly classified information.

It remains to be seen whether Bus 1 is the precursor to a new wave of revelations of classified technology, or the exception that proves the stubborn rule.

In the meantime, there is reason to suspect that some black program developments will be lost altogether, as the result of excessive compartmentalization. Many technology programs are so highly classified that their products are never archived in any kind of central repository, such as the Defense Technology Information Center, where other researchers could discover and benefit from them. Except for the huge sums of money spent to pay for them, they might as well never have existed.

Invention Secrecy Still Going Strong

Under a rather obscure law known as the Invention Secrecy Act of 1951, the government may impose secrecy orders on new inventions if it believes that their disclosure could prove detrimental to national security. When a secrecy order is issued, a patent for the invention is withheld and the inventor is prohibited from disclosing his or her work. (See S&GB 10, 11, 12)

According to the latest statistics from the Patent and Trademark Office, the number of secrecy orders in effect declined only slightly from its all time high of 6,193 in FY 1991 down to 6,102 at the end of FY 1992, the second highest total ever recorded. By comparison, there were about 3,800 orders in effect ten years ago.

In a unique practice with possible First Amendment implications, more than half of the new secrecy orders were imposed on private inventors (known as "John Does"), i.e. individuals or businesses working without government sponsorship or funding. Thus, of the 452 new secrecy orders issued in FY 1992, 288 were John Doe orders.

Since the secrecy order process is triggered by the application for a patent, the only sure way for a private inventor to escape the clutches of the Invention Secrecy Act is to forego patent protection.

A statistical breakdown of secrecy order activity from 1976 to the present is available from our office.

Lofty Thunder

"Lofty Thunder" (S&GB 20) is now known to have been the Air Force designation for the Space Nuclear Thermal Propulsion (SNTTP) program prior to its public unveiling in January 1992, and it was subsequently continued as a classified compartment of that otherwise unclassified program. Lofty Thunder was nominally terminated as a special access program in May 1992, although the program classification guide was not superseded by a new guide until February 1993.

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