Statement of Steven Aftergood
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Before the Subcommittee on Intelligence Community Management
House Permanent Select Committee on Intelligence

On
Oversight of National Security Classification Policy

July 12, 2007

Thank you for the opportunity to address the Subcommittee.

My name is Steven Aftergood and I direct the Project on Government Secrecy at the Federation of American Scientists, which seeks to enhance public access to government information and to limit national security classification to its necessary minimum.

Introduction

It has been ten years since the congressionally-mandated Commission on Protecting and Reducing Government Secrecy issued its critique of national security classification policy and called for "a new way of thinking about government secrecy."

The Commission, chaired by Sen. Daniel P. Moynihan and co-chaired by former HPSCI chairman Rep. Larry Combest, concluded that:

> The classification system … is used too often to deny the public an understanding of the policymaking process, rather than for the necessary protection of intelligence activities and other highly sensitive matters. The classification [system is] no longer trusted by many inside and outside the Government. [1]

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[1] Report of the Commission on Protecting and Reducing Government Secrecy, 1997, page xxi, available at http://www.fas.org/sgp/library/moynihan/index.html .

The Commission produced a fine report, but its work led to no discernable improvement in policy. In 2003, another HPSCI chairman, Rep. Porter J. Goss, testified before the 9/11 Commission that "we overclassify very badly. There's a lot of gratuitous classification going on…"[2]

The adverse consequences of overclassification are clear enough. Unnecessary or inappropriate classification degrades the performance of government agencies, impedes oversight, and fosters public suspicion and contempt. Yet the classification system has proved to be stubbornly resistant to reform or correction.

In this statement, I would like to propose several specific steps that could be taken to improve classification and declassification policy. While these steps would not fully resolve all concerns about the proper exercise of classification authority, each of them has the virtue of being achievable in the near term. And individually or collectively, they would make a real difference.

1.   Establish a Declassification Database

If a database of declassified documents could be established and made publicly accessible, then the positive impact of declassification would be multiplied many times over.

Such a database was explicitly required in 1995 by Executive Order 12958, section 3.8, which stated:

> The Archivist in conjunction with the Director of the Information Security Oversight Office and those agencies that originate classified information, shall establish a Government-wide database of information that has been declassified....Except as otherwise authorized and warranted by law, all declassified information contained within the database ... shall be available to the public.

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[2]   Hearing before the National Commission on Terrorist Attacks, May 22, 2003, available at http://www.fas.org/irp/congress/2003_hr/911Com20030522.html .

Unfortunately, this objective was abandoned in the 2003 amendments to Executive Order 12958. The amended order eliminated the requirement to establish a Government-wide database and also deleted the requirement that declassified information in any existing databases be made available to the public.[3]

Without some form of public database to serve as a universal finding aid, it seems unlikely that most declassified documents will ever be located by the particular readers who would be most interested in them.

Interestingly, it is the Central Intelligence Agency that has made the most progress in this direction. Its CREST database (CREST stands for CIA Records Search Tool) provides a searchable index of millions of declassified Agency records. And it is publicly available-- but only in Room 3000 of National Archives II in College Park, MD.

Inexplicably, CIA has refused to make CREST publicly available online or even to release the database to others who would do so at their own expense. Outside of Room 3000 at the Archives at College Park, the CREST database might as well not exist.

I suggest that this Committee ask intelligence community agencies to establish public databases of their declassified documents. I further suggest that the Committee instruct the CIA to permit online access to its existing CREST database.

2.   Adopt a "Tear Line" Format in At Least One Agency

One way to combat the effects of overclassification is to require that official records be written in such a way that their contents are physically segregable by classification level and that unclassified information in the document can be readily separated from any classified information. This is commonly known as a "tear line" format, referring to the possibility of "tearing off" a portion of the document, literally or figuratively, so that it can be widely disseminated.

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[3] See Executive Order 12958, as amended (EO 13292), at section 3.7. The amended order only says vaguely that agencies "shall coordinate the linkage and effective utilization of existing agency databases." All of the additions and deletions that were made in the 2003 amendments to the executive order can be seen in this markup: http://www.fas.org/sgp/bush/eo13292inout.html .

Congress has already endorsed the tear line approach. In the Intelligence Reform and Terrorism Prevention Act of 2004, Congress mandated that:

> the President shall… issue guidelines … to ensure that information is provided in its most shareable form, such as by using tearlines to separate out data from the sources and methods by which the data are obtained;[4]

Several years later, however, no such guidelines have been issued.

Under the circumstances, it might be productive to undertake a more focused and limited approach. A "pilot project" applied to one government agency or organization could demonstrate the utility and feasibility of tear lines without engendering widespread bureaucratic opposition.

For example, this Committee could ask the National Intelligence Council to adopt the tear line format in all of the National Intelligence Estimates that it prepares in the next twelve months. Since NIEs are intended for distribution outside of the intelligence community, these seem like a logical category of intelligence records with which to begin applying the tear line approach.

Even if an entire document must remain classified for a time and cannot be publicly disclosed, a tear line approach that isolates compartmented information from collateral classified information would still facilitate distribution throughout government, including Congress. It would also expedite the ultimate declassification of the document.

3. Add Classification Oversight to the Functions of Agency Inspectors General

In order to augment existing oversight of classification and declassification activities performed by the Information Security Oversight Office, agency Inspectors General should be tasked to perform their own periodic reviews of classification and declassification.

Given the general consensus that classification is very expensive, both financially

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[4] Intelligence Reform and Terrorism Prevention Act of 2004, section 1016(d)(1).

and operationally, agency heads may well concur that increased oversight of classification practices is appropriate and may be expected to endorse increased IG attention to this area.

Inspectors General with cleared staff are already in place at the relevant agencies and could readily undertake such oversight. Indeed, some of them, like the DoD Inspector General, already perform some classification oversight on an ad hoc basis.

This Committee should therefore ask each of the intelligence community inspectors general to add a periodic review of classification and declassification activities to its portfolio of regular auditing functions.

4.   Declassify the Annual Intelligence Budget

There is no single declassification action that would signal an end to obsolete classification practices as clearly and powerfully as declassification of the total annual intelligence budget.

That was the bipartisan conclusion of the Aspin-Brown-Rudman Commission in 1996.[5] It was also the unanimous recommendation of the 9/11 Commission in 2004.[6] But it has elicited fierce opposition from those who are attached to the status quo.

Paradoxically, the persistent opposition to intelligence budget disclosure has elevated the issue to one of outstanding significance, thereby making its potential declassification even more powerful.

The notion that that annual disclosure of the total intelligence budget could damage national security, a view that the present Administration appears to hold, has been decisively refuted. The budget total was formally declassified in 1997 and 1998 without adverse effect. Nor did release of the budget in those years lead to uncontrolled disclosure of more sensitive information. In other words, the hypothetical "slippery slope" feared by proponents of continued budget secrecy did not materialize.

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[5] Preparing for the 21st Century: An Appraisal of U.S. Intelligence, available online at http://www.fas.org/irp/offdocs/report.html, Recommendation 14-2, March 1996.

[6] Final Report of the National Commission on Terrorist Attacks Upon the United States, page 416.

In fact, intelligence budget classification is a relic of times gone by that has nothing to do with protecting current national security interests.

Declassification of the intelligence budget will help to set an enlightened new standard for classification policy by demonstrating that even the most entrenched secrecy practices are subject to reconsideration and will be rejected when they no longer make sense.

Although this Committee has already completed its markup of the 2008 Intelligence Authorization Act without addressing intelligence budget disclosure, the Senate version of the bill does include a provision for requiring such disclosure (section 107 of S. 1538). Committee members may therefore encounter this provision in a future House-Senate conference.

If so, I would urge you to seize the opportunity to achieve a final resolution of this longstanding controversy, and a new beginning for intelligence classification policy by endorsing declassification of the intelligence budget.

Thank you for considering my views on these important issues.