

Statement of
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before the
Committee on Governmental Affairs
United States Senate
Hearing on
S.1801, The Public Interest Declassification Act
July 26, 2000

Summary

The Public Interest Declassification Act is an extremely modest proposal.

In fact, the objectives of the Act are so limited that if it were the final result of the ambitious process that began with the Moynihan Commission in 1995, then it would be a pathetic conclusion indeed.

But if it is a "middle" rather than an "end," and if it can contribute to the advancement of more substantial changes in national security classification policy, as I believe, then the Act represents an opportunity that should be seized.

My name is Steven Aftergood and I am a senior research analyst at the Federation of American Scientists (FAS), which was founded in 1945 by Manhattan Project scientists at Los Alamos. FAS performs policy research and advocacy on a range of national security policy issues, with an emphasis on nuclear arms control. I direct the FAS Project on Government Secrecy, which studies government secrecy and information security policies, and generally favors greater openness in national security policy.

Background

The last time this Committee held a hearing on government secrecy was two years ago. [Endnote 1] Since that time, there have been several changes in secrecy policy that are unfavorable to "protecting and reducing government secrecy," as the official name of the Moynihan Commission would have it. To the contrary, secrecy is increasing in scope and diminishing in effectiveness. For example:

C Two years ago, in FY 1998, the intelligence budget total (\$26.7 billion) was unclassified. Today, in FY 2000, it is classified as a national security secret.

C In 1999, Congress imposed a new cap of \$51 million for spending on declassification in FY 2000 by all Department of Defense components. (By comparison, classification related costs exceed \$5 billion annually, according to the Information Security Oversight Office.) Last May, the House voted to lower that cap by nearly 50 percent to \$30 million in FY 2001.

C In 1998, Congress sharply restricted automatic declassification under the provisions of Executive Order 12958. In 1999, Congress dealt a further blow to declassification by requiring declassification officials to conduct a new review of hundreds of millions of pages at the National Archives that had already been declassified to search for inadvertent disclosures of still classified information.

C The Freedom of Information Act is steadily being eroded. Earlier this month in the Defense Authorization Act for FY 2001, the Senate voted to block public access to certain unclassified foreign government information, to further restrict public access to certain unclassified imagery and map products, and to grant the Defense Intelligence Agency a categorical exemption from disclosure for its operational files, despite their previous availability and exceptional utility. [2]

C Meanwhile, "leaks," or unauthorized disclosures of classified information, seem to be steadily growing in frequency and magnitude. One notable recent case concerns the official history of the 1953 CIA covert action in Iran, a matter which CIA officials pledged to process for declassification in the early 1990s. Last year, the CIA told a federal court that no more than one sentence of that 200 page history could be declassified. But then the full classified document was leaked to the New York Times and published almost in its entirety on the Times web site. [3]

C Classified documents are entering the public domain at an unprecedented rate. Just last week, a set of CIA briefing documents, classified at the Secret level, was posted on the world wide web. [4]

Instead of "protecting and reducing" government secrecy, we have been "expanding and exposing" it. It is evidently easier to allow the classification system to break down than it is to agree on how it should be fixed.

The Present Bill

The present bill would not do much to solve the problem. The secrecy legislation that was first introduced in 1997 has been watered down in each subsequent iteration to the point that the present bill would have no direct impact on secrecy policy whatsoever. The bill would create a "Public Interest Declassification Board" that has no independent authority to declassify or compel declassification. Its "advice" and "recommendations" would create no obligation on the part of the recipient.

We know from experience that such declassification advisory bodies can make a positive contribution when they have independent declassification authority, as in the case of the JFK Assassination Records Review Board. Lacking such authority, as in the

case of the CIA Historical Review Panel, for example, they are purely cosmetic and without effect.

It is hard for those who have read and admired the Report of Sen. Moynihan's Commission on Protecting and Reducing Government Secrecy not to be disappointed with this meager outcome. If the final result of the process were nothing more than a mere advisory body, then the entire Commission would have been largely a waste of time, as would the related efforts of this Committee over the years.

But that need not be the case. I believe that the S. 1801, the Public Interest Declassification Act, could still serve as a vehicle for advancing more ambitious goals, and should be enacted.

S.1801 As a Stepping Stone to Larger Goals

Despite its clear limitations, I believe that S.1801 could still serve several useful purposes and should be enacted. These purposes include:

a. Advocate Reform within the Executive Branch.

The Board could serve as an advocate within the executive branch for the promotion of policies consistent with the executive order, the findings of the Moynihan Commission, and other reform initiatives. The Board could help oversee compliance with executive order declassification milestones, special initiatives such as the Chile Declassification Project, and so forth. It could identify specific obstacles to secrecy reform and develop its own declassification policy proposals. It could also serve as an internal executive branch advocate for declassification funding. Even though it could not compel compliance with declassification standards, the Board could serve a useful function by highlighting problem areas for others to act upon.

b. Advise Congress on Pending Legislation

The Board could play an enormously valuable role by overseeing the development of legislation affecting classification and declassification policy and advising Congress, as appropriate.

This function is particularly important since Congress has of late adopted significant legislation on secrecy policy without public hearings or other opportunity for public comment. Some of the secrecy policy issues presently before Congress include: Should Defense Intelligence Agency operational files and unclassified foreign government information be exempt from the Freedom of Information Act? Does the benefit of re-reviewing declassified files at the National Archives outweigh the costs involved? Should limits on declassification spending be lowered by 50%?

The Board could take the initiative to provide well-informed input into these and other highly consequential legislative actions, a function that is clearly consistent with Section 3(b)(2) of the bill.

c. Provide an Occasion for Legislative Oversight

The passage of S.1801 and the creation of the Public Interest Declassification Board would give Congress a "stake" in the conduct of declassification policy, and would provide an occasion for regular oversight of the classification system. This has been sorely lacking.

Although there have been valuable hearings held on legislation affecting particular categories of records involving human rights in Central America, Nazi war crimes, and other topics, there has been no regular or systematic oversight of classification policy for years.

If classification and declassification policy really is as important as I think this Committee believes, then there is a role for increased congressional oversight and the new Board could help bring that about.

Conclusion

In the interests of advancing these important objectives, I respectfully suggest that the Committee give favorable consideration to this legislation.

NOTES

1. "S.712-- Government Secrecy Act of 1997," hearing before the Committee on Governmental Affairs, March 25, 1998, S. Hrg. 105-525.
2. See "Seeking Secrecy Where There Was Sunshine," by Tom Blanton, *The Washington Post*, July 19, 2000.
3. See <<http://www.nytimes.com/library/world/mideast/041600iran-cia-index.html>>.
4. See "Web Site Posts Secret CIA Briefing Papers," by Vernon Loeb and Doug Struck, *The Washington Post*, July 23, 2000. The web site is <<http://jya.com/crypto.htm>>.

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Steven Aftergood is a senior research analyst at the Federation of American Scientists. He directs the FAS Project on Government Secrecy, which works to reduce the scope of government secrecy, to accelerate the declassification of cold war documents, and to promote reform of official secrecy practices.

In 1997, Mr. Aftergood was the plaintiff in a Freedom of Information Act lawsuit against the Central Intelligence Agency which successfully led to the declassification and publication of the total intelligence budget (\$26.6 billion in 1997) for the first time in fifty years.

Mr. Aftergood is an electrical engineer by training (B.Sc., 1977) and has published research in solid state physics. He joined the FAS staff in 1989.

He has authored or co-authored papers in *Scientific American*, *Journal of Geophysical Research*, *Journal of the Electrochemical Society*, *New Scientist*, and *Issues in Science and Technology*, on topics including space nuclear power, atmospheric effects of launch vehicles, intelligence oversight, and government information policy. From 1992-1998, he served on the Aeronautics and Space Engineering Board of the National Research Council.

The Federation of American Scientists, founded in 1945 by Manhattan Project scientists, is a non-profit national organization of scientists and engineers concerned with issues of science and national security policy.