

VICE CHAIRMAN'S FOREWORD

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Protecting National Security Secrets in a "Culture of Openness"

The difficulty of the challenge faced by the Commission is immediately apparent from the Commission's title. In Title IX of the Foreign Relations Authorization Act for Fiscal Years 1994 and 1995, Congress established a commission to *both protect and reduce government secrecy*. These goals are divergent at best, and in some respects they actually conflict. Reasonable access to information is a prerequisite for maintaining an informed citizenry, and for maintaining public confidence in the institutions of government. Thus, it was the task of this body to find ways to reconcile the public's legitimate need for access to information with the Government's legitimate need to protect vital national security secrets.

This is a thoughtful and well-intentioned effort, and the recommendations in the report are basically sound as they strive to achieve a balance between security and openness. But no fallible human institution can achieve perfect balance, and this Commission is no exception. I unequivocally endorse the public's right of access to much government-held information, and I concur in the Commission's finding that too much information is classified and kept too long in secret. But I also believe this report may genuflect too far toward the "culture of openness."

If the government's information security and classification system must lean one way or the other, it should err on the side of secrecy. The question is how far the ship of state can list to one side or the other without taking on water and capsizing. Only time and experience can tell if the tilt is too great or too slight in this instance. But lawmakers and policymakers, as well as members of the general public who read this report, must be aware that this is not an abstract intellectual issue. The U.S. Constitution charges the Federal Government with the duty of providing for the common defense and securing the blessings of liberty. Because the Government must pursue those vital purposes in a dangerous world—even more volatile and uncertain than ever in this "Age of Chaos"—the Government must be able to keep secrets. Failure to do so, even out of a well-intentioned desire to open up the processes and archives of government, may cause irreparable harm to the nation, and may cause loss of life. Openness and heightened access are laudable in themselves, but in the act of enshrining them as public policy we also have to beware of the Law of Unintended Consequences.

Protecting Secrets: A Cold War Legacy or Abiding National Interest

The correct balance between security and openness can be achieved only if we think clearly about the underlying reasons for both. First, we have to dispense with the false notion that protecting the secrecy of sensitive national security information is exclusively a result of the Cold War; in effect, that the impulse to secrecy is an aberration, a practice that can be safely dispensed with now that the Soviet threat is gone. Espionage directed against the United States has not ended. Threats to the continental United States, to our citizens and troops abroad, and to our vital interests have not ended.

If anything they are proliferating, so that the dangers, while perhaps less lethal than those of the former Soviet Union, are more widespread and less manageable.

As Chairman Moynihan correctly points out, the government secrecy system did not start with the Cold War, but began during another conflict, with the Espionage Act of 1917. That history should be instructive to those who would seek to cripple or dismantle the nation's ability to keep secrets on the grounds that "the Cold War is over." In one sense, the cold war of struggle and competition between nations is never over. Intelligence collection and the corresponding need to protect vital information, and the need to ensure the reliability and loyalty of government officials who handle that information, will not cease as long as the United States remains a free and independent nation. Indeed, this remains a fundamental requirement of statecraft of any nation in today's world, not just the United States.

Secrecy and National Security

The great English critic and lexicographer Samuel Johnson once said that "patriotism is the last refuge of a scoundrel." We should keep that in mind when national security is invoked as a reason to perpetuate government excess or abuse. But common sense also says that some demands of national security are very real and necessary. National security is not simply one among many government concerns. It should be foremost; it is the primary reason why government is created.

But defense of the nation is not something the citizen can do on his or her own. Only a collective effort under the leadership of competent government can provide for the common defense, and this of necessity includes some modest limits on our collective freedom, including the right to know everything the Government needs to know to carry out this essential function. It is true that too much secrecy, and the abuse of the public's right to know, can erode respect for government. On the other hand, failure to carry out the vital mission of protecting the nation and the American people will undermine the legitimacy of government far more quickly and surely.

The Moral Imperative of Keeping Secrets

In addition to keeping secrets that could affect national security, the Government also has a solemn moral obligation to protect those individuals who provide information valuable to the United States, especially those who do so at risk to their lives. This obligation extends to protecting the methods used to gather the information as well as the sources, so that nothing points back to endanger them. Skilled intelligence professionals can deduce almost as much from the method as from the content. And the more material they have to work with, the easier it is to discern the patterns in the way the United States gathers sensitive information. This is one risk, a potential unintended consequence, in the hasty declassification and bulk release of government documents not sufficiently acknowledged in this report. Some things that might not be apparent to the U.S. Government in the act of bulk declassification could become clear to a hostile intelligence service sifting through a mass of documents; for example, the modus operandi of U.S. intelligence, the matters of greatest interest to the Government, and perhaps even the compromise of specific "sources and methods" are inevitable in a hasty, bulk declassification.

The moral obligation to protect U.S. informants has to be constantly balanced against the public's right of access. This commitment is at least on a par with the moral claims asserted by the "culture of openness."

Is Secrecy a Burden?

The Commission was confronted on many levels with the lack of credibility and loss of respect for the Government system of secrecy, born in part through overclassification, too much complexity, and the well-known phenomenon of self-perpetuating bureaucracy.

It is true that secrecy is a form of regulation, and the American citizen labors under far too many burdensome regulations as it is. But we have to draw a proper distinction between regulation that is necessary and serves an agreed-upon purpose, one connected with the legitimate and necessary function of government, and regulation which is not necessary. Good judgment is the only arbiter, and that judgment has to be informed by an understanding of history, and of the "first principles" which undergird this nation, especially those embodied in the Constitution.

The zeal to open up the process and to declassify information flows in part from a commendable desire among the American people to restore confidence in their government. However, compromising sensitive information through excessive haste to declassify and release will engender a loss of confidence of a different kind. American citizens have a great deal of common sense. They do not want their government withholding information they need to make an informed decision about national policy. But neither do they want their government revealing things that ought to be concealed. They accept the proposition that some things must be kept hidden. They are perfectly capable of understanding that a violent shaking of the security and classification system could compromise vital information and capabilities, and make it harder for the United States to collect information in the future. Informants and allies abroad would be much more reluctant to confide in U.S. intelligence or government officials for fear of being compromised in a rush to declassify.

The citizen is right to be concerned about a government that fosters a dark, closed, and oppressive culture of secrecy. This was, after all, one of the most detested aspects of Communist culture in the former Soviet bloc. But in the final analysis, it must also be said that a government that remains within its proper Constitutional limits, that focuses on its proper Constitutional priorities, and that does not attempt to meddle in the daily lives and routine affairs of its citizens, should not be feared if it also attempts to keep some things secret. The growing fear of government secrecy is linked directly to the growth of government power and intrusiveness. The Commission report does not address this problem per se, but I believe this implication is clear to those not already biased in favor of big government.

The Cost Factor

It will cost many millions to declassify rapidly and release the huge store of currently classified material. Every government expenditure ought to have a cost-benefit. But it is difficult to justify an extraordinary expenditure that goes beyond the costs of routine declassification as a benefit to the taxpayer. Ramping up costs for bulk declassification might benefit special interests; for example, historians, academic researchers, archivists, and policy groups who believe it is the government's duty to radically alter its handling of classified material. But I am hard pressed to see how such an expenditure will benefit taxpayers as a whole.

To be sure, the amount of classified material in government hands is enormous, too enormous. Some of it is more than 25 years old, and presumably much can be released without jeopardizing the nation's security or exposing intelligence sources and methods. But President Clinton's 1995 Executive Order 12958 requires the automatic declassification of all documents over 25 years old by the year 2000. Five years may seem like ample time for this process, but the amount of classified

material subject to the executive order means this five-year deadline will impose a huge and costly burden on the Intelligence Community. Trained specialists and limited resources will have to be diverted from intelligence functions far more vital to national security. From a cost-benefit standpoint, an “issue-driven” approach would make more sense than the bulk declassification envisioned under the Executive Order. Issue-driven declassification would focus on releasing documents with public policy or historic significance, rather than engage in a heroic and costly effort to release the entire store of classified documents in haste.

A Statutory Solution?

When confronted with a problem or an abuse, it is the natural tendency of Americans to pass a law. We are great believers in the redemptive power of law; and, after all, that is what Congress does. And, while I support many of the statutory recommendations in this report, I also acknowledge that there is a limit to what can be achieved through a statute.

Any statute that emerges from the give-and-take of Congress might well end up having little or no relation to what this Commission has recommended. It might be watered down in the consensus-building process to the point where it provides no real reform or corrective action. And inadequate legislation could be worse than none at all, for it would create the illusion that the problem was being addressed, while doing little except breeding a dangerous complacency, or creating a new centralized process that merely adds another layer of bureaucracy and cost.

We should pursue statutory solutions, but remain aware that there is no statutory substitute for sound leadership, good management, commitment, competence, and accountability. Flawed and fallible human beings will have to implement the law on a daily basis, so the matters at issue are subject to daily pressures, judgments, biases, and human error. Handling classified information and protecting vital secrets is a fluid, dynamic process subject to the vagaries of human nature. What is required are people who have the competence and good judgment to operate in the zone of tension between divergent goals—reducing secrecy (which includes limits on the ability of government officials to classify documents) while protecting what needs to be protected.

A commendable feature of this report is its emphasis on accountability. Better accountability, whether it comes through statute or through executive order, will work both ways: making sure that unnecessary classification does not happen, and also that a sudden zeal for openness does not inadvertently compromise highly sensitive information.

Personnel Security

The need to clear people for access to sensitive information may have been based, quite legitimately, on fear of subversion by Communist agents in the Cold War. But the end of the Cold War does not end that concern. Today America has enemies just as implacable in their hatred of the United States, if not as threatening in their means, as the former Soviet Union.

Government officials, members of the Intelligence Community, and military personnel are still the targets of attempts to “turn” them. The blandishments of foreign intelligence services may be even more numerous because the end of the Cold War has spawned many new sources of possible subversion. Of course, attempts to subvert are now based less on ideological recruitment, as was common in the Cold War, than on simple greed, as we are already seeing in this supposedly post-ideological age. In streamlining and standardizing the personnel security system, the U.S.

cannot afford to compromise in any degree the requirement for stability and loyalty in the people who will have access to classified material.

Security of Information Systems

The most valuable service of this Commission may prove to be its emphasis on the security of automated information systems, a crucial area of national vulnerability. It is in this area where the countervailing goal of openness may have the most destructive effects if we are not careful. Computer intrusions and attacks on the data banks of the Pentagon and U.S. Government laboratories are now common. The communications and transportation infrastructure, as well as the entire banking and financial structure of the United States, are computer-based and potentially vulnerable to hackers or hostile powers. Successful attacks on America's automated data handling and storage systems could wreak more havoc than a conventional military attack.

This area of concern will be the most difficult to address through legislation because the problems are highly technical and because information technology is not static, but subject to fast-paced change. Legislation that attempts to protect the security of information systems is likely to be too broad or too specific. If too broad, it will be useless; if too specific, it will soon be outmoded by the rapid march of technology. Nevertheless, we must try to steer a course through these two shoals, revisiting the issue annually in Congress if need be to ensure that our vital computer-based and automated information systems are protected.

Conclusion

In public policy there is often an equal and opposite reaction to government abuse. Because government secrecy has been abused, we must not overreact and send the pendulum swinging too far in the opposite direction. The government must be made to discharge its superfluous secrets and behave in a more open manner. Government officials must be more subject to limits on what they can classify. But in our rush to widen access, we must not compromise vital secrets, nor betray those who have risked their lives and fortunes to confide in us. We must make sure greater access and openness do not become a remedy more deadly than the disease they purport to cure.

The task of this Commission was not easy; it required maintaining a balance between conflicting obligations. Walking the fine line between greater openness and safeguarding the nation's security took sound judgment, a discerning knowledge of America's history, and a deep appreciation of the citizen's need for information in a self-governing society to make sound decisions. The nation was immensely fortunate to have just such a man in Senator Daniel Patrick Moynihan to chair this Commission. I commend and thank him for his fine leadership. I also commend and thank my Commission colleagues and the outstanding staff for their dedication to the nation's highest interests which made the success of the Commission, and this report, possible.