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* Nobel Laureate

May 25, 2006
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Hon. Pete Hoekstra, Chairman
House Permanent Select Committee on Intelligence
U.S. House of Representatives
Washington, DC 20515

Hon. Jane Harman, Ranking Member
House Permanent Select Committee on Intelligence
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Hoekstra and Ranking Member Harman:

My name is Steven Aftergood. I direct the Federation of American Scientists Project on Government Secrecy, which promotes public access to government information and advocates reform of obsolete or counterproductive security policies.

I would like to submit the following statement for the record of your Committee's May 26 hearing concerning unauthorized disclosures of classified information ("leaks").

Respectfully yours,

Steven Aftergood
Director
Project on Government Secrecy
Federation of American Scientists

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Statement of Steven Aftergood
Federation of American Scientists
May 26, 2006

In the course of my research and advocacy activities, I occasionally gain unauthorized access to classified information and sometimes I release such material to the press.[1]

Based on my experience with unauthorized disclosures, I would like to present two claims for your consideration: (1) Some unauthorized disclosures of classified information are good-- that is, they serve a valuable and constructive purpose; and (2) Congress has inadvertently fostered leaks by discouraging classified communications from would-be whistleblowers, and by resisting efforts to reduce overclassification of national security information.

1. Some Leaks Are Good

By definition, properly classified information has the potential to damage national security if it is disclosed without authorization. Furthermore, damage aside, every leak involves a violation of a non-disclosure agreement and is therefore dishonorable. Under ideal circumstances, all leaks would be simply wrong.

However, prevailing circumstances are not ideal – overclassification is rampant (as discussed below), authorized channels for communication of classified information are defective, and independent oversight lags behind rather than leads media coverage.

Under these non-ideal circumstances, the reality is that some leaks serve a positive, beneficial purpose. The "best" leaks help to expose abuses of government authority to public awareness, stimulate congressional oversight, and reinforce constitutional values.

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[1] For example, some years ago I obtained unauthorized access to classified records on an unacknowledged Department of Defense special access program called Timber Wind and I disclosed portions of this material to the press. See "Secret Nuclear-Powered Rocket Being Developed for 'Star Wars'" by William J. Broad, New York Times, April 3, 1991, page A1. For a subsequent investigation, see "The Timber Wind Special Access Program," Department of Defense Inspector General Audit Report No. 93-033, December 16, 1992.

What is an example of a "good" leak of classified information?

I would say that the unauthorized disclosure in May 2004 of a classified report on torture of Iraqi prisoners at Abu Ghraib prison meets the relevant criteria (see excerpt attached).

The report, authored by Maj. Gen. Antonio Taguba, found that "between October and December 2003, at the Abu Ghraib Confinement Facility, numerous incidents of sadistic, blatant, and wanton criminal abuses were inflicted on several detainees."

This observation, as well as the itemized list of criminal activities elaborated on the same page, and the report as a whole, were all classified "Secret / No Foreign Dissemination" at the time of their unauthorized disclosure.[2]

I believe that the leak of the Taguba report qualifies as a "good" leak because it publicly exposed criminal activity conducted by U.S. military personnel, and it laid the foundation for reform of prisoner detention and interrogation practices at Abu Ghraib prison. It also galvanized public awareness of the issue and prompted congressional oversight, which had been dormant or ineffective on the subject of prisoner abuse.

For these reasons, I believe that the release of the classified Taguba report, though unauthorized, was a profound service to American democracy.[3]

It follows that any changes in policy that make a disclosure of this sort more difficult or unlikely, without correcting the concomitant defects in oversight and classification – would be a disservice and should be opposed.

2. Congressional Actions Have Fostered Leaks

By acts of omission and commission, Congress has inadvertently created an environment where unauthorized disclosures are more likely to occur. Specifically, there

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[2] The Taguba report, which is formally titled "Article 15-6 Investigation of the 800th Military Police Brigade," was finally declassified several months after its unauthorized disclosure. The attached excerpt is from the declassified version.

[3] A similar calculation might apply to the December 16, 2005 New York Times story on warrantless domestic surveillance if one believes that the procedures of the Foreign Intelligence Surveillance Act are "the exclusive means by which electronic surveillance... may be conducted" in domestic intelligence collection, as per 18 U.S.C. 2511(f), and that the NSA program revealed by the New York Times was therefore unlawful.

is a perception that Congress does not welcome classified disclosures from whistleblowers. Meanwhile, Congress has encouraged overclassification by blocking classification reform.

2a. Classified Communications to Congress Seem to be Unwelcome

Unfortunately, Congress has discouraged those who in good faith seek to inform Congress about government misconduct on a classified basis.

This was the recent experience of Mr. Russell Tice, a former National Security Agency employee who alleges illegal activity by the NSA.[4]

For months, he sought to brief the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence regarding his allegations, in accordance with the Intelligence Community Whistleblower Protection Act.

According to Mr. Tice, the Senate Committee never responded to his approach. A meeting with House Committee staff, he says, was concluded when staff determined that they lacked the security clearances to receive his allegations![5]

Although Mr. Tice eventually gained a hearing from the Senate Armed Services Committee, the difficulty he encountered in presenting his concerns to Congress in a classified setting might well have dissuaded a less determined person, and convinced him that the press offered the only venue to air his concerns.

If Congress wishes to discourages leaks, it should therefore ensure that the alternative to leaking is simple, straightforward, and productive. Today, it is not.

2b. Congress Has Unwisely Resisted Classification Reform

By all accounts, overclassification is a systemic problem in the intelligence community and government-wide.

"We overclassify very badly," said then-HPSCI chairman Rep. Porter J. Goss in testimony before the 9-11 Commission on May 23, 2003.[6]

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[4] I am not familiar with the substance of Mr. Tice's complaint, which remains classified, or its validity.

[5] See April 25, 2006 correspondence from Mr. Tice to the House and Senate Intelligence Committees here: http://www.fas.org/irp/news/2006/04/tice042506.pdf .

[6] See: http://www.fas.org/irp/congress/2003_hr/911Com20030522.html#dys .

"I do think we overclassify, and I think it's because we got bad habits," said Gen. Michael V. Hayden, the nominee to be the new Director of the Central Intelligence Agency, at his May 18 confirmation hearing.[7]

But despite a near-universal consensus that overclassification is rampant, Congress has done little to address the problem.[8] To the contrary, Congress has blocked the most significant efforts at classification reform.

The single most important step that could be taken towards classification reform in intelligence is the disclosure of the intelligence budget. Every independent expert assessment has concluded that this step is feasible, necessary and desirable.[9] But Congress has repeatedly blocked the move.

Most recently, intelligence budget disclosure was identified by the 9-11 Commission as one of its 41 specific recommendations, based on a finding that excessive secrecy was degrading the performance of U.S. intelligence agencies.[10]

Likewise, a decade ago the Aspin-Brown Commission on intelligence reform urged annual disclosure of the aggregate intelligence budget appropriation and the next year's budget request.[11]

By repeatedly defying this bipartisan consensus, Congress has effectively stopped classification reform in its tracks. Worse, Congress has reinforced widespread contempt for the classification system by perpetuating discredited secrecy policies like intelligence budget secrecy.

As long as overclassification is prevalent and classification policies lack credibility, unauthorized disclosures – however dishonorable or dangerous some of them may potentially be – can also contribute to overcoming classification abuse. From my own

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[7] See: http://www.fas.org/irp/congress/2006_hr/051806transcript.pdf .

[8] One notable recent exception is the successful effort of Chairman Hoekstra to win declassification of certain captured Iraqi documents.

[9] On two occasions in the past, the aggregate intelligence budget has been officially disclosed, first in response to a lawsuit I filed under the Freedom of Information Act in 1997 and then again in 1998. There were no adverse consequences for national security.

[10] See Final Report of the 9-11 Commission at page 416. The Commission recommended disclosure both of the aggregate national intelligence budget and of the budget totals of individual intelligence agencies. In October 2004, the Senate approved aggregate budget disclosure, but the House blocked the measure.

[11] Preparing for the 21st Century, page 142.

perspective, it seems likely that their benefits in preserving constitutional values greatly outweigh their risks to national security.

Conclusion

I believe it is an error to focus on unauthorized disclosures as if they were an isolated phenomenon, without consideration of the corrupted state of the classification system and the difficulties faced by whistleblowers who seek to comply with official procedures.

A far more productive approach would be to tackle the widespread overclassification that intelligence officials readily admit but seem helpless to correct. Specifically, I believe Congress should embrace the bipartisan recommendation of the 9-11 Commission and its predecessors and declassify the intelligence budget.

Ten years ago, the late Senator Daniel P. Moynihan put it in a nutshell: "If you want a secret respected, see that it's respectable in the first place."[12] That is still good advice today.

Enclosure:
Excerpt from the Taguba report (declassified version) (2 pages)

[12] 4 March 1996, remarks at an Open Forum at the State Department.

ARTICLE 15-6 INVESTIGATION OF THE 800th MILITARY POLICE BRIGADE

SECRET/NO FOREIGN DISSEMINATION

DECLASSIFIED
BY U.S. Central Command
DATE 15 OCT 2004

February 2004, COL Thomas M. Pappas was the Commander of the 205th MI Brigade and the Commander of FOB Abu Ghraib (BCCF). **(ANNEX 31)**

3 (U) That the 320th Military Police Battalion of the 800th MP Brigade is responsible for the Guard Force at Camp Ganci, Camp Vigilant, & Cellblock 1 of FOB Abu Ghraib (BCCF) That from February 2003 to until he was suspended from his duties on 17 January 2004, LTC[redacted]n served as the Battalion Commander of the 320th MP Battalion. That from December 2002 until he was suspended from his duties, on 17 January 2004, CPT[redacted]e served as the Company Commander of the 372nd MP Company, which was in charge of guarding detainees at FOB Abu Ghraib. I further find that both the 320th MP Battalion and the 372nd MP Company were located within the confines of FOB Abu Ghraib **(ANNEXES 32 and 45)**

4. (U) That from July of 2003 to the present, BG Janis L Karpinski was the Commander of the 800th MP Brigade **(ANNEX 45)**

5. ~~(S)~~ That between October and December 2003, at the Abu Ghraib Confinement Facility (BCCF), numerous incidents of sadistic, blatant, and wanton criminal abuses were inflicted on several detainees This systemic and illegal abuse of detainees was intentionally perpetrated by several members of the military police guard force (372nd Military Police Company, 320th Military Police Battalion, 800th MP Brigade), in Tier (section) 1-A of the Abu Ghraib Prison (BCCF) The allegations of abuse were substantiated by detailed witness statements **(ANNEX 26)** and the discovery of extremely graphic photographic evidence Due to the extremely sensitive nature of these photographs and videos, the ongoing CID investigation, and the potential for the criminal prosecution of several suspects, the photographic evidence is not included in the body of my investigation The pictures and videos are available from the Criminal Investigative Command and the CTJF-7 prosecution team. In addition to the aforementioned crimes, there were also abuses committed by members of the 325th MI Battalion, 205th MI Brigade, and Joint Interrogation and Debriefing Center (JIDC) Specifically, on 24 November 2003, SPC[redacted], 205th MI Brigade, sought to degrade a detainee by having him strip and returned to cell naked **(ANNEXES 26 and 53)**

6 ~~(S)~~ I f nd that the intentional abuse of detainees by military police personnel included the following acts

a ~~(S)~~ Punching, slapping, and kicking detainees, jumping on their naked feet,
b ~~(S)~~ Videotaping and photographing naked male and female detainees;
c ~~(S)~~ Forcibly arranging detainees in various sexually explicit positions for photographing,
d ~~(S)~~ Forcing detainees to remove their clothing and keeping them naked for several days at a time;
e. ~~(S)~~ Forcing naked male detainees to wear women's underwear,
f ~~(S)~~ Forcing groups of male detainees to masturbate themselves while being photographed and videotaped;