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Censorship, Lie Detectors Hit:

Reagan Information Policies Face Threat From Capitol Hill

Concerned by what they consider a Reagan administration policy to restrict public access to government information, press and civil liberties groups, with the aid of influential members of Congress, have begun a counterattack.

The next salvo is expected to come from the House Post Office and Civil Service Committee, which is considering a bill barring censorship of the writings of government employees and limiting the use of polygraphs (lie detectors) by federal agencies.

The bill (HR 4681) was introduced in response to a controversial administration policy decision made in 1983 to expand the use of polygraphs and require lifetime pre-publication review of everything written by some 120,000 federal workers.

Under pressure from Congress, the administration has suspended the policy, contained in National Security Decision Directive 84, for the rest of 1984. However, some members fear that although the practices are banned governmentwide, individual agencies may require employees to submit to the provisions of the directive. *(Weekly Report p. 336)*

Other attacks against the White House policy have been mounted in recent months. Press groups, with the help of Sen. Patrick J. Leahy, D-Vt., secured concessions before the Senate passed a major revision of the Freedom of Information Act (FOIA) Feb. 27. As a result, while the bill (S 774) does close off certain areas of information, such as details of law enforcement cases, it does not bar access to information as broadly as the administration originally proposed in 1981.

In addition, the bill contains several provisions, backed by the press, aimed at streamlining FOIA procedures. *(Weekly Report p. 511)*

The Senate also passed a bill in November 1983 (S 1324) empowering the director of the CIA to prevent freedom of information access to files containing data on the agency's sources and methods, but that measure also is less restrictive than the administration originally had proposed. *(1983 Weekly Report p. 2479)*

The House Permanent Select Committee on Intelligence has approved legislation (HR 5164), similar to S 1324, that contains provisions advocated by civil liberties groups allowing legal challenges to decisions by the CIA director to close files.

In addition, Sen. Dave Durenberger, R-Minn., has introduced legislation to overturn the Reagan administration's 1982 Executive Order 12356, which provided guidelines on classification of government documents.

While that order has resulted, according to the White House, in an 18 percent reduction in the number of new secrets, it also has tightened classification of historical documents, and they have been declassified at a slower pace than before. Hearings in the Senate Governmental Affairs Committee are expected sometime later this spring on the Durenberger proposal.

"I don't think there's much question" that the administration has pursued a policy of keeping information from the public, said Rep. Glenn English, D-Okla., chairman of the House Government Operations Subcommittee on Government Information. "From its first days after being sworn into office, from FOIA to new executive orders dealing with classification, the administration has a general policy of, 'Don't provide any information unless you have to.' "

English has resisted the administration's policy by moving slowly on changes in FOIA. One Justice Department official called his subcommittee the "black hole of freedom of information reform."

In addition, English has introduced legislation to overturn a Justice Department ruling that uses the Privacy Act to withhold certain information requested under the Freedom of Information Act. English called that ruling "an opportunity for mischief by those who don't support FOIA."

Charges of Secrecy

Reporters are quick to outline what they see as Reagan administration efforts to close off the government to them. In a recent column, syndicated writer Jack Anderson listed five examples of "how [Reagan] has sought to control the flow of information to the public."

The Reporters Committee for Freedom of the Press has a more extensive catalog. The committee submitted to the House Post Office Subcommittee on Civil Service a list of 31 examples ranging from administrative actions — such as excluding news media from covering the U.S. invasion of Grenada — to legislative recommendations, such as seeking a complete exemption from FOIA for the CIA.

The administration defends its actions as necessary to protect against leaks of classified information, which it regards as a serious problem. "The

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—Rep. Glenn English, D-Okla.

—By Robert Rothman

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unauthorized disclosure of our nation's classified information by those entrusted with its protection," President Reagan wrote to federal workers Aug. 30, 1983, "is improper, unethical and plain wrong."

The directive on polygraphs and prepublication review, which provoked the loudest criticism of all the administration's actions, was an amplification of existing policy.

A 1983 General Accounting Office (GAO) report found that six agencies — the departments of Defense, Justice, Treasury and Health and Human Services, and the Postal Service and Tennessee Valley Authority — used polygraphs. All but Defense and Justice used them primarily for investigations of criminal actions or employee misconduct.

The report said the government in 1982 employed 194 polygraph operators and had 14 under contract. Of those, 28 employees and the 14 under contract were used in connection with national security matters.

The GAO also found that 7,805 articles, 2,887 speeches and 68 books were reviewed in 1982 by federal agencies prior to publication, and that 145 employees were assigned to that task.

From 1978 through 1982, six agencies reported 328 unauthorized disclosures, 21 of which were made through writings and speeches.

The Directive

The spate of unauthorized disclosures led to the creation of an interdepartmental group made up of representatives of the CIA and the departments of State, Justice, Treasury, Defense and Energy. It determined that the methods available to the government to investigate leaks were insufficient.

The group concluded that the investigatory system was "so ineffectual as to perpetuate the notion that the government can do nothing to stop leaks of classified information."

In response, the Reagan administration issued National Security Decision Directive 84 in March 1983, although details were not made available until August. The directive required about 120,000 federal workers with access to certain classified information to submit for pre-publication review everything they write for the rest of their lives.

In addition, the directive authorized wider use of polygraphs in investigations of leaks of classified information and imposed sanctions on employees who refused to submit to the tests.

The directive also required agencies to set policies to govern contacts between employees and the media and authorized the FBI to investigate whether criminal laws were violated.

According to Acting Assistant Attorney General Richard K. Willard, author of the directive, "That directive included a number of measures to prevent the unauthorized disclosure of classified information."

However, at a closed hearing held jointly by the House Post Office Subcommittee on Civil Service and the House Judiciary Subcommittee on Civil and Constitutional Rights in early 1984, Willard said the directive would have stopped only a small percentage of the leaks he identified, according to committee staff.

Whatever its intent, the regulation provoked a firestorm.

"The presidential directive on pre-clearance is a direct and we believe unconstitutional prior restraint whose suppression power is doubly reinforced by the polygraph and press-monitoring provisions of the directive," said Jack Landau, executive director of the Reporters Committee for Freedom of the Press.

Sens. Charles McC. Mathias Jr., R-Md., and Thomas F. Eagleton, D-Mo., succeeded in attaching a provision to a State Department authorization bill cleared in November 1983 (HR 2915 — PL 98-164) barring the directive from being put into effect through April 15, 1984. Mathias and Eagleton, both ranking members of the Senate Governmental Affairs Committee, wanted an opportunity to hold hearings on the regulations. *(1983 Weekly Report p. 2530)*

But before the committee held hearings, the administration announced that it had suspended the directive. "This has been done to permit consultations with Congress to continue, unaffected by an ongoing legislative dispute on the provisions" of the directive, Willard said.

Others argued, however, that the suspension was insufficient. Some on Capitol Hill said privately that the suspension was timed to coincide with confirmation hearings on the nomination of Edwin Meese III as attorney general in order to defuse a potentially contentious issue. *(Meese, Weekly Report p. 787)*

Others said it left a loophole. President Reagan "has not revoked, withdrawn or otherwise disavowed the suspended measures," said Landau. "And as far as we know, they could be reimposed tomorrow were it not for the partial ban imposed by Congress until April 15, 1984."

On March 20, national security adviser Robert McFarlane wrote to Rep. Patricia Schroeder, D-Colo., who chairs the House Post Office Subcommittee on Civil Service, informing her that the directive will remain suspended throughout the 1984 congressional session.

Polygraph Ban

But Jack Brooks, D-Texas, chairman of the House Government Operations Committee, insists on plugging the loopholes he says remain. Brooks has introduced HR 4681, which would prohibit government agencies from requiring employees to submit to polygraph testing. The bill would permit the use of such tests only for investigation of criminal activity and of leaks — and employees would have to agree to their use.

HR 4681 also would prohibit the government from requiring employees to submit books and articles written by them for pre-publication review.

The bill would cover all government employees except those in the CIA and the National Security Agency. However, other agencies are seeking exemptions. The Office of Management and Budget (OMB) is currently reviewing agency requests and is expected to report to Congress by the end of April.

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In addition, Brooks and Post Office Committee Chairman William D. Ford, D-Mich., have asked the GAO to update its 1983 survey of polygraph and pre-publication review use within the federal government. When Ford's committee receives the reports from OMB and GAO, it plans to act on HR 4681.

The measure was not Brooks' first attack on the administration's directive. In November his committee approved a report (H Rept 98-578) that sharply criticized the directive and recommended that it be rescinded.

Based on studies by GAO and the Office of Technology Assessment, the committee concluded that "the validity of the polygraph is not scientifically supported for the purposes and manner of its use proposed by the administration."

Furthermore, the committee said, "The pre-publication review requirement will result in significant infringement of the free flow of information and debate which is necessary for an informed public and which has been historically protected from prior censorship."

Five Republicans on the committee wrote in a separate statement that they supported the polygraph use but opposed the pre-publication review requirement. Six other Republicans said the pre-publication review should be limited, rather than extend throughout an employee's lifetime.

Freedom of Information

While the administration was taking a beating on National Security Decision Directive 84, it was winning a partial victory on blocking certain information from public view.

Since entering office, President Reagan has advocated tightening the Freedom of Information Act to restrict the amount of information available to the public. According to the administration, the act has been misused by organized crime syndicates and other lawbreakers to evade criminal investigations or retaliate against informants.

The administration also has received complaints from businessmen that trade secrets and other information they submitted to the government were being released under FOIA.

In response to similar concerns, the Senate Judiciary Committee spent three years considering changes in the law that would expand exemptions to the act, particularly law enforcement records, and protect commercial information submitted to the government. But because of objections raised by the news media and civil liberties groups, legislation never reached the Senate floor.

In late 1983 the committee reached a compromise. S 774, reported by the Judiciary Committee in September 1983 (S Rept 98-221) and passed by the Senate in February, would give the administration more discretion to close certain files.

However, it also provides financial incentives for agencies to respond promptly to requests and establishes a uniform schedule of fees charged to those requesting information. Both those changes were sought by media organizations, such as the Reporters Committee, to make the act work more efficiently.

The Reporters Committee had charged that the Reagan administration had virtually suspended fee waivers, which were routinely granted to journalists and scholars, and that the different rates charged by agencies to search for the information requested discouraged people from using FOIA.

Sen. Leahy, who argued on behalf of the media organizations, said he would have liked the legislation to address other concerns, including the president's executive order on classification. Leahy is a cosponsor of Durenberger's bill overturning that order. The bill would require agencies classifying information to consider first the public interest in disclosure.

But, Leahy said, "I am . . . confident that Congressman English in the House Government Operations Committee will pay particular attention to these matters when they begin hearings on this legislation."

English has said he will move slowly on making changes in FOIA. Noting that the act has undergone a great deal of scrutiny in the courts, English said that "any changes will have to be made with equal care."

English also will have an opportunity to scrutinize S 1324, the Senate bill allowing the CIA director to remove from FOIA coverage files that contain information about the agency's sources and methods of operation.

According to Senate Select Intelligence Committee staff, those files are classified, and would be exempt from the law in any case. S 1324 would free the agency from taking the time to look through them, thus, presumably, making other requests proceed more efficiently.

House Bill

Like S 1324, the version approved by the House Intelligence Committee April 11 (HR 5164) carefully defines the type of files that may be exempted by the CIA director. Both bills require the agency to search files in response to FOIA requests for information concerning the person making requests, information concerning covert actions and information regarding suspected CIA improprieties.

In addition, HR 5164 goes further than S 1324 in providing a check on the CIA director's discretion. The bill expands the section permitting judicial review of agency decisions, giving judges more leeway in deciding whether the CIA director should have opened certain files.

The measure is now before English's Government Operations subcommittee, which has not yet scheduled hearings.

English is less eager than his Senate counterparts to make changes in laws governing public access to information. When he announced that he would hold hearings on FOIA, English said the burden of proof was on those who want to change the law. Basically, he said, the laws that are on the books are adequate.

However, he said he has problems with the way the Reagan administration interprets the laws — and "I haven't come up with anything to guarantee that they follow the law."

"The pre-publication review requirement will result in significant infringement of the free flow of information and debate which is necessary for an informed public and which has been historically protected from prior censorship."

—The House Government Operations Committee report on administration information policy

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