Openness and the CIA

Warren F. Kimball

> **"Thus the issue of openness is a matter of setting reasonable, practical standards, not an immutable proscription."**

Warren F. Kimball is the Robert Treat Professor of History at Rutgers University. He spent 23 years as an active reservist with Naval Intelligence. Since 1991, he has been a member of the State Department Historical Advisory Committee (eight years as chairman).

At a superficial level, there is an oxymoronic aspect to the pairing of "openness" and the CIA.* Revealing what, when, and how intelligence was gathered threatens to betray either the source or the method by which that intelligence was obtained. If a foreign government conversation about X-secret was held at 10 a.m. on the 4th of July, and US records are opened that disclose that the President received information about X-secret on July 5th, then bingo!, that foreign nation's counterintelligence service can narrow the field of suspects down to a precious few. Variations on that scenario seem to warrant exempting the CIA and the Intelligence Community from any and all of the current directives, executive orders, and laws calling for declassifying and opening their historical records.

Intelligence is, by its own definition, inherently secret and clandestine. Exposed intelligence agents are either dead, "turned," or retired—and writing their memoirs. That latter phenomenon, legitimized by the storied Allen Dulles, has become a cottage industry, especially for those who, like Dulles, serve as Director of Central Intelligence (DCI)—which raises an interesting conundrum. If intelligence must be secret forever lest national security and the effectiveness of the CIA be jeopardized, how can such memoirs be permitted? And since they are permitted and vetted by the CIA are they then, by definition, *dis*-information? Research has demonstrated that the answer is an unequivocal "yes and no." Historians generally treat all memoirs as a form of disinformation that exaggerates or exculpates, but that is not the issue here. Unless such memoirs are a conscious, planned disinformation operation that is closely controlled by the CIA, unless those memoirs are a thin tissue of lies, then *all* intelligence is not secret and clandestine. Thus the issue of openness is a matter of setting reasonable, practical standards, not an immutable proscription.

The memoir business may be politically necessary (these are powerful people) and politically useful (such memoirs invariably burnish the CIA's reputation),[1] but what about a formal CIA program for declassification? The argument is made that declassification at any time can compromise the CIA's ability to do its job. To expose operatives and agents at any time could destroy the Agency's ability to recruit personnel and sources. Clandestine is clandestine. But does that pass the common sense test? Is it not possible to set a firm date by which *no* secret needs to be kept secret? Certainly common sense dictates that absolutely no secrets from the

*Precision of terminology in the intelligence world can be crucial, especially when authority for actions and operational plans is being crafted. Yet I also know, from painful experience, that CIA personnel can hide neatly behind a facade of word games over such phrases as "covert action" versus "covert operations." I would ask you all to apply common sense, not Jesuitical debating techniques, as you read this piece.

American Revolution or Civil War need to be kept classified. So the issue for a fixed "drop dead" date for releasing all secrets is merely a matter of determining the date, not a matter of principle and national security.

The Impact of Time

There is the argument that CIA "sources and methods" require everlasting protection. There is a ring of plausibility to the argument that special technological methods and the identity of sources—whether individuals or agencies—need protection against disclosure. It could jeopardize lives if agents or contacts were revealed; it could jeopardize continued access to important information if special relationships with foreign agencies were acknowledged. Imagine, for example, if the United States had a "liaison" relationship with the government intelligence agency in a nation that had a strong anti-American political element. Make your own list of "possibles" from this morning's newspaper—Greece, Syria, Venezuela, just for starters. If the United States acknowledged that it received information from the intelligence agency in such countries, governments could fall. But the sources and methods argument disappears with aging. Human sources die, governments change, technologies become common knowledge or unusable, the very purpose of secrecy is lost. The fear that 30-year old "liaison" arrangements will destroy current intelligence capabilities may, in some rare cases, be valid. But once again all we are arguing is *when* not *if* such information can be made public. Moreover, as the Secrecy Commission pointed out, "the sources and methods rationale has become a vehicle for agencies to automatically keep information secret without engaging in the type of harm analysis required by executive orders..." The CIA could have demonstrated its commitment to openness and taken a huge step toward improving the situation if the DCI had heeded the advice of the Commission and issued an Intelligence Community directive clarifying the basis for sources and methods to be used to classify information.[2]

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No Harm Done

I also do not know of a single plausible threat to the capability of the CIA to perform its mission that has been created by the release of previously classified information *that was reviewed using approved procedures for declassification reviews.* No harm, no foul! It is one thing to argue about the appropriate standards for declassification; quite another to claim that any and all declassification is unacceptable. Most World War II secrets were declassified *in bulk* (however much agencies avoided the term) in the early 1970s. No harm done. Intelligence materials that were exempted from that bulk declassification have since filtered out steadily through mandatory and FOIA requests. Again, no harm done. Nor has the release of British intelligence materials from World War II created any serious problems for CIA mission accomplishment, even if the precise text of the late-World War II British-US Agreement on intelligence collaboration (BRUSA) remains classified. (Why?) So arguments for total and everlasting secrecy are, in the British phrase, "over the top" when one assesses the *actual* damage done to the CIA's mission capability by the extensive declassification efforts undertaken since the early 1970s.

The important details of history, even intelligence history, *can* be declassified without jeopardizing national security or individuals. After all, if, as CIA personnel are wont to say, "everyone knows about them anyway," how can it hurt to get it right instead of relying on the media and the memoirs of ex-CIA officials? What harm did it do for DCI Robert Gates to disclose that the CIA had conducted 11 covert operations? What harm was done when the CIA declassified information about its covert operation to control (subvert) elections in about-to-become independent British Guiana? Our democratic legal system manages to function on real threats, on actions and provable conspiracies, on evidence. Fears and "potential" threats have no place in court. So it is with openness. No harm, no foul.

But why worry about openness and declassification at all? Why take even the slightest risk in order to

satisfy the curiosity of historians or journalists supposedly looking for something bizarre and sensational? Simply put, the United States of America is a democracy, and democracies cannot survive in secret, at least not as democracies. As President James Madison, one of the framers of the US Constitution, warned in 1822, "A popular government without popular information or the means of acquiring it is but a prologue to a farce or a tragedy or perhaps both."[3] So how to reconcile secrecy and safety with democracy and "popular information?" How can the American government be accountable to its public without jeopardizing the security of the nation? The answer is simple and profound—common sense.

The Issue of Accountability

What Mr. Madison referred to was accountability—an essential element of democracy. Openness is not a matter of nosy historians or prying reporters looking for dirt; openness is a search for the "popular information" that allows a society to hold its government responsible for its actions, even if that accounting cannot always take place on a real-time basis. Common sense may necessitate a longer wait in the case of some Intelligence Community records, especially for details, but whether the delay is 10, 20, or 30 years, accountability takes precedence. (Any argument for a period longer than 30 years would have to be overwhelmingly persuasive and on a case-by-case basis.) As time makes secrets irrelevant to national security (the guidelines for Special Compartmentalized Intelligence used to indicate that most SCI needed special security because it was time-sensitive), all agencies of our government should open up their files and let Americans and their representatives judge the actions of the public officials who make and carry out our foreign and national security policy. Democracy is not a suicide pact, but it cannot survive without accountability.

How else can the public judge the conduct of the CIA (or any other agency)? How else can the public be confident that classified information contains legitimate secrets, not tales of embarrassing foolishness or violations of the law. That issue of accountability cannot be dismissed or evaded with a flippant "get real!" As rational creatures we analyze and assess. "Oriental fatalism," as William James would call it, is unacceptable. If bamboo shoots under the fingernails (just kidding—I think) is unacceptable by American standards, but is needed in order to prevent a terrorist attack, we have to confront and discuss that—not accept the rationalization that "I know more than you do, so trust me to protect you." That argument from special expertise is self-aggrandizing. Accountability is a democratic issue, not just one for accountants. Such accountability does not have to come in ways that jeopardize legitimate (to be defined) current activities or living individuals, but at some point (and that is worth a debate) the door must swing open or the very democracy that intelligence and covert action agents are protecting is no longer a democracy. These are serious issues for the Republic.

Public Pressure

If principle and common sense are not enough, what about political practicality? Public pressure in a democracy—whether prurient interest or a legitimate insistence on accountability—is inevitable, and any attempt by the CIA to ignore or stymie that pressure would only compromise the Agency's credibility with the public and, consequently, with Congress. And there goes the budget! Actually, as an advocate of responsible openness, I would be privately pleased if the CIA endorsed a policy of refusing to have a structured program to review material for declassification *and* to release declassified information. I cannot imagine anything that would stimulate swifter public and Congressional outrage and action. A recent letter to the editor of the American Historical Association's newsletter, *Perspectives*, mocked CIA declassification decisions regarding discussions held *nearly 50 years earlier* about the drafting of NSC-68. The details of that tale are not the point—it is the writer's conclusion that should disturb, even frighten, the CIA: "these monitors of the public's intelligence were hiding things just to appear useful. It was secrets for the sake of secrecy."[4]

The CIA's bureaucratic prosperity and even survival depend upon public and Congressional support. The public relations programs of

the CIA in general and the Center for the Study of Intelligence in particular demonstrate the Agency's awareness of the need to maintain and enhance public confidence. A solid majority of Americans and members of Congress would seem to accept that protecting the United States in this world where national states, pressure groups, and individuals routinely reject law and resort to extra-legal violence, requires effective intelligence. But knee-jerk reactions to openness and antagonistic declassification reviews by the Intelligence Community threaten to reduce the public's image of the CIA to that of the caricatures out of *Harlot's Ghost*. In Senator Daniel Patrick Moynihan's pointed words: "If you want a secret respected, see that it's respectable in the first place."[5] The Church Committee report and stories of exploding cigars for Fidel Castro drive home the dual challenge for the CIA of credibility and accountability.[6]

The imperative of public pressure is illustrated by a quote from *The Wall Street Journal* (hardly a leftwing, "liberal" newspaper) in a piece titled "Security Risk: Can Government Be Open Yet Safe?" Although the column is about domestic security, not overseas intelligence collection and operations/actions, the principle is the same: "When there is a security scare, the leaders of the world's greatest democracy are immediately tempted to close themselves off a bit more from those who are being governed, or to trim their rights.... It does matter whether government is open, whether citizens can watch their elected leaders at work and whether civil liberties are upheld.

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That, after all, is the American system the terrorists and spies are trying to tear down in the first place."[7]

Constructive Steps

The claim that declassification costs more than it is worth is a red herring. Principle and practicality (accountability and credibility) are a price that has to be paid. Moreover, the cost is minimal compared to the ever-increasing drain on resources created by the growing mountain of classified material that has to be protected—forever! It is a matter of priorities. Perhaps if the CIA budget were available to public scrutiny it could receive some very useful advice on how to find the resources. As former DCI James Woolsey pointed out at a recent Senate hearing, judicious use of retired CIA officers to do declassification reviews could be done at relatively modest cost, leaving serving CIA officers to go about the current business of the Agency.[8] That is exactly what the State Department did in order to implement its dramatically successful declassification review program.

That program, which should serve as a model for other departments and agencies, had its origin in a piece of legislation sponsored in 1991 by an unlikely trio of Senators—"moderate" David Boren of Oklahoma, "liberal" Claiborne Pell of Rhode Island, and "conservative" Jesse Helms of North Carolina. That "Foreign Relations" bill garnered solid support and became law, despite President George Bush's misgivings (he was, of course, once the DCI). The law created a new State Department Historical Advisory Committee (which I chaired from 1991 to 1999), composed of independent academics and archivists, nominated by various professional societies. This group differed from the usual government advisory committee in four major ways. First and foremost, it existed because the law demanded it, not because department officials thought an advisory committee would be a good public relations move. Second, the committee had a specific legislative mandate to oversee the preservation, protection, and opening of the State Department's record of American foreign policy no later than 30 years after the events. Third, Congress instructed the committee to make sure that the published documentary collection, *Foreign Relations of the United States* (FRUS), would be a "thorough, accurate" and "comprehensive documentation" of the nation's major foreign policy decisions—which meant that the record of all agencies involved in making foreign policy (CIA, Treasury, National Security Council, State, and so forth), had to be examined. Last, members of the Historical Advisory Committee would have security clearances so they could examine any records that were being withheld from the public. That meant that the committee could (and did) kick open the doors, look at the records, and then raise holy hell when it concluded that the bureaucrats were withhold-

ing 30-year-old secrets without a legitimate "national security" reason, all done without public disclosure of classified information.

Some at the CIA said the Historical Advisory Committee could not examine their "special personnel" (agent/contact) records; a representative of the State Department's Intelligence and Research Bureau swore (politely) that the committee would never gain access to their files; another CIA official said committee members and State Department historians would see records "over my dead body." (He is not dead; the committee saw the records.) The "culture" or habit of secrecy assumed that the secret-keepers knew what was best for the United States; assumed that the American public had no need to know what its government had done. But a decade later, there is not a single reported instance of a violation of national security due to declassification reviews done by or at the request of the State Department—and the American people are learning a great deal more about how their foreign policy was shaped and implemented. CIA cooperation with the production of the FRUS series has repeatedly demonstrated that it *is* possible to declassify intelligence and covert action information without jeopardizing national security and without damaging the ability of the CIA to do its legitimate job. And the Republic still stands.

The Turf Barrier

The way that declassification review is handled today is, to say the least, inconsistent. There are no government-wide standards for declassification, either procedural or substantive. The annual reports on implementation of the current Executive Order on Information Security (E.O. 12958) produced by the Information Security Oversight Office illustrate that progress is spotty. Some agencies have no declassification review program; others have dragged their feet and followed an "easiest first" policy, allowing them to pad their numbers by focusing on administrative files and the like. The 1997 report of the Commission on Protecting and Reducing Government Secrecy provides offers a devastating picture of the situation—and some practical solutions. But those recommendations fell afoul of the CIA's (and others') insistence that it could not and would not allow any but its own personnel to develop declassification guidelines or declassify their information equities. So agency turf protection is, in good measure, responsible for the inefficiency.

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No one ever claimed that maintaining American principles was easy or even efficient. Churchill's *bon mot* comes to mind. But awkwardness and difficulty do not constitute a logical argument for changing the CIA's current public commitment to legitimate and reasonable openness. Openness flows from the nature of our democratic republic. Moreover, the fact is that declassification review of large amounts of highly sensitive intelligence information has been and is being done. Where there's a will, there's a way.

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Notes

1. That is the general conclusion of historians. For starters, see Rhodri Jeffreys-Jones, *The CIA and American Democracy* (New Haven: Yale University Press, 1989).

2. U.S. Commission on Protecting and Reducing Government Secrecy, Report, Senate Document 105-2 (Washington: US GPO, 1997), 70.

3. As quoted by Kate Doyle, "U.S. Secrecy and Lies," Foreign Policy in Focus, 5:24 (August 2000), website [http://www.foreignpolicy-infocus.org/briefs/vol5/v5n24secrets.html].

4. Letter to the editor from Robert P. Newman, *Perspectives* (American Historical Association), 38:2 (Feb. 2000), 39.

5. Senator Daniel Patrick Moynihan, 4 March 1996, remarks at an Open Forum at the Department of State.

6. U.S. Senate, 94th Cong., 2d Sess., *Final Report of the Select Committee to Study Governmental Operations with Respect to Intelligence Activities*, Report No. 94-755 (April 26, 1976).

7. "Capital Journal" column by Gerald F. Seib, *The Wall Street Journal*, 7 June 2000.

8. Hearing on S. 1801 (Public Interest Declassification Act) before the Senate Committee on Government Operations, 26 July 2000.