

CELEBRATING SECRECY

*Judith A. Lachman**

Champagne glasses clinked cheerily in toasts to celebrants at the Secrecy Anniversary Party.¹ Conversations wafted by: "I signed my secrecy agreement seventeen years ago today, when I started hanging road markers on an Air Force base," boasted one of

* Professor of Law, University of Wisconsin. I wish to thank Carin Clauss, Kenneth Krause, Steve Suleski, and Cliff Thompson for their helpful comments, and Ruth Harvey for research assistance.

1. On March 11, 1983, President Reagan issued National Security Decision Directive No. 84, requiring that federal employees with access to "sensitive compartmented information" sign lifetime nondisclosure agreements, and submit to lie detector tests and prepublication review of future manuscripts. National Security Directive No. 84 (Mar. 11, 1983), reprinted in *President Issues Directive on Safeguarding National Security Information*, 5 A.B.A. Standing Committee L. & Nat'l Security Intelligence Rep. 1, 2 (May 1983). The General Accounting Office estimated that the directive would affect about 2.5 million government employees and 1.3 million employees of contractors with the Department of Defense. See THE ADMINISTRATION'S INITIATIVES TO EXPAND POLYGRAPH USE AND IMPOSE LIFE-LONG CENSORSHIP ON THOUSANDS OF GOVERNMENT EMPLOYEES, H.R. REP. NO. 578, 98th Cong., 1st Sess. 8 (1983).

In the wake of widespread negative commentary, Congress voted to withhold for six months the funding for implementation of Directive 84. 129 CONG. REC. S14282, S14304 (daily ed. Oct. 29, 1983). Before the expiration of this six-month period, however, the Administration rescinded two provisions of the Directive which had evoked the greatest criticism, with the remainder of the Directive apparently left intact. See Werner, *Aide Says Reagan Shifts on Secrecy*, N.Y. Times, Feb. 15, 1984, at A1, col. 1; *The Secret Life of NSDD 84*, COLUM. JOURNALISM REV., July-Aug. 1984, at 22-23. Thus, the requirements for employee secrecy agreements existing since 1981, as modified by the remaining provisions of Directive 84, have continued in effect. Burnham, *Censorship Accords Signed By Thousands*, N.Y. Times, June 14, 1984, at B28, col. 1.

Under these provisions more than 120,000 employees have signed secrecy agreements; this figure did not take into account employees of the CIA, the National Security Agency, and eight other agencies. In 1983, under such agreements, the employees of the Department of Defense submitted 17,000 books, articles, and speeches for prepublication review. U.S. Gen. Acc't. Off., *Polygraph and Prepublication Review Policies Of Federal Agencies*, at 5, Enclosure I (Rep. NSIAD-84-135, 1984). In that same year, other government employees spent 5268 working days reviewing material submitted. *Id.* at 6.

Legislation prohibiting such prepublication review for all employees but those of the CIA and NSA was introduced in Congress last year. H.R. 4681, 98th Cong., 2d Sess. (1984). The bill was amended and approved by the Committee on Post Office and Civil Service, SCHROEDER, FEDERAL POLYGRAPH LIMITATION AND ANTI-CENSORSHIP ACT OF 1984, H.R. REP. NO. 961, Part I, 98th Cong., 2d Sess. (1984), and the Committee on Armed Services, NICHOLS, FEDERAL POLYGRAPH LIMITATION AND ANTI-CENSORSHIP ACT OF 1984, H.R. REP. NO. 961, Part II, 98th Cong., 2d Sess. (1984), but was never adopted by the Congress. Similar legislation was reintroduced in the current Congress on January 3, 1985. H.R. REP. 39, 99th Cong., 1st Sess., 131 CONG. REC. H. 67 (daily ed. Jan. 6, 1985).

the revelers. "I've got you beat," said another proudly. "I was one of the very first—I signed mine in 1983 when I was doing cancer research—" and he suddenly vanished, gobbled up into the crowd.

Puzzled, I moved on, stealing random phrases from celebrants thither and yon, feeling more and more like a stranger to the party and indeed to the place. In the kaleidoscope of phrases, one pattern repeated itself: exclamations about Arithmetic . . . and even a few conversations *in* Arithmetic.

"Disgusting," scoffed one woman to her companion. "You'd think there's nothing else to talk about, just because Arithmetic finally made it off the Top Secret list this week." Having uttered the first sentence I could follow, if not understand, she became my leading candidate for the position of oracle.

"Why is everyone excited about arithmetic," I asked, "and why was it secret before?" I could recall childhood summertimes, when we had drawn with our sticks on sand at the shore. Surely it can't be a secret, I thought in wonderment. She sized me up quickly, with the tolerant smile of an adult listening to a child's first effort to comprehend government. "Look, Idi Amin II has just learned arithmetic. He was the last world leader to do so. Now it's OK to talk about arithmetic, since there's no longer any foreign policy interest in keeping it secret."

"But why—" I began. "It's this way," she explained in words of one syllable. "We don't want to give away any secrets that could help other nations move ahead faster in military, space, or science research. So we won't sell the fanciest computer abroad, or allow anybody to publish an article on how to build a bomb." Sensible enough, I thought to myself. Silence. "So?" I finally queried. She had been about to go in search of more champagne. "So, what?" she mimicked. "So, why make *arithmetic* secret?" I asked.

"You see, it's all the same thing," she responded. "If Idi Amin II doesn't know how to build a bomb, and we tell him by allowing an article on it to be published, then he'll be able to build a bomb all that much faster. Or, if we sell him a computer, he might learn how it works and build some more computers for himself; then he could bomb us that much more accurately. It's true for anything that's new to him. But if he and his henchmen have to figure things out for themselves, we're safer, longer. That's why the Pentagon classified a report about how water runs downhill: if Idi Amin II doesn't know *that* already, then finding out about it would *really* put him ahead. And once the downhill flow of water was made secret it was obvious that arithmetic had to be secret, too. After all, that's a difference of decades, maybe centuries for their research."

Dazzled by the force of her logic, I felt ashamed of my previous incredulity. Curiosity, however, survived; I had to ask who is obliged to keep such secrets, and find out the identities of the Secrecy Anniversary Party guests. The answers were one and the same: "Just about everybody," my oracle explained. "Well, not at this party," she hastened to add. "These are only the November anniversaries. But almost everybody has one. People were kind of unhappy when the secrecy orders began, so to boost morale the government started holding anniversary parties, all across the country every month. You can only go to one a year, of course," she said as she munched on a canape. "Of course," I echoed.

I braced myself to try again. "Let me ask you this," I ventured. "Is there anyone who *isn't* invited to an anniversary party sometime?" "Oh, yes," she answered immediately, "Sam He's very lonely." She shook her head in sympathy. "Who's Sam?" I asked, his mystery and uniqueness instantly adding ten points to his previously-nonexistent reputation with me. "He pumps gas on 17th Street," revealed the oracle. "He's quite something," she chuckled. "There aren't many like him around anymore. He never had a government job in his life—a bad leg, so not even caught in a wartime draft. And he never had a small business loan, or crop payments, or a research grant, or even a procurement contract for his gasoline. No government scholarships for his kids, no urban renewal money to restore his garage to its gaslight splendor (and so no gaslight splendor); no tax break for locating in the center city, not even a solar energy credit on his tax return. He's the only person I know that didn't sign a secrecy agreement."

"He must be a feisty guy," I suggested, "willing to talk about heavy duty political stuff." I imagined bold arithmetical computations rolling off his tongue while he pumped the gas and checked the tires. "Not really," replied the oracle. "Nobody can talk or listen to him if he pulls that stuff. Mostly, he's just alone." Then she brightened a bit and, hoping to please, said, "Sometimes he talks about his gasoline." I nodded expectantly. "But of course," she added quickly, "not about how it's grown."