

**Law and National Security
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A Man Called "Intrepid"

The daily and periodical press are still engaged in a continuing evaluation of perestroika and glasnost. Do they mean that we are entering a period of greater security in our relations with the U.S.S.R.? Or are they phenomena which increase the dangers for the U.S.A.?

Frank Barnett, the president of the National Strategy Information Center and consultant to the Standing Committee on Law and National Security, recently asked your editor the following question. "Do you suppose Sir William Stephenson ("Intrepid") might consider giving us, for publication, his views on the current U.S.-U.S.S.R. relationship?"

Your editor passed Frank's question to Sir William who promptly called me from his home in Bermuda and offered to give me his views. He may be 92 years of age but there's nothing wrong with his historical recollections or his thought processes!

Sir William is a battle-scarred warrior for peace. He believes in preventive medicine. As chief of British intelligence in the Western hemisphere during World War II, he counted the horrifying cost in lives and treasure resulting from gullibility and political cowardice. He had been gassed in the trenches of World War I, but recovered to become an ace fighter pilot. Between the wars he became an inventor and an industrialist-scientist. With his exceptional knowledge of Germany's secret military buildup, he reported the Nazi plans for war. His secret intelligence was delivered personally to Winston Churchill who was then in the political wilderness because the government of Neville Chamberlain refused to face facts.

Here are Sir William's views, presented in conversation with his biographer, William Stevenson. In essence, Sir William warns, as he did before World War II, against the dangers of the West lowering its guard.

The euphoria now sweeping aside our natural caution in dealing with a super-power driven by the ideological

commitment to destroy our way of life is incredibly dangerous. If I were director of a modern British Security Coordination Office in New York, I would be firing off cables to the British Prime Minister reminding her of the terrible price we might now have to pay, as we did for a similar euphoria in 1938, when Neville Chamberlain returned from Munich crying "Peace in our time."

The Soviet Union has learned from Hitler's mistake, which was to push the democracies into war through his own arrogant belligerence. Democracies are not warlike. They go their separate ways. They unite only in the face of a common threat expressed through violence. Mikhail Gorbachev is the first Soviet leader to go so far in translating the lesson into practice. He remembers, if we do not, that Hitler's earliest victories were won by exploiting the democracies' concern to keep the peace.

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**Problems Posed by Foreign Ownership
Of Defense Industries**

By Delbert L. Spurlock Jr.

United States security services have quite enough to do without having their lives complicated by their superiors, who should know better. A case in point is the existence and evolution of the Special Security Agreement. This is a device designed to protect classified material in the facilities of U.S. based foreign-owned corporations.

Access to classified information by government contractors is conditioned by security clearances of personnel with direct access to the information. Corporate directors of foreign-owned companies often have no need for direct access to the classified work of their facilities. Nevertheless, common sense and the requirements of our investigative services underscore the importance of this situation to any corporate security regime. Investigative access to and police power over any corporate

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Britain: "The United States is the mightiest force in the world for good, and will remain so, when the nation is united in support of courageous leadership. It will prevail over all evil interests."

Courageous leadership there has been, from the Reagan administration. What divides the nation is the bickering and confusion in Congress. For the moment, the Soviets' new tactic exploits this disunity. The United States, as leader of the free world, desperately needs to be shocked into awareness of the terrible dangers which gather when good men have to fight complacency at home.

Foreign Owned Defense Industries

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entity exercising or capable of exercising influence over contractor classified work has traditionally been a condition of facility clearances.

Historically, we have treated such cases in a common sense manner. Foreign ownership was legally and structurally isolated from control of cleared personnel or materials. The acceptable method of isolation was the voting trust or proxy agreement, each of which requires the foreign owners formally to divest themselves of all of the prerogatives of ownership of a facility handling classified matter—except, of course, the financial benefits of its use. Such proxy and voting trust arrangements have been an easily understood means of isolating profits from the operation and control of a corporation. They are also simple and almost self-executing in operation. The violation of their terms is easily subject to proof, if not always detection.

In 1983, the Department of Defense Industrial Security Regulation (ISR) authorized the use of the Special Security Agreement (SSA) as an alternative method of protecting classified information in foreign-owned U.S. corporations.

An SSA is, in form, a memorandum of understanding between the parent foreign company and the U.S. government. In it, the parent corporation pledges that the U.S. citizens who operate its U.S. subsidiary have the authority, in effect, to place a screen between the foreign ownership and the classified work of the subsidiary. Strangely, there is no record establishing the basis for the adoption of the SSA either in terms of the security interests of the Department of Defense or of the inadequacy of the proxy and trust methods of isolation in satisfying those interests. As far as can be determined, the authorization was made over the opposition of the professional security establishment within the department.

Predictably, since 1983 there has been a proliferation of foreign-owned U.S. companies operating facilities whose classified work is "protected" by SSAs. Currently, there are 13 approved SSAs operational within DOD (Army - 3; Army-Navy - 1; Navy - 3; Air Force - 4;

OSD - 1; Defense Advanced Research Projects Agency - 1). Scrutiny of these arrangements by our investigative service and the Congress is overdue. The army's recent denial of the Balzers Optical request for an SSA shows why.

Balzers is a subsidiary of Oerlikon-Burhle (OBUSA), a Delaware Corporation. OBUSA is a subsidiary of Oerlikon-Burhle Holding Company, Ltd. of Zurich, Switzerland (OBH). Balzers is operated by Balzers Ag of Balzers, Liechtenstein (BAG). Balzers was formed in 1981 when OBUSA purchased the U.S. owned Valtec Optical Group and consolidated Valtec with OBUSA's own optical coating business. Not only was Valtec in the same business, but it possessed significant optical design and manufacturing capability. In excess of 60 percent of Valtec's business was with the military. It possessed a secret level facility clearance. OBUSA, as a foreign-owned corporation, was not cleared for classi-

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National Security Conference: Peace and Security in the Caribbean

Since the era of the Monroe Doctrine, the Caribbean and the circum-Caribbean have been areas of increasing importance and sensitivity for United States national security. In recent years issues concerning Cuba, the Dominican Republic, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Nicaragua and Panama, among others, have been of great concern. The drift in Central America and the recent turmoil in Panama, in particular, suggest an accelerating security threat to the region. And for almost 30 years there has been the continuing problem of sustained Cuban support for terrorism and insurgency in the hemisphere. For the long run, the security of the Caribbean and for Latin America as a whole is among the most important security issues facing the nation.

To examine the security issues in this region, the American Bar Association Standing Committee on Law and National Security, in cooperation with the Inter American University School of Law and the Inter American Institute, is sponsoring a conference on January 27-28, 1989, in San Juan, Puerto Rico, on "Peace and Security in the Caribbean." The conference will bring together national and international leaders and experts to address the issues. Part of the conference will be held at the Roosevelt Roads Naval Station.

A block of rooms for conference participants has been reserved at the Clarion Hotel in San Juan. **Reservations must be made before November 30.** If you are interested in attending, please call the hotel directly (800-468-2491) and ask for Madelaine Nadal. Don't forget to inform her that you are part of the ABA group in order to get the special room rate (\$112—single; \$120—double). If you would like additional information, please call Mary Lee at 202-543-5445.

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fied work. Upon its purchase by OBUSA, Valtec—now Balzers—lost its facility security clearance. Balzers, in 1985, sought reinstatement of a facility clearance at the Secret level, pursuant to a Special Security Agreement.

In support of Balzers quest for an SSA facility clearance, Mr. Max Riedl, its executive vice president and general manager, in 1985 stated, "We take this opportunity to inform you that to the best of our knowledge, the U.S. Department of Commerce has not found objectionable aspects to the dealings of our parent company, Balzers Ag in Liechtenstein, with Eastern Bloc countries. They have conducted detailed discussion and review of such business with senior management of Balzers Ag."

Balzers requested the army to grant it an SSA because its acceptance of the voting trust or proxy alternatives would be viewed by Balzers Ag and OBH and its stockholders as a financially irresponsible action. There is no indication whether the purchase of Valtec and the relinquishment of its clearance status, except pursuant to a trust or proxy agreement, in 1981, was also viewed as irresponsible.

The army for the first time rejected a request for an SSA—but not before the Tank and Automotive and Army Material Commands found their proposed grant to Balzers to be in the national interest. Their finding, while difficult to comprehend, is consistent with the treatment of similar requests within the department

since the beginning of SSA authorizations. It is an authorization which should now be examined. Political, rather than security considerations, are perceived as deciding the grant of SSA status. This has increased the propensity of the procurement bureaucracies, where SSA requests must inevitably originate, to interpret the Industrial Security Regulation as if it were a sieve rather than a shield—and what ostensibly originated as the most narrow of exceptions to the rule against the grant of security clearances for foreign-owned U.S. facilities now threatens to engulf the entire process.

In rejecting the request of Balzers for an SSA, the Department of the Army wrote the following paragraph into the memorandum which closed the case:

What is a Special Security Agreement (SSA)?

In this case, as proposed, it is a thirty-five page unenforceable document of "whereases," covenants, and certifications of good faith vigilance, collectively purporting to guarantee the secrets of the nation through newly chartered corporate secret societies and strict pre-approval facility visitation privileges—except when waived. The flippancy of this characterization is exceeded only by the representations of the effectiveness of the document itself.

(Mr. Spurlock, former general counsel of the Department of the Army, is now assistant secretary of the Army, manpower and reserve affairs. He is a member of the Standing Committee on Law and National Security.)

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The views expressed in this publication are not necessarily those of the American Bar Association or the Standing Committee on Law and National Security. Questions or comments should be directed to W.C. Mott, Editor, 217 9th Street, S.E., Washington, D.C. 20003, Tel. 202-543-5445.