

SECRETY IN A FREE SOCIETY:
INTELLIGENCE ACTIVITIES AND INDIVIDUAL LIBERTY
Address by Robert Morgan
U.S. Senator
29th Judicial District Bar Association
10 June 1978
Brevard, North Carolina

In the name of "national security" the Intelligence Community
of the United States has in the recent past

- o opened 215,000 first class letters²
- o kept files on 100,000 Americans and a number
of domestic corporations²
- o caused an IRS tax audit of a North Carolina man
who bought a raffle ticket from a "right wing"
group.³

Our own FBI, through a program called "COINTELPRO"

- o attempted to break up marriages⁴
- o fomented violence between rival groups⁵
- o attempted to discredit individuals with their
employers and financial backers⁶
- o planted false news items about people in the media⁷
- o prevented certain Americans from getting honory
degrees or speaking on college campuses.⁸

...and yet this is the same Intelligence Community that correctly
predicted Israel's invasion of Egypt¹, discovered ^{Soviet}missiles in Cuba,¹⁰
and prevented the ^{ass}ignation of a senior government official
overseas.¹¹

As I told the Senate¹² when they were considering a bill that I co-sponsored - the National Foreign Intelligence Surveillance Act of 1978 - I have been closely involved with our nation's Intelligence Agencies, their activities, and the guidance and direction they receive since I first came into the Senate. Two lessons I have learned, which stand out clearly in my mind, are - one, that in this time of highly charged nationalist movements and outbreaks of terrorism throughout the world, we need and must have the best available intelligence if we are to continue to maintain our stature in the world, and, two, that the activities of our Intelligence Agencies must be conducted pursuant to rules of law consistent with our Constitution.

As we all know, there exists a direct conflict between the ideas of democracy and intelligence - which gives rise to a distinct difficulty in drawing a balance between what activities our Government may participate in in order to protect us, and the protection of our ideals of individual liberties. I feel that too often in the past, our Intelligence Agencies came down on the

side of the vigorous pursuit of their activities, to the detriment of the American citizen.

If we establish that we in Government, we in the Intelligence Agencies, must live within the law, then we will learn to do it, and we will learn to do a better job of it. I do not see how we can continue to generate respect for our system of Government and respect for the laws of this land when we have people in Government disobeying these very laws.¹²

Our Intelligence Agencies are under intense pressure because they must deal daily with some very real threats to America's freedom, and they must do so in absolute secrecy. As Nathaniel Hawthorne observed in The Scarlet Letter:

No man, for any considerable period, can wear one face to himself, and another to the multitude, without finally getting bewildered as to which may be the true.¹³

Whenever there is an atmosphere of secrecy, and whenever those who live in such conditions become confused and lose a proper perspective, genuine abuses of others rights can and will occur. There must be some checks and balances to maintain that better perspective.

THE RIGHT TO BE FREE

The Constitution created the framework for this great nation and, at the same time, established a way of life. Delegates to the North Carolina Convention at Hillsborough refused to ratify the Constitution without the Bill of Rights - and this foundation has assured our individual freedoms for over 200 years. We have the right to be free. We have drawn a line between government and the people. We have given the government "necessary" powers, but we have reserved for ourselves an absolute right to freedom.

The magnificance of this nation lies in the fact that we operate by law, by common consent, and not by intrigue, by force, or by partiality.

A freedom that characterizes the American way is the right of a citizen to be left alone, a right to personal privacy. Denial of this right, which we see defined in the Fourth and Fifth Amendments, is to my mind one of the greatest injustices that can take place. In 1928 the Supreme Court upheld warrantless wiretapping - a practice my National Foreign Intelligence Surveillance Act put under more

effective control - and in that 1928 decision Justice Brandeis said
in his dissent that the

...makers of the Constitution conferred as against
the Government the right to be left alone - the
most comprehensive of rights and the right most
valued by civilized man.¹⁴

Senator Church remarked during the course of the 94th Congress'
hearings on the Intelligence Community

The dominant concern of this committee is the
intrusion by the Federal Government into the
inalienable rights guaranteed by the Constitution.¹⁵

I think that what I am trying to say is best summarized in the
words of President Lincoln

No man is good enough to govern another
without that other's consent.¹⁶

NEED FOR INTELLIGENCE OLD AS MAN

If intelligence activities are so bad you might wonder why
permit them to continue at all - and there have been times in our
country's history when just that very thing has occurred. But
the matter is not quite as simple as all that. The need for
intelligence is as old as man.

From the dawn of history man has used secret means to protect the things he considers valuable. The Egyptians 4000 years ago used secret writings to protect the souls of their dead kings. The Persians, the Babalonians, and other ancient peoples concealed their affairs of state from other nations. The Bible tells us that Moses and Joshua used spies to "search out the land" ¹⁷ and even the Lord God used secret writing when He wrote upon the wall¹⁸

See Daniel 6: 24-30

MENE MENE TEKEL UPHARSIN.

(BELL-SHAH-ZAR's)
Belshazzar's wise men could not read this cryptic message, but

Daniel could and did:

God hath numbered thy kingdom, and finished it.
Thou art weighed in the balances and art found wanting.
Thy kingdom is divided
and given to the Medes and the Persians.

The Spartans, who were the warriors of ancient Greece, established the first system of military cryptography. A military science text of that period (On the Defense of Fortified Places) had an entire chapter on communications security.¹⁹

The secrets of black magic in the Middle Ages were kept safe through cryptography, and by the 1500s modern diplomacy between emerging nations provided fertile soil for hidden writing, spies, and deciphering services. The modern age of intelligence activities was born.

THE BASIC CONFLICT

There is a basic conflict between the concept of individual liberty and the need to stay free. In order to preserve our freedom we will fight and die for our country - thereby giving up the greatest freedom of all. We need an intelligence apparatus to let us know our neighbor's intentions so we can stay free. But it is hard to draw the line in snooping: if the neighbor's intentions are hostile it's O.K. to spy on him, but if he's a "good ol' boy" popular support soon leaves.

A secret world with hidden resources and unsuspected motives cannot easily co-exist in an open society where the individual has the right to be free. Only need keeps such a world alive. Clearly some things are properly secret in that kind of environment and others

most definitely are not, but there is a grey area that has caused America problems for 200 years. From this grey area in the recent past we have experienced an era of "whistle-blowers" who allege excesses and abuses while they reveal secrets to prove a case. The controversial and disturbing problems such incidents bring into focus all revolve around the fundamental conflict between freedom and the need for secrecy to help us stay free.

A CYCLE

It seems to me that over the past two hundred years we have instinctively handled this basic conflict in a cycle. First we recognize a NEED for intelligence activity, then we do something about the need that results in SUCCESS. Not long after intelligence has proven its worth, we engage in such activities to an EXCESS. Often the extent of these excesses is not known to the public for years because of the cloak of secrecy, but when abuses and excesses are discovered we have historically acted to DIVEST ourselves of the whole kit and kaboodle - often throwing out the baby with the wash. This, then is the cycle: NEED, SUCCESS, EXCESS, DIVEST - and it has been repeated often in our nation's history.

THE REVOLUTION

George Washington had no formal Intelligence Community to help him win the War for Independence, but he had the informal equivalent. A suspicious looking letter - three pages of Greek characters, odd symbols, numbers and letters - was brought to him in September 1775.²⁰ The NEED had been established.

The letter had been written by Washington's Director General of Hospitals, Dr Benjamin Church, Jr. Although the Father of our Country thought very highly of Dr Church, the letter was addressed to a British officer, Major Maurice Cane, so he wanted to know what it said. It was quickly deciphered and found to be a detailed report to the British Commander Thomas Gage on the capability and status of the American forces. Church was imprisoned and later exiled and the American intelligence effort enjoyed a resounding SUCCESS.

By 1779 Washington had established a network of spies, deciphering clerks, and clandestine operatives. The value of intelligence proved itself many times. Lord Cornwallis, who was Great Britain's Second in Command in America, planned to conquer Virginia and the Carolinas and thus quell the Revolution. Nathanael Greene, the American

Commander in the South, not only met Cornwallis at Guilford Courthouse near the community that was to bear his name, but he sent the Congress some intercepted redcoat cryptograms as well. Their decipherment led to an effective naval blockade that caused Cornwallis to surrender and thwarted the final British naval attack.²¹

David Kahn, author of The Codebreakers, observed ²² that

With the coming of victory, the difficulties attendant upon the establishment of a new nation compelled the Founding Fathers not only to continue their secret communications, but to extend and improve them.

The forerunner of our Department of State was the Committee of Secret Correspondence—a name that must have underscored the conflict I have been exploring because it was quickly changed to the Committee for Foreign Affairs.²³

Ben Franklin at one time served as Chairman of this committee - a position, according to historian Cecil Currey, that

...put him in touch with many kinds of intelligence activities. He had appointed secret agents of the United States and had parleyed with French agents sent to contact the American government. He discussed with his colleagues various procedures to follow in obtaining intelligence data. ... He had long used mail drops, ciphers, pen names, false information to mislead others and other methods of clandestine warfare....²⁴

While Ben Franklin represented America in France he apparently became involved in a series of shady get-rich-quick schemes. Serving with Silas Deane and Arthur Lee, he and Deane sent Lee off on political missions while they spent large sums of the Government's money without keeping ^{adequate} records. When Lee became suspicious they tried to prove him insane. The Congress called Lee home but the rumors persisted so they recalled Deane as well, and sent John Adams in his place. Adams confirmed Lee's accusations so Franklin and Deane tried the same tactic claiming that the man who was to become the Second President of the United States was "actually mad".²⁵ America was faced with its first EXCESS - an abuse of secrecy to prevent proper accountability.

This time the excess was contained by sending John Adams and John Jay to assist Franklin in the negotiations for peace with Britain. The effect of Congressional intervention by recalling Lee and Deane and sending John Adams and John Jay to replace them was to DIVEST the country of the whole effort of intrigue. That concept has shown up more than once in our history; for example, President Wilson's "open covenants of ^{peace} openly arrived at."²⁶

The reaction to secrecy proved so adverse that no real use was made of Washington's intelligence service during the War of 1812, despite the availability of many veterans with the technical expertise to set it up again.²⁷

THE CIVIL WAR

This cycle repeated during the Civil War. Alex Jones, a Member of Congress after the war, was born and raised near Asheville, North Carolina. His sympathies lay with the North and he was vocal in his point of view. When the question of secession from the Union came to a vote he reported that

At the first election, we of the western portion voted secession down by an overwhelming majority, which carried the State by a large majority. After which armies were raised; vigilant committees appointed throughout the country; a system of espionage kept up; the post offices and mails usurped...²⁸

and other atrocities committed. The South had established a NEED and the intelligence apparatus was quickly assembled.

The Federal Government was not lax in this regard either. Confronted with a Civil War and without any centralized intelligence organization, a major effort was made when it became apparent that the states near Washington - Maryland, Virginia, Delaware - were a "hotbed of treason, Confederate agents, and poisonous conspiracies

against the Union."²⁹ Conspirators and members of the Baltimore, Maryland, police force plotted to kill President-elect Lincoln. Allan Pinkerton, a famous private detective who founded the agency bearing his name, was hired to protect Lincoln. His efforts were successful and soon he found himself back in Washington meeting with the President and some Cabinet Members who wanted to organize a secret service department of the government, with the view of ascertaining the social, political and patriotical status of the numerous suspected persons in and around the city.³⁰

As has been the case in every period of great national danger and personal stress, there was a recognized NEED for intelligence activity. The streets were not safe and rumor and suspicion were rampant. As Pinkerton put it³¹

In war, as in a game of chess, if you know the moves of your adversary in advance, it is then an easy matter to shape your own plans accordingly, and, of course, always to your own decided advantage.

What began as a reaction proved SUCCESSful enough that the program was expanded. Soon the intelligence apparatus assisted in the serious violation of due process and scores of people were arrested on suspicion of aiding the enemy. The jails were filled with political prisoners who were not permitted legal counsel, trials, or visitors.³² NEED, SUCCESS, and now EXCESS again.

On Saint Valentine's Day 1862 President Lincoln issued an Executive Order providing for the wholesale release of most of the political prisoners. But there were other excesses. When Lafayette Baker became head of the intelligence organization he led a march through southern Maryland not unlike Sherman's through Georgia, punishing the disloyal and leaving

behind a trail of burning buildings, frightened men, women, and children, terrified informers and bullet-pierced Secesh tobacco planters.³³

With a full head of steam, Baker next tried

to interest Postmaster General Montgomery Blair in a purge of disloyal Maryland postmasters.³³

Although this offer was rejected Baker was assigned to the War Department and one account of what followed indicates that Secretary Edwin Stanton

warned him of the grave and desperate situation facing the government, advised him that he would never be permitted to disclose the authority for his actions, and gave notice that he would be expected to pursue all enemies of the Union, regardless of their station, power, loyalty, patriotism, or profession.³⁴

With this license

Baker's detective service was to be the terror of the North as well as the South, secretly funded, and accountable exclusively and directly to the Secretary of War.³⁴

Lincoln himself wrote this in reference to permitting Baker such awesome powers:

...often a limb must be amputated to save a life, but a life is never wisely given to save a limb. I felt that

measures, otherwise unconstitutional, might become lawful, by becoming indispensable to the preservation of the Constitution through the preservation of the nation.³⁴

...Does a parallel of the 1970s come to mind?

Baker soon ran an organization that raided gambling parlors and vice dens, interrogated prisoners, and established the nation's first police dossier system and criminal photo file. His men tracked down Lincoln's assassin, he purged the Treasury Department, and spied on senior Union officers to determine their loyalty and ability. He also was responsible for breaking the back of a determined and widespread Confederate undercover operation.

After Lincoln's death Baker became the protector of the new President (Andrew Johnson) and organized the White House Secret Service. But at the War's end his excessive power was gone and he eventually left Washington in disgrace.

By the end of the Civil War all military intelligence operations virtually ceased to exist.³⁵

And so we see the final phase of the cycle once again: the Government had DIVESTed itself of intelligence activities.

WORLD WAR ONE

Military Intelligence resumed in 1882 with the Navy Department and has continued without interruption through our present time. During the Spanish-American War intelligence activities made a significant - but low-profile - contribution. Later, factions in the military began to openly dispute the value of having an intelligence capability. The scene was set for World War One.

In 1916 an intelligence officer discovered proof that large numbers of Japanese soldiers, staging from Mexico, had been on secret military maneuvers in southern Arizona, but the General Staff, which no longer had an Intelligence Section (the DIVESTING stage had been in effect), felt it to be "of no military value"³⁶ and ignored the report. Several attempts by factions within the military during this period failed to re-establish an Intelligence Service. But by 1917 they were successful; a military intelligence force was in being and growing as we became increasingly more aware of the war threat. Patriots were encouraged to report on their neighbors and the intelligence machinery once more began to turn inward. By the War's

end 350,000 loyal American members of the American Protection League were spying on their neighbors³⁷ - a parallel to Baker's Civil War Secret Service activities, World War Two appeals to loyal Americans to turn in the unpatriotic, and the Communist witchhunts of the 1950s.

Between 1917 and 1929 the American Black Chamber, under Herbert Yardley's direction, solved over 45,000 cryptograms, breaking the codes of 20 nations and making inroads on many others.³⁸ Soon its mission had expanded and it was analyzing diplomatic messages obtained through the cooperation of Western Union. In 1929 Herbert Hoover took office and the new Secretary of State Henry L. Stimson closed the Black Chamber, observing that

Gentlemen do not read each other's mail.

The cycle of NEED, SUCCESS, EXCESS, and DIVEST was again complete.

Yardley wrote an expose describing this secret work and then began another which the State Department confiscated at the publishers and held (illegally) while they ramrodded a Secrecy Act through the Congress to make such whistleblowing illegal. I think that this single incident capsulizes the conflict: the Government was willing to abuse Yardley's rights to protect "secrets" that were more political

embarrassing than threatening to this nation's security.

WORLD WAR TWO AND TODAY

In World War Two the cycle repeated again. Huge successes created an immense intelligence effort but Truman's fear of public opinion at the War's end caused him to dismantle the O.S.S. and other elements of the machinery.³⁹ When it became apparent that Soviet post-war intentions were threatening to the United States the cycle speedily began again with the National Security Act of 1947, which founded the immense bureaucratic structure we have today as the Intelligence Community.⁴⁰ EXCESSes were not long in appearing, however. I mentioned the FBI COINTELPRO earlier, and there have been others - including Watergate, assassinations plots, drug experimentation on unknowing subjects, and a host of lesser (but just as serious) attacks on individual liberties.

TAMING THE CYCLE

But today there has been a new factor added to the cycle - a dampner geared to tame it. Americans still recognize the genuine NEED for intelligence activities because of the hostile world climate we find ourselves in. We value their SUCCESS, but we are closer than

ever before to preventing their EXCESS and loss through DIVESTment. That new factor is a new and powerful form of Congressional oversight. Oversight itself is not a new concept; we in the Congress exercised it in bringing Ben Franklin's associates home and sending John Adams to France 200 years ago. But, until this decade, Congressional oversight has never been as consistently sensitive or as well organized.

Results, positive ones, are already apparent from my committee's efforts. We have checked and eliminated the major abuses that were present even as recently as a year or so ago. The going is rough, the decisions not easy, the danger of creating a new layer of leaks and red tape ever-present - as we were painfully reminded recently proclaiming that America can now read Korea's diplomatic code.⁴¹

All-in-all, however, Congressional oversight is having a significant and historical impact in this vital area. Through oversight we are

- (1) eliminating existing abuses while preserving the positive function of intelligence;
- (2) codifying and specifying reasonable limits by charter - the first such legislation in the nation's history;
- (3) actively monitoring daily activity in the Intelligence Community to prevent potential excesses from developing.

We have recognized the cycle and are actively working to harness and control it.

PLEDGE OF CONTINUED VIGILANCE

In testimony before the Select Committee in May of this year
media commentator Daniel Schorr observed that the committee is
faced with

...an extraordinary difficult task because you must
overcome a fundamental contradiction between secret
intelligence and responsive government....Building
a bridge between the Constitution and the Clandestine
is a delicate task. Eternal vigilance will be the
price of maintaining it. ⁴²

I have every intention, so long as I am a member of this committee,
so long as I am a member of the United States Senate, so long as I
am an able American...to maintain the eternal vigilance so necessary
to balance our need for intelligence activities and their surrounding
requirements for legitimate secrecy with the fundamental right of
every American for the protection of his individual liberties.