

SPEECH BY
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AT THE STAFF JUDGE ADVOCATE GRADUATION

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My experiences with the Air Force Judge Advocate General's Corps go back quite some distance in time, from my service as a JAG Officer, to efforts to better the relationships between military legal officers and the Attorneys General Offices throughout the country. Since I began service in the Senate, I have not, as you can probably imagine, been able to follow the implementation of specific proposals then being considered by the National Association of Attorneys General to improve the relationships between Attorneys General Offices and JAG.

I have, however, been exposed to areas of law and constitutional application which I feel are deserving of your close attention as they bear directly on the legal principles which form the foundation for our democratic way of life.

Shortly after I began service in the Senate, I was appointed to the Senate Select Committee on Intelligence. I am the first person to admit that I was initially not an enthusiastic investigator of our intelligence agencies.

I was aware of reports and allegations that the FBI and CIA may have been overzealous in some of their activities, but thought that for the most part, these reports were exaggerations and that the intelligence community was performing its vital functions well within the confines of our legal system.

Despite my limited, but still present, preconceived idea that all was well within the intelligence community, I was able to approach the investigation objectively. I think this, I might point out, is a credit to my background in the legal profession. I emerged from the investigation not only aware of countless instances of lawlessness committed by our intelligence agencies in pursuit of what they considered to be valid ends, but with a very deep appreciation for our Constitution, my rights under the Constitution, and for what it means to be a citizen of the United States.

I am sure you are all familiar with the sad litany of intelligence abuses that were revealed during the

Committee's investigation, so I will highlight just a few before turning to the more important questions of lessons we, as lawyers, can draw from the investigation to assist us in living up to our oath "to protect and defend the Constitution."

Thomas Jefferson once said,

"In questions of power, let no more be heard of confidence in man, but bind him down by the chains of the Constitution."

Beyond the effective control of the Constitution, the following are examples of governmental abuses revealed

by the Committee:

- The FBI, charged by every administration from President Roosevelt to President Nixon to investigate "subversives" - a vague term which was never defined - developed over half a million domestic intelligence files on American groups and individuals. Perfectly legitimate, lawful groups such as the NAACP, the Womens Liberation Movement, and the John Birch Society were investigated. In numerous cases, FBI activity extended beyond mere investigation. In my state, for example, the Bureau actually created chapters

of the Ku Klux Klan in order to destroy existing chapters of the Klan.

- The CIA and the FBI conducted illegal mail opening programs in a number of U.S. cities from 1940 until 1973. In 1971 alone, the CIA screened more than three million first class letters in New York City to or from overseas points and opened and recorded the contents of over 8,000 of them.

- The Internal Revenue Service, through a Special Services Staff, singled out 8,000 individuals and 3,000 organizations for special tax examinations solely on the basis of political criteria. Groups such as the American Civil Liberties Union, the Conservative Book Club and the University of North Carolina were identified as "ideological organizations" and in some cases were subjected to special audits, although no facts were adduced to indicate tax violations.

- Army intelligence opened files on nearly 100,000 Americans in the late 1960's in response to intense administration pressure for information on potential civil disorders.

- Under a secret arrangement with the three U.S. Telegraph Companies, the National Security Agency from 1947-1975 obtained copies of millions of telegrams sent from, to or by way of, the United States.

- The White House, from the days of Franklin Roosevelt to Richard Nixon, permitted, and sometimes encouraged, Intelligence agencies to develop what was essentially political intelligence. President Roosevelt asked the FBI to record the names of citizens opposing his defense policy and supporting that of Colonel Lindberg; Presidents Truman, Eisenhower Kennedy and Johnson, all received information totally unrelated to national security.

A study of these abuses will reveal that many of them were carried out in pursuit of a very critical end: the security of this country.

Having lived through the Red scare days and the Cold War, as well as the unrest of the civil rights period and Vietnam War protests, I too, might see the rationale behind the

desire to know what U.S. citizens writing letters to Russia are saying. And I can well understand the desire of some agencies to establish files on and investigate radicals, trouble makers, or, to use the FBI's terminology, "rabble-rousers" during those times.

The agencies of our government charged with the responsibility of protecting us perceived, rightly or wrongly, threats to our internal security, and acted to reduce, control, or terminate those threats. It was not hard for me, as a lawyer, to see that the activities of our intelligence agencies had violated a basic tenet of our society, that ours is a government of laws, not one of men. That ours is a government of laws, in a nutshell, is the greatest lesson to be learned from the investigations.

You might think it strange that I, in speaking to a group of military attorneys who are about to assume the chief legal positions in their commands, would say that the greatest lesson learned^{was} that this is a government of laws and not one of men. Perhaps I should say that that's the moral of the

story, the re-occurring theme.

But I have become gravely concerned over what I have perceived as an unawareness of or lack of appreciation for their basic rights by American citizens.

It was not hard for me, during the Committee's hearings, to see that the collective will of society, our laws, and the foundation on which our laws are based, the Constitution, were often violated and ignored. It was not hard for me to see that the well-intentioned acts of our governmental agencies were threatening the foundations of our democracy. The words Chief Justice Louis Brandeis in his famous dissent in the Olmstead case in 1928 are particularly applicable here.

He said:

Experience should teach us to be most on our guard to protect liberty when the Government's purposes are beneficent... The greatest dangers to liberty lurk in insidious encroachments by men of zeal, well-meaning but without understanding."

Getting this point over to the American people has proven to be very difficult. They, for the most part, even after last year's celebration of the Bicentennial, have forgotten

the reasons behind our struggle in the American Revolution.

They appear at times oblivious to what it actually means to be an American citizen.

Upon criticizing improper FBI activities against radical white organizations, I received mail alleging I was a secret member of the organizations. Upon criticizing improper FBI activities directed at militant black organizations, I was accused of sympathizing with those groups. The obvious points to me, that governmental action is subject to limits of our Constitution, went largely unnoticed.

This is where I feel you, in the positions of legal responsibility you are about to assume, can make significant contributions to the future of our country and to the preservation of our basic ideals. Often one can go through his entire time in law school and advanced legal courses without so much as a single sentence being spoken about an attorney's moral responsibility to the rest of society.

I choose to do so on this occasion because of my feeling that you have been trained in the law and therefore appreciate the significance of our maintaining at all times a society subject to the rule of law.

Having received the legal training you have received and preparing to occupy the positions you will go to after today places on you, I believe, an affirmative obligation to do what you can, to contribute in some way, to the perpetuation of the wisdom of our forefathers as expressed in our Constitution.

During the course of the Committee's investigation, I came across a speech given by one of the instructors of the FBI's psychological behavior section, to an association of law enforcement officers. Voicing his discontent with congressional investigations into illegal activities carried out by the FBI and CIA, and speaking on various causes of crime, he referred to the law enforcement officers as "the warrior class," and urged that they remain vigilant in carrying out their duties.

I am not advocating that you, as attorneys, occupy a higher status than anyone else in our society. Nor am I saying that you should become active participants in civil liberties unions. I am saying that you are in a unique position to understand, and therefore, appreciate what it means to be an American citizen.

Many citizens would sympathize with efforts by intelligence agencies to infiltrate a group such as the Socialist Workers Party, which openly espouses the end of our democratic way of life. You, knowing that the organization had committed no crime, would know that wiretapping it or breaking into its offices would be wrong and intolerable under our Constitution.

Many citizens, in the wake of black student takeovers of university buildings in the late '60's, would see nothing wrong with establishing files on black militants on college campuses. You, as an attorney, would know that establishing files on every member of every Black Student Union on every college campus in America would be an undesirable extreme.

You might think that mere awareness of the legal impropriety of possible actions would be enough to prevent them from happening. If it were, I would not be here today asking you to live up to the Constitution in your legal careers. The Intelligence Committee's Final Report states that, "Legal issues were clearly not a primary consideration - if they were a consideration at all - in many of the programs and techniques of the intelligence community."

Stated plainly, many activities of our intelligence agencies were not only above and beyond the law, but in complete disregard of it. So your awareness of the Constitution and the rights it guarantees to American citizens is not sufficient. You must carry that knowledge with you in your day-to-day activities and practice according to it.

As you embark on your new duties, you are within a system of justice that has gained some measure of reknown for its adherence to constitutional procedures. Under the Uniform Code of Military Justice, persons accused of crime

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were afforded constitutionally guaranteed rights prior to the Mirando and Escobedo decisions. The holding of separate trials for crime and punishment, an established military procedure, is more advanced concerning the rights of defendants - than most state court proceedings.

This advanced military system of justice gives you an advantage in interpreting and upholding the Constitution as our basic document of justice. I urge you to apply it and live by it. And remember Jefferson's admonition: "In questions of power, let no more be heard of confidence in man, but bind him down by the chains of the Constituion."