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Security in an Open Society

The following is an edited version of the address given in the NSA Auditorium in November as the feature of Security Week 1973.

Good morning ladies and gentlemen. It is a real pleasure for me to be here. When I assumed this new post I made a talk to some of our people at CIA and others from the community and I made the point that my appointment by the President and my confirmation by the Senate was an appointment of the intelligence profession, not a personal thing, and that it was a mark of the confidence of the government and the Congress, and through them the people of the United States, in the long-term contribution that the profession can make. The profession has been given the responsibility for running its own affairs in the same way as some of the other professions, such as the military.

Thus it is a particular pleasure for me to be here with this part of the profession and community. I have been a customer of yours for many years. I have worked at a very low level on some of your operations and tried to contribute little bits and pieces into that enormous computer collection that you have of information from all over the world. I have gained an enormous respect for the rapidity with which you cover problems, for the depth with which you get into them, for the facets of the problem that you bring out and show that otherwise would not appear, and for the ingenuity that you show in overcoming some of the obstacles to getting that information. I first was exposed to the business of cryptography during the war when they tried to teach me how to use a one-time pad; it was quite an effort, I might add.

Today I want to talk about security week, the importance of security and some of the dilemmas that face us when we talk about security in our American open society. I think your watch words today—Honor, Peace, and Vigilance—are extremely good guides for us in the intelligence community as a whole, not just for this week and for this subject. The problems of dealing with security in an American society require a great deal of vigilance. We are doing it in America for peace, of course. Our work also requires a great many considerations of honor. We have a debate today as to whether it is compatible to have security and secrecy in the kind of society that we have. My best answer is to look back to the early days of our country and a remark by our first President, General Washington, who referred to the importance of intelligence and added the comment that "upon secrecy success often depends in enterprises of this kind." He was well aware that we cannot conduct successful intelligence operations unless there is a respect for the need for secrecy.

Following that general guideline we developed a whole apparatus for security and secrecy in the American government. Most recently, of course, this was codified in the National Security Act of 1947, which requires me, as Director of Central Intelligence, to be responsible for the protection of intelligence sources and methods. Various other legislation, such as the Espionage Act and your own act referring to communications intelligence, indicate the necessity for us to keep secrets in this delicate field. And we have a variety of regulations that we have developed both at the national level and at the departmental and agency level for the protection of our secrets, and for decisions as to what these secrets really are.

All of these are now subject to question, because there is a very strong opinion in the country today that times have changed, that an excess of secrecy in the past has led us to mistakes, and that our people have so matured and are so well educated today that it is essential that they be informed, that they be consulted on major questions, so that they can make the wisest decisions for this great democracy, rather than leaving these to the executive, the legislative or even the judiciary.

The question today comes down to the degree to which this can be carried out, and certainly it can be to a considerable extent. There are legitimate things which

perhaps were held secret in the past which can be released today. Various matters are being released for historical purposes which were very secret at the time. And some are things that perhaps we would never have released in the past.

We also have the conflict in some people's minds between the demands of their own moral judgment as to what should be released, and the demands of the regulations and the rules. Some years ago, it was considered very reprehensible to take unto ourselves the decision to break a rule for a greater good. There was a gentleman named Alan Nunn May in Canada who for very moral purposes in the immediate post-war era felt that it was essential that there be a balance of nuclear power between the Soviet Union and the United States. He took upon himself the decision to give the Soviets some United States secrets so that that balance could exist.

Dr. May thought he was being a moral man; he thought he was doing some great good. But what he was doing was in a prideful way taking to himself the decision which should be made not only by his immediate bureaucratic superiors, but also by the constitutional authorities of his country—the legislature, the executive, and the judiciary. He was insisting upon his right to make a very fundamental national decision and at that time even a world decision, rather than following the dictates that were laid upon him by the constituted authorities, but at the same time working to get a change and a relaxation of those rules. He went to jail, and properly so, because we do not have the right to insist that each one of us is sovereign. We do owe respect for our fellow citizens and for the constitutional structure that holds us together, because without it we have a kind of anarchy.

We have situations in which people today have that same feeling of moral imperative which causes them to open things up. These involve constitutional and legal questions, first. Our constitution does provide a structure through which authority can be imposed upon our fellow citizens and procedures through which they can be judged fairly and openly. At the same time we must admit that today the legislation affecting the problems of security is less than totally effective, to put it mildly. We have seen evidence in the past year or so that any exposure of our duly constituted secrets must be proven in court to have been with an intent to harm the interests of the United States to be punishable. The argument is then made that the individual in question, far from wanting to hurt the interests of the United States, was trying to help them, pursuant to his judgment of what these interests are.

Other aspects of our Constitution of course affect this problem. Our country is quite different from other countries which conduct intelligence work. We know we are different from the Russians. We are resolved in the legislation that set up CIA to be different from the German Gestapo because the CIA is barred from activity within domestic affairs, and is held to the area of foreign intelligence. And we are probably going to be reminded of this in some legislation this fall if any doubt arose over the past year or two. But also we are different from some of the countries that afforded us models for the development of our intelligence services, the French and even the British. In the British situation, the government has the authority to issue what is called a "D" notice, and the press is barred from printing a story about intelligence under pain of action in the courts against them.

You can imagine the reaction in this country if we gave Mr. Jack Anderson a "D" notice. This is part of our society. We deliberately adopted in the First Amendment to the Constitution, as a condition to the acceptance of the Constitution by our people, the concept of the freedom of the press, and the prevention of any prior restraint on the right of an editor to publish what he wants. This is an essential part of our society, and there is no merit in complaining about it. Rather we should look at it with pride; I might add that many other countries look at it with perhaps amazement but also some awe and envy.

We are not entirely helpless in the courts, however. In the past couple of years there has been a very interesting case, which unfortunately has centered around an ex-CIA employee, who just as you, when he came to CIA some 15 years ago, signed a secrecy agreement. Whe he left CIA, he was reminded of this secrecy agreement and told that the matters that he learned while he worked in CIA were to be held secret, and that if he wanted to publish anything he had to consult with CIA so that CIA could tell him whether certain matters were classified and could not be published, as he had learned them during the course of his employment.

This gentleman put out a book which was highly critical of some of the habits and even individuals in CIA and was pretty amusing in parts. It caused no problems because it did not include any classified information. But then he decided to go further and prepared an outline for another book and an article: he shopped these around and they came to our attention. We went to the courts and said that a man who went to work for General Electric and signed a secrecy agreement with respect to the kinds of equipment and formulas that he learned while he was in General Electric could be barred from telling Westinghouse everything he learned while he was in General Electric.

CIA asked the courts to give us the same rights that they would give General Electric in a comparable situation. While he claimed that this was an unconstitutional prior restraint on his ability to publish what he wanted, the courts upheld our position in the district and circuit courts. The case was appealed to the Supreme Court, which

refused to review it, indicating that they found nothing very wrong with it. He was put under an injunction to submit anything he wished to publish about intelligence to CIA to determine what was classified. He then wrote his book. He sent his book around to us and in the five-hundred odd pages of his book we found a number of items that we felt were technically classified. We informed him that we had found about 339 such items, and that those would have to be withdrawn from his book. It amounted to about one-fifth of the book. We indicated that we were prepared to negotiate on many of these because if he phrased them slightly differently or left out a few names or places, there would be no great problem. We then got together and indicated that we were not going to argue about 114 items because they had leaked in the past.

We are now in the midst of a law suit about the remaining 225 items, and the American Civil Liberties Union, in good conscience as patriotic Americans, feel that our action is a violation of the First Amendment—a restraint on his ability to publish these secrets. We feel that we are only applying the same rules that apply when anyone is exposed to confidences and agrees to respect those confidences in the course of his employment. The case is now in the courts and will undoubtedly go to a full decision. It shows that we are not entirely helpless, but upon the results of the case will depend a great deal of our ability to control leakages from our service.

There are other ways in which intelligence leaks, and I hardly need to remind you all of this. You are well aware of it. Policy decisions and policy necessities can override the necessity for secrecy from time to time. We are sometimes shocked when we hear that Secretary X has used our highly technical and highly classified information in a press or congressional briefing. This is something that you and I have to live with and accept as a part of the structure of American government.

Our secrets are not ours; they belong to the country and the country through its leaders. Our appropriate authorities have the problem of dealing with and retaining the confidence of our people, and consequently they must decide how much to inform the people so that they can understand the problems facing them around the world, as against the need to protect the intelligence sources, classifications and secrecy. Sometimes it is more important to inform the country than it is to keep the secret.

This is part of life in the American democracy, and I think it is part of the rules that we have to accept. We can reduce this problem by limiting our disseminations so that only the highest levels can make deliberate decisions to reveal information. We can educate the higher levels as to the sensitivity of certain sources. We can indicate the various kinds of classification and compartmentation so that the secrecy of some things means a lot more than the secrecy of others. But I think we have to accept the fact that we are going to operate under an authority which has the right to reveal to the people of the United States, for good reason, some of the things that we gathered, analyzed and produced under the most stringent security regulations.

There is another consideration that is worth thinking about when we talk about secrecy. How much secrecy do we need in our society? Secrecy costs money. It costs a great deal of money to protect secrets, to make the security investigations, to buy the safes with three combination locks, to erect the fences and to employ the other protections such as cryptography. Also, secrecy reduces the degree to which some of our information can be used by the people who need to use it, the particular unit someplace that actually needs the information which is gathered by a very secret technique. How can it be gotten to him if it has some high degree of compartmentation and he is not cleared? Do we expose him to possible danger just because we have not gone through a security clearance on him? We must figure out ways to avoid such situations.

We are all also aware of Gresham's law in economics, which says that bad money drives out good. If we overclassify, we develop in people's minds a contempt for the classification rules, for if some items that really are not secret at all are classified, it means that the whole system is nonsense. Thus the question of how much secrecy should exist comes down to deciding what actually needs to be kept secret and to arrange that the things that don't really need protection are released.

This is in a way the theme of the President's Executive Order of a year ago, in which he made the point that it is in the basic interest of the people of the United States to make information public and that only for good justification can matters be classified and kept from them. It starts from the premise that in our society things have to be open, and that there must be a justification in terms of national security for the classification and restriction of information. We have gone further and have developed various compartmentations. But the philosophy we should start with should not be that our secretary has only a Secret or Top Secret stamp. We must make sure she owns a Confidential one, too.

We need to recognize that many of our administrative papers really do not need to be highly classified but can be handled on an administrative basis and protected from undue exposure. Under the Freedom of Information Act your personnel record and my personnel record need not be made public, because the Act says that personnel records can be respected and restricted, not as classified matters but as personnel matters, in deference to your right of privacy. We need to ask what justification exists that I classify a document, rather than, as sometimes occurs in the bureaucracy, what justification exists for me not to classify

the document. The stress should be placed on the first question rather than the second.

We need rules and categories, and these categories can override individual documents. We have the category that applies to communications intelligence which is well established, and I think this is merely a way of translating these thoughts I expressed here into practical rules, practical decisions which can be applied over the length and breadth of the world where your operations take place, and can be translated from the most senior officials to the most junior officials in our government. But these rules and these categories require periodic review. The United States Intelligence Board is taking a look at certain of these. We are going to look at others in the future with a view to moving toward classifying and keeping secret those things that need to be kept secret, but not classifying and keeping secret the things that do not. We will keep secret on a highly restricted basis the very delicate matters, but try to keep on a much more relaxed basis, so that more people can use them, a number of things which can without great danger be exposed to a much larger group of our government people.

The rules of intelligence and of secrecy will not do the job alone. You know the importance of individual judgment in the intelligence business. The individual must put his mind to the problem, try to look around it, weigh all the factors. This is the normal intelligence process. It is also the process that we need when we approach the problem of secrecy and of classification. The use of judgment, not the rigid application of rules, a spirit of respect for the important things and a determination to protect the important things, and at the same time a respect for our American democracy and the need of our democracy that things that do not need to be classified should not be classified.

We serve the people through the executive, through the Congress, through the judiciary and even through the fourth estate, the press, but it is the people that we are really serving. We are not serving only one part of this total American country of ours. We must translate this service into procedures, into reasonable solutions to the various dilemmas that come upon us as we are pulled between different demands.

In the area of secrecy, we have to respect the necessities of secrecy, particularly in intelligence. We obviously are in a different business than the Fish and Wildlife Service or some of the other services. Nonetheless, underneath it we have to remember that we are in the *American* intelligence service, and that we consequently have to have an American approach to the problems of secrecy. We must be more open. It will be more difficult for us to serve the people, but it is also going to be much more rewarding. Thank you very much.

Mr. Colby has held a number of executive positions in the Central Intelligence Agency. In 1973 he was appointed Director, Central Intelligence.