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The Role of Intelligence in a Free Society

William H. Webster

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The Role of Intelligence in a Free Society

WILLIAM H. WEBSTER*

I. ADDRESS	155
II. QUESTIONS AND ANSWERS	162

I. ADDRESS

The events of the past several months have once again raised questions in the United States about secret intelligence operations, and whether such activity is appropriate in a democracy such as ours. What we have learned, and what I will discuss, are the circumstances under which the use of secret intelligence cannot only be very appropriate and necessary, but a vital part of maintaining our national security. What I have to say fits into a consideration of the role of the branches of government with respect to foreign policy, because much of what we do involves the gathering of information so that policymakers can make wise foreign policy decisions. Not foreign policy as decided by the CIA, but foreign policy as decided by the policymaking branches of government.

Not long ago, someone gave me a lapel button that read: "My job is so secret that even I don't know what I am doing." There may be some correlation between that statement and how we feel about secrecy. It conjures up images of Orwellian intrusion by government, clandestine activities that put our most cherished individual liberties at risk, and mistakes and blunders concealed within classified documents. There is, of course, a historical basis for these concerns, including some incidents in very recent history. It is not my purpose to rehash these incidents. Rather, I intend to discuss the collection of intelligence at home and abroad, and how our Constitution, without a single reference to intelligence, has accommodated this function so vital to our national security, and has inspired a system of oversight.

Taking a leaf or two from my past experiences on the federal bench and as the Director of the FBI, I conduct my responsibility today in accordance with two cardinal theses: First, the intelligence

* William H. Webster is the Director of Central Intelligence (DCI). In this position he heads the Intelligence Community (all foreign intelligence agencies of the United States) and directs the Central Intelligence Agency. Mr. Webster was United States District Court Judge, Eastern District of Missouri, 1970-1973; United States Court of Appeals Judge, Eighth Circuit, 1973-1978; Director of the Federal Bureau of Investigation, 1978-1987.

activities so vital to the protection and preservation of our national security must be conducted professionally, objectively, and with absolute fidelity to our Constitution and laws. Second, there must exist a trustworthy system of oversight and accountability that builds, rather than erodes, trust between those in the executive branch who have the intelligence responsibility and those in the legislative branch who act as surrogates for the American people.

Intelligence has always played a major role in our history and is at least as old as our Constitution. A couple of years ago, Malcolm Forbes gave Bill Casey and me a copy of a letter that George Washington wrote to Major Tallmadge in 1779,¹ in which he outlined some of his thoughts on the need for, and the requirements of, good intelligence work. I am also reminded that earlier, in 1777, George Washington wrote to Colonel Elias Dayton discussing the need for intelligence. He wrote:

The necessity of . . . procuring good . . . [i]ntelligence . . . is apparent and need not be further urged. All that remains for me to add is, that you keep the whole matter as secret as possible. For upon secrecy, success depends in most [e]nterprises of this kind and for want of it, is generally defeated.²

In 1790, secret funding for foreign intelligence activity was formalized by the Congress in the form of a secret contingency fund to be used by the President.³

Today, our government depends heavily upon accurate intelligence to formulate and conduct our foreign policy. We need intelligence to verify compliance with the arms agreements we have made, and to determine whether we could verify compliance with arms agreements that may be signed in the future. We need intelligence to understand both the military capabilities and the intentions of our adversaries. And more recently, we need intelligence to deal with the twin scourges of narcotics and terrorism. Today, the primary consumers of intelligence information are the President, the Vice President, the Secretaries of State, Defense, and the Treasury, the National Security Council, and of course, the select committees of the Senate and the House of Representatives.

We have learned at great cost that intelligence must be timely in order to be of any use. In July, I spent a day at the North American Aerospace Defense Command (NORAD), inside of Cheyenne Moun-

1. Letter from George Washington to Major Benjamin Tallmadge (Sept. 24, 1779), reprinted in 38 THE WRITINGS OF GEORGE WASHINGTON 330 (J. Fitzpatrick ed. 1933).

2. Letter from George Washington to Colonel Elias Dayton (July 26, 1777), reprinted in 8 THE WRITINGS OF GEORGE WASHINGTON 479 (J. Fitzpatrick ed. 1933).

3. Ch. 4, § 3, 1 Stat. 104, 105 (1790).

tain, near Colorado Springs. NORAD is one of the principal early warning systems for the air defense of the United States and Canada. After spending a day there, one cannot help becoming aware of how important early and accurate intelligence is for our national defense. Just last week, I was at Strategic Air Command Headquarters (SAC), in Omaha, Nebraska, where the same message came through loud and clear. A visit to the Middle East, with views of the East and West Banks, the Golan Heights, and all the armament assembled at the borders of Israel, Jordan, and Syria, impressed upon me the importance of our gathering and understanding reliable, timely intelligence. Of course, the same is true of the tactical situation in the Persian Gulf. Much time has passed since our Constitution was drafted, and now, in a nuclear age, we must think of preattack warning times in terms of minutes, rather than months or years.

The forms of intelligence vary, from human intelligence, of which we are all aware; to the gathering of public source information around the world; to signals, communications, and imagery intelligence, some of which involves satellites upon which a substantial part of our budget is spent.

It is important that information that is collected be interpreted in an objective way—that the Director of Central Intelligence and the people who analyze the information can be seen as giving our best estimates. We must not be seen as trying to shape or influence policy because our responsibility is to provide policymakers with the kind of information that they need to make the best decisions and the best judgments in the interest of our national security.

In addition to intelligence collection and analysis, the CIA plays a role in implementing foreign policy. This is done through our covert action programs. Although covert action is not defined by law, the term has come to be understood as referring to activities conducted in support of national foreign policy objectives in such a way that the role of the United States is not readily apparent. These include political work through communications—getting the same message out. They also include training and supplying important materials to those who support America's interests throughout the world. Covert capability, essential in our foreign policy, provides needed support for liberation movements, and allows us to work in collaboration with governments who, for legitimate political reasons of their own, do not wish to have the United States' role and involvement publically known in their countries.

From President Franklin Roosevelt forward, every president in my lifetime has endorsed and used covert action to support the for-

aign policy of this country. Although covert action traditionally claims only a small part of the CIA's budget, less than three percent, it is the focus of the greatest congressional and public attention. Having seen some of the responsibilities for covert action move outside the CIA into the National Security Council, I can understand how this has added to the confusion, the suspicion, and the ill ease of the American people. I have heard this situation described as "a government without rules inside a government that did not know." Now that responsibility for covert action has come back to the CIA, I hope never to leave again. I would like to convince you that we do have rules that, if followed by men of integrity and dedication, will meet both the constitutional requirements and also sustain our national security needs.

We must, of course, have secrecy. Both Congress and the judiciary have recognized the need for secrecy in matters of national security. The Freedom of Information Act,⁴ for instance, has express provisions protecting matters of foreign counterintelligence information supplied to us by foreign intelligence agencies.⁵ The Foreign Intelligence Surveillance Act⁶—the act under which all electronic surveillance of counterintelligence takes place in this country—provides for a special court to review in secret the applications filed to conduct electronic surveillance for foreign intelligence purposes.⁷ This statute has been found to be within the confines of the Constitution.⁸

The main purposes of secrecy in these efforts is to preserve and protect "sources" and "methods," two of the most important words in the intelligence world. If we cannot protect our sources, whether they are FBI informants or CIA assets developed around the world, we will not get the information we need. If we cannot protect the sensitive methods by which we collect the information—both in terms of individuals on the ground and satellites in the air—we will cease to have the means of collecting the information.

Although secrecy is necessary in these circumstances, there are, nevertheless, official surrogates looking after the interests of the American people. In 1976 and 1977, both houses of Congress established intelligence oversight committees to monitor all significant

4. Pub. L. No. 89-554, § 552, 80 Stat. 383 (1966) (codified at 5 U.S.C. § 552 (1982)).

5. 5 U.S.C.A. § 552(b)(7)(D) (West Supp. 1988).

6. Pub. L. No. 95-511, 92 Stat. 1783 (1978) (codified at 50 U.S.C. §§ 1801-1811 (1982)).

7. 50 U.S.C. § 1803(a) (1982).

8. *United States v. Megahey*, 553 F. Supp. 1180 (E.D.N.Y. 1982), *aff'd*, 729 F.2d 1444 (2d Cir. 1983).

intelligence activities and expenditures.⁹ We find many of the rules which govern our activities in the National Security Act,¹⁰ and the Hughes-Ryan amendment,¹¹ and the Intelligence Oversight Act.¹² The oversight committees operating under those acts have formalized the reporting of intelligence and covert activities to Congress. The intelligence community is now required by law to keep Congress and the intelligence committees of the Congress fully and currently informed of all intelligence activities. Under the Hughes-Ryan amendment, the President must find that each covert action is important to the national security before the operation can be initiated.¹³ These are the "findings" you have been reading about.

Under law it is our duty to notify the intelligence committees of "any significant anticipated intelligence activity,"¹⁴ which includes any activity requiring findings under the Hughes-Ryan amendment. In extraordinary circumstances affecting a vital national interest, the President can limit the notification to the chairmen and ranking minority members of the intelligence committees, the Speaker and minority leader of the House of Representatives, and the majority and minority leaders of the Senate, referred to in trade parlance as the "Gang of Eight."¹⁵ Another statutory requirement is that the intelligence committees be fully informed in a "timely fashion" of intelligence activities in foreign countries, other than those solely for the purpose of collecting intelligence, for which prior notice was not given.¹⁶ In addition, the President is required to state the reasons for not giving prior notice in those circumstances.¹⁷ These tightly framed procedures ensure getting the information to the surrogates of the American people in a proper and timely way.

We are improving the management capability to deal with covert activity on the executive side. It is not enough for the President to make a finding authorizing and directing us to take some covert activity. Before submitting the proposal to the President, we in the intelligence community have a responsibility to determine that it can be accomplished within the law. We must be sure that the individuals who are out on the firing line, in many instances outside the reach and

9. Department of Defense Appropriation Act, 1977, Pub. L. No. 94-419, 90 Stat. 1279, 1299 (1977).

10. Ch. 343, § 102, 61 Stat. 495 (1947) (codified at 50 U.S.C. § 403 (1982)).

11. Pub. L. No. 93-559, § 662, 88 Stat. 1804 (1974) (codified at 22 U.S.C. § 2422 (1982)).

12. Pub. L. 96-450, § 407(b)(1), 94 Stat. 1981 (1980) (codified at 50 U.S.C. § 413 (1982)).

13. 22 U.S.C. § 2422 (1982).

14. 50 U.S.C. § 413(a)(1) (1982).

15. 50 U.S.C. § 413(a)(1)(B) (1982).

16. 50 U.S.C. § 413(b) (1982).

17. *Id.*

protection of our Constitution and our laws, can do their work in accordance with the flexibility that they need, and with the clearest possible training and understanding of their responsibility to the CIA and to the country.

Our own internal covert action review group within the CIA now looks carefully at all aspects of proposed covert activity, and asks itself these kinds of questions: Is it consistent with overt United States foreign policy? Failure to ask this question is what went wrong in the Iran-Contra situation. Will it work? Not all covert activities will work, and we have to assess that possibility. What are the consequences going to be if the work is publicly exposed? Will it make sense to the American people? Is it consistent with American values? Not all covert activities are going to succeed. But if the proposed covert activities are subjected to these kinds of tests and this kind of management, we have the best chance of getting the most effective and productive use from our covert capability. Furthermore, all of these questions should be addressed again when the proposal goes to the National Security Council, often with the President in attendance, for its consideration and recommendation.

Our relationship with Congress must be based on truth, not deception. There is so much confusion about deniability and deception that it is important to make one legitimate distinction. Often in covert activity, there is deception to conceal the source of the activity. This deception permits us to implement our foreign policy through means that we believe to be appropriate, but which by necessity must be covert. In dealing with the Congress, however, there is absolutely no excuse for deception. There will be occasions when I may not be in a position to respond to a particular question, especially in an open session of the Congress. But it is possible to tell the Members of Congress, and I have done so on occasion, that I am just not at liberty to answer the question. This is very different from trying to answer the question narrowly or cutely, or pretending that they have failed to ask the question precisely enough, when I know what the Congress wants to hear from me. We have an obligation to speak to each other as individuals doing business, knowing what the other wants to know and being honest about what we are going to tell or not tell one another. If I decline to answer for reasons that seem legitimate to me, there are always opportunities to elevate the issue. Congress can appeal my decision to a higher authority, or it can make it sufficiently rough on me that I might conclude I have to answer. But a level of honesty, a recognition that nothing is being withheld by deception, is vitally important in the sharing of power. There is also a correspond-

ing obligation on the Congress and its committees, whose members serve as surrogates for the American people, to take into account the needs of secrecy and to share that responsibility with the same care and concern for the protection of our sources and methods that are imposed upon the executive branch.

The challenges we face in intelligence require a high degree of cooperation, not only within government but outside it as well. One key element of our society that has always been important to us is the American academic community. As some of you may know, academics were in the beginning of our modern intelligence system. Professors and scholars flocked to Washington to become the backbone of the Office of Strategic Services in World War II. Many of them stayed on after the War and were instrumental in creating the CIA in 1947. They became key research directors, operations officers, managers, and leaders. Moreover, their legacy is still with us.

Today we rely very much on colleges and universities, not only to supply the new people who make our system work, but also for the expertise they can provide us in so many areas. Many faculty members work closely with us. Some even become scholars in residence, sharing their knowledge with us on a day-to-day basis. There are at least forty-three colleges and universities at which a course in intelligence will be taught this year, and there are many others where a discussion of intelligence will take place in a course on foreign policymaking. Agency officers participate in professional and scholarly associations and make substantive presentations on college campuses throughout the country. There is nothing secret about these relationships, nor should there be. We believe that there can and should be a close working relationship between the academic community and the intelligence community in developing accurate assessments about the world around us.

We recognize that the campus is also a legitimate place for discussion and dissent. Over the past few years, students and faculty opposed to the administration's policies have chosen the CIA and its recruiters as the targets for many of their protests. On one occasion, they even came to our CIA campus in Virginia. Despite this activity, we continue to seek out the best and the brightest from our Nation's campuses to join us, and they continue to come. A week or so ago, I was at Dartmouth, speaking on a campus noted for its capacity for dissent. I was pleased to see both the interest and the support that exists among students when issues are rationally, clearly, and accurately presented to them.

In conclusion, shared responsibility for intelligence is vitally

important on both the executive and the congressional sides. We in the intelligence community must work closely with those in the executive branch who must make the policy recommendations. We must provide objective, professional assessments that help put truth into action. We must work with the congressional committees that act in secret matters as surrogates for the Congress and the American people. Most importantly, we must be worthy of their trust. We must diligently carry out our assignments around the world, however difficult, with fidelity to the Constitution and the laws of our beloved country. No nation dedicated to the rule of law can protect itself in any other way.

II. QUESTIONS AND ANSWERS

SPEAKER: Periodically, books are published that purport to contain classified information about our intelligence gathering capability. How damaging are these books, and what can we do to try to prevent this kind of damage in the future?

JUDGE WEBSTER: Books that reveal classified information can cause a great deal of damage to us. They can help our adversaries identify the sources and the methods by which intelligence was, and is, collected. Even if the sources and methods have become matters of common knowledge in a particular country or area, they can still be used effectively elsewhere. There is always the potential of defeating legitimate purposes in disclosure of this information.

I have never believed in hiding wrongdoing through secrecy or confidentiality. In fact, Congress will always be able to get from me anything it needs when it believes there is a question as to whether we are engaged in something we should not be doing. But it is very important to protect our sources and methods. Those who were given information in trust and who have betrayed it have, in fact, betrayed their country.

SPEAKER: You said that your agency, the CIA, is deeply involved in the determination of the ability to verify compliance with treaties. You may want to comment on what you think about the likelihood of adequate verification of compliance with the proposed treaties.

JUDGE WEBSTER: Verification will be the responsibility of the whole intelligence community: The CIA, the National Security Agency (NSA), the Defense Intelligence Agency (DIA), and all of the other military components of the intelligence community. The main concern that we confront is making the decisionmakers aware of both the strengths and weaknesses of our verification potential. We have

been giving information to the policymakers and to the NSC, and policy is being made with knowledge of our strengths and weaknesses.

Frankly, two issues concern me at the present time. First, how are we going to deal with 100 Secretaries of State if and when a treaty is submitted to the Senate? I am afraid that everyone may want to be personally briefed on all of the strengths and weaknesses in our verification ability. We will have to find a way to give at least quantitative information to the members of Congress so that they can make a confident, informed judgment when called upon to vote on these issues.

Second, how are we going to protect our actual weaknesses from the public and foreign hostile intelligence elements? There are very significant risks associated with arms control agreements. These risks are made worse if our weaknesses are exposed publicly, or exposed in any way that makes them perceptible to the other side. These risks, however, must be measured against the benefits and the promise of a more peaceful world.

SPEAKER: What, if any, legislative changes would you recommend to Congress that would make the CIA's difficult job more manageable without sacrificing our values of decency?

JUDGE WEBSTER: I appreciate the question, but I don't think I can answer it without giving improper recognition to the present climate. Our society's concept of decency is an evolving one. Similarly, our concept of what is permissible and impermissible is also an evolving one. These values are deeply affected by war and the threat of war. At the present time, I cannot think of any legislative changes that would relieve us of a major burden. I believe that the current regulations, rules, and procedures are workable, provided that we staff ourselves with men and women of integrity who respect the law. The competition between the branches of government must not place the intelligence community in a squeeze between claims of right to know and threats to go public on sensitive issues or secret matters. Revelations of sensitive sources and methods could put both lives and programs at risk.

It is my principal theory that if we can develop a greater level of trust between those of us responsible for collecting the information and implementing foreign policy through covert action and those responsible for overseeing covert activity, then we can protect the Nation's security under the present legislation. It comes down to people and an attitude that they can work together. I hope it is clear that for the process to succeed, it is essential that the major heads of government and the President approve all CIA covert activity, and that Congress be fully informed about that activity.