

Address by Admiral Stansfield Turner
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American College of Trial Lawyers
Boca Raton, Florida
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STATE OF INTELLIGENCE

Three months before the attack on Pearl Harbor I went to Amherst, a small liberal arts college in New England, with the vague intent in mind that the following summer I would become an office boy in some large Chicago law firm and decide if I really did want to go on to a career in the legal profession. The war and a career in the Navy intervened and I thought I was never going to get my law education until President Carter appointed me Director of Central Intelligence.

That may sound strange to you but almost every day I get a tutorial on the law from my General Counsel, who tells me what I can and cannot do. In fact, there is a great deal stirring between the law and intelligence today. The greater degree of control by law than ever before is a part of the many changes that are taking place in our nation's intelligence activities. I think it is the one feature perhaps which would interest you most, but first I would like to sculpt for you the general nature of the fundamental and far-reaching changes that are taking place in the intelligence process as a whole. They derive from three basic factors. First, the changing perception the United States has of its own role in international affairs. Second, the great technical sophistication which has come to characterize the process of collecting intelligence information. And third, the much greater interest and concern about intelligence activities of the public in general.

Let me start with the changing perception of our role in the world. I believe that the United States is in a state of transition in its public attitudes towards foreign affairs from an activist, interventionist outlook to one where the restraints or limits on our ability to influence events in other countries is more widely recognized. This is not to say that we are retrenching into an isolationism. In fact, as a nation, I believe we are gradually emerging from our post-Vietnam, total aversion to any semblance of intervention on the international scene. Clearly, we must continue to play a major role on the world scene. Yet, the circumstances today are such that we must gauge much more carefully than ever before when intervention may be desirable or feasible.

Look, for instance, at the difficulty that we have today simply deciding whom we are for and whom we are against. Traditionally we often favored those people whom the Russians were against. But look at some of the choices we had in 1978. About this time last year, there was a war in Ethiopia. The Russians were against Somalia. Somalia was headed by a Marxist dictator who was the aggressor; a difficult side for us to be for. At the end of 1978 there was a war in Cambodia. The Russians were for the Vietnamese who were attacking Cambodia. Cambodia was headed by Pol Pot, perhaps the most repressive regime on the face of the globe since Hitler; again, a difficult choice for us.

In short, Communism today is not monolithic and it is hard for us to tell the black hats from the white hats. In addition, it is not nearly so clear today that the consequences of a nation succumbing to Communist influence are as irreversible as we often thought in the past. We have seen Indonesia, Sudan, Egypt, and even Somalia subjected to considerable Soviet influence and then return to independence. So today there is a legitimate question in our body politic as to whether it is always necessary to come to the rescue of countries being subjected to Communist pressure.

Even when we do decide that some struggling nation deserves our support, there are problems in providing that support today which did not exist just a few years ago. One of these stems from the revolution in international communications. Today any international action one may take is instantly communicated around the globe; instantly subjected to analysis; and instantly judged. And that public, international judgment--often approbation or criticism--influences events and inhibits major countries like ours or the Soviet Union, even though these countries voicing their approbation or criticism are often second or third level powers.

If we attempt to sway other countries diplomatically, we are not nearly as effective as we could be 20 or 25 years ago when most free nations of the world followed our lead in such fora as the United Nations. Today, one country has one vote and the major powers are generally on the minority side of those votes.

Today if we believed that it was in our national interest to intervene militarily somewhere, the memory of Vietnam reminds us that when the pendulum of offense and defense in military weaponry is tending towards the defense, as it now is, even a minor military power can give a major one a very difficult time.

What all this adds up to is that the leverage of influence in international affairs must be exercised much more subtly. We must be more concerned with long term influences rather than just putting a finger in the dike. We must be able to anticipate rather than react to events. We must be able to interpret the underlying forces which can be influenced and driven over time. For us in the intelligence world this means that we must vastly expand the scope of our requirements.

Thirty years ago our primary concern was to keep track of Soviet military activities. Today our geographical interests are much more widespread than just the Soviet Union. The subject matter in which we must be intimately familiar encompasses not just military technology, but politics, economics, food, population, narcotics, terrorism, the health and psychiatry of foreign leaders, energy reserves, and many other fields. There is hardly an academic discipline, there is hardly an area of the world that we must not be able to provide good information about to national leaders. This is an exciting, a demanding time for intelligence and one of fundamental change in the intelligence process of our country.

The second factor that is driving change is the technological revolution affecting how we collect intelligence. Basically there are three ways of acquiring foreign intelligence: by photographs from satellites or airplanes; by intercepting signals such as those that are passing through the air right here and now--signals from military equipment, signals from communications systems; and by human collection--the traditional spy.

The first two, photographic and signals intelligence, are called technical intelligence as opposed to human intelligence. The capabilities here, thanks to the great sophistication of American industry, are burgeoning. There is so much information flowing in that our real problem is how to process, handle, and do something with it. Interestingly though, rather than denegrating the value or need of the traditional spy, it has increased his importance. Broadly speaking, technical intelligence collection tells you what happened in some other country in the past. When I give that information to a policy maker the first thing that I am asked is, why did that happen and what is going to happen next? Uncovering people's intentions and plans is the unique forte of the human intelligence agent. The challenge that we face is being able to coordinate photographic, signals, and human means of collection, orchestrating them so that the three complement each other and so that we collect all needed information in the least expensive way with the least risks. For example, what the photograph can't tell you, you look for with signals or the human. This may sound very logical and very simple, but because technical capabilities are burgeoning and many are relatively new and in some ways overwhelming, we can no longer do business in the traditional way.

Because intelligence is a large bureaucracy spread over a number of different government agencies and departments, it has taken some fundamental restructuring to accommodate these changes. I have two jobs. I am head of the CIA but I am also the Director of Central Intelligence. In the latter role I coordinate all of the national intelligence activities of the country. Just over a year ago the President, in a new Executive Order, strengthened my authority over the budgets and collection tasking of all these intelligence activities. That change, that process, is still evolving today. It is coming along nicely but it is not yet complete.

The third factor driving change is the increase in public attention to intelligence ever since the investigations of 1974 through 1976. Those investigations brought to American intelligence activities more public attention than has ever, in the history of mankind, been brought to bear on a major intelligence organization. That process, I am afraid, destroyed some of the confidence and support the American public has traditionally had for its intelligence activities. And, while I am beginning to sense a gradual return of that support and confidence, I also recognize a lingering suspicion as to whether intelligence organizations may be invading the privacy of the American citizen. In any event, enough of the allegations about previous abuses of intelligence were true, even though most were exaggerated, that corrective action has been necessary. It has been taken and has been taken thoroughly.

We now have a series of oversight procedures which serve as a very important check on intelligence. It begins with the President himself, who takes a direct and personal interest in what we are doing. It goes from there to an Intelligence Oversight Board which looks into the legality and propriety of intelligence activities, and reports directly to the President. And it goes from there to the two committees of the Congress empowered exclusively to conduct intelligence oversight. And finally, of course, the press is much more interested, much more persevering in learning what we are doing today than ever before.

The impact of all this added visibility has been substantial and has had a traumatic effect within the Intelligence Community. Some of this publicity is wanted. We need to regenerate that sense of confidence that we are not invading the rights of the American citizen. One way of doing that is through our being more open. We are publishing more and, incidentally, when you leave today, we will have on the tables in the foyer some examples of the materials that we have published in the last year or so which we think are of interest to the American public and which are unclassified. We are answering questions, we are speaking more in public as I am with you today, and we are participating more in symposia and academic conferences.

But some of the publicity is unwanted. It is unhelpful and it involves improper disclosures of intelligence information. This is demoralizing for a service that has traditionally, and of necessity, operated in secret. If you were a CIA case officer overseas attempting to persuade some foreign person to spy on our behalf at the risk of his or her life, then you must have confidence that you can assure that individual his identity will be protected. Today our people do not have the same sense of confidence that they did a decade ago. And so openness is a traumatic change for them which can have a negative impact.

Not the least of the traumas we are experiencing derives from the increasing legal context of everything we do. I am sure you appreciate that there is a natural tension between the effective and impartial administration of criminal justice and the successful prosecution of intelligence. I hardly need remind you that criminal justice requires

that all relevant information be made available to both the prosecution and the defense. And yet, you can readily appreciate that national intelligence interests often require that evidence derived from intelligence sources be protected against disclosure. The resulting dilemmas can be very painful and are not infrequent.

Are these real dilemmas? Yes. I think that when Attorney General Bell, last week, had to drop the prosecution of a case against two ITT officials in order not to disclose intelligence secrets, it is a genuine dilemma. There would be no dilemma, no problem, only if on the scale of national values every law enforcement interest were always superior to any intelligence interest. Intelligence information would always be brought forward as needed. Or if, on the other hand, law enforcement interests were always subordinated to intelligence interests, any criminal proceeding would be terminated should any intelligence information be threatened with disclosure.

Clearly neither view is correct. The values are variable and cannot be readily ordered in advance. Each case must be separately judged on its own facts, and intelligence interests must be placed in perspective with other interests such as justice and precedence, when deciding whether and on what basis to proceed with prosecution.

It is the Attorney General who has the discretion to decide whether a prosecution is warranted and on what basis to go forward. That is not to say, however, that I have no role in influencing that decision whenever intelligence interests are concerned. On the contrary, I have a necessary task.

In the first place, I am responsible for ensuring that no relevant information is withheld from the Attorney General. Access to relevant information, regardless of its classification, should not be a point of dispute. In my view, the Attorney General has a clear right and a need to review all such information so that his decisions may be taken with the fullest factual perspective.

Beyond this, I feel that I am responsible for giving the Attorney General an estimate of the potential impact of the public disclosure of intelligence information that may be relevant to a criminal prosecution. Again, I believe that this kind of an estimate is something the Attorney General must have to make informed decisions and to properly weigh the consequences of those decisions. If it should happen that I conclude that the Attorney General has come to the incorrect balance, I must then appeal to the President to decide whether the best interests of the United States favor prosecution or not. In brief, I cannot frustrate a prosecution simply by withholding secret information from release. That choice lies with the Attorney General and I must appeal that choice, if I do not agree with it. In the two years I have been privileged to work on these thorny issues with Attorney General Griffin Bell, we have never had, because of his great cooperativeness, anything but a harmonious resolution of these issues. But they are not easy for either one of us.

There are fundamental reasons why this issue presents such difficulty. One is simply the fact that a criminal trial in this country is a public event. I have no quarrel with the constitutional guarantees that make it so. At the same time I cannot ignore the fact that evidentiary uses of intelligence information involves a high probability that it will enter the public domain. There are few ways to avoid that outcome or to limit the exposure of the information to trial participants. Other constitutional provisions secure to an accused broad rights of cross-examination. Rules of procedure confer on the defense wide-ranging pre-trial discovery. These features make the judicial process almost as uncertain as it is open. For example, what lines of defense will be followed and what scope of discovery and cross-examination will be allowed do not lend themselves to precise advance measurement. They are unpredictable, and that means that the decision to prosecute is more difficult for those who must gauge, before the course is set, where it all might lead. Again, I'm not complaining about any of this or suggesting any radical reforms that would strip away rights of the accused. I am only trying to describe how it looks from my position.

What I have been saying takes on greater force when you consider the necessities of proof under some of the basic criminal statutes which are of special concern to intelligence agencies. Let us suppose, for example, that a government employee is arrested while attempting to deliver a highly classified document to a foreign agent, and the delivery is frustrated by the arrest. A crime has been committed under the espionage laws. Yet prosecution would exact an extraordinary price. The government would be required to show that the information in the document was of enough significance to materially injure the national security if it had fallen into the hands of the foreign government. That burden of proof would very likely require that the document itself be offered as evidence and that a government witness confirm its accuracy. The net result would be that the trial proceedings would have succeeded in doing exactly what the defendant was being tried for attempting but failing to do, that is, transmit and disclose the information. Moreover, the accuracy of that information would have been verified in the bargain. I am sure you will agree that a spectacle of this sort would not be pleasant to contemplate for those who had to struggle with a decision to prosecute. We have avoided this dilemma once recently, but it was indeed a very risky and uncertain matter.

Another well publicized problem in trial proceedings is the last minute discovery blitzes that have been favored by defense counsels in some espionage cases, the recent case of the U.S. vs Kampiles for example. It is unfortunately true that whenever the CIA or just intelligence is involved, it is inviting for a defense attorney to hope to collapse the prosecution by pressing for more disclosure than we are likely to be willing to provide. Hence, the shotgun approach which is evolving against which there are no easy countertactics.

Judges, though, are by no means insensitive to these dilemmas. They will from time to time regulate pretrial discovery in espionage prosecutions by protective orders affording the defendants and defense counsel access to sensitive materials but restricting their freedom to further disseminate such materials. Unfortunately, the terms of these orders have varied widely and seem to have nothing to do with the differences in the cases themselves.

For example, some of the orders have conditioned access to sensitive materials by defense witnesses on both security clearance grounds and court approval, whereas others, have only been on the basis of court approvals. In some cases, U.S. vs Moore for instance, the protective order has authorized defense counsel to maintain custody of materials in a safe furnished by the government, whereas in others, like the Kampiles case, the material remained totally in the custody of the government at all times. In a recent case, arrangements were made where the materials were kept in a safe of ours which in turn was kept in the judge's safe.

Let me not, however, leave any impression that all of the interests of intelligence are on the side of not disclosing or not prosecuting. We in the Intelligence Community have legitimate interests on both sides of this issue. On the other hand, our concern for protecting national secrets is genuine. Beyond concern for individuals such as I mentioned before, individuals who are willing to risk their lives in our nation's behalf, there is a wide-range of clear damage to our national interest when information which ought to stay secret is disclosed. Sometimes our relations or negotiations with other sovereign nations are undermined or our continued access to information jeopardized. Foreign intelligence services simply will not share information with an organization that appears to be an information sieve; and expensive technical systems I have described can be frustrated and countered if their details are disclosed.

Thus, even though we in intelligence are indeed generally inclined, perhaps overly inclined, to hold back from prosecution to protect classified information, there are also many cases where we intensely want to see the prosecution proceed. Those that concern us most involve espionage. Beyond that, are the irresponsible, I would even say traitorous individuals who deliberately disclose classified information. The seriousness of these losses causes the Intelligence Community to strongly support the prosecution of the individuals who do the disclosing. My blood boils at the obvious callousness and selfishness of such persons. They not only deserve the punishment that may result from prosecution, but we need to prosecute these offenders to deter others. Thus, we have incentive to lean over backwards in releasing information which is essential to such judicial proceedings. In the two years I have been Director of Central Intelligence, I have held my breath while releasing data to permit the prosecution of nearly a half a dozen espionage cases. Nevertheless, the incentive to continue releasing information for the purposes of such prosecution remains strong.

Another set of problems we face centers on the many rules and regulations which have recently been applied to intelligence agencies, especially those to protect the privacy of American citizens. Because they are new and often complex and because they must be interpreted in the light of our sometimes unique activities, they have impacted heavily on the speed and flexibility with which we have traditionally been able to operate. Very often, questions of Constitutional Law have been involved which have required both the Attorney General's legal staff and my legal staff to take the time to think through a legal issue in the midst of an operational crisis. In all such instances, the Attorney General and his staff have gone out of their way to provide timely opinions and advice. But, in practice, and as a result, our options have often been limited. An example in the electronic surveillance area will illustrate what I am talking about.

Over a year ago, a small country was under siege. At one point the only good source of information from within the country was the ham radio transmissions of an American missionary. In light of the President's Executive Order prohibiting electronic surveillance of a United States person, could we legally intercept that transmission? If we could, at what point would it become illegal electronic surveillance? The decision was made that as long as the missionary was using CB or ham radio bands we could listen. But that if he tried to disguise the broadcast--which is not unreasonable if you are broadcasting clandestinely and in fear of being caught--that would evidence a desire for privacy and we would have to stop monitoring.

While we recognize and applaud these efforts to ensure the constitutional and privacy rights of Americans, and in most instances we can adapt to them, the issues are complex and they must be assimilated by my people in the field who are not attorneys. The initiative of the intelligence operator can be dulled by this need to insure that all applicable legal standards are met, and the uncertainty as to whether they are being met can lead to overcaution. In fact, today, our operators are almost forced to avoid operations which could involve US persons. This in turn could reduce our flexibility to respond in crisis situations when the lives and property of American nationals may be involved.

This year it is my hope that legislation defining charters for the Intelligence Community will be passed by the Congress. This legislation would establish for the first time the authority for specific intelligence activities, as well as the boundaries within which we must operate. Written with care and sensitivity to problems like those I have just discussed, it may help to resolve some of these difficulties. Overreaction, either by tying the Intelligence Community's hands or by giving it unrestricted freedom would be a mistake. On the one hand inviting a repetition of past abuses, on the other emasculating necessary intelligence capabilities.

After all these comments, particularly about our legal problems, let me assure you that in my view the intelligence arm of our government today is strong and capable. It is undergoing substantial change which is never an easy or a placid process in a large bureaucracy. But, out of the present metamorphosis is emerging an intelligence community in which the legal rights of our citizens and the legal constraints and controls on intelligence operations are balanced with a continuing need to maintain an effective means of garnering information necessary for the conduct of foreign policy. This is not an easy transition. We are not there yet. But we are moving rapidly and surely down the right path. When we reach our goal we will have constructed a new model of intelligence, a uniquely American model, reflecting the ideals of our country. As we proceed, we need your support and understanding. I am therefore most grateful that you have asked me to be here today and have listened so attentively.

Thank you very much.

AMERICAN COLLEGE OF TRIAL LAWYERS
Boca Raton, Florida
12 March 1979

_____ Matteson, _____ Blackmun, Attorney General Bell, ladies
and gentlemen.

Three months before the attack on Pearl Harbor I went to Amherst, a small liberal arts college in New England, with a vague intent in mind that the following summer I would become an office boy in some large Chicago law firm and decide if I really did want to go on to a legal profession since I'd been involved. The war and a career in the Navy intervened and I thought I was never going to get my law education until President Carter appointed me Director of Central Intelligence.

Now that sounds strange to you but what I am saying is that almost every day I get a tutorial in the law from my General Counsel, who tells me what I can and cannot do. And, in fact, there is a great deal of stirring between the law and intelligence today and it's part of a very general stirring, a very broad set of changes that are taking place in our nation's intelligence activities. One feature of these is a greater degree of control by law than ever before. But that is only one feature, I think it is one perhaps that would interest you most. But I would first like to sculpt for you the general nature of these very fundamental and very long reaching changes that are taking place in our intelligence process. They derive from three basic factors. First, there is a changing perception the United States has of its own role in international

affairs. Secondly, is the great technical sophistication which has come over the process of collecting intelligence information. And third, is the much greater interest and concern about our nation's intelligence activities by the public in general.

Let me start with the changing perception of our role in the world. I believe that the United States is in a state of transition in its public attitudes towards those affairs. The transition from a very activist, interventionist outlook towards one of much greater recognition of the restraints or the limits on our ability to influence events in other countries. This is not to say that we are, in my view, retrenching into a isolationist mode. Clearly, we must continue to play a major role on the world scene. I happen to believe that as a nation we are gradually emerging from our post-Vietnam aversion to intervening in other nations' affairs. And yet, the circumstances today are such that we must gauge much more carefully than ever before when intervention may be desirable or feasible.

Look, for instance, at the difficulty that we have today in simply deciding whom we're for and whom we're against. Traditionally we were in favor of those people that the Russians were against. But look at some of the choices we had in 1978. About this time last year, there was a war in Ethiopia. The Russians were against Somalia. Somalia was headed by a Marxist dictator who was the aggressor in that event, a difficult choice for us to be for. At the end of 1978 there was a war in Cambodia. The Russians were for the Vietnamese who were attacking Cambodia. Cambodia was headed by Pol Pot, perhaps the most repressive regime on the face of the globe since Hitler; a difficult choice for us to be for.

In short, Communism today is not monolithic and it is hard for us to tell the black hats from the white hats. In addition, it's not nearly so clear today that the consequences of a nation succumbing to Communist influence are as irreversible as we often viewed it in the past. We've seen Indonesia, Sudan, Egypt, and even Somalia, subject to very considerable Soviet influence at one time and then come back out and be independent again. And so today there is a question in our body politic as to whether it is always necessary to come to the rescue of countries being subjected to Communist pressure. And yet we do decide that some struggling nation does deserve _____, there are problems today which did not exist just a few years ago.

One of these stems from the revolution in international communications. Today any move that we make in particular is instantly communicated around the globe and instantly subject to approbation or criticism. And somehow, I'm not sure I understand how or why, that public international approbation or criticism influences events and inhibits major countries like ours or even the Soviet Union, even though those countries voicing their approbation or criticism are generally second or third rate powers. And today if we attempt to use political pressure on other countries, it's not nearly as effective as it was 20 or 25 years ago when most free nations of the world followed our lead in such fora as the United Nations. But today in those fora we have created one country, one vote and the major powers are generally on the minority side of those votes. And today if we want to intervene militarily, the situation is different as we all remember it in Vietnam even a minor military power today. When the pendulum of offense and defense in military weaponry is pending towards the defense, even a minor military power can give a major one a very difficult time.

What all this adds up to, I believe, is that the leverage of influence in international affairs must be exercised much more subtly today. We must be more concerned with long term influences rather than just putting our fingers in the dike. We must be able to anticipate rather than react to events. We must be able to interpret the underlying forces which can be influenced and driven over time. For us in the intelligence world this means that we must vastly expand the scope of requirements that we must meet for our country. Thirty years ago our primary concern was to keep track of Soviet military activities. Today our geographical interests are so much more widespread than just the Soviet Union. Today the subject matter in which we must be intimately familiar encompasses not just those things involved in military technology, but political, economic, food, population, narcotics, terrorism, the health and psychiatry of foreign leaders, _____ capacities, energy reserves, and so many other fields. There is hardly an academic discipline, there's hardly an area of the world that we must not be able to provide good information about to our national leaders. This is an exciting, a demanding, a earth-shaking change in the intelligence process of our country.

The second factor driving change today that I mentioned was the technological revolution in how we collect intelligence. Basically there are three ways of gaining information overseas. One is by photographs from satellites, from airplanes. Another is by intercepting signals, signals such as those that are passing through the air with us right here today. Signals from military equipment, signals from communications systems that we collect by airplanes or ships or ground _____.

And the third means is what we call human intelligence, the traditional human spy.

The first two, photographic and signals intelligence, are what we call technical intelligence as opposed to the human. And the capabilities here, thanks to the great sophistication of industry in our country, are simply burgeoning. We have so much information flowing in that our real problem is to process and handle it and do something with it. And this is, indeed, a challenge. Interestingly though, this has not denegated _____ of that old traditional spy. Why? Because, very broadly speaking, the technical intelligence collection tells you what happened in some other country some time in the past. When I give that information to our policy makers the first thing they do is say, "Stan, why did that happen and what's going to happen next?" And finding out people's intentions and plans is the forte of the human intelligence agent. So the change that we are facing today is to be able to coordinate these three means--photographic, signals, and human--of collecting the necessary information and being able to orchestrate that in a manner that will get us the information in the least expensive, the least risky way. But to be sure that we get it in a complementary manner so that what the photograph can't tell you, you look for with the signals or the human, and vice versa. This may sound very logical and very simple to you, I'm only suggesting that because these burgeoning technical capabilities are relatively new, it is not the traditional way we have done business.

And because intelligence is a large bureaucracy spread over a number of different agencies and departments of our government, it takes some fundamental restructuring to do this. Just over a year ago the President, in a new Executive Order, gave me as the Director of Central Intelligence--

I have two jobs, I'm head of the CIA but I'm also the head of the Director of Central Intelligence and in that role I'm to coordinate all of the national intelligence activities of our country. And in that role the President strengthened my authority over the budgets and over the directives to go out and collect information of all the intelligence activities. That change, that process is still in evolution today. It's coming nicely but it is a very fundamental change.

The third factor that is driving change is the increased public attention to intelligence ever since the investigations of the period 1975 to 76. Those investigations have brought to our nation's intelligence activities more public attention than has ever, in the history of mankind, been brought to bear on a major intelligence organization. The process, I'm afraid, has ruined some of the confidence and support of the American public for its intelligence activities. I believe and I am pleased to sense a gradual return to that support and confidence. But with it I also recognize a lingering suspicion as to whether the intelligence organizations of our country may be invading the privacy of the American citizen. In any event, enough of the allegations about previous abuses of intelligence were true, even though most were exaggerated, the corrective action in this area has been necessary. It has been taken and has been taken thoroughly I believe.

We now have a series of oversight procedures which serve as a very important check on intelligence. It begins with the President himself, who takes a very direct and personal interest in what we are doing. It goes from there to an Intelligence Oversight Board which reports to the

President only and it is constituted only to look into the legality and propriety of our intelligence activities. And it goes from there to the two committees of the Congress empowered exclusively to conduct oversight of our intelligence activities. And finally, of course, there is the press which is much more interested, much more persevering in uncovering what we are doing today than ever before.

The impact of all this has been very substantial. This added visibility has had a virtually traumatic effect within the Intelligence Community. Some of this publicity is wanted publicity and we need to regenerate that sense of confidence that we are not invading the rights of the American citizen and hence, we are being more open. We are publishing more and, incidentally, when you leave today, we will have on the tables in the foyer some examples of the materials that we have published in the last year or so which we think are of interest to the American public and which are unclassified. We're answering questions _____ as I am with you today, speaking more in public and participating more in symposia and academic conferences.

But much of the publicity we have today is also unwanted. It's unhelpful and it involves improper disclosures of intelligence information. And this is traumatic for a service that has traditionally, and of necessity, operated in a large measure of secrecy. And if you were what we call a case officer in the CIA and you were overseas attempting to persuade some foreign person to be a spy on our behalf at the risk of his or her life, and you must have that sense of confidence that you can assure that individual his identity will be kept quiet. And today our people don't have that same sense of confidence they did perhaps a decade ago. And so that makes it a traumatic change for them.

And not the least of the traumas we're going through is the increasing legal context of everything we do. I'm sure you appreciate that there is a natural tension between the effective and impartial administration of criminal justice and the successful prosecution of intelligence. I hardly need remind you that criminal justice requires that all relevant information be made available to both the prosecution and the defense. And yet, you can readily appreciate that national intelligence interest often requires that evidence derived from intelligence sources be protected against disclosure. The resulting dilemmas can be very painful and are not infrequent. Are these real dilemmas? Yes. I think that when Attorney General Bell, last week, had to drop the prosecution of a case against two _____ officials in order not to disclose intelligence secrets, it is a genuine dilemma.

There would be no dilemma, no problem, only if one of two things prevailed. If in our scale of national values we felt that every law enforcement interest were always superior to any intelligence interest and, therefore, whatever intelligence was necessary to _____ prosecution. Or if they felt the reverse, that law enforcement interests were always subordinated to intelligence interests and therefore any criminal proceeding would be terminated if intelligence information was threatened, would there be no dilemma. Clearly neither view is correct. The values are variable and cannot be readily ordered in advance. Each case must be separately judged on its own facts and intelligence interests must be placed in perspective with other interests such as justice and precedence.

It is the Attorney General who has the discretion to decide whether prosecution is warranted and on what basis. This is not to say however that I have no role in influencing that decision whenever intelligence interests are involved. On the contrary, I have a necessary task. In the first place, I'm responsible for ensuring that no relevant information is withheld from the Attorney General. Access to relevant information, regardless of its classification, should not give pointed dispute. In my view, the Attorney General has a clear right and a need to review all such information so that his decision may be taken with the fullest factual perspective. Beyond this, I feel that I am responsible for giving the Attorney General an estimate of the potential impact of the public disclosure of intelligence information that may be relevant to prosecution. Again, I believe that this kind of an estimate is something the Attorney General must have in order to make his informed decisions and to properly weigh the consequences of those decisions.

If it should happen that I conclude that the Attorney General has come to the incorrect balance, I must then appeal to the President and have him to decide whether the best interests of the United States favor prosecution or not. In brief, I cannot simply frustrate a prosecution by refusing to disclose to the public classified information. That choice lies with the Attorney General and I must appeal that choice, if I do not agree with it. Let me say that in the two years I have been privileged to work on these thorny issues with Attorney General Griffin Bell, we have never had, because of his great cooperativeness, anything but a harmonious resolution of these issues. But they are not easy for either one of us.

And there are a number of reasons why they are tough decisions. One is simply that a criminal trial in our country is a public event _____ constitutional guarantees that make it so. But at the same time I cannot ignore the fact that the evidencuary use of intelligence information means that there is a very high probability that it will end up in the public domain. There are few ways to avoid that outcome for to limit the exposure of the information just to the trial participants. In addition, there is of course pretrial discovery and the right of cross-examination. These features make the judicial process almost as uncertain as it is open. For example, what lines of defense will be followed, what scope of discovery of cross-examination will be allowed simply don't limit themselves to precise advance measurements. They are unpredictable. That means that the decision of whether or not to prosecute is all the more difficult for those who must gauge before the course is set where it may all lead. Again, I'm not complaining about all this or suggesting any radical reform. I'm only trying to describe how it looks from my position.

What I have been saying takes on even greater force, I believe, when you consider the necessities of proof on just how the basic criminal statutes which are of special concern to intelligence activites. Let me set you a hypothetical, legal case. One in which a government employee is arrested while attempting to deliver a highly classified document to a foreign agent, but in which the delivery is frustrated by the arrest. The crime has been committed under our espionage laws, yet the prosecution of this crime could involve an extraordinary price. The government would very likely be required to show proof

that the information in the document, if disclosed publicly would materially injure the national security. That burden of proof would very likely require that the document itself be offered as evidence and that a government witness confirm the accuracy of that document. The net result, as you can readily see, would be that the trial proceedings themselves would accomplish exactly what had been frustrated by the arrest. The disclosure of the very information to the foreign power and others and on top of that it would have been delivered not under some question by a spy but by the absolute authenticity of having it verified by a government witness in the court. I am sure you can agree that the spectacle of this sort is not pleasant, is not easy for us to contemplate and to struggle with a decision under these circumstances as to whether to prosecute it. I am happy to say in one case recently, U.S. vs Kampiles, we were able to confront this dilemma, but indeed it was a very risky and an uncertain course with lots of hazards around it.

Still another problem in trial procedures, is the last minute discovery ----- that we find have been favored by defense counsels in espionage cases recently. Again, the case of the U.S. vs Kampiles for example. It is unfortunately the case that a member of the CIA or just intelligence involved, it is becoming more and more ----- for the defense attorney to attempt to collapse the prosecution

by pressing for more disclosures than he thinks we are likely to be willing to provide. Hence, a shotgun approach is evolving against which there are no easy counter tactics. Judges, though, are by no means insensitive to these dilemmas. They will, as you know, from time to time regulate pretrial discovery in espionage prosecutions at least, by protective orders limiting access to the defense, or at least limiting what the defense can do in terms of publicizing the information they receive. Unfortunately, the terms of these protective orders vary widely and they seem to have nothing to do with the differences of the cases themselves. For example, some of the orders have conditioned access to sensitive materials by defense witnesses on both security clearance grounds and on court approval. Whereas, in other cases it has only been on the basis of court approvals. In some cases, U.S. vs Moore for instance, the protective order had authorized defense counsel to maintain custody of materials in a safe owned by the government. Whereas in others, like the Kampiles case the material remained totally in the control of the government at all times. Ingeniously, in just a recent case, arrangements were made where the materials were kept in a safe which was mine, and my safe was kept inside a safe which was the judges.

With all this, let me not leave the impression that all of the interests of intelligence are on the side of not disclosing

or not prosecuting. We have legitimate interests of both sides.

To begin with our concern for protecting national secrets is very genuine. Beyond concern for individuals, such as I mentioned before, individuals who are willing to risk their lives in our nation's behalf, there is a wide-range of clear damage to our national interest when information which must stay secret is disclosed. Sometimes our relations for negotiations with foreign powers can be undermined and frustrated and also our continued access to necessary information is often jeopardized. Foreign intelligence services simply do not want to cooperate and share with an intelligence service they feel is an information seive. And these expensive technical systems I have described can be frustrated and countered if their details are disclosed to other nations.

So, thus we in intelligence although we are generally inclined probably overly inclined to hold back from prosecution, also we find many cases when we intensely want to see the prosecution proceed. Clearly, those that concern us most are ones involving espionage. Beyond that, we are very concerned with irresponsible I would say, even traitorous individuals who deliberately disclose classified information today. The seriousness of these losses causes us in the intelligence community strongly to support prosecution against them. My blood literally boils at the obvious callousness and selfishness of some of these individuals who jeopardize our country. They not only deserve the punishment they may receive through prosecution, but we as a nation need to prosecute in order to deter others from following in their footsteps.

Thus, we do have an incentive to lean over backwards. And in the two years I have been privileged to be in this position I have held my breath on at least half a dozen occasions when we have taken espionage cases to court and thus far, I believe, we have been successful in protecting the national interest.

There is one other set of dilemmas I would like to touch on briefly. This is the increasing number of rules and regulations that are being applied to our intelligence activities. Some of them in law, some of them in the directive in the executive branch of the government. These are particularly, rules and regulations, that protect the privacy of American citizens because they are new, often complex and because they must be interpreted in the light of our sometimes unique activities, they have impacted heavily on the speed and flexibility with which we have been able to operate. Very often, questions of Constitutional Law have been involved, and they require that the Attorney General's legal staff and my legal staff take time to think out a legal issue in the midst of an operational crisis. In all such instances, the Attorney General and his staff have gone out of their way to provide timely opinions and advice. In practice the options we have had have often been limited. Let me give you again, one example. A real example involving electronic surveillance. Over a year ago in a small country there was a seige, a state of insurrection and at one point the only good source of information that we had as to just what was going on was the transmissions on a ham radio of an American

missionary. Now the issue came up, could we legally intercept that American's transmission and if we could at what point would it become illegal electronic surveillance. The decision was made that as long as the missionary was using CB or ham radio we

Tape: Side B

would have to stop monitoring. Well, we recognize the-----
-----privacy rights of our citizens and in most instances we can adapt to them, but the issues are very complex and they must be assimilated by my people in the field who are not
----- the initiative of the intelligence operator can be dulled by this need to insure that all applicable legal standards are met, and uncertainty as to whether they are being met can lead to over caution. In fact, today, our operators are almost forced to avoid operations which could involve US persons. This in turn could reduce our flexibility to respond in precious situations, when the lives and property of our nationals may be involved.

This year it is my hope that legislation defining charters of intelligence communities will be passed by the Congress. This legislation would establish on the one hand, the authority for our intelligence activities, and on the other hand the boundaries in which we must operate. If they are read with care and sensitivity with the problems such as those we have been discussing, it may help to resolve some of these difficulties. Overreaction, either by tying the hands of the intelligence community or by

giving it unrestricted freedom would be a mistake. On the one hand it is inviting a repetition of past abuses, on the other hand emasculating our necessary intelligence capabilities.

Let me though, after all these comments, particularly about our legal problems, assure you that in my view the intelligence arm of our government today is strong and capable. It is undergoing substantial change. This is never an easy or a placid process in a large bureaucracy. Out of the present metamorphosis, however, is emerging an intelligence community in which the legal rights of our citizens and the legal constraints and controls on intelligence operations are balanced with a continuing need to maintain an effective means of garnering information necessary for the conduct of our foreign policy. This is not an easy transition to make. We are not there yet, but we are moving rapidly and surely down the right path. When we reach our goal we will have constructed a new model of intelligence, a uniquely American model suited to the ideals of our country. As we go down that path, we need your support and understanding and I am therefore most grateful that you have asked me to be here today and have listened so attentively.

Thank you very much.

Q&As
American College of Trial Lawyers

Begins:

I assure you all that we absolutely have the capabilities to police the forthcoming SALT Treaty. I cannot assure you, this audience, of that in a way that would be persuasive because it is a very highly classified matter. In addition, it is a matter that requires a great deal of ----- and different people will view that differently. There is almost nothing one can verify with a 100% certainty. What I am going to do in the months ahead, once the Treaty is signed is give the Senate of the United States every shred of information about each of the 60 some provisions of the Treaty and will tell them my confidence of being able to tell you whether the Soviets are living up to this provision is so and so, and the possibility there cheating, if we don't catch them is so and so, and the consequences to our security if they did cheat is so and so. It is going to be an extremely complex process and I believe I can weigh it out in all the details the Senate of the United States will need. I regret that I cannot be open enough with the American public to give every detail to the public. I think you are going to have to rely on the Senators, as are your representatives, who will get all the detailed classified information.

Q. Can intelligence -----both avoid another cataclysmic war and tremendous expense -----

A. Now on armaments and the risk that those armaments entail, I certainly hope so. I certainly think that is one of our principal tasks, is keeping the leaders of our country well enough informed so that they don't either overreact to a threat that is developing politically, economically or militarily. Nor do they fail to anticipate one far enough in advance that I was trying to stress in my comments, so that we can and will do something about it rather than waiting until it becomes a crisis. I view that as my primary objective and my primary contribution and I hope we can and will make it well.

Q. Asking about the contents on the H bomb that has been enjoined from publication.

A. No, I do not. I hve to defer to the Attorney General here, this does not come under my purview--I am sorry.

Q. Were we caught short in Iran?

A I wondered if that question would arise.
We win some. We lose some. Very seriously, we would have liked to have done better in Iran. We don't think we did as badly as the newspapers would allege. What we

did and I have a very clear track record. As we tried to see the growing signs of discontent in a number of different areas in the Iranian community. We saw discontent in the religious community, business community, with the people who had not influence on the political process, others who -----economically, but not enough, others who -----economically much at all. There were all sorts of these groups of discontent around that country.

I think we were reasonably portraying those. What we did not foresee that a 78 year old cleric, who had been out of the country for 14 years would be the factor that would coalesce all these groups of discontent. In short, it appeared to us, and me personally, as late as October of last year that while there were these pots of discontent on the stove, the Shah with his strong powers of police force, would be able to put the lid on any one of those. But what happened was they all merged into one big pot, and boiled over. Clearly, the Shah did not anticipate that and he was pretty close to the scene. Nor do I know of any other intelligence services or academic people, or newspaper columnists who were predicting that. I should be better than any of those, I admit, I don't want to forgive myself. But we really thought the Shah had the situation under control. Clearly, we were aware there was a problem. This I believe is one of the first truly revolutionary situations that any of us have seen in our lifetime. A true revolution generated by the people.

The end.

