

OCA 1167-88

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13 April 1988

MEMORANDUM FOR: Director of Central Intelligence
Deputy Director of Central Intelligence
Executive Director
Director, Intelligence Community Staff
Deputy Director for Administration
Deputy Director for Intelligence
Deputy Director for Operations
Deputy Director for Science and Technology
Chairman, National Intelligence Council
Inspector General
Director, Office of Congressional Affairs
Comptroller
Director, Public Affairs Office

FROM: Russell J. Bruemmer
General Counsel

SUBJECT: U.S. v. Morison

1. On 1 April 1988, the U.S. Court of Appeals for the Fourth Circuit unanimously upheld the conviction of Samuel Loring Morison. Morison was convicted under two provisions of the Espionage Act for the unauthorized transmittal of three classified satellite photographs to Jane's Defence Weekly, and for the unauthorized possession and retention of certain secret intelligence reports. Morison was also convicted for stealing Government property (i.e., the photographs and the intelligence reports). Morison did not significantly dispute the essential facts underlying his conviction on these charges.

2. In its opinion, which is attached for your convenience, the court found that the Espionage Act could be used to prosecute a person who "leaks" secret national defense information to the press, regardless of his motive in doing so. Moreover, the court found that the Sensitive Compartmented Information nondisclosure agreement signed by Morison expressly noticed his obligation not to disclose such information to unauthorized persons in violation of the provisions of the Espionage Act.

3. The court also found that the photographs and intelligence reports stolen by Morison were specific, identifiable, tangible Government property clearly subject to statutory protection from theft. The court noted that although the recent prosecution of a Wall Street Journal reporter for the misappropriation of information, which was upheld by the Supreme Court in Carpenter v. U.S., 108 S.Ct. 316 (1987), has clarified the issue of whether "pure" information constitutes property which is protected from theft, it was not necessary for that issue to be faced in this case.

4. Since no prior restraint was involved, and the person prosecuted was a Government employee whose actions were clearly proscribed by statute, the court did not perceive any First Amendment rights implicated by such a prosecution. The court found that the fact that the recipient of the material unlawfully transmitted by Morison was the press did not provide Morison with a First Amendment exemption from criminal prosecution for his otherwise unlawful acts. The court also found no reversible error in the trial court's various evidentiary rulings.

5. In addition to the unanimous opinion of the court, two of the judges wrote concurring opinions. Although Judge Wilkinson's concurrence indicated that the public interest in protecting the security of sensitive Government operations trumped the public interest in informed popular debate in any balancing of First Amendment interests, nevertheless, he sought to reassure the press by emphasizing the difficulty of actually prosecuting press sources. Judge Phillips, in his concurrence, indicated that more carefully drawn legislation would be a better long-term resolution of the constitutional issues raised by the broad language of the Espionage Act.

6. While Morison may attempt to obtain a rehearing en banc, the United States Attorney for Maryland, who personally handled the appeal, believes that his chances of obtaining such a rehearing are slight. It is anticipated that ultimately this case will be taken to the Supreme Court. However, whether the Supreme Court will accept certiorari in light of the comprehensiveness of this unanimous opinion is not at all clear.

7. If you have any questions concerning the Morison case, please contact me at your convenience. The United States Attorney for Maryland has taken steps to have the court correct certain factual inaccuracies contained in the opinion.


Russell J. Bruemmer

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**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 86-5008

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

SAMUEL LORING MORISON,

Defendant-Appellant

THE WASHINGTON POST; CBS, INC.;
NATIONAL BROADCASTING COMPANY, INC.;
CAPITAL CITIES/ABC, INC.; TIME, INC.;
NEWSWEEK; U.S. NEWS & WORLD REPORT;
THE WALL STREET JOURNAL; THE NEW YORK
TIMES; THE NEW YORK DAILY NEWS; THE
LOS ANGELES TIMES; THE CHICAGO TRIBUNE;
THE BOSTON GLOBE; THE ATLANTA JOURNAL
AND CONSTITUTION; THE MIAMI HERALD; THE
DALLAS MORNING NEWS; THE MINNEAPOLIS
STAR AND TRIBUNE; OTTAWAY NEWSPAPERS, INC.;
THE ASSOCIATED PRESS; NATIONAL PUBLIC RADIO;
PULITZER BROADCASTING COMPANY; THE AMERICAN
SOCIETY OF NEWSPAPER EDITORS; THE AMERICAN
NEWSPAPER PUBLISHERS ASSOCIATIONS; THE
AMERICAN BOOKSELLERS ASSOCIATION, INC.;
ASSOCIATED PRESS MANAGING EDITORS; THE
MAGAZINE PUBLISHERS ASSOCIATION; THE
NATIONAL ASSOCIATION OF BROADCASTERS; THE
NEWSPAPER GUILD; THE RADIO-TELEVISION
NEWS DIRECTORS ASSOCIATION; THE REPORTERS
COMMITTEE FOR FREEDOM OF THE PRESS; THE
SOCIETY OF PROFESSIONAL JOURNALISTS AND
PUBLIC CITIZEN; WASHINGTON LEGAL FOUNDATION;
THE ALLIED EDUCATION FOUNDATION,

Amici Curiae

Appeal from the United States District Court for the District of
Maryland, at Baltimore. Joseph H. Young, District Judge. (CR-84-
455-Y)

Argued: October 8, 1987

Decided: April 1, 1988

Before RUSSELL, PHILLIPS, and WILKINSON, Circuit Judges.
