

2
(by Tom
Abrams)

RADIO TV REPORTS, INC.

4701 WILLARD AVENUE, CHEVY CHASE, MARYLAND 20815 (301) 656-4068

FOR PUBLIC AFFAIRS STAFF

PROGRAM	Crossfire	STATION	CNN-TV Cable News Network
DATE	May 12, 1986	7:30 PM	CITY Washington, DC
SUBJECT	A George Carver and Lloyd Abrams		

ANNOUNCER: Live from Washington, "Crossfire."

On the left, ^JTom Braden. On the right, ^JCliff Kincaid. In the crossfire, George Carver, a Deputy Director of the CIA, and in New York, news media attorney, Lloyd Abrams.

TOM BRADEN: Good evening. Welcome to "Crossfire."

Katherine Graham is the pleasant, soft-spoken woman who is chairman of the Washington Post. Should we give her the maximum, 10 years in jail?

Arnold DeBorgrave. You know him. He's been my co-host on "Crossfire." Would he look better behind bars?

This is not a joke. The Director of the Central Intelligence Agency, William Casey, called upon the Post last week and laid it on the line. "We've got five Code violations," naming the New York Times, Newsweek and Time, in addition to the Post and the Washington Times. He said, "If you publish another story, I'll recommend that you be prosecuted under the Intelligence Statute."

So, here we go again.

Does the press put our country in jeopardy by giving you the facts?

Should Katherine Graham go to jail?

Cliff?

OFFICES IN: WASHINGTON D.C. • NEW YORK • LOS ANGELES • CHICAGO • DETROIT • AND OTHER PRINCIPAL CITIES

Material supplied by Radio TV Reports, Inc. may be used for file and reference purposes only. It may not be reproduced, sold or publicly demonstrated or exhibited.

-2-

CLIFF KINCAID: Mr. Abrams, people who give secrets to the Russians, like the Walkers, are tied and convicted and sent to jail. Why shouldn't a newspaper that gives secrets to the Russians via its front page also be sent to jail?

LLOYD ABRAMS: Frankly, maybe because we live in a free society, and the core notion of that society is that the American people are entitled to information. This isn't government information. This is our information. There is some secret information to be sure. Sometimes the government keeps a secret, sometimes it fails. But the test of our freedom in general has been our ability to say it one and the same time, look, it's up to us, the public, it's up to the press to decide what to say, when we want to say it in order to inform other people. We don't let the government come into that picture.

That's why I think Mr. Casey is just a bit out of bounds and going quite so far down the road as he had already.

KINCAID: I don't understand, frankly, what you're driving at. I mean, the Walkers were convicted of espionage and yet if a newspaper does it it's called exercising the First Amendment. That -- that's a double-standard, don't you agree?

ABRAMS: Well, I don't think it's a double-standard. It seems to me to be a spy who gives secrets to the Russians is being on one side of the line. It's a different ball game entirely there. To provide information to the American public about why planes crash or why the Consumer Price Index goes so high, or even in the national security area.

What about the "Pentagon Papers?" Even though the government came out and said the country would collapse, we would have grave and irreparable harm to the public if it was printed. Those things tend to be exaggerated. They're often not true, and the public is generally well-served by allowing people to say what they know.

KINCAID: Even if -- even if that benefits the enemy?

ABRAMS: Everything can't benefit the enemy if you define national security....

KINCAID: If it compromises our national security or our communications or intelligence gathering. This could certainly benefit the Russians.

ABRAMS: Let's talk about specifically what it is we mean "benefits the enemy."

it benefits the American public as a general matter, and that's our business.

-3-

Now, what is it that the Washington Post has done? What is it that the others have done that really benefitted the enemy? It wasn't, for example, when the entire American press corps in Iran did not print the names of the American hostages who were hidden in the Canadian Embassy. None of them printed it. That didn't benefit the enemy. It benefitted all of us by not printing it. And it did benefit all of us when the New York Times and the Washington Post went ahead and printed the "Pentagon Papers" over the government's opposition.

BRADEN: Mr. Carver, on April 14th, the President of the United States spoke to the nation, and he said that we learned about Libya -- about Libya being involved in terrorist acts. He said we learned about them from coded intercepts.

Now, Casey is running ground to the newspapers saying, look, you published that we had quoted intercepts.

GEORGE CARVER: It's more than that, Tom. I think that you all are making a very general statement on a very narrow, specific problem. The President spoke more than he should have.

The media, particularly the Washington Post and Bob Woodward, compounded the problem by pinpointing what Libyan messages had been intercepted, what Libyan codes had been broken, thus denying us in the future the kind of warning of terrorist activities that we've had in the past.

BRADEN: Now wait a minute. Mr. Reagan says we intercepted a Libyan message.

CARVER: Tom?

BRADEN: He let the Libyans know that we've got their codes.

CARVER: Tom, you've been in the intelligence business. You know what is not true. There's a great deal of difference between saying we intercept messages and saying that at 1:49 on the 5th of April we intercepted this message set in this cipher system that had this text. The two are not the same.

ABRAMS: Should Bob Woodward be prosecuted for that, or Mrs. Graham, chairman of the Post?

CARVER: The particular statute that Bill Casey was referring to was Section 798 of Title 18 of the United States Code which was specifically written in 1950 to protect communications intelligence and the proofs of it.

Mr. Casey was saying nothing that Justice White did not say from the bench of the Supreme Court in the New York Times v. United States, the

-4-

"Pentagon Papers" case, which I believe Mr. Abrams argued where he called attention to Section 798 which said that newspapers were on full notice of the provisions of the U.S. Government and must face the consequences if they published, and that he would have no trouble sustaining a 798 conviction if they violated it.

KINCAID: So, we have grounds for prosecution right now of the Washington Post.

CARVER: We have grounds for prosecution right now. Whether we should go back and prosecute things of the past is one thing, but I think Mr. Casey was trying to fire a clear warning shot across peoples' bows.

BRADEN: Can we get it clear on what Section 798 is? That's what Mr. Carver's talking about, and that's what Bill Casey is talking about when he's threatening newspapers.

Sections -- 1950 -- the law provides the publication of communications intelligence activities of the U.S. knowingly or willfully or of any other country is -- is a violation of law.

All right now, look, the "Zimmerman Note" -- you remember what the "Zimmerman Note" was?

CARVER: Sure, I remember what the "Zimmerman Note" was.

BRADEN: It was -- it was published by us and it said that Germany would offer Mexico....

CARVER: Excuse me, Tom, the British deliberately leaked....

BRADEN: They leaked to us.

CARVER: They leaked to us, but they have the right to violate their own laws.

BRADEN: How about our newspapers? We published them. You would have had to prosecute our newspapers under this Section.

CARVER: Tom, the publishing of "Zimmerman" is an inauspicious argument, as you know. The "Zimmerman Note" was published in 1916. This law was passed in 1950. There is no parallel between the two, and you know it.

BRADEN: Well, it -- it's the same problem. You'd have -- you would -- you would have barred all the papers under this law from publishing the "Zimmerman Note."

-5-

CARVER: We are not amenable to British law, and if American newspapers chose to publish something passed by the British Embassy, they are not amenable to British courts.

American newspapers are amenable to American law. They're amenable to Section 798.

BRADEN: Pardon me, Mr. Carver, but "disclosing information about codes and ciphers of the U.S. or any other governments" is what the law says.

KINCAID: Tom, let me bring Mr. Abrams in because Mr. Carver has just, in my mind, laid out a fascinating justification for prosecuting the Washington Post right now. And the question is, Mr. Abrams, we have a law. The Post has been caught ice-cold in a violation of it. Why shouldn't we prosecute them?

ABRAMS: Well, there are two reasons. First, I'm not so sure at all that the Post has violated the law. This is not a law which makes it a crime to publish the content of that which comes from communications intelligence. That is to say, it's not a crime to publish what's in a cable. It's a crime to disclose, according to the framers of the law, how you get, how you make, how you transmit communications.

KINCAID: You're wrong, Mr. Abrams. That's simply not true.

ABRAMS: It's got to be....

KINCAID: Mr. Abrams, it's simply not factually.

ABRAMS: Well, I really -- I really wish you wouldn't say that, Mr. Kincaid.

KINCAID: I have the language right here.

ABRAMS: Well, Mr. Carver and I have the language of the framers here. You're the one who just told us that the President over-spoke. Just let me have my say.

It seems to me what you have said, Mr. Carver, shows the basic problem here. Do you think the President went too far? And I think that it doesn't much matter that you think the President went too far. The President opened the door on the subject. He made the announcement. He made the revelation.

To seriously talk about prosecuting American newspapers because after the President spoke they gave more vitality, more actuality than what it was he was saying it seems to me not only inconsistent with the statute but as a matter of public policy -- and this is the second part of the answer -- it would be foolish to prosecute.

-6-

Why should they prosecute? No one else ever has. We have never had a prosecution in our history since the Alien and Sedition Act.

[Confusion of voices].

KINCAID: Why should the Washington Post or any other newspaper be above the law?

ABRAMS: They shouldn't be above the law. The question is are they violating the law. But the second question is....

KINCAID: We have an intelligence expert here who says they have.

ABRAMS: Well, I think you have a legal expert here who is saying that they may not have.

KINCAID: It's here in the law.

ABRAMS: I know, we can all read the statute, but what I'm telling you is that.... Why do we want to have this major confrontation in court?

KINCAID: Because someone else will be taught a lesson about protecting national security information. No one's molesting the media for anything.

BRADEN: Let Mr. Abrams finish what he was saying. Go ahead.

ABRAMS: It seems to me that all of us have elected -- all of us -- the media included -- and each and every one of us when we adopted the First Amendment to be free to tell the truth about things, and that's what the Washington Post was doing.

Now, I have no problem with Mr. Casey going to the Post or any place else and trying to persuade them not to print things. I think he ought to do that. Mr. Colby did that. Mr. Schlesinger did that. That's a part of his job, and I wish he would do it.

But, when he starts threatening the press, when he starts talking of -- when, as you tell me, Mr. Carver, about shots across the bow, it seems to me one is entitled to ask why? What harm has been done?

CARVER: A great deal of harm has been done, Mr. Abrams. We have lost a facility that we used to obtain prior warning of terrorist attacks. That loss could cost American citizens their lives. I do not regard one American right as being worth a by-line for Bob Woodward or a Pulitzer Prize for the Washington Post.

KINCAID: Amen to that.

-7-

ABRAMS: I think you should recommend those views to President Reagan then, and that you should say forthrightly to him as you have on this program not only that he went too far, but that he has risked American lives. Do you believe it?

CARVER: I think he went too far and put them at risk, and I think the media comes back....

BRADEN: All right, should we put President Reagan in jail?

KINCAID: Oh, come on. you know why he went public. He had to or the liberals wouldn't believe him about the Libyan....

BRADEN: Hold it. Hold it.

We have to take a break for a commercial even though you speak.

KINCAID: And the Post went a lot further.

BRADEN: We'll be right back after you speak, but not until you finish speaking. Ok?

All right. We'll have a break. We'll be right back.

* * *

BRADEN: Good evening. And welcome back to "Crossfire."

Bill Casey versus the Press. He's warned them, if you publish, I will prosecute. Mr. Carver is our guest, and in New York Lloyd Abrams.

I want to ask a question first of you, Mr. Carver...

CARVER: Yes.

BRADEN: Our former Deputy Director of the Central Intelligence Agency.

Mr. Carver, if you call a newspaper and say I've got a hot item. I think this is important. I think you ought to know this. You have a reason for wanting to get this out. It makes you look good, or it makes your boss look good, or it makes your agency look good. Aren't you to blame and not the newspaper?

CARVER: Both people are to blame in this particular case, because Congress, I think very wisely, wrote a particular statute to cover the protection of communications intelligence, methods, techniques and the fruits of it. And in this case, both the leaker and the leakee are culpable under a section of the United States Code. It's not Bill Casey versus the Press.

-8-

It's the law of the land, which is quite different.

BRADEN: All right, Mr. Abrams, let me ask you this. Who should determine what is the national security? Should the -- should the government? Should the President? Should Bill Casey? Who is to decide what is a national security?

ABRAMS: Well, I think the President has to decide for himself, Mr. Carver to the contrary, what he should reveal and when he should reveal it. That's his job.

I think the CIA should decide for itself to the extent that they know in advance when something is going to be revealed which might come from out national security, and they ought to speak out. They ought to try to persuade people, as Mr. Casey has. And I think that the press should, except in the most extraordinary circumstances, decide for itself what to print. That, I think, is what makes us special and the special country that we are.

BRADEN: All right.

KINCAID: Well, let me ask you this, Mr. Abrams. You do grant, then, that the government has a right to protect national security information.

ABRAMS: I do.

KINCAID: Right?

ABRAMS: Yes.

KINCAID: And prosecute those who violate or compromise that national security information, right?

ABRAMS: Yes, although we're getting closer. They -- they certainly can prosecute spies. Whether they can prosecute the press or an outside -- me, you or whatever, really, it would have to be so extraordinary a circumstances for a law to be constitutional in that area.

And Section 798 sets forth some of those circumstances, but they are very narrow.

KINCAID: Mr. Abrams, you're paid probably \$500,000 a year as a lawyer representing all the big risk media companies. You're a hired gun for the media. But I have to question your constitutional expertise.

After all, back in 1980, as I remember, you were on Capitol Hill arguing against congressional legislation to outlaw the practice of publishing

-9-

the names of our CIA agents. Isn't that correct? You thought that was unconstitutional, but the Congress went ahead anyway and passed that law, and you lost, and you're wrong.

No, I don't know that I'm wrong, Mr. Kincaid. I lost in the sense that Congress passed a law that I thought a very real constitution problem. Now that law's not been enforced yet. It hasn't been challenged yet. It hasn't been in court yet. We will see.

KINCAID: But the point is, you even believe that our own media should have the right to publish the names of our CIA agents abroad, exposing them to terrorist attacks, perhaps resulting in their murder, and a case like that did happen back in 1976. I'm sure you're aware of that.

ABRAMS: I'm aware of....

KINCAID: It doesn't bother you because in your mind the media could not really care one way or the other about the consequences of their actions. Isn't that true?

ABRAMS: No, and I'm really sorry to hear you say that.

It seems to me that not only should the media care, but in most cases the media does care. I gave you an example earlier. There are lots of other examples -- information which is known by the media and not published.

BRADEN: Ok.

CARVER: Let's put this back in perspective a little bit. We don't want to get too personal.

Harry Truman put it very wisely when he said in 1951 that it does the country just as much damage for secrets to be made known through instant publication as it does for them to be passed to enemies through clandestine spy activities. Truman was right. It's a fact of life that we have to accept, particularly where it deals with our sensitive intelligence sources and methods. We must protect them, as 798 in fact does.

BRADEN: All right, what is the -- tell me what is the story that the Post is holding and which Casey says you must not publish?

CARVER: I do not know, and if I did I would not talk about it on this program. But I think it is another story related to communications intelligence, possibly a case now being tried in the court, and Casey wanted to clearly put the people on notice, just as Justice White put them on notice in 1971, of the existence of 798 and the fact that they must bear the consequences of their actions.

-10-

BRADEN: And isn't the -- Mr. Abrams, isn't the reason why Ben Bradlee of the Washington Post are considering what Casey has to say? Doesn't that buttress your position that the -- that the newspapers have to decide this for themselves?

ABRAMS: Well, I've not talked with them about this, but it seems to me that everyone is proceeding down the right path absent the threat of prosecution. I think Mr. Casey, if he cared enough about this and thought that it would really would compromise national security, as I'm sure he did, should have gone to the Post.

I think Mr. Bradlee and his colleagues should have stood back and taken a hard look. It is not often that the Director of the Central Intelligence comes to the Post or any other paper and insists to say that.

I think that's what's been happening. That's fine. I don't have any problem with that. I think both sides are doing the right sort of thing. As I -- as I indicated earlier, my problem is when you start talking, and rather loosely talking, about criminal prosecution, then you are changing the whole dynamics of this process. I mentioned earlier that Section 798 was not an effort to prevent all communication of intelligence information from being revealed.

And just looking at the statement made on the Senate floor at the time it passed, I see that Senator Hunt said that it was proposed out of fear that persons no longer in government might reveal communications intelligence information for personal gain, and because the present laws are not adequate. And he said the bill would not control in any way the free dissemination of information which might be transmitted in code or cipher.

[Confusion of voices].

ABRAMS: I know. That's why I'm reading to you what Senator Hunt said.

CARVER: Well, I would have thought that the language of the statute had more weight than the legislative history of it.

ABRAMS: Well, the language, in effect, is certainly the starting point, Mr. Carver.

CARVER: I thought it actually forbids publication of information obtained by the process of communications intelligence from the communications of any foreign government knowing or seemed to have been obtained by....

BRADEN: Why doesn't Casey protect his own agency and stop letting people like Wilson sell arms to Libya?

KINCAID: Wilson? Casey has nothing to do with Wilson.

-11-

CARVER: Wilson hasn't worked for CIA in over 10 years.

KINCAID: [Laughs].

BRADEN: I know, but why doesn't he stop it?

CARVER: Because, among other things, he's enjoined by some of the "feel good" legislation which was passed in the late '60s and early '70s about not interfering with the civil rights of an American citizen overseas.

ABRAMS: Look, it seems to me that all this has a rather odd sense of priorities on Mr. Casey's part.

KINCAID: No, you've got the odd sense of priorities. Mr. Casey realizes that we have the legal basis to protect national security information, and he wants the Washington Post and the other media to know it.

CARVER: Let's not talk about national security information. Let's talk about a very precise thing, which is what 798 talks about -- communications intelligence capabilities needed to protect American lives which I do not want to see put at risk.

BRADEN: All right, Mr. Abrams and Mr. Carver, thank you for being our guest on "Crossfire."

Cliff Kincaid and I will be back in just a moment.

*

*

*

KINCAID: President Reagan was elected by the American people. We have intelligence agencies risking people's lives out there. We have oversight there. Who elected the Washington Post and the New York Times?

BRADEN: The Constitution of the United States, Cliff, and it's about time that you found out.

President Reagan went on the television and himself revealed classified information because it was wise politics for him to do so.

KINCAID: I don't think you were listening to Mr. Carver try to draw a distinction between what President Reagan said and how the Washington Post acted.

BRADEN: Just because Mr. Carver pointed out his motto, it doesn't mean a darn thing.

-12-

He leaked the information because it was politically smart to do so, and that is what 99 percent of the leaks in government are.

I'm Tom Braden. Goodnight for "Crossfire."

KINCAID: From the right, I'm Cliff Kincaid. Join us next time for another edition of "Crossfire."