

THIRD SESSION

The End of the American Revolution to the Civil War

The struggle for independence had only begun, and the tide of war had not yet turned in favor of the patriot forces. Yet, Congress recognized that there must be a formal governmental structure, an alliance to resolve disputes between them and to provide for those elements necessary for government, be it issuing money, receiving and sending ambassadors, entering into treaties or raising an army and declaring war. Their instrument was called the Articles of Confederation, agreed to by Congress on November 15, 1777, but not ratified finally until March 1, 1781.

In September 1776, the Continental Congress had elected Benjamin Franklin, Silas Deane and Thomas Jefferson to be its commissioners, albeit secret, in France. They were charged with procuring armed vessels and loans of money, exploring possible treaty relationship with France, and feeling the pulse of Europe. Jefferson was unable to go, and Arthur Lee, still in England, was appointed in his stead. With this move, Franklin, a key member of both the Committee of Secret Correspondence and the Secret Committee, and the head of the unsuccessful special mission to Canada, embarked for France to join Deane and Lee who by the Congress' act had been converted from secret agents to secret commissioners. Secret aid had already been flowing from France, thanks largely to Arthur Lee's exploitation of Beaumarchais' proposals. The time had arrived to move firmly into the diplomatic arena. On April 17, 1777, the Congress resolved that from that day forth the Committee of Secret Correspondence would be known as the Committee of Foreign Affairs. It also elected Thomas Paine to be the new committee's secretary.

Fluctuating membership, increasing British interception of its despatches, delayed communications with its agents and commissioners abroad and weakened security sent the Committee of Foreign Affairs into a decline from which it never recovered. Politically-motivated wrangling broke out among the members of the Committee at home and among the Commissioners in France. More and more concerned with the diplomatic, rather than intelligence aspects of foreign affairs, the Congress in 1778 began meeting after hours as a "committee of the whole" to deal with matters that might otherwise be treated by the Committee. In 1779, the Congress appointed yet another committee, with one representative from each state, "to take into consideration the foreign affairs of these United States, and also the conduct of the late and present commissioners of these states in Europe."

The Committee of Foreign Affairs, in the meantime, fell almost exclusively to the operation of Congressman James Lovell, who was elected to Congress after release from British imprisonment as a spy. The state of affairs was apparent in this letter to Arthur Lee from Lovell, June 13, 1779:

"... again left alone of the Com'tee of for. Affrs. yr Brother R.H. Lee having resigned as I hear and gone home ... It is said that such a Comm'tee is useless. I am sure I find an immense Deal that ought to be done and a great Burthen in what has been done by a Member of Congress without Secretary or Clerk, little of you and the other gentlemen from abroad may have benefited by my labours. Quires of my writing have been sunk in the sea, most of it near these capes."

By the end of the same summer, Lovell wrote Lee:

"... there is really no such thing as a Comm'tee of foreign affairs existing--No secretary or clerk--further that I persevere to be one and the other. The Books and Papers of that extin-

guished body lay yet on the Table of Congress, or rather are locked in the Secretary's Private Box."

What little charter the Committee had in foreign affairs and intelligence fell to special committees or the Congress as a whole.

Jay, serving as minister to Spain, put the problem succinctly in this letter to Lovell:

"One private correspondent would be worth twenty standing committees, made of the wisest heads in America, for the purpose of intelligence. What with clever wives, or pretty girls, or pleasant walks, or too tired, or too busy, or do you do it, very little is done, much is postponed and more neglected. If you, who are naturally industrious and love your country, would frequently take up your pen and your ciphers and tell me how the wheel of politics runs and what measures it is from time to time turning out, I should be better informed and the Congress better served. I now get more intelligence of your affairs from the French ambassador than from all the members of Congress put together . . ."

Benjamin Franklin, from his station in Paris, had recognized the problem even before Jay. For almost a year, he had been sending his reports directly to the president of Congress, rather than to the Committee.

With the ratification of the Articles of Confederation in 1781, the beginnings of government took shape. And in that unifying document one will find an awareness of the need for continuing secrecy in some matters. For example, the Articles of Confederation required publication of the Congress' *Journal* on a monthly basis, but specifically excluded from publication "such parts thereof relating to treaties, alliances or military operations, as in their judgment require secrecy." It also agreed that the excepted matters could not be relayed to the states of the respective delegates, a significant denial of secret information to states which insisted on their own sovereignty and independence.

The responsibility for communication with both agents and emissaries abroad were shifted by the Articles of Confederation to the Department of Foreign Affairs (the forerunner of the Department of State), complete with a Secretary for Foreign Affairs and one salaried clerk. Its charter made clear that in addition to its diplomatic responsibilities, it was to correspond with "other persons, for the purpose of obtaining the most extensive and useful information relative to foreign affairs." A year later, in reorganizing the department, Congress empowered the Secretary of Foreign Affairs to correspond "with all other persons from which he may expect to receive useful information . . ."

John Jay, returned from his mission to Spain and his role in negotiating the Treaty of Paris, was appointed Secretary of Foreign Affairs in 1784, a post he would hold for the next five years. One problem Jay faced was how to deal with the problem of advising Congress of sensitive information received from abroad. Congress could not be trusted to keep secrets. As he later wrote his successor, Thomas Jefferson:

"These circumstances must undoubtedly be a great restraint on those public and private characters from whom you would otherwise obtain useful hints and information. I for my part have long experienced the inconvenience of it, and in some instances very sensibly."

Jay was known to have maintained an active correspondence with Lafayette, both privately and in Jay's official status. Lafayette's reports of the European situation were well-received, and Jay once complimented him: "You have done us a service, because I know how able, as well as how willing you are to do it. I wish all who speak and write us were equally

well-informed and well disposed.”

Another of Jay's sources, in fact possibly an agent, was Gouverneur Morris, then in Europe to open the tobacco trade and to sell American lands. The correspondence between the two must have been confidential if one is to read between the lines of this letter from Morris to Jay in July, 1789:

“I am too occupied to find time for the use of a cipher, and in effect the government here is so much occupied with their own affairs, that in transmitting to you a letter under an envelope is no risk.”

Jay, as Secretary, found himself back in the intelligence business, reminiscent of the counterintelligence work he had performed during the American Revolution. On September 7, 1785, Congress enacted the following secret legislation:

“Resolved that whenever it shall appear to the Secretary of the United States of America for the department of foreign affairs, that their safety or interest require the inspection of any letters in any of the postoffices, he be authorized and empowered to inspect the said letters, excepting from the operation of this resolution, which is to continue for the term of twelve months, all letters franked by, or addressed to, members of Congress.”

The following year, Congress once again passed an almost identical resolution, with one exception. It had no expiration date.

By 1786, there were problems with the Confederation which brought together commissioners from New York, New Jersey, Pennsylvania, Delaware and Virginia at Annapolis to seek remedy for the defects they saw in the Federal government as it then existed. The Commissioners strongly recommended a convention of the states, and the Congress also resolved, with only three states opposed, that delegates from all the states meet in Philadelphia the following year.

The assembled delegates began their proceedings in May 1787 by electing George Washington as president of the convention, and quickly adopting rules to permit the proceedings to be conducted in secret.

[When they had finished their work, there was even a proposal to destroy the *Journals*: “. . . if suffered to be made public, a bad use would be made of them by those who would prevent the adoption of the Constitution,” said Rufus King of Massachusetts. It was finally agreed that the *Journals* should be held by George Washington subject to the orders of the Congress, if ever formed under the Constitution. It was not until 1820 that statutes were enacted to remove that restriction and to permit publication.]

Some had predicted the document would result in a civil war. Yet, it received the signatures of the Convention majority, and gained the required ratification.

It is in the deliberations of the Constitutional Convention, the Federalist Papers which detail the intent of the framers of the Constitution, and in the document itself that we find the historical and legal basis for much of what we call today “the intelligence community.” Those who gave us a document guaranteeing our liberties, also provided the constitutional basis for secrecy and intelligence.

Secrecy

On August 11, 1787, votes were taken on the questions of allowing the Senate to keep *Secret Journals* of its non-legislative dealings, matters related to treaties and military operations, and such other activities as the membership of that body determined to require secrecy. On September 14, there was an attempt to include language in the Constitution accepting the maintenance of *Secret Journals* by the Senate but to require the publication of all proceedings of the House of Representatives. The point was made that cases might arise where secrecy might be necessary in both Houses, with preparation for war as one example. From these debates came Article 1, Section 5 of the Constitution which provided for the publication of the journals of each, "excepting such parts as may in their judgment require secrecy." [The Senate's first use of this article took place in 1790 when considering a secret article to be included in a treaty with the Creek Indians.]

On September 7, the debates dealt with the advice and consent provision of the presidential authority to make treaties. James Wilson of Pennsylvania moved to extend the provision to the House of Representatives. In support of his view, he said that since treaties would have the force of law, they must have the sanction of law as well. Wilson noted that he recognized "the circumstances of secrecy in the business of treaties," but felt such secrecy was outweighed by the need for obtaining legislative sanction. Roger Sherman of Connecticut countered that the only question was whether the power could be safely trusted to the Senate. He felt it could, and that the necessity of secrecy in the case of treaties forbade a reference to them in the whole legislature, i.e. the House. Wilson's bid to include the House in advice and consent was defeated 9-1.

Secret Diplomacy

John Jay, in Federalist No. 64, noted that the Convention had been diligent on the need for "secrecy and despatch." He wrote:

"So often and so essentially have we heretofore suffered from the want of secrecy and despatch, that the Constitution would have been excusably defective, if no attention had been paid to those objects. Those matters which in negotiations usually require the most secrecy and the most despatch are those auxiliary measures which are not otherwise important in a national view, than as they tend to facilitate the attainment of the objects of the negotiation . . . Thus we see that the Constitution provides that our negotiations for treaties shall have every advantage which can be derived from talents, information, integrity, and deliberate investigations on the one hand, and from secrecy and despatch on the other."

Counterintelligence

The framers of the Constitution were not unaware of the threat from foreign intelligence services, evidence the remark of Elbridge Gerry of Massachusetts on August 13:

"Foreign powers will intermeddle in our affairs, and spare no expence to influence them. Persons having foreign attachments will be sent among us & insinuated into our councils, in order to be made instruments for their purposes. Everyone knows the vast sums laid out in Europe for secret services."

One might also consider Gerry's remark as our nation's first warning of the threat of agents of influence.

In the debate about defining the law of treason, on August 20 the Convention voted to add the words "two witnesses" to the statement "to the same overt act," to shelter an innocent accused from the possible perjured testimony of only one person. In doing so, Mr.

Wilson recognized that "Treason may sometimes be practised in such a manner as to render proof extremely difficult--as in a case of traitorous correspondence with an Enemy."

Intelligence

During the debates of July 26th, one of the proposals was to disqualify from membership in either House those who are indebted to, or who have unsettled accounts with, the government. The proposal was defeated when Gouverneur Morris of New York mentioned the case of George Washington's account for secret services. He noted that everyone was astonished the amount was so moderate and was so uncomplicated that no doubt could arise from it. Yet, he said, had an auditor been disposed to delay the settlement, how easily Washington, "a distinguished and meritorious Citizen," could be placed under temporary disability and disenfranchisement.

The realities of the intelligence business were also addressed by the framers of the Constitution. Jay, in Federalist No. 64, tells the intent:

"There are cases where the most useful intelligence can be obtained, if the persons possessing it can be relieved from apprehension of discovery. Those apprehensions will operate on those parties whether they are actuated by mercenary or friendly motives, and there doubtless are many of both descriptions who would rely on the secrecy of the President, and who would not confide in that of the Senate, and still less in that of a large popular general assembly.

"The Convention have done well, therefore, in so disposing of the power of making treaties that although the President must, in forming them, act by the advice and consent of the Senate, yet he will be able to manage the business of intelligence in such a manner as prudence may suggest."

With ratification of the Constitution, our constitutional republic came into being, with George Washington elected as the first president, and Jay continuing "unofficially" as Secretary of Department of Foreign Affairs until named the first Chief Justice of the Supreme Court. A year later he was succeeded as Secretary by Thomas Jefferson.

The first Congress was not internationally minded. Mr. Carroll of Maryland, for example, suggested in debates that "with hope that a time would come when the United States would be disengaged from the necessity of supporting a Secretary of Foreign Affairs." He saw the geographic position of the United States as being some security against being drawn into European politics. He was defeated in the proposal, but managed to strike out the salary for the Secretary of the Department of Foreign Affairs, thus leaving the lifespan of the Department to the will of the House of Representatives.

Although foreign affairs was a political football, fortunately the Federalist Papers had assured that the president was the manager of intelligence. When President Washington, in his first annual message, requested "a competent fund designated for defraying the expenses incident to the conduct of our foreign affairs," it was understood, and on July 1, 1790, Congress created the Contingent Fund of Foreign Intercourse (the so-called secret service fund), appropriating \$40,000 annually for the purpose, and providing the president discretion not to account specifically for such of the expenditures as he thought inadvisable to make public. This discretion was continued and the procedures formalized by the Second Congress. [The practice of certifying secret expenditures by voucher was extended to the Director of Central Intelligence by the National Security Act of 1949.]

In anticipation of the Contingent Fund, President Washington had already dispatched an agent abroad. The agent was Gouverneur Morris, who thus earns the distinction of being our first intelligence agent abroad, although Congress was not told of it until 1791. Of Morris, William MacClay said: "He has acted in a strange kind of capacity, half pimp, half envoy, or perhaps more properly a kind of political evesdropper."

The second agent sent abroad was Col. David Humphreys, a former intelligence officer and for a time during the American Revolution aide-de-camp to Washington. The notification of Congress of Humphreys' mission to London, Madrid and Lisbon was also delayed.

Washington's Secretary of State, Thomas Jefferson, recognized the need for intelligence and the importance of good cover for secret aides. In a letter to James Madison, dated 27 May 1793, Jefferson (not without whimsy) said: "We want an intelligent and prudent native, who will go to reside in N. Orleans as a secret correspondent for 1,000 a year. He might do a little business, merely to cover his real office. Do point out such a one. Virginia ought to offer more loungers equal to this, and ready to do it, than any other state."

By the third year, Washington's secret service fund had risen to one million dollars, or 12 percent of the national budget. Much of it was for ransoming American hostages held in Algiers, for paying off foreign officials and, in effect, "buying peace." In accounting for the money, President Washington requested confidentiality: "It would still be improper that some particulars of this communication should be made known . . . Both justice and policy required that the source of that information should remain secret as a knowledge of the sums meant to have been given for peace and ransom might have a disadvantageous influence on future proceedings for the same objects."

Washington did not include the Algiers-related expenditures in the Annual Accounts of Receipts and Expenditures, but in response to a House resolution gave the information in confidence in 1897. A secret debate in the House followed, resulting in a majority vote that the injunction of secrecy be lifted in regard to certain of the matters provided it by the president. The episode suggests, as one legal authority has noted, that the Congress was satisfied with appropriating a very substantial amount of money for a rather vaguely stated purpose, and, "perhaps, that there is more of a relationship than some of the commentators admit between the Appropriations Clause and the Statement and Account Clause, on the one hand, and the *Journal Secrecy Clause* in Article 1, Section 5 of the other."

It was during Washington's administration that the issue of Presidential secrecy first appeared. A special committee of the House of Representatives was probing the debacle of General Arthur St. Clair's defeat by a small band of Indians in 1791. Of an initial force of 1,500 men, St. Clair had lost 600; the Indians lost 70 men. St. Clair had spiked his cannon and retreated. The House Committee called on Secretary of War Henry Knox to provide the original letters and instructions of the campaign.

We are grateful to the notes of Thomas Jefferson for the discussions between President Washington and his Cabinet. Washington noted that since this was the first such request, he desired it to be studied thoroughly since it might become a precedent. He neither acknowledged or denied, nor even doubted the propriety of the Congress making such a request, simply because he had not thought of it. Yet, he could conceive of cases where there might be papers of so secret a nature, that they ought not be given up. The Cabinet agreed that the Executive ought to communicate such papers as the public good would permit, and refuse those the disclosure of which would injure the public. It was agreed that, in this case, none of the papers required continued protection, but that copies only should be sent. A clerk would respond, on request, to display the originals for verification.

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This action, as Washington had anticipated, provided the theoretical foundation for an Executive Branch claim to secrecy and the power of the President to refuse information to Congress.

The precedent was put to a test before Washington left office. In 1794, President Washington sent John Jay to England to resolve many of the controversies stemming from the Revolutionary War. When Jay returned with a treaty, the rage against it was, as Washington put it, "like against a mad dog." [His opponents would have preferred a declaration of war against Britain.] The House sought copies of the instructions given Jay for negotiating the agreement, together with all the correspondence and documents related to it.

In refusing to produce the documents, Washington drew on the constitutional nature of his action while assuring that he would continue his endeavors to cooperate with the other branches of government "so far as the trust delegated to me by the people of the United States and my sense of obligation it imposes to 'preserve, protect and defend the Constitution' will permit." He also noted that the advice and consent of the House was not necessary in regard to treaties. President Washington concluded:

"It is essential to the administration of the Government that the boundaries fixed by the Constitution between the different departments should be preserved, a just regard of the Constitution and to the duty of my office, under all the circumstances of this case, forbids a compliance with your request."

The protections of the broad Atlantic which some had hoped would shield the United States from events and powers in Europe, had fallen aside. By the time of President John Adams' first inaugural address in 1797, European powers and problems had indeed reached our shores. He noted:

"... It is proper for me to mention the attempts of foreign agents to alienate the affections of the Indian nations, and to excite them to actual hostilities against the United States; great activity has been exerted by those persons who have insinuated themselves among the Indian tribes residing within the territory of the United States, to influence them, to transfer their affections to a foreign nation, to form them into a confederacy, and to prepare them for a war against the United States."

Adams assured the Congress that countermeasures had been taken to prevent Indian hostilities and preserve their attachment to the United States, but did not define what the countermeasures were.

During his presidency, Jefferson received intelligence from France suggesting that Napoleon would be willing to coerce Spain into yielding the Floridas to the United States for seven million dollars--with Napoleon pocketing most of the money. Jefferson sought, and in secret session the Congress appropriated, an even greater secret discretionary fund--two million dollars--to start negotiations with Napoleon.

The political furor this aroused is told in this excerpt from the *Columbian Centinel* of April 2, 1803:

"Some conjectures were offered in our last, as to the probable object of the appropriations which Congress, behind the screen of closed doors, have been so profuse in submitting to the President . . . During the Federal Administration, the democrats now in power raised the most furious yelping whenever occasions, few and special as they were, occurred of such a

nature as to require momentary privacy. While Gen. Washington was President, and the British Treaty was under the consideration of the Senate of the United States, a democratic member of that body, the honorable George Mason from Virginia, thought proper to break through a solemn injunction and the obligations of his official oath by a premature disclosure and publication of the instrument in question. The cry was that a government of a free country should not keep any secret,--no, not for an instant, from the view of the people! And it was promised that, if Mr. Jefferson were made President, the proceedings of every kind whatever should be carried on in open day, under the most public inspection. What has this sequel produced? It has produced, in this as in other instances, a conduct directly reverse of all the expectations which the party took such incessant pains to create. The fact will warrant us, it is believed, in asserting that during the few months of their late session, a democratic Congress have observed more secrecy, and ordered more concealment, than the federalists ever did throughout the whole twelve months in which the vessel of State was under their command. Whenever a subject came before the democrats this winter, on which they were afraid to have their real sentiments known, or ashamed of exposing their wretched inferiority in contrast with their talents, the knowledge and eloquence of the federal minority, the constant trick was for some fellow more silly and impudent than the rest, to rise and move the doors should be closed. Thus it was day after day the lobbies and galleries were cleared of every citizen spectator--that is, to use a fashionable phrase, every day the representative servants were seen, turning out of the House a portion of their sovereign masters, like truant school boys playing Christmas pranks on their tutors."

The paper speculated, correctly, that the money was to be used to bribe Bonaparte and his ministers. "The little fry, as well as the ravenous sharks of foreign corruption will thus have been both satisfied, and every honourable appetite appealed out of this fund of our thoughtful Administration."

The Jeffersonians had to maintain their silence, and fortunately so. Bonaparte subsequently backed out of the deal.

Earlier, Jefferson had sent a secret message to Congress that convinced it to appropriate a sum of money

"For the purpose of extending the external commerce of the United States."

The legislation was public, but its cryptic language was intended to mask the funding of the Lewis and Clark expedition which, despite what the schoolbooks tell us, was planned as an intelligence mission, most secret in nature, to enter the territories of foreign states with whom we were at peace, for the purpose of locating and mapping fortifications.

The secret move was overtaken by events. Napoleon soon recognized that wherever he attacked the English, they might retaliate by occupying the Mississippi and appropriate Louisiana. Yellow fever and guerrilla warfare had so decimated the French Forces in Santo Domingo that Napoleon would be helpless to stop them. To prevent this and to raise money for other wars, Napoleon broke his promise to Spain not to transfer the American west to another power, and offered the entire, vaguely delineated, area to astonished envoys of the United States for four cents an acre. Thanks to Jefferson's plans for the secret mission, Meriweather Lewis's expedition was already underway. The secret mission was instantly transformed into one of national policy. [Meriweather Lewis and William Clark subsequently strayed over the obscure boundaries of the Louisiana Purchase into the territory of yet another nation with whom we were at peace.]

In 1806, the United States considered it essential to conduct another such military recon-

naissance, this time of the entire territory drained by the Arkansas and Red Rivers. Selected to lead this intelligence mission was Lieutenant Zebulon Pike, a reliable young officer who, the previous year, had conducted an exploration of the upper course of the Mississippi River. The cover story selected for the mission was that the expedition was returning a party of Osage Indians to their homelands. If intercepted by Spanish forces, the party was under instruction to say it was traveling to the American outpost at Natchitoches, but had lost its bearings--had gone off course. (Where have we heard that one before?)

On 3 December 1806, Lieutenant Pike first saw the inspiring peak in the Colorado Rockies that was later to bear his name. But that fame would come later. Shortly thereafter Pike's party of trespassers was captured by the Spanish and taken first to Santa Fe, then to Chihuahua, while the Spaniards considered what to do with them. Ultimately, they were released and made their way to Natchitoches, arriving the following July.

Not surprisingly, when Pike's party returned East they were enmeshed in political controversy, not honors. The War Department was particularly sensitive about any discussion of an espionage mission into friendly territory and, four years later when Pike resolved to publish his journal of the expedition, it was over its objection.

When the War of 1812 broke out two years later, the man who had been an embarrassing Lieutenant only five years earlier was commissioned a Brigadier General. In April 1813, he was killed at the Battle of York (Toronto); he was 34. [There is a footnote to the Pike Mission. Because Pike had kept accurate journals and maps of both his reconnaissance and the journey as a Spanish captive, when the Mexican War broke out some 30 years later, his were among the few reliable military intelligence documents concerning the Mexican territory.]

During Madison's administration, document security procedures were formalized with markings for Secret, Confidential and Private. [We had to wait until World War II to add Top Secret to the list to contend with British Most Secret information.]

Madison, like his predecessors, recognized the need for intelligence, dispatching secret agents to South America, Nova Scotia, Bermuda and Turkey.

But, as with Jefferson, his eye were on the Floridas, and in 1810 he sent agents to West Florida to convince American settlers there that in the event they separated from Spain, they would be welcome to join the United States. The settlers responded as expected, adopted a "lone star" flag, captured Baton Rouge and declared West Florida "free and independent." Within two days of receipt of reports of the "lone star" declaration, Madison proclaimed American control over the territory and sent troops.

Madison then took on the rest of the Floridas, dispatching General George Mathews on the secret mission. Mathews was a veteran of the American Revolution, a former member of Congress and a recent governor of Georgia. His instructions were

"To take over the Floridas from General Folch if the Spanish are willing to surrender them."

Mathews opted once again for the "lone star" revolution tactic, and in March 1812 a group of "patriots," which included Georgia militia in mufti and other volunteers, supported by American gunboats, occupied their first town and moved on to San Marcos near St. Augustine. They failed in their second conquest attempt but, undaunted, organized a government, chose a governor and ceded East Florida to the United States.

But, back in Washington the situation had changed. President Madison had just paid \$50,000 for the letters of John Henry, a British spy, which laid bare British efforts to woo the Federalists. The documents had been well-publicized, the New England Federalists embarrassed and the British thoroughly denounced for intervention in our domestic affairs. Arriving in Washington when it did, news of Mathews' action permitted President Madison to share the embarrassment he had initiated. The British had been doing only a little bit of spying and buying; General Mathews had successfully incited a revolution, seized Spanish territory, and employed U.S. Naval forces to boot. [It is interesting to note that the discovery of British efforts to develop agents of influence among the Federalists coincided with the vice-presidency of Elbridge Gerry, who had warned of such agents during the Constitutional Convention, an alert carefully recorded by James Madison in his notes of the Convention.]

Although there had been secret Congressional approval for launching Mathews' mission, the President had no option but to reprimand him and to promise return of the land to Spain. But, he didn't return it, and Andrew Jackson administered the *coup de grace* during the War of 1812.

It was also during Madison's term that a successful--if unholy--alliance was made with gangsters of the period for intelligence purposes. The pirate Jean Laffite and his men were used to scout, spy and sometimes fight for General Andrew Jackson in Louisiana.

Earlier, I mentioned the Secret Journals of Congress. In 1818, the question of declassifying the journals first arose. Recognizing the role of the Executive, the Congress permitted the President to withhold from declassification those matters related to foreign affairs that he deemed to require continued protection. Thus, the published Secret Journals of the Revolution, declassified in 1818, and the Confederation period, declassified in 1820--much like the information released these days under the Freedom of Information Act--are incomplete and fragmentary. Even then, there was embarrassment to some; for example, secret debates in Congress defining terms for the defection "in place" of a British official during the American Revolution, the sending of a printer to Canada to publish materials favorable to the American position and the unanimous secret resolution authorizing the Secretary of State to open the mails--except those to and from Members of Congress--for reasons of national interest.

From time to time, there had been rumblings in the Congress about secret agents and the sums to support them, but it was not until March 1818, nearly 29 years after President Washington had sent his first secret agent abroad, that the issue erupted in the Senate as a purely political one. By then the framers of the Constitution and founders of the Republic had all retired or had died. The issue was raised by young men, examining the system they had inherited.

One, Henry Clay, objected to including in the public appropriations bill monies for three individuals appointed by the President and not confirmed by the Senate, saying he felt the Contingent Fund was primarily, if not exclusively, to be used for such agencies. The Congress affirmed this, struck the money from the appropriations bill and added it to the Contingent Fund.

The matter arose again, in 1825, with Adams as President and Clay Secretary of State, with the opposition condemning the sending of official observers to the Panama Congress. Several members of Congress suggested from the floor that secret agents--spies paid from the Contingent Fund--should have been sent instead. The seal of secrecy was subsequently removed from parts of the debate. In them we find this wise criticism by Thomas Hart

Benton, speaking of Britain:

"... a power that never sleeps when her interest is at stake, will be before us with her operations upon the Isthmus. Granted sir, that Nation will do what we ought to have done-- send an Agent, without diplomatic character or privilege. 'La Senora de las Naciones' will doubtless be there; not in the questionable and clumsy shape of a formal Embassy, but in the active, subtle, penetrating and pervading form of unofficial Agents, speaking the language of the country, and establishing themselves on the basis of social intercourse in every Minister's family; and this is precisely what we should have done. We should have sent an agent, as President Washington sent Gouverneur Morris to London in 1790 . . ."

The debate concerning executive agents, then a gray area between private citizen and an emissary confirmed by the Senate, arose in 1835. The debate focused on the objections of Littleton Waller Tazewell of Virginia to the appointment of commissioners plenipotentiary as executive agents for making treaties. To put an end to queries, the Administration moved to transfer money from the appropriations bill to the secret service fund. The opposition objected, saying it did not mind the Contingent Fund being used to pay secret agents, but that treaty commissioners were another thing. Tazewell's remarks about secret agents are significant:

"Let me not be misunderstood. I do not mean to doubt the power of the President to appoint secret agents when and how he pleases; nor do I mean to advance any claim on the part of the Senate to participate in the exercise of that power . . . it is only because secret agents are not officers of the United States, but the mere agents of the President, or of his Secretaries, or of his military and naval commanders, that I disclaim all participation in their appointment . . ."

The Tazewell forces lost, and the issue was again buried in the secrecy of the Contingent Fund. What makes these debates of interest here is that the first full public statement of the purpose of the secret fund surfaced. Senator John Forsyth, later to be Secretary of State to Presidents Jackson and Van Buren, declared:

"The experience of the Confederation having shown the necessity of secret confidential agencies in foreign countries, very early in the progress of the Federal Government, a fund was set apart, to be expended at the discretion of the President on his responsibility only, called the Contingent Fund of Foreign Intercourse . . . It was given for all purposes to which a secret service fund should or could be applied to the public benefit. For spies, if the gentleman pleases . . ."

A challenge to the Contingent Fund arose in 1842. At issue was the appointment of despatch agents and their payment from the Contingent Fund. The debate expanded to include an amendment to remove Presidential appointment authority of special agents as well. As a result, there were some noteworthy comments about special agents and the Contingent Fund's purpose. Senator Tappan of Ohio asserted that "he could point out a long list of paupers quartered on the contingent fund by the present administration, of no use to the Government, but merely to sustain them," and alluded to a person he knew had been sent to Central America. Senator Preston of Maine contended that it was necessary to send special agents to such places as Central America, if for no other purpose, for gathering information about the state of things there. Senator James Buchanan, later to become Secretary of State and President of the United States, pointed out "There was no Government on the face of the earth that had not secret agents abroad, unless it were our own. It might become necessary shortly--though he did not know whether he ought to allude to the fact--to send an agent to the island of Cuba, and one to St. Domingo; and in such a case, to have a nomination

made and confirmed by the Senate, according to the ordinary method of appointing diplomatic agents, would defeat the very purpose of the appointment, because the necessary secrecy would not be preserved . . . The amendment [on the floor] would deprive the Executive of this power, so essential to the interests of any country that no government on the face of the earth was destitute of it . . . I admit that such discretion may be abused; that it has been abused. But the question is can we take it away altogether?"

Buchanan told the anecdote that while serving as U.S. Minister to Russia, his despatches had been so tampered with that the American eagle put on them in Washington "became a miserable turkey buzzard." Buchanan carried the day. The amendment in question was defeated and, although despatch agents could no longer be paid from the Contingent Fund, executive agents remained within its sanctuary.

These early fifty years of our Republic contain a number of fascinating intelligence episodes which I have drawn from the so-called "secret agent bundles" in the National Archives.

In one bundle, for example, one may find a story-book type agent, George Bethune English. English, a former lieutenant in the U.S. Marine Corps, had resigned his commission to become a Muslim officer in the Turkish Army, and served in Ismail Ali's campaigns into the Sudan. On his return to the United States, he was recruited by President Monroe to return to the capital of Islam as a secret agent. His mission was to determine the receptivity of the Ottoman Empire to a commercial treaty with the United States and our desires to trade on the Black Sea. Garbed in the costume of, and representing himself as an American Mussulman, English managed "quietly and without observation" to obtain a copy of the Turkish treaty with France, but refrained from attempting to get others for fear it would, he said, "rouse suspicion."

Another agent launched by President Monroe in 1823 was Alexander McRae, who was sent to Europe to report on the possibility of European intervention in South America. McRae's letter of instruction contained this admonition, one with which we should not be unfamiliar:

"You will assume no public character, but take passports of a private citizen of the United States . . . And you will take proper precautions for avoiding any appearance or suspicion of your being employed by a public agency . . ."

Much has been written about Joel Poinsett's mission to purchase Texas from Mexico for five million dollars. Most forget that it was a failure, choosing only to recall that on Poinsett's return to the United States he introduced our popular holiday flower. His successor, Anthony Butler, was also a failure, but he did it magnificently. He attempted to bribe Mexican officials into selling Texas and when that failed he came up with the idea of an unrepayable loan to Mexico with Texas as collateral. Although it was denied at the time, the Mexican Government also accused Butler of being behind attempts to recruit so-called "colonists" to revolutionize Texas.

A "lone-star" uprising eventually succeeded, and as we all know there was no sign of U.S. intervention. After Santa Anna's defeat in 1836, the question arose in Washington about diplomatic recognition of the Texans. A secret agent was sent to inquire into the political, social and economic conditions in the new republic, their military strength and financial resources and the ability of Sam Houston's government to meet its international obligations. The agent, Henry W. Morfit, came back with the word, in effect, "They're not ready yet," leading Jackson to recommend to the Congress that the U.S. stand aloof to Houston's

overtures. [By March the following year the situation had changed and the United States finally recognized the Republic of Texas.]

Another of President Jackson's agents is worth noting, if only because the case reflects how little our fledgling nation knew about the world. Edmund Roberts was assigned to investigate secretly the operations of the British East India Company. He sailed for the Far East in 1832, rated as the "captain's clerk" on the sloop *Peacock*. Only the ship's captain knew his true status. Unfortunately, information at the Department of State regarding the countries he would visit was not very extensive or exact. In fact, titles and identities of some of the national leaders he was to approach were unknown in Washington. Simple--he was given a quantity of passports with blank spaces so that he might enter the necessary information on the spot. And, since he might be able to negotiate a treaty here and there, he was furnished with a supply of letters of credence with similar blank spaces. By the time Roberts died in Macao four years later, he had concluded treaties with Siam and the Sultan of Muscat!

President Tyler also had a bit of controversy over the natural combination already mentioned: Texas, secret agents and the Contingent Fund. Duff Green, a leading newspaper publisher and businessman, was sent to England to collect intelligence and engage in a bit of covert action related to the possible annexation of Texas. One of his letters about Texas was published in the British press--naturally not over his own name. The letter created such a stir that the Congress asked Secretary of State Calhoun to identify the writer and summon him before Congress. Calhoun replied that he couldn't ascertain the identity of the writer.

Congress tried again, closer to target, asking if Duff Green, specifically, had been employed in Europe. Calhoun obviously winced before responding that there was

" . . . no communication whatever either to or from Mr. Green, in relation to the annexation of Texas, to be found in the files of the Department."

The next inquiry was to the point: Was Duff Green paid money from the Contingent Fund appropriated by the Congress? By then the Senate had already rejected the treaty of annexation, and the secret no longer needed to be held. President Tyler answered that although he was not required to tell the Senate whom he paid from the Contingent Fund, he would oblige--just this once. Yes, Duff Green had been employed to collect information about a negotiation being contemplated, but later abandoned. You will note that he didn't answer the original question--who wrote the controversial letter?

But Tyler, after leaving office, was not to hear the last of his Contingent Fund. It was charged in the Congress that Tyler's Secretary of State, Daniel Webster, had used some \$17,000 from the Fund for propaganda in the U.S. religious press to win popular support for an unpopular treaty with Canada.

By deposition, Tyler told the investigating committee that what they were probing was a secret matter and that Webster had been deputized to carry it out. The committee backtracked. It said it had no intention of investigating the acts of presidential secret agents or of judging the propriety of using them within the United States.

The full House wasn't mollified. It called on President Polk to surrender the accounts of all payments from the Fund during Tyler's administration. Polk refused disclosure, noting:

"To break the seal of confidence imposed by the law and heretofore uniformly preserved, would be subversive of the very purpose for which the law was enacted, and might be productive of the most disastrous consequences. The expenditures of this confidential

character, it is believed, were never before sought to be made public, and I should greatly apprehend the consequences of establishing a precedent which would render such disclosures hereafter inevitable . . .

"The experience of every nation on earth has demonstrated that emergencies may arise in which it becomes absolutely necessary for the public safety or the public good to make expenditures, the very object of which would be defeated by publicity . . . In no nation is the application of such funds to be made public. In time of war or impending danger the situation of the country will make it necessary to employ individuals for the purpose of obtaining information or rendering other important services who could never be prevailed upon to act if they entertained the least apprehension that their names or their agency would in any contingency be revealed."

I have cited a lengthy excerpt from Polk's landmark statement because it recognizes the clear linkage between "obtaining information," or collection, and "rendering other important services," undefined. Rather like the phrase "to perform such other functions and duties related to intelligence affecting the national security . . ." found in the National Security Act of 1947.

Polk had good reason to defend the integrity of the Contingent Fund and to include "rendering other important services" in addition to collection--he was then using the Fund for agents to Mexico and to California for what we would now call covert action to assure that California and Texas would drop into the U.S. bucket.

As war clouds thickened, Polk received an intelligence report that Mexico might cede California to Britain, effectively and permanently blocking American dreams of stretching to the Pacific. He authorized Thomas Larkin, a Massachusetts businessman, to assure the Californians that:

"Should California assert and maintain her independence, we shall render her all the kind offices of our power, as a sister Republic."

Should the question of annexation arise, Larkin was empowered to say that the United States had no such aspirations,

". . . unless by the free and spontaneous wish of the independent people of adjoining territories."

Larkin was instructed to propound these ideas secretly, but back in Washington the opposition got it all wrong--they claimed that Larkin had been instructed to produce a revolution in California and that Col. John Fremont had been given authority to sustain it. [In their defense, some historians claim evidence that U.S. Army personnel served covertly in the ranks of the California "vigilantes."]

The war with Mexico broke out in 1846, and once more President Polk turned to a secret agent, this time Moses Yale Beach, a journalist and one of the founders of the New York Associated Press. Beach traveled to Mexico, using a British passport, and under instruction

". . . Never to give the slightest intimation, directly or indirectly, that you are an agent of this Government."

Beach is said to have done well. He met with prominent Mexicans and became actively involved in the political and social life of Mexico City, all with the objective of seeking a way

toward peace, a task some historians say he almost accomplished. Interestingly, the suspicious American press never unmasked his mission.

President Taylor also had his spy flap, and handled it with a flourish. It surfaced in the Congress that he had dispatched an agent to take soundings of the Hungarian revolt--and perhaps do a bit more if it looked as though the Magyars would win. They didn't, and the Congressional leak resulted in a strong note from the Austrians saying that had the American agent been apprehended, he could have been treated in a manner traditional for spies. President Taylor, in angry response, defined a spy as one sent by one belligerent against another to gain secret information for hostile purposes. The United States was neutral in the conflict, ergo the man was an observer, not a spy. Furthermore, the President of the United States takes great offense at the suggestion this country would employ spies.

President Pierce, as Polk, made extensive use of agents and covert action. One of the most innovative was a plan to acquire Cuba from Spain. Spain had refused to part with the troublesome island, and a scheme was devised to force them to sell. It called for cooperative European money-lenders to call in their loans to the Spanish Crown, pressuring Madrid to sell Cuba to the United States to raise the needed cash. The plan went well until leaked to the *New York Herald*.

In another ploy aimed at the same target, President Pierce acquiesced to the formation of an exile army in New Orleans for the "liberation of Cuba." When political realities forced Pierce to end his support of the proposed invasion, he used positive intelligence on Cuban fortifications to convince an old friend, who was the leader of the rebel army, to call it off.

To demonstrate the problems Pierce faced, one need only look at one intercepted letter brought to his attention. In it were British plans to sell guns to Costa Rica for use in a war with Nicaragua which would have the effect of driving out the Americans there. Pivotal then, as now, were the Moskito Indians.

President Buchanan had his spies, too. Francis J. Grund, the newsman credited with being the father of the sensational style of journalism, served in Europe as a roving spy-at-large, investigating a number of issues of concern to the President. He was authorized to reveal his true status only to U.S. Ministers in whatever countries he visited, but to all others he was to be only an interested and inquisitive private citizen.

As Buchanan left office in 1861, new threats--long brewing--would see a more active role for intelligence. Next time, The Civil War.

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