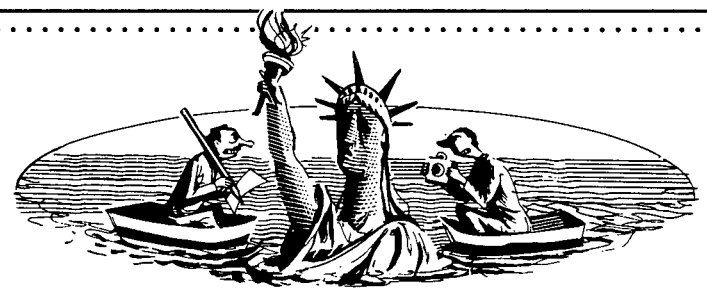

TREASON AND ACCOUNTABILITY

by Michael Ledeen

Early in April, an appeals court in Richmond, Virginia, upheld the conviction of Samuel Loring Morison, for violation of the Espionage Act. Morison had given secret satellite photographs of a Soviet shipyard to *Jane's Defence Weekly*, a British publication. The photos appeared in the American media some weeks later.

Most American newspapers (including the *Washington Post* and the *New York Times*) are worried, deeply worried, about the precedent set by this case, for Morison is the first American ever convicted for turning over classified information to the media. Heretofore, "espionage" was restricted to handing state secrets *directly* to the enemy. The media say—and they are undoubtedly right—that if the decision stands, it will have a chilling effect on the way they do business. Thus, lots of newspapers filed briefs asking the appeals court to overturn Morison's conviction. The basis for the media concern is not the law itself, but that it has, for the first time, been applied to a "journalist." But it seems clear enough that journalists are covered by the law, which makes it a crime for anyone to provide secret information, which he has reason to believe would harm the national defense, to "unauthorized persons." That phrase about "unauthorized persons" is almost never quoted in the newspapers, because it makes it clear that journalists, just like any other citizen, are covered by the Act.

That Morison is guilty of espionage, as defined by the law, is hard to doubt (although the Supreme Court may manage to find a way). The issue is whether it is a good law, and whether the decision of the appeals court threatens freedom of the press. My own view is that, while I'm nervous about the implications of the decision, the participation of the media in Morison's appeal is one of the worst decisions they have made in a long time. For years now, whenever people like me have warned that it will not do for the press to publish all manner of classified information, the media's response has been (with lots of modulation): "That's not our problem. It's the government's problem. Let them take steps to stop the leaks at the source, but let them leave us alone to publish what we think is responsible."

That is precisely what has happened in the Morison case. The government did not take the press to court. The fact that Morison was moonlighting as a free-lancer for *Jane's* is interesting, but irrelevant. His crime was, as a government employee, to pass information damaging to the national defense (it told a great deal about the capabilities of our spy satellites) to unauthorized persons at *Jane's*. And, of course, from *Jane's* to, inter alia, the Soviet Union. But that last move isn't even crucial, for Morison could have been charged with espionage if he had given the photographs to some friend of his.

The problem, according to the media brief (as reported by Stuart Taylor, Jr. in the April 10 *New York Times*), is that the decision "will affect, and perhaps dramatically alter, the way in which government officials deal with the press, the way in which the press gathers and reports the news, and the way in which the public learns about its government."

To which Judge Donald Stuart Russell implicitly replied in his decision: "The mere fact that one has stolen a document in order that he may deliver it to the press . . . will not immunize him from responsibility for his criminal act. To use the First Amendment for such a purpose would be to convert the First Amendment into a warrant for thievery."

The judge is right and the media brief was wrong. And what *really* worries the media—as opposed to all the philosophical talk about "how the public learns about its government"—is that if this decision sticks, it may frighten some leakers away, and it may lead editors to think twice about publishing certain kinds of national security revelations. That is the sum total of it.

The media don't like that because they want to decide what should be published and what should be secret—they don't want anyone else horning in on their act. As the ACLU's Morton Halperin put it, "There's nothing in the statute that distinguishes between government officials and the press, and under the court's legal interpretation it could be used against the press."

Exactly right. If citizens are forbidden to reveal damaging information to unauthorized persons, then no class of citizens is exempt. Journalists are just like the rest of us. I believe that most informed people of good will agree that there are certain kinds of information that should not be published or broadcast, for precisely the same concern that led to the passage of the Espionage Act. There are two serious questions at stake here: Who defines what is damaging to national security? And how can the media and the government reach a working relationship in which reasonable decisions on publication or broadcast of potentially sensitive information are made, and there is a mechanism for enforcement (that is, penalties for those who break the rules)?

There isn't room here to cover all the angles, but here are a few thoughts to keep you going for a month:

•There is going to have to be some kind of mixed government/media/legal panel to give advice (or actually make decisions?) on whether a given story is publishable or not. Both sides will hate it, because the media want to decide these things themselves, and the gov-

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ernment thinks only it should decide when things are "properly classified." The comparison that comes to mind is the Ratings Board for the Motion Picture Association, except that the media board will have to have some enforcement capability.

•It will be argued that this is censorship. It is. But we have it already. There is a law that forbids publication of information about "Signals Intelligence." It has never been applied, so nobody knows whether it would stand up in court, how sweeping its scope really is, or anything else about it. Yet any journalist who writes about intelligence could very easily be prosecuted under the law. We need some Supreme Court decisions, and with the Morison case on the books, the government should quickly charge some journalist with a violation of the SIGINT law and get a ruling. It may be that these laws need some changes, but at present the media are acting like ostriches, hoping no one will notice them since they have put their heads in the sand.

•Journalism today is the only profession with no procedure for enforcing accountability. Lawyers, doctors, even college professors have to respond to professional boards that evaluate their qualifications and their standards of performance. Why should journalists be different?

More on this next month.

Jewish Ritual Murder, Updated

On Sunday, January 24, the second-largest newspaper in Guatemala, *El Grafico*, ran a sensational story, according to which Guatemalan babies were being purchased by Israelis and then shipped to the United States and Israel where they were dismembered in order to provide transplants for local babies. The story was picked up by the joint Spanish-Central American news agency ACAN-EFE, and wired all over Central America and Spain. As usual, it took some time for the truth to catch up with the front page, and by the time the United States and Israeli embassies had asked the Guatemalan officials to investigate the charges (the allegation had appeared once before, and believe it or not, the U.S. government actually had the FBI investigate it), and the Guatemalans had assured the world there was no truth to the story, the damage was done.

A minor, intriguing, possibly irrelevant footnote: the EFE correspondent in Guatemala City was at the time sharing an office with the *Prensa Latina* (Cuban) correspondent.

Headline of the Month

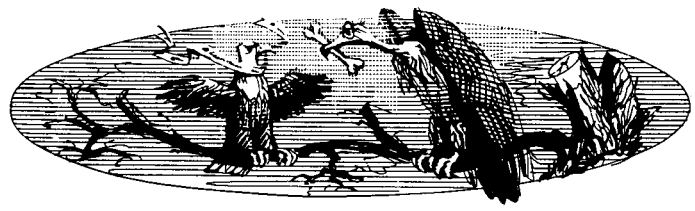
From the *New York Times*, Saturday April 2, the (three-column) headline on the "jump" for a story reporting that Independent Counsel McKay had no reason to indict Attorney General Meese: "No Indictment of Meese Planned Yet." In short, if you don't like the news today, pretend it's only a matter of time before things get better.

Runner-up goes to the *Washington Post*, April 1 (but they missed the joke): "Hungary Welcomes Refugees From Rumania. Thousands Have Sneaked Across Border in Flight From Alleged Repression."

Unreported Story of the Month

A fellow named William Biggert, who entered Israel in early March with documentation showing he was a staff photographer for the *Village Voice*, was found to have joined local Arabs in throwing rocks at Israeli soldiers in Nablus. Charges were filed against him, and he was ordered to appear in court, but Biggert left the country before the hearing. It was the first time a foreign journalist or photographer had been charged with participation in a violent disturbance, according to Israeli radio. The broadcast said that the executive editor of the *Voice* confirmed that Biggert worked for them, but said he was not a staff photographer.

I guess it's the latest in advocacy journalism. □



THE SELLING OF AMERICA

by Irwin M. Stelzer

We are being attacked by "a highly organized economic system, based on enormously large units, nourished by an industrial-academic-governmental complex and stimulated, financed and girded by the national government." Richard Gephardt's 1988 description of Japan, Inc.'s assault on American markets? No: Historian Arthur Schlesinger, Jr.'s 1968 description of American penetration of European markets, written as a foreword to J. J. Servan-Schreiber's *The American Challenge.*

In that then-much-heralded work, Servan-Schreiber saw Europe's "economic system . . . in a state of collapse. . . . [We] watch American investment skim gently across the earth like the fabled swallow, and watch what it takes away. . . ." And now it's Europe's turn, and Asia's, to take over America. Or so some of our xenophobic businessmen, and their congressional allies, would have us believe.

Now, no one can deny that every country must prevent some of its industries from falling into the hands of foreigners even though, in a national emergency, most facilities can be seized by our government. But the danger points are few. We already, for example, prevent foreigners from owning U.S. airlines or television stations. But does anyone doubt that American travelers would be better off if British Airways' superior managers took over Continental, or BBC programmers took over a few TV stations? And how would our security be threatened if they did?

One need not be a cynic to doubt that businessmen opposed to "the selling of America" are largely unconcerned about national security. They worry, instead, about their jobs. For foreign acquisitions are only one part, and a small one at that, of a merger movement that continues to regard its repeated death notices as premature.

Three times we have read that particular obituary. First, Ivan Boesky confessed to insider trading (and then wired himself so that he could gather just a few more bits of inside information—these for federal prosecutors). This led Wall Street sages to assume that arbitrageurs, who generally helped the raiders to gain control of their targets by buying large blocks of stock and then voting with the takeover team, would no longer play that game.

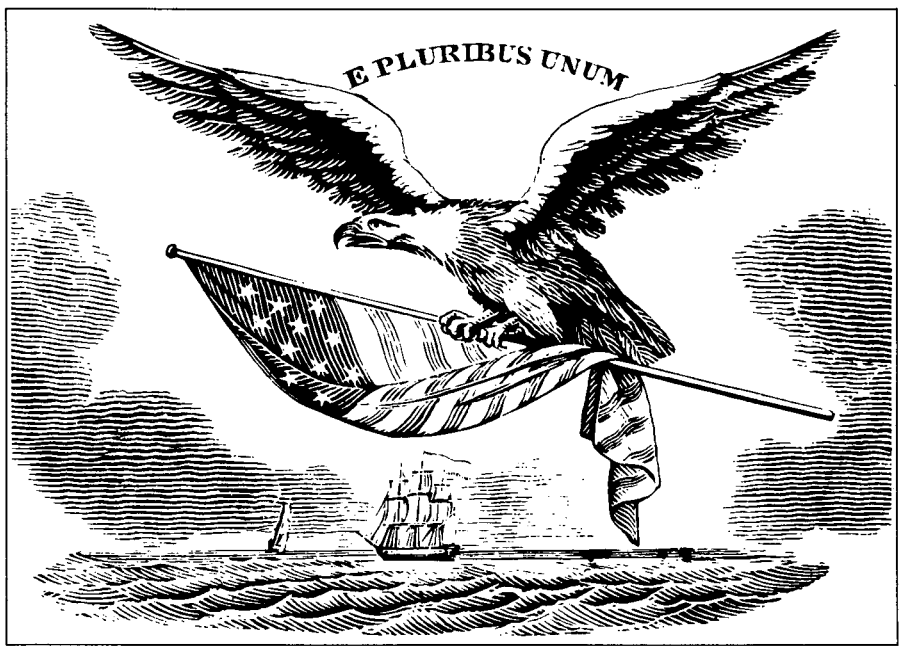
Then Drexel Burnham, the founder of and major player in the misnamed "junk bond" market, began to have troubles with the Securities and Exchange Commission. Since the sale of this higher risk debt is a crucial source of financing for takeovers, pundits declared that the crippling of Drexel (in fact, its business rolled along) would so reduce liquidity in the junk bond market as to make such borrowing unavailable to the Goldsmith-Pickens crowd.

Finally, the October 19 collapse of share prices rattled the investment community. Once again, the experts argued that acquirers, no longer able to pay for their acquisitions with high-priced stock, would be forced to the sidelines.

All of these predictions ignored one fundamental fact: the wave of acquisitions has been triggered by basic economic forces which make many companies worth more in the hands of new managers. Some have bloated payrolls and overcrowded executive suites; some are conglomerates of unrelated enterprises, the value of whose parts exceeds the value of the combined enterprise; others are in the hands of managers who act as if the internationalization of business and the globalization of finance hasn't happened; still others are simply worth more combined with another firm.

Boesky's troubles, the SEC investigation of Drexel, and the drop in share prices could not change that fact. And they didn't.

So far this year, takeover bids valued at close to $90 billion have been announced, about twice the amount as in the same period in 1987. Many deals have been prompted by the very fall in share prices that was supposed to mark the death knell of mergers. The drop did, after all, create bargains—companies whose market value was cut to levels that made them attractive to potential buyers.



Financing is no problem. One deal maker says that it is so easy to raise money, "it's kind of scary." This is because, as still another merger maven puts it, "the world is awash in cash." Insurance companies are competing with one another to make cash available to acquirers. So, too, commercial banks: with new loans to so-called Third World countries clearly unattractive, banks need new business. And what could be better than lending to top companies bent on sound acquisitions? Add to this source the continued availability of junk bond financing, and it becomes clear that financing is no constraint.

Nor is there any shortage of ideas. Some 50,000 investment bankers, commercial bankers, and lawyers spend their days—and nights—looking for deal-making opportunities and a chance to earn impressive fees. In Campeau's successful hostile bid for Federated Department Stores, for example, the commercial and investment bankers took in between $250 and $300 million. The securities industry as a whole now earns about one-third of its profits from mergers and acquisitions. And commercial banks' placement fees for syndicating loans are so attractive that, according to America's preeminent merger lawyer, Joe Flom, they are falling over each other to finance acquisitions.

Acquisitions, in short, are no longer peripheral to the main activity of American corporations. They have become an integral part of corporate strategies. Indeed, so vigorous and deep has the market for companies become that it is now not very different from the market for real estate or other big-ticket assets. Buyers and sellers abound; assets can be valued with some precision; financing is almost routine.

Panicky managers, some seeing a threat to their jobs, others genuinely concerned that takeover threats make long-range planning difficult, failed to persuade Congress to adopt anti-take-

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