

William Sessions
LBJ Lecture Feb. 10, 1989

Introduction of William S. Sessions
The 11th Lyndon Baines Johnson
Distinguished Lecture
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Good evening, and welcome to the eleventh presentation of the Lyndon B. Johnson Distinguished Lecture Series. I am pleased to see so many students, faculty, staff and friends of the university with us tonight.

All of you are our special guests, of course, but we have one new face in our audience whom I want all of you to meet. SWT's new president, Jerome Supple, is on campus for a few days and is with us tonight. Dr. Supple, will you please stand?

Also with us tonight are Southwest Texas Regent Ed Longcope and his wife Bonnie. Please welcome them. And we are indeed fortunate that the wife of tonight's speaker was able to accompany him to San Marcos. Would you welcome Mrs. Alice Sessions.

Southwest Texas State initiated the Lyndon B. Johnson Distinguished Lecture Series in 1982 to fulfill a vision of the late president. Lyndon Johnson had a special place in his heart for education and for his alma mater. The week before he died, he spoke on campus about establishing a lecture series that would bring here the nation's most influential and respected people to talk about issues of the day. And we have done that.

We have invited a newspaper publisher, legislators, a former president, an historian, a physician, a business leader — and a play. At the last LBJ presentation, our own Charles Pascoe delighted all of us with a children's play celebrating the 200th anniversary of the Constitution. And tonight we continue the tradition.

Our speaker has climbed the ladder of law from Baylor Law School, through private practice, to a federal district bench and, in 1987, to the leadership of the nation's top law-enforcement agency, the Federal Bureau of Investigation.

He entered the practice of law in Waco in 1958 and remained there until he accepted an offer to join the Department of Justice in Washington, D.C., in 1969. After two years, he was named a justice of the U.S. District Court for the Western District of Texas, where he served for 13 years, seven of them as chief justice.

In his career, he has had to work under the gaze of the media spotlight. He has presided at the trial of infamous suspects. He has required 24-hour protection for months at a time. Yet again and again, he has been the scale that balanced the rights of the individual with the good of society as a whole. These years of experience in civil liberties are an excellent prerequisite course for his current major.

Please welcome our Spring 1989 Lyndon B. Johnson Distinguished Lecturer, FBI Director William S. Sessions.

Lyndon Baines Johnson Distinguished Lecture
William S. Sessions

Good evening. After an introduction like that, I think you probably know more about me than you really wanted to know. In fact, I am reminded of a story told about Lyndon Baines Johnson at my old alma mater, Baylor University. President Johnson had gone to Baylor in 1965 to receive an honorary doctor of laws degree. After listening to a highly complimentary introduction, he stood up, walked to the podium, paused a little, and said; “My father would have enjoyed what you so generously said of me, and my mother would have believed it.”

Thank you for your welcome. Nothing could give me greater pleasure than to address the 11th Lyndon Baines Johnson Distinguished Lecture Series here today.

Lyndon Baines Johnson was an exceptional leader who focused his great talents onto realizing a vision of what America could be and should become.

Throughout his long career as congressman, senator, vice president, and resident of the United States, he stood both for law and order and for the rights of each and every American. I believe this balanced stance empowered his vision of the Great Society. He understood that our nation is founded on laws that seek to maintain a balance between individual liberties and social order. In a different context he said, “We cherish freedom—yes . . . but the key to all we have done is really our own security.”

Civil Liberties and Social Order

American democracy is, and always has been a wonderful, but strange breed of cat, balancing as it does the concepts of individual freedom and social order. From the earliest days of our democracy, our leaders have struggled with the inevitable conflicts that arise between our citizens’ right to be left alone and the right of our society to be kept safe and free. Today, as we stand on the edge of the 21st century, we must balance the conflict anew, because today we face new and awesome threats to our social order. Never before have we been confronted, as a nation, with the crushing realities of terrorism and drugs, as we are at this moment in our history. I was thinking just this morning that during President Johnson’s tenure, no American was subject to magnetometer; and baggage examination at airports. But when we think of the bombing of Pan Am Flight 103 last December, we realize that Americans are willing to endure the intrusiveness of strict airport security measures in order to protect our airways and the lives of our citizens. As a practical measure, we accept, as necessary, the degrees of intrusion necessary in our lives in order to ensure public safety and national security.

FBI Sensitive Investigative Techniques

I know you are all aware that the FBI plays a strong role in the effort to keep our society safe and free. But you may not be familiar with the techniques we use to accomplish these ends. Certainly we take full advantage of traditional law enforcement techniques—like searching crime scenes, interviewing witnesses, and physically observing suspects. But also, within strict guidelines, we are permitted to use some more intrusive ways of gathering evidence—measures that we call “sensitive investigative techniques.”

If we are to penetrate and dismantle terrorist and drug trafficking organizations that threaten our national security, we must be able to use informants; we must be able to use court-authorized electronic surveillances; and we must be able to use undercover agents. But—and I want to emphasize this—we must also be careful not to improperly

interfere with the civil liberties of our citizens as we gather our evidence—and this is always a very delicate balance to maintain.

How do we ensure **fairness**? We ensure it in a number of ways. First we **train** to be fair. As new agents, our agents are formally taught the Constitution and the Bill of Rights—and throughout their careers they are given legal briefings that focus on the constitutional limits of their authority. Second, in our operations, we adhere to clearly defined systems of checks and balances: we act under pre-established rules of conduct set down by the attorney general—and we not only follow these rules scrupulously, we also impose more rigorous ones of our own. Finally, we ensure fair deployment of our sensitive investigative techniques by holding ourselves totally accountable to the public—through the provisions of the Freedom of Information-Privacy Acts, through the close scrutiny of the media, and through various congressional oversight committees.

I want to talk to you today about these sensitive investigative techniques so that when you hear about some of the FBI's wonderful successes, you will better understand how we are able to bring them to pass. I'd like to examine these techniques with you; tell you how the FBI manages them in a fair and lawful manner; and describe some of the successes we have had with them.

Informants

The use of informants has often been called the single most important tool in law enforcement. And I think it's pretty clear why: What do you do when a crime has been committed—but you have no fingerprints, no evidence, no identified crime scene, and no eyewitnesses? What do you do? You look for informants—that is, people who are in a position to provide information to the FBI about the wrongdoing involved in that particular circumstance.

And we use an astonishing variety of informants. At one end of the spectrum may be someone deeply involved in crime, someone like Jimmy “The Weasel” Fratianno. Fratianno was a vicious criminal—a mob hit man who had become a very important crime figure. But when he learned that a contract had been taken out on his life, he came to the FBI. Because of his longtime criminal ties, Fratianno was able to reveal valuable information about the structure, the interrelationships, and the activities of organized crime groups. His testimony resulted in the conviction of the entire ruling structure of the Los Angeles La Cosa Nostra, and more recently, his continuing testimony helped us convict the leadership of the five ruling families in York City—the Bonannos, the Genoveses, the Gambinos, the Colombos, and the Lucheses.

At the other end of the spectrum is the good citizen—someone with a reputation for honesty and fairness—someone who gives us information out of a laudable sense of duty. Herman “Duffy” Mazzeo is such a person.

Duffy Mazzeo was a businessman in North Carolina who helplessly watched as his wife struggled with the problems of drug and alcohol abuse. Mr. Mazzeo's rage against the drug problem grew until, in early 1986, he was unexpectedly given a chance to do something about it. His next door neighbor, a special agent with the FBI, asked him if he had ever heard heroin-trafficking schemes mentioned in the restaurant at which he worked. Mr. Mazzeo hadn't—but he said he would ask around.

This began the strange and dangerous two-year odyssey that transformed Mr. Mazzeo into an undercover “drug dealer.” He went to Sicily on two separate occasions to

make drug connections. He risked his life in the company of Sicilian killers and traffickers. And eventually, his efforts helped secure the FBI's success in the Sicilian Mafia Connection case, a case that reached from the poppy fields of Southwest Asia through Europe to the city streets of America. On March 31st of 1988, 233 persons in the United States and Italy were charged with heroin trafficking in the largest international drug case ever developed. America's thanks for this goes to Duffy Mazzeo who, I believe, set a high standard of moral conviction and determination in the fight against drug trafficking.

Jimmy Fratianno and Duffy Mazzeo—and all the variously motivated informants in between—are critical to our work because they provide inside information on criminal activity—and because they are often our only means of putting our undercover agents in contact with criminal organizations.

At the same time, we are very careful that our management of informants is fair and beyond reproach. We safeguard our informants by protecting their confidentiality. But, because many are capable of working both sides of the street, we protect ourselves and the public by supervising them closely. We keep records of what they have been instructed to do, what they have done, what they have been paid, and what they have produced. We are **always** ready to be held accountable.

The FBI functions under strict Attorney General Guidelines and FBI I regulations that specifically spell out our day-to-day responsibilities in utilizing informants. If agents discover an informant is involved in criminal activity, they must deal with it and report it to their supervisor immediately. I want to emphasize that informants are **not** used by the FBI to circumvent legal or ethical restrictions. They are given specific instructions **not** to participate in acts of violence, **not** to use unlawful techniques to get information, and **not** to commit criminal acts. If they violate our rules, they will be subject to prosecution.

Electronic Surveillance

Electronic surveillance is a most intrusive investigative technique. And, before a federal judge will approve an application for its use, the FBI must meet very stringent requirements, including a show of probable cause that evidence of criminal activity will be uncovered.

Wiretaps and closed-circuit television are critically important techniques because they give us direct access to otherwise inaccessible criminals, and they also provide a valuable and dramatic record of what actually occurs.

Let's look at an example for a moment—the case that the media call the “Defense Procurement Scandal.” Here was a situation where government bidding regulations were allegedly being circumvented—but without leaving a trace of evidence. No documents described the fraud; no notes signaled bribery attempts. The bribes appeared to be offered and the deals sealed only with spoken words—and these words would have evaporated into the air if they had not been captured by court-authorized wiretaps.

This two-year investigation, conducted jointly by the FBI and the Naval Investigative Service, made extensive use of electronic surveillances. By recording conversations that demonstrated improper dealings among consultants, some defense contractors, and certain government officials, we were able to shine a light into dark corners of fraud that cannot—and will not—be tolerated in our government. The first

indictments and guilty pleas in the case were made last month, and more can be anticipated.

I might also mention an FBI case involving a terrorist group that has had far-reaching consequences. In the course of the investigation, we actually videotaped these terrorists as they busily constructed deadly bombs. The terrorists were indignant when they saw the film, and they protested that we had violated their privacy rights! Ultimately, the information we gathered with our court-authorized closed-circuit TV surveillance was upheld, in court, as proper and legally obtained evidentiary material that would be admissible in a trial. Judge Posner of the Seventh Circuit Court of Appeals ruled against the terrorists' claim of violated rights, saying, "There is no right to be let alone while assembling bombs in safe houses." **This** is the way, I believe, that our nation is able to define—and redefine—the critical democratic balance.

Because of the obvious intrusiveness of these surveillances, however, we must follow our procedures meticulously. We must establish that we cannot obtain the information we need by other techniques. We must establish probable cause. And, long before we send an application for a Title III electronic surveillance to a reviewing judge for approval, we rigorously review it ourselves. The United States attorney is just as meticulous before presentation is made to the court.

First, we describe fully the minimization procedures we use to prevent us from accumulating information that has no relationship to the crime. These procedures include not listening when a conversation takes place that is unrelated to the crime or where attorney-client privilege might be involved—and they are designed to protect the public from indiscriminate listening and to ensure fairness.

Second, we initiate an approval process that begins in the field office when a case agent prepares the affidavit in support of an application for Title III electronic surveillance. Listen to the steps through which it must pass: After several reviews at the local level, the application is sent to headquarters, where it is examined by our legal counsel division, our criminal investigative division, and attorneys at the Department of Justice. It is then referred to the Attorney General, or his designate, for authority to file it in federal court. Finally, the application is submitted to a district court judge by the appropriate U.S. attorney. I should also mention that when the application involves particularly sensitive circumstances, my special assistants and I personally review and approve it.

After an application is authorized by the reviewing judge, we take the extraordinary measure of advising the court every time a surreptitious entry is required to install a device. And we ask the court to include the authority to do so in the order. This measure is not required by law, but it highlights our abundance of caution and our absolute concern for fairness.

Undercover Agents

Let me turn now to our third sensitive investigative technique: the undercover agent. Our agents have been glamorized, and they have been criticized, depending on one's perspective. But to those of us in law enforcement who see great wrongs that need to be corrected, these agents are invaluable and necessary instruments of justice.

In major criminal investigations, undercover agents have discipline, control, and staying power. We have trained them to understand and respect the law's requirements;

we can trust them implicitly to carry out their demanding responsibilities over a long investigation; and we can count on their credibility on the witness stand. It is an unbeatable combination—and one that is fully sanctioned by the courts.

Just in the past year, we have dismantled several heroin-trafficking organizations that sought to use an FBI bogus food import business as an avenue for their drugs. We dismantled cocaine-trafficking organizations that sought to use our undercover agents as communication experts—buying beepers, cellular phones, and short-wave radios from us, and using us to sweep their boats and homes for wiretaps! And we have been able to uncover business fraud because our undercover agents worked well in the guise of businessmen, accountants, and a variety of other callings.

The length, the complexity, and the sensitive nature of undercover projects, however, all call for very careful planning and control. And the procedure for requesting such an operation is formidable. Each project originates in a field office as a “scenario.” Then it goes up the approval chain—first locally; then in Washington through a “substantive desk” and the Undercover and Sensitive Operations Unit; thereafter, it is tested by the Criminal Undercover Operations Review Committee. If the proposal is approved by this last committee, it is given to the head of our criminal investigative division or, in particularly sensitive circumstances, to me for final approval. No operation is approved for more than six months, and extensions are granted only after committee review.

Once in place, we monitor undercover operations closely to ensure fairness and full compliance with legal requirements and the Attorney General Guidelines. Our investigation called Cashweb/Expressway is a perfect example of this kind of operation.

This three-year money-laundering investigation sought to identify and prosecute individuals at the highest levels of three money-laundering syndicates operating in South America and the United States. We asked FBI undercover agents from a number of field offices to pose as money launderers—and over time they were able to work their way into the inner sanctum of these Colombian organizations. All told, our agents were asked to transfer almost half of a billion dollars in drug profits to Colombia. In that investigation, we actually laundered nearly \$175 million—enough to enable us to arrest the hierarchy of the three major syndicates. And, in the process, we seized 2,500 pounds of cocaine, 22,000 pounds of marijuana, and \$25,000 in cash.

Conclusion

I have spoken to you at some length today about issues that lay at the heart of law enforcement—and close to the heart of this great nation. “Liberty” and “order”—these are uppermost, precious, and closely held values of American society. And they are values that help define each other.

Supreme Court Justice Robert Jackson once observed that “The choice is not **between** order and liberty. It is between ‘liberty **with** order’ and anarchy without either.” I would add that justice is the nexus between the two and is the practical aim of both.

In my discussion today, I have tried to show you that the FBI truly strives to serve the ends of justice.

—by strictly following our statutes, guidelines, rules, and regulations;

—by striving for fairness; and

—by seeking always to balance the concerns of liberty and order.

Mr. President, thank you for providing me the opportunity to discuss these very important concepts as a part of the Lyndon Baines Johnson Distinguished Lecture Series.

Lecture transcribed by Benjamin Hicklin, graduate research assistant, 2007-08