

British whistleblower faces trial for exposing US spying on UN delegates

Paul Mitchell

9 December 2003

Katherine Gun, an intelligence officer at the British government's secret surveillance headquarters, was arrested in March under the Official Secrets Act on charges of passing information to an unauthorised person. She admits she leaked a secret memo to a British newspaper about US-UK government surveillance of the United Nations before the war in Iraq.

Lawyers appointed for Gun by the human rights organisation Liberty told magistrates at London's Bow Street court that Gun is pleading "defence of necessity." In a statement issued after her court appearance on November 27, she said, "I have today indicated to the court that I intend to plead not guilty to the charge that I face under the Official Secrets Act. I will defend the charge against me on the basis that my actions were necessary to prevent an illegal war in which thousands of Iraqi civilians and British soldiers would be killed or maimed. No one has suggested (nor could they) that I sought or received any payment. I have only ever followed my conscience. I have been heartened by the many messages of support and encouragement that I have received from Britain and around the world."

Gun was granted bail and told to return to Bow Street on January 19 when a magistrate will decide on sending the case to a Crown Court.

The leaked memo that appeared in the *Observer* newspaper was from US National Security Agency (NSA) official Frank Koza to his counterparts at the Government Communications Headquarters (GCHQ) in Britain where Gun worked as a translator. In the memo, Koza asked GCHQ to help with the secret surveillance of United Nations Security Council (UNSC) delegations that were considered to be wavering over the drive to war against Iraq.

According to intelligence sources quoted by the *Observer*, National Security Advisor Condoleezza Rice would have initiated the memo or at least approved it.

Koza's memo, marked Top Secret, explained how the NSA had mounted "a surge effort to revive/create efforts against UNSC members Angola, Cameroon, Chile, Bulgaria and Guinea, as well as extra focus on Pakistan UN matters."

The NSA effort, Koza said, would help provide "the whole gamut of information that could give US policymakers an edge in obtaining results favourable to US goals or to head off surprises."

Koza asked for the help of British analysts who "might have similar, more indirect access to valuable information from accesses in your product lines"—spy jargon for bugging work and home telephones and intercepting e-mails.

The publication of Koza's memo in early March came at a particularly sensitive time for the British and American governments as they tried to get support for a second UN resolution authorising war against Iraq. In the face of unprecedented worldwide demonstrations against the threat of war and the intention of major UNSC powers such as France and Germany to vote against a second resolution, the votes of the minor nations were crucial. In the event, the US and UK were forced to go to war on March 21 without a UN mandate.

The seriousness with which the Bush and Blair administrations regarded the leak can be measured by the speed in which Gun was arrested, within days of publication of the *Observer* article, and the virtual blackout of the issue in the US media. Martin Bright, an *Observer* journalist involved in the Gun case, told the Australian Broadcasting Corporation that interviews planned with major news networks were abandoned at the last minute. Bright said, "It happened with NBC, Fox TV and CNN who appeared very excited about the story to the extent of sending cars to my house to get me into the studio, and at the last minute, were told by their American desks to drop the story."

The *New York Times* did not mention the story, and other newspapers downplayed its significance. The *Washington Post* said, "UN diplomats and analysts said that espionage had been a fact of life at the UN since its founding in 1945, and they assume they are being monitored by many foreign intelligence agencies."

The *Los Angeles Times* said, "Forgery or no, some say it's nothing to get worked up about."

Whilst the UN has no doubt been a hotbed of intrigue and spying since its inception, the Gun case could not be dismissed by anyone not wishing to conceal the illegal acts the US and British governments employed to pave the way for an illegal war.

Gun's actions occurred at a time when there was concern within broad sections of the British ruling elite, including the security services, that a too close identification with the war aims of the Bush administration and the Blair government's readiness to forge intelligence and commit other crimes was threatening Britain's own strategic interests.

Since the Hutton Inquiry was held into the death of weapons inspector Dr. David Kelly, there have been further calls for a more in-depth inquiry into how the British government used intelligence material in the run-up to the Iraq war. Former Labour environment minister Michael Meacher and former US weapons inspector Scott Ritter have called for investigations into secret disinformation

operations called Rockingham and Mass Appeal. According to Ritter, Rockingham was set up by the British Defence Intelligence Service in 1991 to “cherry-pick” facts to fit a “pre-ordained outcome”—to prove that Iraq possessed weapons of mass destruction.

Ritter told the British House of Commons last month that he was involved with MI6’s Mass Appeal campaign to “shake up public opinion” using “single source data of dubious quality, which lacked veracity.” Saying he would reveal more details in a public inquiry, Ritter told the parliamentarians that the intelligence services “took this information and peddled it off to the media, internationally and domestically, allowing inaccurate intelligence data to appear on the front pages. The government both here in the UK and US would feed off these media reports, continuing the perception that Iraq was a nation ruled by a leader with an addiction to WMDs.”

We spoke to Barry Hugill, a spokesman for Liberty and asked him why Katharine Gun is using the plea of “defence of necessity.” He replied, “Essentially it means that she is going to argue that faced with the American government asking the British government to commit an illegal act, she felt no other option than to make public what was going on behind the scenes. Unlike a normal job, she works at GCHQ and is bound by the Official Secrets Act (OSA) so she couldn’t simply report it to her superiors because they would have known full well what was happening.

“She will argue that it was her own belief that Britain going to war was itself an illegal act and that America was attempting to unfairly influence the UNSC. By acting in the way she did, albeit if it was in a small way, she felt it could have helped prevent war and therefore save countless lives. So the ‘necessity’ was to prevent an illegal act and to prevent a great human tragedy.”

We asked Hugill whether this was the first time that a plea of defence of necessity has been used. He said that it was: “This will be a test case. The plea was not used by David Shayler [the MI6 spy charged in 2000 with revealing that the British security services held files on prominent Labour politicians and celebrities such as John Lennon, but not for his claim that the security services blacked a plot to assassinate Libyan leader Colonel Qaddafi], but he was told during his trial that he could have used the defence.”

Under the Official Secrets Act, the prosecution has only to prove that Gun passed secret information to an unauthorised person. As she has already admitted this, we asked Hugill whether he thought there was any chance that more revealing information may emerge—for example, did the British government comply with the American request?

He replied, “That is a very interesting question. I’m sure Katharine would like to find out if that was the case. It is difficult at this stage to know what defence her lawyers will mount. There is speculation that they might try and subpoena the Attorney General. Do you remember the report he allegedly gave to the Cabinet saying support for the war would be legal? And how other press reports said he did not give such advice. It may be that Katherine’s QC Ben Emerson—probably Britain’s leading human rights lawyer—might call the Attorney General to clear up this matter. Whatever happens this is going to be a very interesting

trial.”

We asked if it is true that Ms Gun is restricted in what she can discuss with her legal representatives?

Hugill replied: “Yes. There is a dispute at the moment with GCHQ that is yet to be resolved over what she can and cannot say. They are arguing that she is still covered by the Official Secrets Act and anything she says she has to have prior permission from GCHQ, otherwise she will be in breach of the OSA again.

“Katharine was charged in March and normally a decision to prosecute is taken fairly quickly—a month or two. But it wasn’t until last month that a decision was taken. The fact that it took that long is a clear indication that some very earnest discussions were being taken at a very senior level. It is quite inconceivable that the decision to prosecute in this case—given the publicity that a court will generate—was taken in the standard way. Usually a relatively junior member of the Crown Prosecution Service decides whether a case should go ahead. In this case, it would have had political approval and that would be the Attorney General.”

We asked whether he thought the delay in the case was related to the government’s preoccupation with the Hutton Inquiry.

Hugill replied, “I’m sure there was one school of thought that was arguing, ‘Don’t bring charges. Just let it drop. There will be a couple of stories in the newspapers and that will be the end of it given the public opposition to war, given the Hutton Inquiry and given the fact that, after all, the Americans were asking us to spy on our own allies.’

“On the other hand there must have been enormous pressure from GCHQ and the intelligence services saying, ‘You can’t operate something like GCHQ without strict application of the OSA. If you allow one person to leak secrets, then you will open the floodgates.’”



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