

SYMBIOSIS OR VASSALAGE?

National Security Investigations and
Impediments to Success

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“That is the fate of democracy, in whose eyes not all means are permitted, and to whom not all the methods used by her enemies are open. At times democracy fights with one hand tied behind her back. Despite that, democracy has the upper hand, since preserving the rule of law and recognition of individual liberties constitute an important component of her security stance

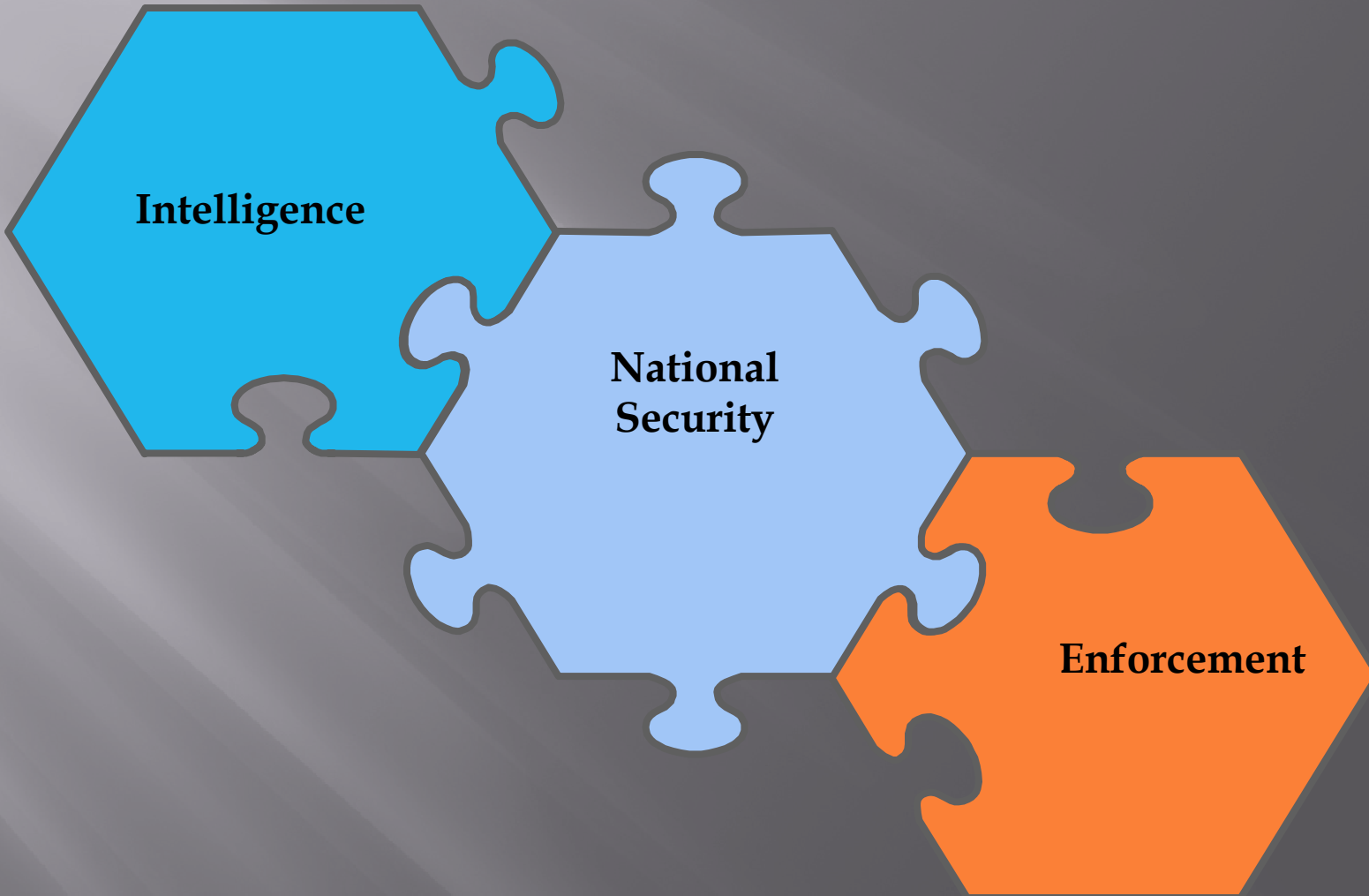
President (retir'd) A Barak. (HCJ 5100/94 *The Public Committee against Torture in Israel v. The State of Israel*, 53(4) PD 817, 845).

“Today we were unlucky, but remember we only have to be lucky once.....”



“You will have to be lucky always.”

SYMBIOSIS



Impediments to Success



1. In their treatment of disseminated information the RCMP endanger sources, disclose allies' confidences and make investigations by CSIS much more difficult.
2. The scope of Stinchcombe disclosure obligations, create a risk of public exposure of intelligence operations and reduce the effectiveness of CSIS.
3. Closer cooperation with RCMP will blur the lines that separate their distinct functions and mandates
4. CSIS does not appreciate the overlap of their mandates in counterterrorism matters.
5. CSIS have disregarded evidentiary standards in the collection and retention of intelligence product.
6. CSIS will seek to protect its own investigations in preference to the criminal investigations

Pragmatic Changes – An Inclusive Approach to National Security Investigations

- ▣ CSIS and Disruption Tactics
- ▣ Parallel Investigations
- ▣ Joint Assessment and Investigation
 - UK and the Joint Intelligence Handling Model

Change to Substantive and Procedural Law

- ▣ Crown Disclosure – Thresholds in National Security Cases.

Changes to Privilege and Substantive Law.

- ▣ Create New Class Privileges?
- ▣ Mandate Defense Disclosure in Section 38 Applications.
- ▣ Review of Informant Privilege in National Security Cases.
 - Agent Status.



8 Dead and 13 Injured



12 Dead and 63 Injured



1 Dead and 31 Injured



32 Dead and over 200 Injured