The Director of Central Intelligence

Washington, D.C. 20505

9 June 1981

Honorable Patrick J. Leahy
United States Senate
Washington, D.C. 20510

Dear Senator Leahy:

This is in response to your letter of 12 May in which you posed a number of questions concerning S. 391, the "Intelligence Identities Protection Act."

With regard to your first question, the Administration believes that from a prosecutorial perspective the Senate's subsection 601(c) "reason to believe" standard is preferable to the "intent to impair or impede" language of H.R. 4. The Department of Justice is in the best position to evaluate the practical evidentiary problems that can develop in a criminal prosecution. Although it might appear that past disclosures which would have met all of S. 391's other criteria and which also would have met the requisite "reason to believe" standard have been accompanied by something like an "intent of neutralizing a covert agent or impairing or impeding our intelligence activities," the Administration's concern is that it could be difficult to prove beyond a reasonable doubt the kind of subjective intent as to purpose now contained in H.R. 4. Such proof might be particularly troublesome if an unauthorized disclosure were to be accompanied by a declaration that its ultimate intent was to somehow enhance intelligence capabilities.

Your second and third questions deal with my suggestion that the House Intelligence Committee consider amending the "Privacy Protection Act of 1980" (P.L. 96-440) so as to include unauthorized disclosures of intelligence identities among the enumerated offenses for which court authorized searches and seizures may be conducted. As you know, this enumeration was not intended to give the listed statutes any special standing. It was designed to ensure that their enforcement was not obstructed by the Privacy Protection Act's prohibition of court authorized searches to enforce relatively minor receipt, possession, or communication offenses. The sole effect of this enumeration is to preserve with respect to the listed national security-related offenses an authority applicable to virtually all other offenses, i.e., use of a search warrant to obtain documentary evidence in the possession of a suspect.

Addition of the Intelligence Identities Protection Act to the offenses now listed in the Privacy Protection Act would not conflict with the Judiciary Committee's intent with respect to 18 U.S.C. 793. I do not view that intent as inconsistent with the Administration's position that the pattern of activities and knowledge elements of the Identities legislation, combined with the serious consequences of unauthorized disclosures, make it appropriate to include the offense among those for which a search warrant may be obtained pursuant to the Privacy Protection Act whether the Identities legislation is ultimately enacted with a "reason to believe" or an "intent to impair or impede" standard.

I would emphasize that this is not an issue which should be allowed to delay consideration of the Identities Bill, and I would support separate consideration of the extent to which the Identities statute ought to be added to the Privacy Protection Act. My letter to Chairman Boland of the House Intelligence Committee merely suggested that the Committee might wish to consider the issue, and I did not raise the matter in my Senate testimony because I do not consider it to be integral to the Identities Bill. I thank you for your continuing interest in this matter and look forward to working with you to ensure speedy enactment of the Identities legislation.

Sincerely,

William J. Casey