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**United States Senate**

COMMITTEE ON THE JUDICIARY  
 WASHINGTON, D.C. 20510

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Dear Mr. Casey:

The enclosed transcript of your remarks is attached to afford you the opportunity to review and correct your testimony.

Only changes in diction or expression or in the interest of clarity, brevity, or accuracy, or to correct any errors in transcribing are permitted. If changes in substance are desired, application must be made to the Chairman.

If corrections in your testimony are not necessary, please return this transcript as soon as possible.

Please write all corrections legibly and in CONTRASTING COLOR directly onto the attached transcript. If a lengthy insert is necessary, staple it to the page of origin with point of insertion clearly marked. DO NOT RETYPE TRANSCRIPT. Also, please supply at this time, any documents or information requested, or that you offered to submit for the record during your appearance.

Please also assist the Committee by inserting a centerhead each time the subject matter changed during the hearing. These headings are to describe the subject matter which is to follow and should be inserted at about a minimum of one heading every three pages of transcript copy. Centerheads enable quick referencing and assist the Committee if an index is prepared.

Please return the transcript WITHIN FOUR WORKING DAYS after receipt so that your remarks, as revised, may appear in the printed hearing; otherwise the Committee may not be able to incorporate your revisions.

Return the material involved to the attention of Mr. Paul Guller, Chief Printer, Senate Committee on the Judiciary, 2226 Dirksen Building, Wash., D.C. 20510. I am enclosing an addressed, franked envelope for your use.

Sincerely,

*Quentin Crommelin, Jr.*  
 Quentin Crommelin, Jr.  
 Staff Director

Enclosure

PG

Subcommittee on Security and Terrorism  
of the  
COMMITTEE ON THE JUDICIARY

# UNITED STATES SENATE

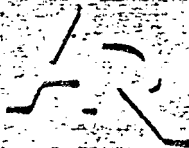
HEARING ON

S. 391

INTELLIGENCE IDENTITIES PROTECTION ACT OF 1981

WASHINGTON, D. C.

May 8, 1981

ALDERSON  REPORTING

400 Virginia Ave., S.W. Washington, D. C. 20004

Telephone: (202) 554-2345

1 STATEMENT OF WILLIAM J. CASEY, DIRECTOR, UNITED STATES  
2 CENTRAL INTELLIGENCE AGENCY; ACCOMPANIED BY JOHN H. STEIN,  
3 ASSOCIATE DEPUTY DIRECTOR FOR OPERATIONS, CIA; AND FRED  
4 HITZ, LEGISLATIVE COUNSEL, CIA

5 Mr. Casey: I am pleased to be here, and I would ask  
6 that my prepared statement be inserted in the record, and I  
7 will give you the gist of my statement orally.

8 Senator Denton: It shall be done, sir.

9 Mr. Casey: Early last month I appeared before the  
10 House Intelligence Committee on legislation and testified on  
11 the House version of this bill. With both Chambers  
12 considering this legislation, I am very hopeful that we will  
13 soon see enactment of a measure that will finally put an end  
14 to the pernicious and damaging unauthorized disclosures of  
15 intelligence identities.

16 We need criminal penalties as soon as possible on the  
17 unauthorized disclosure of information identifying certain  
18 individuals engaged or assisting in the foreign intelligence  
19 activities of the United States. This Administration  
20 believes that the passage of the Intelligence Identities  
21 Protection Act is essential to the maintenance of a strong  
22 and effective intelligence apparatus. Enactment of this  
23 legislation is vital to President Reagan's determination and  
24 commitment to enhance the Nation's intelligence capabilities.

25 Mr. Chairman, there exists a tiny group of Americans

1 who openly proclaim themselves to be devoted to the  
2 destruction of the Nation's foreign intelligence agencies.  
3 This group has engaged in activities avowedly aimed at  
4 undermining the Nation's intelligence capability through the  
5 identification and exposure of undercover intelligence  
6 officers.

7       Those perpetrating these disclosures understand  
8 correctly that secrecy is the lifeblood of an intelligence  
9 organization, and that disclosure of the individuals engaged  
10 in that activity and whose identity is deliberately  
11 concealed will disrupt, discredit, and they hope ultimately  
12 destroy an agency such as the CIA.

13       Some of the persons engaged in this activity have  
14 actually traveled to foreign countries with the aim of  
15 stirring up local antagonism to U.S. officials through  
16 thinly veiled incitements to violence.

17       Mr. Chairman, I might say that since taking the post of  
18 Director of the Central Intelligence Agency only a few  
19 months ago, I can confirm that these disclosures have  
20 resulted in untold damage and, if not stopped, will result  
21 in further damage to the effectiveness of our intelligence  
22 apparatus and to the Nation itself.

23       I am appalled at the degree to which concerted activity  
24 is being carried out around the world to destroy the  
25 capacity which is critical to our national security, and

1 which has been painstakingly developed over many years with  
2 the full participation and support of the Congress and an  
3 investment of many billions of dollars.

4       The tragic results of these unauthorized disclosures  
5 have been reviewed by Senator Chafee so well that I will not  
6 take your time to go into all the details, except to say  
7 that just a few weeks ago six Americans were expelled from  
8 Mozambique following charges of engaging in espionage.  
9 These expulsions followed and were directly attributable to  
10 visits to that country by members of the Cuban Intelligence  
11 Service and the editors of the Covert Action Information  
12 Bulletin.

13       So this is a continuing threat that hangs over our  
14 heads which can result in serious damage, increasing  
15 discouragement, and retirements of people engaged in this  
16 activity who have developed years of experience which is  
17 enormously valuable to our national security.

18       Mr. Chairman, I do not think it necessary to go into  
19 great detail about the adverse effects that these  
20 disclosures are having. Simply put: The credibility of our  
21 Country and its relationship with foreign intelligence  
22 services and individual human sources, the lives of  
23 patriotic Americans serving their Country, and the  
24 effectiveness of our entire intelligence apparatus are being  
25 placed in jeopardy daily.

1           Extensive hearings before the House and Senate  
2 Intelligence and Judiciary Committees have documented these  
3 damaging effects. The underlying basic issue is a fact that  
4 our ability to continue to recruit and retain human sources  
5 of intelligence whose information could be crucial to the  
6 Nation's survival in an increasingly dangerous world, our  
7 equally important relations with the intelligence services  
8 of other nations, are in continuing jeopardy as long as we  
9 are exposed to this threat.

10           It is important to understand what legislation in this  
11 area seeks to accomplish. It seeks to protect the secrecy  
12 of the participation or cooperation of certain persons in  
13 the Foreign Intelligence Service of the United States.  
14 These are activities which have been authorized by the  
15 Congress, activities which we as a Nation have determined to  
16 be essential. Secrecy is essential to the safety and  
17 effectiveness of the case officers and the agents, without  
18 which no intelligence service can operate. It is essential  
19 to get individuals to undertake this delicate, demanding,  
20 and frequently dangerous work.

21           No existing statute clearly and specifically makes the  
22 unauthorized disclosures of intelligence identities a  
23 criminal offense. As matters now stand, the impunity with  
24 which unauthorized disclosures of intelligence identities  
25 can be made implies a government position of neutrality of

1 not caring about the matter. It suggests that U.S.  
2 intelligence officers are fair game by those members of our  
3 own society who take issue with the existence of the CIA, or  
4 find other perverse motives for making these unauthorized  
5 disclosures.

6 I might say that other intelligence services around the  
7 world, and other nations, the leaders of other nations,  
8 witness this continuing spectre where the United States  
9 leaves its people who have undertaken this work exposed to  
10 this kind of risk and look at it with amazement. You hear  
11 it wherever you go.

12 I believe it is important to emphasize that the  
13 legislation which you are considering today is not an  
14 assault on the First Amendment. It would not inhibit public  
15 discussion and debate about U.S. foreign policy or  
16 intelligence activities. It would not operate to prevent  
17 the exposure of allegedly illegal activities or abuses of  
18 authority. It is carefully crafted and narrowly drawn to  
19 deal with conduct which serves no useful informing function  
20 whatsoever. It is not related to alleged abuses. It does  
21 not bring clarity to issues of national policy. It does not  
22 enlighten public debate. It does not contribute to an  
23 enlightened and informed electorate.

24 Mr. Chairman, there is virtually no serious  
25 disagreement over those provisions of this legislation which

1 impose criminal penalties on the unauthorized disclosure of  
2 intelligence identities by those individuals who have had  
3 authorized access to classified information. Controversy  
4 has centered on Subsection 601(c) of S. 391 which imposes  
5 criminal penalties on the disclosure of information  
6 identifying a covert action by anyone under certain  
7 specified conditions.

8 Disclosure of intelligence identities by persons who  
9 have not had authorized access to classified information  
10 will be punishable only under certain specified conditions  
11 which have been carefully crafted and narrowly drawn so as  
12 to encompass persons only engaged in an effort or pattern of  
13 activities designed to identify and expose intelligence  
14 personnel and impair our intelligence capabilities thereby.

15 The proposed legislation also contains offenses and  
16 exceptions which reinforce this narrow construction. It is  
17 instructive in this regard to look at the elements of proof  
18 that would be required in a prosecution under this section,  
19 keeping in mind that the government would have to prove each  
20 of these elements beyond a reasonable doubt.

21 The government would have to show that there was an  
22 intentional disclosure of information which did in fact  
23 identify a cover action;

24 That the disclosure was made to an individual not  
25 authorized to receive classified information;



1           The the person who made the disclosure knew that the  
2 information disclosed did in fact identify a covert action;

3           That the person who made the disclosure knew that the  
4 United States was taking affirmative measures to conceal the  
5 covert agent's classified intelligence affiliation;

6           That the individual making the disclosure did so in the  
7 course of a "pattern of activity intended to identify and  
8 expose covert action;

9           And that the disclosure was made "with reason to  
10 believe that such activities would impair or impede the  
11 foreign intelligence activities of the United States.

12          Because of these strict conditions which narrowly  
13 define the prohibited conduct, I believe it is clear that  
14 this subsection is directed at conduct which the Congress  
15 has the authority and power to proscribe consistent with the  
16 First Amendment, and that this bill does so in a  
17 constitutional manner.

18          Mr. Chairman, I understand that the Department of  
19 Justice believes that the Senate version of the bill better  
20 captures the concerted nature of the activity which is  
21 intended to be proscribed than does the House bill, and that  
22 there are prosecutorial and evidentiary advantages to the  
23 Senate language. I believe the Department's witness will  
24 speak to this matter.

25          Mr. Chairman, S. 391 will deal with a clear and

1 immediate danger which currently each and every day  
2 endangers our intelligence activities, our staff officers,  
3 and the lives of those who are cooperating with our Nation  
4 abroad.

5 I want to express my gratitude and appreciation to the  
6 subcommittee for so promptly bringing this legislation  
7 forward, and to reiterate the hope that it will be enacted  
8 into law as quickly as possible so that this intolerable  
9 situation is remedied and no longer permitted to exist.

10 I will be happy, Mr. Chairman, to answer any questions  
11 that you or anybody else may have.

12 [The complete statement of Mr. Casey follows:]

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1           Senator Denton: Thank you, Mr. Casey, for your most  
2 expert and helpful testimony. I will be very brief in my  
3 questioning in view of your time constraints.

4           Let me say at the outset that, while you have evinced  
5 your sense of being appalled at the situation which we are  
6 now addressing with such incredible tardiness, from my own  
7 background I can assure us all that from personal contact  
8 with high-ranking communists that they too are amazed,  
9 amused, and highly pleased that such a situation at which  
10 you are appalled exists.

11          I did hear you say, sir, that there is no existing  
12 legislation which adequately deals with the problems of  
13 disclosure which S. 391 is formulated to address. May I ask  
14 what steps, if any, the CIA may have taken to tighten up its  
15 security practices and cover for its own agents and  
16 sources? And would the Agency develop standards for cover  
17 sufficient to protect its covert employees from  
18 identification, if this bill is passed and prosecuted  
19 properly?

20          Mr. Casey: Well, we take extensive precautions to  
21 equip our agents, and indeed our case officers with cover  
22 and identities which facilitates the conduct of their task  
23 that is assigned to them, and to protect them from both  
24 disclosure of identification by foreign intelligence  
25 services, and disclosure and violence from any source.

1           Senator Denton: Can Congressional oversight and  
2 legitimate official and unofficial scrutiny of intelligence  
3 activities take place without the likely revelation of  
4 intelligence identity?

5           Mr. Casey: Well, our experience with Congressional  
6 oversight and the informing of the relevant committees about  
7 our proposed and actual operations has not resulted in any  
8 serious disclosure at all, as far as I know. Much of the  
9 conversation which takes place with the committees generally  
10 describes what we intend to do and the risks and other  
11 things that may be involved that seem relevant to the  
12 adequate understanding and proper oversight, and very  
13 unusually does it take us into identifying the particular  
14 individuals who will undertake the particular mission. So I  
15 do not see any risk there at all for the oversight process.

16          Senator Denton: My final question, sir: I am not even  
17 a lawyer, but I cannot help but be somewhat impressed that  
18 the offense which we are trying to establish as culpable  
19 would result in a punishment of a fine not to exceed \$15,000  
20 and imprisonment of not more than three years or both,  
21 considering the deaths which have resulted and the harm to  
22 our national security which can be translated in terms of  
23 peacetime terroristic activities or wartime situations into  
24 deaths.

25          In your opinion, are the penalties provided in S. 391

1 sufficient or severe enough for the proscribed activities  
2 mentioned in the bill?

3 Mr. Casey: Well, I would not be opposed to more severe  
4 penalties. I believe, however, the fundamental requirement  
5 is that we establish the illegality of this action, the  
6 criminal nature of this activity, and that we do that as  
7 promptly as possible. So I would not be inclined to  
8 encourage the imposition of more severe penalties if that  
9 were to result in a delay in the enactment of the  
10 legislation.

11 Senator Denton: I entirely agree, sir.

12 Senator Leahy?

13 Senator Leahy: Thank you, Mr. Chairman.

14 Mr. Casey, I am always delighted to see you before any  
15 of our committees. I would also want to commend your  
16 department for some help that they provided for me and my  
17 staff during the past few weeks. It was extremely well done  
18 and very professionally done, and I appreciate it.

19 Mr. Casey: Your visits were very helpful to the morale  
20 and spirit of our people.

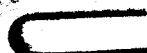
21 Senator Leahy: Thank you, sir.

22 I found an interesting thing in preparing for this that  
23 the American Civil Liberties Union and the Heritage  
24 Foundation in what was probably an historic moment held  
25 hands on one major item; that they feel that the issue is

1 not so much disclosure made by the press or public, but the  
2 question of adequate cover for intelligence officers abroad,  
3 something touched on by the Chairman earlier.

4 I am concerned on that, as I know you are and I know  
5 others here, I see Mr. Maury in the audience, and others who  
6 have expressed the same concern in one regard or another. I  
7 know that many agents' identities have been uncovered  
8 through the use of the State Department's Biographic  
9 Register, I must admit an item that I was not aware of until  
10 I got on the committee and started looking through a copy of  
11 it. I understand that Register is no longer in general  
12 circulation, but it is still published as an unclassified  
13 document.

14 Have you discussed the problem this might create with  
15 Secretary Haig?

16 Mr. Casey: Yes, I have, Senator. I think generally  
17 speaking we are getting a high degree of cooperation on the  
18 provision of official cover. There has been sort of a   
19 resuming of the publication of the State Department's  
20 Biographical Register, and that is under discussion now, the  
21 impact it would have or might have on protecting cover. I  
22 think we will get full cooperation in the Executive Branch  
23 with respect to all steps necessary to provide maximum  
24 cover.

25 Senator Leahy: It occurs to me that both the ACLU and

1 the Heritage Foundation are correct in suggesting that no  
2 matter what kind of laws we might have, if we do not have  
3 adequate cover there is always going to be somebody, for one  
4 reason or other, who is just going to go into something  
5 relatively easy to decipher and make a big thing out of  
6 just passing them out, no matter what their motivation might  
7 be.

8 Mr. Casey: Even the State Department's Biographic  
9 Register took a certain amount of interpretation. It was  
10 not always accurate; but with the nature of this kind of  
11 activity, it does not really matter too much whether it is  
12 accurate or inaccurate, insofar as the damage it imposes and  
13 the disrespect and impairment of morale it creates. So the  
14 publication of false information is almost as damaging as  
15 the publication of the correct information.

16 It is really the "pattern of activity" that I think the  
17 legislation will address, and the thing that needs to be  
18 proscribed.

19 Senator Leahy: Do you know, or has your office come  
20 across cases where the names of agents were disclosed with  
21 reason to believe that that disclosure would impair or  
22 impede the foreign intelligence activities of the United  
23 States, but at the same time felt that the person did so  
24 without any intent of neutralizing the agent or impairing  
25 our intelligence activities?

1 Mr. Casey: Well, I think that there has been  
2 occasional publication in the press which divulged the name  
3 in the course of writing an article intended to generally  
4 inform the public; yes. I do not believe that that kind of  
5 a one-shot publication would be reached by this legislation,  
6 which it is clearly not designed to reach.

7 This bill goes to the active use of the information for  
8 a particular purpose in a particular way. As Senator  
9 Chafee's distinguished Uncle put it: It is not the swinging  
10 of the arm that is proscribed; it is the smashing of the  
11 nose.

12 Senator Leahy: But you also agreed, however, that  
13 under this law we could be dealing simply with one  
14 publication, but a series of events leading up to it.

15 Mr. Casey: Well, we could be; yes. There you have got  
16 "acted in the course of a pattern of activities intended to  
17 identify and expose". Unless the primary purpose is to  
18 divulge a single agent's name, I do not think it would be  
19 reached. You have to have a course or a pattern of  
20 activities intended to identify."

21 Senator Leahy: But it could be one disclosure, but a  
22 pattern of activities leading up to one disclosure.

23 Mr. Casey: The disclosure I think would have to be  
24 part of a pattern of activities.

25 Senator Leahy: But it could be a single exposure.



1 Mr. Casey: It could be a single publication.

2 Senator Leahy: I may have other questions, Mr.

3 Chairman, but I will submit them for the record. I know the  
4 Director has to go to a Cabinet meeting.

5 Senator Denton: Thank you.

6 And I think I should communicate here that Senator  
7 Biden is delayed because of a train accident, all the trains  
8 being held up. He will be here as soon as possible.

9 We would like to thank you very much, Mr. Casey, and  
10 hope that you get to your Cabinet meeting on time, sir.

11 Mr. Casey: I appreciate it very much. Thank you.

12 Senator Denton: Our next witness is Richard K.  
13 Willard, Counsel for Intelligence Policy, Department of  
14 Justice.

15 Good morning, Mr. Willard, and welcome.

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