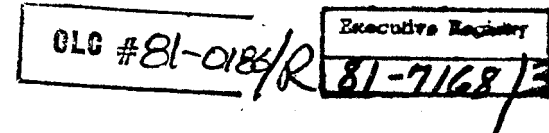


United States Senate

WASHINGTON, D.C. 20510

May 12, 1981



Mr. William Casey
Director of Central Intelligence
Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Casey:

I want to thank you again for your most helpful testimony on S. 391, the Intelligence Identity's Protection Act of 1981.

I would like to get your response, for the record, to three additional questions which time did not permit me to ask at the hearing on Friday. They are as follows:

- 1) You have testified that you have a preference for the "reason to believe" language of Section 601 (c) contained in S. 391, as opposed to the "with the intent to impair or impede" language of Section 601 (c) contained in H.R. 4. I understand that the Justice Department is of the view that this element of the crime would be easier to prove under the language of the Senate Bill than that contained in the House version. My question is, do you know of actual circumstances where the names of agents were disclosed with reason to believe that disclosure would impair or impede the foreign intelligence activities of the United States, but the person did so without any intent of neutralizing a covert agent or impairing or impeding our intelligence activities? (I understand that you may not be able to submit the answer to this question for the public record.)
- 2) By letter dated April 29, 1981, to the House Permanent Select Committee on Intelligence, you suggested a technical amendment to H.R. 4. You suggest including the offenses contained in H.R. 4, the offenses listed in the Privacy Protection Act of 1980, the Stanford Daily legislation, which would give rise to a newsroom search and seizure. You did not raise this amendment in your testimony before the Subcommittee on Security and Terrorism. 1) Is this because you have changed your position? 2) If you have not changed your position, why do you believe it is necessary to expand the list of exemptions to the subpoena-only standard set up in the Stanford Daily legislation? 3) Have you consulted with the Department of Justice about seeking this amendment to H.R. 4?

Mr. Casey

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3) In reporting the Privacy Protection Act of 1980, the Senate Judiciary Committee recognized a legal controversy concerning 18 U.S.C. 793, which covers the espionage offense of gathering, transmitting or losing defense information. The controversy concerned whether that statute required proof of intent to injure the United States or give advantage to a foreign power. There is a conflict of judicial authority on this point. The Committee stated in its report on the bill:

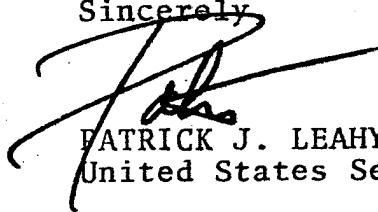
Obviously, the Committee does not attempt to settle this controversy in this bill. However, to the extent that S. 1790 provides a suspect exception related to the national security statutes which are stated, it is the intent of the Committee that with regard to 18 U.S.C. 793 the suspect exception to the ban on searches would apply only if there was an allegation of an intent to injure the United States or give advantage to a foreign power. For the purposes of this Act, the government shall recognize the higher standard, the requirement of intent, before utilizing the suspect exception for searches for materials sought under 18 U.S.C. 793.

S. Rep. 874, 96th Cong., 2d Sess. 12 (1980).

S. 391 presents a similar problem to the Committee if it is to consider a simultaneous amendment to the Privacy Protection Act of 1980. Assuming the Committee considers some amendment to the Stanford Daily legislation, would you support including only section 601 (a) and 601 (b) in the list of exempted statutes, that is, would you support elimination of section 601 (c) which presently does not contain an intent to injure standard?

I look forward to receiving your responses to these questions.

Sincerely



PATRICK J. LEAHY
United States Senator

PJL:kmp