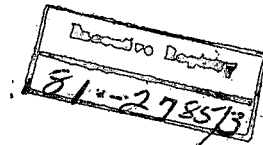


The Director of Central Intelligence

Washington, D.C. 20505



22 DEC 1991

Honorable Strom Thurmond, Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Committee on the Judiciary recently reported S. 1630, the Criminal Code Reform Act of 1981, recommending favorable Senate action. I share the view of the Committee and the Administration that the nation needs a comprehensive revision of the federal criminal code, but I am concerned that the provisions of S. 1630 appear to have been developed without sufficient consideration of their effect on the ability of the Intelligence Community to carry out its mission.

I am sure that the Committee on the Judiciary intended no detriment to the conduct of legitimate foreign intelligence activities, but the provisions of S. 1630 do not clearly reflect that intention. The lack of a definitive statement on the relationship between the proposed criminal code and the conduct of intelligence activities, combined with the proposed code's expansion of extraterritorial federal criminal jurisdiction, gives rise to uncertainties which could seriously impair our intelligence efforts. Moreover, under S. 1630 as reported by the Committee, an intelligence officer engaged in legitimate intelligence activities would be able to rely only on prosecutorial discretion and on the common law defense of exercise of public authority to shield him from criminal liability. Our nation's intelligence officers should not be put in such a position.

Sections 201(b)(1)(B) and 204(i) of S. 1630 establish, for the first time in federal criminal law, general extraterritorial jurisdiction over the conduct of nonmilitary federal public servants outside the United States for the purpose of performing official duties. Offenses defined with domestic circumstances in mind may therefore apply in vastly different circumstances to the activities of public servants abroad. For example, the offenses of Theft (section 1731), Trafficking in Stolen Property (section 1732), Receiving Stolen Property (section 1733), and Executing a Fraudulent Scheme (section 1734), when combined with the new general extraterritorial jurisdiction provision, could be construed to prohibit federal public servants abroad engaged

in the collection of foreign intelligence from clandestinely acquiring foreign documentary materials or other property of foreign intelligence value. Similar problems arise with respect to the relationship of other sections of the Bill to the new general extraterritorial jurisdiction over the conduct of federal public servants. I should also note that provisions of the proposed criminal code could be misconstrued to apply in those limited circumstances in which foreign intelligence activities are properly conducted in the United States.

Comprehensive revision of the criminal code provides the opportunity for an explicit statement that the conduct of legitimate intelligence activities does not give rise to criminal liability, and that the Congress does not intend enactment of the new code to require agencies of the Intelligence Community to apply American criminal law standards throughout the world in the collection of foreign intelligence. I strongly recommend, therefore, that S. 1630 be amended by adding at the end of the Bill the following new section:

"PART KK--EFFECT ON INTELLIGENCE ACTIVITIES

SEC. 731. Nothing in title 18, United States Code, or any other federal criminal statute shall be construed to create criminal liability for the conduct of intelligence activities by a federal public servant that are authorized and conducted in accordance with the Constitution and applicable federal statutes, Executive orders, presidential directives, and departmental or agency regulations, which regulate the conduct of intelligence activities."

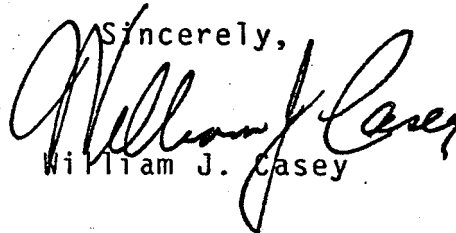
I would emphasize that this provision would protect intelligence officers whose activities are both authorized and conducted in accordance with the Constitution and the well developed, detailed body of statutes, Executive Orders, and implementing procedures regulating the conduct of intelligence activities. The provision would not protect an intelligence officer engaged in an improper intelligence activity, nor would the provision itself authorize any intelligence activity.

In addition to proposed section 731 which will assure harmony between the criminal code and federal law governing the conduct of intelligence activities, several other amendments to S. 1630 are needed to protect federal interests related to intelligence activities. Section 1205 of the Bill provides only partial protection against unauthorized disclosure of diplomatic codes and communications, and several sections of the Bill which protect certain federal public servants and foreign visitors from violent crime fail to protect intelligence personnel. I have enclosed proposed amendments to strengthen these sections.

I believe that one final, and crucial, modification of S. 1630 should be made. The Bill should provide more effective criminal sanctions against espionage and unauthorized disclosure of intelligence information. My staff is studying this issue thoroughly, and I will be forwarding my recommendations on this matter to you separately.

I appreciate very much the opportunity to express my views on this important legislation. I look forward to enactment of a comprehensive federal criminal code which will comport with the nation's need for an effective Intelligence Community.

Sincerely,



William J. Casey

Enclosures

Amendments to S. 1630

Section 1205
Disclosing a Foreign Diplomatic Code or Correspondence

Amendment (pagination of S. 1630 as introduced)

On page 52, strike Section 1205 and substitute:

"1205. Disclosing A Diplomatic Code or Communication

(a) OFFENSE.--A person commits an offense if he, without lawful authority, willfully publishes or otherwise discloses--

- (1) any diplomatic code or any information or matter prepared in such code; or
- (2) any information or matter intercepted while in the process of transmission between a foreign government and its diplomatic missions

to which access was obtained as a federal public servant.

(b) DEFINITIONS.--As used in this section--

- (1) 'information' includes any property from which information may be obtained;
- (2) 'intercept' has the meaning set forth in section 1526(d); and
- (3) 'federal public servant' includes any officer or employee of the United States or of any department or agency thereof, or of any corporation or institution the stock of which is owned in whole or in part by the United States or which is established by the United States to act on its behalf, members of the armed services and contractors of the United States Government and their employees."

Explanation

Section 1205 of S. 1630 is seriously deficient in comparison to the corresponding existing statutory provision, 18 U.S.C. 952, which protects against disclosure of both foreign government diplomatic codes and communications and United States diplomatic codes and communications. The proposed amendment will carry forward the existing statutory protection for both foreign and United States codes and communications. Disclosure of foreign diplomatic codes and communications severely damages the ability of the United States to collect foreign intelligence since foreign nations

will change their codes and methods of communications immediately upon suspecting that the United States has access to them. The United States has an equally grave interest in deterring disclosure of its own diplomatic codes and communications to assure that it can conduct foreign policy effectively and avoid foreign government intelligence efforts directed at the United States.

The proposed amendment represents an advance over existing 18 U.S.C. 952 in two respects: (1) it penalizes disclosure of intercepts of foreign government diplomatic communications with its diplomatic missions outside the United States as well as those located in the United States, and (2) it includes within its ambit contractors and their employees who have access to diplomatic codes or communications in the course of their work for the United States. The amendment retains the current exclusion in 18 U.S.C. 952 of disclosures made with lawful authority.

Amendments to S. 1630

Protection of Intelligence Personnel

Amendments (pagination of S. 1630 as introduced)

[1 - Murder, Manslaughter, Negligent Homicide, Maiming, Aggravated Battery, Battery, Menacing, Terrorizing]

On page 96, line 2 AND page 98, line 10, after the phrase "an employee of the United States Probation System," appears, insert:

"an officer or employee of any department or agency within the Intelligence Community (as defined in section 3.4(f) of Executive Order 12333, December 4, 1981, or successor orders) not already covered under the terms of this subparagraph,".

On page 96, line 19 AND page 98, line 27, strike the word "or".

On page 96, after line 21 AND on page 98, after line 29, insert:

"(I) a person given entry into the United States for permanent residence pursuant to the provisions of section 7 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403h); or

(J) a person certified by the Director of Central Intelligence or his designee to be present in the United States under the auspices of any department or agency within the Intelligence Community (as defined in section 3.4(f) of Executive Order 12333, December 4, 1981, or successor orders);".

[2 - Kidnapping, Aggravated Criminal Restraint, Criminal Restraint]

On page 102, line 8 after the phrase "an employee of the United States Probation System," appears, insert:

"an officer or employee of any department or agency within the Intelligence Community (as defined in section 3.4(f) of Executive Order 12333, December 4, 1981, or successor orders) not already covered under the terms of this subparagraph,".

On page 102, line 16, strike the word "or".

On page 102, after line 18, insert:

"(H) a person given entry into the United States for permanent residence pursuant to the provisions of section 7 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403h); or

(I) a person certified by the Director of Central Intelligence or his designee to be present in the United States under the auspices of any department or agency within the Intelligence Community (as defined in section 3.4(f) of Executive Order 12333, December 4, 1981, or successor orders);".

[3 - Arson, Aggravated Property Destruction, Property Destruction]

On page 108, line 20 strike the word "or", and after line 21 insert:

"(F) a person given entry into the United States for permanent residence pursuant to the provisions of section 7 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403h); or

(G) a person certified by the Director of Central Intelligence or his designee to be present in the United States under the auspices of any department or agency within the Intelligence Community (as defined in section 3.4(f) of Executive Order 12333, December 4, 1981, or successor orders);".

Explanation

The proposed amendments provide federal criminal jurisdiction for certain acts of violence directed at three categories of persons:

- (1) United States intelligence personnel engaged in the performance of official duties,
- (2) aliens admitted to the United States under the Central Intelligence Agency Act of 1949 because of their critically important contributions to the national intelligence mission, and
- (3) foreign nationals temporarily present in the United States under the auspices of a department or agency within the Intelligence Community to further U.S. intelligence objectives.

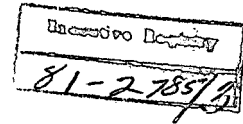
Federal criminal jurisdiction for acts of violence directed at these categories of persons is lacking both under current federal law and under S. 1630, despite the clear and compelling federal interest in protecting these people and prosecuting crimes directed at them.

Under the proposed amendment crimes constituting murder, manslaughter, negligent homicide, maiming, aggravated battery, battery, menacing, terrorizing, kidnapping, aggravated criminal restraint, or criminal restraint would fall within federal criminal jurisdiction if the target of such crimes were a U.S. intelligence officer or employee engaged in official duties, an alien permanently admitted to the U.S. under the CIA Act for his contribution to U.S. intelligence objectives, or an alien temporarily in the U.S. to assist a department or agency within the Intelligence Community. In addition, the crimes of arson, aggravated property destruction, and property destruction would fall within federal criminal jurisdiction if the target of such crimes were an alien permanently admitted to the U.S. under the CIA Act or an alien temporarily in the U.S. to assist a department or agency within the Intelligence Community.

The Senate passed a similar version of this amendment as section 510 of S. 1127, the Intelligence Authorization Act for FY 1982. Subsequently, the House-Senate Conference Committee deleted the provision from the legislation at the insistence of the House conferees due to a jurisdictional dispute between the House Permanent Select Committee on Intelligence and the House Judiciary Committee.

The Director of Central Intelligence

Washington, D.C. 20505



22 DEC 1981

Honorable Barry S. Goldwater, Chairman
Select Committee on Intelligence
United States Senate
Washington, D.C. 20510

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