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INTELLIGENCE IDENTITIES PROTECTION ACT

HEARINGS

BEFORE THE

SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-SIXTH CONGRESS

SECOND SESSION

ON

H.R. 5615

INTELLIGENCE IDENTITIES PROTECTION ACT

AUGUST 19 AND 20, 1980

Serial No. 92

Printed for the use of the Committee on the Judiciary

U.S. GOVERNMENT PRINTING OFFICE

74-882 O WASHINGTON : 1981

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INTELLIGENCE IDENTITIES PROTECTION ACT

TUESDAY, AUGUST 19, 1980

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CIVIL AND CONSTITUTIONAL RIGHTS,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 2:10 p.m., pursuant to call, in room 2237, Rayburn House Office Building, Hon. Don Edwards (chairman of the subcommittee) presiding.

Present: Representatives Edwards, Seiberling, Drinan, Hyde, and Sensenbrenner.

Also present: Catherine A. LeRoy, counsel; Janice E. Cooper, assistant counsel; and Deborah Owen, associate counsel.

Mr. EDWARDS. The subcommittee will come to order.

This afternoon, the subcommittee begins hearings on H.R. 5615, the Intelligence Identities Protection Act. The bill creates criminal penalties for identifying certain covert agents, informants, and sources operating on behalf of U.S. intelligence agencies.

The bill was reported favorably by the House Intelligence Committee on July 25. It has been sequentially referred to the Judiciary Committee at Chairman Rodino's request because it contains several provisions which fall within the jurisdiction of the committee.

In referring the bill to this subcommittee, the chairman has asked that we focus our close attention on those provisions of concern to him and to the committee in the short time we have available.

H.R. 5615 has a criminal justice dimension and a constitutional dimension equal in importance to its national security dimension. That is why the bill was referred to the Judiciary Committee and that will be the focus of our hearings.

[A copy of H.R. 5615 follows:]

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I

96TH CONGRESS
2D SESSION

H.R. 5615

[Report No. 96-1219, Part I]

To amend the National Security Act of 1947 to prohibit the unauthorized disclosure of information identifying certain United States intelligence officers, agents, informants, and sources.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 17, 1979

Mr. BOLAND (for himself, Mr. ZABLOCKI, Mr. BURLISON, Mr. MURPHY of Illinois, Mr. ASPIN, Mr. ROSE, Mr. MAZZOLI, Mr. MINETA, Mr. FOWLER, Mr. ROBINSON, Mr. ASHBROOK, Mr. MCCLORY, Mr. WHITEHURST, and Mr. YOUNG of Florida) introduced the following bill; which was referred to the Permanent Select Committee on Intelligence

AUGUST 1, 1980

Reported with an amendment, referred to the Committee on the Judiciary for a period ending not later than August 26, 1980, for consideration of such provisions of the bill and amendment as fall within its jurisdiction under clause 1(m), rule X and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

A BILL

To amend the National Security Act of 1947 to prohibit the unauthorized disclosure of information identifying certain

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United States intelligence officers, agents, informants, and sources.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 ~~That this Act may be cited as the "Intelligence Identities~~
4 ~~Protection Act".~~
5 ~~SEC. 2. (a) The National Security Act of 1947 is~~
6 ~~amended by adding at the end thereof the following new title:~~
7 ~~"TITLE V—PROTECTION OF CERTAIN NATIONAL~~
8 ~~SECURITY INFORMATION~~
9 ~~"PROTECTION OF IDENTITIES OF CERTAIN UNITED~~
10 ~~STATES UNDERCOVER INTELLIGENCE OFFICERS,~~
11 ~~AGENTS, INFORMANTS, AND SOURCES~~
12 ~~"SEC. 501. (a) Whoever, having or having had author-~~
13 ~~ized access to classified information that—~~
14 ~~"(1) identifies as an officer or employee of an in-~~
15 ~~telligence agency, or as a member of the Armed~~
16 ~~Forces assigned to duty with an intelligence agency,~~
17 ~~any individual (A) who in fact is such an officer, em-~~
18 ~~ployee, or member, (B) whose identity as such an offi-~~
19 ~~cer, employee, or member is classified information, and~~
20 ~~(C) who is serving outside the United States or has~~
21 ~~within the last five years served outside the United~~
22 ~~States; or~~
23 ~~"(2) identifies as being or having been an agent~~
24 ~~of, or informant or source of operational assistance to,~~

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1 an intelligence agency any individual (A) who in fact is
2 or has been such an agent, informant, or source, and
3 (B) whose identity as such an agent, informant, or
4 source is classified information,

5 intentionally discloses to any individual not authorized to re-
6 ceive classified information any information that identifies an
7 individual described in paragraph (1) or (2) as such an officer,
8 employee, or member or as such an agent, informant, or
9 source, knowing or having reason to know that the informa-
10 tion disclosed so identifies such individual and that the United
11 States is taking affirmative measures to conceal such individ-
12 ual's intelligence relationship to the United States, shall be
13 fined not more than $50,000 or imprisoned not more than ten
14 years, or both.

15 "(b) Whoever with the intent to impair or impede the
16 foreign intelligence activities of the United States discloses to
17 any individual not authorized to receive classified information
18 any information that—

19 "(1) identifies as an officer or employee of an in-
20 telligence agency, or as a member of the Armed
21 Forces assigned to duty with an intelligence agency,
22 any individual (A) who in fact is such an officer, em-
23 ployee, or member, (B) whose identity as such an offi-
24 cer, employee, or member is classified information, and
25 (C) who is serving outside the United States or has

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1 within the last five years served outside the United
2 States; or
3 "(2) identifies as being or having been an agent
4 of, or informant or source of operational assistance to,
5 an intelligence agency any individual (A) who in fact is
6 or has been such an agent, informant, or source, and
7 (B) whose identity as such an agent, informant, or
8 source is classified information,
9 knowing or having reason to know that the information dis-
10 closed so identifies such individual and that the United States
11 is taking affirmative measures to conceal such individual's
12 intelligence relationship to the United States, shall be fined
13 not more than $5,000 or imprisoned not more than one year,
14 or both.

15 "DEFENSES AND EXCEPTIONS

16 "SEC. 502. (a) It is a defense to a prosecution under
17 section 501 that before the commission of the offense with
18 which the defendant is charged, the United States had pub-
19 licly acknowledged or revealed the intelligence relationship
20 to the United States of the individual the disclosure of whose
21 intelligence relationship to the United States is the basis for
22 the prosecution.
23 "(b)(1) Subject to paragraph (2), no person other than a
24 person committing an offense under section 501 shall be sub-
25 ject to prosecution under such section by virtue of section 2

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~~or 4 of title 18, United States Code, or shall be subject to prosecution for conspiracy to commit an offense under such section.~~

~~"(2) Paragraph (1) shall not apply in the case of a person who acted with the intent to impair or impede the foreign intelligence activities of the United States.~~

~~"(c) In any prosecution under section 501(b), proof of intentional disclosure of information described in such section, or inferences derived from proof of such disclosure, shall not alone constitute proof of intent to impair or impede the foreign intelligence activities of the United States.~~

~~"(d) It shall not be an offense under section 501 to transmit information described in such section directly to the Select Committee on Intelligence of the Senate or to the Permanent Select Committee on Intelligence of the House of Representatives.~~

~~"EXTRATERRITORIAL JURISDICTION~~

~~"SEC. 503. There is jurisdiction over an offense under section 501 committed outside the United States if the individual committing the offense is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act).~~

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1 "PROVIDING INFORMATION TO CONGRESS

2 "SEC. 504. Nothing in this title shall be construed as
3 authority to withhold information from Congress or from a
4 committeee of either House of Congress.

5 "DEFINITIONS

6 "SEC. 505. For the purposes of this title:

7 "(1) The term 'classified information' means infor-
8 mation or material designated and clearly marked or
9 clearly represented, pursuant to the provisions of a
10 statute or Executive order (or a regulation or order
11 issued pursuant to a statute or Executive order), as re-
12 quiring a specific degree of protection against unau-
13 thorized disclosure for reasons of national security.

14 "(2) The term 'authorized', when used with re-
15 spect to access to classified information, means having
16 authority, right, or permission pursuant to the provi-
17 sions of a statute, Executive order, directive of the
18 head of any department or agency engaged in foreign
19 intelligence or counterintelligence activities, order of a
20 United States district court, or provisions of any Rule
21 of the House of Representatives or resolution of the
22 Senate which assigns responsibility within the respec-
23 tive House of Congress for the oversight of intelligence
24 activities.

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1 ~~"(3) The term 'disclose' means to communicate,~~
2 ~~provide, impart, transmit, transfer, convey, publish, or~~
3 ~~otherwise make available.~~
4 ~~"(4) The term 'intelligence agency' means the~~
5 ~~Central Intelligence Agency or any intelligence compo-~~
6 ~~nent of the Department of Defense.~~
7 ~~"(5) The term 'informant' means any individual~~
8 ~~who furnishes or has furnished information to an intel-~~
9 ~~ligence agency in the course of a confidential relation-~~
10 ~~ship protecting the identity of such individual from~~
11 ~~public disclosure.~~
12 ~~"(6) The terms 'agent', 'informant', and 'source of~~
13 ~~operational assistance' do not include individuals who~~
14 ~~are citizens of the United States residing within the~~
15 ~~United States.~~
16 ~~"(7) The terms 'officer' and 'employee' have the~~
17 ~~meanings given such terms by sections 2104 and 2105,~~
18 ~~respectively, of title 5, United States Code.~~
19 ~~"(8) The term 'Armed Forces' means the Army,~~
20 ~~Navy, Air Force, Marine Corps, and Coast Guard.~~
21 ~~"(9) The term 'United States', when used in a ge-~~
22 ~~ographic sense, means all areas under the territorial~~
23 ~~sovereignty of the United States and the Trust Terri-~~
24 ~~tory of the Pacific Islands.".~~

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1 ~~(b) The table of contents at the beginning of such Act is~~
2 ~~amended by adding at the end thereof the following:~~

~~"TITLE V—PROTECTION OF CERTAIN NATIONAL SECURITY INFORMATION~~

~~"Sec. 501. Protection of identities of certain United States Undercover intelligence officers, agents, informants, and sources.~~
~~"Sec. 502. Defenses and exceptions.~~
~~"Sec. 503. Extraterritorial jurisdiction.~~
~~"Sec. 504. Providing information to Congress.~~
~~"Sec. 505. Definitions.".~~

3 *That this Act may be cited as the "Intelligence Identities*
4 *Protection Act".*

5 *SEC. 2. (a) The National Security Act of 1947 is*
6 *amended by adding at the end thereof the following new title:*

7 *"TITLE V—PROTECTION OF CERTAIN*
8 *NATIONAL SECURITY INFORMATION*

9 *"DISCLOSURE OF IDENTITIES OF CERTAIN UNITED*
10 *STATES UNDERCOVER INTELLIGENCE OFFICERS,*
11 *AGENTS, INFORMANTS, AND SOURCES*

12 *"SEC. 501. (a) Whoever, having or having had author-*
13 *ized access to classified information that identifies a covert*
14 *agent, intentionally discloses any information identifying*
15 *such covert agent to any individual not authorized to receive*
16 *classified information, knowing that the information dis-*
17 *closed so identifies such covert agent and that the United*
18 *States is taking affirmative measures to conceal such covert*
19 *agent's intelligence relationship to the United States, shall be*
20 *fined not more than $50,000 or imprisoned not more than ten*
21 *years, or both.*

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1 *"(b) Whoever, as a result of having authorized access to*
2 *classified information, learns the identity of a covert agent*
3 *and intentionally discloses any information identifying such*
4 *covert agent to any individual not authorized to receive clas-*
5 *sified information, knowing that the information disclosed so*
6 *identifies such covert agent and that the United States is*
7 *taking affirmative measures to conceal such covert agent's*
8 *intelligence relationship to the United States, shall be fined*
9 *not more than $25,000 or imprisoned not more than five*
10 *years, or both.*
11 *"(c) Whoever, in the course of an effort to identify and*
12 *expose covert agents with the intent to impair or impede the*
13 *foreign intelligence activities of the United States, discloses,*
14 *with the intent to impair or impede the foreign intelligence*
15 *activities of the United States, to any individual not author-*
16 *ized to receive classified information, any information that*
17 *identifies a covert agent knowing that the information dis-*
18 *closed so identifies such covert agent and that the United*
19 *States is taking affirmative measures to conceal such covert*
20 *agent's intelligence relationship to the United States, shall be*
21 *fined not more than $15,000 or imprisoned not more than*
22 *three years, or both.*
23 *"DEFENSES AND EXCEPTIONS*
24 *"SEC. 502. (a) It is a defense to a prosecution under*
25 *section 501 that before the commission of the offense with*

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1 *which the defendant is charged, the United States had pub-*
2 *licly acknowledged or revealed the intelligence relationship to*
3 *the United States of the individual the disclosure of whose*
4 *intelligence relationship to the United States is the basis for*
5 *the prosecution.*

6 *"(b)(1) Subject to paragraph (2), no person other than a*
7 *person committing an offense under section 501 shall be sub-*
8 *ject to prosecution under such section by virtue of section 2 or*
9 *4 of title 18, United States Code, or shall be subject to pros-*
10 *ecution for conspiracy to commit an offense under such*
11 *section.*

12 *"(2) Paragraph (1) shall not apply in the case of a*
13 *person who acted in the course of an effort to identify and*
14 *expose covert agents with the intent to impair or impede the*
15 *foreign intelligence activities of the United States.*

16 *"(c) In any prosecution under section 501(c), proof of*
17 *intentional disclosure of information described in such sec-*
18 *tion, or inferences derived from proof of such disclosure, shall*
19 *not alone constitute proof of intent to impair or impede the*
20 *foreign intelligence activities of the United States.*

21 *"(d) It shall not be an offense under section 501 to*
22 *transmit information described in such section directly to the*
23 *Select Committee on Intelligence of the Senate or to the Per-*
24 *manent Select Committee on Intelligence of the House of*
25 *Representatives.*

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1 *"PROCEDURES FOR ESTABLISHING COVER FOR*
2 *INTELLIGENCE OFFICERS AND AGENTS*

3 *"SEC. 503. (a) The President shall establish procedures*
4 *to ensure that any individual who is an officer or employee of*
5 *an intelligence agency, or a member of the Armed Forces*
6 *assigned to duty with an intelligence agency, whose identity*
7 *as such an officer, employee, or member is classified informa-*
8 *tion and which the United States takes affirmative measures*
9 *to conceal, is afforded all appropriate assistance to ensure*
10 *that the identify of such individual as such an officer, em-*
11 *ployee, or member is effectively concealed. Such procedures*
12 *shall provide that any department or agency designated by*
13 *the President for the purposes of this section shall provide*
14 *such assistance as may be determined by the President to be*
15 *necessary in order to establish and effectively maintain the*
16 *secrecy of the identity of such individual as such an officer,*
17 *employee, or member.*

18 *"(b) Procedures established by the President pursuant*
19 *to subsection (a) shall be exempt from any requirement for*
20 *publication or disclosure.*

21 *"EXTRATERRITORIAL JURISDICTION*

22 *"SEC. 504. There is jurisdiction over an offense under*
23 *section 501 committed outside the United States if the indi-*
24 *vidual committing the offense is a citizen of the United*
25 *States or an alien lawfully admitted to the United States for*

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1 *permanent residence (as defined in section 101(a)(20) of the*
2 *Immigration and Nationality Act).*

3 *"PROVIDING INFORMATION TO CONGRESS*

4 *"SEC. 505. Nothing in this title shall be construed as*
5 *authority to withhold information from Congress or from a*
6 *committee of either House of Congress.*

7 *"DEFINITIONS*

8 *"SEC. 506. For the purposes of this title:*
9 *"(1) The term 'classified information' means in-*
10 *formation or material designated and clearly marked*
11 *or clearly represented, pursuant to the provisions of a*
12 *statute or Executive order (or a regulation or order*
13 *issued pursuant to a statute or Executive order), as re-*
14 *quiring a specific degree of protection against unau-*
15 *thorized disclosure for reasons of national security.*
16 *"(2) The term 'authorized', when used with re-*
17 *spect to access to classified information, means having*
18 *authority, right, or permission pursuant to the provi-*
19 *sions of a statute, Executive order, directive of the*
20 *head of any department or agency engaged in foreign*
21 *intelligence or counterintelligence activities, order of a*
22 *United States court, or provisions of any Rule of the*
23 *House of Representatives or resolution of the Senate*
24 *which assigns responsibility within the respective*

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1 *House of Congress for the oversight of intelligence*
2 *activities.*
3 *"(3) The term 'disclose' means to communicate,*
4 *provide, impart, transmit, transfer, convey, publish, or*
5 *otherwise make available.*
6 *"(4) The term 'covert agent' means—*
7 *"(A) an officer or employee of an intelligence*
8 *agency, or a member of the Armed Forces as-*
9 *signed to duty with an intelligence agency—*
10 *"(i) whose identity as such an officer,*
11 *employee, or member is classified informa-*
12 *tion, and*
13 *"(ii) who is serving outside the United*
14 *States or has within the last five years*
15 *served outside the United States;*
16 *"(B) a United States citizen whose intelli-*
17 *gence relationship to the United States is classi-*
18 *fied information and—*
19 *(i) who resides and acts outside the*
20 *United States as an agent of, or informant*
21 *or source of operational assistance to, an in-*
22 *telligence agency, or*
23 *"(ii) who is at the time of the disclosure*
24 *acting as an agent of, or informant to, the*
25 *foreign counterintelligence or foreign counter-*

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1 *terrorism components of the Federal Bureau*
2 *of Investigation; or*
3 *"(C) an individual, other than a United*
4 *States citizen, whose past or present intelligence*
5 *relationship to the United States is classified and*
6 *who is a present or former agent of, or a present*
7 *or former informant or source of operational as-*
8 *sistance to, an intelligence agency.*
9 *"(5) The term 'intelligence agency' means the*
10 *Central Intelligence Agency, the foreign intelligence*
11 *components of the Department of Defense, or the for-*
12 *eign counterintelligence or foreign counterterrorist com-*
13 *ponents of the Federal Bureau of Investigation.*
14 *"(6) The term 'informant' means any individual*
15 *who furnishes information to an intelligence agency in*
16 *the course of a confidential relationship protecting the*
17 *identity of such individual from public disclosure.*
18 *"(7) The terms 'officer' and 'employee' have the*
19 *meanings given such terms by sections 2104 and 2105,*
20 *respectively, of title 5, United States Code.*
21 *"(8) The term 'Armed Forces' means the Army,*
22 *Navy, Air Force, Marine Corps, and Coast Guard.*
23 *"(9) The term 'United States', when used in a*
24 *geographic sense, means all areas under the territorial*

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1 *sovereignty of the United States and the Trust Terri-*
2 *tory of the Pacific Islands.".*
3 *(b) The table of contents at the beginning of such Act is*
4 *amended by adding at the end thereof the following:*

"TITLE V—PROTECTION OF CERTAIN NATIONAL SECURITY INFORMATION

"Sec. 501. Disclosure of identities of certain United States undercover intelligence officers, agents, informants, and sources.
"Sec. 502. Defenses and exceptions.
"Sec. 503. Procedures for establishing cover for intelligence officers and employees.
"Sec. 504. Extraterritorial jurisdiction.
"Sec. 505. Providing information to Congress.
"Sec. 506. Definitions.".

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Mr. EDWARDS. Our first witness is Mr. Robert Keuch, Associate Deputy Attorney General for the Department of Justice. He has been the primary departmental and administration spokesman throughout the evolution of an agents' identities bill. Once legislation is enacted, it will be the Department's task to prosecute cases under it, and to defend it from possible constitutional attacks. Thus, as the Department's representative, Mr. Keuch is well qualified to help us analyze the legislation before us.

Mr. Keuch, we welcome you and you may proceed.

TESTIMONY OF ROBERT L. KEUCH, ASSOCIATE DEPUTY ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, ACCOMPANIED BY FREDERICK P. HITZ, LEGISLATIVE COUNSEL, CENTRAL INTELLIGENCE AGENCY

Mr. EDWARDS. Accompanying Mr. Keuch is Mr. Fred Hitz; is that correct?

Mr. HITZ. Yes, sir.

Mr. EDWARDS. And your official title is what, Mr. Hitz?

Mr. HITZ. Legislative Counsel, Central Intelligence Agency.

Mr. EDWARDS. Right.

Mr. Keuch, we are delighted to have you.

Mr. Hyde?

Mr. HYDE. Thank you, Mr. Chairman.

H.R. 5615 is part of an important effort to combat a serious threat to our intelligence-gathering efforts. That threat is the callous and unconscionable revelation of the identities of our covert intelligence agents.

This unfortunate situation has existed for many years, at least as far back as 1975 when the CIA Station Chief in Athens was assassinated following public disclosure of his covert status.

This problem promises to continue unless prompt and firm action is taken by Congress. Since the Administration and the majority leader in the House have expressed strong support for such legislation, we are all seemingly in agreement on the goal to be achieved. The only question that remains involves mechanics.

We are also in agreement with respect to the proposition that first amendment aspects of this legislation must be carefully considered and accommodated. We are faced with the difficult task of balancing freedom of speech and our national security concerns. Of course, if our national security is not preserved, our first amendment rights may disappear as well.

It is important for us to identify the precise first amendment rights that are involved here. Where individuals intentionally disclose the identities of undercover agents with reason to believe that such disclosure will impair our intelligence activities, they should not be permitted to hide their ulterior motives behind the claim of first amendment liberties rights. Such individuals hamper the efforts of conscientious journalists.

The House Intelligence Committee held hearings on this important issue and, based on the testimony they heard, reported a bill which attempts to balance our intelligence needs and first amendment rights, particularly with respect to individuals who have not had access to classified information. The Senate Intelligence Committee has made a similar effort.

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I look forward to hearing the comments of our witnesses on these efforts, and hope that legislation can be enacted promptly so that these evils can be quickly remedied.

Mr. EDWARDS. The gentleman from Massachusetts.

Mr. DRINAN. I thank the witnesses and look forward to their presentation on a very important and complex subject. Thank you very much.

Mr. EDWARDS. Mr. Keuch.

[The prepared statement of Mr. Keuch follows:]

STATEMENT OF ROBERT L. KEUCH, ASSOCIATE DEPUTY ATTORNEY GENERAL

Mr. Chairman and Members of the Subcommittee, I am pleased to appear today to comment on the bill recently reported by the House Intelligence Committee and referred to this Subcommittee in an area of critical importance—protecting the confidential identities of intelligence agents and sources who serve this country overseas. My remarks will be brief, because I have testified extensively about this legislation during its development.

Seven months ago, when I testified before the House Intelligence Committee on its earlier draft bill—that is, H.R. 5615 before it was amended—I expressed the Department's concern about the potential breadth of the bill's coverage. We were concerned, first, that the bill would have punished individuals who did not knowingly identify covert agents and sources, but who only revealed indirect information that they had "reason to know" would have an identifying effect. The Committee has tightened the bill in that respect, now requiring that any identification be knowing, and we agree with the wisdom of the change.

A second concern of the Department had been the breadth of coverage provided for disclosures based on public record information. As originally put, the bill not only criminalized use of classified information to identify agents, and disclosures by former government employees, but it also criminalized any use by any individual of information from the public record to reveal even a single covert identity, so long as the government could demonstrate the requisite intent on the part of the person to "impair or impede the foreign intelligence activities" of the United States. We were concerned that legitimate news reporting on foreign policy and foreign affairs, and even dinner-table political debate by citizens, might be chilled by the breadth of that provision. The Committee has gone far to meet this concern by providing that a single act of disclosure would be covered only if it is a part of an ongoing effort to destroy intelligence covers—or to use the amended bill's exact language, only if it occurs "in the course of an effort to identify and expose covert agents". The Committee Report makes clear that the disclosure of the name of an agent or a source, if integral to a serious discussion of the nature of American involvement in a certain country or area or a question of intelligence policy, would not be the target of the bill's prohibition. While, as I will note later, we believe this concept is better described in the Senate bill, the embodiment of the concept in the draft bill is an improvement which could be supported.

However, the bill as drafted carries forward the requirement of the original draft that an individual must have had "intent to impair or impede the foreign intelligence activities of the United States," in contrast to the Senate bill which requires that an individual need only have had "reason to believe" that his activities "would impair or impede the foreign intelligence activities of the United States." As I have previously testified, the former scienter requirement causes serious prosecutorial and constitutional concerns. In my testimony before the House Intelligence Committee, I said, and I quote:

"The scienter requirement—that an individual must have acted with "intent to impair or impede the foreign intelligence activities of the United States"—is not a fully adequate way of narrowing the provision. First, even such a scienter standard could have the effect of chilling legitimate critique and debate on CIA policy. A mainstream journalist, who may occasionally write stories based on public information mentioning which foreign individuals are thought to have intelligence relationships with the U.S., might be fearful that any later stories critical of the CIA could be used as evidence of an intent to "impede" foreign intelligence activities. Speculation concerning intelligence activity and actors abroad would be seemingly more hazardous if one had even taken even a general position critical of the conduct of our covert foreign intelligence activity.

"And yet, even as it may chill legitimate journalists, that same intent requirement would pose a serious obstacle in any attempted use of § 501(b) to prosecute

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individuals who for no reasonable purpose of public debate expose wholesale lists of our intelligence operatives. The intent element mandates that in every case where a defendant fails to admit an intent to impair or impede, a serious jury question on the issue of intent will arise. A defendant could claim that his intent was to expose to the American people questionable intelligence gathering operations which he "believed" to be improper, rather than to disrupt intelligence operations, and the government may find it a practical impossiblitiy to ultimately establish the requisite intent beyond a reasonable doubt, thereby rendering the statute ineffective.

"Second, and perhaps more importantly, the intent element will facilitate "graymail" efforts by a defendant to dissuade the government from proceeding with the prosecution. Under § 501(b) of the House bill, a defendant will be able to argue for disclosure, either pretrial or at trial, of sensitive classified information relating to the alleged activities of covert agents, on the ground that the information is relevant to the issue of whether he intended the revelations of identity to "impede" American intelligence activities or rather intended the revelations to lead to supposed reform or improvement of future intelligence activities."

The addition of the "effort to expose" concept to the original House Intelligence Committee bill is an attempt to meet these concerns. While the constitutional questions have been narrowed, our concern remains and there are clear prosecutorial advantages in the Senate version of the bill. Moreover, as is inherent in the previous testimony which I quoted, the House Intelligence Committee's specific intent requirement tends to invite a "good faith" defense—the claim by a defendant that while his disclosure may have hampered the success of a particular intelligence operation or project, his overall purpose was to alert the Congress and the American public to a necessary reform of intelligence policy, or to point out an intelligence operation that was unwise or illegal, and that he had no desire or intention to injure our overall intelligence capability. The Senate "reason to know" standard would, we believe, more easily exclude such a good faith defense.

Finally, as noted we would suggest that the narrowing phrase used by the Senate bill in its public record provision better describes the sort of concerted, extended, almost recidivist activity which we seek to criminalize, than does the phrase of the House bill. The Senate bill covers a disclosure based on public record material only when it is part of a "pattern of activities" intended to expose agents. The House bill instead covers any disclosure made in the course of an "effort" to expose. Although, the House Report makes reasonably clear that the two phrases have the same aim; for instance, the House Report speaks of "systematized identification and disclosure," and a "conscious plan to seek out" identities, and a "practice to ferret out and then expose". But we believe that the Senate statutory language, the phrase "pattern of activities", somewhat better captures the necessary concerted nature of the activity than does the House phrase.

Mr. Chairman, legislation in this area is critical to the moral and continuity of our intelligence service, to the confidence that foreign sources have in us, and to our ability to protect national security in a hostile world. The Department strongly recommends that the Judiciary Committee report out an agent identities bill with a favorable recommendation, so that we can look forward to passage in this Congress.

Thank you very much.

Mr. KEUCH. Mr. Chairman and members of the subcommittee, I am pleased to appear today to comment on the bill recently reported by the House Intelligence Committee and referred to this subcommittee in an area of critical importance—protecting the confidential identities of intelligence agents and sources who serve this country overseas.

My remarks will be brief, because I have testified extensively about this legislation during its development.

Seven months ago, when I testified before the House Intelligence Committee on its earlier draft bill—that is, H.R. 5615 before it was amended—I expressed the Department's concern about the potential breadth of the bill's coverage.

We were concerned, first, that the bill would have punished individuals who did not knowingly identify covert agents and sources, but who only revealed indirect information that they had "reason to know" would have an identifying effect.

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As originally put, the bill not only criminalized use of classified information to identify agents, and disclosures by former Government employees, but it also criminalized any use by any individual of information from the public record to reveal even a single covert identity, so long as the Government could demonstrate the requisite intent on the part of the person to "impair or impede the foreign intelligence activities" of the United States.

We were concerned that legitimate news reporting on foreign policy and foreign affairs, and even dinner table political debate by citizens, might be chilled by the breadth of that provision.

The committee has gone far to meet this concern by providing that a single act of disclosure would be covered only if it is part of an ongoing effort to destroy intelligence covers—or to use the amended bill's exact language, only if it occurs "in the course of an effort to identify and expose covert agents."

The committee report makes clear that the disclosure of the name of an agent or a source, if integral to a serious discussion of the nature of American involvement in a certain country or area or a question of intelligence policy, would not be the target of the bill's prohibition.

While, as I will note later, we believe this concept is perhaps better described in the Senate bill, the embodiment of the concept in the draft bill is an improvement which could be supported.

However, the bill as drafted carries forward the requirement of the original draft that an individual must have had "intent to impair or impede the foreign intelligence activities of the United States."

This is in contrast to the Senate bill which requires that an individual need only have had "reason to believe" that his activities "would impair or impede the foreign intelligence activities of the United States."

As I have previously testified, the former scienter requirement causes serious prosecutorial and constitutional concerns. In my testimony before the House Intelligence Committee, I said, and I quote:

> The scienter requirement—that an individual must have acted with "intent to impair or impede the foreign intelligence activities of the United States"—is not a fully adequate way of narrowing the provision.
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> First, even such a scienter standard could have the effect of chilling legitimate critique and debate on CIA policy. A mainstream journalist, who may occasionally write stories based on public information mentioning which foreign individuals are thought to have intelligence relationships with the U.S., might be fearful that any later stories critical of the CIA could be used as evidence of an intent to "impede" foreign intelligence activities.
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> And yet, even as it may chill legitimate journalists, that same intent requirement would pose a serious obstacle in any attempted use of section 501(b) to prosecute individuals who for no reasonable purpose of public debate expose wholesale lists of our intelligence operatives.

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The intent element mandates that in every case where a defendant fails to admit an intent to impair or impede, a serious jury question on the issue of intent will arise. A defendant could claim that his intent was to expose to the American people questionable intelligence gathering operations which he "believed" to be improper, rather than to disrupt intelligence operations, and the government may find it a practical impossibility to ultimately establish the requisite intent beyond a reasonable doubt, thereby rendering the statute ineffective.

Second, and perhaps more importantly, the intent element will facilitate "graymail" efforts by a defendant to dissuade the government from proceeding with the prosecution.

Under section 501(b) of the House bill, a defendant will be able to argue for disclosure, either pretrial or at trial, of sensitive classified information relating to the alleged activities of covert agents, on the ground that the information is relevant to the issue of whether he intended the revelations of identity to "impede" American intelligence activities or rather intended the revelations to lead to supposed reform or improvement of future intelligence activities.

The addition of the "effort to expose" concept to the original House Intelligence Committee bill is an attempt to meet those concerns. While the constitutional questions have been narrowed, our concern remains and there are clear prosecutorial advantages in the Senate version of the bill.

Moreover, as is inherent in the previous testimony which I quoted, the House Intelligence Committee's specific intent requirement tends to invite a "good faith" defense—the claim by a defendant that while his disclosure may have hampered the success of a particular intelligence operation or project, his overall purpose was to alert the Congress and the American public to a necessary reform of intelligence policy, or to point out an intelligence operation that was unwise or illegal, and that he had no desire or intention to injure our overall intelligence capability.

The Senate "reason to know" standard would, we believe, more easily exclude such a good faith defense.

Finally, as noted, we would suggest that the narrowing phrase used by the Senate bill in its public record provision better describes the sort of concerted, extended, almost recidivist activity which we seek to criminalize, than does the phrase of the House bill.

The Senate bill covers a disclosure based on public record material only when it is part of a "pattern of activities" intended to expose agents.

The House bill instead covers any disclosure made in the course of an "effort" to expose. The House report makes reasonably clear that the two phrases have the same aim; for instance, the House report speaks of "systematized identification and disclosure," and a "conscious plan to seek out" identities, and a "practice to ferret out and then expose."

But we believe that the Senate statutory language, the phrase "pattern of activities," somewhat better captures the necessary concerted nature of the activity than does the House phrase.

Mr. Chairman, legislation in this area is critical to the morale and continuity of our intelligence service, to the confidence that foreign sources have in us, and to our ability to protect national security in a hostile world.

The Department strongly recommends that the Judiciary Committee report out an agent identities bill with a favorable recommendation, so that we can look forward to passage in this Congress.

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Thank you very much.

Mr. EDWARDS. Thank you, Mr. Keuch.

Mr. Hitz, I believe that you have a statement that, without objection, will be made a part of the record, and you may proceed.

[The prepared statement of Mr. Hitz follows:]

STATEMENT OF FREDERICK P. HITZ, LEGISLATIVE COUNSEL

Mr. Chairman, I want to thank you and the other distinguished members of this Subcommittee for the opportunity to discuss legislation which I consider to be urgently needed and vital to the future success of our country's foreign intelligence collection efforts.

I start this afternoon from the premise that our efforts to collect information about the plans and intentions of our potential adversaries cannot be effective in a climate that condones revelation of a central means by which those efforts are conducted. The impunity with which misguided individuals can disclose the indentities for our undercover officers and employees and our foreign agents and sources has had a harmfull effect on our intelligence program. Equally significant is the increased risk and danger such disclosures pose to the men and women who are serving the United States in difficult assignments abroad. It is outrageous that dedicated people engaged or assisting in U.S. foreign intelligence activities can be endangered by a few individuals whose avowed purpose is to destroy the effectiveness of activities and programs duly authorized by the Congress.

Mr. Chairman, recent world events have dramatically demonstrated the importance of maintaining a strong and effective intelligence apparatus. The Intelligence Community must have both the material and the human resources needed to enhance its ability to monitor the military activities of our adversaries and to provide insights into the political, economic, and social forces which will shape world affairs in the 1980's. It is particularly important that every effort be made to protect our intelligence officers and sources. It is imperative that the Congress clearly and firmly declare that the unauthorized disclosure of the identities of our intelligence officers and those allied in out efforts will no longer be tolerated. The President has expressed his determination to "increase our efforts to guard against damage to our crucial intelligence sources and our methods of collection, without impairing civil and constitutional rights." We recognize that legislation in this area must be carefully drawn; it must safeguard the nation's intelligence capabilities without impairing the first amendment rights of Americans or interfering with congressional oversight.

Mr. Chairman, at this point I would like to make clear for the record the damage that is being caused by the unauthorized disclosure of intelligence identities. I would then like to address briefly several fallacies and misconceptions that have crept into public discussion and debate about the problem. Finally, I will deal with the issue of how a legislative remedy can be structured so as to discourage these unauthorized disclosures without impairing the rights of Americans or interfering with Congressional oversight.

Obviously, security considerations preclude my confirming or denying specific instances of purported identification of U.S. intelligence personnel. Suffice it to say that a substantial number of these disclosures have been accurate. The destructive effects of these disclosures have been varied and wide-ranging.

Our relations with foreign sources of intelligence have been impaired. Sources have evinced increased concern for their own safety. Some active sources, and individuals contemplating cooperation with the United States, have terminated or reduced their contact with us. Sources have questioned how the United States government can expect its friends to provide information in view of continuing disclosures of information that may jeopardize their careers, liberty and very lives.

Many foreign intelligence services with which we have important liaison relationships have undertaken reviews of their relations with us. Some immediately discernible results of continuing disclosures include reduction of contact and reduced passage of information. In taking these actions, some foreign services have explicitly cited disclosures of intelligence identities.

We are increasingly being asked to explain how we can guarantee the safety of individuals who cooperate with us when we cannot protect our own officers from exposure. You can imagine the chilling effect must have on a source to one day discover that the individual with whom he has been in contact has been openly identified as a CIA officer.

The professional effectiveness of officers so compromised is substantially and sometimes irreparably damaged. They must reduce or break contact with sensitive

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covert sources. Continued contact must be coupled with increased defensive measures that are inevitably more costly and time-consuming. Some officers must be removed from their assignments and returned from overseas at substantial cost. Years of irreplaceable area experience and linguistic skill are lost. Reassignment mobility of the compromised officer is impaired. As a result, the pool of experienced CIA officers is being reduced. Such losses are deeply felt in view of the fact that, in comparison with the intelligence services of our adversaries, we are not a large organization. Replacement of officers thus compromised is difficult and, in some cases, impossible. Once an officer's identity is disclosed, moreover, counterintelligence analysis by adversary services allows the officer's previous assignments to be scrutinized, producing an expanded pattern of compromise through association. Such disclosures also sensitize hostile security services and foreign populations to CIA presence, making our job far more difficult. Finally, such disclosures can place intelligence personnel and their families in physical danger from terrorist or violence-prone organizations. I need only cite to you the recent disclosures in Jamaica by Louis Wolf, one of the editors of the Covert Action Information Bulletin, and the subsequent attempts made on the lives of U.S. Government employees there.

Mr. Chairman, it is essential to bear in mind that the collection of intelligence is something of an art. The success of our officers overseas depends to a very large extent on intangible psychological and human chemistry factors, on feelings of trust and confidence that human beings engender in each other, and on atmosphere and milieu. Unauthorized disclosure of identities information destroys that chemistry. While we can document a number of specific cases, the Committee must understand that there is no way to document the loss of potential sources who fail to contact us because of lack of confidence in our ability to protect their identities.

Mr. Chairman, in a time when human sources of intelligence are of critical importance, there can be no doubt that unauthorized disclosures of identities of our officers, agents, and sources constitute a serious threat to our national security. The threat may not be as direct and obvious as the disclosure of military contingency plans or information on weapons systems. It is indirect and sometimes hard to grasp. But the net key result is damaged intelligence capability and reduced national security.

Those who seek to destroy the intelligence capabilities of the United States, and others, whose opposition to identities legislation is based upon genuine concern about first amendment considerations, have propagated a number of fallacies and misconceptions. Understandably, some of these have found their way into discussions of identities legislation before the Congress and in the press.

One of these fallacies is that accurate identification of CIA personnel under cover can be made merely by consulting publicly available documents, like the State Department's Biographic Register, and that identities legislation would impinge on discussion of information that is in the public domain. This is absolutely untrue. There is no official unclassified listing anywhere that identifies undercover CIA officers. The intelligence relationships which we are seeking to protect are classified, and a great deal of money and effort is expended to maintain their secrecy. The names of individuals who are intelligence officers do appear in certain unclassified documents, but they are not identified as intelligence officers. This is consistent with our need to establish and maintain cover to conceal the officer's intelligence affiliation. The State Department Biographic Register, and unclassified document until 1975, and similar documents cannot be used, without additional specialized knowledge and substantial effort, to make accurate identifications of intelligence personnel. It is only because of the disclosure of sensitive information based on privileged access and made by faithless government employees with the purpose of damaging U.S. intelligence efforts, that the public has become aware of indicators in these documents that can sometimes be used to distinguish CIA officers. It is noteworthy, however, that these indicators do not invariably lead to correct identifications. The substantial number of accurate identifications that are being made by the Covert Action Information Bulletin long after the Biographic Register ceased to be publicly available indicates that these disclosures are based on extensive additional investigation, presumably using many of the same techniques as any intelligence service uses in its counterintelligence efforts. In this regard I would like to quote to you from the Senate report:

". . . [T]he Committee rejected the contention that the identities of imperfectly covered intelligence personnel are . . . part of the public record. They are not. Those seeking to learn them without the use of classified information must frequently engage in physical surveillance, in search of personnel records, in interviews with neighbors and former colleagues. All of this amounts to a comprehensive counterintelligence effort. It may be that one does not have to be or to have been an intelligence officer in order to learn and reveal the identities of American undercov-

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er agents. But in that case one must often behave as a counterintelligence officer, using systematic investigative techniques, against the United States. The Committee [SSCI] has decided that certain identities should be protected both against betrayal of classified information and against such self-appointed counterspies."

Another fallacy widely circulated by opponents of identities legislation is that prohibition of the unauthorized disclosure of intelligence identities would stifle discussion of important intelligence and foreign policy issues. This simply is not so. Identities legislation is not designed to forestall criticism of intelligence activities, prevent the exposure of wrongdoing, or "chill" public debate on intelligence and foreign policy matters. Rather, such legislation would protect a narrow, essential element of our nation's foreign intelligence programs for which the Congress appropriates taxpayer dollars year after year. In this regard, it is important to recall that virtually all of the legitimate official and unofficial examinations of intelligence activities which have taken place over the past several years have been accomplished without the revelation of intelligence identities of the kind we are seeking to protect. Extensive public and congressional scrutiny and criticism of intelligence activities has taken place without recourse to wholesale disclosure of the names of intelligence personnel. Mr. Chairman, identities legislation is designed to discourage activity that threatens the very lifeblood of our nation's intelligence apparatus. I urge the Subcommittee to examine closely the claims of those who contend that there are legitimate reasons for the unauthorized disclosure of intelligence identities and that such disclosures are in the public interest. These claims are without merit and must be rejected when weighed against real and certain damage to the national interest.

Another serious misconception which has arisen in connection with the debate over identities legislation is the contention that such a statute would prevent legitimate "whistle-blowing" by individuals whose intent is to expose alleged illegality or impropriety. A properly drafted statute will have no such effect. Provision can be made to ensure that the transmittal of information to the House and Senate Intelligence Committees is not covered by the statute's prohibitions, and we support language such as that contained in subsection 502(d) of H.R. 5615. Identities legislation, therefore, need not impact at all on those whose legitimate purpose is to report alleged wrongdoing.

Still another misconception is the contention that passage of identities legislation would spell the end of efforts to enact comprehensive intelligence charter legislation. It has been suggested that the Intelligence Community would lose interest in a comprehensive charter if an identities bill were to be enacted separately. Mr. Chairman, the commitment of the Intelligence Community to comprehensive charter legislation is well known and has been stated often. I state it again before you today. We sincerely regret that it was not possible to proceed with a full charter bill this year. The Intelligence Community's interest in charter legislation will not evaporate upon passage of a separate identities bill. Identities legislation is urgently needed and should proceed on its own merit. It must not be held hostage to comprehensive charter legislation and be made to wait for the 97th Congress to convene.

Mr. Chairman, I would like now to discuss how identities legislation can be structured so as to effectively proscribe the most damaging unauthorized disclosures without impairing the rights of Americans or interfering with Congressional oversight.

Congress should enact legislation which will fully remedy the problems we face. Passage of a statute that is too limited in its coverage, that could be easily circumvented, or which would go unenforced because of unmeetable burdens of proof would be counterproductive. Such a statute would give the impression of solving the problem without actually doing so.

Legislation in this area should, first of all, hold current and former government employees and others who have had authorized access to classified identities information to a higher standard than persons who have not had such access. Such individuals, because of their employment relationships or other positions of trust, can legitimately be held accountable for the deliberate disclosure of any identity they know, or have reason to know, is protected by the United States.

With regard to such individuals, the legislation should require proof that a disclosure is made with culpable knowledge, or with knowledge of sufficient facts to make the average person aware of the nature and gravity of his actions. This is an important element because it must describe a state of mind which will support the attachment of criminal sanctions, and at the same time be capable of proof in the kinds of disclosure cases which have been damaging. If a person with authorized access discloses information knowing that it identifies an intelligence officer under cover, that person should be considered to have acted with culpable knowledge. The

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knowledge formulation must not be so difficult of proof as to render the statute useless. We would oppose, therefore, any requirement such as the one contained in Representative Aspin's Bill, H.R. 6820, for the government to prove that the specific information disclosed was acquired during the course of the individual's official duties.

Mr. Chairman, a statute in this area, if it is to be effective, must also cover those who have not had an employment or other relationship of trust with the United States involving authorized access to classified identities information.

Additional safeguards are in order with respect to the broader coverage which is sought by the Administration. I will touch upon these in the context of discussing the specifics of the two Bills recently reported by both House and Senate Intelligence Oversight Committees, H.R. 5615 and S. 2216 respectively. These Bills were reported late last month following the Jamaican incidents described earlier in my testimony. They go a long way in attempting to fashion an effective legislative remedy.

Both the House and Senate versions create three categories of the offense of disclosures of intelligence identities:

A. Disclosures of a "covert agent" by persons who have or have not had authorized access to classified information that identifies such a covert agent. This category covers primarily disclosure by intelligence agency employees and others who get access to classified information that directly identifies or names agents and persons under cover.

B. Disclosure of a "covert agent" by persons who have learned the identity as a result of authorized access to classified information. This category covers disclosures by any person who learns the identity of a covert agent as a result of government service or other government relationship and access to classified information that does not identify or name a specific agent or person under cover. For example, this would cover the State Department employee who learns that the CIA occupies a certain part of a given embassy building.

C. Disclosure of a "covert agent" by anyone who makes the disclosure in the course of an effort to disclose covert agents with intent to impair or impeded intelligence activities (House version) or as part of a pattern of activities intended to identify and expose covert agents with reason to believe that such activities will impair or impede foreign intelligence activities (Senate version). While the House and Senate Intelligence Committees versions differ here, this category is intended to encompass persons like Louis Wolf and to exclude "reputable" journalists. I will discuss the difference in the House and Senate language more fully.

All three categories of the offense have, in both versions, several common elements:

a. First, the person disclosed must be a "covert agent." This is a defined term in both versions and includes (1) officers and employees of intelligence agencies whose identities are classified and who are serving or have, within the last five years, served outside the United States; (2) agents and sources who are U.S. citizens and who reside outside the U.S. or who are agents of or informants to the foreign counterintelligence or foreign counterterrorism components of the FBI, and whose identities are classified information; and, (3) foreign agents and sources of an intelligence agency whose intelligence relationship to the United States is classified information.

b. Second, the disclosure must be to a person not authorized to receive classified information. This means that the government would have to prove that the identity was revealed to some uncleared person. Thus, some employee disclosures, such as disclosure by a CIA employee of a cover identity to someone in the Commerce Department would not be an offense if the person receiving the identity was cleared for access to classified information. The CIA employee would be subject to administrative disciplinary sanctions, however.

c. Third, the cover identity of the covert agent or such agent's intelligence relationship to the United States must be classified.

d. Forth, the person making the disclosure must know that the United States is taking affirmative measures to conceal the covert agent's intelligence relationship to the United States. Affirmative measures include, but are not limited to, the establishment and maintenance of a cover identity and the use of clandestine means of communication.

e. Finally, the information disclosed which identifies any covert agent need not be classified information. Any information which identifies a covert agent can be used to establish the offense if the other elements are present. This is particularly important under the third category of the offense which does not require the government to prove that the person making the disclosure had authorized access to classified information. Thus, under this category, if all the other elements are

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present, the government would be able to establish the offense even if the defendant claims he obtained the information from publicly available sources.

The only difference in the substantive offenses created by the House and Senate versions is found in the category which is intended primarily to cover nonemployees and which does not require a showing that the person making the disclosure had authorized access to the classified information.

The House version provides in subsection 501(c) that—

"Whoever, *in the course of an effort to identify and expose covert agents with the intent to impair or impede the foreign intelligence activities of the United States,* discloses, *with the intent to impair or impede the foreign intelligence activities of the United States,* to any individual not authorized to receive classified information. . . ."

This formulation contains a dual intent requirement. Under it the government would have to prove that the disclosure was made in the course of an effort to identify and expose covert agents with the intent to impair or impede the foreign intelligence activities of the United States, *and* that the actual disclosure of the covert agent was made with the intent to impair or impede such foreign intelligence activities. The Department of Justice objects to this formulation for the following reasons. First there could be very real difficulties in proving intent in some situations where the record may not be as clear as it is with Philip Agee or Covert Action Information Bulletin. Secondly, the Department is concerned that such a subjective intent standard will impermissibly "chill" speech and press criticism of CIA in other areas as a result of fear that such criticism would be evidence of intent to impair or impeded the foreign intelligence activities of the United States.

The Senate version provides in subsection 510(c) that—

"Whoever, *in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States,* discloses any information that identifies an individual as a covert agent to any individual not authorized to receive classified information. . . ."

First, in contrast the House version, the Senate version has only a single intent standard which would be easier to prove. Under the Senate language, the government would only have to prove that the disclosure occurred in the course of a pattern of activities intended to identify and expose covert agents, and would not have to show that there was intent to impair or impede foreign intelligence activities. Second, the government would have to show that the person making the disclosure had reason to believe that such pattern of activities would impair or impede the foreign intelligence activities of the United States. This element would be easier to prove than the second intent element in the House version ("intent to impair or impede foreign intelligence activities of the United States") since the element required is an "objective" one, based on what a reasonable man would be expected to know. Under such a standard the U.S. Attorney General must convince a jury that a reasonable man should know that impairment of foreign intelligence would result from disclosures like those made by Covert Action Information Bulletin. Finally, the "pattern of activities" language of the Senate version requires more than proof of just a single effort at disclosures, as under the House version. While this Senate language may mean that a single first-time disclosure standing alone would not constitute a "pattern of activities," it provides the necessary protection to assure the press that one-time disclosures for "legitimate" purposes are not covered. However, the "pattern of activities" does not necessarily have to amount to a series of disclosures, and could be established by showing the investigative acts designed to identify and expose covert agents.

Both the Senate and House version have certain defenses in common:

A. Prior public acknowledgement or revelation by the United States of the intelligence relationship that has been disclosed is a defense.

B. There is a bar to accomplice or conspiracy prosecution of persons who have not had authorized access to classified information unless those persons act so as to meet the element embodied in the third category of the offense. Thus, a newsman could not be prosecuted as an accomplice of or for conspiracy with a cleared employee unless the newsman also meets the standards of the third category of the offense.

Mr. Chairman, the Senate Bill strikes the appropriate balance between the need for immediate legislative relief and legitimate First Amendment concerns. As reported, S. 2216 provides the government with an effective tool to prosecute both present and former Intelligence Community and government employees as well as those misguided individuals outside the Intelligence Community and government who take it upon themselves to destroy the foreign intelligence apparatus of our nation.

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Mr. Chairman, there is a pressing need for effective legislation to discourage unauthorized disclosures of intelligence identities. The credibility of our country in its relationships with foreign intelligence services and agent sources, the personal safety and well-being of patriotic Americans serving their country, and the professional effectiveness and morale of our country's intelligence officers are all at stake.

As matters now stand the impunity with which protected intelligence identities may be exposed implies a governmental position of neutrality. It suggests that U.S. intelligence officers are "fair game" for those members of their own society who take issue with the existence of CIA or find other perverse motives for making these unauthorized disclosures. Specific statutory prohibition of such activity is critical to the maintenance of an effective foreign intelligence service. It is imperative that a message be sent that the unauthorized disclosure of intelligence identities is intolerable.

On behalf of Admiral Turner, I urge you to proceed to report legislation that will provide an effective remedy.

Mr. HITZ. Yes, sir. I understand that we are somewhat pressed for time this afternoon so I will attempt to summarize my statement.

It is a pleasure to be here to speak in favor of this legislation. I think recent world events have dramatically demonstrated the importance of maintaining a strong and effective intelligence apparatus.

The intelligence community must have both the material and the human resources needed to enhance its ability to monitor the military activities of our adversaries and to provide insights into the political, economic, and social forces which will shape world affairs in the eighties.

It is particularly important that every effort be made to protect our intelligence officers and sources.

I would like to make clear for the record at this point, Mr. Chairman, the damage that is being caused by the unauthorized disclosure of intelligence identities. I would then like to briefly address several fallacies and misconceptions that have crept into public discussion and debate about this problem.

Obviously, security considerations preclude my confirming or denying specific instances of purported identification of U.S. intelligence personnel.

Suffice it to say that a substantial number of these disclosures have been accurate. The destructive effects of these disclosures have been varied and wide ranging. Our relations with foreign sources of intelligence have been impaired. Sources have evinced increased concern for their own safety. Some active sources and individuals contemplating cooperation with the United States have terminated or reduced their contact with us.

Sources have questioned how the U.S. Government can expect its friends to provide information in view of continuing disclosures of information that may jeopardize their careers, liberty, and very lives.

Many foreign intelligence services with which we have important liaison relationships have undertaken reviews of their relations with us. Some immediately discernible results of continuing disclosures include reduction of contact and reduced passage of information.

In taking these actions some foreign services have explicitly cited disclosures of intelligence identities. We are increasingly being asked to explain how we can guarantee the safety of individuals

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who cooperate with us when we cannot protect our own officers from exposure.

You can imagine the chilling effect it must have on a source to one day discover that the individual with whom he has been in contact has been openly identified as a CIA officer.

The professional effectiveness of officers so compromised is substantially and sometimes irreparably damaged. They must reduce or break contact with sensitive covert sources, continued contact must be coupled with increased defensive measures that are inevitably more costly and time-consuming; some officers must be removed from their assignments and returned from overseas at substantial cost. Years of irreplaceable area experience and linguistic skill are lost. Reassignment mobility of the compromised officer is impaired. As a result, the pool of experienced CIA officers is being reduced.

Such losses are deeply felt in view of the fact that in comparison with the intelligence services of our adversaries, we are not a large organization. Replacement of officers thus compromised is difficult and in some cases impossible.

Once an officer's identity is disclosed, counterintelligence analysis by adversary services allows the officer's previous assignments to be scrutinized, producing an expanded pattern of compromise through association.

Such disclosures also sensitize hostile security services and foreign populations to CIA presence, making our job far more difficult.

Finally, such disclosures can place intelligence personnel and their families in physical danger from terrorist or violence-prone organizations.

I need only cite to you the recent disclosures in Jamaica by Louis Wolf, one of the editors of the Covert Action Information Bulletin, and the subsequent attempts made on the lives of U.S. Government employees there.

Those who seek to destroy the intelligence capabilities of the United States and others whose opposition to identities legislation is based upon genuine concern about first amendment considerations have propagated a number of fallacies and misconceptions. Understandably some of these have found their way into discussion of identities legislation before the Congress and in the press.

One of these fallacies is that accurate identification of CIA personnel undercover can be made merely by consulting publicly available documents like the State Department's Biographic Register. And that identities legislation would impinge on discussion of information that is in the public domain.

This is absolutely untrue. There is no official unclassified listing anywhere that identifies U.S. undercover CIA officers.

The intelligence relationships which we are seeking to protect are classified, and a great deal of money and effort is expended to maintain their secrecy. The names of individuals who are intelligence officers do appear in certain unclassified documents, but they are not identified as intelligence officers.

This is consistent with our need to establish and maintain cover to conceal the officer's intelligence affiliation. The State Department Biographic Register, an unclassified document until 1975, and

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similar documents cannot be used, without additional specialized knowledge and substantial effort, to make accurate identifications of intelligence personnel.

It is only because of the disclosure of sensitive information based on privileged access and made by faithless Government employees with the purpose of damaging U.S. intelligence efforts, that the public has become aware of indicators in these documents that can sometimes be used to distinguish CIA officers.

It is noteworthy, however, that these indicators do not invariably lead to correct identifications. The substantial number of accurate identifications that are being made by the Covert Action Information Bulletin long after the Biographic Register ceased to be publicly available indicates these disclosures are based on extensive additional investigation presumably using many of the same techniques as any intelligence service uses in its counterintelligence efforts.

Another fallacy widely circulated by opponents of identities legislation is that prohibition of the unauthorized disclosure of intelligence identities would stifle discussion of important intelligence and foreign policy issues.

This simply is not so. Identities legislation is not designed to forestall criticism of intelligence activities, prevent the exposure of wrongdoing or chill public debate on intelligence and foreign policy matters. Rather, such legislation would protect a narrow, essential element of our Nation's foreign intelligence programs for which the Congress appropriates taxpayer dollars year after year.

In this regard it is important to recall that virtually all of the legitimate official and unofficial examinations of intelligence activities which have taken place over the past several years have been accomplished without the revelation of intelligence identities of the kind we are seeking to protect.

Extensive public and congressional scrutiny and criticism of intelligence activities has taken place without recourse to wholesale disclosure of the names of intelligence personnel.

Another serious misconception which has arisen in connection with the debate over identities legislation is the contention that such a statute would prevent legitimate "whistleblowing" by individuals whose intent is to expose alleged illegality or impropriety. A properly drafted statute will have no such effect.

Provision can be made to insure that the transmittal of information to the House and Senate Intelligence Committees is not covered by the statute's prohibitions, and we support language such as that contained in subsection 502(d) of H.R. 5615.

Identities legislation, therefore, need not impact at all on those whose legitimate purpose is to report alleged wrongdoing.

Mr. Chairman, I would like now to discuss briefly how identities legislation can be structured so as to effectively proscribe the most damaging unauthorized disclosures without impairing the rights of Americans or interfering with congressional oversight.

Legislation in this area should, first of all, hold current and former Government employees and others who have had authorized access to classified identities information to a higher standard than persons who have not had such access. Such individuals, because of their employment relationships or other positions of trust, can legitimately be held accountable for the deliberate disclo-

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sure of any identity they know or have reason to know is protected by the United States.

A statute in this area, Mr. Chairman, if it is to be effective, must also cover those who have not had an employment or other relationship of trust with the United States involving authorized access to classified identities information.

Both the House and Senate versions create three categories of the offense of disclosures of intelligence identities:

A. Disclosures of a "covert agent" by persons who have or who have had authorized access to classified information that identifies such a covert agent. This category covers primarily disclosure by intelligence agency employees and others who get access to classified information that directly identifies or names agents and persons under cover.

B. Disclosure of a covert agent by persons who have learned the identity as a result of authorized access to classified information. This category covers disclosures by any person who learns the identity of a covert agent as a result of Government service or other Government relationship and access to classified information that does not identify or name a specific agent or person under cover.

C. Disclosure of a covert agent by anyone who makes the disclosure in the course of an effort to disclose covert agents with an intent to impair or impede intelligence activities, which is the House version, or as part of a pattern of activities intended to identify and expose covert agents with reason to believe that such activities will impair or impede foreign intelligence activities, which is the Senate version, and I associate myself with the remarks of Mr. Keuch in suggesting that as far as the administration is concerned there is a preference for the language in the Senate version on that particular point. While the House and Senate Intelligence Committees' versions differ here, this category is intended to encompass persons like Louis Wolf and to exclude reputable journalists.

I will discuss the difference in the House and Senate language more fully.

All three categories of the offense have, in both versions, several common elements:

A. First, the person disclosed must be a "covert agent." This is a defined term in both versions and includes (1) officers and employees of intelligence agencies whose identities are classified and who are serving, or have, within the last 5 years, served outside the United States; (2) agents and sources who are U.S. citizens and who reside outside the United States or who are agents of or informants to the foreign counterintelligence or foreign counterterrorism components of the FBI, and whose identities are classified information; and (3) foreign agents and sources of an intelligence agency whose intelligence relationship to the United States is classified information.

B. Second, the disclosure must be to a person not authorized to receive classified information. This means that the Government would have to prove that the identity was revealed to some uncleared person.

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Thus, some employee disclosures, such as disclosure by a CIA employee of a cover identity to someone in the Commerce Department would not be an offense if the person receiving the identity was cleared for access to classified information. The CIA employee would be subject to administrative disciplinary sanctions, however.

C. Third, the cover identity of the covert agent or such agent's intelligence relationship to the United States must be classified.

D. Fourth, the person making the disclosure must know that the United States is taking affirmative measures to conceal the covert agent's intelligence relationship to the United States.

Affirmative measures include, but are not limited to, the establishment and maintenance of a cover identity and the use of clandestine means of communication.

Finally, the information disclosed which identifies any covert agent need not be classified information. Any information which identifies a covert agent can be used to establish the offense if the other elements are present.

This is particularly important under the third category of the offense which does not require the Government to prove that the person making the disclosure had authorized access to classified information.

Thus, under this category if all the other elements were present, the Government would be able to establish the offense even if the defendant claims he obtained the information from publicly available sources. The only difference in the substantive offenses created by the House and Senate versions is found in the category which is intended primarily to cover nonemployees and which does not require a showing that the person making the disclosure had authorized access to the classified information.

Mr. Chairman, I think there is a discussion in my submitted testimony of the differences between the House and Senate versions of 501(c) that will probably be the area in which you have questions.

Why don't I skip that in terms of reading it and just make a final statement that as far as the Central Intelligence Agency is concerned and the intelligence community as a whole, there is a pressing need for effective legislation to discourage unauthorized disclosures of intelligence identities.

I know of no issue, for instance, that is more on the minds of staff employees of the Central Intelligence Agency. Officers whose careers have been interrupted in the sense of a normal career track which might have given them the opportunity to serve in *x* country but where, because their names have been published in one of the Covert Action Information Bulletin publications or in Dirty Work 2, that assignment is not advisable or feasible at this time.

It seems to me that the House Intelligence Committee has worked extremely diligently to report out a bill that deals with this conduct in a way that preserves legitimate first amendment concerns, and let me say for the Director of Central Intelligence, Admiral Turner, we would be most enthusiastically supporting the efforts of this subcommittee in reporting out this bill, H.R. 5615, as reported by the House Intelligence Commmittee.

Mr. EDWARDS. Thank you, Mr. Hitz.

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The gentleman from Ohio, Mr. Seiberling.

Mr. SEIBERLING. Thank you. I have listened to your testimony with great interest. Of course, your point that such disclosures can cripple our intelligence activities is obvious to anybody who knows anything about the problem from the standpoint of collecting; that is a valid point.

I was interested in your statement that, without extensive counterintelligence-type activities, it is not possible in the usual run of things to ascertain who our intelligence agents of the United States are merely by going over unclassified material.

As far as I am concerned, and I think probably as far as this committee is concerned, that is one of the crucial issues. There is a freedom of speech and freedom of press problem here and I think we have to be very careful that we do not make substantial inroads on that.

Let me ask you two questions. Would you feel that a bill would be satisfactory that required that any classified information, in order to be protected, shall have been properly classified? In other words, a court could look into the question of whether it should have been classified?

Mr. HITZ. Look behind the authorizing official. I think, and I would defer to Mr. Keuch with respect to the particular problems of prosecution, but I would think that it would create an additional and perhaps substantial burden if the court had to review de novo, whether or not the information was properly classified beyond the judgment of the duly authorized classifying official.

Mr. SEIBERLING. Well, it is not beyond the memory of the members of this committee that we had experience with classifications that were indulged in by everyone from the President of the United States down to lesser officials simply to cover up improper activities. That is one of the reasons why the Freedom of Information Act permits the judge to look behind the classification.

I would like to get Mr. Keuch's comments on this.

Mr. KEUCH. If you are talking about a statute only limited to the compromise of classified information per se, as I guess we learned in the debates over some of the early formulations of the Uniform Criminal Code, that does raise serious constitutional questions. But the statute here does more than that. That is, it requires a compromise of a specific type of classified information, that relating to a covert agent.

There is engrafted into the legislation what I consider to be the litigative history of cases in the espionage area, classified and compromises area, which do provide that there are defenses to prosecutions of that category of cases, if the information is indeed in the public domain, if the Federal Government has not taken the necessary steps to protect the information.

But here the very definition in the statute in both the House and Senate versions of covert agent and the definition of classified information and the requirement specifically in the language of the bill that the individual must make the compromises knowing that the Federal Government has been taking steps to protect the information, and specifically providing that it is a defense to the prosecution if the information has been revealed by the Federal Government, I think would answer the concerns that you are raising.

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It is not merely classified information compromises that the statute reaches, but compromise of classified information relating to a specific type of information, that is the identities of covert agents.

Mr. SEIBERLING. It does seem to me that the classification of the identity of covert agents should obviously be a proper classification. I don't think really there is much of a problem if that is the only kind of classified information that we are likely to be dealing with. While there are other types of information that might reveal identities, the mere fact that that information could be used to extract the identity of an agent ought to be sufficient grounds for classification.

So I wouldn't think there would be a problem but I wanted to make sure I was right in that conclusion. What you are telling me is that that is a correct conclusion.

Mr. KEUCH. I think that is correct.

Mr. SEIBERLING. So, the additional burden would not really be a very great one, would it?

Mr. KEUCH. It would not be a great one, Mr. Congressman. I guess my point is that if the statute, in all the ways I outlined, requires the very thing you say would be the ultimate test, that is if indeed it does reveal a covert agent, which would be required by the statute, if it reveals a covert agent that has not been revealed by the Federal Government or in some other manner and that the Federal Government has taken pains to protect the identity of that agent, you are saying if all that is established then it must be properly classified. To engraft an additional level of proof——

Mr. SEIBERLING. I am saying maybe it doesn't need to be the fact that has to be proved by the prosecution but merely an affirmative defense, that the information that he used was not properly classified, even if it was classified.

Mr. KEUCH. I guess my only lingering concern might be that I would still want to protect the properly protected identity of the covert agent irrespective if there had been a technical mistake in the application of the classified stamp.

For example, the Executive order on classified information, as those of us who deal with it day after day realize, is a very technical order. The regulations issued by the various departments are also very specific and very precise.

I would not like to see an argument made that you have to go in every case and you would have to prove that the individual who signed the classification stamp was at the proper level, and had the proper authority. Nor would I like to see that defense for an agent who otherwise meets all the criteria of the statute. We are not merely talking about the compromise of a piece of classified information. It is a piece of classified information involving a very specific thing with the statutory definition for covert agent and very definite affirmative defenses.

For example, if someone who did not have top secret classification erroneously marked the document "Top Secret", or the stamp erroneously marked the document, or some other technical requirement was not complied with, I would not like to see that be a defense.

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When I balance that kind of mischief that could come up in a criminal case against the need, then I guess I would be opposed to such a provision.

Mr. SEIBERLING. My time has expired but if the only defect in the classification were a technical one and otherwise it was information that should be classified, then if the statute could make that kind of distinction, I think it should.

Mr. KEUCH. I believe the statute as drafted would meet that in effect because these materials are in fact confined by the statutory definition by their very terms——

Mr. SEIBERLING. You mean the statutory definition of what is proper classification would have to be in the statute and not just a technical definition under the regulation?

Mr. HITZ. Parenthetically, Mr. Seiberling, as a closing comment, the House Intelligence Committee felt strongly enough about this matter of maintaining cover, maintaining the secrecy the executive branch taking all efforts to take effective measures to provide intelligence officers with sufficient cover abroad, that they added a section, 503(a), to direct the President to do so. So it is a concern.

Mr. EDWARDS. Mr. Hyde?

Mr. HYDE. Thank you, Mr. Chairman.

Mr. Hitz, would you describe some of the recent incidents that involved revelations of the identities of covert agents?

Mr. HITZ. Well, the most——

Mr. HYDE. Aside from Welch case, which we all know about.

Mr. HITZ. The most telling identification and one has to be careful here, was one that occurred on July 4 this year, Mr. Hyde, in Jamaica, where 15 officers of the American Embassy were identified by Mr. Louis Wolf, one of the contributors to the Covert Action Information Bulletin in a press conference in Kingston and shortly thereafter, followed by a day or two, Mr. Richard Kinsman, who was named in that press conference as the Chief of the CIA station in Jamaica, his home was beset in the nighttime by a gang armed with .45 caliber weapons, they shot up the house, they shot through the bedroom of Mr. Kinsman's daughter, who luckily was not in the room at that time, and threw a grenade in the front yard.

Luckily there were no casualties but this was an attempt which was followed several days later by the attack on another of the named individual's house, or, rather, that was an attempted attack, and they were apprehended before its consummation.

Again, no loss of life. But that is the most recent incident. These—it is interesting to note that the press conference and the identifications of these 15 individuals was accompanied also by a description of their automobiles, the license plate numbers that the automobiles carried, the addresses of their houses, the home telephone and office telephone of the individuals involved.

Mr. HYDE. We have been talking about a chilling effect on first amendment rights. However, the fact that this information can be disclosed, as it is, must have a very chilling effect on informants, and sources providing your agency with information. If their covert status may be leaked like a sieve, and spread with impunity before the world. Why should anybody risk his life, his job, or anything to reveal information?

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I suspect that these incidents must have really inhibited the operation of your agency. Is that correct?

Mr. HITZ. Yes, that has had a very telling effect and I think as you can imagine, that will extend beyond the individual incident.

Mr. HYDE. Certainly.

Mr. HITZ. It will be harder, I would suppose to convince middle ranking officers to just take these jobs.

Mr. HYDE. Mr. Keuch, I am troubled by the one-bite-of-the-apple theory with respect to section 501(c). Unless you can prove an ongoing effort or a pattern of activities under the various formulations, which require more than a single incident, correct me if I am wrong and I hope I am wrong, an individual disclosure seems to be permitted, even if it is going to impair intelligence efforts, so long as it is not part of a string of events or an ongoing effort.

I am troubled by that, because I can see that as a loophole. I can see me having this information and giving it to her, if she makes one revelation that is not an ongoing effort, I am really the culprit.

Mr. KEUCH. I understand. I share your concerns. I have two responses. One, of course, as is obvious from all the testimony and debates both before the House and Senate committees, this formulation is an attempt to draft a statute that does reach narrowly, that is, reach those people who should be most subject to the legislation.

I quite agree with you that the one time, the first time revelation may be egregious, may be a very severe problem but, again, it is an attempt to reach the types of individuals that the legislation is supposed to reach and to hopefully, provide protections for those areas that are protected by the first amendment.

I would like to stress, however, it would certainly not be our interpretation of the statute that you had to have a series of revelations. You would have to have an effort to expose. Whether you take the Senate or House version, you have to have this pattern of activities intended to expose. In our judgment, it could be a pattern of efforts, attempts to get that information, attempts to reach it in different ways.

Let me also say, though it is not a complete answer, the disclosure you mentioned while not covered by this legislation, depending on the facts, would be reached by the normal espionage statutes. In my judgment and in the Department of Justice, the situation you described would be a violation of 793, either subparagraph (c) or (d), depending on whether you had authorized access or unauthorized access to the information.

The pattern that I have identified avoids a great many problems, such as graymail, that we would have in the normal espionage statute which has a much broader reach. It also provides a very specific piece of legislation indicating that this type of information should be given special protection.

Mr. SENSENBRENNER. Will the gentleman yield?

Mr. HYDE. My time isn't up, but I yield.

Mr. SENSENBRENNER. How many prosecutions has the Department of Justice instituted under the existing espionage statutes in cases similar to the ones you have described?

Mr. KEUCH. None.

Mr. SENSENBRENNER. Why not?

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Mr. KEUCH. There are a variety of reasons. If we want to talk about specific cases I would have to do that in executive session. There are problems with espionage prosecutions. One, is the standard is very broad. It is not a specific type of information. It must mean information relating to the national defense. Very often we find ourselves in a situation where we must disclose a great deal of classified information in order to bring the prosecution itself. That is a problem.

You are in effect hurting the national security to protect the national security. There is a problem of confirmation of information again under the broader standard. That is always a problem.

Certainly the questions of proof and discovery of the individual who has disclosed or compromised is always present. But the first of the two are our major concerns generally, that is the breadth of information we have to provide and the fact we provide confirmation in bringing those cases. Other reasons I would have to go into in executive session.

Mr. SENSENBRENNER. If this bill were enacted into law, what assurance would you give this subcommittee that the Department of Justice would more vigorously enforce this law than they have enforced existing espionage laws?

Mr. KEUCH. Well, I hope it is not a question of a lack of vigorous enforcement by the Department of Justice under the existing laws. We investigate when referrals are made to us. We have attempted to bring prosecutions in those matters in which we felt we could. We will continue to do so. If you want a guarantee that we will apply this law vigorously, we certainly will.

If you want a guarantee as to a list of prosecutions, say I come back next year and say we have 10 cases now that we didn't have last year; I can't make that promise. It depends on the facts after this legislation is passed.

The Department clearly feels this is an important piece of legislation and we will certainly enforce it to the best of our ability.

Mr. SENSENBRENNER. I thank the gentleman from Illinois for yielding.

Mr. EDWARDS. The gentleman from Massachusetts, Mr. Drinan.

Mr. DRINAN. Thank you, Mr. Chairman.

I agree with you on the Philip Agee case but I am not certain you have a remedy for Mr. Wolf. Do you think if this law passed Mr. Wolf would just cease and desist publication of his CovertAction? Assuming he would not, you go to court and he makes the case that he made in a memo to this committee. He says that I am opposed to the CIA in its covert activities, that we believe that the CIA does not exist primarily to gather intelligence but to interfere in the affairs of other nations, to manipulate the events covertly and they are opposed to that and that is why they are taking these means.

You would say that he has criminal intent, he has the *mens rea,* he has the desire to impede the intelligence activities.

Can you make that a crime? He is sincerely opposed as millions of people are opposed to covert activities of this kind.

Mr. KEUCH. First I think you can make it a crime. It is possible to debate the activities of the intelligence agency and what they are doing without revealing seriatim a long list of individuals who

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are enjoying or trying to have the protection of the covert status who, whether you agree with the wisdom of the programs or not, are there to serve their country.

Mr. DRINAN. There is an Official Secrets Act. We keep these covert actions and operatives as official secrets. But, if he sincerely opposes them, if he believes they are interfering with the democracy of other nations, he has no remedy.

Mr. KEUCH. I don't think we have official secrets. You don't have to reveal the identity of covert agents. The legislation recognizes the fact, as Mr. Hitz's statement says, that there are opportunities, channels open to the person who sincerely believes that what we are doing is incorrect and wrong, illegal, immoral and the rest, to enter into that debate, bring it to the attention of the appropriate subcommittees and the Congress.

That debate can continue without the revelation of covert operatives. To strip away the protection from people who are acting for their country in rather dangerous circumstances, to subject them to the type of activity that faced the gentlemen in Jamaica and may have faced Mr. Welch, in the interest of public debate, I don't think is a sincere argument.

Mr. DRINAN. It may be constitutionally, though. This is his only way of exposing what he thinks the United States of America, his country, should not be doing.

Mr. KEUCH. As the Department expressed, we do have some constitutional concerns about the intent element of the bill.

Mr. DRINAN. Because you might lose in court?

Mr. KEUCH. The intent element as it is specified in the bill. Let me stress, our constitutional concerns are not to the fact that legislation attempts to reach a compromise of covert agents. If that is the situation, if our Constitution bars us from providing that it is a criminal act to reveal the names of our covert agents, then I think we had perhaps better wipe up our intelligence business and get out of the business entirely.

Mr. HITZ. That is, Congressman Drinan, I think the House Intelligence Committee report is particularly eloquent on this particular subject, at page 12, bottom of the page. They state in dealing with section 501(c):

> The added requirement that the disclosure be in the course of an effort to identify and expose undercover officers and agents makes it clear that the defendant must be engaged in a conscious plan to seek out undercover intelligence operatives and expose them with the intent to destroy United States intelligence efforts.

Mr. DRINAN. Mr. Wolf is engaged in that and you are saying it is a crime?

Mr. HITZ. No, the House Committee, I believe, is trying to argue that it should be a crime. The defendant, in other words, has made it a practice to fer·et out and then expose undercover officers or agents for the purpose of damaging an intelligence agency's effectiveness and the disclosure which is the subject of the prosecution must be made with that intent. And——

Mr. DRINAN. Mr. Wolf has that intent. I am saying it is not necessarily a criminal intent. This is the only way he can carry out his objective of preventing U.S. forces carrying out this interference with the governments of other countries.

Mr. KEUCH. I don't think that is the correct way, it is not the only way he can carry it out. Indeed, I suggest they have selected

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one of the most ineffective ways. There does sit the House and Senate Intelligence Committees; there is a Presidential Intelligence Oversight Board——

Mr. DRINAN. You are missing the point. All of those agencies believe in covert activity. They think it is fine if we can destabilize a country, change it to democracy, if we can alter the Government of Nicaragua and lean them to us, they believe in it but there is no remedy for Mr. Wolf.

Mr. KEUCH. Whether or not covert activities should be carried on, I suggest can be debated in the public forum. We have just gone through a minute's argument showing how, without revealing one covert agent. I would suggest that could be done.

Mr. HYDE. Would the gentleman yield?

Mr. DRINAN. I don't have any time but I yield.

Mr. HYDE. I think what Father Drinan appears to be saying is that, because this gentleman disagrees with the intelligence programs and policies which have been thrashed out in our democratic forum, he should be able to obstruct them with impunity, because it comes under his first amendment right of free speech. His motives, as distinguished from his intent, are beneficent and aimed at saving humanity, but his intent is to reveal these identities and jeopardize our intelligence efforts, because that is exactly the effect of his acts. Further, the suggestion seems to be that, even though he lost in the social policy arena, he still should have the right to make these disclosures and be immune from criminal prosecution. I just don't buy this approach.

Have I misstated the argument made by the gentleman from Massachusetts?

Mr. HITZ. But it is resting on also a supposition that this is not the proper forum to confirm or deny. And that is whether or not we are engaged in the activities which he has a violent moral objection to. He makes that assumption that is something that——

Mr. HYDE. I believe that Father Drinan would argue that he is entitled to make that assumption. It is at least controversial.

Mr. DRINAN. It is at least historically true.

Mr. HITZ. The other issue, it seems to me, is if he takes this view with respect to that activity, might he not have—and I hope this is an entirely fatuous example—but he might take the same kind of moral objection to paying his income taxes or anything else.

The point I am——

Mr. HYDE. On the ground that his taxes are going to be used for the purchase needed for the defense of this country.

Mr. HITZ. Indeed.

The point is that if the Congress of the United States through the oversight mechanism, appropriation of monies annually—authorization and appropriation of monies for the existence of an intelligence community, an intelligence agency, and the review procedures which exist for covert action activity, representatives of U.S. citizens in effect concurring on the wisdom or unwisdom of that matter, if he is not willing to abide by those judgments, it seems to me that it is proper for the Congress to make this particular activity unlawful.

Mr. EDWARDS. Would the gentleman yield?

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I find that a rather extraordinary statement, Mr. Hitz. Are you saying that citizens of the United States and the press and scholars and just ordinary citizens do not have an oversight responsibility and that they must bow to the judgments of congressional committees on the behavior of police officers?

Mr. HITZ. Not as a general matter, Mr. Edwards. I am saying in the activity of which we are speaking, the clandestine collection of intelligence information, it is not a matter in which the American public, as a mass, is going to have access to the details of the operations.

Now, they will have to do that through surrogates, their elected representatives. And the existence of an organization whose function is to collect this information and whose activities are authorized and appropriated for each year by the Congress, has to continue to do its work without having to fear that some individual is going to expose the identities of these intelligence officers with the declared intent of trying to make it impossible for them to do their job and, indeed, endanger their lives.

Mr. DRINAN. I ask unanimous consent to proceed for 3 additional minutes.

Mr. EDWARDS. Without objection.

Mr. DRINAN. Let's come back to the jurisdictional point on which this subcommittee came in; namely, the FBI. Would you tell me, Mr. Keuch, about how many FBI agents might be involved in this? Why did the FBI apparently ask for the expansion of this bill in the Intelligence Committee?

Mr. KEUCH. Mr. Congressman, I would like to give you the numbers at a later time. I would be guessing if I gave them to you now. I don't have them. The reason is quite simple. I believe the first time I testified on this legislation before the House it was franky an oversight; the fact is that the FBI does have individuals in the foreign counterintelligence field that are really in the same posture and face the same dangers and the same detriment to their careers and lives and physical safety as do people from the CIA and DIA and the rest.

Mr. DRINAN. Mr. Wolf hasn't heard about them yet.

Mr. KEUCH. That is correct. Perhaps there has not been the same number of disclosures. I suppose there have not been the same number of disclosures of the DIA and other intelligence agencies covered by that legislation.

It did not seem to make logical sense to exclude people from the FBI who are engaged in exactly the same kind of efforts. I would stress it is that part of the FBI engaged in foreign intelligence activities and they would have to meet the same definition of covert agent that anyone else would, so it would be someone serving overseas.

Mr. DRINAN. It is my information there are some 40 or 50 FBI employees in the foreign liaison offices. They deal with drugs, narcotics and other things, but give me again the reason why their inclusion seemed to be important? I am impressed that they weren't thought of until the last hour. All of a sudden, without hearings, they also have this new immunity.

Mr. KEUCH. I am not so sure it was the last hour. The first time I testified would be when 5615 was first being considered. We sup-

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ported the inclusion of the FBI. It was raised by the staff prior to that time. The reason, again, is that those people serving in the foreign counterintelligence aspect of the Bureau are in exactly the same logical and factual position as the individuals who are assets, covert agents serving other agencies.

There seems to be no reason to draw a distinction. Again, they would have to meet the definition of covert agent. Those in FBI who served exclusively in this country would not be reached by this legislation.

Mr. DRINAN. The key question ultimately, if this bill passes, is that if Mr. Wolf gets information not from classified sources but from some other source, he would be punished and put in jail for an act of publication and the civil libertarian community and the newspaper publishers of America and many other people say that is precisely what the first amendment forbids.

Mr. KEUCH. Of course he would be, an individual would be punished under this statute if he published the identity of the covert agent, that he has intentionally made that publication, knowing two things, one that the information he is releasing would identify such an agent, knowing that the U.S. Government had taken steps to protect the identity of that agent, and if he did show a pattern of activities that was intended to create such exposure or part of an effort to create such exposure, that is absolutely correct. There is a debate as to whether that can be constitutionally reached. The Department feels that it can, and we have so testified.

Mr. DRINAN. The publisher of the New York Times can go to jail?

Mr. KEUCH. If he satisfied the statutory standards. I always believe that the law should be applied evenly. It wouldn't matter to me whether it was the publisher of the New York Times or publisher of the Covert Action Bulletin if he satisfied the standards and the terms of the bill. That is what we believe the law is all about.

Mr. SENSENBRENNER. Mr. Hitz, I have the last two issues of the Covert Action Information Acts Bulletin. In the back, there is a section entitled "Naming Names," which lists foreign agents stationed in foreign countries. Incidentally, one was a law school associate of mine whose whereabouts were unknown until I picked up this issue today.

Mr. DRINAN. If the gentleman will yield, I had that same experience. It is a useful guide.

Mr. SENSENBRENNER. Some of the information in this section looks as if it might have been gleaned from a biographical publication issued by the State Department. If this bill were passed, would you would have the requisite framework to prosecute the publishers of this bulletin, since it looks like it might be a regurgitation of information which might be elsewhere in the public domain.

Mr. HITZ. "Naming Names" is a regurgitation from some compendium. The State Biographical Register, as you know, is a recent phenomenon. Others could, I suppose, be taken from most reports or other kinds of documents that may have been in unclassified context. There is a statement, a listing of the personnel in a given embassy or mission with the biographies set forth in that fashion indiscriminately, as to their real affiliation with State, commercial

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fisheries, or whatever. But clearly, one would have to be very careful as to what one uses as a basis for prosecution in this area.

Mr. SENSENBRENNER. Considering the standard of proof in any criminal prosecution is guilty beyond a reasonable doubt, would it be criminal to and merely stating that a certain individual was posted to this embassy or that embassy, spent time in the State Department headquarters in Washington, and now, "Our records indicate he has been posted to an embassy in country X."?

Mr. HITZ. They are identifying that individaul as a covert agent in the context of this bill and if they meet the requirements of section 501(c), that, I think would not apply. Jump in Bob, if I am overstating that.

In short, what they appear to be taking it from is a garden variety biographical compendium. They are saying this is past history, but presently he is the CIA station chief in country X and that is the exact relationship to the Intelligence Agency which is as a classified matter.

Mr. SENSENBRENNER. May I ask the Associate Deputy Attorney General how the Justice Department proposes to get around the problem I have outlined?

Mr. KEUCH. The affirmative defense in the statute provides that if the U.S. Government publicly reveals the information it would be a defense. Also as I indicated earlier, there is a litigative history in the whole area of compromise and classified information which states if the information were taken clearly from the public record, you would have a very difficult time meeting your standard of proof. But you keep in mind, the standard requires the pattern of activities, the fact the individual knows the information he is disclosing will reveal covert agents and that he knows the United States had made an effort to protect the indentity of covert agents.

I do not frankly think, Mr. Congressman, as you pointed out, the criminal statute is applied appropriately in the first amendment area. I think given those facts under a proper set of circumstances, we could meet the proper standards.

Mr. SENSENBRENNER. I yield back the balance of my time.

Mr. EDWARDS. I think most of the members of the subcommittee would agree that most of the legislation is certainly necessary and appropriate. A sticky point which has been suggested in the questions that have been asked today has to do with 501(c). That section to my knowledge, is the first time in the history of the country it has been made a felony to take public information and disclose it—information which is nonclassified and which you might pick up in a bar, read in a newspaper, et cetera. Is that correct?

Mr. KEUCH. Again I have to stress while this did not specify the individual had to have access to classified information, either authorized or unauthorized it requires the information must be of a type as it applies to a covert agent. That requires there must be steps taken to protect the information, the individual knows of the steps being taken, the individual knows that the information he is disclosing will identify that covert agent. I think the statute is a long way from public.

Mr. EDWARDS. The information could be something he read in the newspaper.

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Mr. KEUCH. It would depend then what is done with that information. The statute would certainly not reach the individual who reads in the Washington Post or the New York Times that the individual was an agent of the CIA then discloses that to his friends at the local country club or on the Hill that day in his Department of Justice Office.

It is designed to reach the individual who reveals information which he knows has not been revealed by the U.S. Government, which the U.S. Government has taken steps to protect.

Mr. EDWARDS. You have not responded to my suggestion that he might pick up the information in the neighborhood bar or in the paper. It is not classified information.

Mr. KEUCH. If he just heard a statement in the neighborhood bar, that Bob Keuch is a CIA agent then if he repeats that information, he must know that the U.S. Government is making some effort to protect it, et cetera.

Mr. EDWARDS. So if he goes out and tells somebody, tells his wife, then he is guilty of a crime?

Mr. KEUCH. If it is a true statement and he gets it under those conditions——

Mr. EDWARDS. I can read, so can you. That is what 501(c), says. Apparently, it was directed toward one particular newspaper.

Mr. HITZ. That is correct.

Mr. EDWARDS. Are there other publications?

Mr. HITZ. There are several. There is one called Counter Spy. There is a compendium, a book form called Dirty Work II. There is the promise of a Dirty Work III.

Mr. EDWARDS. All those will be sent for criminal prosecution.

Ms. LEROY. Who is responsible for the publications you just named?

Mr. HITZ. I can find that out.

Mr. EDWARDS. We understand they are the same group of people.

Mr. HITZ. I did not know Counter Spy was.

Mr. EDWARDS. Essentially 501(c) is directed at the activity of this particular group of people——

Mr. HITZ. That lead to the firing on Mr. Kinsman's house.

Mr. DRINAN. Suppose you go in and suppress this ad for Dirty Work II. Somebody will immediately go in and reproduce a million copies.

Mr. HITZ. Will they have the requisite intent, the reproducing?

Mr. DRINAN. Yes, he does have it. He did not think we should be doing this and he wants to expose covert agents and identify them. He thinks this is outrageous that we should be doing this. I never heard of Dirty Work II until this morning. I am sure if you prosecute them, everybody in the world will be buying it.

Mr. HITZ. Just the notion, sir, that we have been unhappy about Dirty Work II has increased their sales.

Mr. DRINAN. Thank you very much, Mr. Chairman for yielding.

Mr. EDWARDS. Mr. Keuch, in your previous testimony you argued that a mainstream journalist, thought to have intelligence relationships, may fear that any other stories by him, critical of the CIA may be taken as evidence of intent to impair foreign intelligence activities.

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Take the case of a reporter from the New York Times or Washington Post who did not like what was going on in Chile, the activities of the CIA. He believes in all sincerity, that they have engaged in criminal activity, break-ins, bribery, et cetera.

Now he better not write that under 501(c).

Mr. KEUCH. I am not so sure I agree with you, Mr. Chairman. Again, it must be done as part of a pattern of activities which either under the Senate version or under the House version, results in the exposure of covert agents, et cetera. If it did not meet that test, it is not prosecutable. The first test applies across the board as do the criminal statutes. But again, as I suggested earlier, that kind of debate, if it is a first article and a first discussion and there are disclosures, it comes back to Mr. Hitz' statement that it may not be covered by the statute. Espionage statutes have been on the books for 20-some years. I have not noticed an effect on the aggressive reporting by the press on these issues. But here again, it has to be part of the pattern of activities to meet the remainder of the statutory standard, I think your questions point up our concern, as I expressed it at the time. I was talking about the intent formulation presently in the House committees bill. That is, there must be the intent to impede. We are concerned that if that is the case, the statute may seem to reach those individuals who have been critical of the intelligence operations of the Government or our programs and it may have a chilling effect. That is why I indicated in my testimony, numerous times before the House and Senate committees that we prefer the formulation in the Senate bill.

The claimed intent, is, indeed, to protect our intelligence operations because they will get us out of the dirty business. There was an espionage matter where an Army officer revealed a great deal of highly sensitive information about our missile program because he wanted to call attention to the Congress and American people as to how far behind the Russians we are in the missile program.

We will get back again to the fact the individual can write about operations in Chile. I can go on for paragraphs about the fact we should not use Government officials in Chile. We should not pump in money, send arms. I can do it vigorously and effectively and I have not put one individual's life into jeopardy; and I cannot see why the public debate cannot be carried out forcefully without indicating the names of people trying to serve their country in their way.

Mr. EDWARDS. I yield to my colleague from Ohio.

Mr. SEIBERLING. Take Jack Anderson whose activity has to do with disclosures. Back in the days of Watergate there were a lot of disclosures about the United States in Chile, for example. Let us assume that he, in the course of such exposures, reveals the identities of covert agents and that he does it with intent to prevent those kinds of activities as part of his usual pattern of revealing information.

Is that going to be caught by the Senate bill or the House bill? Is that not a clear infringement of freedom of the press?

Mr. KEUCH. It gets back to the question of whether because you disagree with a Government program or action you have a unilat-

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eral right to declassify any document protected by a national security concern. There are certainly people who feel that way.

If that is the case, as I indicated earlier, I think we can wrap up our intelligence operations and get out. We will not be able to continue intelligence programs if everybody who disagrees with them, has a right to declassify them.

Mr. SEIBERLING. Are you saying when intelligence programs conflict with the Constitution the Constitution has to give way?

Mr. HITZ. That is an exception.

Mr. SEIBERLING. You are making an exception to the categorical language of the first amendment. From what you are saying, Drew Pearson could not have written some of the articles he wrote about as to some of the activities in Chile, if these statutes had been on the books.

Mr. KEUCH. The Supreme Court has refused to apply the first amendment as an absolute.

Mr. HYDE. Does that mean you cannot pray in school?

Mr. KEUCH. I am saying there are types of public speech and public expression that can be reached by criminal laws without doing violation to the first amendment.

Mr. SEIBERLING. You have to make a very strong and compelling case and tie it in with an overriding national need and show there is no other way of accomplishing the objective.

Mr. KEUCH. In my sincere judgment, the disclosure of covert agents is not necessary for vigorous public debate on these issues.

Mr. SEIBERLING. Let me ask you one other thing. I am putting aside the fellow who gets his information because he has been with a Federal agency. That is a pretty clear case. But say a private individual with no access to Government information figures out certain people are foreign agents and he publishes that and does so with the intent to stop their activity.

Now, if he can do it why cannot any foreign government with much better intelligence presumably than private individuals do the same thing? If so, what objective have you accomplished other than keeping the public in certain countries from being involved in the act?

Mr. HITZ. We agreed that those professional intelligence officers involved know they run the risk of being identified by other governments and they make every effort to avoid detection. What they did not sign up for is a situation where citizens in their own country, in effect make the moral judgment themselves that the activity in which this intelligence officer is engaged, is improper——

Mr. SEIBERLING. My question is not what they signed up for, but if a foreign government can do it, then why cannot they do a lot more than the individual who decides to publish this information?

Mr. KEUCH. Inherent in this concept that is in effect we have a hostile force that can get access to our secrets, then we will say, we will take no steps to protect that information because we accept the fact they are very good, and efficient and are working at it. I cannot tell you that we can prevent an aggressive intelligence service from coming up with the same information we have, but they have problems. There is a certain time delay built in.

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I am pleased that you find an exception to the categorical languge of the first amendment for those of us who have gotten this information under a position of trust. I think the damage is the same. The recognition of the different statutes is based on the different penalties involved.

Mr. HITZ. We are in effect saying, Mr. Seiberling, that this activity should be made unlawful. it meets the standards you have set for it in your question. It is free speech that goes beyond a certain limit.

Mr. SEIBERLING. I am not saying there are not legitimate——

Mr. HITZ. Each one endangers the lives of those engaged in the activity.

Mr. SEIBERLING. I do not accept the doctrine of bureaucratic infallability. There are times when it is in the public interest to disclose things that have been classified and there are times when the actions of covert agents, even if authorized from on high, are so reprehensible, that they ought to be disclosed.

Mr. HITZ. The action is, but perhaps not the identities.

Mr. SEIBERLING. Perhaps sometimes the only way you can blow the whistle is to disclose the identities. Maybe you have to have people willing to take the risk of prosecution when they think something is so bad they will have to disclose it. Like the revelation of the Pentagon Papers. It may have been a crime, but it is certainly in the public interest as viewed by a lot of people.

So I think maybe what we will have to do is figure out how to draw that line in a way that provides what is required.

Mr. EDWARDS. Mr. Hyde.

Mr. HYDE. I would point out to my departing colleague that section 502(d) contains the whistle-blowing provisions. While one would not get the publicity attendant with public disclosure on certain items, one could at least have the spiritual relief by going to the Intelligence Committee of either house to blow the whistle.

Mr. SEIBERLING. In the present Congress that might be a solution, but there have been times in the past when I did not have a very high regard for some of the committees in Congress and I do not think the public had either, as with some of the ways things in Vietnam were carried on that were subsequently disclosed as being wrong and yet the committees did not take many pains to find out what was going on or did not want to know. So I do not think a disclosure to a committee is necessarily an acceptable alternative.

Mr. HYDE. Perfection is always elusive.

Let me ask very quickly, what about aiding and abetting and conspiracies? Are they covered by the bill at all?

Mr. KEUCH. Those sections only apply, again if it is during a portion of a pattern of activity. That would mean that the individual who, for example, giving information to our counsel, she would not be prosecutable as an aider or abettor unless that act was part of the same pattern of activities. So, generally, they are taken out of the statute but put back in for the cases in which the pattern, is established.

Mr. HYDE. They are useful for establishing a pattern?

Mr. KEUCH. Yes.

Mr. HYDE. I was thinking of the poor guy who is identified wrongfully as the CIA station chief in Bangladesh and his life and

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family are endangered. He has absolutely no remedy. When you are rightly or wrongly identified and it injures your life and your family, that ought to be a tort. If I am named as a CIA agent, I should have a civil action against the discloser. He has put my life in jeopardy as well as the lives of my family. There ought to be some substantial liquidated damages due and, where willful and wanton conduct is found, he should go to jail. That is one way to get at such conduct. Maybe it would have a grave therapeutic effect.

Mr. KEUCH. We believe they have a civil remedy. There are torts for interference with constitutional rights, et cetera. Some consideration was given to the possibility of drafting civil sanction in addition to the criminal sanctions. There are problems. One is jurisdiction. While criminal statutes may have penalties that would apply, even though they remain outside the United States, that would be very difficult, if not impossible, under the civil rules. The availability of civilian penalties, in behalf of government is unique in this area.

Mr. HYDE. If this were considered libel——

Mr. KEUCH. The individual has a remedy.

Mr. HYDE. What is his remedy?

Mr. KEUCH. The question is if he is erroneously identified. It would be our view, that there would be civil action called for.

Mr. HYDE. I am confused as to what the remedy is.

Mr. KEUCH. I think you could assume, as Mr. Hitz' statement pointed out, we have record of where individuals have been harmed because of identification of agents. We have had homes fired on.

Mr. HYDE. You would not advise suing for slander or libel?

Mr. KEUCH. No, for a deprivation of constitutional rights.

Mr. HYDE. Thank you, I have no further questions.

Mr. EDWARDS. Mr. Drinan.

Mr. DRINAN. We are having Congressman Les Aspin testify here tomorrow. Mr. Aspin offered an amendment in the Intelligence Committee which I understand was the original position of the Justice Department. The Aspin amendment, which did not carry, said in effect there should be a defense on the part of the person accused of this crime. The defense would be that the disclosure was not based on classified information. Is that the position of the Justice Department?

Mr. KEUCH. As to the category of individual in 501(c), that is those individuals in the public sector who did not have access to classified information.

Mr. DRINAN. Your position changed.

Mr. KEUCH. It became clear during the course of the hearings both before the House and the Senate, that we did not have the votes for the administration bill, the Department of Justice bill. At that time there was a meeting between the various staffs, the agency—the CIA—and ourselves and we came up with the concept of activities as a different way than the one we supported to meet the problems.

Mr. DRINAN. If reason prevailed and the Les Aspin amendment passed, would you still accept the bill?

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Mr. KEUCH. I would have to answer the question yes, since that was our original position.

Mr. EDWARDS. The subcommittee will recess for 10 minutes.

[Brief recess.]

Mr. HITZ. May I be heard on the last question raised by Congressman Drinan.

Mr. EDWARDS. Yes.

Mr. HITZ. If the Aspin amendment were adopted, the intelligence community would lose interest in this bill. It would render 501(c) practically nugatory in terms of that which we want to achieve. The Aspin amendment is strongly opposed by the CIA and the intelligence community.

Mr. DRINAN. I thank you for your observation and I am sure those people who are publishing this newspaper are causing you a great deal of anguish. But our obligation is to look at this matter very seriously to see whether or not after 200 years of American history, that we can take this giant step which has real constitutional problems—this step which you as a lawyer understand—just because four or five people who are taking unclassified information. However I think from your testimony there may be some real intelligence leaks they might be privy to. Is that correct?

Mr. HITZ. One ventures perilously into the area of defining what precise sources might be available to these publications, but clearly the Covert Action Information Bulletin and some of the recent publications spoken of here speak of our sources in Rome and Athens. They are not specific as to the cities, but they refer to this.

Mr. EDWARDS. Perhaps you should get your house in order vis-a-vis leaks that may be coming from your own shop.

Mr. HITZ. That is why I indicated there is something in the bill to do something about cover.

Mr. EDWARDS. In addition to that, I have a sense of deja vu about the entire issue, because the intelligence agencies have been coming to this committee and other committees with regard to the same complaints about the Freedom of Information Act—that the Freedom of Information Act is making it impossible to have communications with other foreign governments and the FBI and CIA cannot get informants anymore.

Mr. HITZ. We feel strongly about that issue also.

Mr. EDWARDS. So we might have an amendment to this bill to do away with the Freedom of Information Act too.

Mr. HITZ. Even that goes beyond our optimism as to what can be achieved in the few days remaining in this Congress.

Mr. EDWARDS. Mr. Drinan.

Mr. DRINAN. The Senate bill has an exception permitting an individual to identify himself and the House bill does not. It is my understanding the administration in the last month objected to this exclusion.

Mr. KEUCH. We have no objection to exclusion. However we feel this is a protection in the House bill. It is unlikely that an individual who reveals himself does so in a pattern of activities. Even in those circumstances, one of the hypotheticals given to me was the ex agent who, by revealing his own identity, under most egregious circumstances, could affect an ongoing investigation. As an argument as to why that should not be in the bill, my answer was that

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