

# CIA Pushes for Expansion of Secrecy Law to Stifle Public Criticism

## Invoking Wikileaks and Torture Report

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*When the CIA and other agencies in the United States government pushed for the Intelligence Identities Protection Act (IIPA) in 1981, it was crafted to exclude “covert agents” who resided in the U.S.*

There was consideration by the House Permanent Select Committee on Intelligence of how the legislation might “chill or stifle public criticism of intelligence activities or public debate concerning intelligence policy.”

More than three decades later, the CIA is apparently unsatisfied with the protections the bill granted covert agents. It has enlisted a select group of senators and representatives to help expand the universe of individuals who are protected, making members of the press who cover intelligence matters more vulnerable to prosecution.

Democratic Representative Adam Schiff, chairman of the House intelligence committee, was involved in adding language to expand the IIPA to the Intelligence Authorization Act moving through Congress.

“Schiff is once again putting the interests of the intelligence agencies in concealing their misdeeds ahead of protecting the rights of ordinary Americans by criminalizing routine reporting by the press on national security issues and undermining congressional oversight in his Intelligence Authorization bill,” declared Daniel Schuman, who is the policy director for Demand Progress.

Schuman added,

“Schiff’s expansion of the Intelligence Identities Protection Act beyond all reason will effectively muzzle reporting on torture, mass surveillance, and other crimes against the American people—all at the request of the CIA. Schiff is clearly the resistance to the resistance, and he should drop this provision from his bill.”

The CIA put their specific request for what language they would like amended in writing and sent it to the Senate Select Committee on Intelligence. Their request was essentially copied and pasted, with no changes, into the intelligence bill.

“Undercover agency officers face ever-evolving threats, including cyber

threats,” the CIA argued. “Particularly with the lengths organizations such as WikiLeaks are willing to go to obtain and release sensitive national security information, as well as incidents related to past agency programs, such as the RDI investigation [CIA torture report], the original congressional reasoning mentioned above for a narrow definition of ‘covert agent’ no longer remains valid.”

“This proposal would provide protection for all undercover agency officers by allowing for the prosecution of individuals responsible for disclosing the identities of those officers, regardless whether the undercover officer serves inside or outside of the United States,” the agency additionally stated.

Schiff supports the prosecution of WikiLeaks founder Julian Assange and shares the CIA’s view that WikiLeaks is a “non-state hostile intelligence service,” not a media organization.

In 2018, when Assange was willing to speak with investigators about the Russia probe, he [replied](#),

“Our committee would be willing to interview Julian Assange when he is in U.S. custody, not before.”

“I deplore the potentially treasonous disclosure of classified and sensitive national security information, and urge the Department of Justice to bring any responsible party to justice,” Schiff stated in 2010.

Senator Ron Wyden, a member of the Senate intelligence committee, said he is concerned about how the bill expands the IIPA so that it applies indefinitely, including to individuals who have been in the United States for decades and have become senior management or have retired.”

“I am not yet convinced this expansion is necessary and am concerned that it will be employed to avoid accountability,” Wyden declared. “The CIA’s request that the Committee include this provision, which invoked ‘incidents related to past Agency programs, such as the RDI [Rendition, Detention and Interrogation] investigation,’ underscores my concerns.”

Gina Haspel, the CIA director, likely favors the law because she faced scrutiny over her role in the destruction of torture tapes that showed the waterboarding of Abd al-Rahim al-Nashiri. She was still a “covert agent” when news of this scandal erupted, and the protection of her identity played a role in enabling her ascension to the top of the agency.

Various groups, including the American Civil Liberties Union, Demand Progress, Human Rights Watch, National Association of Criminal Defense Lawyers, Physicians for Human Rights, the Reporters Committee for Freedom of the Press, and the Society of Professional Journalists, wrote a letter objecting to the proposed expansion that was sent to both intelligence committees.

“The provision would expand the definition of ‘covert agent’ for purposes of prosecution under the Intelligence Identities Protection act, in what appears to be a clear attempt to subvert transparency, oversight, and accountability,” the groups assert.

The groups contend it would “harm congressional oversight of the intelligence community, making it much more difficult to obtain information about almost any individual’s relationship to intelligence agencies and allowing the executive branch to avoid oversight through arbitrary classification. Additionally, it would potentially make it more difficult for intelligence community whistleblowers to approach Congress with reports of fraud, waste, and abuse.”

The letter further argues it would be “significantly damaging” because it is an “extremely broad expansion of felony criminal penalties and delegates authority to when those penalties apply to the executive branch.”

“Because of the potentially widespread legal ramifications for working with individuals who have retired or otherwise left their work with the intelligence community, this provision would likely have a profound chilling effect on journalists’ and public interest organizations’ work,” they conclude.

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When the IIPA was drafted in 1981, the ACLU initially opposed [\[PDF\]](#) it. Yet, as Angus MacKenzie [described](#), ACLU attorney Jerry Berman and Morton Halperin, who became the ACLU director in 1984 after passage of the bill, worked with the CIA on a compromise in July 1981, which offered journalists some small measure of protection.

“Halperin’s compromise was a signal that the ACLU would not mobilize its quarter million members to lobby Capitol Hill in defense of the First Amendment rights of government employees or reporters,” MacKenzie wrote. “As the ACLU position became clear in the ensuing months, the traditional liberal coalition against secrecy began to disintegrate both inside and outside Congress. Over the next twelve years, the Reagan and Bush administrations were emboldened to invent new means to control information.”

Nonetheless, before the Senate Subcommittee on Security and Terrorism, which was part of the Judiciary Committee, Halperin articulated a case against the IIPA on May 8, 1981.

Halperin suggested it would be better for the government to focus on taking steps to “make it impossible for foreign terrorist groups or American citizens” to “identify covert agents.” Legislation impinging on the First Amendment should not be passed for a “symbolic purpose.” It should pass because it will have some “real effect on protecting lives.”

The ACLU and other organizations believed the legislation, as it was drafted, would make it a crime “for the press to publish information which it lawfully acquires, whether it acquires that information from foreign intelligence sources, from foreign governments, from foreign newspapers, [or] from official publications of the United States government.”

“It would be a crime for a reporter or a scholar to engage in an effort to mine those sources to learn the identities of agents and to publish, for any purpose, even to ferret out corruption or illegal activities,” Halperin said.

There was nothing in the language that required a “bad purpose” to exist in order for a person to be prosecuted.

It is not like the law has not been abused by the U.S. government.

In 2013, the Justice Department successfully prosecuted former CIA officer John Kiriakou for confirming the name of an officer involved in the CIA's RDI program to a reporter, even though he did not have a "pattern of activity" which involved trying to out "covert agents."

Members of Congress specified in the IIPA that a person must be engaged in a "series" of acts or a "pattern of activity" that was intended to "impair or impede the foreign intelligence activities of the United States by the fact of such identification and exposure."

It was viewed as a kind of protection for journalists. However, in Kiriakou's case, there was enough ambiguity to deploy it against a former officer who had a public record of opposing the agency's use of waterboarding against detainees in the "war on terrorism."

The Justice Department did not use the law when CIA officer Valerie Plame had her cover blown by officials in President George W. Bush's administration. Her outing was retaliation against her husband, former diplomat Joseph Wilson, who exposed part of the fabricated case for regime change in Iraq.

Former CIA case officer Philip Agee, who sought to reveal how the CIA was involved in "secretly intervening in country after country to corrupt politicians and to promote political repression," was the key inspiration for the CIA push to pass the IIPA. Agee published a column, "Naming Names," that outed agents allegedly involved in the activities he exposed.

In 1975, Agee was blamed by the CIA for the murder of Richard Welch, the CIA station chief in Athens, but Agee maintained the publication had nothing to do with the murder of Welch.

"By removing the mask of anonymity from CIA officers, we make it difficult for them to remain at overseas posts," Agee wrote. "We hope that the CIA will have the good sense to shift these people to the increasingly smaller number of safe posts, preferably to a desk inside the CIA headquarters at Langley, Virginia. In this way the CIA will protect the operatives named—and also the lives of their potential victims."

Three decades ago, the CIA mobilized to protect itself from radical acts of transparency, and now, with the internet and organizations like WikiLeaks, it hopes to be able to further isolate and criminalize those who directly challenge the agency's activities.

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