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CIA, Justice Dept. Differ on Data Disclosure Curb

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The CIA opened a congressional drive to regain its Cold-War vigor yesterday and was promptly chided—by the Justice Department among others—for beginning with a bill that may be unconstitutional.

The intramural bickering within the Carter administration came to light at a hearing before the House Intelligence Committee on a bill that would make it a crime to disclose information—even when obtained from public sources—that serves to identify U.S. intelligence operatives working abroad.

CIA Deputy Director Frank C. Carlucci acknowledged that the proposal could under certain circumstances outlaw the publication on unclassified information obtained from unclassified sources. But he insisted that the measure had been carefully drafted and described it as essential "to the maintenance of an effective foreign intelligence service."

Voicing the Justice Department's reservations, Associate Deputy Attorney General Robert L. Keuch warned that the bill would have "a chilling effect" on freedom of speech. He stopped short of flatly labeling the measure unconstitutional but other critics, outside the government, were more outspoken.

The hearing reflected the start of a determined drive by the CIA to gain a freer hand for its activities on the heels of the crisis in Iran and the Soviet invasion of Afghanistan. After years of discomfiture brought on by congressional investigations of the mid-1970, the agency is pressing for a greater measure of secrecy and "operational flexibility," including repeal of current legislative controls of its covert operations.

A milder version of the so-called Intelligence Identities Protection Act, aired before the House committee is expected to be included in the administration's long-delayed charter for the CIA. Members of the Senate Intelligence Committee met at the White House with President Carter yesterday to discuss the omnibus measure and, according to Sen. Charles McMathias Jr. (R-Md.), reached "a very large measure of agreement" on outstanding issues.

The charter proposal, which may be introduced next week, would also make it a crime to disclose the names of CIA operatives or sources, but only for past or present government officials who have had "authorized" access to such information. The CIA bill would also provide for the prosecution and conviction of outsiders, such as journalists, who make such information public if the government can show they intended to "impair or impede the foreign intelligence activities of the United States."

Under questioning by Rep. Robert McClory (R-Ill.), Carlucci said he thought it vital to subject outsiders to prosecutions. "It is imperative," he testified, "that a message be sent that the unauthorized disclosure of intelligence identities is intolerable."

The main targets of the proposal are avowed anti-CIA publications such as the Covert Action Information Bulletin and Counterspy, which regularly publish the names of CIA station chiefs and officers working abroad. But the Justice Department emphasized that the impact would be much broader.

The measure the CIA wants, introduced by all 14 members of the House Intelligence Committee last fall, "would cover disclosures of publicly available information made by ordinary citizens who claim no special expertise in intelligence affairs and have not held special positions of trust nor associated with others who have," Keuch testified.

He said that even "conversational speculation about whether foreign officials may have been a CIA source and whether we have covert operatives in country... could come chillingly close to criminality" under the terms of the bill. He said journalists could also find critical stories or even remarks about the CIA used against them later at a criminal trial as evidence of an "intent to impede" foreign intelligence activities.

Carlucci sought to emphasize the damage done by naming names. As former ambassador to Portugal, he said he was in Lisbon several years ago when a "so-called expose" of the CIA personnel in the U.S. Embassy there came complete with names, addresses and even directions such as "second apartment to the right as you get off the elevator."

"It was a clear incitement to violence," Carlucci protested. "We had to move people out of the country. Sources were drying up."

In an exchange with Rep. Wyche Fowler (D-Ga.), Carlucci said "it would be virtually impossible" to prosecute a reporter from, say, The Washington Post or The New York Times—because of the difficulty of proving intent—"unless the journalist went around town boasting he was on a vendetta against the agency."

Keuch observed, however, that "the First Amendment is intended to protect a wide range of people, far beyond The Washington Post and The New York Times."

Carlucci maintained that it takes "specialized knowledge and substantial effort" to clean the identities of CIA personnel from publicly available documents—such as old State Department biographic registers (the new ones are classified)—but other witnesses such as American Civil Liberties Union spokesman Morton Halperin said this was far easier to do than Carlucci suggested.

New York lawyer Floyd Abrams, who represented The New York Times in the Pentagon Papers case, attacked the bill as "flatly unconstitutional" in its efforts to subject outsiders, including members of the press, to criminal penalties. He said every newspaper that printed the name of U2 spy plane pilot Francis Gary Powers in 1960 when he was shot down by the Russians but before the White House acknowledged he worked for the government would have been subject to prosecution if the bill had been law back then.