

Statutory Restrictions on the Use of Journalists for Intelligence Purposes

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On March 29, 2023 Russian authorities arrested *Wall Street Journal* reporter Evan Gershkovich and charged him with espionage. The U.S. Department of State subsequently determined that Gershkovich is "[wrongfully detained](#)" and that the U.S. government will provide all appropriate support to secure the journalist's release.

This Insight provides background and issues facing Congress concerning U.S. statutory restrictions on the use of journalists for intelligence purposes. Congress may examine whether existing statutory provisions sufficiently protect overseas U.S. journalists from the perception by adversarial governments or non-state actors of affiliation with the U.S. intelligence community.

Background

Prior to the mid-1970s, [reportedly](#) it had been a [practice](#) of the Central Intelligence Agency (CIA) to use journalists for intelligence collection purposes. However, following the investigations into past U.S. intelligence activities by two congressional select committees (chaired by Senator Frank Church and Representative Otis Pike), it has seemingly been the policy of the intelligence community not to use journalists, clergy, or aid workers for intelligence purposes, other than in "exceptional circumstances." A declassified CIA regulation from 1987, for example, states that the agency would not use accredited U.S. or foreign journalists, clergy, or Peace Corps workers for intelligence purposes. Open, acknowledged relationships with the clergy and journalists for conducting translation or training services, or (for clergy) religious services, were allowed. (AR 2-2, *Law and Policy Governing the Conduct of Intelligence Activities*, December 23, 1987, pp. 27-30, at https://www.cia.gov/readingroom/docs/DOC_0006235713.pdf)

The exception to this policy was described in [July 1996 testimony](#) for the Senate Select Committee on Intelligence by John Deutch, then-Director of Central Intelligence (DCI). Deutch expressed his reluctance to ever use journalists. Nevertheless, he defended maintaining an exception in "extremely rare...highly improbable circumstances" that could result in intelligence enabling disruption of an "extreme threat to the Nation."

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[A]s the Director of Central Intelligence, I must be in a position to assure the President and the members of the National Security Council and this country, that there will never come a time when the United States cannot ask a witting citizen, knowledgeable citizen, to assist in combating an extreme threat to the Nation. So I, like all of my predecessors for the last 19 years, have arrived at the conclusion that the Agency should not be prohibited from considering the use of American journalists or clergy in exceptional circumstances. (S. Hrg. 104-593, pp. 6-7)

Legislation

Shortly after Director Deutch's testimony, in October 1996, Congress included language in the FY1997 Intelligence Authorization Act (P.L. 104-293 §309, codified as [50 U.S.C. §3324](#)) concerning use of journalists in intelligence activities. The provision is captioned "Prohibition on using journalists as agents or assets," and states that it is the "policy of the United States that an element of the Intelligence Community may not use as an agent or asset for the purposes of collecting intelligence." The prohibition covers these individuals in the United States or abroad. This provision covers any individual with press credentials of a U.S. media organization or who may be recognized by a foreign government as a representative of a U.S. media organization.

Waiver and Congressional Notification Provision

The statute permits the President to establish procedures ([50 U.S.C. §3324\(b\)](#)) for the President or Director of National Intelligence to waive the policy with respect to an individual upon making a written determination that a waiver is "necessary to address the overriding national security interest of the United States." In the event of a waiver, the Administration is to provide notification to the Senate Select Committee on Intelligence and the House Permanent Select Committee on Intelligence.

Voluntary Cooperation of "Any Person"

The statute also allows for the voluntary cooperation by "any person" who is aware he or she is providing such cooperation to the U.S. intelligence community. A former Inspector General of the Central Intelligence Agency has maintained that the wording of the provision—specifying "any person" knowingly volunteering information to U.S. intelligence—effectively includes members of the clergy and Peace Corps, in addition to journalists (L. Britt Snider, *The Agency and the Hill: CIA's Relationship with Congress, 1946-2004*, Washington, DC: Center for the Study of Intelligence, p. 245).

Potential Issues for Congress

- Congress may consider whether the restrictions on intelligence community usage of journalists as agents or assets should extend to overseas freelance or unaffiliated U.S. journalists.
- Congress may consider whether U.S. members of the clergy, Peace Corps, and other U.S. aid organizations warrant similar explicit statutory protections.
- Congress may consider whether the waiver provision in 50 U.S.C. §3324(b) provides a pretext for a foreign government to detain U.S. citizen journalists, clergy or Peace Corps volunteers on suspicion of being associated with intelligence.

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