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Senate Proposal for Curbing ‘Leaks’ Escalates Restrictions on Intelligence Employees Who Talk to Media

By: [Kevin Gosztola](#) Wednesday July 25,

The Senate Intelligence Committee passed an intelligence authorization bill yesterday. The legislation, according to committee chairwoman Senator Dianne Feinstein, would fund measures to “counter terrorist threats, prevent the proliferation of weapons of mass destruction, enhance counterintelligence, conduct covert actions and collect and analyze intelligence around the globe.” All of which is expected from the committee serving under the national security state of America. In addition to all that, however, are proposals specifically aimed at “preventing unauthorized disclosures of classified information.”

The [proposals](#) come as a response to “leaks” on cyber warfare against Iran, Obama’s “kill list” and a CIA underwear bomb plot sting operation in Yemen. They are the result of a [bipartisan offensive](#) against “leaks” that Sen. Feinstein has said comes from the White House.

One of the proposals is a restriction on the “number of intelligence community employees authorized to communicate with the media” and a “prohibition on current and former intelligence officials entering into certain contracts with media organizations.” What this would mean exactly is not defined in the talking points put forward by Feinstein. Would the “number of intelligence community employees” be limited by establishing guidelines that prohibited lower level employees from talking with news organizations? Would it cut back on the number of individuals, who could speak in an official capacity about intelligence operations?

What exactly does the intelligence committee mean by “contract”? Is getting an intelligence official’s approval to put comments on the record a “contract”? Then there’s the part about this applying to “former intelligence officials” as well as “current” officials. Would this put limits on what people like NSA whistleblower Thomas Drake would be able to say publicly because they might share information that would reveal details on matters “sensitive” to national security? [Drake was one of six individuals President Barack Obama’s administration has prosecuted under the Espionage Act. The Justice Department’s case [collapsed](#) in June 2011 and the government was forced to settle for a deal where Drake pled guilty to a misdemeanor but served no jail time.]

This is not far-fetched. Drake attended a Cato Institute event today on “[The FISA Amendments Act \(FAA\) and Mass Spying Without Accountability](#).” Senator Ron Wyden, who has been bold in his opposition to how the government is abusing the spying powers granted to it by FAA, was asked a question by Drake. Drake wanted to know if it was possible to provide collective security and not go to the dark side and violate Americans civil liberties. He mentioned that he was the executive manager of ThinThread, a program that would have made it possible for the government to respect the Constitution while at the same time protecting liberty. Wyden gave Drake an incredibly timid response saying he could not respond or go into specific details about any technology being used by the government. He, instead, generally declared that he believed protecting the country in a dangerous time and protecting people’s civil liberties is not “mutually exclusive.”

How might Wyden answer this question if the Senate intelligence committee’s proposals were passed by Congress? And would Drake be putting himself in a position where government could punish him for asking questions or making comments at public events if these proposals were signed into law? Feinstein told *CNN*’s Wolf Blitzer when she first was expressing outrage at the “leaks,” “[It’s a] problem that we have people consulting. They live their life with classified information. They then get a consultancy with your show or your station or some other station and they’re talking, inadvertently, I think, about information that should not be talked about.” Given this earlier statement from Feinstein, it seems reasonable to presume the measure is intended to silence former intelligence employees.

In addition to these provisions that explicitly mention the media, the Senate proposals would require the executive branch to notify Congress when it made “authorized disclosures of intelligence information to the public.” Why would this be necessary? It might be one way to ensure that Congress be fully briefed on specific matters before disclosures occur. Quite often it seems Congress members are blindsided by administrations that do not fill in people on what they are doing on national security until a news story is about to be released that will generate interest in a national security matter and put these officials in a position where they have to answer questions.

The new measures call for the “Director of National Intelligence (DNI) to improve the process for conducting administrative leaks investigations, including a requirement to proactively identify leaks and take administrative action when necessary.” The DNI has already [proactively moved](#) to institute anti-leaks measures. Intelligence employees will now be required to answer a question on whether they have leaked “restricted information” to journalists or the news media when they take a polygraph test that all employees have to take every seven years. They will also be subjected to an environment that further chills freedom of speech, as they could be issued “letters of reprimand” if they are “suspected” of being involved in a “leak.”

A provision to “improve non-disclosure agreements (NDAs) and the penalties for non-compliance,” along with a measure that would require a “report from the attorney general on possible improvements to the criminal process for investigating and prosecuting leaks” are also in the proposed legislation. The “improvement” to NDAs and additional penalties is notable because such agreements currently form the government’s basis for at least two leaks prosecutions—the prosecution of former CIA agent John Kiriakou, who the government alleges revealed the identities of CIA officers, and the prosecution of Pfc. Bradley Manning, who allegedly released classified information to WikiLeaks. The government is using the NDAs as a way to charge individuals under the Espionage Act with transmitting information they should not have disclosed. Since they state clearly what is expected of employees, this makes it possible for the government to curb discussion in court about what an alleged leaker’s intent happened to be. It essentially transforms the Espionage Act into a state secrets statute.

Feinstein, Rep. Mike Rogers, and others in Congress that have led the charge against “leaks” would claim there is a “culture of leaks” that has got to change. As blogger Glenn Greenwald [highlighted](#) Tuesday, Feinstein is one of the biggest leakers in Congress and yet she vehemently fights to strengthen secrecy powers in Washington so that more “leakers” and/or whistleblowers face punishment. She also gets it wrong because really, if there is a culture at all, it is a “culture of *high-level* leaks” that she and others are railing against. Low-level employees understand the chilly climate well and are likely to not be willing to talk to the press because they might lose their job. This is especially true if they are exposing corruption or malfeasance in an institution. Just look at what happened to scientists in the Food & Drug Administration (FDA) when they tried to go through the proper channels to blow the whistle on dangers posed by FDA-approved medical devices. They were [subjected](#) to a surveillance operation designed to limit their ability to have any impact. If this is what happens to individuals at this level of a government agency when they do what is supposedly proper, one can only imagine what would happen if the same people were just getting on the phone to blab about what they know about an agency and what its leaders are doing on a daily basis.

In essence, this hysteria over “leaks” is a war amongst political elites. Elite Congress members like Feinstein are upset that Elite Members of the Obama administration were interviewed by journalists like the *New York Times* David Sanger for his book (who one could argue is an Elite Journalist). These politicians have bowed to the undemocratic idea that there should be [no free flow of information](#) on national security and so all possible measures imaginable should be enacted to curb “leaks.” At the end of the day, however, none of these measures will stop elites in the Obama administration from “leaking” for self-serving purposes. They will still be able to “leak” and get away with it. In fact, they are getting away with it now, to an extent, because there is no Justice Department investigation into “leaks” on the “kill list.” The two US attorneys [appointed](#) by Attorney General Eric Holder are only investigating the cyber warfare and CIA underwear bomb plot sting operation leaks.

What the proposed measures will do is ensure that reporters are less able to talk to sources in the lower levels of intelligence agencies and that low-level employees face an even greater possibility of prosecution or retaliation if they open their mouth and educate the public on the way things really work inside of a government intelligence agency. It is likely to escalate the war on whistleblowing and further entrench a culture in the Justice Department that favors criminal prosecutions of leakers that in turn adds to the chilling of freedom of the press that already exists. It is likely to make it so high-ranking officials can talk even more openly about national security secrets without consequence, but, even if the secrets are widely known, lower level employees will not be able to discuss such secrets, despite the fact that they may become part of a conventional wisdom that functions in a propagandistic way and provides cover for clear abuses of power.

Update

Greg Miller of the *Washington Post*, who would likely find many of his potential sources essentially gagged if these measures became law, [adds](#):

The ban on television contracts could block — at least temporarily — an often lucrative post-government path for security officials. The White House recently held a conference call to discuss the disrupted Yemeni plot with former officials of the George W. Bush and Clinton administrations now working on television, including Fran Townsend, Roger Cressey and Juan Zarate.

The proposals would not only restrict what critics of the national security state like Thomas Drake might say (especially if he were to take a contract with a news show), but it could potentially prohibit apologists and cheerleaders of the national security state from going on air regularly.

There would be minimal discussion of national security issues, even less conversation than media has currently (and media already pays limited attention to national security issues).