

# The Big Leak

by Paul Wolf, 30 September 2003

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## Introduction

It seems unlikely Robert Novak could be prosecuted under the Intelligence Identities Protection Act (IIPA) of 1982, for "burning" alleged CIA operative Valerie Plame in an article he wrote two and a half months ago. In the 21 years since this act was passed, it appears there's been only one prosecution under the statute, of a very serious espionage case, which resulted in a plea bargain. So no one has ever been convicted of this crime before, under the IIPA, anyway.

Yet the leaking of classified information, including the identities of CIA and other undercover agents, has occurred many times over the years without prosecution. For example, just one year after the IIPA was passed, journalist Seymour Hersh published a book in which he accused Morarji Desai -- Deputy Prime Minister of India under Indira Gandhi -- of being on the CIA payroll.

"Desai was a paid informer for the CIA and was considered one of the Agency's most important 'assets'," wrote Hersh in 1983.

Desai denied the charge and sued Hersh for defamation. At trial, Hersh testified he'd relied on six separate confidential sources: "two were out of government, one was in the CIA, one was in the world of the NSA, National Security Agency, which is the communications intelligence people, and two were working in the White House."

Morarji Desai went to his grave as a traitor -- perhaps India's most infamous one -- totally discredited on the basis of Hersh's secret informants. But to my knowledge, Hersh's leaks were never investigated and certainly no one was prosecuted under the IIPA.

Of course this is just one small example. Washington thrives on inside information and people make a living off it.

I think Novak was justified in pointing out the possible conflict of interest of sending the spouse of "an agency operative on weapons of mass destruction" to head the Saddam- Africa uranium investigation -- if that is true, and that "two senior administration officials" told him she was the one who set up the trip to Africa. There has certainly been more than enough fabrication of evidence to justify the war in Iraq, I'm glad to see a journalist investigate this.

Joseph C. Wilson admits the exposee has posed no danger to his wife, who apparently works as an analyst in an office. Wilson himself has been on the media circuit for the past two months drawing as much attention as possible to the story, which has for whatever reason just exploded into front page news.

On the other hand, though, if it's true about someone at the White House calling six different journalists to suggest this story -- I don't know if that's true or not -- perhaps this would have made a good test case for the Intelligence Identities Protection Act, 20 years ago. But it's a little late to start enforcing it now. I'll be interested in the results of the FBI investigation, though. The leakers should be exposed to the public, at least.

- Paul

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### **One Heckuva Leak (Excerpts)**

by Howard Kurtz, *Washington Post*, 30 September 2003

"If this is a federal crime and Robert Novak knows who the guilty party is, would it not be responsible to report the identity of the leaker?"

"Do the reporters, Andrea Mitchell and five others, who were contacted by the two 'Bush senior administration officials' have any obligations to these sources since they did not report the story about Joseph Wilson's wife? Would it be unethical for them to comment about which 'Bush senior administration officials' contacted them about stories that were not reported?"

"When a news story reveals information from an anonymous source that it's a crime to reveal, is it ethical for a reporter to protect the source? Let's say, hypothetically, that the revelation was intended to harm a political enemy, rather than to blow the whistle on government misconduct. Let's say, hypothetically, that this source went to several journalists, some of whom had the principles not to go with the story: would it be unethical for these journalists to reveal the name of the source, if another journalist used that information and an inquiry is launched to investigate it? Do journalists who do not reveal the source run the risk of being complicit in the crime?"

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## **Mission to Niger**

By Robert Novak, *Creators Syndicate, Inc.*, 14 July 2003

WASHINGTON -- The CIA's decision to send retired diplomat Joseph C. Wilson to Africa in February 2002 to investigate possible Iraqi purchases of uranium was made routinely at a low level without Director George Tenet's knowledge. Remarkably, this produced a political firestorm that has not yet subsided.

Wilson's report that an Iraqi purchase of uranium yellowcake from Niger was highly unlikely was regarded by the CIA as less than definitive, and it is doubtful Tenet ever saw it. Certainly, President Bush did not, prior to his 2003 State of the Union address, when he attributed reports of attempted uranium purchases to the British government. That the British relied on forged documents made Wilson's mission, nearly a year earlier, the basis of furious Democratic accusations of burying intelligence though the report was forgotten by the time the president spoke.

Reluctance at the White House to admit a mistake has led Democrats ever closer to saying the president lied the country into war. Even after a belated admission of error last Monday, finger-pointing between Bush administration agencies continued. Messages between Washington and the presidential entourage traveling in Africa hashed over the mission to Niger.

Wilson's mission was created after an early 2002 report by the Italian intelligence service about attempted uranium purchases from Niger, derived from forged documents prepared by what the CIA calls a "con man." This misinformation, peddled by Italian journalists, spread through the U.S. government. The White House, State Department and Pentagon, and not just Vice President Dick Cheney, asked the CIA to look into it.

That's where Joe Wilson came in. His first public notice had come in 1991 after 15 years as a Foreign Service officer when, as U.S. charge in Baghdad, he risked his life to shelter in the embassy some 800 Americans from Saddam Hussein's wrath. My partner Rowland Evans reported from the Iraqi capital in our column that Wilson showed "the stuff of heroism." President George H.W. Bush the next year named him ambassador to Gabon, and President Bill Clinton put him in charge of African affairs at the National Security Council until his retirement in 1998.

Wilson never worked for the CIA, but his wife, Valerie Plame, is an Agency operative on weapons of mass destruction. Two senior administration officials told me Wilson's wife suggested sending him to Niger to investigate the Italian report. The CIA says its counter-proliferation officials selected Wilson and asked his wife to contact him. "I will not answer any question about my wife," Wilson told me.

After eight days in the Niger capital of Niamey (where he once served), Wilson made an oral report in Langley that an Iraqi uranium purchase was "highly unlikely," though he also mentioned in passing that a 1988 Iraqi delegation tried to establish commercial contacts. CIA officials did not regard Wilson's intelligence as definitive, being based primarily on what the Niger officials told him and probably would have claimed under any circumstances. The CIA report of Wilson's briefing remains classified.

All this was forgotten until reporter Walter Pincus revealed in the Washington Post June 12 that an unnamed retired diplomat had given the CIA a negative report. Not until Wilson went public on July 6, however, did his finding ignite the firestorm.

During the run-up to the invasion of Iraq, Wilson had taken a measured public position -- viewing weapons of mass destruction as a danger but considering military action as a last resort. He has seemed much more critical of the administration since revealing his role in Niger. In the Washington Post July 6, he talked about the Bush team "misrepresenting the facts," asking: "What else are they lying about?"

After the White House admitted error, Wilson declined all television and radio interviews. "The story was never me," he told me, "it was always the statement in (Bush's) speech." The story, actually, is whether the administration deliberately ignored Wilson's advice, and that requires scrutinizing the CIA summary of what their envoy reported. The Agency never before has declassified that kind of information, but the White House would like it to do just that now -- in its and in the public's interest.

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### **Rarely Invoked Statute Could Play a Role**

Few, if Any, Have Been Prosecuted Under 1982 Law to Shield Agents' Identities

By Edward Walsh & Susan Schmidt, *Washington Post*, 30 September 2003

An obscure law that could come into play in an investigation of alleged leaks by the Bush administration has rarely, if ever, been used to prosecute someone for the unauthorized disclosure of a covert U.S. agent's name, people familiar with the law said yesterday. The law, the Intelligence Identities Protection Act, was enacted in 1982 and was designed to protect the identities of covert U.S. agents. It was a response to an organized campaign led by former CIA agent Philip Agee to identify CIA and other U.S. covert agents around the world.

After it was signed into law, the measure quickly faded into obscurity. Government officials said yesterday they could not recall a single prosecution under the law, although they said they could not completely rule that out.

But now that long-forgotten statute has been resurrected in connection with allegations that Bush administration officials leaked the name of an undercover CIA officer to syndicated columnist Robert D. Novak in an attempt to discredit the officer's husband, former U.S. ambassador Joseph C. Wilson IV.

Wilson was sent by the CIA to Niger last year to investigate President Bush's claim that Iraq had tried to buy "yellowcake" uranium ore, which can be used in producing nuclear weapons, from African nations. Earlier this year, Wilson disclosed that he found no evidence to support the yellowcake claim, undercutting one of Bush's justifications for the war in Iraq.

Agee, the renegade CIA agent, was the main catalyst for the law that could play a role in the investigation into the leak that identified Wilson's wife, Valerie Plame, as a CIA operative

on weapons of mass destruction. In 1975, Agee published a book, "Inside the Company: CIA Diary," that revealed undercover CIA operations and named those involved in them.

Agee was also associated with the Covert Action Information Bulletin, which included a column called "Naming Names" that regularly identified undercover CIA agents.

"There was a reaction in this country" to such disclosures, recalled Jeffrey H. Smith, a former CIA general counsel. "Regardless of what you thought of the CIA, very few people except Phil Agee thought it was a good idea to name your fellow countrymen so that they could be shot."

The law enacted to stop Agee and others imposes maximum penalties of 10 years in prison and \$50,000 in fines for the unauthorized disclosure of covert agents' identities by government employees who have access to classified information.

The statute includes three other elements necessary to obtain a conviction: that the disclosure was intentional, the accused knew the person being identified was a covert agent and the accused also knew that "the United States is taking affirmative measures to conceal such covert agent's intelligence relationship to the United States."

The law says no person other than the one accused of leaking the information can be prosecuted, a provision that would protect journalists who report leaked classified information identifying a covert agent. But there is one exception to that protection.

The measure says people who engage in a "pattern of activities" intended to identify covert agents and who have "reason to believe that such activities would impair or impede the foreign intelligence activities of the United States" can be prosecuted. Smith said that language was aimed at the publishers of the Covert Action Information Bulletin and others who made it a practice to identify undercover CIA agents.

A former Justice Department official with experience investigating national security cases said the 1982 law was seldom considered by prosecutors and that there were few, if any, prosecutions under the law because the statute's enactment had the desired effect.

"The fact that it's on the books has a very sobering effect on people who have access to sensitive information," he said. "Usually its existence is enough of a deterrent, and that has been the case with this law."

In general, investigations into leaks to news organizations rarely lead to charges. In recent years, the few convictions included a former Navy analyst who disclosed classified defense photographs and a Drug Enforcement Administration analyst who disclosed material about a classified investigation.

"There is a long history of failure there," said Stewart Baker, a former general counsel at the National Security Agency. Usually, he said, "all the roads end up leading back to the journalists, and there is an assumption that the journalists are not going to talk."

The CIA makes about one referral a week to the Justice Department concerning possible

unauthorized disclosure of classified information, according to officials.

The CIA referred the disclosure by Novak to the Justice Department in July. In mid-September, the agency sent follow-up material that answered a series of questions such as whether the officer's identity was already in the public domain, according to a U.S. intelligence official.

Any investigation, whether conducted by a special counsel or national security lawyers at the Justice Department, would involve FBI agents from the bureau's Washington field office.

As a first step, White House officials might receive questionnaires about whether they were in touch with various journalists and whether they knew of Wilson's wife's occupation, according to several attorneys who have been involved in investigations of leaks and probes of the White House. Investigators would also likely subpoena phone logs, calendars and credit card receipts.

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**From *Desai v. Hersh*, 954 F.2d 1408 (1992)**

KANNE, Circuit Judge.

Courts and scholars alike have expressed their concern that the public's interest in a free press and open news dissemination might be severely inhibited if journalists were required to reveal the identity of their confidential sources. The disclosure of these sources, however, is often critical to a defamed individual's hopes for preserving his or her reputation, particularly in those instances where the individual is a public figure who must establish that the defendant published the statement at issue with actual malice or reckless disregard of the truth. *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964). These competing interests come into conflict in this libel action, where we are asked on appeal by the former Prime Minister of India to find that the district court improperly allowed author Seymour Hersh to testify at trial concerning the background and reliability of his sources -- without ever disclosing their identity.

The plaintiff, Morarji Desai, has played a prominent role in Indian politics and public life throughout his career. From 1930 to 1947, he participated in the nonviolent movement to gain India's independence from Britain. In 1957, he was elected to the Indian national parliament where he served for more than two decades. During his parliament tenure, he held several positions in the Indian Cabinet, including Deputy Prime Minister and Finance Minister under the government of Prime Minister Indira Gandhi. He ultimately became Prime Minister of India on March 24, 1977, and remained as such until July 15, 1979. Currently, he is the vice-chancellor of the Gujarat Vidyapith, a university founded by Mahatma Gandhi.

In his book, *The Price of Power: Kissinger in the Nixon White House*, defendant Seymour Hersh examines how former National Security Advisor Henry Kissinger conducted U.S. foreign policy during President Richard Nixon's first term. Included in Hersh's commentary is a chapter reviewing the U.S. foreign policy decisions concerning the 1971 India-Pakistan

War, a crisis in which the United States adopted a controversial, hard-line policy against India and in favor of West Pakistan. [1] According \*1410 to Hersh, President Nixon and Dr. Kissinger justified this policy based largely on information received from a "reliable source" reporting from India through the Central Intelligence Agency. The identity of the source who furnished this information was never revealed by the National Security Council or the CIA.

Desai's libel claim focuses on Hersh's assertion that the Indian-CIA source was "undoubtedly Morarji Desai." In the passage at issue, Hersh specifically cites several unidentified government "officials" to establish Desai's link with the CIA:

Desai was a paid informer for the CIA and was considered one of the Agency's most important "assets."

Former American intelligence officials recall that Desai was a star performer who was paid \$20,000 a year by the CIA during the Johnson Administration through the 303 Committee, the covert intelligence group that was replaced by the 40 Committee under Nixon and Kissinger. One official remembers that Desai continued to report after Nixon's election, much of his information having to do with contacts between the Indian government and the Soviet Union. According to this official, Kissinger was "very impressed with the asset. He couldn't believe it was really in the bag."

Price of Power at 450. Desai's pleadings denied that he ever had any connections with the CIA, and alleged that Hersh published these statements knowing they were false or with reckless disregard as to their falsity. . . .

The court concludes that the proper exercise of the "newsman's" privilege will not be penalized by precluding defendant's reliance on confidential sources....

However, the court did permit Desai to inquire into the existence and reliability of Hersh's confidential sources -- but without requiring them to be identified.

During his testimony at trial, Hersh explained that he relied on six separate confidential sources to support his assertion that Desai was a CIA informant. Hersh testified that of the six sources, "two were out of government, one was in the CIA, one was in the world of the NSA, National Security Agency, which is the communications intelligence people, and two were working in the White House." Two of these sources he characterized as "active sources" who "were telling me details, a lot of detail." And, at one point during his direct testimony, Hersh stated that "I thought the most important thing was to know that the sources upon which I was relying were sources that I had the utmost confidence in, and that was the driving force of what I wrote."

1. Soon after West Pakistan commenced a war against the secessionist forces of East Pakistan on March 25, 1971, reports of war atrocities -- including systematic elimination of women and children -- began reaching the international press. Hersh observes that while "most nations" immediately reacted by denouncing West Pakistan, "the United States -- at the specific direction of the White House -- remained mute." Price of Power at 445. According to Hersh, Nixon and Kissinger were reluctant to criticize East Pakistan because they viewed its president, Yahya Khan, as "their conduit to the Chinese" and a potential summit meeting in Peking. *Id.* Thus, when Khan carried the war to the Indian front by launching a surprise attack against eight Indian airfields on December 3, 1971, the White House was

groping for some rationale for "tilting" towards West Pakistan. Hersh concludes:

[A] miraculous new element emerged to buttress the seemingly incomprehensible White House policy: highly classified evidence that Mrs. Gandhi was planning to attack East Pakistan. In mid-May, Kissinger wrote, he and Nixon learned "from sources heretofore reliable" that Mrs. Gandhi had ordered plans for a lightning 'Israeli-type' attack to take over East Pakistan." The evidence, taken at face value in the White House, confirmed his and Nixon's view that as "Pakistan grew more and more isolated internationally, she [Gandhi] appeared to seek above all Pakistan's humiliation." *Id.* at 450.

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## Central Intelligence Agency

Recent Espionage Cases, 1975-1999, Defense Personnel Security Research Center

1985 - SHARON M. SCRANAGE, operations support assistant for the CIA stationed in Ghana and her Ghanaian boyfriend, MICHAEL SOUSSOUDIS, were charged on 11 July with turning over classified information, including the identities of CIA agents and informants, to Ghanaian intelligence officials. It is reported that a routine polygraph test given to Scranage on her return to the US aroused CIA suspicions.

Following an internal investigation, Scranage agreed to cooperate with the FBI in order to arrest Soussoudis, a business consultant and permanent resident of the United States. According to one report, damaging information on CIA intelligence collection activities is likely to have been passed on by pro- Marxist Kojo Tsikata, head of Ghanaian intelligence, to Cuba, Libya, East Germany and other Soviet Bloc nations.

Indicted on 18 counts of providing classified information to a foreign country, Scranage subsequently pleaded guilty to one count under the espionage code and two counts of violating the Intelligence Identities Protection Act. Fifteen remaining charges were dropped. On 26 November Scranage was sentenced to five years in prison. (This was later reduced to two years.) At the same time Soussoudis who had been charged with eight counts of espionage pleaded nolo contendere and was sentenced to 20 years. His sentence was suspended on the condition that he leave the United States within 24 hours.

*Washington Post*, 12 Jul 1985, "CIA Aide, Ghanaian Face Spy Counts"

*Washington Post*, 14 Jul 1985, "Routine Polygraph Opened Ghanaian Espionage Probe"

*Washington Post*, 20 Jul 1985, "FBI Says Spying Occurred After CIA Order on Ghanaian"

[The defendants plead guilty, so were not convicted of violating this Act. *The Washington Post* successfully sued to release the transcript of the plea hearing, in *In re Washington Post Co.* 807 F.2d 383 (1986) but I do not have that. - Paul]

*The Price of Power: Kissinger in the Nixon White House*, by Seymour M. Hersh, Summit Books, 1983. Excerpts from the book online at: [http://www.thirdworldtraveler.com/Kissinger/Price\\_Of\\_Power.html](http://www.thirdworldtraveler.com/Kissinger/Price_Of_Power.html)

Intelligence Identities Protection Act, 50 US Code Section 421. Protection of identities of certain United States undercover intelligence officers, agents, informants, and sources: [http://caselaw.lp.findlaw.com/scripts/ts\\_search.pl?title=50&sec=421](http://caselaw.lp.findlaw.com/scripts/ts_search.pl?title=50&sec=421)

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