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Executive Secretary

5/19/87

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3637 (12-77)

STATEMENT BY

SENATOR JOHN H. CHAFEE (R-R.I.)

OF THE

SENATE SELECT COMMITTEE ON INTELLIGENCE

BEFORE THE

SENATE COMMITTEE ON THE JUDICIARY

SUBCOMMITTEE ON SECURITY AND TERRORISM

ON THE

INTELLIGENCE IDENTITIES PROTECTION ACT OF 1981 (S. 391)

FRIDAY, MAY 8, 1981

MR. CHAIRMAN. I am pleased to appear here today to testify on the Intelligence Identities Protection Act of 1981 (S. 391), which I introduced in February of this year, and which has been referred to your Subcommittee for consideration.

S. 391 is essentially the same as S. 2216 as it was reported from the Senate Intelligence Committee in August of last year by the near unanimous vote of 13 to 1, the one exception being that the title and paragraph numbers were changed.

The purpose of the Intelligence Identities Protection Act is to strengthen the intelligence capabilities of the United States by prohibiting the unauthorized disclosure of information identifying certain American intelligence officers, agents and sources of information. In short, the bill places criminal penalties on those enemies of the American intelligence community engaged in the pernicious activity of "naming names."

In my judgment, governmental protection of the identities of American intelligence officers is an idea whose time has come. In fact, it is long overdue. My colleague, Senator Bentsen, introduced two bills which would accomplish this purpose in the 94th and 95th Congresses, respectively, following the tragic murder of Richard Welch in December, 1975. In 1979, Representative Boland, Chairman of the House Intelligence Committee, introduced H.R. 5615, which was the predecessor of this year's H.R. 4. In January of last year, S. 2216 was introduced on the Senate side and, in its subsequent refinement and alteration, this bill became the current S. 391.

Extensive hearings have been held on the issue of intelligence identities protection in both the House and Senate Intelligence and

Judiciary Committees. The issues which this legislation involves have been heard in detail, and the wording of S. 391 has been carefully amended and refined to its current state.

The Republican Party platform for 1980 contains a plank supporting legislation "to invoke criminal sanctions against anyone who discloses the identities of U.S. intelligence officers." Mr. William Casey and Admiral Turner have both publicly expressed their support for intelligence identities protection, and our bill is the only one to receive the endorsement of both the Reagan and Carter Administrations' Justice Departments.

Support for this legislation also comes from a broad bipartisan base of Senators with extensive knowledge and experience in intelligence and national security affairs. S. 391 currently has over 40 cosponsors from both sides of the aisle, 10 of whom are Committee Chairmen and 30 of whom chair Subcommittees of the Senate. I am particularly pleased that the distinguished Majority Leader, Mr. Howard Baker, is an original cosponsor of this bill as well as Chairman Thurmond and Chairman Goldwater.

It seems to me that speedy passage of this legislation is essential if this country is to restore at least a modicum of effectiveness to its clandestine service and foreign operations. Its prompt passage will show that this Nation intends to reverse the adverse trend of recent years, and will work to rebuild an efficient, effective, responsive and professional intelligence community to serve as the first line of defense in today's unstable and hostile world. Finally, the expeditious passage of this legislation is vital to the lives and safety of those Americans who serve this Congress and this Nation on difficult and dangerous missions abroad.

As you may know, Mr. Chairman, opponents of this legislation were able to prevent its coming to the floor of the Senate last fall. As a result, the 96th Congress completed its business without offering us the opportunity for free debate and a vote on this vital issue. Since that time, I am told that the Covert Action Information Bulletin has published additional names of alleged covert agents, and their editors have travelled abroad to pursue this pernicious activity. As a consequence, six Americans were expelled from Mozambique recently following charges of engaging in espionage there.

A great deal of debate has centered on the constitutional issues of intelligence identities legislation. The American Civil Liberties Union (ACLU), for example, recently referred to this sort of legislation as a "violation of the First Amendment."

The section of the First Amendment to the Constitution that pertains to our discussion states that "Congress shall make no law....abridging the freedom of speech, or of the press...." The first point that I wish to make with regard to this amendment is that the provisions of the Bill of Rights cannot be applied with absolute literalness, but are subject to exceptions. It has long been recognized that the free speech clause of the Constitution cannot wipe out common law regarding obscenity, profanity and the defamation of individuals, for example. This point was reiterated by Justice Oliver Wendell Holmes in the classic Espionage Act decisions in 1919 when he stated that:

> "The First Amendment....obviously was not intended to give immunity for every possible use of language....The most stringent protection of free speech would not protect a man in falsely shouting fire in a theater and causing a panic."

A second, and equally important point, is that if unlimited speech interferes with the legitimate purpose of government, there must be some point at which the government can step in. My uncle, Zechariah Chafee, who was the leading defender of free speech during his thirty-seven years at the Harvard Law School, wrote in his book titled Free Speech in the United States that:

> "The true meaning of freedom of speech seems to be this. One of the most important purposes of society and government is the discovery and spread of truth on subjects of general concern. This is possible only through absolutely unlimited discussion.... Nevertheless, there are other purposes of government, such as order, the training of the young, protection against external aggression. Unlimited discussion sometimes interferes with these purposes, which must be balanced against freedom of speech.
>
> Or to put the matter another way, it is useless to define free speech by talk about rights.'...Your right to swing your arms ends just where the other man's nose begins.'
>
> The true boundary line of the First Amendment can be fixed only when Congress and the courts realize that the principle on which speech is classified as lawful or unlawful involves the balancing against each other of two very important social interests, in public safety and in the search for truth.
>
> Thus, our problem of locating the boundary line of free speech is solved. It is fixed close to the point where words will give rise to unlawful acts."
>
> (Chafee, Free Speech in the United States, pp. 31-35)

It is evident, Mr. Chairman, that the activity of "naming names" has given rise to unlawful acts, and that it has endangered the safety of American citizens serving abroad. I have already mentioned the murder of Richard S. Welch in Greece. I am sure you also know of the series of assassination attempts in Kingston, Jamaica, following the Covert Action Information Bulletin's publication of the names of 15 alleged CIA officers there last year. What you

may not know is how terribly those events have affected the lives of the American officials involved, their wives and their children. Mrs. Richard Kinsman, who wrote to me last year on this issue and whose letter I would like to insert into the record, has since stated that her life has been "terribly disrupted" by the assassination attempt on her husband and her family. Her children, one of whose bedroom was riddled by machine gun bullets, "did not understand why anyone would want to hurt them." The family has been forced to move several times for reasons of their own personal safety, required to give up jobs, sever friendships, withdraw from and re-enter schools and suffer long periods of separation. They also wonder whether they will ever travel abroad again for any purpose.

I understand that another wife, whose home was also the target of an assassination attempt in Jamaica last year, was hospitalized for stress disorders following the incident. They have also left Jamaica. It is clear, then, that the personal safety and missions of those named have been placed in jeopardy by "naming names."

What is not so clear, is where "naming names" contributes to what my uncle has characterized as the important social interest of "the search for truth." For example, it is difficult to see how the knowledge that a particular individual serving in an Embassy abroad is paid by CIA rather than the State Department materially contributes to our search for the truth.

In this regard, Mr. Chairman, I think that it is essential to point out that this bill would not prevent Mr. Philip Agee

from publishing the articles contained in his publications, obnoxious though they be. This bill would only restrain his publication of the names of persons he claims are covert agents. By the same token, there is nothing in this bill which would prevent Louis Wolf from continuing to publish the Covert Action Information Bulletin which does contain articles purported to be based on "research" into U.S. intelligence operations at home and abroad. The only impact of this legislation would be on the section of the Bulletin titled "Naming Names."

I hope that this brief review of the constitutional question will show that the First Amendment does not provide absolute protection for all speech, and that the government can, in certain circumstances, intervene in the exercise of free speech in the interest of public safety, without jeopardizing the search for truth. As the Attorney General stated last year on this subject, "our proper concern for individual liberties must be balanced with a concern for the safety of those who serve the Nation in difficult times and under dangerous conditions." It goes without saying that these important constitutional considerations were very much in our mind when my colleagues and I worked up the final draft of the Intelligence Identities Protection Act. We are not challenging the Constitution. We are working with it. In my judgment, we have worked well within its limits. We have successfully followed what my uncle called the "boundary line of free speech."

Mr. Chairman, I will not take time this morning to discuss the specific provisions of S. 391, or to point out in detail how

this formulation reflects our proper concern for First Amendment rights. This has been the subject of previous testimony, and it is a part of the extensive record on this issue. I recommend the Intelligence Committee's Report (No. 96-896) on this subject, as well as the published hearing record of both the Intelligence and Judiciary Committees.

However, there is one additional issue which I believe must be addressed before I conclude my remarks because there has been so much confusion surrounding it. During the long public debate on this issue, and in the hearings before the Senate Intelligence Committee, I have heard it suggested or implied that it should be acceptable for people to disclose the names of covert agents if this information derives from "unclassified" sources. The implication of this view is that there exists somewhere in this government an official but unclassified list of covert agents, and that those who have found this list should be free to publish the names thereon.

Mr. Chairman, I have studied the matter of cover for covert agents within the Senate Intelligence Committee, and have even held a series of detailed hearings on this subject. Without going into specifics in open session, I can assure you that there is no such list. What we have found are unclassified official or semi-official documents which contain the names of covert agents in among the names of other officials of the U.S. government. The covert agents are NOT identified. The very purpose of these documents is to cover or to hide the true identity of the covert agents named thereon, and in no case is an identification explicitly made.

However, to say that the government has never published an unclassified list of covert agents as such does not mean that certain persons, employing basic principles of counter-espionage, and after considerable effort, cannot determine identities of covert agents with some degree of accuracy.

It is the purpose of S. 391 to punish the publication of names acquired through these techniques regardless of whether the identification was made with reference to classified or unclassified information. After all, it is not the mechanism of identification which places people's lives in jeopardy and threatens our intelligence capabilities. It is the actual publication of people's names as covert agents that does so. It is the pattern of activities involved in the pernicious business of "naming names" that we want primarily to prevent.

In closing, Mr. Chairman, I would like to make a special appeal to you and to my colleagues on your Committee to report S. 391 intact so that the interminable delays which seems to follow any change to a bill might be avoided in this case. You have my assurance, in turn, that I will do whatever I can to see that this vital bill is moved with the deliberate speed it deserves.

Over the past five years, more than 2,000 names of alleged CIA officers have been identified and published by a small group of individuals whose stated intention is to "expose" U.S. intelligence operations. I think it is time we legislated an end to this pernicious vendetta against the American intelligence community.

We send fellow Americans abroad on dangerous missions which are supported by us as Senators. We owe it to them to do our utmost to protect their lives as they go about our business.