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INTELLIGENCE IDENTITIES PROTECTION ACT OF 1981

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of S. 391, the Intelligence Identities Protection Act of 1981, which the clerk will report.

The assistant legislative clerk read as follows:

A bill [S. 391] to amend the National Security Act of 1947 to prohibit the unauthorized disclosure of information identifying certain United States intelligence officers, agents, informants, and sources and to direct the President to establish procedures to protect the secrecy to these intelligence relationships.

The Senate proceeded to consider the bill (S. 391), which had been reported from the Committee on the Judiciary with amendments, as follows:

On page 3, strike line 7, through and including "information," on line 13, and insert the following:

"(c) Whoever, in the course of an effort to identify and expose covert agents with the intent to impair or impede the foreign intelligence activities of the United States by the fact of such identification and exposure, discloses to any individual not authorized to receive classified information, any information that identifies an individual as a covert agent,

On page 5, line 15, after "agency,", insert the following: "other than the Peace Corps,".

So as to make the bill read:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Intelligence Identities Protection Act of 1981".

SEC. 2. (a) The National Security Act of 1947 is amended by adding at the end thereof the following new title:

"TITLE VI—PROTECTION OF CERTAIN NATIONAL SECURITY INFORMATION

"PROTECTION OF IDENTITIES OF CERTAIN UNITED STATES UNDERCOVER INTELLIGENCE OFFICERS, AGENTS, INFORMANTS, AND SOURCES

"SEC. 601. (a) Whoever, having or having had authorized access to classified information that identifies a covert agent, intentionally discloses any information identifying such covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such covert agent and that the United States is taking affirmative measures to conceal such covert agent's intelligence relationship to the United States, shall be fined not more than $50,000 or imprisoned not more than ten years, or both.

"(b) Whoever, as a result of having authorized access to classified information, learns the identity of a covert agent and intentionally discloses any information identifying such covert agent to any individual not authorized to receive classified information, knowing that the information disclosed so identifies such covert agent and that the United States is taking affirmative measures to conceal such covert agent's intelligence relationship to the United States, shall be fined not more than $25,000 or imprisoned not more than five years, or both.

"(c) Whoever, in the course of an effort to identify and expose covert agents with the intent to impair or impede the foreign intelligence activities of the United States by the fact of such identification and exposure, discloses to any individual not authorized to receive classified information, any information that identifies an individual as a covert agent, knowing that the information disclosed so identifies such individual and that the United States is taking affirmative measures to conceal such individual's classified intelligence relationship to the United States, shall be fined not more than $15,000 or imprisoned not more than three years, or both.

"DEFENSES AND EXCEPTIONS

"SEC. 602. (a) It is a defense to a prosecution under section 601 that before the commission of the offense with which defendant is charged, the United States had publicly acknowledged or revealed the intelligence relationship to the United States of the individual the disclosure of whose intelligence relationship to the United States is the basis for the prosecution.

"(b)(1) Subject to paragraph (2), no person other than a person committing an offense under section 601 shall be subject to prosecution under such section by virtue of section 2 or 4 of title 18, United States Code, or shall be subject to prosecution for conspiracy to commit an offense under such section.

"(2) Paragraph (1) shall not apply in the case of a person who acted in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States.

"(c) It shall not be an offense under section 601 to transmit information described in such section directly to the Select Committee on Intelligence of the Senate or to the Permanent Select Committee on Intelligence of the House of Representatives.

"(d) It shall not be an offense under section 601 for an individual to disclose information that solely identifies himself as a covert agent.

"PROCEDURES FOR ESTABLISHING COVER FOR INTELLIGENCE OFFICERS AND EMPLOYEES

"SEC. 603. (a) The President shall establish procedures to ensure that any individual who is an officer or employee of an intelligence agency, or a member of the Armed Forces assigned to duty with an intelligence agency, whose identity as such an officer, employee, or member is classified information and which the United States takes affirmative measures to conceal is afforded all appropriate assistance to ensure that the identity of such individual as such an officer, employee, or member is effectively concealed. Such procedures shall provide that any department or agency, other than the Peace Corps, designated by the President for the purposes of this section shall provide such assistance as may be determined by the President to be necessary in order to establish and effectively maintain the secrecy of the identity of such individual as such an officer, employee, or member.

"(b) Procedures established by the President pursuant to subsection (a) shall be exempt from any requirement for publication or disclosure.

"EXTRATERRITORIAL JURISDICTION

"SEC. 604. There is jurisdiction over an offense under section 601 committed outside the United States if the individual committing the offense is a citizen of the United States or an alien lawfully admitted to the United States for permanent residence (as defined in section 101(a)(20) of the Immigration and Nationality Act).

"PROVIDING INFORMATION TO CONGRESS

"SEC. 605. Nothing in this title may be construed as authority to withhold information from the Congress or from a committee of either House of Congress.

"DEFINITIONS

"SEC. 606. For the purposes of this title:

"(1) The term 'classified information' means information or material designated and clearly marked or clearly represented, pursuant to the provisions of a statute or Executive order (or a regulation or order issued pursuant to a statute or Executive order), as requiring a specific degree of protection against unauthorized disclosure for reasons of national security.

"(2) The term 'authorized', when used with respect to access to classified information, means having authority, right, or permission pursuant to the provisions of a statute, Executive order, directive of the head of any department or agency engaged in foreign intelligence or counterintelligence activities, order of any United States court, or provisions of any rule of the House of Representatives or resolution of the Senate which assigns responsibility within the respective House of Congress for the oversight of intelligence activities.

"(3) The Term 'disclose' means to communicate, provide, impart, transmit, transfer, convey, publish, or otherwise make available.

"(4) The term 'covert agent' means—

"(A) an officer or employee of an intelligence agency or a member of the Armed Forces assigned to duty with an intelligence agency—

"(i) whose identity as such an officer, employee, or member is classified information, and

"(ii) who is serving outside the United States or has within the last five years served outside the United States; or

"(B) a United States citizen whose intelligence relationship to the United States is classified information, and—

"(i) who resides and acts outside the United States as an agent of, or informant or source of operational assistance to, an intelligence agency, or

"(ii) who is at the time of the disclosure acting as an agent of, or informant to, the foreign counterintelligence or foreign counterterrorism components of the Federal Bureau of Investigation; or

"(C) an individual, other than a United States citizen, whose past or present intelligence relationship to the United States is classified information and who is a present or former agent of, or a present or former informant or source of operational assistance to, an intelligence agency.

"(5) The term 'intelligence agency' means the Central Intelligence Agency, a foreign intelligence component of the Department of Defense, or the foreign counterintelligence or foreign counterterrorism components of the Federal Bureau of Investigation.

"(6) The term 'informant' means any individual who furnishes information to an intelligence agency in the course of a confidential relationship protecting the identity of such individual from public disclosure.

"(7) The terms 'officer' and 'employee' have the meanings given such terms by sections 2104 and 2105, respectively, of title 5, United States Code.

"(8) The term 'Armed Forces' means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

"(9) The term 'United States', when used in a geographic sense, means all areas under the territorial sovereignty of the United States and the Trust Territory of the Pacific Islands.

"(10) The term 'pattern of activities' requires a series of acts with a common purpose or objective.".

"(b) The table of contents at the beginning of such Act is amended by adding at the end thereof the following:

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"TITLE VI—PROTECTION OF CERTAIN NATIONAL SECURITY INFORMATION

Sec. 601. Protection of identities of certain United States undercover intelligence officers, agents, informants, and sources.
Sec. 602. Defenses and exceptions.
Sec. 603. Procedures for establishing cover for intelligence officers and employees.
Sec. 604. Extraterritorial jurisdiction.
Sec. 605. Providing information to Congress.
Sec. 606. Definitions.".

Mr. GOLDWATER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. DENTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. WARNER). Without objection, it is so ordered.

Mr. DENTON. Mr. President, I rise in support of S. 391. On February 3, 1981, our distinguished colleague Senator JOHN H. CHAFEE of Rhode Island introduced the Intelligence Identities Protection Act of 1981. This bill, which currently has 46 cosponsors, was reported from the Committee on the Judiciary on October 6, 1981.

S. 391 is a bill to amend the National Security Act of 1947, to prohibit the unauthorized disclosure of information identifying certain U.S. intelligence officers, agents, informants, and sources, and to direct the President to establish procedures to protect the secrecy of these intelligence relationships.

Events transpiring in the world have been increasingly demonstrative of the need for maintaining a strong and effective intelligence apparatus. It follows, therefore, that unauthorized disclosures of information identifying individuals engaged in, or assisting in, our country's foreign intelligence activities, undermine the intelligence community's human source collection capabilities as well as endanger the lives of our intelligence officer in the field.

The disclosure of the identity of a covert agent is an immoral, nationally, and personally harmful act that cannot be tolerated. Prohibition of this activity as defined by the bill would in no way inhibit an individual from speaking out against Government programs that are wasteful. It would not impede the whistleblower who seeks to enhance his Government's ability to perform more efficiently by bringing to the attention of those in responsible positions deficiencies, such as fraud or waste, in the agency in which the whistleblower serves. The reprehensible activities which this bill is designed to criminalize have repeatedly exposed honorable public servants to personal peril and vastly reduced their effectiveness in pursuing their endeavors with significant detriment to national security. The insensitivity and moral degeneracy on the part of those who seek to undermine the effectiveness of our intelligence capability are so inimical to our American democratic system that it seems evident that what we are about to do today should not be necessary. This bill is indeed overdue for passage.

While in a free society we must welcome public debate concerning the role of the intelligence community as well as that of other components of our Government, the irresponsible and indiscriminate disclosure of names and cover identities of covert agents serves no salutory purpose whatsoever. As elected public officials, we have the duty, consistent with our oaths of office, to uphold the Constitution and to support the men and women of the U.S. intelligence service who perform important duties on behalf of their country, often at great personal risk and sacrifice.

Extensive hearings before the House and Senate Intelligence Committees and the Subcommittee on Security and Terrorism have documented the pernicious effects which have resulted from these disclosures or identities. An underlying, basic issue is our ability to continue to recruit and retain human sources of intelligence whose information is crucial to our Nation's survival in an increasingly dangerous world.

It seems mind-boggling to me that no existing law clearly and specifically makes the unauthorized disclosure of clandestine intelligence agents' identities a criminal offense. Therefore, as matters now stand, the impunity with which unauthorized disclosures of intelligence identities can be made implies a governmental position of neutrality in the matter. It suggests that the U.S. intelligence officers are "fair game" for those members of their own society who take issue with the existence of a CIA or find other perverse motives for making these unauthorized disclosures.

Through the lengthy hearings that have occurred over the past several sessions of the Congress, we have heard a substantial amount of testimony regarding the possible constitutional problems engendered by provisions of this bill. As we all appreciate, in this area of identities protection, we have steered a course carefully charted between two enormous interests: On the one side, we have the protection of a constitutional right of free speech and, on the other side, the vital need to protect the effectiveness of U.S. intelligence gathering around the world. During all of the hearings and debates, great care has been taken to construct a provision that would reach the activity to be proscribed, that is, "naming names," in such a way as to do no violence to the first amendment to the Constitution. I believe we, and those who labored previously on this measure, have been successful.

On June 29, 1981, the Supreme Court of the United States in a 7-to-2 decision sustained the authority of the President, acting through the Secretary of State, to revoke a passport of a U.S. citizen on the grounds that the holder of the passport is engaged in activities abroad that are causing serious damage to the national security of foreign policy of the United States.

This decision, Haig, Secretary of State against Agee, has a major relationship to this bill in that the Court's review of this matter established the serious nature of the activity of naming names to identify and expose covert agents. Furthermore, the Court's decision suggests that the issues involved here are, from a constitutional standpoint, relatively clear cut. This decision established that S. 391 will withstand a first amendment challenge in the courts. Even Justice Brennan stated in his dissent that:

> It may be that respondent's first amendment right to speak is outweighted by the Government's interest in national security.

Mr. President, I view this as a bipartisan issue. I believe immediate action must be taken to curtail these activities which have been so determental to our intelligence-gathering capabilities and, ultimately, to our national security. If any legitimate criticism is to be leveled at this bill it would, in my view, relate to insufficient criminal sanctions for what I consider to be a most egregious offense that borders on treason.

Frankly, I am grateful for the spirit of cooperation that has enabled this important bill to be brought to the floor but I am concerned that it has taken so long to do so. I look forward to the prompt consideration of this measure on the floor today and its early enactment in a form that most adequately addresses this serious gap in the Federal Criminal Code.

Finally, I want to commend by colleague from Rhode Island, Senator CHAFEE, for his initiative and unceasing efforts on this vital measure. I also want to thank staff members Rob Simmons, Will Lucius, and Sam Francis for their valuable contributions on S. 391. These gentlemen, along with many others, have put in many long hours on this legislation and I feel they deserve our strong commendation.

There has been a strong bipartisan tone in the discussions on this matter in committee. In the spirit of that bipartisanship I have worked with the minority floor manager of this bill and have come to respect him greatly.

I am now pleased to yield to the Senator from Delaware.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. I thank the Senator.

I, too, would like to begin by complimenting the Senator from Rhode Island, Senator CHAFEE, who serves with me on the Intelligence Committee, has had for some time a preeminent interest in doing something about protecting, the safety of agents of the U.S. Government. These agents, acting on behalf of our Government, and in the interests of the people of the United States of America, are sub-

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ject to the outrageous public exposure by individuals, some of whom are former members of those agencies, who have deliberately put them at risk.

It was beyond any question in my mind that those people who are deliberately engaging in this practice are fully aware of the fact that such exposure can and has resulted in the loss of life and the breach of security and, consequently, affected the interests of the United States of America.

I, too, believe as does the Senator from Rhode Island and the Senator from Alabama, indeed I think we are all in agreement that it is high time we finally got this thing to the floor. It is high time we get a vote.

We had a number of debates. I see the distinguished Senator from Arizona, chairman of the Committee on Intelligence, here. He is fully aware of the subject, fully cognizant of it. He, in his capacity on that committee, has heard all the arguments and debates on this. We have had it through his committee and the Judiciary Committee. In the 10 years I have been in the U.S. Senate, there have not been many issues that have been as thoroughly, fully debated as this one. So I think it is high time we got on with the issue of deciding what are the only really one or two controversial aspects of the bill. We are 99 or 90 percent in agreement as to what form this protection of our agents should take.

I should like to suggest, and I think it is appropriate—it is common practice that we should move, probably, the committee amendments. This is the Judiciary Committee the Senator from Alabama and I are representing today. I ask unanimous consent that we consider and agree to en bloc the amendments as adopted in the committee on this bill.

The PRESIDING OFFICER. Is there objection?

Mr. DENTON. Mr. President, I reserve the right to object.

Mr. BIDEN. Mr. President, I amend that to say and that the bill as thus amended be considered as original text.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request of the Senator from Delaware as amended?

Is it the request of the Senator to have the amendments be agreed to en bloc?

Mr. BIDEN. That is correct.

The PRESIDING OFFICER. The question is on agreeing to the committee amendments en bloc.

The committee amendments were agreed to en bloc.

Mr. BIDEN. I thank the Chair for the help.

Mr. President, let me, if I may, at least from my perspective, outline in just a few minutes the essential elements of the bill as I see it so our colleagues, as they go forward with their efforts and their homework tonight and tomorrow and on the weekend, reading the RECORD of what the debate is about, will have a starting point at least.

The whole purpose of this bill is to penalize the disclosure of names by three classes of persons, but it really is only the third class of person we have a debate about as to how we should do it. The first is in section 601 (a) and (b) and they deal with present and former Government employees who have had access to the names of agents or who, because they had access to classified information, are able to determine the names of the agents. In subsection (d), that deals with individuals outside the Government who disclose the names of agents even though they never had access to classified information.

There are two formulations of section (c) that really are the cause of some debate here, in the Senate, and that we shall be debating at the beginning of next week, the so-called reason-to-believe version, which reads as follows:

> Whoever, in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States, etc.

We are talking about the third class of person now, not the person who has had access to classified information. These are persons outside the Government who disclose the names, the standard we want to judge them by. The first standard we are going to argue about is the one I just read.

Another version is the version adopted by the Judiciary Committee. It is the intent version. It is a response to some of the arguments raised by some of the constitutional scholars and press groups who contend that the reason to believe version is unconstitutional and/or unnecessarily broad. The intent version reads as follows:

> Whoever, in the course of an effort to identify and expose covert agents with the intent to impair or impede the foreign intelligence activities of the U.S. by the fact of such identification and exposure,

And so on.

That is what we are going to be arguing about. That is what it is all about. That is what it comes down to—whether or not we have the operative language that would make it a crime and subject those persons to a criminal penalty who reveal the names of agents, who have not had access to the names of these agents through classified information in the past, fall outside of Government but, nonetheless, by whatever means, gain access to it: a reporter who finds out that John Doe is a CIA agent and he publishes John Doe's name; or somebody who deliberately goes on a witch hunt to find out the names of those people, gathers them up and publishes them for purposes of exposure. They are the folks we are after.

So what we are going to be arguing about—not so much today because we are not going to spend a lot more time here today—is how do we get to those folks, how do we treat them, and by what standard of law do we apply to them?

On the fairness position argued by the Senator from Rhode Island, the Senator from Alabama and others, a case can be made that the civil liberties of Americans are better protected by the reason to believe standard. So our colleagues are going to hear a lot of confusing, well-intended jargon on both sides. We are going to have the Senator from Rhode Island arguing, if we really want to protect civil liberties, we should adopt reason to believe. We are going to have the Senator from Delaware say, no, it is better to have an intent standard.

I do not have any doubt in my mind at the beginning of this debate that the Senator from Rhode Island means what he says, that he truly believes the best way not only to protect our national interest but also not to violate the civil liberties of our American citizens under the first amendment is to adopt the reason to believe. I happen to disagree with that. So we are about to get into a debate that I believe is borne out by a genuine belief on both our sides that we can get the job done with our language and protect civil liberties.

Mr. President, I think it is useful for us to really understand just how narrow the difference is, because it gets kind of complicated. We are going to get into fairly esoteric arguments and it is a little bit hard to follow. I suspect that we shall both or all of us on the floor may very well—at various times in the debate, our decibel rates may rise and we may also be making appeals as to the same basic set of arguments and our colleagues are going to argue, how can they both be saying the same thing?

Mr. President, there is much more to talk about in this bill. There is a section on whether it is constitutional to penalize nonemployees. We are going to be talking about what happens without the intent language, what happens with the intent language. We are going to be arguing about what the Agency thinks will get the job done, we are going to be arguing about how badly all these things are needed. Rather than get into those things now and rather than make a more lengthy floor statement, I want to reiterate where the bone of contention is going to come.

The argument we are going to be focusing on in this bill is whether or not the language which says "with the intent to impair or impede" should be stricken and we should have language that says "with reason to believe." It is going to come down to that. That is the big issue. I am anxious to get it settled. I am anxious to have a resolution, because we need a bill. These folks need protection and I am confident that whatever version we come

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out with we can get passed in the U.S. Congress, we can get the President to sign, and we can get on with the business of putting it in shape. So without getting into the details of my argument as to why I think we should stick with the committee version, let me yield to my colleagues who also have opening statements and, maybe, a different perspective on this question.

Mr. DENTON. Mr. President, first I would pose a rhetorical question to the Senator from Delaware. I wonder why the Senator is so firm on the intent standard regarding the application of legislation to protect the lives of our intelligence agents and yet does not come down on that same standard on the issue of voting rights.

Mr. BIDEN. I said it was going to be an interesting debate. I will be happy, since it was a rhetorical question, to speak to that question in some detail as we get down the line here.

Mr. DENTON. I yield to the Senator from Arizona.

Mr. GOLDWATER. Mr. President, I thank my friend. The Intelligence Identities Protection Act (S. 391) before us today will help protect our intelligence personnel on difficult and dangerous assignments in foreign countries. It also will help stop our intelligence sources from turning away from us because they are afraid we cannot be trusted to protect them. It might help us get information that is vital to the security of our country.

Last November, the "Covert Action Information Bulletin" published the names of 69 alleged CIA officers serving in 45 countries abroad in a section titled "Naming Names." In addition, the "Bulletin" reprinted the names of 272 alleged covert agents which had been identified in the 12 previous editions of the magazine.

One week later, the pro-Sandinist paper, Nuevo Diario, identified the names of 13 alleged CIA officers assigned to the U.S. Embassy in Managua, Nicaragua. Several of those named have already received death threats, been roughed up in their homes at night, and the families of a number of these American officials have been evacuated for their personal safety. U.S. officials in Managua have linked the publication of these names with the visit of Philip Agee to Nicaragua last month.

There has already been one murder. Richard Welch was murdered in Greece after being named. In 1980, two attempts were made in Jamaica to assassinate American personnel. They were set up as targets for assassination by other Americans through the unauthorized disclosure of names. There are two ways this is being done. One is the naming of names at press conferences, and the other is listing names in books and publications. These unauthorized disclosures have been extensive and many have been made by former CIA employees. The tragedy is that we do not have any laws to stop it.

It is bad enough that our overseas employees are exposed to violence, but to allow someone here at home to do it by putting ID tags on them so that they may become targets makes no sense at all.

So far, some 1,200 names have been made public in magazines or newspapers. Another 700 appeared in a book. A bimonthly bulletin exposes CIA, FBI, and military intelligence personnel and assignments. A worldwide network called CIA watch is operated for the purpose of destroying the CIA.

Every time I read about something like this, it bothers me, I cannot help but wonder why we let it continue and why someone does not do something about it. That seems to me as morally wrong as anything I can think of and something I can accept no longer.

We are in a rut on this subject, and I am afraid it will become our grave if we do not stop talking and do something. We must tell the world that we will not tolerate such disclosures any longer and show that we care for the CIA and plan to do something about it.

Thus, the immediate goal for this Nation—and for this Congress—should be the rebuilding and revitalization of the intelligence community which will benefit all our citizens.

We should have had this bill before us sooner, but now that it is before us, we must act promptly. This bill was reported from the Senate Intelligence Committee by a vote of 13 to 1 in 1980, after 9 days of hearings and over 650 pages of testimony. It picked up 47 cosponsors in 1981. It passed the House by a vote of 354 to 56 last year, and has had the support of both the Reagan and Carter administrations.

The purpose of this bill is to protect the lives of American citizens working abroad in the intelligence operations of this country from other American citizens who deliberately wish to set them up for exposure to violence by the unauthorized disclosure of names.

The bill also places a price on the activities of those who use this means to impair and impede duly authorized American intelligence activities around the world.

The biggest obstacle to this bill in the past were claims that it would interfere with free speech and freedom of the press. That has been worked out, and those claims are phony. The Supreme Court would not hesitate to say so if Congress were to go too far.

If someone wants to criticize foreign policy, that is their business. If they want to write about the lousy conduct of some of our citizens, that is OK, too. But they do not have to name names, because that places the lives of human beings in danger. That is not OK. It is not acceptable in the American society.

There have been at least six bills on both sides of the Capitol to deal with this, but all of them have been bogged down in discussions over how best to arrange words. The problem has been how to protect first amendment rights while allowing for prosecution of those who abuse those rights. I hope we have not become so helpless that we cannot recognize a serious situation and solve it just because we cannot agree on words. I believe that first amendment rights were considered and that the bill will protect those rights while allowing for prosecution of those who name names solely for the purpose of harming the Government's foreign intelligence activities. There is another amendment in the Constitution that is important, too. That is the 14th amendment, which guarantees the right of equal protection to all citizens. I believe this bill will protect those rights and the first amendment at the same time.

This bill will outlaw unauthorized disclosure of names in three ways. First, it covers those who have access to classified information which identifies names. Second, it applies to those who have access to classified information but not names, and who learn of names because of that access. Third, it hits those who make a business of naming names in a deliberate and systematic way even though they claim not to have access to classified information.

Some have said that this bill will not do much more than help patch the image of the CIA. I believe that there is a lot more at stake than that. It has nothing to do with whether you like the CIA or do not like the CIA. Saving lives is what this bill will do. This is so serious that if we do not pass this bill the KGP people are the only ones who will get a laugh out of it. Everyone else will think we are crazy and start looking at us as accessories to negligent homicide. It would mean that we would prefer to protect those who would harm us instead of those who work for us.

A high-ranking CIA official testified before the Senate Intelligence Committee in these words:

> Our intelligence sources and methods are part of the national treasure. Once disclosed, our sources can be denied to us and our methods thwarted by relatively simple actions by foreign authorities. The law currently lacks teeth in seeing to it that these sources and methods are adequately protected from unauthorized disclosure.

Mr. President, those words certainly make sense. There is no good reason why our intelligence employees or agents who operate under protective cover on official Government business should be placed in needless danger by permitting their identities to be revealed deliberately.

Mr. President, I might comment that we are the only country in the world that allows this to go on. The penalty for doing this in any other country would undoubtedly be death or life imprisonment. But we allow it to go on out of an office on DuPont Circle, and I am fed up with it.

These disclosures of identities have no redeeming social value and were

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clearly not intended to be within the freedom of speech or of the press incorporated in the first amendment to our Constitution.

Nearly all major foreign intelligence services with which the United States has liaison relationships have undertaken reviews of their relations with the Agency. Some immediate results of continuing disclosure have included reduction of contact, reluctance to engage joint operations, and reduced exchange of information.

That in itself is a very serious thing to have happened to our country when we cannot exchange classified intelligence information with other countries and slowly lose them as sources because they are afraid for the lives of their own people and they do not like the possible disclosure of top secret information of their own.

There is an urgent need for effective legislation both to discourage these unauthorized disclosures and to criminalize them when they occur. The credibility of our country in its relationships with foreign liaison services and agent sources is at stake. The personal safety and well-being of patriotic Americans serving their country in the far reaches of the globe are at stake. The professional effectiveness and morale of this country's intelligence officers is at stake. In sum, the Nation's national security is at stake.

U.S. intelligence officers overseas must establish what are, in effect, contratual relationships with foreign nationals occupying key posts and who are willing to provide information to the U.S. Government. Since many of our most valuable intelligence sources live in societies were anything less than total allegiance to the state could subject an individual to loss of life or liberty, they rightfully demand an absolute assurance that the cooperative relationship they are about to enter into will remain private. You can imagine the effect it must have on a source who one day discovers that his contact has been openly identified as a CIA officer. The impact in this regard is twofold. First, there is a substantial adverse impact on the CIA's ability to collect intelligence; second, some of our foreign sources, who, notwithstanding the disclosures, must remain in place, may be subject to severe punishment or worse.

As matters now stand, the intentional exposure of covert intelligence personnel without punishment implies a governmental position of neutrality in the matter. It suggests that U.S. intelligence officers are fair game for those members of their own society who take issue with the existence of CIA or find other motives for making these unauthorized disclosures.

I have outlined several reasons why legislation is necessary to solve this problem of unauthorized disclosures of identity. I believe that timely action in this regard is very important to national security. It hinges not only on the protection of our intelligence officers and contacts but on the diminished quality of intelligence we can expect to receive unless we take action now.

It seems to me that we sometimes forget that the intelligence agencies are on our side and sometimes need our help. It makes no sense for us always to be looking for faults.

This is an emergency situation that needs legislation to deal with it now. We cannot avoid this issue just because we may get some bad press. We must pass the Chafee-Jackson amendment, and we must pass this bill. We must have the courage to do what is right. This bill is good for our fellow Americans who serve us on difficult and dangerous missions abroad. And it will do us a lot of good, too.

Mr. President, the most important function of the legislative branch is to legislate when it is needed. We need it now. Let us go ahead with Senator CHAFEE and Senator JACKSON'S amendment.

I wish to take this opportunity to thank the Senator from Rhode Island for his constant courage in pushing forward on this matter. It is long, long overdue, and it will do more in my humble opinion to once again create a giant and effective force of intelligence in this country than anything I can think of, a force which was diminished by the so-called Church committee which almost deprived us of intelligence during the years it was in existence.

Mr. President, I yield the floor.

Mr. DENTON. Mr. President, I was delinquent in not yielding to my admired friend from Arizona more elaborately.

He ran for the Presidency in 1964, and the respect held for him in the hearts of the people of my State was such that he not only won that State in that election but he got the first five Republican Congressmen from Alabama since Reconstruction elected on his coattails.

I have had personal opportunity to admire him for decades, and then to serve with him on the Armed Services Committee and to be invited by him to participate in hearings on the Select Committee on Intelligence, and I cannot think of a man in the United States to whom we owe more for protecting this Nation's security interests.

I strongly recommend that we pay close attention to what he just had to offer us.

I will yield to the distinguished Senator from Rhode Island who has been a central figure in bringing this measure to the floor.

Mr. CHAFEE. Mr. President, I thank the distinguished Senator from Alabama for that kind introduction and I thank the senior Senator from Arizona for his very kind comments. It is a pleasure to work with Chairman GOLDWATER on the Intelligence Committee where we have been together now for some 6 years. Also, by happy coincidence, the floor leader for the minority on this issue, representing the Judiciary Committee, also serves on the Intelligence Committee. So he is very, very familiar with the issues that we are struggling with here today. He lends great insight to the problems that we face.

Mr. President, briefly let me review the matter.

We have members who serve on the Senate Intelligence Committee who travel around the world and spend a good deal of time with American intelligence agents both at home and abroad. They are fully aware that the most nagging problem facing our agents—one which elicits the greatest concern from those who lead the Intelligence Agency—is the fact that names of alleged agents are published freely by American citizens. As the distinguished floor leader for the minority on this issue pointed out, we have tried in this legislation, whether it is the committee's bill or whether it is in the amendment that Senator JACKSON and I have proposed, to prohibit the publication of these agent's names from three sources of publication, or potential sources of publication.

The first category of person naming names is the person who had authorized access to information that identifies a covert agent. This person may work for an intelligence agency. The second category deals with those who had access to some secret information but they themselves did not have specific access to the name of a covert agent.

Finally, you come to the most difficult group of persons naming names. This category includes those who did not serve or are not currently serving in an intelligence agency, and who do not have access to classified information. Nonetheless they proceed to identify names of alleged agents through determined efforts on their part to ferret out the names of what might be agents, and then they proceed to publish these names.

That is the cause of the problem, and that presents the difficulty we have here this afternoon as we debate this legislation. Can you punish someone who himself has never had access to classified information, who never, perhaps, served in an intelligence agency, but who, using unclassified documents, a whole series of them, carefully searches through them and ferrets out and produces names alleged to be intelligence agents, and publishes them?

The Senate Judiciary Committee came forward with language to take care of this problem with what I will refer to as the committee language.

This language states:

> Whoever, in the course of an effort to identify and expose covert agents with the intent to impair or impede the foreign intelligence activities of the United States . . .

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Somebody goes out, he spends an incredible amount of time, he goes through a whole series of unclassified documents, and then with the intent to expose the name of an agent in order to impair the activities of the United States, goes ahead and publishes these names.

On the other hand, in the amendment that I will call up, the language is somewhat different. The language in my amendment says, "Whoever, in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede." As the distinguished Senator from Delaware mentioned, it seems we might be arguing and nitpicking over words here. One talks about the "intent" to impair the intelligence activities of the United States, and the other talks about "reason to believe" that the disclosure of these names would impair the intelligence activities of the United States.

First, let me say this: We have been working on this entire subject now for over 2 years. I will say, how delighted I am that we have this legislation on the floor now. In one way or another it seems apparent that legislation is going to pass dealing with this problem. That in itself is a mammoth step forward. Indeed, in the Judiciary Committee, the committee language passed unanimously, and the amendment that I presented barely failed by a vote of 8 to 9. But if it had passed I suspect that that language would have also been approved by the committee.

In other words, one way or another there is unanimity, I believe, in this body that we will pass legislation to curb the disclosure of the names of alleged agents working for our intelligence agencies.

As I mentioned earlier, we have found this to be the principal sore spot with those who serve this country abroad. How is it possible, they say, that fellow Americans can disclose names of alleged agents who are serving at their personal peril around different trouble spots of the world? Why do we permit this to happen?

When this legislation is passed, and the House has passed language similar to that in my amendment, and if my amendment prevails, which I hope it will, then we will not have to go to conference on this subsection. If my amendment fails, then we will go to conference, but one way or another language is going to come out. An act is going to be passed by this body, that will wrestle in a determined manner with this problem.

Let me briefly give a bit of history, if I might, but before proceeding to that, let me call up my amendment.

(By request of Mr. DENTON the following statement was ordered to be printed in the RECORD:)

● Mr. THURMOND. Mr. President, this bill represents the culmination of a great deal of work during at least two Congresses. Legislation of this nature has been examined in one form or another by both the Intelligence Committee and the Judiciary Committee since early 1980. Hearings have been held, there has been lengthy debate, and each and every section has been closely and carefully scrutinized. I do not believe that there is much disagreement in the Senate as to whether or not legislation of this type is needed, and I think that it is time for the Senate to say with a loud and clear voice that we do not condone the type of action prohibited by this bill.

This measure aims at protecting the identities of those individuals whose anonymity serves the interest of the country. Moreover, this legislation would insure an appropriate balance between individual rights and the absolute necessity for secrecy in intelligence collection vital to the security of the Nation.

The prohibitions contained in S. 391 are directed at punishing those individuals who intentionally and without authorization disclose information identifying intelligence officers and agents of the United States. This bill is not intended to apply to members of the press or others engaged in legitimate activities protected by the first amendment. It is intended, however, to stop those people who are in the business of "naming names" of our covert agents.

We must keep in mind the special needs of the brave and unsung employees of the intelligence agencies of this country. We must remember, too, that uninformed policymakers cannot properly serve the people, and without the information these employees provide, the American people will suffer.●

● Mr. GRASSLEY. Mr. President, earlier this year, as a member of the Senate Judiciary Committee, I voted in favor of S. 391, as originally introduced. I intend to reaffirm my strong support for the bill here today and I hope that we can restore the bill to its original form.

In this bill, as in other bills that the Judiciary Committee has studied in this and the prior session, we have been asked to balance first amendment rights against the Government's ability to "suppress" information necessary to protect the men and women of the intelligence community, whose secret work is vital to the Nation's security.

Some have opposed this legislation. The opposition states that the bill undermines first amendment rights. But, overwhelmingly, it has been viewed and it should be viewed as an attempt to bolster or protect our covert intelligence and counterintelligence agents.

I have been convinced beyond a reasonable doubt that this legislation is needed to prohibit the systematic exposure of agents' identities under circumstances that pose a clear threat to intelligence activities vital to the Nation's defense. I am also convinced that this bill goes to great lengths to distinguish between the ghoulish business of furnishing the enemies of the United States with information that invites and facilitates violence against its agents and mere reporting. I am satisfied with the terms of this bill and the protection that it affords. I encourage all of my colleagues to support this bill and its goals.●

AMENDMENT NO. 1256

(Purpose: To describe criminal liability for the disclosure of certain information identifying an individual as a covert agent)

Mr. CHAFEE. Mr. President, I call up my amendment numbered 1256.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Rhode Island (Mr. CHAFEE) for himself, Mr. JACKSON, Mr. ABDNOR, Mr. COCHRAN, Mr. D'AMATO, Mr. DENTON, Mr. DOMENICI, Mr. EAST, Mr. GARN, Mr. GRASSLEY, Mr. GOLDWATER, Mr. HAYAKAWA, Mr. HATCH, Mrs. HAWKINS, Mr. HELMS, Mr. HUMPHREY, Mr. LAXALT, Mr. LUGAR, Mr. MATTINGLY, Mr. NICKLES, Mr. SCHMITT, Mr. SIMPSON, Mr. SYMMS, Mr. THURMOND, Mr. TOWER, Mr. WALLOP, and Mr. WARNER) proposes an amendment numbered 1256:

On page 3, beginning with line 13, strike out all through "agent," on line 19 and insert in lieu thereof the following:

"(c) Whoever, in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States, discloses any information that identifies an individual as a covert agent to any individual not authorized to receive classified information,".

Mr. CHAFEE. Mr. President, the guts of this debate here this afternoon and Monday and Tuesday morning presumably will revolve around the amendment I have submitted.

As I previously indicated, the rest of the language of this legislation appears to be noncontroversial and that is a tremendous step forward because such certainly was not true some 2 years ago when we first presented this language.

On this amendment, in which I am joined as a principal cosponsor by Senator JACKSON of Washington, and by some 25 other Senators, I now review a bit of history, if I might, on the background of the amendment.

The language which I am presenting along with Senator JACKSON is the language which was originally proposed and referred to the Senate Committee on the Judiciary. It emerged from the Subcommittee on Security and Terrorism headed by the distinguished Senator from Alabama, and then was considered in the full committee. There this language was rejected by a very close vote of 9 to 8.

In my judgment, the committee language, which was adopted—and let me call it the committee amendment—substantially weakens the language which was originally in the bill which

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was adopted by the House, and which is in my amendment.

Therefore, I am presenting this amendment, which passed in the House of Representatives last fall by a vote of 354 to 56. It is the language which the Senate Intelligence Committee originally adopted in 1980 by a vote of 13 to 1.

Now, President Reagan has stated that our language—and by our language I mean the Chafee-Jackson language—is "far more likely to result in an effective law that could lead to successful prosecution," than the committee language.

Mr. President, the key difference between the committee and the Chafee-Jackson language relates to the standard of proof that would be used in a prosecution. The committee language requires that there be an effort to identify and expose agents with the intent to impair or impede the intelligence activities of the United States.

Our language requires that there be a pattern of activities intended to identify and expose agents, with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States. In other words, the difference is the committee language depends on the subjective intent of the person engaged in naming names whereas our language uses an objective standard of proof.

(Mr. HAYAKAWA assumed the chair.)

Mr. CHAFEE. I will explain this further as we go along. But, at this point, let me say that it places the intent of the defendant under our language where it should be in a criminal act—on the intention to perform the harmful act. The committee language focuses on the subjective intent of the defendant to do harm.

The reasons for these differences rises out of the debate we had on this issue last year. I would like to summarize some of the background of the debate.

In January of 1980, over 2 years ago, Senator JACKSON and I joined Senator MOYNIHAN in introducing the Intelligence Reform Act of 1980 (S. 2216). That bill contained a section designed to protect agent identities which depended on a subjective standard of intent—in other words, when we originally introduced this bill, we also had this subjective standard of intent. What did the person intend to do inside their breast?

Now, when we had the hearings before the Senate Intelligence Committee in June of 1980, a number of witnesses expressed concern with this language. For example, Mr. Floyd Abrams testified that he did not support the intent standard for the following reasons:

> I don't think that their intent—
>
> Meaning the accused—
>
> ought to bear on your decision. They—
>
> The accused—
>
> Do bad things maybe for bad reasons but the question I would urge on you at least is whatever the intent is; whether you ought to start down the road of deciding what can be said or written by people who don't happen to work for the Government, whether you like or approve of their intent or not. I don't think that factor ought to be that they don't like the CIA. They may not have a constitutional right to publish certain information but they have absolute right to like or dislike what they choose.

And Mr. Morton Helperin, of the ACLU, said about the same thing. He said:

> I think that a citizen has the right to impair or impede the functions of a government agency whether it is the Federal Trade Commission or the CIA. The fact that your intent is to impair or impede those agencies does not make your activity a crime if it is otherwise legal.

Now, because of these concerns about intent, the staffs of the Senate Intelligence Committee and the Justice Department began working on an alternative standard of proof which would remove the problems of the specific intent standard. Eventually, we came up with language which utilized what they call an objective standard of intent. The Carter administration's Justice Department endorsed this language.

In a letter to Chairman Bayh, who was then the chairman of the Senate Intelligence Committee, the Deputy Attorney General of the United States, Mr. Renfrew, wrote as follows about this objective standard:

> This formulation substantially alleviates the Constitutional and practical concerns expressed by the Justice Department with regard to earlier versions of this bill that included a requirement that prohibited disclosures be made with a specific "intent to impair or impede" U.S. intelligence activities.
>
> Because of the significance of this matter, however, it has been our view from the beginning that such legislation as is enacted must be fair, effective and enforceable. Our position has been and remains that the absence of an intent element in this legislation will accomplish this goal.

Let me just briefly summarize what we are talking about here. Under the committee language, it is said that you have to have an intent to impair the intelligence activities of the United States before you are guilty. We say that is not the right standard. Somebody might be impairing intelligence activities but not with the intent to do so. Somebody might be disclosing names of alleged CIA agents and saying:

> I'm not doing it to impair the intelligence activities of the United States, I am doing it to improve intelligence activities. These agents are misbehaving all over the world. They shouldn't be monkeying around in foreign countries. We ought to be collecting intelligence with satellites or whatever it might be. I'm not out to spoil or impair the intelligence activities of the United States, I'm out to improve them.

Now, that is what we call the subjective standard of intent. How do we get into that person's breast and determine whether he is out to improve or he is out to impair the intelligence activities of the country?

The problem is why we do not use that standard. Instead, we look at the pattern of activities of a person: If time after time after time he exposes the names of agents and he has a reason to believe that it impairs intelligence activities, he is culpable. Any reasonable person would know that by naming names you are going to impair the foreign intelligence activities of the United States.

Now, there is the crux of the problem between this different language. It is not that we are dancing on the head of a pin here. There are substantial differences.

Mr. President, the Department of Justice under President Carter and the Department of Justice under President Reagan both believe that the better standard is the one in our amendment. This language protects the individual and, furthermore, it enhances the chances of obtaining a prosecution at the same time.

Now, I note that the language of this amendment is the only language that has been endorsed by both the Carter and the Reagan administration Justice Departments. The issues which this legislation involves have been heard in detail. Our wording in this amendment has been carefully worked out and refined to its current state.

Let me address for a moment the committee language.

The reason we are here this afternoon, of course, is to strengthen the intelligence capabilities of the United States by prohibiting the unauthorized disclosure of information identifying certain intelligence offices of our country. This bill places criminal penalties on those enemies of our intelligence community engaged in this pernicious activity called naming names.

There is no dispute that those who are for the committee language and those who are for the amendment both object to the activity of the naming of names. The difficulty comes in whether the committee language will accomplish the purpose of placing criminal penalties on this activity because the committee language depends on specific intent language. That is the standard in the committee bill. It offers serious prosecutorial problems in the case of an individual that claims that his intent is to inform the public or even to improve U.S. intelligence.

Let me refer to the testimony of Mr. Richard Willard, who is the Attorney General's counsel for intelligence policy, on October 6, 1981. Mr. Willard said:

> The problem is that Senator BIDEN's approach would invite evasion of the bill because people like Mr. WOLF and others would say, "Well, my intent was to help intelligence activities by disclosing unsavory activities," and that would give them a defense that they would seek to use. That is why we felt the objective reason-to-believe standard which Senator CHAFEE introduced to be better.

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In the Judiciary Committee markup of the original bill on October 6, 1981, Senator BIDEN stated that:

All the folks we all agree we want to get can be captured, figuratively and literally, under the language I'am about to introduce.

However, it is my concern that this is not the case. Many individuals who indulge in "naming names" have suggested that their purpose, their "intent," is not to impair or impede U.S. intelligence activities. Their purpose, they say, is to improve these activities. For these individuals, the subjective intent standard provides a loophole big enough to drive a truck through.

For example, in testimony before the House Permanent Select Committee on Intelligence on January 31, 1981, William Schaap of the Covert Action Information Bulletin, had this to say:

Our publication . . . is devoted to exposing what we view as the abuses of the Western intelligence agency, primarily though not exclusively the CIA, and to expose the people responsible for those abuses. We believe that the best thing for the security and well-being of the United States would be to limit severely, if not abolish, the CIA.

Our intent both in exposing the abuses of the intelligence agencies and in exposing the people responsible for those abuses is to increase the moral force of this Nation not to lessen it. That the CIA would assume our intent is simply to impair or impede their foreign intelligence also seems likely. Patriotism is to some extent in the eyes of the holder.

The implication of this testimony is that Mr. Schaap does not believe his intention is to "impair or impede" U.S. intelligence activities. His activity is patriotic.

It would seem, then, that he could mount an effective defense under the committee language, based on his "intent," and that he would escape prosecution because there is no criminal liability for his "pattern of activities."

Mr. President, it has been suggested that the objective standard of criminal liability under subsection 601(c) departs from previous statutes, punishment for disclosure in the national security field. Some say, "We have never heard of such a thing. Every criminal statute has intent. You have to have intent on the part of the accused. What do you do coming up with language which talks about 'reason to believe?'"

But the facts are that the standard we have adopted is consistent with existing espionage statutes and, if anything, offers greater protection for first amendment rights.

All the existing espionage laws which can apply to those without authorized access to classified information require that an individual be engaged in an activity with one of two things: Either there be an "intent," which is true in some statutes, or that there be a "reason to believe," as we have here, and sometimes both.

For example, 18 U.S.C., section 793(e), punishes unauthorized disclosure of national defense information which the person has "reason to believe could be used to the injury of the United States or to the advantage of any foreign nation." There is an example of the "reason to believe."

Similarly, 42 U.S.C., section 2274(b) punishes disclosure of restricted atomic energy data "with reason to believe such data will be utilized to injure the United States or to secure an advantage to any foreign nation."

There are other examples.

Therefore, the standard which we have adopted in this amendment is consistent with past legislation where Congress has punished disclosure without requiring proof of specific intent, but, rather, proof that the reasonably foreseeable result would cause injury to the United States or advantage to a foreign power.

Of course, the question may be asked whether the objective standard—the "reason to believe" standard—will be sustained by the courts. Clearly, we do not want to write something into this very important statute—which both sides are anxious to get passed—that will not be sustained by our courts.

In the opinion of the Carter administration and in the opinion of the Reagan administration Justice Department, this standard, the Chafee-Jackson standard, will survive first amendment and other challenges in the courts.

Past examples of where the "reason to believe" standard has been upheld would be:

Gorin against the United States, 1944, where the "reason to believe" was characterized as sufficient scienter in a criminal statute by the Supreme Court;

Schmeller against the United States, sixth circuit, 1944, where "reason to believe" was upheld with no requirement to prove specific intent;

U.S. against Achtenberg, eighth circuit, 1972, where the "reason to believe" standard was deemed sufficiently precise for the criminal statute to withstand an attack for vagueness and overbreadth;

U.S. against Bishop, ninth circuit, 1979, where the "reason to believe" standard was held to be sufficiently precise to withstand a vagueness attack;

U.S. against Progressive, Inc., Wisconsin District Court, 1979, where the "reason to believe" standard withstood an attack for vagueness and overbreadth.

In comparison to many existing statutes the language which we have placed in this amendment includes language which narrows the scope of criminal liability and therefore affords greater protection for first amendment rights. There must be proof that the disclosure was made with reason to believe that it "would impair and impede the foreign intelligence activities of the United States."

This standard is more carefully tailored to the specific harm the statute seeks to prevent than the more generalized standard of injury to the United States or advantage to a foreign power.

As Judge Learned Hand observed,

there may be many cases where information may be advantageous to another power and yet not injurious to the U.S.

Judge Hand said that in United States against Heine, 151 F.2d 813, 815(1945).

The language of our amendment focuses solely on injury to the United States. In other words, it does not talk about its being advantageous to a foreign power. It even restricts it further than that—it involves not just broad injury to the United States, but specific injury to the U.S. foreign intelligence activities.

So, unlike statutes that merely require reason to believe that information could be used to the injury of the United States, the Government must prove that the reasonably foreseeable result of this disclosure would be to impair or impede particular U.S. Government functions that are exceptionally important to the conduct of U.S. foreign and military defense and that depend upon secrecy for their success.

An even greater safeguard is the requirement that the disclosure must occur "in the course of a pattern of activities intended to identify and expose covert agents." The term "pattern of activities" is defined in section 606(10) of this statute, the bill that we are discussing today. The pattern of activities require a series of acts with a common purpose and objective. It is not one disclosure, it is a pattern of activities to impair or impede U.S. foreign intelligence activities.

Thus, there must be proof not only with regard to a particular disclosure, but also with respect to the pattern of activities in which the disclosure occurs. The evidence must show that such activities were undertaken both to identify and to expose covert agents. A person must, in other words, be engaged in the enterprise of ferreting out the identities of individuals involved in covert intelligence activities and exposing their intelligence relationship to the United States. This standard is more rigorous than the current statutes punishing disclosure of other types of national defense information.

The "pattern of activities" requirement is designed to narrow the scope of criminal liability without imposing undue burdens on the prosecution of offenses under section 601(c). It was developed in consultation with the Department of Justice, which strongly endorses the language as preferable to the "subjective intent" requirement in the committee standard.

The alternative of requiring specific intent to impair or impede intelligence activities which the committee language requires would place unneces-

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sary obstacles in the way of enforcement of section 601(c), in my judgment. That is, the specific intent requirement puts unnecessary obstacles in the way of enforcement of this act. It would compel the Government to gather and present evidence as to the particular motives of the defendant, above and beyond his or her conduct and the reasonably foreseeable results of that conduct. Second, where a defendant does not openly proclaim an intent to interfere with U.S. intelligence activities, the Government may have to rebut arguments that disclosures were intended to inform the American people about activities the defendent considered wrong or improper.

Mr. President, I should like to dicuss the implications of the so-called Agee case, Haig against Agee, which was decided by the Supreme Court last summer. That case's conclusions reinforce the point that my language in subsection 601(c) adopts standards that are directly relevant to the central constitutional concern of showing the reasonable likelihood of serious harm.

In its opinion upholding the authority of the Secretary of State to revoke the passport of Phillip Agee on the ground that his activities constituted a serious danger to national security, the Supreme Court rejected Agee's first amendment claim as follows:

> Assuming arguendo that First Amendment protections reach beyond our national boundaries, Agee's First Amendment claim has no foundation. The revocation of Agee's passport rests in part on the content of his speech: Specifically, his repeated disclosures of intelligence operations and names of intelligence personnel. Long ago, however, this Court recognized that "No one would question but that a Government might prevent actual obstruction to its recruiting service or the publication of the sailing dates of transports or the number and location of troops." *Near* v. *Minnesota*, 283 U.S. 697, 716 (1931), citing Chafee, Freedom of Speech 10 (1920). Agee's disclosures, among other things, have the declared purpose of obstructing intelligence operations and the recruiting of intelligence personnel. They are clearly not protected by the Constitution. The mere fact that Agee is also engaged in criticism of the Government does not render his conduct beyond the reach of the law. (Emphasis added).

The Supreme Court clearly decided in Agee that disclosures of intelligence operations and names of intelligence personnel which obstruct intelligence operations are not protected by the first amendment. You cannot do it and say you are protected by the first amendment. The Court emphasized that there is no first amendment protection for disclosures which have the effect of obstructing intelligence activities; it did not limit this holding to disclosures which additionally have such an openly declared purpose.

Thus, the Court's ruling does not support the contention that a subjective "bad purpose" intent standard is needed to make the identities bill constitutional. The provisions of the Chafee-Jackson language, which are narrowly crafted to apply to the types of disclosures the Supreme Court described in Agee, are consistent with the first amendment.

Mr. President, the question has been raised as to what the administration's position is with regard to identities legislation. The reason for this confusion arises because of the CIA's role in assisting the House Permanent Select Committee on Intelligence with its identities bill (H.R. 4) earlier this year.

On June 24, 1981, the House sent CIA Director Casey a draft formulation for subsection 601(c) and asked for his comments. In responding to the House, Director Casey indicated that his general counsel believed the House draft to be "deficient in certain respects," and he, therefore, provided alternative language. This alternative was characterized as being "acceptable under certain conditions," and the Casey letter went on to say:

> We would be prepared to support this alternative, which I understand is already familiar to Members and staff of your Committee, if its adoption would ensure House Floor consideration of the Identities Bill directly following the reporting of H.R. 4 from your Committee.

In other words, we would support it if it comes out and goes to the floor, if this is the way to do it.

That is the clincher.

Mr. Casey went on as follows: "I must emphasize, however, that the administration's preference for S. 391"—which is the language that Senator JACKSON and I are submitting here—"the Senate version of the identities bill, remains unchanged."

In other words, the administration prefers the language of this amendment.

The memorandum which Director Casey included with his letter had this to say:

> This memorandum does not address differences between H.R. 4 and S. 391, and nothing contained herein should be construed as altering the administration's position of preference for the Senate version of the identities bill.

That is the language that was originally introduced that was included in the language that came from the subcommittee.

Mr. President, there can be no question that the Chafee-Jackson language for subsection 601(c) is the language preferred by both the Carter and Reagan administrations. In support of this statement, I ask unanimous consent that the following be printed in the RECORD: Deputy Attorney General Renfrew's letter dated July 29, 1980; CIA Director Stansfield Turner's letter dated July 30, 1980; CIA Director Casey's letter of April 29, 1981; Attorney General Smith's letter of July 20, 1981; President Reagan's letter of September 14, 1981; CIA Director Casey's letter of September 30, 1981; President Reagan's statement of December 4, 1981; and President Reagan's letter of February 3, 1982.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., July 29, 1980.

Hon. BIRCH BAYH,
Chairman, Committee on Intelligence, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN BAYH: I am writing to reiterate the position of the Department of Justice concerning whether and in what form Section 501(c) of the Intelligence Identities Protection Act now before the Committee should include an element relating to the state of mind of persons, other than present or former government employees, who identify clandestine intelligence personnel or agents. It is my understanding the provision to be considered by the Committee now consists of essentially the following language:

> (c) Whoever, in the course of a pattern of activities intended to identify and expose covert agents, discloses any information that identifies an individual engaged or assisting in the foreign intelligence activities of the United States, knowing that the information disclosed so identifies the individual and that the United States has taken affirmative measures to conceal the individual's classified intelligence relationship to the United States'. . . .

This formulation substantially alleviates the constitutional and practical concerns expressed by the Justice Department with regard to earlier versions of this bill that included a requirement that prohibited disclosures be made with a specific "intent to impair or impede" U.S. intelligence activities.

Because of the significance of this matter, however, it has been our view from the beginning that such legislation as is enacted must be fair, effective and enforceable. Our position has been and remains that the absence of an intent element in this legislation will accomplish this goal.

Sincerely,

CHARLES B. RENFREW,
Deputy Attorney General.

THE DIRECTOR OF CENTRAL INTELLIGENCE,
Washington, D.C., July 30, 1980.

Hon. JOHN H. CHAFEE,
U.S. Senate,
Washington, D.C.

DEAR JOHN: My heartfelt thanks go out to you and your staff designee, Ken deGraffenreid, for your unflinching efforts at crafting an effective legislative remedy to the problem of the unauthorized disclosures of the identities of our intelligence officers and agents.

The Bill, which you so ably steered through the Senate Intelligence Committee, strikes the appropriate balance between the need for immediate legislative relief and legitimate First Amendment concerns. The Senate Bill, as reported, provides the Government with an effective tool to prosecute both present and former Intelligence Community employees as well as those misguided individuals outside the Intelligence Community who take it upon themselves to destroy the foreign intelligence apparatus of our nation.

I am certain I can count on your continuing help in the time remaining in the 96th Congress to insure that the Senate Bill is cleared for floor action in the near future. It is of critical importance that every effort

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be made to have this legislation enacted this year.

Yours sincerely,

STANSFIELD TURNER.

THE DIRECTOR,
CENTRAL INTELLIGENCE AGENCY,
Washington, D.C., April 29, 1981.

Hon. EDWARD P. BOLAND,
Chairman, Permanent Select Committee on Intelligence, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: During the course of the recent hearings on the proposed "Intelligence Identities Protection Act" before the Subcommittee on Legislation, the following requests were made of me:

Representative Ashbrook asked, as a drafting service, that we provide him with language for a "false identification" provision that would meet constitutional muster;

Representative Fowler asked for the Agency's official views on the Senate version of subsection 501(c) and the so-called "Kennedy Compromise" suggested in the closing days of the 96th Congress.

As to Representative Ashbrook's request, one such version is presently found in subsection 800(d) of H.R. 133, the "Intelligence Officer Identity Protection Act of 1981," introduced by Representative Charles E. Bennett (D., Fla.). Mr. Bennett's formulation contains a harm standard, that is, prejudice to the safety or well-being of any officer, employee, or citizen of the U.S. or adverse impact on the foreign affairs functions of the United States. The Bennett formulation provides a readily available solution. The formulation that appears in H.R. 133 is as follows:

"Whoever falsely asserts, publishes, or otherwise claims that any individual is an officer or employee of a department or agency of the United States engaged in foreign intelligence or counterintelligence activities, where such assertion, publication, or claim prejudices the safety or well-being of any officer, employee, or citizen of the United States or adversely affects the foreign affairs functions of the United States, shall be imprisoned for not more than five years or fined not more than $50,000, or both."

In the course of the testimony by Richard K. Willard, the Attorney General's Counsel for Intelligence Policy stated that, in his opinion, a "false identification" provision containing a "life endangerment" element would be both enforceable and constitutional. I would stress, however, that such a physical harm standard would not be suitable for the sections of the Bill which cover correct identifications of intelligence personnel. The physical safety of our people is, of course, a matter of grave concern, but the Identities legislation is designed to deal primarily with the damage to our intelligence capabilities which is caused by unauthorized disclosures of identities, whether or not a particular officer or source is physically jeopardized in each individual case.

As to the first question posed by Mr. Fowler, i.e., the Agency's views on the Senate's version of subsection 501(c), we start from the basic premise that H.R. 4 and S. 391 are essentially similar. Both are carefully and narrowly crafted Bills which could effectively remedy the problems posed by the unauthorized disclosures of intelligence identities, and withstand challenge on constitutional grounds. Thus, the CIA would support enactment of either H.R. 4 or S. 391. As you know, the Bills do differ with respect to the standard of proof that would apply to individuals who have not had authorized access to classified information, and which would criminalize their disclosures of identities even if these disclosures cannot be shown to have come from classified sources. This has been the most controversial part of Identities legislation, and it is also the key provision from the standpoint of the legislation's potential effectiveness in deterring unauthorized disclosures. We have concluded that the objective standard of proof contained in S. 391 (i.e., "reason to believe that such activities would impair or impede. . .") is preferable to the subjective standard set forth in H.R. 4 (i.e., "with the intent to impair or impede. . ."). This preference is based upon a number of factors, including prospects for successful prosecutions under the differing formulations. We have discussed this matter at great length with the Department of Justice, and we believe that our preference for S. 391 is in accord with the Department's views.

Mr. Fowler's second question goes to the issue of the so-called "Kennedy Compromise," printed in the 30 September 1980 Congressional Record and set forth herein below:

"Whoever, in the course of a pattern of activities undertaken for the purpose of uncovering the identities of covert agents and exposing such identities (1) in order to impair or impede the effectiveness of covert agents or the activities in which they are engaged by the fact of such uncovering and exposure, or (2) with reckless disregard for the safety of covert agents discloses any information that identifies an individual not authorized to receive classified information, knowing that the information disclosed so identifies such individual and that the United States is taking affirmative measures to conceal such individual's classified intelligence relationship to the United States, shall be fined not more than $15,000 or imprisoned not more than three years, or both."

This formulation appears to raise the same kinds of problems of proof of intent which the Department of Justice believes are present in the current formulation of the subsection 501(c) offense in H.R. 4, since the Government would have to show that the disclosure was made "in order to" impair or impede the effectiveness of covert agents or their activities. A defendant could assert that his activities and his disclosures were done "in order to" to accomplish some other purpose. Inclusion of the alternative "reckless disregard" standard in any 501(c) type provision would be of doubtful value. It is difficult to understand what is meant by "reckless disregard" in the context of the Identities Bill, since Congress, by enacting Identities legislation is in effect making a finding that unauthorized disclosures of identities do in fact threaten the personal safety of intelligence personnel. A reckless disregard standard would apparently mean that the Government would have to make an additional showing of physical endangerment in each particular case. This, from a deterrent perspective, would appear to be inadvisable.

Additionally, the Committee may wish to consider one technical amendment to H.R. 4, not mentioned in the course of the recent Identities hearings, but nonetheless dictated by enactment in the 96th Congress of S. 1790, the "Privacy Protection Act of 1980," legislation signed into law by President Carter on 14 October 1980 and designed to modify the Supreme Court's decision in *Zurcher* v. *Stanford Daily.* The enactment of this legislation has a bearing on our efforts to secure passage of Identities legislation. The Identities legislation should include a provision amending subsections 101(a)(1) and 101(b)(1) of the Privacy Protection Act so as to include the proposed new title of the National Security act of 1947 among the "receipt, possession, or communication" of national security information offenses with regard to which searches and seizures may be conducted under the exceptions provided in those subsections.

Should you have any questions concerning the views expressed in this letter, please do not hesitate to contact my Legislative Counsel directly. We look forward to working with the Committee to ensure prompt enactment of Identities legislation.

Sincerely,

WILLIAM J. CASEY.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., July 20, 1981.

Hon. STROM THURMOND,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: It is my understanding that the Committee on the Judiciary is presently considering S. 391, the proposed Intelligence Identities Protection Act, which was introduced by Senator Chafee on behalf of himself and a number of distinguished Members of the Senate. My representative testified in favor of this bill earlier this year in hearings before the Subcommittee on Security and Terrorism. I would like to take this opportunity to assure you of my strong personal support for this legislation.

The recent decision of the Supreme Court in *Haig* v. *Agee* emphasized that "(m)easures to protect the secrecy of our Government's foreign intelligence operations plainly serve compelling national security interests." The Court rejected Agee's First Amendment claim with the following analysis:

"The revocation of Agee's passport rests in part on the content of his speech: specifically, his repeated disclosures of intelligence operations and names of intelligence personnel. Long ago, however, this Court recognized that "No one would question but that a government might prevent actual obstruction to its recruiting service or the publication of the sailing dates of transports or the number and location of troops." *Near* v. *Minnesota,* 283 U.S. 697, 716 (1931), citing Chafee, Freedom of Speech 10 (1920). Agee's disclosures, among other things, have the declared purpose of obstructing intelligence operations and the recruiting of intelligence personnel. They are clearly not protected by the Constitution. The mere fact that Agee is also engaged in criticism of the Government does not render his conduct beyond the reach of the law."

I believe this Supreme Court decision should resolve any lingering doubt that may exist concerning the constitutionality of the proposed legislation.

Speedy enactment of legislation to protect covert agents' identities deserves the highest priority, and I strongly recommend that S. 391 be favorably reported out of the Committee.

Sincerely,

WILLIAM FRENCH SMITH,
Attorney General.

THE WHITE HOUSE,
Washington, September 14, 1981.

Hon. STROM THURMOND,
U.S. Senate,
Washington, D.C.

DEAR SENATOR THURMOND: It is my understanding that the Senate Judiciary Committee will consider S. 391, The Intelligence Identities Protection Act of 1981, on Tuesday, September 15.

Passage of legislation to provide criminal sanctions against those who make it their business to identify and expose our intelligence officers is a key element of my program to rebuild and strengthen US intelligence capabilities. Nothing has been more

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damaging to our intelligence effort than the pernicious, unauthorized disclosures of the names of those officers whom we send on dangerous and difficult assignments abroad.

Attorney General Smith advises that the Senate version of this legislation, S. 391, is legally sound, both from a prosecution perspective and in the protection it provides for constitutional rights of innocent Americans. Any change to the Senate version would have the effect of altering this carefully-crafted balance.

I cannot overemphasize the importance of this legislation. I hope I can have your support in reporting out S. 391 without amendment.

Sincerely,

RONALD REAGAN.

CENTRAL INTELLIGENCE AGENCY,
Washington, D.C., September 30, 1981.

EDITOR,
The New York Times,
New York, N.Y.

DEAR SIR: Your editorial of September 28, 1981, "A Dumb Defense of Intelligence," incorrectly represents the position I have taken on legislation to protect the identities of covert agents. I have consistently supported and advocated the Senate language in S. 391 and H.R. 4, as amended and passed by the House on September 23, as more certain to be effective in ending the pernicious unauthorized disclosures which are jeopardizing our nation's intelligence efforts and threatening those engaged or assisting in difficult and dangerous assignments abroad.

Opponents of this crucial legislation, in an effort to delay and obstruct final enactment, are quick to allege its constitutional infirmity. However, the legislation in its current form has had the bipartisan support of the Carter and now the Reagan White House and Justice Departments. We are confident that the legislation will pass constitutional muster. There is no doubt that disclosures of agent identities constitute a clear danger to this nation's first line of defense, its intelligence apparatus. Recently, the U.S. Supreme Court in *Haig* v. *Agee* stated that such "conduct . . . presents a serious danger to American officials abroad and serious danger to the national security" and that these disclosures " . . . clearly are not protected by the Constitution."

We can no longer afford delay. Every day means more unauthorized disclosures, more operations compromised, more lives endangered, more loss of confidence in our ability to keep secrets on the part of foreign intelligence services willing to cooperate with us. The Senate should delay no longer.

Sincerely,

WILLIAM J. CASEY,
Director of Central Intelligence.

STATEMENT BY THE PRESIDENT

I am pleased today to sign into law H.R. 3454, the Intelligence Authorization Act for Fiscal Year 1982. This act represents a significant first step toward achieving revitalization of our Nation's intelligence community. The President of the United States must have timely, accurate, and insightful foreign intelligence in order to make sound national defense and foreign policy decisions. This act helps to assure that we will have the necessary intelligence information to make these difficult decisions.

The Congress has with this act authorized appropriations sufficient to assure that we continue to have the world's best and most professional intelligence service. The Congress has also provided new administrative authorities to the heads of the Nation's three major intelligence agencies to assure that they can perform their missions more effectively. I hope that the spirit of cooperation between the Legislative and Executive Branches which resulted in this act will continue as we move to rebuild our Nation's intelligence capabilities.

I would also note my hope that I will soon be able to sign the Intelligence Identities Protection Act, which has passed the House and is awaiting floor action in the Senate. I strongly support enactment of this measure, preferably in the form in which it was passed by the House of Representatives; we must act now to protect our intelligence personnel, who serve our Nation under what are often difficult and dangerous circumstances.

THE WHITE HOUSE,
Washington, February 3, 1982.

Hon. HOWARD H. BAKER,
Majority Leader, U.S. Senate,
Washington, D.C.

DEAR SENATOR BAKER: Legislation to make criminal the unauthorized disclosure of the names of our intelligence officers remains the cornerstone for the improvement of our intelligence capabilities, a goal that I know we share. Nothing has been more damaging to this effort than the pernicious disclosures of the names of officers whom we send abroad on dangerous and difficult assignments. Unfortunately, these disclosures continue with impunity, endangering lives, seriously impairing the effectiveness of our clandestine operations, and adversely affecting morale within our intelligence agencies.

Last September the House of Representatives overwhelmingly passed the Administration-supported version of the Intelligence Identities Protection Act. The Senate is soon to take up consideration of this legislation, and you will have before you two versions. While I believe that both versions are fully protective of constitutional guarantees, Attorney General Smith and I firmly believe that the original version, first introduced by Senator Chafee and others, is far more likely to result in an effective law that could lead to successful prosecution.

I strongly urge you and each of your colleagues to support the carefully-crafted Chafee-Jackson amendment to S. 391. I cannot overemphasize the importance of this legislation.

Sincerely,

RONALD REAGAN.

Mr. CHAFEE. Mr. President, for those who argue that the administration does not care whether it gets the Chafee-Jackson language or the committee language, I should like to read the President's letter to Senator BAKER and Senator ROBERT C. BYRD this month.

DEAR SENATOR BAKER: Legislation to make criminal the unauthorized disclosure of the names of our intelligence officers remains the cornerstone for the improvement of our intelligence capabilities, a goal that I know we share. Nothing has been more damaging to this effort than the pernicious disclosures of the names of officers whom we send abroad on dangerous and difficult assignments. Unfortunately, these disclosures continue with impunity, endangering lives, seriously impairing the effectiveness of our clandestine operations, and adversely affecting morale within our intelligence agencies.

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I strongly urge you and each of your colleagues to support the carefully-crafted Chafee-Jackson amendment to S. 391. I cannot overemphasize the importance of this legislation.

Sincerely,

RONALD REAGAN.

It seems to me that this letter makes the administration's support for our amendment perfectly clear.

Finally, it has been argued by proponents of a subjective intent standard that, in order to be constitutional under Supreme Court precedents, a law punishing disclosure must require proof of an intent to do harm. For example, on May 8, 1981, a witness before the Subcommittee on Security and Terrorism of the Senate Committee on the Judiciary stated that:

> Professor Scalia * * * expressed the clear view that the absence of a bad purpose would make the statute unconstitutional.

This assertion is not, however, supported by careful analysis of the applicable cases and constitutional principles.

In fact, Prof. Antonin Scalia of the University of Chicago Law School has testified with respect to the reason to believe standard in section 601(c):

> If the character of the information were defined narrowly enough, if the individual against whom the law is directed were defined narrowly enough, I think such a provision might well be sustained. "1981 House Intelligence Committee Hearings."

Given the extremely limited type of information covered and the narrow class of individuals engaged in a pattern of activities intended to identify and expose covert agents, there is little risk of unconstitutionality in S. 391 as originally introduced.

The central constitutional question presented by any prohibition against disclosure is: What danger does the disclosure create? It may be that if a person intends to produce harm, his intention may itself increase the risk that the harm will occur. But the Supreme Court has held that all the circumstances of the case must be taken into account before the actual danger can be assessed for first amendment purposes. Disclosure may be innocuous in fact—it may have no reasonable likelihood of creating a danger the Government is entitled to prevent—even though the intentions of the person are of a different character. Our amendment adopts standards that are directly relevant to the central constitutional concern of showing the reasonable likelihood of serious harm.

In summary, the Chafee-Jackson amendment contains language which is consistent with existing statutes punishing disclosure of national security information; it narrows the scope of criminal liability without imposing undue obstacles to effective enforcement; it meets the constitutional re-

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quirements of the first amendment; and it will provide for the effective prosecution of those who spend their time naming names.

Mr. President, over the past 5 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 vendetta against the American intelligence community.

We send fellow Americans abroad on dangerous missions; missions which are directed and ordered by our Government. We owe it to them to do our utmost to protect their lives as they go about our business. S. 391, with our amendment, will provide this protection, and I urge my colleagues to support the Chafee-Jackson amendment and final passage of this bill.

Mr. President, there is no debate or argument on this floor that somebody is more for the first amendment than anyone else. There is no argument on this floor as to whether one group is more for successful prosecution, more for stemming the publication of the names of these agents than another. There is none of that. The argument here solely is how we can best craft this language to accomplish the goals we all seek. It is my view, the view of two administrations, the view of the Attorney General of the United States, and the view of the President, that the language of this amendment best accomplishes that goal, best permits us to move forward with the successful prosecution of these despicable persons who publish the names of agents of the United States.

Mr. BIDEN. Mr. President, the hour is getting late. We are going to have a chance, as I said, on Monday to get into great detail on this, but I should like to take 5 minutes now to make some initial rebuttal to the points raised by the Senator from Rhode Island. I am going to pick only a few of the things he has said today.

The first comment the Senator made in the early part of his statement was as to how we get into the breast of the person making the statement. The phrase is, "How do we get into the breast of the person making the statements?"

I suggest that we get into the breast of the person making the statements, or disclosing the name, the same way we get into the breast of a defendant accused of robbery or murder or rape or larceny or anything else. We get into the breast by looking at all the circumstances surrounding what that person did.

I should also like to point out that the way the judges usually tell the juries to get into the breast of a person accused of crime is by instructing the juries on what intent means. They say the following, which is from section 14.03, "Specific intent," Devitt and Blackmar, vol. I, Federal Jury Practice and Instructions, third edition 1977.

Remember, we have a defendant, and the prosecution says, "This guy killed Cock Robin." Then the judge says, "You have to find that he specifically meant to kill Cock Robin." He had to have intent to kill Cock Robin. It could not have been an accident. What I mean by intent is this: "Specific intent," as the term implies, means more than the general intent to commit the act. To establish specific intent the Government must prove that the defendant knowingly did an act which the law forbids (knowingly failed to do an act which the law requires,) purposely intending to violate the law.

This is the important part: "Such intent may be determined from all the facts and circumstances surrounding the case.

"An act or failure to act is knowingly done if done voluntarily and intentionally, and not because of mistake or accident or other innocent reason."

The Senator goes on and makes a very compelling argument. I should note for the Record that he is a very worthy adversary on this matter. It sounded good to me. As a matter of fact, he had me believing it for a second.

The Senator says we have these guys who are publishing these bulletins saying, "Well, I intended to help America when I disclosed the name of Joe Doakes, who is an agent of the CIA, so don't find me guilty because, although I intended something, I did not intend to hurt. I intended to help."

I submit that under the reason to believe standard, he can say the same thing. He can stand before the jury and say: "Ladies and gentlemen, I had reason to believe this would help America when I disclosed the name of Joe Doakes."

I had reason to believe that because I know from great experience in the area that we are not trusted around the world because of the CIA. They do not like us because of the CIA, and the real reason, the way to help America is to uncover CIA agents. So I have reason to believe that this would help, not impede.

So if he would be able to stand before a jury and say with any degree of credibility, "Ladies and gentlemen of the jury, I did not intend to hurt," he could also stand before the jury and say, "Ladies and gentlemen of the jury, I did not have reason to believe this would hurt; I had reason to believe it would help."

So, if it applies to intent, it is kind of a specious argument to say it also implies to reason to believe, but the kicker is that in either case the jury is going to sit back and say, "Now, wait a minute, what did he do here? Did he intend to do this? Let us look at all the facts and circumstances. Did this guy mean—sure, he intended to publish because he published—but did the intend to hurt?"

We make distinctions. For example, we have all read in the newspaper and if my colleagues will read the RECORD they will read all the exposures about Wilson and Terpil, former CIA agents. What are they doing? They are fooling around with Qadhafi in Libya and they are selling arms, and they are doing all these things.

Were it not for the innovative and anxious press intending to help America, not impede it, we would have not found out very much about that. It was not the CIA that came to us and told us these guys were out fooling around. It was the press, an inquiring press. I want the press going out there intending to expose those people. They publish the name of the CIA agent. They did it with the intent to help America. In this case they did.

According to the jury instruction, that is up to a jury to believe. Does it help America for a press person to expose the name of an agent who may be a mole in the CIA, who may be selling arms to an enemy?

That is a question for the jury to decide just like it is if Mr. Schaap stood before the jury and said, "Well, when I published all these names in this bulletin I intended to help."

The jury makes that decision just like they would in "reason to believe."

They say, "Biden, you are making a pretty convincing argument here. Why do you not just accept 'reason to believe' then?"

The problem with "reason to believe" is it has what we call in the law a chilling effect on that reporter who wants to go out there and expose something that is harming the United States, wants to find the mole in the CIA, if there is one, wants to find out whether that jerk Terpil is in fact selling weapons to Qadhafi and aiding terrorism, wants to expose the fact that there may be a CIA agent involved in international drug trafficking.

Now, he knows under the intent standard that he can stand before a jury and say: "Hey, I was not intending to hurt; I was intending to help the CIA, and let me tell you the facts; the facts are this guy was dealing in drugs. The facts are this guy is a KGB agent, not a CIA agent. The facts are that this guy is selling arms to terrorists. Jury, what do you think? Do you think I am meaning to help or hurt?"

We do not even get to that in the "reason to believe" standard because we establish a "pattern of activities" easily. We do not have to have them publish 50 names on 50 different days or 3 names, or 20 names, but only 1. All we have to do is establish this one reporter went around and spoke to 10 people and said, "What about Mark here? What about it? What do you know about him?"

And you go and go to you, "What do you know about him?"

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And go to you and say, "What do you know about him?

And go to the Senator from California and say, "What do you know about him?"

I am establishing a pattern of activity. The activity is that I am running around and I am going to end up exposing Joe Doe. I am going to publish Joe Doe's name.

Under the law the prosecution will be able to walk into court and say: "Wait, the pattern of activity. Did you not go around and speak to 25 people to find this out and discover this guy's name?"

"Oh, yes, I did that."

All right. There we have the pattern of activity.

"When you went to the CIA and said what do you know about Joe Doakes, did not the pressman for the CIA fellow look at you and say, 'Wait a minute. I have to tell you right now you are on slippery turf. You may very well be jeopardizing the security of the United States of America. I want to warn you of that right this minute.'"

Now, OK. The reporter says,

"Now there is a 'reason to believe' standard in the law. The CIA just told me I better not go any further because I am going to hurt the United States of America if I go any further."

Now, does that mean that I have already crossed the threshold of the "reason to believe"? Does that mean if I get dragged into court even though I am out to help, not hurt, and even though I am exposing a jerk like Terpil or Wilson, even though I am uncovering a KGB agent in the CIA—have I met the second standard already?

Let us face it. Whether you are talking to a CIA man or whether you are talking to someone in the Defense Department or whether you are talking to a press secretary for a U.S. Senator, they are not going to encourage you to investigate anything. So what do we all instinctively do? We are going to say, "You better be careful." And now when this guy has the story or that woman has her story they go to their editor and they sit down with the editor and say:

"You know, I have a story that is going to blow this place wide open. I found out we have some CIA agents who are selling arms to Libyans and they are hurting us, they are lying to the Government."

And the editor is going to say, "Now, wait a minute, are you all ready to go to jail?"

No; I do not want to do that.

OK. Let me ask you: How do you know it is true?

"Well, I tell you here it is true," and you lay it out.

They say, "Now, are you sure you are not missing something?" What happens if you publish this and this is really a double cover for something else that is behind all of this and Wilson and Terpil are really triple agents, not double agents?

They say, "What did they tell you out at the agency?" "They told me I am on thin ice. They told me I better not go any further."

Wait a minute, gee, does that mean we have reason to believe that? Should not I have done this?

That is not a spot to put the press in. That is not what we are about. That is not where we are.

So the reason to believe ends up being an incredibly subjective standard rather than the objective standard that the Senator is genuinely trying to accomplish.

He really means, and I believe every word he says, he really and truly means that this is the best way to protect not only America, the CIA agent, but also our civil liberties and a free press.

I respectfully argue and suggest that is not the case. And when you get down to the point again that he made so eloquently, the Senator from Rhode Island said this guy, Schaap—and I want to note for the RECORD not former Gov. Milton Schaap—Schaap says in testimony, "I do not intend to hurt. I intend to help."

And the Senator from Rhode Island says, "Well, he is going to be able to say to a jury," and implies they will probably believe him and he probably will get away with it. Again let me emphasize that if he can stand before the jury and say, "I did not intend to hurt, I intended to help," he can also stand before the jury and say, "I had no reason to believe that I was hurting; I had every reason to believe I was helping, and it is a bit of a red herring to argue whether or not this is going to make it easier or harder before a jury because they are going to look behind, they are going to look at the totality of the acts.

But what in fact is at stake is whether or not some reporter will believe that they will have a chance to make the arguments as to what they intended to do.

In the espionage statute—and we will go into this in great detail Monday, because I am sure the Senator will be back to it—the court usually takes two portions of the statute to come up with the conclusion that there was intent. The point I really want to make here is I spent 2 years doing a study for the Intelligence Committee on the espionage laws of this country and in fact with the help of Mr. Gitenstein, who was then on the Intelligence Committee and now on the Judiciary Committee staff, we went back and looked at every damage assessment report for the previous 10 years on leaks in espionage activities to write a tough espionage statute. You know what we found out? We found out there is hardly any successful leak prosecutions under the Espionage Act, hardly any.

I would respectfully suggest to you that one of the reasons why it is difficult, from the testimony we had, is, they said, "Hey, the prosecution is constantly coming and saying 'We cannot make a case with the "reason-to-believe" portion of the statute. That gets in our way, does not help us.'"

I hope we are going to hear from, on Monday, my colleague from Pennsylvania, a former prosecutor, on the other side of the aisle, who, I think, will make the case fairly eloquently that it would be harder to get a conviction under the "reason-to-believe" standard than under the "intent" standard.

I will also argue in some detail on Monday the constitutionality of the standard of "reason-to-believe."

I would just like to note for the record and put in the RECORD a list of over 100 law professors, the most outspoken one of whom is Prof. Philip Kurland of the University of Chicago. They all say that the "reason-to-believe" language is unconstitutional as it is applied in the proposed statute.

One other point I would like to make—there are many more to make, but just one other point at this juncture—the Senator from Rhode Island, as he always is, is completely candid, and let me be completely candid. The argument is not whether or not this administration wants the Biden language or the Chafee language more. It wants the Chafee language more, there is not any question about it. This administration says, "We want the Chafee language," but they also said in testimony before our committee, they have always said repeatedly, that the Biden language can get the job done.

What we are about here is getting the job done of putting these folks in jail who are, in fact, attempting to impede or impair the foreign intelligence activities of the United States of America.

I suggest to you that in our public and private conversations the administration feels fairly strongly about it. But they also feel fairly strongly about the Senator from Rhode Island, and I would, too, if I were a Republican President. He is one of the most competent people they have, and if he came to me and said, "This is important to me, but I think this is right—not that it is important to me personally—but this is the way to go, and both of them will get the job done, but the Chafee language will do the job," I would sure say, "The Chafee one is the one I want."

I admit that this administration does not think—it has consistently not thought—that the Chafee language could be unconstitutional. So looking at it from the President's side of the ledger he says, "Both can get the job done. One is constitutional, one is introduced by BIDEN, not a very strong supporter of mine, and the other one is introduced by the Senator from Rhode Island. Which one am I going

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to go with? Of course, I am going to go with the Chafee one."

But that is not really the issue. The issue is, on my side of the argument, "Look, it simply comes down to this: Why take a chance on its being unconstitutional? Why take a chance on it being harder to get a prosecution because the statute is struck down and go with the Chafee language when we both admit they both get the job done?"

The Chafee side of the argument, I would suspect, comes down in the final analysis to, "Look, even though they can both get the job done, they are both constitutional, why fool around with the Biden language because I think ours can get the job done better and faster?"

I mean, we are really arguing on the margins here, and I am constrained to wind up now because there is a very strong supporter of this position of the committee's who wants to speak now. Again I will have much more to say, but I would like very much to submit for the RECORD, and I ask unanimous consent, a list of all those law professors who concurred with the position I just took, and a letter from Professor Kurland be printed in the RECORD, along with a letter from Laurence H. Tribe, professor of law at Harvard University to Senator KENNEDY in September of 1980.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PROFESSOR KURLAND ON S. 2216

Perhaps the sharpest and most succinct scholarly criticism of S. 2216 came from Philip B. Kurland, Professor of Law at the University of Chicago and one of the nations leading constitutional scholars:

Hon. EDWARD KENNEDY,
Chairman,
Committee on the Judiciary,
Washington, D.C.

DEAR SENATOR KENNEDY: In response to your request, I can frame my opinion on the constitutionality of Sec. 501(c) very precisely. I have little doubt that it is unconstitutional. I cannot see how a law that inhibits the publication, without malicious intent, of information that is in the public domain and previously published can be valid. Although I recognize the inconstancy and inconsistency in Supreme Court decisions. I should be very much surprised if that Court, not to speak of the lower federal courts, were to legitimize what is, for me, the clearest violation of the First Amendment attempted by Congress in this era.

With all good wishes,
Sincerely yours,
PHILIP B. KURLAND.

SEPTEMBER 25, 1980.

We believe that Sections 601(c) of S. 391 and 501(c) of H.R. 4, which would punish the disclosure of the identity of covert CIA and FBI agents derived solely from unclassified information, violate the First Amendment and urge that they be deleted.

Charles Abernathy, Professor of Law, Georgetown University Law School.
Bruce Ackerman, Professor of Law, Yale University Law School.
Barbara Aldave, Professor of Law, University of Texas Law School.
George Alexander, Professor of Law, University of Santa Clara Law School.
Judith Areen, Professor of Law, Georgetown University Law School.
Peter L. Arenella, Professor of Law, Rutgers University School of Law.
Richard Arens, Professor of Law, University of Bridgeport School of Law.
Charles E. Ares, Professor of Law, University of Arizona College of Law.
Robert Aronson, Professor of Law, University of Washington School of Law.
Frank Askin, Professor of Law, Rutgers University School of Law.
Barbara Babcock, Professor of Law, Stanford University.
Fletcher Baldwin, Professor of Law, University of Florida College of Law.
Elizabeth Bartholet, Professor of Law, Harvard University Law School.
Patrick Baude, Professor of Law, Indiana University School Law School.
Paul Bender, Professor of Law, University of Pennsylvania Law School.
Carolyn Bratt, Professor of Law, University of Kentucky College of Law.
Ralph S. Brown, Jr., Professor of Law, Yale University Law School.
Burton Caine, Professor of Law, Temple University School of Law.
Oscar Chase, Professor of Law, New York University School of Law.
Paul Chevigny, Professor of Law, New York University School of Law.
Michael Churgin, Professor of Law, University of Texas Law School.
Richard A. Chused, Professor of Law, Georgetown University Law School.
Robert Emmet Clark, Professor of Law Emeritus, University of Arizona College of Law.
Sherman Cohn, Professor of Law, Georgetown University Law School.
Tom A. Collins, Professor of Law, College of William and Mary, Marshall-Wythe Law School.
Vern Countryman, Professor of Law, Harvard University Law School.
Alan M. Dershowitz, Professor of Law, Harvard University Law School.
Norman Dorsen, Professor of Law, New York University School of Law.
Steven B. Duke, Professor of Law, Yale University Law School.
Thomas I. Emerson, Professor of Law Emeritus, Yale University Law School.
Nancy S. Erickson, Professor of Law, Ohio State University College of Law.
David B. Filvaroff, Professor of Law, University of Texas Law School.
Caleb Foote, Professor of Law, University of California Law School.
Jack Getman, Professor of Law, Yale University Law School.
Steve Gillers, Professor of Law, New York University School of Law.
David Goldberger, Professor of Law, Ohio State University College of Law.
Peter Goldberger, Professor of Law, Villanova University School of Law.
Louise Graham, Professor of Law, University of Kentucky Law School.
Arthur S. Greenbaum, Professor of Law, Ohio State University College of Law.
Linda S. Greene, Professor of Law, Temple University School of Law.
Trina Grillo, Professor of Law, Hastings College of Law.
Daniel Halperin, Professor of Law, Georgetown University Law School.
Charles Halpern, Professor of Law, Georgetown University Law School.
Joel Handler, Professor of Law, Georgetown University Law School.
Michael C. Harper, Professor of Law, Boston University Law School.
Lawrence Herman, Professor of Law, Ohio State University College of Law.
Morton J. Horwitz, Professor of Law, Harvard University Law School.
John M. Hyson, Professor of Law, Villanova University School of Law.
Stanley Ingber, Professor of Law, University of Florida College of Law.
Louis A. Jacobs, Professor of Law, Ohio State University College of Law.
Peter Jaszi, Professor of Law, American University, Washington College of Law.
Arthur Kinoy, Professor of Law, Rutgers University School of Law.
Lewis Kornhauser, Professor of Law, New York University School of Law.
John R. Kramer, Professor of Law, Georgetown University Law School.
Stanley K. Laughlin, Professor of Law, Ohio State University College of Law.
Howard Lesnick, Professor of Law, University of Pennsylvania Law School.
John Leubsdorf, Professor of Law, Boston University Law School.
Allan Levine, Adjunct Professor of Law, Cardozo School of Law.
Sanford Levinson, Professor of Law, University of Texas Law School.
John Levy, Professor of Law, College of William and Mary, Marshall-Wythe Law School.
Lance Liebman, Professor of Law, Harvard University Law School.
Jeffrey A. Meldman, Professor of Law, Massachusetts Institute of Technology.
Louis Menand, Professor of Law, Massachusetts Institute of Technology.
Roy Mersky, Professor of Law, University of Texas Law School.
Elliot Millstein, Professor of Law, American University, Washington College of Law.
Arvil Morris, Professor of Law, University of Washington School of Law.
Jack Murphy, Professor of Law, Georgetown University Law School.
Winston P. Nagan, Professor of Law, University of Florida College of Law.
Barry Nakell, Professor of Law, University of North Carolina Law School.
James C. Oldham, Professor of Law, Georgetown University Law School.
Joseph A. Page, Professor of Law, Georgetown University Law School
Richard D. Parker, Professor of Law, Harvard University Law School.
Daniel Partan, Professor of Law, Boston University Law School.
Cornelius Peck, Professor of Law, University of Washington School of Law.
Willard H. Pedrick, Professor of Law, Arizona State University College of Law.
Leroy Pernell, Professor of Law, Ohio State University College of Law.
Michael Perry, Professor of Law, Ohio State University College of Law.
Daniel H. Pollitt, Professor of Law, University of North Carolina Law School.
Andrew Popper, Professor of Law, American University, Washington College of Law.
Scot Powe, Professor of Law, University of Texas Law School.
John Quigley, Professor of Law.
Robert Sedler, Professor of Law, Wayne State University Law School.
Louis Michael Seidman, Professor of Law, Georgetown University Law School.
Ed Sherman, Professor of Law, University of Texas Law School.
Andrew Silverman, Professor of Law, University of Arizona College of Law.
James Simon, Professor of Law, New York Law School.
Aviam Soifer, Professor of Law, Boston University Law School.
Philip Sorensen, Professor of Law, Ohio State University College of Law.
Girardeau A. Spann, Professor of Law, Georgetown University Law School.
Roy Spence, Professor of Law, University of Arizona College of Law.

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Geoffrey Stone, Professor of Law, University of Chicago Law School.

Telford Taylor, Professor of Law, Columbia University Law School.

Charles Thompson, Professor of Law, Ohio State University College of Law.

Gregory M. Travalio, Professor of Law, Ohio State University College of Law.

James Treece, Professor of Law, University of Texas Law School.

Lawrence Tribe, Professor of Law, Harvard University Law School.

Richard C. Turkington, Professor of Law, Villanova University School of Law.

Mark Tushnet, Professor of Law, University of Wisconsin School of Law.

Frank Upham, Professor of Law, Ohio State University College of Law.

Pete Wales, Professor of Law, Georgetown University Law School.

Burton Wechsler, Professor of Law, American University, Washington College of Law.

Wendy Williams, Professor of Law, Georgetown University Law School.

Bernard Wolfman, Professor of Law, Harvard University Law School.

Diane Zimmerman, Professor of Law, New York University School of Law.

HARVARD UNIVERSITY LAW SCHOOL,
Cambridge, Mass., September 8, 1980.

Hon. EDWARD M. KENNEDY,
Committee on the Judiciary,
Washington, D.C.

DEAR SENATOR KENNEDY: Thank you for inviting me to offer my views on § 501(c) of the Intelligence Identities Protection Act of 1980, S.2216.[1] I believe that this provision, if made law, would violate the First Amendment.

There is no doubt, of course, that "the Executive [may] . . . promulgat[e] and enforc[e] . . . executive regulations[ ] to protect the confidentiality necessary to carry out its responsibilities in the fields of international relations and national defense." *New York Times Co.* v. *United States*, 403 U.S. 713, 729-30 (1971) (Stewart, J., joined by White, J., concurring). Nor is there any doubt that "Congress [may] . . . enact . . . criminal laws to protect government property and preserve government secrets." Id. at 730. But the First Amendment severely circumscribes the Government's power to achieve such ends by punishing journalists and other private citizens for repeating or publishing truthful information either (1) lawfully derived or deduced from information that has already found its way into "the public domain," *Cox Broadcasting Co.* v. *Cohn*, 420 U.S. 469, 495 (1975), or (2) innocently received as a "leak" from someone with access to classified, or otherwise confidential, government materials. *Landmark Communications, Inc.* v. *Virginia*, 435 U.S. 829, 837-46 (1978).

The need for secrecy in the foreign intelligence sphere is among the most pressing of governmental interests. Cf. id. at 849 n. (Stewart, J., concurring in judgment). But this cannot obscure either the priority given by the First Amendment to "public scrutiny and discussion of governmental affairs" id. at 839 (majority opinion); *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 269-70 (1964), or the correlative principle that no governmental restriction on "uninhibited, robust, and wide-open" political debate, id. at 270, is constitutionally acceptable unless—

(a) the restriction is designed to achieve a compelling governmental objective, and is narrowly drawn to achieve neither more nor less; and

(b) the restriction's enforcement in a given case is shown to be truly essential to achieve that compelling governmental interest.

See First National Bank v. *Bellotti*, 435 U.S. 765, 787 (1978); *In re Primus*, 436 U.S. 412 (1978); *Buckley* v. *Valeo*, 424 U.S. 1, 25 (1976) (per Curiam).[2] Section 501(c) quite clearly fails to meet these tests.

The provision's proscriptions—which apply even when the information illegally "disclosed" was lawfully obtained, and even when the only result of its suppression would be to stifle criticism or exposure of alleged governmental ineptitude or wrongdoing—are not limited to cases in which a judge or jury finds that "disclosure" of the information in question has harmed, or is likely to harm, the safety or security of any individual or the success of any specific lawful governmental undertaking. Cf. *Bridges* v. *California*, 314 U.S. 252, 263 (1941); *Pennekamp* v. *Florida*, 328 U.S. 331, 347 (1946); *Craig* v. *Harney*, 331 U.S. 367, 376 (1947); *Wood* v. *Georgia*, 370 U.S. 375 (1962). The provision at issue would impermissibly penalize unauthorized disclosures without requiring any such showing of actual or probable harm.

It is no answer that the disclosures for which § 501(c) prescribes punishment without requiring such a showing of injury are limited to disclosures made "in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States." Indeed, the vague "pattern of activities" requirement demonstrates that the proposed law would be anything but closely fitted with the restriction's ostensible purposes. For disclosures of the identities of our covert agents and operatives abroad, however, harmful or threatening would not be forbidden under § 501(c) unless made "in the course of a [specified] pattern of activities," while revelations that do not imperil any individuals or operations would be punished under § 501(c) whenever made by persons tainted by their association with the forbidden "pattern of activities"—activities that, standing alone, might otherwise be wholly lawful and, in fact, themselves entitled to First Amendment protection. Thus it is also no answer that punishment is limited to disclosures made "in the course of [such] a pattern of activities" with knowledge "that the United States is taking affirmative measures to conceal [an] individual's classified intelligence relationship to the United States." Even under such circumstances—and assuming that any matter so vaguely defined can be "known"—§ 501(c) would not require the Government to prove any causal link between the culpable disclosure and a harm that would justify punishing it.

This mismatch between the Government's chosen means and its professed ends not only dooms § 501(c) on its face but also underscores doubts, independently generated by the provision's history, about its true aims, and, indeed, about those of § 501 as a whole. Cf. *First National Bank* v. *Bellotti*, 435 U.S. 765, 793 (1978). Needless to say, protecting the image and reputation of governmental officials and agencies, or the smooth operation of governmental programs immunized from public examination and critique, is insufficient justification "for repressing speech that would otherwise be free." *New York Times Co.* v. *Sullivan*, 376 U.S. 254, 272-73 (1964). Thus, for example, the provision's restrictions on disclosure cannot be justified by the Government's wish to preserve the CIA's "plausible deniability," or to avoid "political outcry" over American covert operations in foreign countries, or otherwise to preserve, among other things, access "to appropriate targets" of recruitment abroad. New York Times, September 6, 1980, at 22, col. 1 (quoting testimony of Frank C. Carlucci, Deputy Director, CIA, before Senate Judiciary Committee on September 5, 1980). Such justifications bespeak purely political purposes beyond the Government's power to accomplish by stifling protected speech. Moreover, such congressional action, frankly targeting for special restrictions on First Amendment activities a readily identifiable group of private citizens—in this case, apparently a group of journalists associated with the Covert Action Information Bulletin—bears a distressing resemblance to past legislation whose purpose to punish dissenters or penalize partisans of defeated enemy causes was evident from the legislation's face or history—and which was hence invalidated by the Supreme Court as a forbidden ex post facto law or bill of attainder.[3]

For the reasons I have sought to articulate above, I believe that § 501(c) would violate the First Amendment if enacted. Accordingly, I recommend that at least this provision of § 501 be deleted from S. 2216.

Sincerely,

LAURENCE H. TRIBE.

Mr. BIDEN. Let me say that really when my colleagues read this RECORD, when their staffs look this over, I hope they will focus on which side of the issue we are going to err on. We are not erring on whether or not these folks are going to get away. That is not the issue. The issue is whether or not the language the committee has adopted, which is believed by the consitutional experts to be more clearly consitutional than the other, is the best way to go, and to err on the side of its being constitutional and not have that question in the way or is it

[1] The provision reads as follows:

"(c) Whoever, in the course of a pattern of activities intended to identify and expose covert agents and with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States, discloses any information that identifies an individual as a covert agent to any individual not authorized to receive classified information, knowing that the information so disclosed so identifies such individual and that the United States is taking affirmative measures to conceal such individual's classified intelligence relationship to the United States, shall be fined not more than $15,000 or imprisoned not more than three years or both."

[2] Thus, for example, despite the undisputed importance of preserving the confidentiality of a state's judicial disciplinary proceedings, Landmark Communication, Inc., supra, 435 U.S. at 834-36, not even the state's "interest in protecting the reputation of its judges, nor its interest in maintaining the institutional integrity of its courts is sufficient to justify . . . punishment of [unauthorized disclosure]," id. at 841, when such disclosure is made by "third parties" and consists of "truthful information regarding [the] confidential [judicial] proceedings." Id. at 837. The Supreme Court so held "even on the assumption that criminal sanctions do in fact enhance the guarantee of confidentiality," id. at 841, and even when the information at issue had been "withheld by law from the public domain." Id. at 840.

[3] *See United States* v. *Brown*, 381 U.S. 437, 453, 455-56 (1965) (invalidating law prohibiting members or supporters of Communist Party from holding union office); *United States* v. *Lovett*, 328 U.S. 303, 315 (1946) (invalidating law barring those named as subversives in HUAC investigations from federal employment); Ex parte Garland, 71 U.S. (4 Wall.) 333 (1867) (invalidating law forbidding supporters of Confederate cause to practice law in federal courts); *Cummings* v. *Missouri*, 71 U.S. (4 wall.) 277, 323 (1867) (invalidating law banning such persons from practice of any profession).

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better to err on the side of maybe not being constitutional but allegedly protect the civil liberties of more of the people involved, those publishing, by the "reason-to-believe" standard.

I should note to you that none of the people we are worrying about protecting agrees with the Senator from Rhode Island. None of the newspaper people, none of the people who are the ones who would be in the third category, the good folks, the good guys, the white-hat folks whom the Senator from Rhode Island says he believes he can protect better by the "reason-to-believe" standard happen to agree with him.

So in the final analysis I am saying why not err on the side of sticking with standard language which we know in 99⁹⁹⁄₁₀₀ percent gets the job done, and gets the job done with the fewest constitutional problems.

Let me finish by saying that there is more to be said, which I will say later.

I yield the floor.

Mr. QUAYLE. Mr. President, today we take up S. 391, the Intelligence Identities Protection Act, a bill which would make criminal the disclosure of the identities of covert intelligence officers and agents. Different penalties and elements of proof are required depending on whether the defendant is a present or former employee of the Government and depending on whether or not he had authorized access to classified information.

There is a crying need for this legislation which is long overdue. We should all be aware of the tragedies which have occurred in the recent past as the result of published allegations that a certain individual was a covert intelligence officer or agent. While I am certain that there are many examples, I will mention only two: the abominable assassination in 1975 of Richard Welch after being identified as a CIA officer by Philip Agee in Counterspy magazine, and the attempted assassination of a U.S. Embassy employee just 48 hours following a published allegation by Louis Wolf in the Covert Action Information Bulletin that the employee worked for the CIA.

Mr. President, the destructive effect of such disclosures must be stopped. I believe, and the public recognizes, that there is a compelling need for the legislation we are debating here today.

The controversy and disagreement about S. 391 really swells around one section of the bill—section 601(c) which addresses itself to that class of persons who identify a covert agent but who have not had access to classified information. It is this section in which the balance is most precarious between the undeniable need to protect our intelligence agents and the equally compelling need to protect first amendment rights.

Mr. President, I believe that section 601(c) as reported by the Senate Judiciary Committee maintains this crucial balance. That section reads:

(c) Whoever, in the course of an effort to identify and expose covert agents with the intent to impair or impede the foreign intelligence activities of the United States by the fact of such identification and exposure, discloses to any individual not authorized to receive classified information, any information that identifies an individual as a covert agent, knowing that the United States is taking affirmative measures to conceal such individual's classified intelligence relationship to the United States, shall be fined not more than $15,000 or imprisoned not more than three years, or both.

This language, the so-called intent language, is narrowly drawn to define and punish specific conduct. The intent language is intended to reach the activities of the Covert Action Information Bulletin and similar groups, and it does reach them. I am confident that section 601(c) as drafted by the Judiciary Committee will allow successful prosecution of those who are engaged in the destructive activity of naming names.

This legislation is not intended to chill legitimate debate on intelligence issues or to censor stories such as those we read daily in the New York Times or Washington Post. The Judiciary Committee language does not do that. In my view, it is constitutional and effectively carries out the objective of the legislation which is to deter individuals who name names with the intent to harm the United States and our intelligence agencies.

In order to successfully prosecute such individuals, S. 391 as passed by the Judiciary Committee would require the Government to prove each of the following elements beyond a reasonable doubt:

That the disclosure was intentional; That the covert relationship of the agent to the United States was properly classified information and that the defendant knew it was classified; That the defendant knew that the Government was taking affirmative measures to conceal the agent's relationship to the United States; and

That the disclosure was made as part of an overall effort to identify and expose covert agents for the purpose of impairing or impeding the foreign intelligence activities of the United States through the mere fact of such identification and exposure.

This is a narrowly drawn statute—as all statutes which touch upon rights protected by the first amendment should be—and I believe that its constitutionality will be sustained by the courts.

I am much less certain, however, that a bill which incorporates the original language of section 601(c) could pass constitutional muster. That language, which adopts a reason-to-believe standard rather than the intent standard drafted by the Judiciary Committee, is overly broad and could indeed abridge the exercise of first amendment rights by legitimate journalists. Certainly the journalists believe that it would.

Every major national press group in the country opposes replacing the intent standard with the reason-to-believe standard. Their concerns have been continually expressed to me in letters and meetings over the past several months. I would like to quote from a letter signed by the representatives of the Society of Professional Journalists, the American Newspaper Publishers Association, the National Newpapers Association, the Association of American Publishers, the Reporters Committee for Freedom of the Press and the National Association of Broadcasters. One section of their letter reads:

The "reason to believe" language would, on its face, apply to a reporter who seeks to inform Congress and the public about corrupt, illegal, improper or questionable intelligence activities under circumstances where the identities of present or former covert agents are necessary to the story. One major news article which might not have been published under this formulation could be the recent revelations about Frank J. Terpil. The "reason to believe" language places editors and reporters in the position of having to risk a criminal violation or prosecution in order to publish news reports which they honestly believe to be in the public interest. In this sense, we are persuaded that the Judiciary Committee version of the bill, with its "specific intent" standard, presents far less serious pre-publication problems for the press.

My opposition to a "reason-to-believe" standard, however, has evolved from additional concerns that go beyond the constitutional questions raised by the journalistic and legal community.

First of all, intent is the appropriate element for a criminal statute. "Reason-to-believe" implies a negligence standard and this is not a negligence statute.

Second, the objective "reason-to-believe" standard: "What would a reasonable man believe would be the results of his actions," raises serious prosecutorial questions. For example, it would force the Government to make public at the trial more classified information than it would want to and certainly more than is required in a prosecution under the "intent" standard.

Under a reason-to-believe standard it suddenly becomes relevant to the defendant's case what effect the disclosure had or would have on certain intelligence activities. In other words, the objective "reasonable man" standard necessarily forces the Government to reveal what the agent, whose cover was blown, was doing in the country to which he had been assigned. Such information would not have to be released under the "intent" standard because it would be irrelevant. A "reason-to-believe" standard could, thus, chill not only legitimate journalism, but also the very prosecutions which this legislation is designed to bring about.

The White House, the Justice Department and the CIA have all stated that either an "intent" standard or a "reason-to-believe" standard would be acceptable to them. They profess to believe that both are constitutional

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and enforceable. Though they have expressed their preference for the "reason-to-believe" standard, their top priority seems to be the immediate passage of a bill which would end the destructive and sinister enterprise of naming names.

I believe that S. 391 as reported by the Senate Judiciary Committee will accomplish that end, and will do so in an effective, efficient, and constitutional manner, and I urge my colleagues to support it.

Mr. President, I want to pay particular reference and compliments to my distinguished freshman colleague, Senator DENTON, who has been very active in this and other matters. He has made an immense contribution to the committee on which we serve together, and he will continue to make an immense contribution to this Senate.

I also want to pay my respects to the distinguished Senator from Rhode Island who continues to be one of the most respected Members of the Senate.

But I must say to these two distinguished gentlemen that I disagree with them on this issue. But I do hope that we pursue this debate Monday and Tuesday in the spirit that the Senator from Rhode Island discussed in concluding his remarks.

This issue is not an issue over who supports civil rights and who supports the first amendment. We all do. The issue is not over who supports prosecuting those who violate a very strict code of conduct, or over who wants to have agent identity legislation passed, because we all do.

The question comes down to what statutory language is the preferable language to achieve both of those goals.

There has been a lot of discussion these last few weeks on televising the proceedings of the U.S. Senate. I happen to be a supporter of that. But those who argue on the other side keep pointing out the difference between this body and the other body. They talk about the U.S. Senate as a deliberative body, and they applaud how the U.S. Senate takes its time on very important issues. I hope that Members of this distinguished body do take their time on this very important issue and that we think it through. I hope that we do not jump to an emotional conclusion, simply choosing whichever emotion happens to trigger us the most, whether it is the first amendment rights or the need to protect our Nation's security.

I hope that we think through this process very clearly and very deliberately. I hope that we resolve this issue in the way the legislation was reported from the Judiciary Committee. This is the proper resolution to the issue.

Basically, Mr. President, the reason-to-believe language is not preferable to the intent language for two simple reasons. First, I think there is a legitimate constitutional question on the reason-to-believe language. As the distinguished Senator from Delaware pointed out, 100 constitutional lawyers and professors in this country have voiced their concerns about the problems of constitutionality.

If we really want to have a constitutional bill, why not go with the intent language that we know is going to be constitutional and not take a chance that the courts are going to throw the whole bill out? That is why it is perplexing to me to hear the administration say that they prefer the Chafee and Denton language to the Biden language, because there is no doubt that the courts would find intent to be constitutional.

Second, Mr. President, when you are dealing with a criminal statute, intent is the proper standard of conduct. Reason to believe is a negligence standard in civil cases. A criminal statute such as this should have the minimal legal ingredients of what criminal acts do constitute, and that is intent.

Mr. President, again, I commend my colleagues. I hope that we proceed along the lines of this debate in the next few days, a line of facts, a line of reasoning, and not one of simple reaction to motions without a thorough study.

The debate may be intense at times. That is what our debate is all about. If we take our time, I am certain that the Senate will come down to the language, and I am hopeful it will come down to the language, as reported by the Senate Judiciary Committee. The members of that committee put in a lot of hours. They are the ones that put in a lot of work. A majority of that committee has concluded that the intent language is preferable. I am hopeful that a majority of this body will agree with them.

I yield the floor.

Mr. DENTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. DENTON. Mr. President, I thank my distinguished freshman colleague from Indiana and return his sentiments of respect. I admire the equanimity with which both he and the Senator from Delaware have addressed the issue. I totally concur that we should do so with great deliberation.

It is my fear that the complexity of the wording and of some of the thought patterns applied to the rationale are going to defy the comprehensions of many of our colleagues who, when they come in here to vote, do not have much time to deliberate. I hope there is some attendance to the speakers to the debate which is taking place so that our collective judgments will be relatively enlightened.

I believe the Senator from Delaware, the minority manager, made reference to the President's preference for the Chafee language on the basis of his being of the same party, but I may have missed the implication.

Mr. BIDEN. If I may, I think he prefers the Chafee language because he prefers it, but it is also an added incentive that it is not the language of the Senator from Delaware.

Mr. DENTON. The point I would like to make is that the Carter administration Justice Department also preferred the Chafee language.

Mr. CHAFEE. Mr. President, the distinguished Senator from Delaware always has kernels for thought and cogitation. I have been pondering the comment he made that the President was for the Chafee-Jackson language because I was Republican. All weekend I am going to be pondering why the Carter administration was also for this language. Did they look at me as a potential convert? I cannot fathom in any way why they too would be supportive of my language. Admiral Turner was a Democratic appointee, as head of the CIA. Attorney General Renfrew was a Democratic appointee of the Justice Department. I am still waiting to discover the answer. So I am looking forward to the debate on Monday and hope I find out what particular appeal I might have had to the Carter administration 2 years ago.

Mr. DENTON. Mr. President, I would like to go on record in fully supporting the amendment to section 601(c) offered by my friend and distinguished colleague from Rhode Island. I truly regard it as the best and most appropriate standard by which to criminalize this statute for naming names resulting from a study of unclassified sources.

I must acknowledge before this body, and before anyone covering this session, that I am not a lawyer, but I am supposed to be good at logic. In fact, I did not have to take a course once because I answered a question posed at the beginning of a college course in logic that the man posed for over 50 years of teaching. I do think that I understand enough of the law to apply logic to this situation.

It seems to me that we have an interesting inversion here, in that we have Democrats and nominal liberals propounding an approach which will be intrusive, one which will involve a subjective standard, one which the distinguished Senator from Delaware proposes. I believe the use of the "intent" standard will open a Pandora's box in this particular case, which defeats the objective of avoiding witch hunts.

We have the reason-to-believe standard in which the defendant's political belief, past conduct, critical remarks about the Government, et cetera, are all irrelevant. We have a finding by the committee, the very committee to which the Senator from Indiana referred, that:

The disclosure of such relationships to unauthorized persons is detrimental to the successful and efficient conduct of foreign intelligence, counterintelligence, and counterterrorism activities to the United States;

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Which tends to support the reason-to-believe standard as a method of proof.

But if you go into intent, you get a chilling effect on expression, because you then have to start talking about the man's of woman's past speech or activities, which would be directly relevant to proving intent.

Clearly, the specific intent standard creates a far greater potential for intrusive investigations into individual political beliefs. I do not want to be a witch hunter, but I think that, in this particular area, you open that Pandora's box. The witch hunt would be undertaken frequently as the only means of establishing intent, and perhaps more tragically than that witch hunting is that the effort to establish intent would all too frequently be unsuccessful. In spite of the fact that the accused might be guilty, it would be unsuccessful.

So if we let this erroneous committee amendment stand, which stood on a vote of 9 to 8 with two administrations who are expert in this, one Democratic, one Republican, standing against it with, I have to believe, much more expertise and learned forethought about the constitutionality, I believe that we will not only be tempting prosecutors into witch hunts, but we will be letting down those courageous men and women who risk their lives on a daily basis to preserve the security of this country.

It is the KGB which is laughing at this debate, and yet it is being conducted on both sides with good will. I think the statute with the specific intent standard rather than a reason-to-believe standard would be counterproductive. It would purport to provide a solution to a serious problem of unauthorized disclosure of intelligence identities without actually doing so.

It would raise the specter of the intrusive techniques and the witch hunts.

Mr. EAST. Mr. President, today we are considering S. 391, the Intelligence Identities Protection Act of 1981. This bill, which has almost 50 cosponsors, of whom I am proud to be 1, is the most significant proposal for the reform and strengthening of the intelligence community that the Senate has considered this year. I believe that it is absolutely essential that we pass a bill that would protect the classified identities of American intelligence officers—not just any bill but an effective law that would deter the exposure of their identities, one that is both constitutionally sound and will prosecute those who have specialized in the contemptible and pernicious practice of systematic exposures. I believe that until we pass such a law, there is little purpose in talking about the need for a stronger CIA or FBI. In short, we must put our money where our mouth is.

I wish particularly to address the issue of the constitutionality of the proposed reason to believe, or objective, standard that was in the original bill as introduced by the Senator from Rhode Island. The objective standard was deleted in the Judiciary Committee by a single vote and an intent or subjective standard was adopted.

But, Mr. President, it was the objective standard that I and our 40-odd colleagues chose to cosponsor when we endorsed S. 391. It is this standard also that was overwhelmingly endorsed by the House of Representatives and is now in H.R. 4, the House version of S. 391. Finally, it is the objective standard that is endorsed by the intelligence community itself—the Central Intelligence Agency, the Federal Bureau of Investigation, and the Association of Former Intelligence Officers. I wish to confine my remarks to a defense of the reason to believe standard and to urge my colleagues to support and endorse it with me.

We are being told, Mr. President, that the objective standard of the reason to believe language is unconstitutional, that it fails to define a bad purpose, that its enactment would jeopardize the effectiveness of the bill and also that it would have a chilling effect on legitimate discussion of intelligence policy and activities in the public forum. I would like to address these charges seriatim, but I would like first to point out that some of them are mutually contradictory.

If reason to believe is unconstitutional, it would be overturned by the courts. This is the argument of its opponents, who say that they would like an effective bill. Yet they also argue that reason to believe would have a chilling effect. If it is to be overturned, then it obviously could not have a chilling effect. We cannot accept the mutually exclusive propositions that a law would be both effective and ineffective.

In regard to constitutionality, I would like to point out that nine Federal criminal statutes make use of the reason to believe standard, and these include both the Espionage Act and Atomic Energy Act. Moreover, five Federal court cases have upheld the reason to believe language as constitutional grounds for prosecution. The most significant of these cases is that of *Gorin v. United States*, (312 U.S. 19 (1941)), in which the U.S. Supreme Court upheld the reason to believe standard in the Espionage Act of 1917 against the defendant's claim that the language was vague and indefinite—precisely the same charge that is being made today and with as little foundation.

While it is true, Mr. President, that the intent standard is also constitutional and that the Department of Justice has stated that an intent standard would be acceptable, the administration, the Department of Justice, and the CIA have been emphatic that they all prefer the reason-to-believe standard, that reason to believe is constitutional and is a more effective prosecutorial tool.

Why is reason to believe preferable to intent? In order to convict a defendant under the intent standard, the burden of proof is far more difficult to establish and actually requires more instrusive investigation than reason to believe. Proof of intent requires inquiry into the state of mind of the defendant before or during the commission of the offense. In the context of the intelligence identities bill, it would also require inquiry into the political and personal associations of the defendant—whether, for example, he had been involved with Counterspy or Covert Action Information Bulletin, what his attitude toward intelligence gathering was, and other beliefs and associations. Since those who oppose reason to believe on constitutional and civil libertarian grounds are concerned about such intrusive inquiries, I would think they would prefer the far less intrusive standard of reason to believe.

Reason to believe simply means what any reasonable man would believe. Thus, use of this standard would not require any intrusive investigation into a defendant's background nor the presentation of evidence concerning his political and personal associations. For this reason, it is preferable to the civil libertarian as well as to the prosecutor.

The argument that reason to believe would have a chilling effect on the exercise of first amendment rights and on discussion of intelligence activities is also without merit and has been grossly exaggerated by the opponents of the bill in the Congress and the media.

I would point out first that the U.S. Supreme Court in a 7-to-2 decision this summer in the case of Haig against Agee found that:

> Agee's disclosures [of covert agents], among other things, have the declared purpose of obstructing intelligence operations and the recruiting of intelligence personnel. They are clearly not protected by the Constitution.

If the disclosure of agents' identities is not protected by the Constitution, then a law punishing disclosure of identities cannot have a chilling effect on the exercise of legitimate rights of expression. The chilling effect argument is therefore without foundation.

However, the language of the reason-to-believe section has been carefully drafted to avoid interference with legitimate discussion and investigation. It is absolutely essential, Mr. President, to bear in mind that reason to believe is only one of the six elements of proof required for conviction in this bill.

Section 601(c), as originally introduced, contains the reason-to-believe language, which would make it illegal for a person to reveal the identity of a covert agent if that person:

First. Knows that the persons to whom he reveals the information are not authorized to receive classified information;

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Second. Knows that the information revealed in fact identifies a covert agent;

Third. Intends to disclose information that identifies a covert agent;

Fourth. Knows that the Government is taking affirmative measures to conceal the identity;

Fifth. Engages in "a pattern of activities intended to identify and expose covert agents"; and

Sixth. Has reason to believe that such activities would impair or impede the foreign intelligence activities of the United States.

In sum, before a person can be prosecuted under the reason-to-believe language, the prosecutor must prove all five elements of proof in addition to the reason to believe element.

Furthermore, one of these elements is already an intent standard, and it must be noted that in those parts of the bill that establish defenses and exceptions, there are three areas of disclosures that are excluded from any prosecution, including the revealing of a covert identity to the House or Senate Intelligence Committees. This latter exclusion is intended to allow for the disclosure to responsible authorities outside the intelligence community of abuses or unauthorized intelligence activities without danger of prosecution to the disclosing party.

To prosecute a journalist who investigates intelligence activities, therefore, the prosecutor must show that every one of the elements applies. There are few if any legitimate journalistic investigations in which the revealing of names or identities would be useful, and it should be noted that the entire investigation of the Church committee into CIA activities took place without a single revelation of a covert identity. In other words, preventing the disclosure of agents' identities would not cripple our ability to learn of or prevent intelligence abuses.

It is almost inconceivable, Mr. President, that legitimate discussion of intelligence activities could be prevented or in any way discouraged by the reason to believe language that is proposed.

I urge my colleagues to join with me in supporting the amendment of S. 391 to adopt the reason-to-believe standard that is so necessary for the protection of our intelligence agencies and their personnel, for the security of our country, and for the strengthening and reform of the intelligence community.

(By request of Mr. DENTON the following statement was ordered to be printed in the RECORD:)

● Mr. THURMOND. Mr. President, this proposal to amend S. 391 would restore the original language of section 601(c).

In both versions of the bill, this section addresses the situation in which a person who does not have direct access to classified information knowingly identifies individuals as covert agents of the United States. Beyond this general statement, the technical subtleties of the separate versions make them quite distinct, and because I feel that the amendment offered by the distinguished Senator from Rhode Island embodies the preferable version, I support its adoption.

The language of the proposed amendment reflects the requirement that a putative defendant be involved in the course of a pattern of activities which is intended to identify and expose covert agents. As defined in section 606(10) of the bill, this requires a series of acts with a common purpose or objective. Clearly, then, a single event of republication, without a further showing, probably would amount to a violation of the act.

Moreover, this amendment mandates that it be proven that a putative defendant, while participating in such a pattern of activities, possessed a reason to believe that these activities would impair or impede the foreign intelligence activities of this country. This standard has been the object of much debate and discussion due to its so-called reasonable man aspect, which, it has been said, is a departure from customary criminal law standards. However, in the field of espionage laws, this standard is quite consistent.

For example, 18 U.S.C. 793(e) punishes unauthorized disclosure of national defense information which the person "has reason to believe could be used to the injury of the United States or to the advantage of any foreign nation." Similarly, 42 U.S.C. 2274(b) punishes disclosure of restricted atomic energy data "with reason to believe such data will be utilized to injure the United States or to secure an advantage to any foreign nation."

This statute clearly distinguishes disclosure "with intent to injure the United States or with intent to secure an advantage to any foreign nation," which is punished under section 2274(a) with more severe penalties.

Therefore, the language of the amendment is consistent with past legislation where Congress has punished disclosure without requiring proof of specific intent, but rather proof that the reasonable foreseeable result would be injury to the United States or advantage to a foreign power.

I believe the amendment of my distinguished colleague from Rhode Island not only is consistent with prior law in this area, but also offers greater protection for the rights of individuals. It must not be forgotten that in any prosecution under this act each and every element must be proven beyond a reasonable doubt to the satisfaction of the triers of fact, not only as to the requisite belief of the wrongdoer, but also as to his involvement in a pattern of activity.

I finally want to remind my fellow Senators of the words of the Supreme Court when it decided Haig against Agee this past June:

It is "obvious and unarguable" that no governmental interest is more compelling than the security of the Nation. Protection of the foreign policy of the United States is a governmental interest of great importance, since foreign policy and national security considerations cannot neatly be compartmentalized.

Measures to protect the secrecy of our Government's foreign intelligence operations plainly serve these interests. Thus, in Snepp against United States, we held that "[t]he Government has a compelling interest in protecting both the secrecy of information so important to our national security and the appearance of confidentiality so essential to the effective operation of our foreign intelligence service." (Citations omitted.)

I firmly believe that the interest of our Government would be afforded greater protection with the addition of this amendment to this bill, and I urge its adoption.●

COMMEMORATING ROGER WILLIAMS

Mr. STEVENS. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on Senate Concurrent Resolution 64.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the resolution from the Senate (S. Con. Res. 64) entitled "Concurrent resolution to authorize the Zeta Beta Tau fraternity to conduct a reception in the rotunda of the Capitol on March 31, 1982, to commemorate Roger Williams for his contribution to religious toleration and freedom in the United States", do pass with the following amendments:

Strike out all after the resolving clause, and insert: That appropriate ceremonies are authorized to be conducted in the rotunda of the Capitol on March 31, 1982, to commemorate Roger Williams for his contributions to religious toleration and freedom in the United States. These ceremonies shall be conducted in accordance with conditions prescribed by the Architect of the Capitol.

Amend the title so as to read: "Concurrent resolution to authorize ceremonies in the rotunda of the Capitol for March 31, 1982, to commemorate Roger Williams for his contributions to religious toleration and freedom in the United States.".

Mr. STEVENS. Mr. President, I move that the Senate concur in the House amendments.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution.

The concurrent resolution, as amended, was agreed to.

Mr. STEVENS. Mr. President, I move to reconsider the vote by which the concurrent resolution, as amended, was agreed to.

Mr. BIDEN. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

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