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News

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STATEMENT BY SENATOR HENRY M. JACKSON
ON THE INTELLIGENCE IDENTITIES PROTECTION ACT OF 1982
SENATE FLOOR, MONDAY, MARCH 1, 1982

MR. PRESIDENT, THERE IS WIDE AGREEMENT ON THE IMPORTANCE OF THE MEASURE WE ARE CONSIDERING, THE INTELLIGENCE IDENTITIES PROTECTION ACT.

AT LONG LAST, WE HAVE BEFORE US THE MEANS TO PROTECT OUR NATIONAL FOREIGN INTELLIGENCE CAPABILITIES FROM A SERIOUS THREAT. THERE ARE ACTIVE TODAY A FEW PEOPLE WHO MAKE A BUSINESS OF EXPOSING THE IDENTITIES OF AMERICAN COVERT AGENTS. THESE PEOPLE ARE NOT PURSUING HISTORICAL OR ACADEMIC RESEARCH, CORRECTING ABUSES, INVESTIGATING POSSIBLE SCANDALS OR ILLEGAL ACTIVITIES, OR PURSUING ANY OTHER SALUTARY PUBLIC ACTIVITY. INSTEAD, THEY ARE IN THE BUSINESS OF "NAMING NAMES."

THESE MALEFACTORS, NOTABLY LOUIS WOLF AND PHILIP AGEE, HAVE

PERSISTED IN RISKING THE LIVES OF COURAGEOUS PUBLIC SERVANTS AND THREATENING OUR VITAL FOREIGN INTELLIGENCE ACTIVITIES. AMONG THEIR OTHER ACTIVITIES, FOR EXAMPLE, THOSE TWO VISITED GREECE, JAMAICA, AND MOZAMBIQUE, WHERE THEY ALLEGED A CIA RELATIONSHIP FOR SEVERAL AMERICAN GOVERNMENT PERSONNEL WORKING IN THOSE COUNTRIES. IN SO DOING, AGEE AND WOLF PLACED THE INDIVIDUALS THEY NAMED IN SERIOUS PERIL. IN MOZAMBIQUE, THE PERIL WAS HARASSMENT AND EXPULSION. IN JAMAICA, THE PERIL WAS ATTEMPTED ASSASSINATION. IN ATHENS, IT WAS MURDER.

THIS THREAT CONTINUES TODAY. JUST LAST FALL, IN OCTOBER 1981, AGEE TRAVELED TO NICARAGUA, WHERE A STRIDENT ANTI-U.S. CAMPAIGN WAS UNDER WAY. ON NOVEMBER 6, THE PRO-SANDINIST NEWSPAPER, NUEVO DIARIO, PUBLISHED THE NAMES OF 13 ALLEGED CIA OFFICERS ASSIGNED TO THE U.S. EMBASSY IN MANAGUA. U.S. OFFICIALS THERE BELIEVE THE PUBLICATION OF THOSE NAMES WAS LINKED WITH AGEE'S VISIT. SEVERAL OF THE INDIVIDUALS NAMED IN THE LIST SOON RECEIVED DEATH THREATS, AND THE FAMILIES OF ALL THESE AMERICAN OFFICIALS WERE EVACUATED FOR THEIR PERSONAL SAFETY.

EMPLOYEES OF THE U.S. EMBASSY IN MANAGUA WERE ACCOSTED AND/OR HAD THEIR HOMES ENTERED.

IN THE FIRST OF THESE INCIDENTS, THREE MEN ARMED WITH PISTOLS ENTERED THE HOME OF AN EMBASSY EMPLOYEE WHO WAS ABSENT AT THE TIME. THE MEN TIED UP THE EMPLOYEE'S GARDENER AND SEARCHED THE WOMAN'S HOME, TAKING A FEW ITEMS AND DISABLING THE TELEPHONE.

IN THE SECOND INCIDENT, INDIVIDUALS BELIEVED TO BE THE SAME THREE MEN FORCED THEIR WAY ONTO THE GROUNDS OF THE HOME OF ANOTHER EMPLOYEE, TIED UP THE GUARD, AND WAITED 7 HOURS FOR THE EMPLOYEE TO RETURN HOME. THE INTRUDERS THEN TIED UP THE EMPLOYEE, THREW HER INTO A CLOSET, TOOK HER CAR, MONEY, AND SOME BELONGINGS, AND DEPARTED. THE INTRUDERS TOLD THE GUARD THAT THE EMPLOYEE WAS A CIA AGENT.

IN THE THIRD INCIDENT, THE HOME OF AN EMPLOYEE WAS ENTERED BY FORCE. THE GUARD WAS TIED UP AND THE EMPLOYEE WAS ACCOSTED AND THREATENED. THE MEN WERE OVERHEARD TO DISCUSS AMONG THEMSELVES WHETHER OR NOT THE EMPLOYEE'S NAME WAS "ON THE LIST."

THE FOURTH INCIDENT INVOLVED THE SAME EMPLOYEE WHO WAS THE

TARGET OF THE FIRST. THE MEN INVOLVED HID ON THE GROUNDS OF THE EMPLOYEE'S RESIDENCE. WHEN SHE RETURNED HOME, THE MEN STOPPED THE CAR IN WHICH SHE WAS RIDING AND, AT GUNPOINT, TOOK HER, A NICARAGUAN ACQUAINTANCE, HER MAID, AND A GUARD PRISONER. AFTER TYING, GAGGING, AND BLINDFOLDING THEM, THE MEN PROCEEDED TO EMPTY THE APARTMENT OF ALL ITS CONTENTS AND AGAIN DISABLED THE TELEPHONE. DURING THE COURSE OF THESE ACTIVITIES, THE NICARAGUAN ACQUAINTANCE WAS BEATEN. THE ASSAILANTS ARE QUOTED BY THE MAID AS HAVING SAID, "WE ARE DOING THIS SO THAT CIA PERSONNEL WILL HAVE TO LEAVE," AND THAT THEY WERE DOING THIS SO THAT "ALL AMERICANS WILL HAVE TO LEAVE." JUST BEFORE LEAVING THE APARTMENT, ONE OF THE MEN SAID, "YOU ARE CIA AND OUR HANDS ARE ITCHING TO KILL YOU."

AGREEMENT IN CONGRESS

MR. PRESIDENT, BECAUSE OF INCIDENTS LIKE THESE, AND BECAUSE OF THE WAY IN WHICH WOLF-AGEE STYLE ACTIVITIES CAN INJURE OUR NATIONAL FOREIGN INTELLIGENCE CAPABILITIES, THE NEED FOR LEGISLATION DEALING WITH THIS MATTER IS NOT IN DOUBT. THERE IS WIDESPREAD AGREEMENT, NOT JUST IN THE SENATE BUT THROUGHOUT CONGRESS AND THE GOVERNMENT GENERALLY, ON THE NEED FOR LEGISLATION TO PROTECT THOSE

WHO SERVE OUR COUNTRY IN SUCH HAZARDOUS CIRCUMSTANCES.

THE ACTIVITIES OF PEOPLE LIKE AGEE HAVE BEEN CONDEMNED IN THE PRESS AND IN THE COURTS. FOR EXAMPLE, THE SUPREME COURT MAJORITY OPINION ON JUNE 29, 1981, IN THE CASE OF HAIG VS. AGEE, SAID IN PART:

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.

THERE IS ALSO WIDESPREAD AGREEMENT THAT WE MUST ACT NOW -- INDEED THAT WE HAVE DELAYED TOO LONG ALREADY. IT WAS EARLY IN JULY 1980 THAT THE ASSASSINATION ATTEMPT ON MR. KINSMAN OCCURED IN JAMAICA, FOLLOWED THREE DAYS LATER BY AN APPARENT ATTEMPT TO ASSASSINATE ANOTHER OF THE EMBASSY PERSONNEL NAMED BY WOLF. THE FOLLOWING DAY, MR. FRANK CARLUCCI, THEN DEPUTY DIRECTOR OF CENTRAL INTELLIGENCE, WROTE TO ONE OF MY COLLEAGUES ON THE INTELLIGENCE COMMITTEE ABOUT THESE EVENTS. HE SAID: "I FURTHER BELIEVE WE CAN ILL AFFORD TO WAIT UNTIL ANOTHER MEMBER OF A U.S. OVERSEAS MISSION

COMES HOME IN A CASKET BEFORE CONGRESS ADDRESSES THIS PRESSING PROBLEM." HOW RIGHT HE WAS -- AND THAT LINE WAS WRITTEN BEFORE THE ATTACKS IN MOZAMBIQUE AND NICARAGUA.

WE ALSO FIND GENERAL AGREEMENT ON ALL PROVISIONS OF THE BILL BEFORE US NOW, SAVE FOR ONE SECTION. THAT SECTION CONCERNS PROVISIONS DEALING WITH PEOPLE WHO HAVE NEVER HAD ACCESS TO CLASSIFIED MATERIAL, SECTION 601 (c) OF S. 391.

AND EVEN ON MOST PARTS OF THIS SECTION, WE ARE AGREED.

WE ARE AGREED THAT WE MUST LEGISLATE TO CORRECT GRAVE ABUSES. WE ARE AGREED THAT WE MUST LEGISLATE CAREFULLY, TO AVOID INFRINGING ON OR CHILLING THE EXERCISE OF CIVIL LIBERTIES. WE ARE STRIVING TO CRAFT A LAW THAT WILL DELIMIT NARROWLY THE SPECIFIC ABUSES THAT WOULD BE PROHIBITED. TO THAT END, WE AGREE THAT WE MUST PROTECT INDIVIDUAL RIGHTS BY IMPOSING A BURDEN ON THOSE WHO WOULD BE PROSECUTING OTHERS UNDER THIS LAW -- A BURDEN OF SIX ELEMENTS THAT MUST EACH BE PROVEN BEYOND REASONABLE DOUBT.

WE ARE AGREED, MOREOVER, ON FIVE OF THOSE SIX ELEMENTS.

SPECIFICALLY, THE LAW WOULD REQUIRE, WHETHER IN THE VERSION AS IT

CAME TO THE FLOOR OR AS AMENDED IN THE WAY THAT SENATOR CHAFFEE AND I, WITH SEVERAL OTHERS, HAVE URGED, THAT THE PROSECUTION PROVE THAT A PERSON ACCUSED UNDER THIS LAW MUST HAVE:

- ACTED IN THE COURSE OF AN EFFORT OR PATTERN OF ACTIVITIES INTENDED TO IDENTIFY AND EXPOSE COVER AGENTS.
- INTENTIONALLY DISCLOSED INFORMATION THAT DID, IN FACT, IDENTIFY A COVERT AGENT.
- MADE DISCLOSURE TO AN INDIVIDUAL NOT AUTHORIZED TO RECEIVE CLASSIFIED INFORMATION.
- KNOWN THAT THE INFORMATION DISCLOSED DID, IN FACT, IDENTIFY A COVERT AGENT.
- KNOWN THAT THE GOVERNMENT WAS "TAKING AFFIRMATIVE MEASURES TO CONCEAL SUCH INDIVIDUAL'S CLASSIFIED INTELLIGENCE RELATIONSHIP TO THE U.S."

SUPPORT FOR THE OBJECTIVE STANDARD

WHERE THERE IS DISAGREEMENT, MR. PRESIDENT, IS THE SIXTH ELEMENT REQUIRED FOR THE PROSECUTION TO PROVE. THE BILL, AS IT CAME TO THE FLOOR, EMPLOYS AN "INTENT" STANDARD FOR PROSECUTION, WHICH WOULD REQUIRE THAT A DEFENDANT'S STATE OF MIND AND PURITY OF PURPOSE BE EXAMINED. THAT IS, IN THE BILL AS IT CAME TO THE FLOOR, THE SIXTH ELEMENT REQUIRED FOR A SUCCESSFUL PROSECUTION WOULD BE

THAT THE PERSON MAKING THE DISCLOSURE OF IDENTITY DID SO WITH THE INTENT OF IMPAIRING OR IMPEDING THE FOREIGN INTELLIGENCE ACTIVITIES OF THE UNITED STATES.

THIS LANGUAGE CONCERNED ME, CHIEFLY FOR REASONS OF CIVIL LIBERTIES. WE MUST EXERCISE GREAT CARE TO PROTECT THE EXERCISE OF OUR POLITICAL FREEDOMS. WE SHOULD BE VERY CAUTIOUS ABOUT WRITING LAWS THAT WOULD PERMIT OR EVEN REQUIRE EXAMINATION AND TRIAL OF A PERSON'S LAWFUL EXERCISE OF POLITICAL BELIEFS, ACTIONS, AND ASSOCIATIONS. THE FREE EXERCISE OF PUBLIC SCRUTINY AND DEBATE IS CENTRAL TO OUR DEMOCRATIC INSTITUTIONS, AND WE SHOULD AVOID CREATING LAWS THAT MIGHT CHILL THESE ACTIVITIES BY INDUCING A FEAR THAT A SPIRITED CRITICISM MADE TODAY WILL TOMORROW BE ADDUCED AS EVIDENCE OF IMPURE INTENT.

CONSEQUENTLY, I JOINED SENATOR CHAFEE AND SEVERAL OTHER CO-SPONSORS IN PROPOSING AN AMENDMENT TO THE BILL WHICH WOULD RESTORE THE ORIGINAL LANGUAGE OF THE BILL. OUR AMENDMENT WOULD REPLACE THE SUBJECTIVE "INTENT" STANDARD WITH AN OBJECTIVE STANDARD, ACCORDING TO WHICH THE PROSECUTION WOULD HAVE TO PROVE THAT THE ACCUSED HAS "REASON TO BELIEVE" THAT HE "WOULD IMPAIR OR IMPEDE FOREIGN

INTELLIGENCE ACTIVITIES OF THE UNITED STATES."

THE LANGUAGE PROPOSED IN OUR AMENDMENT HAS BEEN STRONGLY SUPPORTED BY BOTH THE CARTER AND REAGAN ADMINISTRATIONS. IT IS THE LANGUAGE THAT WAS ENDORSED BY THE SENATE INTELLIGENCE COMMITTEE IN 1980, THAT WAS IN THE BILL WHEN IT WAS ORIGINALLY SUBMITTED TO THE SENATE DURING THIS CONGRESS, AND THAT WAS OVERWHELMINGLY ADOPTED BY THE HOUSE OF REPRESENTATIVES EARLY LAST FALL.

THE KEY ADVANTAGE OF THIS LANGUAGE, I BELIEVE, IS EFFECTIVENESS. THE CHAFEE/JACKSON LANGUAGE WILL BE MORE EFFECTIVE IN PROTECTING BOTH OUR FOREIGN INTELLIGENCE CAPABILITIES AND OUR INDIVIDUAL CIVIL LIBERTIES. WITH THIS LANGUAGE, THE LEGITIMATE SCOPE FOR GOVERNMENTAL INVESTIGATION WOULD BE LIMITED. BEING AN OBJECTIVE STANDARD OF EVIDENCE, THE "REASON TO BELIEVE" ELEMENT MAKES IRRELEVANT AN INDIVIDUAL'S POLITICAL BELIEFS, ASSOCIATIONS, AND OTHER PUBLIC ACTIVITIES. AT THE SAME TIME, MALEFACTORS WILL NOT BE ABLE TO AVOID PUNISHMENT UNDER THIS LAW BY CLAIMING THAT THEY HAD A BENIGN INTENT FOR THEIR ACTIONS, HOWEVER MUCH THEY ENDANGERED NATIONAL SECURITY AND IMPERILED INDIVIDUAL LIVES.

THE "REASON TO BELIEVE" STANDARD IS EFFECTIVE IN A TECHNICAL SENSE, AS WELL. IT IS CONSISTENT WITH THE BODY OF STATUTORY AND CASE LAW THAT HAS BEEN DEVELOPED CONCERNING ESPIONAGE ACTIVITIES, AND IT HAS PASSED CONSTITUTIONAL MUSTER IN A NUMBER OF IMPORTANT CASES.

FINALLY, IT IS IMPORTANT TO REMEMBER THAT WE HAVE BEEN ADDRESSING JUST ONE ELEMENT -- THE OBJECTIVE VERSUS THE SUBJECTIVE STANDARD OF PROOF. WHICHEVER VERSION IS SUPPORTED BY THE SENATE WILL BE ONLY ONE OF SIX ELEMENTS, EACH OF WHICH MUST BE PROVEN. MOREOVER, IN CASE A COURT MIGHT REQUIRE FURTHER GUIDANCE IN APPLYING THIS LAW, ITS LEGISLATIVE HISTORY MAKES ABSOLUTELY CLEAR THAT THE LEGISLATIVE PURPOSE IS TO "GET THE BAD GUYS", NOT TO CHILL DEBATE OVER ISSUES OF PUBLIC POLICY.

MR. PRESIDENT, THE AMENDMENT WE HAVE PROPOSED WILL HELP PROTECT OUR CIVIL FREEDOMS AND THE LIVES OF COURAGEOUS PUBLIC SERVANTS -- WHO ARE ALSO VITAL TO PRESERVING OUR FREEDOMS. I URGE ITS PROMPT ADOPTION.