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ROSS CRYSTAL: On Thursday the Senate voted to make it a felony to disclose the names of United States intelligence operatives, which brought up and stirred a lot of debate. The measure is seen as a necessary step in protecting our agents; and as an invasion of the First Amendment rights, as many people see that.

We're going to talk about that right now. Joining us is Jack Maury, who's the President of the Association of Former Intelligence Officers, and, understandably, quite happy, about that vote. Jack Landau is the Executive Director of the Reporters Committee for the Freedom of the Press, a group that disagrees.

A Senate version of this bill, a House version of this bill, which would make it, for the first time, a crime to publish information derived solely from public records, which are sometimes enough, as we've seen in the past, to figure out the names of CIA officers stationed abroad.

Why are we restricting, and what does seem to be a harsh restriction on journalists in this country? Why are we doing that?

JACK MAURY: I don't know why a legitimate journalist working on a story that would be of interest to the public has to get into the uncovering of agents under deep cover, with the result that their careers are jeopardized, and indeed their safety is also put in jeopardy sometimes. I think it'd be very hard to visualize a situation where that would present a serious problem to a responsible journalist.

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CRYSTAL: A responsible journalist should not have their nose in that kind of stuff, is what you're saying.

MAURY: No. I think they certainly have a duty to investigate mischief in the government. I think it's inevitable, under our system, that they would carry on that kind of a mission with diligence and enthusiasm.

CRYSTAL: But if they find out...

MAURY: But I don't think that it is necessary for them, in performing that function, to uncover agents who are -- whose effectiveness depends on their their anonymity.

CRYSTAL: All right.

Jack Landau, why is it necessary, indeed?

JACK LANDAU: Well, I think we ought to take Mr. Maury's statement just sentence-by-sentence.

It isn't necessary to investigate deep-cover agents. That strikes a patriotic thump in my heart. This bill is much broader than that. It doesn't say anything about deep-cover agents. This bill simply says "any intelligence agent."

So, the United States launches a covert action in Honduras to try to overthrow the government of Guatemala, and there is a CIA agent running it. And they say, "John Smith is running it for the CIA."

In addition, the agent says -- the bill also says "intelligence agents or their sources."

So, "Ernesto Sanchez is running it for Jack Smith." Into the pokey you go for five years. You don't have to show that it's a danger to the national security. As a matter of fact, many people would argue that it's good for the national security of this country to have some debate about those activities.

CRYSTAL: Too much leeway involved in this law.

MAURY: Well, let me reply to Jack's points.

First of all, it is not as simple as he says, that any agent can be -- who's identified can give rise to prosecution. That's not true. It's got to be an agent who has -- who is undercover. And there are, indeed, six hurdles that you have to get over before you can start prosecution. And finally, you've got to have reason to believe, you've got to prove that there was reason to believe that this would impair the effectiveness of

U.S. intelligence.

CRYSTAL: How do you do that? How do you go about proving...

LANDAU: The question is asked just the opposite. Mr. Maury is an editor. Right? And he discloses Jack Smith's name. And they say to him in front of a jury, "Now, Mr. Maury, didn't you reasonably believe that by disclosing this agent you would in some way impede intelligence gathering?" What's he going to say, no? His answer is, "Of course I thought I would impede it. But it was more important for people to know about it."

CRYSTAL: So, what we're saying here is that we now turn the burden of proof around in that court of law to say that you are guilty until proven innocent.

MAURY: No, I don't think -- I think you've got to -- you have got to prove six things. You've got to prove that this was done with the knowledge on the part of the defendant that this identity was one that the government was protecting. You've got to prove a pattern of activities designed to uncover people under deep cover. And you've got to prove reason to believe that it would impair the effectiveness of the U.S. intelligence establishment. So all of these things have to be added together.

And mind you, this bill was supported by both the Democratic and Republican Administrations. It's been reported out by 15-to-1 by the Senate Intelligence Committee. It was voted on in the House by a 6-to-1 vote. It was voted in the Senate by 90-to-6, I believe it was.

LANDAU: ...asking the right question, though.

CRYSTAL: Jack Landau is saying, "Wait a second" -- Jack Maury, rather, is saying, "You've got a long way to go before anybody's getting convicted."

LANDAU: Yeah, but look at -- I mean look at what he said. A newspaper has to know that the guy is undercover. Well, of course, if they say, "Jack Smith, whose name hasn't been publicly disclosed as a CIA agent," of course he's undercover. I mean that's almost by definition. You don't see people running around the streets of Latin America with big signs on them, "I am a CIA agent." Of course they don't do that.

The second thing is a pattern of disclosure. What does that mean? You write one story that Jack Smith and then you write another story he's being helped by Ernesto Sanchez; and boom, there's your pattern of disclosure.

So these are -- these are artificial -- these are arti --

but that's not the question that should be asked of Mr. Maury. The hard question is, and the question that concerns everybody, including people in the press, is: Why is it so easy to find this out? What's wrong with the agency? If we can find it out, the Russians can find it out, the Latin American press can find it out. What is wrong with the security over in Langley? That's the issue that nobody's talking about, because these names wouldn't get out if it was so easy [sic].

MAURY: I'll tell you what's wrong with it, Jack. We don't have a police state in this country. If that's what you want, then maybe we can protect these secrets. But in a free society, it is absolutely impossible, when we've got an organization of thousands of people, that there might be, sooner or later, some blabbermouth, some bad egg somewhere along the line, and so on. So it is possible for people on the outside to find out things that they've got no business knowing, and they're damaging national security.

CRYSTAL: You're saying they've got something wrong there. And if you can find it out, so be it.

LANDAU: Well, I'm saying if the point of the bill is to stop the Russians from finding out who our agents are, certainly if some little storefront magazine, Covert Action Information Bulletin, can find it out, then the Russians can damn well find it out.

And furthermore -- furthermore, if somebody is determined -- this information doesn't come from the press. The press is not in the agency. If a person is determined to get this information out, all he has to do is go to a pay phone and call the Russian Embassy and say, "Hey, you know, Jack Smith is organizing a" -- so it's not going to stop the Russians from finding it out.

Secondly, if the object of it is to stop it from being published, if a person is determined to have it published, all he has to do is call up Tass or Prensa Latino (?) or any of the Communist news services here. It'll be spread all over the place.

It is an emotional reaction against -- they're clawing at the press because they're frustrated by their own poor security.

MAURY: The Russians probably can find out quite a few of these identities. But, as a matter of fact, I have every reason to believe that things like Covert Action Information Bulletin are being provided information by the Russians and their allies.

But the point is that once you start the process of disclosing these identities, you have created an atmosphere in

which it is impossible to recruit the people you need to do these jobs. It is impossible to protect those that are already on board. A lot of them get cold feet and back off of their cooperation with us, and so on.

If the U.S. Government allows a magazine like Covert Action Information Bulletin to be published right in the nation's capital and disclose the identities, destroy the careers and jeopardize the lives of people that are doing a job for the U.S. Government, then I think we look pretty sick, and I think it's going to be pretty hard to get people to cooperate with us.

CRYSTAL: But is that the root of the problem?

LANDAU: It's a question of embarrassment.

CRYSTAL: Is that the root...

MAURY: It's not -- it's not embarrassment. It has a paralyzing effect on the effectiveness of a lot of people undercover to be threatened with this continued possibility of disclosure.

CRYSTAL: But at the same time, if that publication isn't doing it and if that publication ceases, somebody else is going to come along and do it. And why don't we get to the source and...

MAURY: If -- well, if they do it as part of a pattern of activities of exposing people under deep cover, knowing the damage it will do, with reason to believe that it will impair our intelligence operation, then...

LANDAU: Well, I think you have to stop there.

CRYSTAL: Who's going to decide that?

MAURY: A jury will decide that.

LANDAU: That's a very important question, because this is the first time that we have ever had a law which would send third parties -- I'm not talking about government and former government employees -- third parties to jail for publishing information involving the national security without the government having to show that the information is a clear and present danger.

Let's take our example. Right? John Smith is disclosed. Right? Big deal. They could put him on an airplane and send another agent in his place. They do it all the time. Suppose he got pneumonia. Suppose he broke a leg. I mean that's not a reason to throw a newspaper reporter or publisher in jail, the fact that one agent's effectiveness is going to be -- is limited.

Agents' effectivenesses, I assume, are limited all the time, and the agency knows how to take care of it. They take him back, put him out of circulation for a while, and then later on send him someplace else.

MAURY: Well, you've got to remember...

LANDAU: That's not a clear and present danger to national security.

MAURY: Well, obviously, any law can be abused if it's administered by irresponsible people. But you seem to be assuming that the jury and the courts and the Executive Branch, the Justice Department, all of whom would be a party to this operation of prosecution, all are going to be bent on violating people's constitutional rights. I don't think that's...

LANDAU: ...law. I mean that's what we argued, Jack. We argued, put into the law a requirement that the disclosure be a clear and present danger to the national security, force the government to prove some really identifiable harm. And you fellows opposed it; and the Administration opposed it, the very people who we should trust in the prosecution opposed it.

MAURY: Look, we've got in the law a reason to believe that it will impair our intelligence.

CRYSTAL: Okay. What happens -- what happens if -- we haven't had a case to test this yet. What happens if, in fact,...

LANDAU: Well, we had a case. The Washington Post actually published a story two weeks ago about this covert-action operation in Latin America.

CRYSTAL: But not at the highest -- but not at the highest -- in other words, they published, it's unconstitutional, is what I'm getting at here. If we prove that, where do you go from there? is what I'm driving toward.

MAURY: Well, all I can tell you is that two committees of the Congress and the great majority of the membership of the Congress and the Justice Departments of both Administrations have judged that this constitutional.

CRYSTAL: But if the High Court says uh-uh, then you go back to the drawing board.

MAURY: Then we go back to the drawing board and...

CRYSTAL: And then your six criteria are out the window, and where do you start from?

LANDAU: You know where you start? Right back where we said. You start over in Langley. That's where you start.

MAURY: Well, that's sort of passing the buck, Jack. You know perfectly well that it's impossible to get 10 or 15 thousand people without getting some bad eggs occasionally. And you know also that this town is -- has a ready market for secrets and makes an instant celebrity out of the whistle-blowers that leak secrets. And as long as that's the case, as long as any of them can find fame and fortune by betraying their trust and going public with their secrets, why, there's going to be a danger that some of them will.

CRYSTAL: All right, gentlemen. With that I must end.