

ARTICLE APPEARED
ON PAGE C7THE WASHINGTON POST
4 October 1981

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Why Should We Endanger Our Spies?

When a complicated problem is before Congress, it is extremely convenient to pin on any proposed solution a simplistic label reflecting the labeler's bias—and then to make a judgment based on one's appraisal of the label.

A current case of simplistic labeling and predictable judgments is the designation by the press of legislation to forbid the disclosure of the names of covert agents serving our country abroad. It "limits free speech." Such legislation is, in the words of *The Post* (Sept. 25) "a swipe at the First Amendment." Congress, in a frenzy, is blowing away our rights of free speech, *The Post* would have us believe.

Labeling is considerably easier than studying the legislation or producing a solution.

The problem: Americans in the employ of our government are sent abroad by that government on dangerous missions. Their identities as agents are concealed for their protection and so that they might better accomplish their assigned tasks. Other Americans, with laborious effort, considerable skill and

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countless hours, using the montage of unclassified materials, ferret out the names of these agents, publish their names and thus imperil the lives of their fellow countrymen; One agent, Richard Welch, was murdered in Athens following such a disclosure. Others have had attempts made on their lives, their families have suffered, and useful careers have been terminated.

What should we do?

"Nothing," counsels the press. Any action would allegedly require a sacrifice of constitutional liberties. Freedom of speech must not be abridged.

Exactly right—to a limit. Long ago, it was decided that one's right to freedom of speech ends when the other man's safety is endangered. There is no *right* under freedom of speech to cry "fire" in a crowded theater. There is no *right*, having observed the wartime troop ship depart, to tell the world about it.

Legislation I have sponsored in the Senate, which has now passed the House of Representatives, makes it a crime to pursue a "pattern of activities intended to identify and expose covert agents with reason to believe that such activities would impair or impede the foreign intelligence activities of the United States. . . ."

Note that this legislation deals solely with the identification and exposure of agents. It does not inhibit the revelation of intelligence abuses or cry for reform, as has been charged. A reporter is free to castigate our intelligence agencies, their leaders, their activities, and the results of the work done. But systematic disclosure of agents' names is forbidden. Will this stifle reform?

The answer is no. The entire activities of former senator Frank Church's committee in 1975, and its investigation of the CIA, never once involved the disclosure of an agent.

To be found guilty under this legislation would require proof of six elements. The accused must have:

- Acted in the course of a "pattern of activities intended to identify and expose covert agents."
- Had "reason to believe that such activities would impair or impede foreign intelligence activities of the United States."
- Disclosed information that did, in fact, identify a covert agent.
- Made disclosure "to any 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."

Much is made of the "reason to believe" standard set forth in the pending bill. "Reason to believe" language is

well-established in espionage law and has been upheld in the courts on a number of occasions. "Reason to believe" is an objective standard: would a reasonable person have reason to believe that by such actions the intelligence activities of the United States would be impaired? It does not require inquiries into the political beliefs of the accused, or past critical remarks he might have made about the government. Those matters are irrelevant.

The Justice Department, under two successive, politically different administrations, has given the opinion that this legislation is constitutionally sound. A succession of CIA directors has implored Congress to enact this law to protect the well-being of our agents.

Our fellow Americans, who are serving abroad as covert agents, find it incomprehensible that their lives and the lives of their families can be jeopardized by other Americans who remain safe from prosecution.

The writer is a Republican senator from Rhode Island