

Protect the CIA—and the Constitution

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THE HOUSE Judiciary Committee has just approved a bill designed to protect the identities of the CIA's secret agents. Its counterpart committee in the Senate is about to do the same thing. But there is a problem. The method of accomplishing this selected by the House committee, and apparently favored by a majority of the senators, seems to be unconstitutional.

To be fair about it, the two committees are tackling an unusually difficult situation. There is loose in the country a handful of individuals who see nothing wrong in fingering the CIA's agents, even if that disrupts intelligence operations or marks the agents as assassination targets. Some of these individuals are former government officials; others are private citizens. Therein lies the problem.

Congress has the power—and it should have exercised it some time ago—to put the clamps on those who, while employed by the government, learn the names of secret agents and later disclose them. That is a breach of security properly punished by the criminal law.

But Congress is in an entirely different position when it comes to putting the same clamps on other citizens who have never had access to classified information. Its ability to pass laws punishing such citizens for what they publish or talk about is strictly limited

by the First Amendment. It is that point the members of the two committees are ignoring.

The proposal approved by the House committee makes it a crime for any person to publish information disclosing the identity of a secret agent, regardless of where that information originated. The fact that it had been obtained from public documents, for example, would be irrelevant. The only defense would be that the person identifying such an agent did not intend to impede intelligence activities—a defense depending on subjective, political judgments.

This is precisely the kind of law the First Amendment was designed to prohibit. If it is constitutional—and we do not believe for a minute that it is—the way would be clear for Congress to determine what information on almost any subject the public may have. If Congress can make it a crime for anyone to publish the names of secret agents, it can make it a crime to publish other kinds of information such as, say, the size of the defense budget or the existence of a COINTELPRO operation.

The cruel and shameless conduct of a few Americans has put the CIA's secret agents in new danger. The House committee's solution to it would leave constitutional freedoms in shreds.